

KatibaNews

Towards a new constitutional dispensation in Kenya

OCTOBER 2008

Issue NO. 10.08

Disbanding and reconstituting the ECK

- 
- ✎ Examining the independence of IREC
 - ✎ Katiba briefs
 - ✎ Post election violence commission of inquiry
 - ✎ Political parties & democratic governance in Kenya

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ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

The Media Development Association (MDA) is an alumnus of graduates of University of Nairobi's School of Journalism. It was formed in 1994 to provide journalists with a forum for exchanging ideas on how best to safeguard the integrity of their profession and to facilitate the training of media practitioners who play an increasingly crucial role in shaping the destiny of the country.

The MDA is dedicated to helping communicators come to terms with the issues that affect their profession and to respond to them as a group. The members believe in their ability to positively influence the conduct and thinking of their colleagues.

The MDA aims at:

- ❑ Bringing together journalists to entrench friendship and increase professional cohesion; Providing a forum through which journalists can discuss the problems they face in their world and find ways of solving them;
- ❑ Organising exhibitions in journalism-related areas such as photography;
- ❑ Organising seminars, workshops, lectures and other activities to discuss development

issues and their link to journalism;

- ❑ Carrying out research on issues relevant to journalism;
- ❑ Organizing tours and excursions in and outside Kenya to widen journalists' knowledge of their operating environment;
- ❑ Publishing magazines for journalists, and any other publications that are relevant to the promotion of quality journalism;
- ❑ Encouraging and assist members to join journalists' associations locally and internationally;
- ❑ Creating a forum through which visiting journalists from other countries can interact with their Kenyan counterparts;
- ❑ Helping to promote journalism in rural areas particularly through the training of rural-based correspondents;
- ❑ Advancing the training of journalists in specialised areas of communication;
- ❑ Create a resource centre for use by journalists;

- ❑ Reinforcing the values of peace, democracy and freedom in society through the press;

- ❑ Upholding the ideals of a free press.

Activities of MDA include:

- ❑ Advocacy and lobbying;
- ❑ Promoting journalism exchange programmes;
- ❑ Hosting dinner talks;
- ❑ Lobbying for support of journalism training institutions;
- ❑ Initiating the setting up of a Media Centre which will host research and recreation facilities;
- ❑ Working for the development of a news network;
- ❑ Providing incentives in terms of awards to outstanding journalists and journalism students;
- ❑ Inviting renowned journalists and other speakers to Kenya;
- ❑ Networking and liking up with other journalists' organisations locally and abroad.

This newsletter is meant to:

- 1 Give critical analysis of democracy and governance issues in Kenya.
- 2 Inform and educate readers on the ongoing Constitution Review Process.

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Voters queue to vote during the last general election.

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Disbanding and reconstituting the ECK

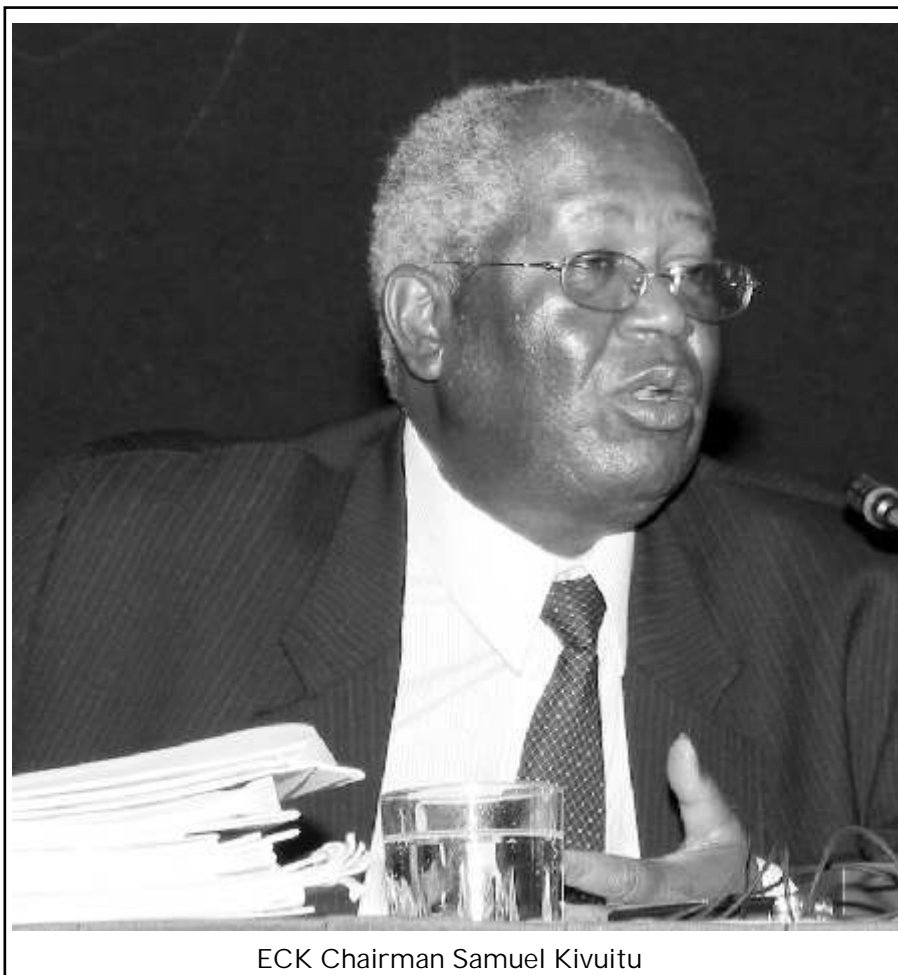
Options and rule of law questions

By James Kwena

Since the political crisis triggered by the disputed 2007 elections, focus has shifted to independence and impartiality of the Electoral Commission of Kenya (ECK) in electoral process. ECK is viewed as the trigger of the political crisis and ensuing violence. Kenya is a rule of law state governed by laws enacted by Parliament, implemented by the Executive and interpreted and enforced by the judiciary hence observing the principle of separation of powers. Rule of law demands that laws must be public knowledge, clear in meaning and applicable to everyone equally including government.

According to Thomas Carothers, unless the government subordinates itself to the law and to the sovereignty of the people through the Constitution, that government may rule by law but its authority will not be grounded on rule of law. Rule by law does not protect citizens from arbitrariness and violation of rights by government.

The disbandment and reconstitution of ECK must be in accordance with the law. The rule of law protects institutions and reinforces their independence. Section 41 of the Constitution provides that a member of ECK can only be removed on recommendation of a tribunal appointed by the President to inquire into his or her conduct. The reasons for removal are inability to exercise the functions of the office due to infirmity of body or mind or for misbehaviour.



ECK Chairman Samuel Kivuitu

Removal will require appointment of tribunals to investigate into the conduct of all twenty two commissioners. This is a protracted and lengthy process. The constitution does not define what constitutes misbehaviour. This method would involve appointment and formation of tribunal under the constitution culminating in the removal and compensation of commissioners. This method would not reform the constitutional and legal framework in which ECK operates. However, the removal of the Commissioners would pave way for reconstitution of ECK through

bipartisan consultations.

The other option is for Parliament to enact a constitutional amendment to restructure ECK prior to completing constitutional reform in accordance with the recommendation. This will secure the integrity and acceptance of the referendum results. The measure will facilitate completion of the review process. The amendment will introduce a bipartisan and consultative process in the appointment of commissioners, requiring parliamentary approval, and reduce the number of

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commissioners and stipulate the qualifications for appointment

The reform of ECK is part of the constitutional reform process. In 1997, Parliament amended the Constitution to increase the number of Commissioners from 12 to 22. The additional commissioners were nominated by opposition parties on pro rata basis. This method was criticised since the Commission is not a representative body of parties' nominees but should be independent and staffed with professionals. In Uganda and South Africa, Commissioners are vetted by Parliament prior to their appointment. ECK has called for amendment to the law to allow a transparent method of announcing presidential results and installation of the President.

Models of election management bodies

There are four models of election management bodies:

1. An independent model is autonomous of the executive and manages its own budget.
2. The mixed model has an

independent board to determine policy, but implementation is carried out by an executive department with supervision by the independent board. Mixed model exists in Cameroon, France, Germany, Jamaica, Japan, Spain, and Togo.

3. A government model is where elections are managed and directed by a government ministry which operates within the executive. This model is adopted in Denmark, Seychelles, Singapore, Sweden, Switzerland, Tunisia, and the United States. The model may incorporate local authorities as agents.
4. The judicial model is where the electoral authority is supervised by and is responsible to a special Electoral Court. The model is adopted in Costa Rica, Brazil, and Mexico.

Adhering to the rule of law in reforming the ECK
Reconstitution of the commission

must respect the security of tenure granted under the Constitution. When the Government in 2003 implemented the Justice Ringera Report on Judiciary, the judges, who similarly have security of tenure under the constitution, were granted a hearing in a tribunal. However, during the period of the hearing, they were suspended. 17 of judges resigned while six were subjected to tribunals. The tribunal procedure is supposed to reinforce the presumption of innocence until found guilty. A rushed and ill planned disbandment may create a lacuna since ECK is supposed to supervise the referendum and by-elections. The nation must have a functional electoral authority.

The role of ECK in constituency boundary review

The Constitution empowers the ECK to review the number, boundaries and names of constituencies every 8-10 years. All constituencies shall contain as nearly as equal number of inhabitants as appears to the Commission to be reasonably practicable but ECK may, to the extent it considers expedient, consider population density, population trends, means of communication, geographical features, community interest and boundaries of existing administrative areas. In 2007, the Minister for Justice published a Bill which sought to increase the number of constituencies by 60. The Bill had other proposals which the MPs did not support and hence it was not enacted. The ECK has not carried out a review since 1996. Population should be the primary consideration in boundary review.

Comparative analysis of electoral management bodies

Uganda
The Electoral Commission consists



A voter casts his ballot in last year's general election

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of Chairperson, Deputy Chairperson and five members appointed by the President with approval of Parliament. The members should be of high moral integrity and character and possess considerable expertise in public affairs. Members hold office for a term of seven years which is renewable once. The renewal is done three months to the expiry of their terms. Members may be removed by the President for inability to perform their functions due to mental or physical infirmity, misbehaviour or misconduct or incompetence. Among the functions of the EC is to hear and determine election complaints arising before and during the polling day. Any person aggrieved by the decision of the EC may appeal to the High Court. Complaints relating to boundary demarcation can be referred to a tribunal appointed by the Chief Justice.

Ghana

The Electoral Commission consists of a Chairman, two Deputy Chairmen and Four members. Members are appointed by the President. The Chairman has similar status to a Judge of the Court of Appeal and the Deputy Chairmen a Judge of the High Court. The EC appoints officers and employees in consultation with the Public Service Commission. The expenses of the EC are charged to the Consolidated Fund. The members of the EC do not have security of tenure.

Germany

Each election is viewed as a test of the federal government's popularity. In designing the electoral system, the framers of the Basic Law had two objectives. They sought to re-establish the system of proportional representation. A proportional representation system distributes legislative seats based on a party's percentage of the popular vote. The

other objective was construction of a system of single-member districts. The combination would ensure greater accountability of representatives to their electoral districts. A hybrid electoral system of personalized proportional representation resulted.

Voters cast two ballots in the election. The elector's first vote is cast for a candidate vying to represent the district. The candidate who receives most votes is elected district representative. Germany is divided into 328 electoral districts with roughly 180,000 voters in each district. Half of the members are directly elected from districts. The second ballot is cast for a party.

The first ballot is designed to decrease the anonymity of a strict proportional representation system. The second ballot determines how many seats each party will be allotted. To ensure that each party's percentage of the combined district (first ballot) and party (second ballot) seats equals its share of the second vote, each party is allocated additional seats. These seats are filled according to lists of candidates drawn up by the party prior to the election.

India

The Election Commission is an autonomous quasi-judicial body. Its function is to conduct free and fair elections. The commission consists of a Chief Election Commissioner and two. In 1991, Parliament passed a law providing for the appointment of two Election Commissioners. The Election Commission enjoys autonomy and is insulated from executive interference. EC arbitrates electoral disputes but its opinions are binding and are subject to judicial review.

The Commission is responsible for planning and executing the conduct

of elections. During the elections, the government machinery is deputed to the Commission to facilitate the elections. The Commissioners are appointed by the President. The Commissioners have tenure of six years, or up to the age of 65 years and 62 years respectively, whichever is earlier. They enjoy the status of Judges of the Supreme Court. The Chief Election Commissioner can be removed from office through impeachment by Parliament

Conclusion

The ECK is expected to supervise the referendum for a new Constitution. The integrity of the result will depend on the composition, efficiency and structure of the Commission. The Government should negotiate a compensation package to the commissioners for the remaining terms and arrange a negotiated departure in conformance with the Constitution. This will obviate the necessity of establishing tribunals which will hold the country at ransom as the offices of the Commissioners cannot be filled before they are reinstated by the tribunal or found unfit to serve as Commissioners and are removed by the President.

In the event of resistance from the Commissioners to exit in a negotiated manner, Parliament can amend the Constitution reconstituting the Commission and remove the serving commissioners by abolishing their offices. Reform of the ECK may delay the realisation of a new Constitution due to its central role in the referendum. ECK is one institution in dire need for reform and it is appropriate to undertake urgent minimum reforms to the Constitution to ensure it is efficient and independent. **KN**

Examining the independence of IREC

By Tom Mbono

The Independent Review Commission (IREC) was formed as part of the mediation agreement to review and recommend changes to the electoral laws with a view to preventing post-election crises in future. It was chaired by a former South African Judge, Johann Kriegler, and had six members.

Irec's mandate was to examine the Constitution and legal framework on elections and identify weaknesses or inconsistencies, examine the structure of the ECK and assess its independence, capacity and functioning, examine the electoral environment and role of political parties, media, civil society and observers, and examine the conduct of 2007 elections. It was also to assess the integrity of results with special attention to presidential contest, assess functionality and capacity of the ECK and recommend electoral and

other reforms.

Irec was to submit its report to the President within six months and the report was to be published within 14 days. Irec submitted its report to the President and the Panel of Eminent African Personalities. The report was published.

Highlights of the Report

The Commission commenced its inquiry by analysing and aggregating tasks, reviewing documents, drafting procedural rules, and holding meetings with role players and the public. Six technical workshops were later held with experts. Finally, key witnesses were interviewed on oath, including ECK commissioners and senior staff. Irec maintained a sound working relationship with ECK.

The cornerstones of a free and fair election include periodic regular elections, which are free from manipulation, the right to participate, universal suffrage, right to vote, equality of vote, secret ballot and freedom of expression. Among the functions of ECK are to determine and review boundaries at 8-10 year intervals, register voters, supervise elections, promote free and fair elections and carry out other functions prescribed by Parliament.

Commissioners by the President unilaterally during 2006 and 2007 created doubt on the integrity and non-partisanship of ECK. The manner of appointment of commissioners and the structure, composition and management system of ECK were materially defective, resulting in loss of independence, capacity and functional efficiency. ECK needs to be radically transformed or replaced.

The legal framework and the culture of lawlessness during elections do not support an appropriate framework for political competition. ECK does not have sufficient quasi-judicial powers to adjudicate results. Adjudication is handled exclusively by the Judiciary with limited ECK involvement in ordering recounts and retallies at the request of candidates or parties within specific timeliness after the close of polling. ECK should have power to enforce its orders by barring defiant candidates. Due to widespread nature of voter bribery, ECK should be empowered to sanction candidates involved in the practice. Delay in issuing Identity Cards adversely affected registration of voters.

The tallying, recording, transmitting and announcing the results is conceptually defective and poorly executed and failed to deploy information technology, thereby contributing to the climate of tension, suspicion and rumour, which bred violence. The first-past-the-post election system has potential for distortion. The ODM won over 100 seats whereas its competitor, PNU, won about 45.

Public servants should be barred from participating in political activity, including election campaigns and using public resources in partisan political activities. Public servants should be



South African Judge Johann Kriegler, chair, Independent Review Commission (IREC)

The appointment of 15 new

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monitored and prosecuted by ECK. Irec stated that ECK should be empowered to monitor spending by parties during campaigns. This provision has been implemented through the Political Parties Act. This will reduce undue influence of money in campaigns.

ECK should also be granted delegated powers by the Attorney General to prosecute electoral offences. ECK failed to communicate effectively with parties and the public in regard to the national tallying centre leading to misconceptions, rumour and anger.

The Irec noted that the 2007 elections were a resounding failure and materially defective and it was impossible to establish true or reliable results for the presidential and parliamentary elections noting the results reflect innumerable mistakes. "The process was undetectably perverted at the polling stage and the results are so inaccurate to render any reasonable and convincing conclusion possible."

The commission found that the electoral dispute resolution procedure was inadequate. One can only challenge an election after the announcement of results. Though the judicial process can be expedited, disputes take years to resolve. The referral of all disputes to litigation makes it impossible to find and implement quick, sensible and fair solutions. The tribunals mandated to decide on electoral disputes require specialised judicial attention. The disputes require rapid resolution and do not allow time for extensive research by the tribunal. Electoral dispute resolution requires flexibility and pragmatism.

In Mexico, there is a special tribunal with extensive power and exclusive jurisdiction on elections. In South Africa, there is a special electoral court with exclusive and final jurisdiction consisting of three judges. The disputes are decided on urgently and on priority basis. Where appropriate, the decision should be

made at the lowest point in the chain of authority with finality.

Swearing-in and assumption of office

Most jurisdictions have some length of time between elections and taking of office by the winner. The United States conducts elections in November, but the

President takes office in January the following year. In Mexico, the 2006 elections took place in July and the President was sworn-in in December. This period is intended to avail sufficient time for resolution of pending disputes, verification of results and facilitate peaceful and orderly transition of power.

The ECK should conduct regular post-election audits. This requires preservation of election materials including ballot, counting sheets, voter lists and all election result forms, the master voter register with voter information and checklists. The details of Election Day, ECK staff with information of where they worked and party agents should be preserved. The audit will assist ECK to improve the quality of data and its procedures and processes. The results of all polling stations should be published in the ECK website.

The commission recommended that all laws relating to elections should be consolidated into one statute. The ECK cannot enforce the Code of Conduct. It proposed the establishment of Election Disputes Court to handle appeals after initial appeal to the ECK, in cases where ECK is a party and post-election disputes. The court would be required to determine the matter within six months from the elections. In South Africa, the judges of the Election Court are deployed for normal judicial duties after they complete handling electoral disputes.



ECK Chairman Samuel Kivuitu and some members of the Electoral Commission of Kenya

Irec recommended that the culture of impunity should be fixed. Law enforcement organs must carry out their tasks. The conferment of security of tenure on the Commissioners is not to make it impossible to remove them, but to confer justice to the process of removal. A special election court should handle disputes on nomination and its decision shall be final. Parties should be bound to hold primaries and candidates should not be gazetted when there is an election dispute pending.

The appointment criteria for the commissioners should inspire public confidence. The terms of the Commissioners expire during election years raising suspicions on reappointment or reconstitution of the Commission. This should not be the case. The President, who is a candidate in the elections and leader of a contesting political party, does the appointment.

Whereas the Chairman and the Vice Chairman should be persons qualified to be appointed judges, there are no qualifications set out for the rest of the Commissioners. The appointment process should involve consultations with Parliament and civil society. The number of 22 commissioners should be reduced to between 3-9 commissioners. The ECK should be accountable to Parliament.

Irec noted that ECK has not developed standard voting procedures and training guidelines.

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For example, poll officers issued ballot papers in a batch of three or separately for Presidential, parliamentary and local elections. The operational procedures of the commission should be codified and the staff trained. Staff recruitment procedures should be developed. The roles of Commissioners and staff should be clarified to ensure the secretariat preserves the institutional memory. Performance contracting should be implemented. The Commission Secretary acts as the Chief Executive and should be competitively recruited. The Commission should be granted fiscal autonomy by charging its expenses to the Consolidated Fund with the Commission Secretary as the accounting officer.

A Standing Liaison Committee should be formed by ECK, incorporating party representatives to supervise and monitor the nomination process during elections. Registration of parties and allocation of party symbols should not be permitted in an election year. The campaign period should be defined in the law and the election date set. The ECK should be empowered to deny a party nomination where the party has failed to comply with its constitution or nomination rules.

The Media Council of Kenya should enforce the Code of Conduct for journalists. The media should be obliged to report accurate results, train journalists, monitor observance of Code of Conduct, vet live broadcasts and verify data before broadcasts. The real owners of media houses should be disclosed. The public broadcaster, KBC, should be independent and accountable. The KBC Act enjoins media to maintain fair balance in allocation of broadcasting hours between different political viewpoints. The corporation should consult ECK while implementing this provision. KBC came under criticism over coverage of 2007 elections given it is a strategic broadcaster covering virtually the entire country.

The Government should enact hate speech legislation. ECK should ensure that the media accesses timely and accurate information to mitigate possibility of misreporting. The media should liaise with ECK to verify the accuracy of results.

The ECK and civil society should co-operate in voter education and ensure neutrality. Partisan bodies should not be accredited to monitor or observe the elections. ECK should permit the monitoring of tallying at all levels and provide copies of authentic statutory forms to observers. The ECK has not ensured the equality of the vote. Embakasi constituency has a variance of 351 per cent above the average voters per constituency, while Lamu East has 18 per cent less than the average.

The constituency delimitation process should be regular and transparent. Irec recommended formation of an Independent Boundary Review Commission with the mandate of establishing new constituency boundaries. This Commission should undertake the review immediately and thereafter after completion of each population census. The Commission will stand disbanded on completion of delimitation. Parliament should abide with the decision of the Boundary Commission. The absence of the application of one-man one-vote principle impairs the integrity of the electoral process.

There were abnormal voter patterns where some polling stations registered 100 per cent turnout. The range of deviation permitted is 5-20 per cent. Further, an estimated 1.2 million dead persons have their names on the register. The high turnout is evidence of ballot stuffing, organised impersonation of absent voters, vote buying and bribery. Ballot stuffing could have been facilitated by ECK references to black book, in which names of voters were entered on registration. The book was used when names did not appear on the voters roll. ECK should ensure the presence of agents representing parties during voting and tallying. In many instances, only agents of the majority party in particular localities were represented.

The agents should be trained on their duties and should take an oath.

The process of issuance of Identity Cards should be integrated with the registration of voters. The requirement of production of voting card should be discarded. The elector should vote if they possess an identity card or passport and his name is on the register. The registration process is defective as the registered voters constitute 71 per cent of the voting age population. Women and voters between 18-30 years of age are significantly under represented.

Polling stations should be designed in a manner that facilitates easy ingress and egress, including for voters with disabilities. The tallying documents should be reduced to one form. ECK should design an integrated and secure tallying and data transmission system. There should be adequate lead-time for verification of results to reduce the risk of errors. The results should be declared final once all the objections have been considered.

A clear and elaborate criterion should be developed for nomination of MPs under Section 33 of the Constitution. ECK has used different criteria to recommend nomination of MPs to the President. Irec recommended that it would be preferable to devote the seats to improve representation of women. Parliament should consider introduction of reserved seats for persons with disabilities and ethnic minorities. The reserved seats should have a voice, but no vote in Parliament. Another recommendation was granting an allowance to the President to appoint ministers who are not MPs. Such ministers would participate in Parliament with a voice, but no vote. The ECK should be mandated to nominate councillors from party lists.

Irec recommended that Sections 7 and 9 of the Constitution be amended to eliminate doubt on expiry of the term of the president. The Constitution should be amended to provide a five year fixed term for the President and Parliament and include provisions for an election timetable.

Katiba briefs

Oct 7 The Government and religious leaders differ over the constitutional review approach ahead of Parliament's opening. Justice and Constitutional Affairs minister Martha Karua states to participants at a meeting in Nairobi that the process will be participatory.

Religious leaders are root for a multi-sectoral constitutional review conference similar to the one held at Bomas. The clergy punch holes on the proposed roadmap to a new Constitution.

Oct 11 The Catholic Church demands the inclusion of Kenyans in the review process. According to the church, Kenyans have the right to be involved in the process of making their own laws and must not be excluded.

Oct 14 Attorney-General Amos Wako warns that premature campaigns for the 2012 general election might derail efforts to give Kenyans a new Constitution.

Oct 20 Children's rights should be entrenched in the new Constitution, Lands Minister James Orengo says. Orengo says this would ensure children's issues are no ignored.

Oct 24 Transparency International observes Kenyans would continue reeling in political, social and economic problems unless the Constitution is fairly reviewed and tailored to trim presidential powers.

Oct 31 The violence that rocked the country could have been avoided if the Bomas Draft Constitution had been adopted in 2005, claims Prof Yash Pal Ghai.

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Implementation of the recommendations

The Cabinet formed a subcommittee to recommend the method of implementing the report. Consensus has been built in the subcommittee that ECK should be reconstituted by amending the Constitution. The report has not generated heated opposition and all parties are agreed on its implementation. Implementation of the report will strengthen the electoral framework and institution thereby insulating the country from post-election crises.

Way forward

The main thrust of the Irec report is the need to reform ECK, the electoral system and the electoral dispute resolution system. It has proposed the radical reform to the ECK, including reconstitution of the membership.

ECK is a creature of the Constitution and any reform must relate to amending the Constitution. Irec has alluded to formation of an elections dispute tribunal with the mandate of resolving election disputes. This is a commendable step in seeking to depoliticise the Judiciary and build expertise and expediency in resolution of electoral disputes. Irec has recommended the formation of the Boundaries Review Commission. A similar entity had been proposed in the draft Constitution. ECK has failed to carry out boundary delimitation for 12 years whereas the law requires such a review every 8 -10 years. The recommendations of Irec are an important input into the review process and will no doubt enrich the quality of the envisaged Constitution.

Profile of Justice Johann Kriegler
Justice Johann Kriegler was born in 1932 and was admitted to the

Johannesburg Bar in 1959. He set up a litigation practice and was the Secretary of the General Council of the South African Bar. He was involved in promotion of human rights and development of human rights institutions. Between 1979 and 1983, he served as an acting judge intermittently. He was appointed in Transvaal Division of the Supreme Court in 1984 and acted in the Appellate Division between 1990 and 1993. In December, 1993, he was appointed the Chairperson of the Independent Electoral Commission that delivered the first election based on universal suffrage. He chaired the Electoral Commission between 1997 and 1999.

Other Irec Commissioners included Francis Angila and Catherine Mumma nominated by ODM, and Lucy Kambuni and Prof Mugambi Marete nominated by PNU. **KN**

Did the Commission of Inquiry to Post-Election Violence accomplish its mission?

By Macharia Nderitu

General elections have been a trigger for localised violence since 1991. This is due to ethnic polarisation of politics. The widespread violence that broke out after the 2007 elections threatened the existence of Kenya as a nation state. The elections attracted nine presidential candidates, including two lead contenders, Honourable Mwai Kibaki of Party of National Unity and Honourable Raila Odinga of Orange Democratic Movement. The presidential elections were closely contested and assumed an ethnic angle. The bedrock of support for Raila was Western, Nyanza and Rift Valley while Kibaki was supported in Central and Eastern. Though the voting exercise was peaceful, the vote counting and tallying cast doubt on accuracy of results announced by the Electoral Commission.

Violence took different patterns, peaking after the elections in mid January to early February, 2008. The violence put Kenya at cross roads. Kenya has opportunity to address structural and proximate causes of the violence. Constitutional review remains the key to resolving underlying causes. The international community put intense pressure on the leadership to resolve the crises precipitated by the election.

In 1997, the Government set up a Commission of Inquiry to interrogate causes of ethnic clashes and identify the sponsors. The Commission submitted its report, but it was not implemented. The Commission on Post-Election Violence (Cipev) was created pursuant to the agreement signed by the National Dialogue and Reconciliation talks chaired by H E Kofi Annan. The agreement that established Cipev was signed on March 4, 2008. The Commission was granted a period of three months to complete its mandate, but this was extended by one month.

The violence experienced during 1992 and 1997 elections was less intense and localised. Failure to prosecute sponsors and participants of ethnic violence nurtured a culture of impunity and increased intensity and scale of violence. The risks of violence prior to and immediately after the election held in December 2007 were evident. However, the scale and speed of the violence shocked many. The electorate was ethnically polarised. Lack of an independent Electoral Commission and judiciary rendered the institutions unable to mediate and respond effectively.

The protagonist parties agreed to a negotiated framework to address the crisis. The framework was sustainable peace, stability and justice through restoration of rule of law and respect for human rights. The power sharing agreement signed by President Kibaki and Honourable Raila on February 28, 2008 was the most important factor in halting the violence.

Cipev was chaired by Justice Philip Waki of the Court of Appeal, assisted by two international experts, Pascal Kambale from the Democratic Republic of Congo and Gavin McFayden from New Zealand as Commissioners. Mr McFayden retired from the New Zealand Police Force in 2004. Mr Kambale is a human rights lawyer who has worked with Open Society and Human Rights Watch in the past. The Commission Secretary was Mr George Kegoro while Mr David Majanja was the Assisting Counsel. The Commission had three international investigation experts.

The composition of the Commission with non-national commissioners and investigators is evidence of the international community's interest in emergence of a durable solution to the crisis. The Chairman of the

Commission was proposed by the Kenya National Dialogue and Reconciliation team while the Commissioners were identified by the Panel of Eminent African Personalities in consultation with the team.

Terms of reference, mandate and limitations

The mandate of the Commission can be summarised as:

- a) To investigate the facts and surrounding circumstances related to violence that followed the 2007 Presidential Elections;
- b) To investigate the actions or omissions of State security agencies during the violence and make recommendations as necessary;
- c) To recommend measures to control or eradicate the occurrence of similar deeds in future;
- d) To recommend measures with regard to bringing to justice persons responsible for violent acts;
- e) To recommend measures to eradicate impunity and promote national reconciliation; and
- f) To make recommendations to the Truth, Justice and Reconciliation Commission.

The recommendations on institutional reform are a key part of transitional justice. The Commission recommended measures for reforming the security agencies, based on their failures and weaknesses in handling the violence.

The Commission received views from the public through oral or written submissions and summoned persons to testify in public or private. The

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Commission was required to conduct the inquiry with speed, diligence and submit a report without delay. The final report containing findings and recommendations was submitted to the President and the Panel. The report was to be made public within 14 days from the date of submission. The operations of the Commission were funded by the Government and the Trust Fund for National Dialogue and Reconciliation.

Rules and procedure of the Commission

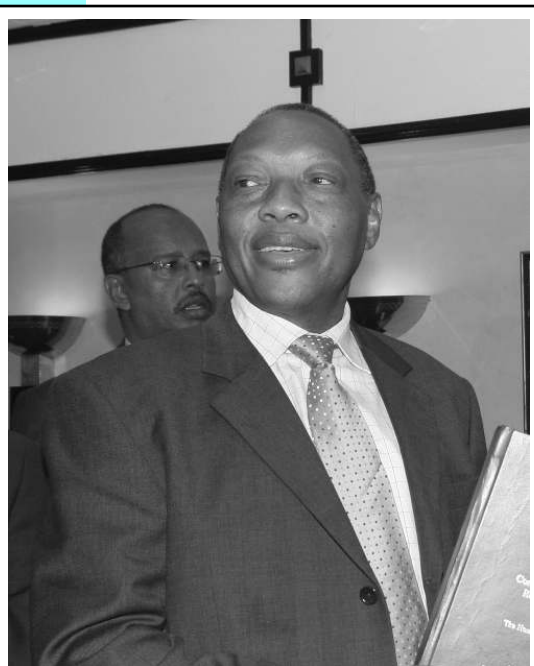
The Commission published its rules and Procedure. Under the Rules, the Commission was to conduct its business through meetings, review of documents, receipt and consideration of submissions, investigations, public and in camera hearings, research and analysis, and compilation of the report. The role of the counsel was to assist by investigating and reporting information to the Commission and by formally presenting evidence at the hearings.

The Commission was empowered to conduct hearings in camera. Evidence received in camera related to security agencies and gender based violence. Persons implicated or involved in the matters under inquiry were informed of the allegations made against them and the substance of the evidence in support of the allegation. The Commission was empowered to grant standing to a person or organisations if the Commission was satisfied that the person or organisation was directly and substantially affected by the hearing.

Proximate causes of post-election violence

The proximate causes are immediate circumstances that triggered the eruption of violence in Kenya after the announcement of the results. These causes were anchored on deeper underlying causes. The proximate causes are:

- a) Perceived manipulation of election results. The announcement of Honourable Kibaki as the winner of the elections and subsequent swearing-in triggered widespread violence in urban slums in Nairobi and other towns.
- b) Close and ethnically polarised election. The political campaign for the Presidential Election were heated and played on ethnic resentments. This created an environment under which ethnic violence would erupt after the election. The National Security Intelligence Service had predicted violence regardless of the electoral outcome.
- c) Incitement by vernacular radio stations. There was evidence



Justice Waki, Chair, Commission of Inquiry to post-election violence

of incitement by radio stations through coded messages. There was further evidence of co-ordinated incitement and mobilisation of militia to participate in violence by local leaders.

Structural causes

The structural causes are the underlying and historical factors that

explain the violence. They include:

1. Deepening Tribalism and Patrimonial Ethnic Based Politics

The Constitution vests enormous powers on the Presidency. Political success is hinged on support from ethnic power bases. Public office is a means for political elite to access State resources and opportunities for predatory behaviour. Unequal distribution of resources and lack of job opportunities fuelled violence in Rift Valley. Ethnicity was a dominant phenomenon leading to inter-ethnic fear and mistrust.

2. Culture of Impunity

Politics are a factor in election violence. The Government failed to prosecute persons who incite and perpetrate violence despite inquiries and investigations. Lack of accountability for violence contributed to exacerbation. The complicity of public officers and politicians was documented in the Akiwumi Report.

The legacy of impunity fostered resurgence and persistence of violence. The establishment of the Commission and the Truth, Justice and Reconciliation Commission are decisive steps to hold perpetrators accountable. The Commissions must be supported by enhanced prosecutorial capacity at the Attorney General's Chambers and an independent and impartial judiciary.

3. Inequitable distribution of resources

The violence was fuelled by grievances relating to inequality. Kenya has regional economic disparities reflecting ethnic cleavages. This is due to non-fulfilment of social and economic rights. Kenya is among the ten most unequal societies in the world.

4. Weak and disempowered institutions

The lack of independence rendered crucial institutions unable to mediate the election dispute and respond effectively to violence. Unilateral appointment of Electoral Commissioners by the President prior to the election eroded public confidence. Lack of confidence to

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deliver a verdict independently and expeditiously in electoral disputes undermined the court's ability to act as impartial arbiter. Electoral disputes last three to four years in courts. Judges are appointed by the President after recommendation by the Judicial Service Commission. Such judges were viewed as reluctant to invalidate presidential elections.

5. Weaknesses in the security sector

Prediction and response by the security agencies was ineffective. The police appeared unprepared and overwhelmed by violence. Their response varied and demonstrated systemic weaknesses in policing, including political capture, excessive use of firearms, inadequate training and equipment, and lack of oversight and accountability mechanisms. An incoherent structure involving the Kenya Police and the Administration Police with different standards of training, equipment and rules of engagement contributed to poor coordination and internal tensions. The security forces were divided and disjointed in handling the violence. The military demonstrated coherence, professionalism and independence.

6. Ungoverned spaces and the rise of militia

Inadequate security and weak State

penetration has led to ungoverned spaces, notably in urban slums. Vigilantes offer an avenue of socialisation, informal employment and income generating opportunities, creating conducive environment for expansion. The outfits draw from unemployed youth who were mobilised during the violence. The vigilante groups and the militia explain the scale, spread and urban context of the violence given the political discontent in the overcrowded slums. The militia capitalised on disorder and political uncertainty to expand economic interests and secure covert political backing.

7. Hate speech and incitement and the role of the media

Some vernacular stations in the affected areas inflamed ethnic tensions and incitement. Talk shows became vehicles for coded messages and idiomatic hate speech. Unregulated emails, web pages and short messages sent through phones were used to spread messages that promoted ethnic intolerance and hatred. Hate speech was prevalent in campaigns. The NSIS conceded that the agency had recommended the enactment of hate speech legislation before elections. The Government must enact the hate speech law to deal with dissemination of information that instigates hate or inter-communal divisions and conflict.

8. Land

Land was an underlying factor in the violence in Rift Valley and the intermittent violence in Molo, Kuresoi and Mt Elgon prior to the widespread violence. The discontent is anchored on historical injustices and poor handling of the settlement schemes for political advantage. There is perceived favouritism and corruption since independence in land allocation. In 1992 and 1997, there were ethnic clashes in Coast and Rift Valley provinces when the locals used specific grievances on land to cause violence. The aim of the violence was to displace opposition voters. A promised return of majimbo was interpreted as a chance to evict certain tribes and reclaim ancestral lands. This manipulation of ethnicity sought and succeeded in deflecting attention away from corrupt and politically motivated land allocation by politicians.

Facets of the post-election violence

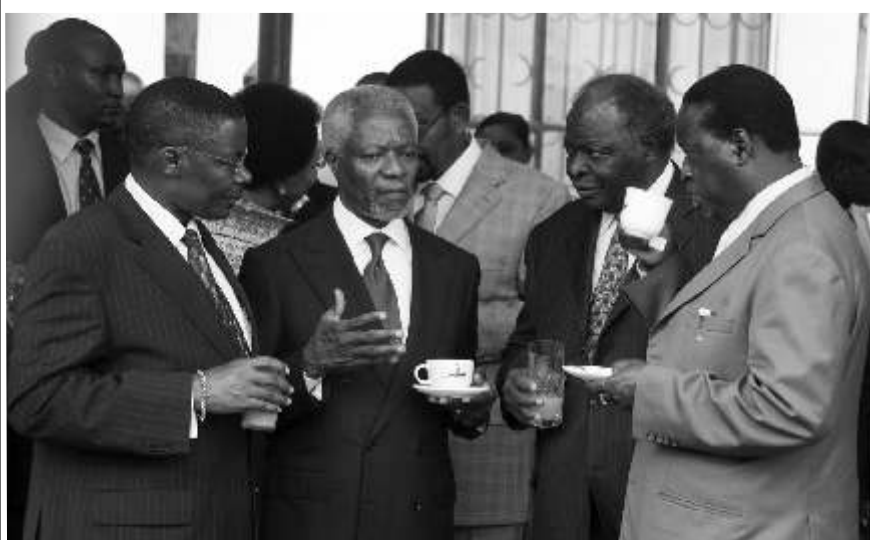
1) Spontaneous violence

Spontaneous violence broke out after the announcement of presidential results. The violence was politically driven but ethnically targeted. The violence occurred after youths were prevented from demonstrating by the police and occurred throughout January in reaction to unfolding political events. The violence involved large scale looting and loss of life and was prevalent in the urban slums and major towns.

2) Organised violence

There was seemingly organised violence in Rift Valley. The Kalenjin warriors attacked Kikuyus and perceived PNU supporters, notably Kisii and Luhya. The attacks entailed a degree of mobilisation and financial sponsorship by the local leaders, who exploited resentment over Kikuyu settlement and their perceived economic dominance. The manner of the violence was reminiscent of previous violence in 1992 and 1997. The geographical hotspots were corresponded in previous spates of

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From left: Speaker of National Assembly Kenneth Marende, Former UN Secretary General Kofi Annan, President Mwai Kibaki and Prime Minister Raila Odinga after signing of the peace accord.

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election-related ethnic violence. Violence occurred in Molo, Trans Nzoia, Uasin Gishu, Eldoret and Kericho towns. The violence was characterised by attacks on farming communities, businesses and residential areas. The aim seems to have been permanent displacement of targeted communities.

3) Organised retaliatory attacks

These were carried out by Kikuyu youths against Luo, Luhya and Kalenjin and other groups perceived to be associated with the ODM. The attacks were centred in Nakuru and Naivasha and occurred in January, 2008.

4) Sexual and Gender Based Violence

Sexual and gender violence was perpetrated by gangs. Such violence is generally under reported and under investigated in Kenya. This was compounded by the inability of victims to reach health facilities and police stations due to insecurity at the height of the violence. Health facilities were not functioning optimally due to the widespread insecurity that made medical personnel keep off. The numbers are difficult to ascertain due to lack of a standardised reporting framework.

5) Use of excessive force by the police

The police used excessive force in dealing with election related demonstrations, causing a significant number of deaths through gunshot wounds. The police sometimes acted with restraint, but were overwhelmed. Their response raised questions of political interference and ethnic tensions, and leadership, discipline, training, coherence and coordination of security forces. Resorting to intentional use of lethal force should occur when strictly unavoidable.

Witness protection

The Government must consider ways of protecting witnesses appearing before the Special Tribunal to avoid reprisals. The Attorney General has in the past failed to prosecute suspected human rights violators and inciters of ethnic violence, thereby promoting the culture of impunity. The Witness Protection Act should be implemented

promptly. Cipev recommended that the Witness Protection Bill be implemented to protect witnesses in the course of investigation, prosecution and adjudication.

Special tribunal for Kenya

The most significant recommendation by Cipev and one that has generated political heat and division is the formation of a Special Tribunal for Kenya. The tribunal, to be set up as a court, is mandated to seek accountability against persons bearing the greatest responsibility for crimes against humanity. The tribunal will investigate, prosecute and adjudicate on the crimes. The tribunal shall apply Kenyan law and the International Crimes Bill, once enacted. The Constitution and international human rights standards do not permit retrospective application of criminal law. The Tribunal will be staffed with Kenyan and international staff.

The representatives of the parties to the Accord shall sign an agreement establishing the Tribunal within 60 days. The statute for the Special Tribunal shall be enacted into law and come into force within a further 45 days. The date of commencement of the Tribunal shall be determined by the President, in consultation with the Prime Minister, Chief Justice, and the Attorney General, within 30 days after Presidential Assent to the Bill setting up the Tribunal.

The report recommends that if the agreement is not signed or the Statute for the Tribunal fails to be enacted, a list containing names of and relevant information on persons suspected to bear greatest responsibility for crimes shall be forwarded to the Prosecutor of the International Criminal Court, who shall analyse the information with a view to investigating and prosecuting such persons.

The Bill creating the Tribunal shall be anchored in the Constitution. This means that at least 145 MPs must



A scene during post election violence.

support the Bill. The special tribunal shall consist of four organs: the Chambers, including an appeals chamber, the Prosecutor, the Registry and defence. The Chambers shall consist of six judges, with the Trial and Appeal Chambers having three judges each. The Presiding judges shall be Kenyan while the rest shall be non-Kenyans drawn from the Commonwealth.

The President shall appoint the Chair of the Trial Chamber in consultation with the Prime Minister and acting on advice of the Chief Justice from persons qualified to be appointed judges of the High Court. The Panel will nominate the rest of the judges, who will be appointed by the President. The Prosecutor shall be appointed by the President in consultation with the Prime Minister from a list provided by the Panel. The jurisdiction of the tribunal shall be adjudicating cases against persons bearing the greatest responsibilities for serious crimes relating to 2007 post-election violence. There will be a right of appeal from the Trial to Appeals Chamber.

The Tribunal shall have sufficient authority and independence to conduct investigation and shall have authority to recruit and control its own staff. The head of investigation and three other members of the investigating team shall be non-Kenyans. The investigators shall work under the general direction of the prosecutor. The tribunal shall take custody of all investigative material, witness statements and testimony collected by Cipev. The International Crimes Bill should be fast tracked in

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Whither the political party and democratic governance in Kenya

By Rose Mwema

Kenya was declared a colony in 1920. At the time, there was minimal African involvement in politics. Political activity by Africans began after World War I when regional political organisations like the Kikuyu Central Association and Young Kavirondo Association were formed. These political outfits were composed of members from particular ethnic communities. The Kikuyu Central Association was instrumental in agitating for reversion of land to Africans. Jomo Kenyatta was sent to London to make representations on the land tenure system.

After World War II, Africans realised the need for a national wide movement to demand for independence. The first African MP was nominated to Legislative Council in 1944 leading to the formation of Kenya African Union. Among its objectives were to unite African people, fight for the abolition of colour bar, campaign for a common electoral roll based on universal franchise among others.

In 1946, Jomo Kenyatta assumed leadership of the Union and embarked on political sensitisation through rallies and mobilisation. In 1952, the Union was proscribed and its leaders detained. The colonial government also banned national wide parties intending to weaken the Mau Mau movement which was fighting for independence. Political activity shifted to trade unions and district associations. The first elections on a limited franchise were undertaken in 1957 and eight African MPs were elected.

After the first Lancaster House Conference in 1960, the ban on nationwide political parties was lifted. In March, 1960, a party named Kenya African National Union (KANU) was formed. James Gichuru was confirmed

as Acting Chairman and Oginga Odinga as Vice Chairman. In June, 1960, other political organisations were formed representing the small tribes, like Kalenjin Political Alliance, Coast African Peoples Party and Masai United Front. These parties felt their regional interests would be compromised if they joined a nationalist party like KANU. They formed Kenya African Democratic Union (KADU). When Kenyatta was released, he joined KANU.

KANU's aim was to fight for independence. During the second Lancaster Conference, KANU advocated for a centralised government with a unitary constitution while KADU wanted strong regional governments with a weak central government. A coalition of KANU and KADU ruled from April 1962 to May 1963. In May 1963 elections KANU won 83 out of 124 seats in Parliament and formed internal self government. In November 1964, the KADU Chairman, Ronald Ngala, announced its dissolution with its members joining KANU. Kenya

remained a de facto one-party state until 1966 when Oginga Odinga resigned as Vice President and formed the Kenya People's Union (KPU). In subsequent by-elections, KPU won nine out of 30 seats. KPU was banned in 1969 and its leaders detained. Kenya was a de facto one-party state until 1982 when the Constitution was amended to provide that Kenya was a de jure one-party state.

Kenya reverted to multipartism in 1991. Two opposition parties emerged, the Forum for Restoration of Democracy (FORD) and Democratic Party. A division emerged in FORD necessitating registration of FORD Kenya and FORD Asili. The three parties and KANU contested the 1992 elections which were won by KANU. In 1997, the leader of FORD Asili, Hon Kenneth Matiba did not contest the presidency. The main parties were KANU, Democratic Party, FORD Kenya, National Development Party and Social Democratic Party. KANU won the Presidency due to fragmented opposition.

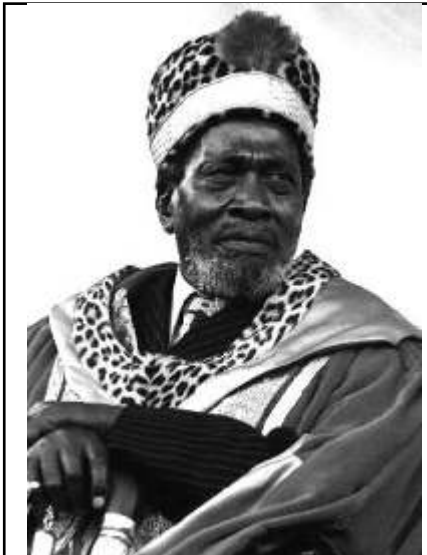
In 2002, the opposition parties formed a grand coalition named the National Rainbow Coalition, which enabled the opposition to win the Presidency. In 2007, three main parties, the Party of National Unity, Orange Democratic Movement- Kenya and the Orange Democratic Movement contested the presidential elections. The PNU candidate, Hon Mwai Kibaki was declared the winner with ODM protesting that the elections had been rigged. Eventually, a power sharing deal was reached where the leader of ODM was appointed the Prime Minister. The main Parliamentary parties are ODM with 101 MPs, PNU with 42 MPs, KANU with 16 MPs, and ODM Kenya with 17 MPs

The Current state of the political party



The august house.

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Kenya's first president
Mzee Jomo Kenyatta

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There are 160 registered parties in Kenya. Previously, parties were registered under the Societies Act by the Registrar General. With the coming into force of the Political Parties Act, 2007 on 1st July, 2008, this power to register and deregister the parties is vested in the Registrar appointed under the Act. Political parties in Kenya are not defined by clear ideology but seem like conglomeration of ethnic entities with sole purpose of achieving political power. Parties have failed to offer political leadership and define the political destiny.

Kenyan political landscape has been defined by constant defections of MPs from one party to the other, especially in election years. Parliamentary practice requires that an MP must resign from Parliament to enable the Speaker of the National Assembly to declare the seat vacant. MPs decline to tender the written notification and thereby retain their seats in Parliament. Public declaration of support for another party by an MP should lead to an automatic by-election.

Parties lack transparency in choosing their leaders. Elections of office bearers are seldom held. Party leadership is arbitrary, autocratic and unaccountable. Parties serve as vehicles for elections and have no vibrant or committed membership. Parties do not continually recruit members and they are aligned to the dominant ethnic groupings.

Analysis of the Political Parties Act, 2007

The Societies Act treated parties in the same manner as welfare groups, associations and churches. Many parties existed in name. The situation is bound to change with the enactment of the Political Parties Act, 2007.

The Act defines a political party as an association or organisation which has the objectives or purposes the proposing and supporting candidates for national and local authority elections, with a view to forming or influencing the formation of the Government or any local authority in Kenya. Parties can have corporate and individual memberships. The Registrar of Political Parties is an office in the Electoral Commission of Kenya responsible for registration of parties and arbitration of disputes between members of a party.

The Political Parties Disputes Tribunal consists of a Chairman, who shall be a person qualified to be appointed a judge of the High Court and two members, one of whom shall be an advocate of at least five years standing. These members are appointed by the Chief Justice with the approval of Parliament and hold office for a term of five years renewable once. The functions of the tribunal are to determinate disputes between members of a party, determine disputes between parties and hear appeals from decisions of Registrar under the Act. Disputes shall be determined expeditiously within three months from lodgement.

Where parties form a coalition before or after an election, the coalition agreement shall be deposited with the registrar for the purposes of arbitrating any ensuing disputes. The Registrar shall not register a party:

1. Founded on ethnic, tribal, racial, gender, regional, linguistic or religious basis, or
2. Which uses words, slogans, emblems or symbols which arouse ethnic, tribal, racial, gender, regional, linguistic or religious division, or
3. Whose constitution provides for discriminatory practices or which advocates for use of force or violence, or
4. Which advocates for carrying out political activity exclusively in one part of Kenya; or
5. Which does not allow periodic, regular and open election of office bearers.

Parties are required to be national in character. Any person above the age of 18 may participate in the political activities intended to influence composition and policies of Government and join a party of his choice. Any person who intends to resign from a party shall give a fourteen days notice to the party and to the Clerk of the National Assembly, if he is an MP; and the Minister for Local Government, if he is a councillor.

A person shall not be a member of two political parties simultaneously. Any person who, while a member of a party, forms another party, or supports the formation of another political party, or joins another party or advocates publicly for the formation of another party shall be deemed to have resigned from the previous political party. This provision is inapplicable where a member joins as a corporate member.

The application for registration of a party shall contain name of the party, copy of the constitution, request for registration of emblem and prescribed fee. The registrar may write to a political party requiring it to amend its rules to conform to the Act. The registrar shall grant provisional registration to a party which has conformed. Such party may apply for full registration within 180 days.

The Political Parties Fund shall be administered by the Registrar. Sources of funds will be provisions by the Minister for Finance through estimates, contributions and donations. The allocations to a political party will be used to promote active participation by people in politics, election expenses, ensure vital links between the people and organs of the state, and civic education in democracy and electoral process. Up to 25% of the funds may be used for administrative expenses of a party. The funds shall not be used to remunerate members or supporters or establish

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businesses or interests in immovable property unless such property shall be used exclusively for the purposes of the party.

15% of the fund shall be distributed equally among parties while 80% shall be distributed proportionally in reference to the votes secured in the previous General Election. 5% will cater for administrative expenses. Other sources of funds for parties are membership fees, voluntary contributions, donations, bequests and grants and investment proceeds. No person shall contribute an amount exceeding Kshs. 5,000,000/-. Any amount in excess shall be forfeited to the state. A party shall not accept grants from foreign governments, intergovernmental or non governmental organisations. The registrar may permit a person to contribute more than Kshs. 5,000,000/- on request. This threshold does not apply to donations made by a founding member as his contribution to the initial assets of the party within the first year of existence.

A party shall submit to the registrar a list of assets and liabilities three months prior to and after a General Election, including details of expenditure incurred by each candidate. Every financial year, all parties shall publish sources of funding including monies from the Political Parties Fund, membership income and donations.

Every party shall keep a membership register, particulars of contributions or donations and property, and statements of accounts approved by the Registrar. The Registrar has the power to inspect a party. Parties registered under the Societies Act may apply for registration under the Act within 180 days. Upon full registration of the Party under the Act, all funds, assets and other property held by the party shall vest in the registered party in its corporate capacity.

The implementation of the Act explains the renewed interest by parties to conduct election and establish presence throughout the country to ensure they are eligible for registration when their provisional registration lapses in January, 2009.



Former President, Daniel Arap Moi

Comparative Analysis

Germany

German Constitution stipulates that political parties are intended to form the political will of the people and may be freely established. Their internal organization must conform to democratic principles and must account for funding sources. The Law on Parties solidified the role of parties in the political process and addressed party organization, membership rights, and nomination of candidates. Major parties are closely affiliated with foundations, which are independent. The foundations receive over 90% funding from public sources to implement their educational role through public education programs, social and political research, and international exchanges. Parties are funded through membership dues, gifts and public funds.

The government finances election campaigns. Any party that gains at least 0.5% of the vote is eligible to receive funding. The parties receive free campaign advertising on public television and radio stations. Airtime is allotted based on past election performance.

In post-World War I Germany, a weak multiparty system impaired the functioning of parliamentary democracy. Many parties existed but the electoral laws allow only parties with minimum of 5% votes to nominate MPs. The main parties are:-

- i) Christian Democratic Union/Christian Social Union

The Christian Democratic Union (CDU) was founded after World War II. The party espoused a Christian approach to politics and rejected Nazism and communism. CDU members advocate conservative values and the benefits of a social market economy. Konrad Adenauer, the CDU's first leader and West Germany's first chancellor, envisioned the CDU as a conservative party.

- ii) Social Democratic Party of Germany

Founded in 1875, the Social Democratic Party (SPD) is the oldest party and with largest membership. Under the leadership of Kurt Schumacher, the SPD established itself as an ideological party, representing the working class and the trade unions. The party leaned on Marxism and called for the nationalization of major industries and state planning.

- iii) Free Democratic Party

FDP is smaller than the CDU and SPD. It has significant political influence and has held over 20% of cabinet posts during its time in coalition governments. Prior to 1994 election, its worst results in national elections were in 1969 and 1983. The poor showings followed its decision to switch coalition partners. Between 1949 and 1990, it averaged 9.6 percent vote in national elections.

Other parties include The Republikaner, the German People's Union and the Greens. The Republikaner has about 23,000 members while the German People's Union has 26,000 members. The Greens are the other minor party with significant political influence.

In Germany, coalition government is the norm. The CDU or SPD rarely win an outright majority in an election. At the federal level, governments are formed with the smaller parties. Grand coalitions also occur on rare occasions when the larger parties do not receive enough votes to form their preferred coalition. Currently, there is a grand coalition in Germany. The CDU did not garner enough votes to form a majority coalition with FDP while SPD and Greens did not have enough votes to form a ruling coalition. A grand

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Parliament to facilitate investigation and prosecution of crimes against humanity.

Conclusion

The most fundamental limitation of a commission is that the implementation of its recommendations is not guaranteed. The mandate of the Commission is terminated upon submission of its report to the President, and to the Panel. In the past, the contents of the reports were not made public, thereby curtailing any useful debate on reform measures

proposed by the commissions. The findings of the Commission will bring pressure to bear on those identified as perpetrators. The civil society and the international community must exert pressure on the Government to implement the recommendations, especially those related to holding perpetrators of violence to account and institutional reforms to redress systemic weaknesses. Kenya's return to rule of law will be defined by ending impunity among politicians and public officials and institutional reform. The international community must ensure long term causes of instability are

addressed, investigation undertaken rigorously and identified perpetrators punished. [KN](#)

About Justice Waki

Justice Philip Waki was admitted to the Bar in 1975 and worked for one year. In 1976, he established his legal practice where he worked until 1995 when he was appointed a High Court Judge. In 2003, he was elevated to the Court of Appeal. He was temporarily suspended from his duties in 2003, but was investigated and cleared by a tribunal. He was reinstated from where he was selected to head Cipev.

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coalition government was subsequently formed between the CDU and the SPD. The partnership involves structured cabinets. CDU holds the Chancellory while SPD occupies majority of cabinet posts.

South Africa

South Africa has a vibrant multiparty political system. Sixteen parties are represented in parliament. The African National Congress (ANC) is the majority party in Parliament and controls eight of the nine provincial governments. Opposition parties are robust and vocal.

The state provides public funding to parties under the Public Funding of Represented Political Parties Act. These public funds are regulated and monitored while private funding is unregulated. Public disclosure of party incomes and expenditures is discretionary. The Political Parties Fund is managed by the Independent Electoral Commission. The IEC keeps financial records and accounts for each year. Sources of income for parties include parliamentary appropriations, donations, and investment income. Money sourced from the fund may be used to develop political will of people; shape public opinion; inspire political education; promote participation in political life; and exercise an influence on political trends.

Among the parties in South Africa are:

African National Congress

The ANC was banned following the

Sharpeville massacre but was unbanned in 1990 when Nelson Mandela and other political prisoners were released. ANC recruited members and established regional structures. In the historic 1994 elections, the ANC won 62% of the vote. Nelson Mandela became South Africa's president. In 1999 elections, the party increased its majority nearly two-thirds of the vote. The South African Communist Party has a close working relationship with the ANC since the 1960s. The party's membership overlaps the ANC and the Congress of South African Trade Unions (COSATU). It has significant representation in the ANC and government.

Mosoiua Lekota, a Former Minister for Defence, has threatened to form a splinter party from ANC after Thabo Mbeki's removal as President. Mbeki resigned in September, 2008 after the ANC threatened to recall him. This has led to a feeling that ethnic nationalism is replacing civic nationalism and solidarity. South African President is elected by Parliament. ANC selects its MPs through a party list after every election in a system of proportional representation. Mbeki opted to resign rather than face a confidence vote in Parliament in which he may have lost as most MPs are nominated by ANC. Jacob Zuma is the President of the ANC with Kgalema Montlanthe as his Deputy.

Democratic Alliance

Democratic Alliance espouses liberal democracy and free market principles. The party's forerunner was the Progressive Federal Party (PFP). In

2000, the party merged with the New Nationalist Party to form the Democratic Alliance. In 2001 the NNP withdrew from the pact and was disbanded in 2004. The party champions the interests of white voter and has not built a formidable multiracial constituency. It is concentrated in the West Cape Province and controls the Cape Metropolitan Council.

United Kingdom

The main parties are Labour Party, the Conservative Party and Liberal Democrats. Labour Party was formed in the 1920s while the Conservative Party is the successor to the Tory Party formed in 1678. The Exchequer does not fund political parties directly. Funding is provided for the opposition parties to run their offices and as policy development grants. Other support includes sponsorship of political broadcasts and free postage of election literature to every constituent. Candidates use public facilities, like schools, for free during the campaigns. The Political Parties, Elections and Referendum Act creates a registration framework for parties. Parties are required to supply details of income and expenditure. The Act creates expenditure limits for parties during campaigns and creates an Electoral Commission to oversee implementation but without prosecutorial powers. The Act has been amended to make it compulsory to disclose loans. UK adopts a parliamentary system in which the party with the majority in Parliament forms the government. [KN](#)

THE KONRAD ADENAUER FOUNDATION IN KENYA

Konrad-Adenauer-Stiftung is a German political Foundation which was founded in 1955. The Foundation is named after the first Federal Chancellor, Prime Minister and Head of Federal Government of the then West Germany after World War II. Konrad Adenauer set the pace for peace, economic and social welfare and democratic development in Germany.

The ideals that guided its formation are also closely linked to our work in Germany as well as abroad. For 50 years, the Foundation has followed the principles of democracy, rule of law, human rights, sustainable development and social market economy.

In Kenya, the Foundation has been operating since 1974. The Foundation's work in this country is guided by the understanding that democracy and good governance should not only be viewed from a national level, but also the participation of people in political decisions as well as political progress from the grass roots level.

Our aims

Our main focus is to build and strengthen the institutions that are instrumental in sustaining democracy. This includes:

- Securing of the constitutional state and of free and fair elections;
- Protection of human rights;
- Supporting the development of stable and democratic political parties of the Centre;
- Decentralisation and delegation of power to lower levels;
- Further integration both inside (marginalised regions in the North/North Eastern parts) and outside the country (EAC, NEPAD); and
- Development of an active civil society

participating in the political, social and economic development of the country.

Our programmes

Among other activities we currently support:

Working with political parties to identify their aims and chart their development so that democratic institutions, including fair political competition and a parliamentary system, are regarded as the cornerstones for the future development in Kenya.

Dialogue and capacity building for young leaders for the development of the country. Therefore, we organise and arrange workshops and seminars in which we help young leaders to clarify their aims and strategies.

Reform of local governance and strengthening the activities of residents' associations. These voluntary associations of citizens seek to educate their members on their political rights and of opportunities for participation in local politics. They provide a bridge between the ordinary citizen and local authorities, and monitor the latter's activities with special focus on the utilisation of devolved funds.

Introduction of civic education to schools and colleges. We train teachers of history and government in civic education. In addition, we participate in the composition of a new curriculum on civic education.

Our principle is: Dialogue and Partnership for Freedom, Democracy and Justice.

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MEDIA DEVELOPMENT ASSOCIATION

*Promoting
Democracy and
Good Governance
through the
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