

Rethinking Democracy

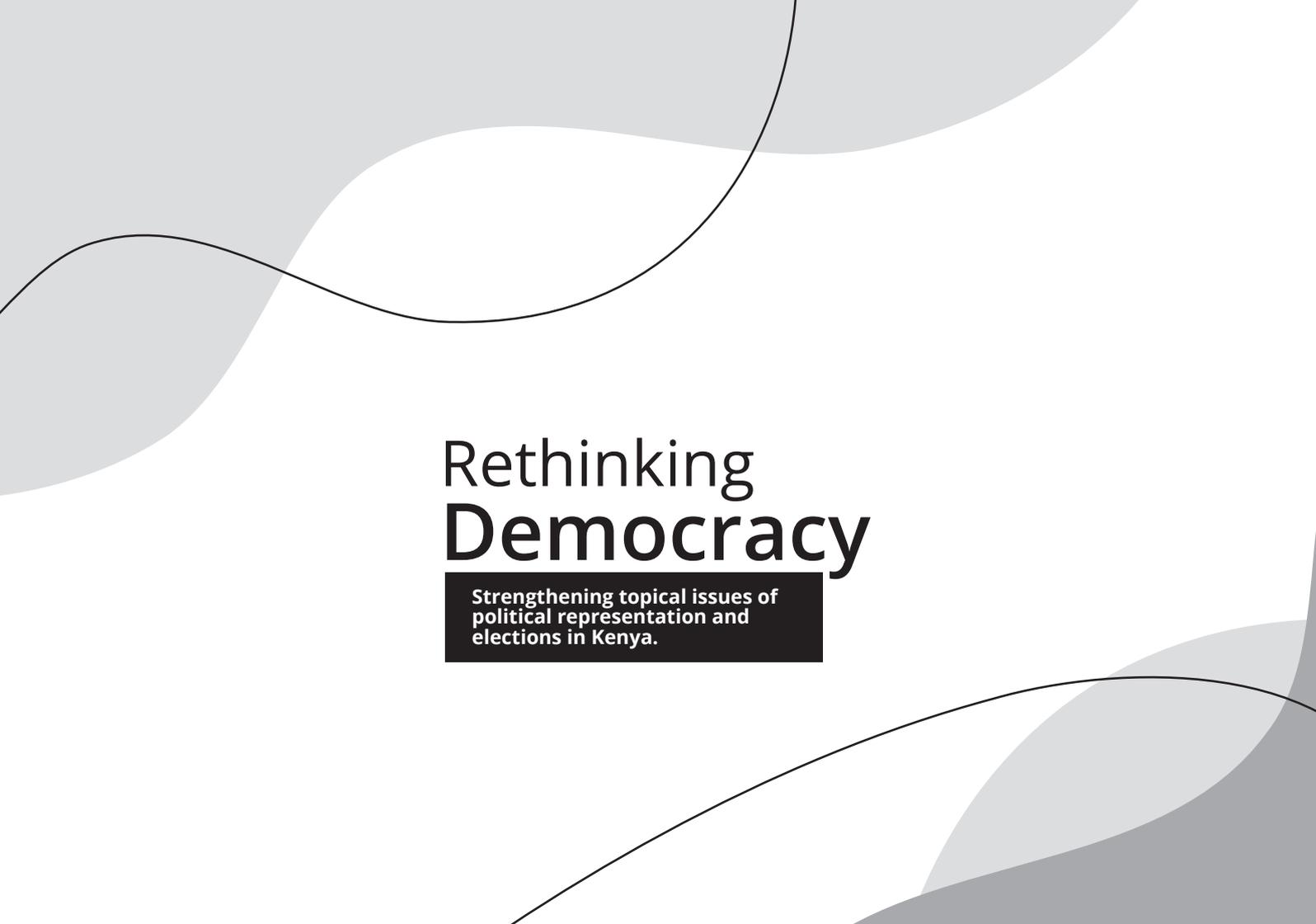
Strengthening topical issues of
political representation and
elections in Kenya.

JUDGE MARAGA STREET
1ST SEP 2017

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Rethinking Democracy

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political representation and
elections in Kenya.**



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PREFACE

Democracy often refers to a form of government in which people choose leaders by voting. A democratic system of government is a form of government in which supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodic free elections.

Kenya's democratic transition has been characterized by its endurance and contradictions that mixes progress and regression in almost equal measure. Despite initial reforms that had made the country more democratic than it was before 1992, the country's democratization has slowed down and, in some areas, reversed. However, after stagnating for two decades, the 2007 post-election violence offered new impetus for reform. The National Accord that ended the post-election violence put in place a coalition government that resulted in a progressive popular constitution promulgated in 2010 and key institutional reforms undertaken within the judiciary, parliament and a devolved system of government.

The active and meaningful participation of citizens in public affairs is the distinguishing feature of democratic societies,

which are judged by the extent to which governments open up to citizens' involvement in public affairs and the space they give for citizens in Kenya and Africa in general continue to demand increased space for participation.

Democracy is an important form of governance as it gives citizens equal or fair opportunities to decide their societal life including the kind of socio-political development that can be achieved. While this form of governance offers the best protection to human rights, participation in decision making, the same is still faced with a myriad of challenges in Africa and Kenya to be specific.

In Kenya, we have seen democracy spurring in various depths. Since independence, the country has seen the political environment gaining optimism with the growing numbers of political parties that symbolized the clamour for multiparty, relatively peaceful change of political regimes over time, with the exception of the 2002 general election and last but not least, broadened freedoms and rights under a new constitution.

Nonetheless, there are many challenges that have made a majority of Kenyans start to rethink on how the said democracy can embrace their contexts. The mechanics of democracy entail looking for local solutions and ideas that work for Kenyans. Some of the recent efforts to review our political governance architecture were illustrated by the likes of the Building Bridges Initiative (BBI) as well as the Punguza Mizigo initiative. While the efforts are welcomed, they have not been significant in creating the change effect,

out of various reasons.

This publication emanates from a Call for Papers that KAS published on the 22nd of April 2021 with the main objective being to offer political science scholars, practitioners/activists from the Civil Society Organizations (CSOs), legal practitioners and any other politically active individual with the platform to make contributions on current topics of political representation and elections in Kenya. This publication is therefore made out of four interdisciplinary areas, namely;

1. Political representation and its relationship with service delivery.
2. Political culture, reforms and elections in Kenya.
3. Election management and voter education.
4. Finally, is the influence of Civil Society Organizations on reforms and political processes significant enough?

With this approach and publication in general, the Konrad Adenauer Stiftung believes that the knowledge and experiences will contribute to the larger discourse of making democracy work even better for the case of Kenya.

FOREWORD

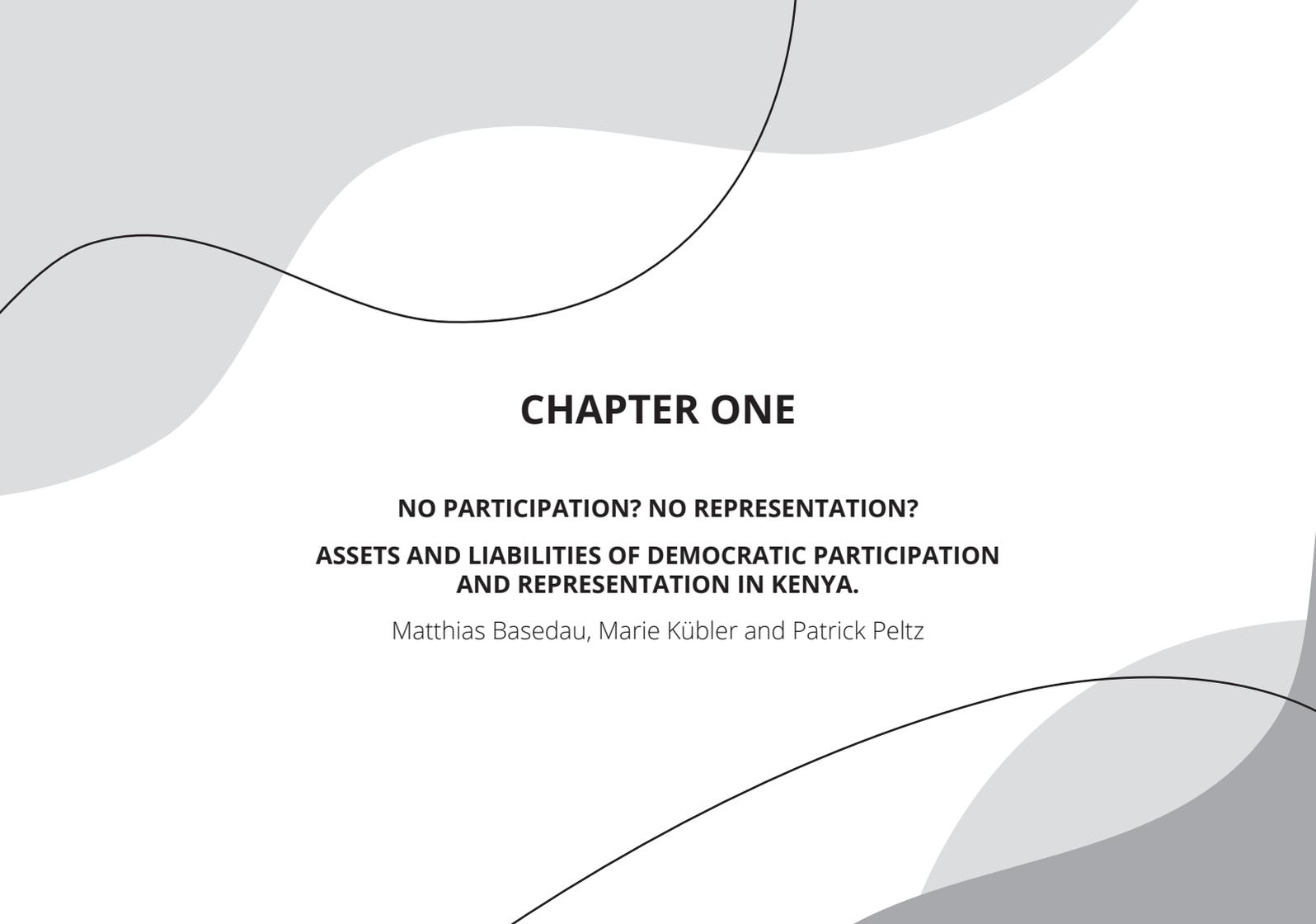
For the last three years, we have engaged in demystifying what democracy from different practitioners, government bodies as well as the civil society entails not just in Kenya but from other quarters of the world. As a think-tank, the KAS, Kenya Country Programme hopes to continue with these engagements through various mediums including production of well analysed publications. Already, there are two publications that have been done in the recent past dubbed 'Rethinking Democracy' of which were published as off shoots of the international conferences hosted in Nairobi.

This call for publication is unique in its own way. Firstly, is that it comes at a time when the world as well as the country is faced with the Coronavirus Disease (COVID 19) and an existing health limitation to hold large meetings and conferences. Secondly is that this Call helps to collect ideas in form of knowledge from different actors and practitioners within the field of governance and democracy here in Kenya as well as other international expert(s). The end result is to publish the contents driven by experiences and knowledge. We hope that this publication will provide you with options

and alternatives on various facets and instruments for engaging meaningfully in democracy building in Kenya. We would like to thank the six writers who picked on the various topics that provide consolidated pool of knowledge for students, scholars and practitioners of governance and democracy in Kenya.

I would like to thank **Ms. Joan Gowi, Mr. Odanga Kisali and Mr. Kristian Kaufmann** for providing editorial support throughout the implementation of this assignment. This work cannot go unnoticed, especially of your time, efforts and contributions to ensure we got a realistic product that can be consumed. Last but not least is to thank Mr. Edwin Adoga Ottichilo, the Country Programme Coordinator for KAS Kenya Office for coordinating this exercise to its completion.

Dr. Annette Schwandner,
Country Director.
Konrad Adenauer Stiftung.
Kenya Country programme.



CHAPTER ONE

NO PARTICIPATION? NO REPRESENTATION? ASSETS AND LIABILITIES OF DEMOCRATIC PARTICIPATION AND REPRESENTATION IN KENYA.

Matthias Basedau, Marie Kübler and Patrick Peltz

1. ABSTRACT

This paper looks at the level of **democratic participation and representation** and their drivers and obstacles in Kenya. The writers use a number of tools to highlight existing assumptions and realities in the Kenyan context. For instance, the **Bertelsmann Transformation Index (BTI 2020)** classifies Kenya as “a moderate autocracy”, mainly because of the irregularities during the recent elections. The **Varieties of democracy (V-Dem)** which rates several forms of democracy by assessing different countries on a scale of 0-100, with 50 being the minimum level for a political system to be regarded as democratic, indicates that Kenya falls short of reaching minimum levels (at 50%) in all 5 indices but scores best in electoral democracy. The **Freedom House or Polity** opines that Kenya falls short of a full democracy especially in respect to political rights and civil liberties, key bill of rights that are undermined by pervasive corruption and brutality by security forces. The article in general suggests that Kenyans generally believe that they can express their opinions freely. However, they still find it difficult to **participate in democratic processes regardless of elections**. In sum the paper argues that Kenya shows all necessary requirements of a full democracy on paper, especially after the new Constitution from 2010, but this may be relatively different in practice. The fact that leaders seek and use office for public gain and get away with it due to unawareness by the general population and failure to hold them accountable helps to show why full democracy in Kenya appears only good on paper.

2. INTRODUCTION

This paper assesses the level of **democratic participation and representation** and their drivers and obstacles in Kenya. We look at democracy in general, but pay special attention to what makes democracy work after elections, namely to what extent Kenyans can effectively participate in democratic processes and to what extent elected and other officials actually represent the interest of Kenyans. We put our findings in perspective by looking at the situation in neighbouring countries and the sub-Saharan region as a whole. Four basic questions guide this paper:

- i. What is the **state of democracy in Kenya**, especially regarding when elections are over? Can citizens effectively **participate** in democratic processes then and do elected leaders really **represent** the interest of Kenyans once being in office?
- ii. What are **underlying causes** of the present situation, i.e., drivers and obstacles of democratic participation and representation?
- iii. **How does Kenya compare** to neighbouring countries and sub-Saharan Africa as a whole?
- iv. What **remedies** can be recommended to improve democratic participation and representation in Kenya – and thus democracy in general?

3. BACKGROUND

3.1 What is Democracy and What Makes It Work?

Generally, we have to distinguish between two aspects of democratization (and, also democratic participation and representation, see 3.3): The characteristics of a democratic

system, **what democracy is**, and those **conditions and underlying causes that determine and explain why** a political system is democratic or not. However, sometimes the two different aspects are difficult to distinguish, mainly because concepts of democracy differ. More maximalist concepts will include characteristics such as the party system or even socioeconomic conditions as parts of what democracy is, while more minimalist concepts will consider these as conditions that make democracy work – or not. The work of the late Robert A. Dahl (1989, 1998) will help create an understanding on the concepts of democracy. As a third important aspect, we will specifically discuss to what extent (democratic) representation and participation are required or useful for democracy in one way or the other.

3.0.1 What is Democracy?

To determine what makes a political system a democracy or not, we begin by identifying its literal meaning “**rule of the people**” which means that people decide on who governs through elections. A very minimalist definition of democracy may assume that holding elections is sufficient for a political system to be regarded democratic. However, elections in this case can be manipulated to exclude a large part of the population or by being confined to single parties or candidates thus hardly representing the people’s will. Therefore, Dahl (1971; 1998) starts his theorizing on democracy or what he calls “Polyarchy” – rule of the many – with the observation that as many as possible citizens can participate and that there must be competition over who governs. His list of **requirements for a democratic**

political system includes; regular free and fair elections, elected representatives having decisions over policy issues, freedom to form associations and assemble and finally freedom of expression and a minimum of alternative sources of information.

Although these requirements are not trivial and not easy to achieve, some concepts of democracy exceed Dahl’s criteria. For instance, Merkel’s concept of “embedded democracy” (2004) adds checks and balances on the executive by other institutions such as parliament and the judiciary – and generally that rule of law is in effect. Other concepts of democracy (Lindberg et al. 2014) name an effective inclusion of citizens in the political process (*participatory democracy*), a political process that ensures an open debate (*deliberative democracy*) or a high level of economic equality between citizens (*egalitarian democracy*).

The more the concepts exceed elections and institutions the more they can be considered maximalist. It may be problematic to add specific set of institutions because they may limit flexibility of creating a democracy that reflects specific traditions of a country and some of these conditions may represent factors that make democracy stable rather than characteristics that make a political system more democratic per se. From the perspective of a social scientist, we may no longer be able to distinguish between the questions of a) whether a country is a democracy and b) why it is a democracy.

3.0.2 What Conditions Make Democracy Work?

As our study builds on Dahl's concept of democracy, we can use his set of what he terms "favourable and essential" conditions of democracy to determine what makes a democracy work:

1. **Socioeconomic conditions** that favour democracy show characteristics of a "modern, dynamic and pluralist" society. A "MDP-society" includes, inter alia, a high and increasing level of socio-economic development, the absence of high levels of poverty, well-educated citizens and a vibrant civil society with diverse interests of citizens which are represented and voiced by civil society or non-governmental organizations (CSOs/ NGOs).
2. Generally, Dahl assumes that **cultural homogeneity** is more favourable for democracy as diversity can lapse into deep divisions between subcultural segments or groups. However, through a 'modus vivendi' ethnic, religious or other cultural groups can find a way to coexist peacefully without diversity posing a problem.
3. **Attitudes regarding democracy** including attitudes and behaviour regarding laws not directly connected to elections and other democratic processes. Citizens and in particular elites should be in favour of democracy and behave accordingly.
4. As a fourth condition, even put first in Dahl's list, **the military and other security actors** who possess "means of coercion" – in short: weapons

– need to be under civilian control or apolitical. Military coups and regimes have been an obstacle to democracy throughout the world, not least in Africa (e.g., Powell and Thyne 2010). This condition also extends to non-state actors. When non state actors are armed, democracy has issues to thrive.

5. Finally, **international influences** hinder democratic rule in even the most democratic society. For instance, colonialist powers prevented democracy in Africa before independence. This can amount to occupation and take the form of promotion of authoritarian leadership thus calling for positive or no negative external influences.

3.1.3 The Role of Democratic Participation and Representation.

As this paper focuses on participation by citizens and representation of these citizens by leaders, we should clarify where and when these two aspects come into play. Democracy begins with citizens participating in elections as both voters and candidates and further calls for effective **participation**, as Dahl suggests, once elections are over and before a new election campaign starts. Constitutional rights provide for freedom of assembly and expression. More progressive ideas require citizens to influence elected officials through voicing their interests and concerns through civil society and opposition parties, organizing demonstrations, issuing petitions and holding politicians accountable and even influencing policy making. Such ways of participation should not be rituals of inclusion such as

in self-acclaimed participatory democracies, let alone “popular democracies” – which are often barely disguised dictatorships where people are “mobilized” in mass events but do not have a say in politics.

Representation in minimalist concepts is achieved through the act of voting which is a mechanism to gauge the next election. Voters can punish leaders by voting them out or reward them. However, some argue that genuine democratic representation should go beyond this mechanism and ensure that leaders more directly consider the voters’ will (see e.g. Randall 2007). The 2010 Constitution requires elections officials to hold public participation to directly take to account the people’s will. Such measures ensure leaders consider public opinions before next election campaign commences. At this point, effective participation and representation are tied together and jointly exceed the requirements of liberal democracy, and are more reflected in concepts such as *participatory or deliberative democracy* (see above and Lindberg et al. 2014). We thus **define democratic participation and representation** as characteristics of a political system in which citizens can effectively participate in democratic processes beyond elections and leaders actually represent the interest of their voters when they formulate and implement policies.

4. METHODOLOGY

The study uses a mixed-method approach and draws on information from various sources. These four sources reflect both inside and outside views as well as qualitative

and quantitative approaches. These sources are:

- **Indices of democracy** such as the Bertelsmann Transformation Index (BTI), Freedom House (FH) or the more recent Varieties of Democracy (V-Dem) project. These indices consider whether Kenya and other countries are democratic and also include sub-indices, categories or indicators that at least partially allow a more fine-grained look at aspects of democracy, participation and representation.
- We also used **surveys by Afro barometer** to assess what the general population thinks. Afro barometer data is rich in many aspects, especially regarding attitudes to democracy and participation.
- In addition, we engaged in a **review of the literature on democratization in Kenya**. Corresponding works include more recent scholarly articles and books, but also so called grey literature, that is reports by civil society organizations, policy briefs by think tanks as well as studies by political foundations such as the Konrad-Adenauer Foundation (KAS). We concentrated on works since 2010, when the current Kenyan Constitution came into force (see 6. References).
- The most important part of our study are **interviews with more than 20 stakeholders in Kenya**, especially members of civil society organizations, scholars, religious leaders, and party officials, as well as KAS office staff. We especially talked to young leaders that participate in KAS’ mentoring programme. All interviews were facilitated by the

Nairobi office of KAS. Interviews were conducted for the first draft of this report until early April 2020. It was originally planned to revise the manuscript according to feedback from Kenyan stakeholders on a planned conference in August 2020 in Nairobi.

We generally synthesize the findings from these sources in the two main analytical sections. In each section, we first provide background by looking at democracy in general and then take an in-depth look at democratic representation and participation. The findings of this draft of the report were planned to be presented to Kenyan stakeholders at a conference in Nairobi in August 2020. Comments and additional interviews were planned to be fed into the final version of this report.

5. DISCUSSION

5.1 State of Democracy, Participation and Representation in Kenya.

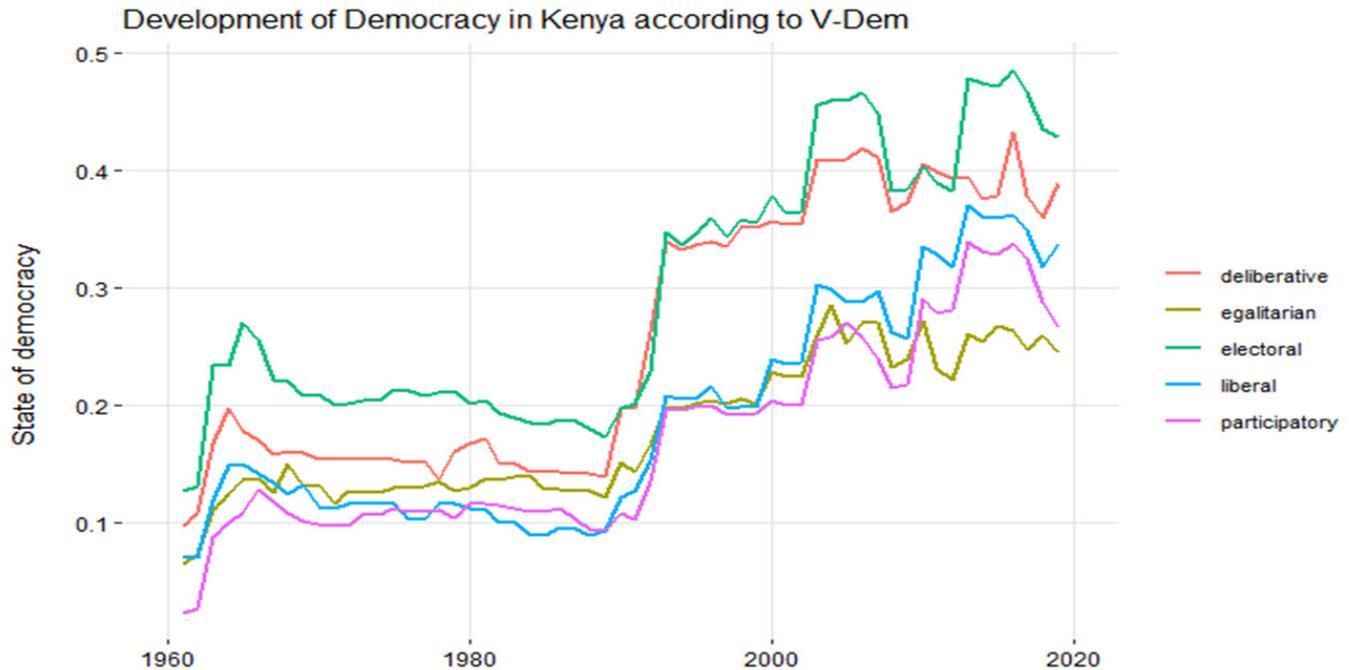
Kenyans created a **new Constitution (2010)** that introduced a number of progressive elements and measures, in particular regarding devolution. The 2012 elections saw the victory of Uhuru Kenyatta and who was later confirmed in office in the 2017 elections. However, apparent widespread irregularities led to Kenya's Supreme Court annulling the outcome of the election. Presidential elections were repeated but boycotted by the opposition claiming that irregularities were not sufficiently addressed. Kenyatta hence easily won the election, but opposition leader Raila Odinga declared himself the "people's president".

The "Handshake" of Kenyatta and Odinga in March 2018 resulted in more cooperation between opposition and the government Jubilee coalition and marked a slow return to less contentious politics. At the time of writing, Kenya has held six general elections in a row in a multiparty system and, at least on paper, practices a democratic political system.

5.1.1 General State of Democracy in Kenya.

All the indices that measures the level of democracy, confirm that Kenya is not a full democracy despite its longstanding multiparty elections since 1992. **The Bertelsmann Transformation Index (BTI 2020)** which judges the state of democracy as of January 2019 – classifies Kenya as "a moderate autocracy", mainly because of the irregularities during the last elections. This assessment might be slightly misleading as it suggests that the government rules autocratically, meaning that the political system falls short of the minimum criteria of a democracy. suggests that the government rules autocratically, meaning that the political system falls short of the minimum criteria of a democracy.

Figure 1.1: Development of Democracy in Kenya according to Varieties of Democracy 1963-2020



Source: compilation by Marie Kübler on the basis of V-Dem.

Varieties of democracy (V-Dem) is another index that rates several forms of democracy by assessing different countries on a scale of 0-100, with 50 being the minimum level for a political system to be regarded as democratic. V-Dem looks at a huge number of single indicators and summarizes them in five different indices that reflect different concepts of democracy (see above; Lindberg et al. 2014). *Electoral democracy* which is the minimum level of democracy in which the government is actually determined by public vote. *Liberal democracy* additionally includes political and civil rights, close to the sense of the concept of “Polyarchy”. *Participatory democracy* focusses on the extent to whether the population is effectively included in the process. *Deliberative democracy* also judges to what extent open debates take place. Finally, *egalitarian democracy* assesses whether or not and to what extent people have the same chances to participate in the electoral process.

Kenya falls short of reaching minimum levels (at 50%) in all 5 indices but scores best in electoral democracy contributing to a large improvement. There is one notable exception to this trend though. Deliberative democracy and liberal democracy have increased lately, probably reflecting some achievement in the fields of devolution and, thus, participation. Kenya is at an average and partly slightly above the sub-Saharan average in the V-Dem analysis. Comparing with her direct neighbours, Tanzania is slightly ahead whereas South Sudan, Somalia, Ethiopia and Uganda lag behind Kenya. However, this assessment needs to be put in perspective because it is partially at odds with what many

observers of Tanzania would agree on. It may be partly driven by a rather critical view of Kenya by international assessments.

Other indices such as **Freedom House or Polity** by and large confirm these assessments. Kenya falls short of a full democracy as indicated in the short summary of Freedom House (2020): “Kenya is a multiparty democracy that holds regular elections, but its political rights and civil liberties are seriously undermined by pervasive corruption and brutality by security forces. The country’s media and civil society sectors are vibrant, even as journalists and human rights defenders remain vulnerable to restrictive laws and intimidation.”

Compared to international and other academic sources, **Kenyan views seem more optimistic:** On the basis of Afro-barometer opinion polls, the general population seems generally more positive on the extent to which Kenya is a democracy. Almost 15 percent think they live in a full democracy, while around half of all respondents only see minor problems. Around 50 percent are both satisfied with the functioning of democracy and feel that they live in a democracy. It should be also noted that Kenya compares favourably to other countries in sub-Saharan Africa (see Mattes 2019). Regarding satisfaction with the democratic quality of Kenya’s political system, Kenya ranks 8th out of 34 sub-Saharan countries surveyed in Afro barometer’s round 7 and thus clearly above average. This number has

increased compared to round 6 in 2014/15. This not true for support for democracy however. Support has decreased and is slightly below African average.

5.1.2 Democratic Participation.

International democracy indices are rarely designed to capture democratic representation and participation in our sense and are thus only partly useful to assess the levels of participation and representation over time and compared to other countries. The best proxy is possibly V-DEM's index of participatory democracy – or arguably also the index for deliberative democracy – already discussed above. As can be seen in Figure 1, the ratings are slightly less favourable compared to liberal democracy. However, in terms of participatory democracy, Kenya scores ahead of all its neighbours. Yet, given the deficiencies of the indices, the full picture requires a more fine-grained qualitative look.

Regarding participation specifically, most of the participants in the interviews stress that **freedom of expression** is largely intact. However, several interviewees also pointed to some harassment of the media. These form an exception, thus putting international assessments into perspective.

Many interviewees underscored that the **2010 Constitution offers particular opportunities for participation, especially through devolution**. The process of devolution was designed to bring politics closer to the people and some authors acknowledge an increase in public participation (e.g. Kanyinga 2014; D'Arcy & Cornell 2016; Bennett 2018; BTI 2020). A particular asset is that the new Constitution

provides for direct consultation with the population. So called public participation meetings must be held for policy decisions. As it seems, laws on the county budgets and the public participation meetings seem to be somewhat unclear regarding who and how the public will be included. More importantly, the process of public participation meetings is often manipulated. Venues are announced but changed on short notice. Leaders bring in participants that support their positions.

Opinion polls largely confirm these assumptions; Kenyans generally believe that they can express their opinions freely. However, they rather **rarely participate in democratic processes regardless of elections** as revealed by Table 1, below:

Table 1.1: Political participation in Kenya according to Afro barometer 2016 (in per cent)

	<i>Join others to raise an issue</i>	<i>Contact media</i>	<i>Contact official for help</i>	<i>Refuse to pay tax/ fee to government</i>	<i>Attend demonstration / protest march</i>
<i>No, would never do this</i>	16	26	16	76	66
<i>No, but would do if had the chance</i>	53	61	57	15	21
<i>Yes, once or twice</i>	13	5	14	2	6
<i>Yes, several times</i>	14	5	10	2	3
<i>Yes, often</i>	4	2	3	2	1
<i>Don't know</i>	0	1	1	0	1

Source: Compiled by Marie Kübler based on Afro barometer, Round 7.

5.1.3 Democratic Representation.

Based on the interviews conducted, the extent to which actual representation takes place is critical as complains have ensured that all important decisions are taken before elections as **main leaders “pull strings behind the scenes”**. Weak parliaments result to bills being pushed through other than holding open-ended debates. Lack of integrity result to politicians pursuing their own interests other than that of the citizens majorly taking advantage of their illiteracy. Dependency on handouts and funding by poor Kenyans to meet their needs leads to direct and indirect vote buying and manipulating of ethnic identities. Leaders get away with failing to represent the public because they can draw on the “ignorance” of larger parts of the general population.

These claims are hard to back up with actual data. The Afro barometer however asks for trust in several institutions and how they assess the performance of several levels of government (see Table 2).

Table 1.2: Performance Approval of Political Leaders in percent, Kenya 2016.

	<i>Performance President</i>	<i>Performance MPs</i>	<i>Performance local gov.</i>	<i>Performance tradit. leader</i>	<i>Performance Mayor</i>
<i>Don't know</i>	2	3	4	13	3
<i>Not applicable</i>	0	0	0	2	0
<i>Refused to answer</i>	0	0	0	0	0
<i>Strongly approve</i>	47	11	11	18	17
<i>Approve</i>	28	32	34	45	38
<i>Disapprove</i>	12	28	26	11	21
<i>Strongly disapprove</i>	10	25	25	10	21
<i>Missing</i>	0	0	0	1	0

Source: Compiled by Marie Kübler based on Afrobarometer, Round 7.

5.1.4 Summary and Take Away.

In terms of the general state of democracy, all sources confirm that **Kenya's political system falls short of being a full democracy**. Sources partially differ in the amount of shortcomings, with international assessments naming more deficiencies than Kenyans themselves. In sum, Kenya shows all necessary requirements of a full democracy on paper, especially after the new Constitution from 2010. Multiparty elections have been held regularly since 1992 including turnover of power through the ballot box. Compared to neighbouring countries such as Somalia, South Sudan or Uganda, Kenyan democracy scores fairly well, but is only average in sub-Saharan Africa, with a possible authoritarian backsliding in recent years. Regarding **participation and representation** specifically, there is a certain **gap between institutional opportunities and the actual situation**. The freedom of the press and expression are by and large in effect and Kenya shows many institutional features that facilitate participation by the elites and representation by leaders.

5.2. Underlying Causes: Drivers and Obstacles to Democratic Participation and Representation in Kenya.

This section asks what conditions influence whether and to what extent democratic participation and representation succeed. We organize the section according to two major aspects, namely the underlying drivers and obstacles of democracy in general as well as democratic participation and representation. As reasons for (or the lack of) participation and representation seem intertwined we discuss them jointly in one sub-section. A third sub-section synthesizes our findings.

5.2.1 General Drivers and Obstacles to Democracy in Kenya

On the whole, the conditions for democracy in Kenya to thrive are on average. Regarding **socioeconomic preconditions**, the situation in Kenya seems to be **rather favourable** in the sub-Saharan context. Income in the form of GDP according to the World Bank stands at 1710.51 US\$ per capita in 2019 compared to a 1585.77 US\$ average in sub-Saharan Africa. Kenya's main fiscal capacity compares favourably to other countries which rely on foreign aid and natural resources. Low tax rates and high dependence on natural resources like petrol or other mining products are usually detrimental to democracy. According to the BTI and other sources civil society are fairly strong with Kenya scoring 4 on a scale of 10 to 1, whereby 1 is the strongest although inequality is at high levels.

Cultural relations, especially ethnic and religious communities, are faced by high divisions due to what BTI terms as high conflict intensity and cleavage-based conflicts. Power is not equally divided and politics deplore a strong ethnicization. Institutions established to work on ethnization of politics have not been captured by objective indicators. While the winner takes all logic of presidential and parliamentary elections can be considered confrontational (e.g. Basedau 2016), the devolution process has a potential to decrease tensions compared to highly centralized unitary states. Kenyan laws also provide for additional measures such as a territorial quota for the presidential elections, which requires to gain at least 25 percent of the popular vote in two thirds of all counties – thus a winning president will represent better all Kenyans and has an incentive to reach out to several communities and not just her or his own “tribe” (e.g. Theuerkauf 2013).

Another important condition for democracy is the **control over the forces of coercion, namely the military and non-state violent actors**. The BTI indicators, “monopoly on the use of force” and “effective power to govern” investigates whether there are powerful actors that constrain the power of civil governments. Regarding the military, Kenya has never witnessed a military coup – only the attempted 1982 coup – thus military remains apolitical (see e.g. Powell and Thyne 2011; Croissant et al. 2016; Basedau 2020). Issues of rogue security forces do not pose severe threats to democracy (e.g. criticized by Freedom House, see above). The main

challenge is terrorism by the militia group, al-Shabaab, in form of attacks like on the Westgate Shopping Mall in 2013.

Democracy cannot flourish when **external influences** strongly undermine it. China Influence is on the rise but it has not posed any threats on democracy thus the possibility of recolonizing Kenya is fairly low. Terror attacks associated with military engagements in Somalia are the biggest challenge, done as a revenge mechanism. Indices by BTI failed to capture the COVID-19 virus effects though they are outrageously pronounced with partial repressive enforcement of lockdown

Attitudes by the population on democracy are not a threat. Based on round 7 results of the Afro barometer survey, two thirds of Kenyans have a high preference of democracy than any other kind of government. If we demand that individual respondents prefer democracy and at the same time reject all other forms, what Mattes (2019) calls “demand” for democracy, still 44 percent are “full democrats”. The mean of 34 surveyed countries in round 7 stands at 68 percent for support of democracy and the rejection of military rule at 72 percent. A lack of support of democracy is not the main challenge to democracy in Kenya – as in Africa in general. Rather, it is an asset.

Regarding **pro-democratic attitudes of elites**, objective indicators offer limited insights. Survey based information exists for elites only on a rather small, specific sample of young party officials (Hoffmann & Basedau 2018). However, some indicators offer an expert-based assessment of elite

behaviour. BTI measures the “commitment to democratic institutions” and the governance index both of which Kenya scores 3 which is under the African and regional average. Four V-Dem indices for neopatrimonialism, clientelism, regime and political corruption also show alarmingly high levels, except neopatrimonialism only. However, they do not compare particularly badly to the sub-Saharan and regional means, rather better. According to “objective” indicators, elite behaviour in Kenya is clearly no asset for democracy, but not much worse and rather average or better than in other African countries. The picture seems different however, when we look at participation and representation more specifically – at least according to qualitative sources.

5.2.2 Why Does Democratic Participation and Representation Not Fully Work?

Generally, the previous sub-section has already revealed some encumbrances of democratic representation and participation. Regarding the latter, interviews with observers, party and CSO officials and scholars, in conjunction with academic literature (e.g. Burgess et al 2015; Cheeseman 2015; Cheeseman et al 2020; Elischer 2013; Kanyinga 2014; Kisaka and Nyadera 2019) revealed three issues namely: **leaders, ethnicity**, and the **general population** which stand out as obstacles to democratic participation and representation. Political parties and institutions were also often mentioned.

These **problems hinge together to form a system that undermines democracy**. In short: leaders seek

and use office for public gain and get away with it due to unawareness by the general population and failure to hold them accountable. They remain vulnerable to ethnic and other identities. Poverty pushes them to accept handouts and economic donations. Political parties and institutions mirror this character and hence are unable to transform the toxic culture. In addition, the winner-takes-all character of the basic institutions favours confrontational politics.

The **attitudes and the behaviour of leaders** are directly responsible for problems of democracy. As also revealed in interviews for another study for KAS (Hoffmann & Basedau 2018), campaigning for office is costly and needs to be “reimbursed” thus venturing into politics is a form of investment. Leaders undermine democracy through corruption and selfish acts and failure to abide by the Constitution and other laws, while going to extent of whatever means to access funds legally or illegally. The poorer populations expect support in the funeral or wedding events. In this sense, direct representation may undermine broader representation by working on bills and policies that are designed to improve the general development of the country.

Lack of awareness of available opportunities is a reason why the **general population** does not hold leaders accountable. If they happen to be aware, the knowledge to exert influence is in-existent thus key policy making opportunities bypass them like the budget formation. Socioeconomic concerns like **abject poverty** lead to an irrational behaviour of voting leaders based on economic handouts or rather ethnic

affiliations hoping that the candidate will care for one’s concerns more than members of other “tribes”. In addition, corruption is not just a crime perpetrated by the elite, but also committed and accepted by the people. It takes two to tango. At times it seems, that corruption is widely criticized but nevertheless practiced at all levels (see BTI 2020; Basedau & Hoffmann 2018).

When we look at the difficult relation between the general population and the elite, it may make sense, to name the **most important problems in the country**. If we agree that this can proxy what Kenyans expect their leaders to work on, we find according to most recent available Afro barometer data that corruption is most mentioned (see Figure 5) due to the massive dissatisfaction by leaders and officials. Political issues except corruption are not the prime concern of Kenyan but rather the socioeconomic challenges; unemployment, management of the economy, water supply crime and security. Afro barometer data lead to one conclusion: If leaders and political parties want to make the electorate happy, they need to **focus on corruption and general economic living conditions** (see also Cheeseman et al. 2020). Little debate, however, occurs how these aims can be addressed.

Ethnicity as well as, to a lesser degree, region and religion hold a popular view by interview partners and other sources of democratic participation and representation as underlying challenges of democratic participation. Interestingly, this somehow contradicts the Afro barometer data which shows

national identity is quite strong, and ethnic cleavages are not considered that problematic and that people would not mind having a neighbour with different ethnicity. Religious discrimination and tensions have grown and ethnicity is the most salient issue in Kenyan party politics (e.g., Elischer 2013). First, ethnicity seems to replace more urgent debates on policy differences – how to address development issues for instance – and also has the tendency to be, or at least actually is confrontational. The massive violence during the 2007 elections underscores this finding. If the contentious and dominant role of ethnicity in politics is problematic, we have to ask why it works. For one, leaders do manipulate it – a view held by several interview partners.

But why do leaders succeed in doing so? While history can be part of the explanation, another reason might be **political parties and institutions** that also seem to be obstacles to democracy, participation and representation – though they were mentioned less often. Both political parties and institutions should mediate between the population and the leaders – and apparently largely fail to do so in a healthy way, but reflect or even **promote the problems already described**. Political parties are “owned by individuals” and lack programmes that are more than “copy and paste” from other parties’ programmes. In reality, parties and their officials often appeal to ethnicity. The party system and the individual parties lack institutionalization and are unstable. Only few exceptions of programme-based parties with an orientation to the public good exist and usually

these political parties are small. Regarding state institutions criticism centres on clearer provisions regarding the “public participation meetings”. Devolution has a downside too and seem to localize corruption (see D’Arcy & Cornell 2016). However, the biggest concerns apparently refer to the **“winner-takes-all” logic of the electoral system** for both the presidency and the National assembly (and in local elections). If only one candidate can win, competition will become almost inevitably contentious and confrontational.

While the discussion of underlying causes is largely oriented toward deficits, **assets seem to be present too**. This refers to other aspects of institutions. One interview highlighted that Kenyans have been very **“experimental” and creative regarding new institutions** in many instances. This logic applies to the electoral system for the president. In order to ensure more national representation, winners are required to not only win an absolute majority but also at least 25 per cent in two thirds of the counties. According to many interview partners, there were also many initiatives to address the general political culture, which are sometimes however dominated by the government and serve PR rather than substantial purposes. Generally, civil society organisations are an asset rather than a liability. Almost all interviewees agreed that civil society is vibrant serving both as an actual or potential watchdog, a facilitator of dialogue and a key factor in civic education.

5.2.3 Summary and Take Away.

Interrelated reasons for liabilities of democracy in Kenya

are **closely connected to deficiencies in participation and representation**. These problems are tied together in a self-perpetuating system. “Selfish” leaders get away with integrity issues in a culture of impunity; leaders are voted into office according to ethnic and other identities rather than better political options. Ordinary Kenyans show ethnic, tribal, and regional voting patterns and lack knowledge on their rights and opportunities to effectively participate after elections. However, the picture is far from entirely dim. Assets of Kenyan democracy comprise promising political institutions, especially in relation to devolution, that can facilitate effective participation and representation. Kenya also has a vast population in favour of democracy to any other kind of government. Participation levels seem to be at least average by African standards.

6.0 CONCLUSION AND RECOMMENDATIONS

In order to further promote representation and participation and thus democracy in general several measures may be considered. Areas to be addressed and corresponding target groups and formats are the following:

- In order to increase effective representation, local and international reform-oriented actors must **engage with established political stake holders** by promoting integrity and issue-orientation in politics. This will necessarily include senior politicians, but in particular the promotion of networks of young politicians, effectively creating a new generation of progressive leaders for the

future of Kenyan democracy.

- Programmes of **civic education for the general population** need to create awareness about rights and the rich opportunities in the Kenyan Constitution for ordinary citizens to participate and hold leaders accountable. This process can be facilitated by civil society organizations, religious leaders and especially media in remote rural areas. Effective participation will create accountability of leaders and may change their behaviour and hence effective democratic representation in the long run.
- Creativity will be required to **“detrribalize” Kenyan politics** as such patterns are hard to eradicate. However, it seems key to create a relationship between the electorate and the leaders that enables “true” democratic participation and representation. In the long run, politics should be oriented towards the nation instead of tribe; Debates should focus on policy issues rather than identities. Dialogue programmes should facilitate exchange of ideas between and among leaders and communities.
- Relatedly, one should support a debate on **alternative and innovative political institutions**. Kenya has shown great creativity regarding such innovative institutions, and this resource can be further exploited. National institutions like the electoral system (less “winner takes all”) and the

legislature (more control of the executive) as well as at the county level (effective participation meetings) could be reformed or strengthened. One may also think about further measures to strengthen the judiciary to curb office abuse of leaders. Civil society in Kenya as well as international partners could facilitate debates on strengths and weaknesses of alternatives and experiences in other countries.

- A **number of principles** will increase the effectiveness of corresponding policies. First, efforts and programmes need to be **effectively coordinated** between local and international reform actors. Second, regarding individual actors, **“less is more”**. Continuity and a long-term perspective will bear more fruit than “one off” workshops and trying to address all issues everywhere and at the

same time. Moreover, **“bottom up”** are preferable to “top down” approaches. Regarding formats, civil society and international partners can contribute to create awareness, build capacities of citizens, and enable dialogues among and between leaders, stakeholders and communities. **Exchanging ideas and experiences with and from other African countries** such as Botswana, Ghana, and South Africa, possibly also Rwanda and Tanzania may help these processes.

CHAPTER TWO

POLITICAL REPRESENTATION AND ITS RELATIONSHIP WITH SERVICE DELIVERY: A CASE STUDY OF KENYA.

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1. ABSTRACT

Kenya boasts of a globally recognized progressive Constitution that upholds national values which include accountability, transparency, public participation, equity, equality among others. Matters of ethical conduct and integrity within its public leadership at the political and non-political front are also enshrined in this Constitution. These provisions should promote efficient service delivery. Further the political representation model is based on a decentralized system of governance through which resources can reach citizens at the grass root level. Being the grand norm of all the legislations, the Constitution thus informs the specific laws that govern service delivery in the public sector. This bedrock of excellent legal framework should therefore translate to an ideal state where the government provides its citizens with efficient service delivery through its public institutions. However, various challenges like corruption, clientelism, patrimonialism and ethnic politics that still bedevil Kenya have been a great hindrance to efficient service delivery to its citizens.

2. INTRODUCTION

The relationship between political representation and service delivery can be described as a mirror effect relationship. This is because the quality and the manner in which public services are delivered to the people are ultimately controlled by the political representatives elected by the people. In Kenya, citizens get the opportunity to interrogate the vision and values of the aspiring leaders through the political parties'/candidates' manifestos which contain the policy

ideas and the prioritized services and model of deliveries that a particular candidate intends to adopt. Political parties through which political representatives are elected have thus been described as gatekeepers of democracy as they play a unique and fundamental role in the democratic process. (OSCE, ODIHR, 2014).

These parties represent the views and perspectives of citizens which are then channelled into appropriate public policy fora (OSCE, ODIHR, 2014). Kenya as a growing democracy has undergone huge reforms and thus grown as a model democratic country in Africa. This can be attributed to the decentralization of government services and the promotion of public participation in government agenda that has seen an emergence of a robust and outspoken electorate who were previously muzzled by a legal regime that did not provide an avenue for citizens to participate in governance issues and also curtailed the freedom of expression. The citizens have therefore been in the forefront in participating and approving government policies that influence service delivery and demanding for accountability from the public servants.

Despite this growth, Kenya's service delivery score still falls slightly below average. According to the Service Delivery Indicator Survey that was conducted in Kenya in 2013 in the Education and Health Sector, the survey revealed that only 49% of the public health facilities had clean water, electricity and sanitation and that that not a single health facility had all 10 tracer drugs for children or all 16 tracer drugs for

mothers (Martin & Pimhidzai, 2013). In the education sector an improvement was seen on the infrastructure but there was still a huge gap on teacher knowledge as only 35% of teachers showed mastery of the curriculum they teach. (Martin & Pimhidzai, 2013).

The aim of this paper is to therefore critique the idea of political representation as a tool of service delivery in Kenya by looking at whether or not the present political representation model in Kenya promotes equitable and efficient service delivery to its citizens and thus good governance and the reasons why its service delivery score is therefore low. This critique will be informed by the idea that efficient, effective and equitable service delivery is that which entails provision of quality basic needs to a people by their government while promoting the values of transparency, accountability, equality, equity and good decision making that don't compromise the country's economic, social and political growth. These services must not only be readily available and accessible to the citizens when needed but also affordable even to the poorest within a given country. The services must further answer to the needs of a given population with priority given to the most needed service at a required period.

3. BACKGROUND

Kenya's democracy is based on a representative democracy system. This system is an evolution of the ancient Greece idea of democracy. It was developed to adapt to the challenges that citizens in large territories experienced

as it became impracticable for people in a large state to meet as a legislative body. One of the early proponents of representative democracy is Montesquieu who in his writing "*In The Spirit of Laws*" (1748) opines that people living in large states ought to choose representatives to act on their behalf (Dahl, 1989).

The political representation model in Kenya has undergone numerous reforms in a bid to improve service delivery. This comes from a historic background that was characterized by poor and discriminatory practices in the public service sector.

Public institutions for a long time were stuck up in the rot in which services were offered to the citizens as favors and not as rights. This was further entrenched by the patrimonial system of governance that was deeply rooted in the post-colonial governments which was based on presidential system of governance whereby power was centralized at the Presidency.

The imperial presidency ultimately gave rise to inequalities and inefficiencies in service delivery. Between 1978 and 2003, numerous amendments were made to the Constitution which emboldened the office of the President. Consequently, the president had control over the other arms of the government and the electoral commission. (Nyadera, Agwanda, & Maulani, 2014). The President could not only dissolve the parliament which ought to have checked his powers but also he had full control of the national budget. (Nyadera, Agwanda, & Maulani, 2014). In

essence, the president controlled the distribution of public resources and delivery of basic services such as health, education and security using his appointed cronies who held the administrative offices at the local government level which ranked from the Provincial Commissioners down to the Assistant chief level.

The political representatives at the national assembly and the cabinet ministers who were appointed from the national assembly therefore had little say on the services that the citizens got. There was clear systematic discrimination of regions whose representatives were perceived to oppose the government agenda and they were “punished” by receiving fewer resources than the government loyalist regions. Provision of government services therefore took the form of a favor as opposed to a right a discussion that we will further develop later while discussing the challenges brought about by political representation as a vehicle of service delivery.

It is based on these inefficiencies and inequalities in service delivery perpetuated by the presidential system of governance that saw the clamor for a new constitution that would be inclusive and which gave power back to the ordinary citizens. Indeed pre-2010, the people had lost trust in their representatives and the political representation model was not considered as an effective means of ensuring all citizens receive government services. An atmosphere of disenchantment and disillusionment was therefore created within the citizenry who no longer trusted their political

representatives to address their issues. A new constitution was ultimately promulgated in August 2010. With it came the overhauling of the Presidential system of the government and a re-introduction of parliamentary system of devolved government that brought government services closer to the people.

4. METHODOLOGY

The author will use desk-based method of research by relying on primary and secondary data collected from legislations, case laws, government websites’ articles, reported opinion polls, books, published research papers, articles and journals. This data will inform the author of whether the political representation model in Kenya has contributed in achieving equitable and efficient service delivery in Kenya or not.

5. DISCUSSION

5.1. The Political Representation model in Kenya pursuant to the Constitution of Kenya 2010

The political representation model in Kenya is characterized by a devolved system of governance comprising of two levels of government where we have the national government comprising of the executive, legislature and the judiciary and the county government consisting of the office of the governor and the county assembly. Political representatives are elected in two arms of the government being the executive and the legislature at both levels of the government. The general principles governing representation of people in Kenya is encapsulated in **Chapter 7, 8, 9 and 10 of the**

Constitution of Kenya 2010, the Elections Act of Kenya 2011 and the Political Parties Act of Kenya 2011.

The political representatives in Kenya comprise of:

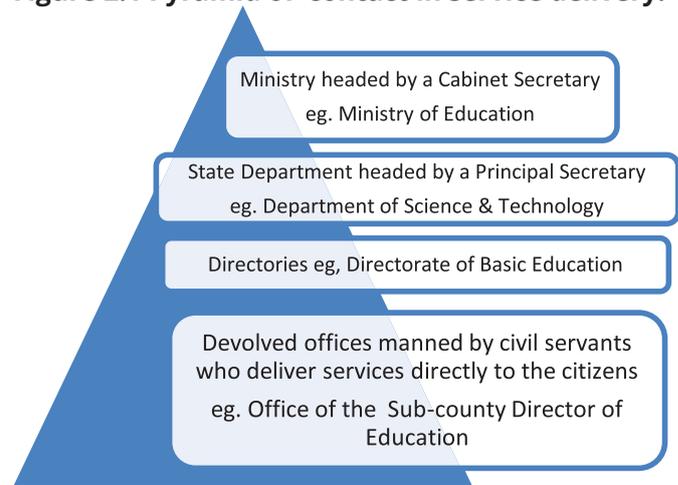
- a) **National government level:** the President and his deputy; the members of national assembly consisting of 290 members elected from each constituency, 47 women representatives elected from each county and 12 nominated persons representing special interest groups i.e., the youth, persons with disabilities and workers; members of the senate consisting of 47 elected senators from each of the 47 counties,
- b) **County government level:** 47 elected governors from each county; members of county assembly elected from each single ward in a given county and special seats that promote gender parity and inclusion of marginalized groups.

5.2. Service delivery model in Kenya

The principles governing public service are encapsulated in **Article 232** of the Constitution of Kenya. **Article 233** establishes the Public Service Commission whose roles include establishing and abolishing offices in the public service and developing human resource. As illustrated in Figure 1.1 below, delivery of national government services is controlled within the different ministries constituted by the President. These ministries are headed by the Cabinet Secretaries who are presidential appointees but subject to approval by the Parliament. The ministries are then divided

into state departments headed by Principal Secretaries. The state departments are further divided into directorates headed by Directors who are employed by the Public Service Commission down to the junior offices. Often the junior officers are the first contact in service delivery.

Figure 2.1 Pyramid of 'contact in service delivery.



At the county level, services are delivered to citizens through the offices of the County Executive Commissioners appointed by the governors.

5.3. How political representatives influence service delivery in Kenya

Political representatives influence service delivery through the roles assigned to them by law. These provisions enable them to directly or indirectly exercise control over the appropriation, allocation and use of the national/county revenue and other devolved funds like the Constituency Development Fund and the ward development fund. They also participate in the appointment of public officers and additionally play an oversight role on public officers who are mandated to provide services to the citizens. These roles are well encapsulated in the **Constitution of Kenya 2010 (Articles 95, 96, 132, 225, 226 and 227)** and the **County Governments Act of Kenya, 2012 (Sections 9, 30 and 185)**. The principles that guide political representatives in ensuring that services are effectively and efficiently delivered to citizens are:

i) Devolution

Devolution has been heralded as one of the best principles that address issues of service delivery in democratic states. Kenya has adopted this system of governance to address issues of marginalization, accountability and government responsiveness to citizens. By addressing these issues, efficient, effective and equitable service delivery is achieved. **Article 6 of the Constitution, 2010** mandates the national government to provide reasonable access of services in all parts of the country. One of the objects of devolution under **Article 174 of the Constitution, 2010** is to facilitate the decentralization of State organs, their functions and

services, from the capital of Kenya. According to a survey done by Kenya Alliance Residents Associations (KARA) on County Service Delivery, most respondents felt that access to services had improved with devolution with Kisumu reporting the highest percentage of respondents who felt service delivery with 72% noting improvement in access to education, 69% noting improvement in access to health and 41% noting improvement in access to trade services (Kenya Alliance of Resident Associations; IPSOS Kenya, 2019).

ii) Equity and equality

These principles address the issues of marginalization. One of the objects of devolution as envisaged under Article 174 of the Constitution is to ensure equitable sharing of national and local resources across the country. One of the ways Kenya has adopted to ensure equitable share of resources is through the Equitable Share of revenue allocated to counties has adopted a progressive horizontal sharing formula that provides historically marginalized counties with higher per capita transfers than historically privileged counties. (Finch & Omollo, 2015) This has been subject to a hot debate in the National Assembly and the Senate where certain members feel that the allocation should be based on the population of citizens in a given county and not the size or the perceived notion of marginalization with the proposal of “one man one shilling” being pushed by certain members of the national assembly.

iii) Public participation, Accountability and Transparency

This principle ensures citizens' interaction with not only their political representatives but also with the government appointees that are mandated to provide services to them. Public participation promotes efficient and effective service delivery as the citizens are engaged fully on the proposed government projects. They are given a platform to propose which projects will best address their needs at a given time. By participating in the budget process, they also get a chance to hold the government accountable by interrogating the fiscal reports and proposals.

Public participation is one of the national values under **Article 10** of the Constitution. The requirement of public participation in government planning including participating in the budget cycle and interrogating budget priorities, reviewing government performance and airing of grievances has been incorporated in various legal instruments that touch on service delivery. These are: the Public Finance Management Act; the Public Procurement and Disposal of Assets Act; the County Government Act; and the Urban Areas and cities Act. Through public participation, delivery of services is subjected to the principles of transparency and accountability. It also promotes social inclusivity in decision making as citizens are fully involved in government projects.

The principle of accountability ensures that public officers are held answerable for their acts or omissions when providing services to citizens. It promotes responsiveness

and transparency in service delivery hence efficiency. The principle of transparency on the other hand mandates the government and public officers to conduct public affairs in an open manner. Citizens should be able to get timely access all information regarding the service delivery processes and outcomes. These processes often manifest in a given budget cycle. Citizens are then able to interrogate the amount of funds available in a given cycle, the prioritized projects and how the projects have been implemented. The relationship between the three principles in promoting efficient and effective service delivery is illustrated below.

Figure 1.2 Service delivery cycle



5.4. Does the political representation model in place thus promote effective, efficient and equitable service delivery?

Based on the above analysis of the political representation model that is in Kenya and the legal principles that have been put in place to guide the said representatives in ensuring services are delivered to citizens in an efficient and effective manner, it is clear that the political representatives have been empowered enough hence service delivery in Kenya should be optimal. The national values under Article 10 of the Constitution that guide public officers in their duties and the principles of checks and balances that curtail arbitrary use of power by the executive while at the same time making them accountable to citizens through the Parliament is an effective way of ensuring equitable delivery of government services in an effective and efficient way.

5.5. What are some of the notable steps that political representatives have taken to influence service delivery?

One of the ways in which political representatives have promoted effective and efficient service delivery is through the oversight role of parliament at the national level and county assemblies through which they have held public officers accountable for poor service delivery. Post the promulgation of the Constitution of Kenya 2010, seven county assemblies has exercised their right to impeach their respective governors on account of poor service delivery that was marred with embezzlement of public funds and corruption in the procurement of public services. However,

only two of the governors lost their seats while the rest were cleared by either the Senate Committee or the Court after challenging the impeachment process. This bold move by the six county assemblies has not only served the objective of deterrence to other governors but it also improved service delivery at the county levels.

The National Assembly and the senate have also played a key role in promoting equitable share of the national revenue through the Equalization Fund that seek to address inequalities in resource distribution perpetuated by marginalization of certain communities in Kenya. The role of Parliament in approving funds allocated to County governments also promotes service delivery through devolution of revenue that is in turn used for county development.

At the executive level, we saw the President of Kenya in 2015 sack five cabinet secretaries accused of graft and violation of the public procurement laws. Public uproar and pressure from political representatives from the then opposition party CORD also saw the resignation of the then Cabinet Secretary for Devolution and Planning after she was linked to the NYS scandal that involved grand theft of public fund in her ministry. This was a positive move by political representatives through promoting accountability and thus creating a conducive environment for efficient and effective service delivery by future office holders.

The setting up of Huduma Centers in all the 47 counties has also improved access to national government services that were initially accessible only at Nairobi like civil registrations, health insurance services, immigration and social security services can now be accessed by citizens in these centers. From the above examples, we can conclude that the political representation model has improved the service delivery in terms of accessibility as most services have been devolved. It has also ensured that public officers adhere to the principles that promote service delivery by holding them accountable. Service delivery however is still not optimally effective due to certain challenges that have affected the availability and affordability of some services to citizens.

5.6. Challenges facing efficient, effective and equitable service delivery in Kenya in relation to the political representation model in place

a) Corruption

Efficient service delivery cannot be achieved if public institutions mandated to offer such services are still riddled with corruption. Corruption has been defined as the act of doing something with intent to give an advantage inappropriate with official duties to obtain a benefit, to harm or to influence improperly the actions of another part. (UNDP, 2015). In the recent Corruption Perception Index conducted by Transparency International, Kenya scored 28 of 100 which is still below the global average of 43. (Transparency International, 2017) This means that corruption is still a scourge that we need to deal with.

Kenya clusters the types of corruption as petty or grand corruption. Petty corruption is experienced at the lower levels of government where junior public officers demand for bribes before they can give services like registration of civil documents, land transaction documents etc. Grand corruption on the other hand is experienced at the highest echelons of power where public funds are embezzled on a grand scale.

The petty corruption in Kenya is deeply entrenched that without money it is almost impossible to get government services. This means that efficient service delivery is biased against the poor as the rich are able to seek services from alternative service providers in the private sector or pay the hefty bribes that are often demanded by the service providers in the public sector. In the East Africa Bribery Report conducted by Transparency International Kenya, index, it was established Thirty five percent of respondents reported paying bribes to hasten up the services they were seeking followed by 34% who paid as it was the only way to access the service. (Transparency International, 2017). This clearly depicts how corruption hinders efficient and effective service delivery as it affects the accessibility and affordability of such services to the poor citizens.

The grand corruption on the other hand has manifested itself in a myriad of scandals that have been exposed in Kenya's mainstream media and social media. This is through tenders that have been awarded to fictitious companies that do not provide the intended services as was the case

in the National Youth Service scandal that involved high ranking political representatives in Kenya. Kenya has also experienced cases in which governors have been questioned for making purchases using public funds at inflated prices. Political representatives in Kenya are also known to use their positions in influencing the award of public tenders to certain companies/individuals in return for kickbacks. This has greatly affected the quality and the availability of goods/services that the citizens get at the end of the day as huge sums meant for such services end up in the pockets of the said politicians.

b) Clientelism and neo-patrimonialism

Clientelism is the quid pro quo kind of relationship between political representatives and their subjects whereby subjects get favors from politicians in exchange for their electoral support. This often manifests in the awards of government tenders where private citizens are contracted by the government to deliver certain services like infrastructure, medical supplies, education materials like books etc. it also manifests in offers of jobs in the public service.

In Kenya, clientelism is practiced by awarding party loyalists who lose in elections with state positions. Examples can be seen in the appointment of some of the Cabinet Secretaries, Principal Secretaries and even heads of parastatals at the national level and the County executive commissioners and officials at the county level. One demonstrable example is the creation of the position of Chief Administrative Secretaries by the President after the 2017 elections. The

holders of these offices are been perceived to be his cronies who supported him in the said elections. The High Court of Kenya in its decision in *Petition NO. 33 & 42 (consolidated)* has since declared the said positions as unconstitutional. Governors at the county levels have also been known to appoint their supporters in various county institutions in exchange for financial support during elections. (*Omtata & anor v Public Service Commission & 73 Others; Law Society of Kenya (Interested Party)*, 2021).

Clientelism also manifests in the political party ideology that is in Kenya whereby elected leaders owe allegiance to the parties that have sponsored them to their positions at the expense of the public. This has promoted corruption and unaccountability in government as members of parliament/county assemblies turn a blind eye to the vices perpetuated by the people mandated to provide services as long as the party leadership dictates so. Those who have gone against the stand taken by the political party leadership face consequences to the extremity of being expelled from the respective party and thus losing their seats either at the parliament or the cabinet in the case of cabinet secretaries. In the recent times we have witnessed the chief whips at the Senate and the National Assembly being de-whipped on account of their “wavering” loyalty. One of the National Assembly Justice and Legal Affairs Committee members also lost his seat in the committee for criticizing a Bill that was sponsored by his party.

Clientelism hinders effective and efficient service delivery by violating the principle of accountability as the electorate becomes blinded by the favors they receive from politicians. Secondly, it compromises the quality of leadership at the public sector as appointment of public officers is based on loyalty and not competence/merit. Poor leadership thus hinders service delivery as the people mandated to oversee the efficient and effective delivery of such services lack the competencies to do so.

Neo-patrimonialism is a kind of governance in which power is centralized. Even though Kenya currently has a devolved system of governance, elements of patrimonialism still manifest in the service delivery at the public sector. Government development projects for example are perceived to be controlled by the President who is in direct control of the Cabinet Secretaries at the national level and the governors who are in direct control of the County Executive Commissioners. Regions perceived to be politically correct therefore receive more services in terms of quality, accessibility and availability than those in opposition. This type of governance perpetuates inequalities and inequities in delivery of government services.

c) Existing disconnect between the needs of the citizens and the services that are prioritized

Effective service delivery entails availing the right services in a timely manner to the right people. For this to happen, public participation must happen whereby the citizens' views must be incorporated to determine which services take

priority. In a bid to achieve the Sustainable Development Goals (SDGs), the Kenyan Government has initiated grand projects whose goal is to break down the sustainable goals into different implementable parts. However, it is important to note that some of these projects are continuously being regarded to be out of touch with the locals, looking at the competing needs of the population at a given time. The rural electrification project under the 'last mile' for example was a noble project aimed at connecting all Kenyans to the national electricity grid by 2020, to stimulate economic growth and create jobs. However, most citizens at the rural areas do not have habitable housing, let alone, the fact that they most of them may be homeless. Hence, the provision of habitable housing ought to have been prioritized first complemented with last mile. Most of the population in Kenya still live below the poverty line. This means that while the last mile project sounds a good idea, the sustainability of it will be a hard task, especially knowing that most poor Kenyans may not be able to pay the electricity bills. The electricity connections therefore has been argued by some quarters of Kenyans to have been one of the best examples where governments have not been so strategic and in the process wasting a lot of public resources.

The Service Delivery Indicators (SDI) Report, 2013 by the World Bank, that focused on health and education sector also revealed that Kenya focused greatly on the infrastructure and equipment in the health and education facilities than on the provider knowledge and effort. (Martin & Pimhidzai, 2013). This manifested on the frequency of permitted

absenteeism by teachers and healthcare providers from the said facilities. The level of mastery by employees in the respective fields was also quite low. This in turn affects the availability and quality of services. Indeed, of what use is a beautifully constructed class without a teacher or a well-equipped hospital without trained doctors/personnel?

d) Bureau pathology

The delivery of government services and goods is done by bureaucrats. An effective bureaucracy ensures effective and efficient delivery of services owing to the fact that ideal bureaucracies are based on hierarchical system with division of labor, rules and regulations and competency. Bureau pathology is the negative behavior of bureaucrats who misuse their positions and hold the citizens at ransom by neglecting their duties and extorting bribes from citizens in exchange for public services. This therefore reflects negatively on the efficiency and effectiveness of service delivery.

Kenya public service (civil servants) is known for its nonchalant behavior in providing services to the citizens. This vice is entrenched so deeply that getting government services in a timely and efficient manner is seen as a favor and not a right. The bureaucracy in Kenya is also known for corrupt practices, absenteeism from work and red tapes due to its hierarchical nature that slows the delivery of services.

Other challenges that Kenya faces in delivery of services are gaps in laws that allow politicians to offer public services for profit in their private capacities. **Section 59 of the Public Procurement and Asset Disposal Act of Kenya, 2015** prohibits public officers and state officers from participating in procurement and disposal of public goods or services. Politicians have however found a way to circumvent this provision through incorporating ghost companies under fictitious names or in the names of their extended family members so as to be eligible to offer such services. The culture in the public service whereby services are given as favors has also affected the efficacy and efficiency of service delivery. Laziness and inefficiencies at the public service have been normalized to the extent that there no one thinks of exercising the accountability mechanisms in law to curb this vice. This has greatly affected the efficiency of service delivery.

5.7. Kenya's current position in achieving the Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs) and how it compares to other democracies in Africa

The Millennium Development Goals (MDGs) 2000 were centered on a 15 year agenda to end indignity and poverty. (United Nations Development Programme, 2021). As at 2015, Kenya had made significant progress in achieving the 8 goals which are: eradicating extreme hunger and poverty, achieving universal primary education, promoting gender equality and empowering women, reducing child mortality, improving maternal health, ensuring environmental

sustainability and developing a global partnership for development. There was improvement, albeit some being marginal in all the key indicators under each goal.

Looking at specific MDGs that revolve around service delivery, in the education sector, Kenya recorded a remarkable improvement on enrollment of learners in primary schools from 5.93 million in 2003 to 10.2 million in 2006. (Ministry of Devolution and Planning, 2013) The percentage of learner retention also improved from 57% in 2000 to 80.3% in 2013. Currently the government is implementing the 100% transition of learners from primary school to secondary school. In the health sector Kenya has rolled out free maternity health services for mothers in all public institutions. HIV prevalence has also reduced from 6.3% in 2003 to 5.6% in 2012. (Ministry of Devolution and Planning, 2013). The World Economic Forum Reports (2017-2018) ranked Kenya as the best African country in terms of the strength of its education system. Overall, Kenya was ranked at number 114 out of 137 under the pillar of health and primary education services with its best rank being 27 under the pillar of Labor Market efficiency. (World Economic Forum, 2017).

The Sustainable Development Goals which were built on the Millennium Development Goals (MDGs) are based on the United Nations (UN) Agenda 2030. The objectives of the SDGs are to improve quality of life by working towards ending poverty, reducing inequality, improving healthcare, protecting the environment, and promoting peace and

justice. (Macharia, 2021). In working towards achieving these goals, the Kenyan government has unveiled the Big 4 Agenda whose pillars are food security, affordable housing, manufacturing and affordable healthcare. This agenda addresses the SDGs of achieving zero poverty and hunger, fostering good health and wellbeing, and promoting decent work and economic growth (Macharia, 2021).

Based on the Big 4 Agenda Report (2019), the Universal Health Care program had been piloted in four Counties being Kisumu, Isiolo, Nyeri and Machakos. The aim of this program was to ease access and affordability of health services in public hospitals. The healthcare financing was however still low being 7.2% of the government expenditure. (The State Department National Treasury and Planning, 2020). There were however remarkable achievements in improving healthcare equipment and infrastructure with 120 public hospitals having been equipped with specialized and 100% functional equipment. The government had also provided 25% of affordable houses out of the targeted 80,000 housing units that it intended to construct. 10 slums out of the 18 targeted slums have been upgraded and on matters infrastructure the government exceeded its targets by constructing 2,014 km of roads over the targeted 1,645km (The State Department National Treasury and Planning, 2020). Kenya's commitment to achieving the SDGs and the MDGs is evident from the data above even though it is yet to achieve 100% score in any of the goals. With the implementation of the good policy guidelines in place and political goodwill, the vision 2030 should be achievable.

CONCLUSION AND RECOMMENDATIONS

From the discussion above, Kenya seems to be doing averagely well in terms of service delivery. The challenges it experiences are however becoming a great detriment to the country in achieving efficient and effective service delivery. If the challenges highlighted in this paper are addressed, Kenya will progressively attain a world model status in the public service delivery sector. Some of the steps that can be taken by the political representatives and the citizens at large to address these challenges are:

- a) Strengthen the institutions that are involved in the fight against corruption by supporting institutions like the EACC, the Office of the Director of Public Prosecutions and the Judiciary to enable them successfully prosecute and get convictions against corrupt political leaders. This can be achieved through enhancing their capacity to get evidence by incentivizing and protecting whistle-blowers and witnesses in such cases.
- b) Increase citizen capacity in public participation to make the public participation forums effective and productive. This can be through training of the public on policy making processes and budget cycles so as to enhance their knowledge and thus competence in interrogating policies that influence service delivery in their respective counties and the country at large. The government can collaborate with the CSOs involved in civic education and encourage citizens to join citizen groups to engage the government.
- c) Incentivize the civil service to motivate the staff and in turn increase their productivity and to also minimize the cases of bribery that have been attributed to poor pay in the public service.
- d) Uphold the objects of devolution by fully implementing the principles and the laws that promote devolution and bar leaders who have been involved in mismanagement of public offices from vying for political leadership positions.
- e) Increase transparency and accountability measures in the public service by conducting regular monitoring and evaluation procedures at all the state departments. This will inform the relevant officials of the relevant steps that need to be taken to make service delivery efficient and effective in a given department.
- f) Digitize the processes of obtaining government services to enhance efficiency. This will also help the government minimize the recurrent expenditure spent on paying salaries to redundant civil servants which monies can be redirected to other sectors.

CHAPTER THREE

POLITICAL REPRESENTATION AND SERVICE DELIVERY IN KENYA

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1. ABSTRACT

While political representation has remained a central feature of democracy and despite significant strides in democratization across the globe since 1989, most governments continue to grapple with the disenchantment of the citizens toward political representation. This phenomenon has, arguably, led to the erosion of public trust in political institutions. In particular, it has exposed a crisis of legitimacy, the very foundation of democracy. Indeed, one of the goals of democracy is to strive for policies that are responsive to the needs of citizens, have not been contested, and have continued to inform research on democracy. Despite research on political representation, there is still debate on the meaning of political representation and its consonance with the delivery of public services, which is the hallmark of the quality of democracy. Hence, four essential questions emerge that are at the core of democracy. Firstly, is there an academic consensus on the conceptual meaning of political representation and its relationship with service delivery? Secondly, is it the unresponsiveness and the disconnect between political representation and service delivery that is the cause of citizens' distrust of political institutions? Thirdly, how has Kenya performed regarding global trend which points to distrust with political institutions? Lastly, how can democratic institutions work for the citizenry? In responding to these pertinent questions, this paper builds on recent work on political representation. It seeks to re-imagine how representative democracy can be made to realize public goods in Kenya. Importantly, as the country is preparing yet for another election cycle in

2022, there is an inescapable need for an in-depth analysis of how to rethink political representation that is responsive to the citizenry's needs. Accordingly, the paper is structured in three main parts. The first part explores the concept of political representation and its nexus with public service delivery within the broader democratic theory. More specifically, it strives to unpack the conceptual architecture of political representation in the current literature and using the principal-agent framework. It also outlines how the substantive dimension of political representation is directly linked to public service delivery. The second part looks at the recent global trend of democracy which points to a democratic decline and how Kenya has performed. This is done by in-depth content analysis of reports of Global State of Democracy (GSoD) indices, Economic Intelligence Unit (EIU), Freedom House, Bertelsmann Transformation Index (BTI), Global Corruption Barometer (GCB), Afrobarometer, African Governance Report, and World Bank's Service Delivery Indicators. Such indices are complemented with a literature review on the nexus between political representation and service delivery in Kenya. The third part discusses our findings, which suggests that the simplistic meaning that political actors have attached to the concept of political representation is intertwined with the recent growth of 'audience democracy,' which has led to populism, corruption, and machine politics which partly account for the failure of political representation to meet the expectations of the populace. This paper concludes with a discussion regarding the implications of these findings for rethinking democracy. In particular, the paper avers that

building democratic resilience in Kenya requires quality of political representation that is responsive and accountable to citizens' needs. This has ramifications for restoring the legitimacy of representative democracy since political representation in the sense of substantive representation is intrinsic to democracy. This, therefore, calls for changes in how representative institutions such as parliaments and political parties need to be re-aligned to public service delivery.

2. INTRODUCTION

The concept of political representation continues to dominate academic discourse as divergent opinions continue to be put forth for and against its necessity and reality. Proponents of direct democracy, including Jean Jacques Rousseau, were basically among the earlier authors who remained critical about the concept of political representation. Rousseau opined that political representation was very detrimental to direct democracy and thus the liberty of the population. According to Jean Jacques Rousseau (1712-1778), representative democracy is not democracy at all but an elective aristocracy. John Locke underscores the arguments of Jean Jacques Rousseau by opining that the election of representatives of the people remains a very crucial exercise because the exercise of public authority is usually exercised through elected representatives. On the other hand, James Madison avers that acting as a collective within a polity is quite impossible hence the need to have elected representatives to make decisions on behalf of the citizenry. He further notes that the representatives chosen should be those who are accountable to the electorates.

Noteworthy, the concept of political representation gained much dominance in political discourse during the French Revolution of 1789- 1799, when the revolts blamed the monarch for taking actions and pursuing policies against their will. Since then, political misrepresentation has been a contributory factor to several conflicts, coups, and revolts within the international system.

Kenya adopted a representative democracy immediately after attaining independence. However, despite making significant strides to democratic consolidation, political misrepresentation remains pertinent, resulting in a lack of trust in political institutions, low voter turnout during democratic processes, and a lack of public acceptance and confidence in government projects and policies. One of the reigning debates on political representation is that most political representatives do not pursue public-centric decisions and actions but rather serve their interests. The representatives do not necessarily help or represent the wishes of the masses but instead, represent the wishes and preferences of the elites. Kenya has never had a stable democracy, and the level of development remains low. This argument is footnoted by the findings of Kurlantzick (2013) that categorized Kenya as among the sixteen "highly deficient democracies" which are primarily characterized by, among other factors, unrepresentative political structures, problems with the rule of law, and a lack of opportunity for opposition voices.

As a result of the public feeling that unrepresentative political structures exist in Kenya, there continue to be concerted efforts to enhance political representation. For instance, in 2010, Kenya adopted a new constitution that provides for a bicameral legislature, a devolved governance structure, introduction of women representative positions, and seats for specialized groups such as youths purposely to address the question of exclusivity and marginalization in Kenya's politics. Despite the new developments geared towards enhanced political representation, the country continues to record a deteriorating economic trajectory due to poor services provided by the different state and non-state actors that represent over 48 million citizens.

3. THE NEXUS BETWEEN POLITICAL REPRESENTATION AND PUBLIC SERVICE DELIVERY

According to Urbinati & Warren (2008), there is a correlation between political representation and public service delivery. In their view, the political model can be conceptualized as a principal-agent relationship in which electorates elect agents who stand for and act in their interests and opinions. According to democratic theorists, there does exist a positive correlation between political representation and public service delivery. This is informed by the fact that political representation remains a central tenet of democracy. This ideology envisions creating a public-centric government that is responsive to the needs of the electorates. Therefore, with quality political representation, governments are most likely to perform actions that reflect the aspirations and preferences of the populace.

According to Pitkin (1967), for political representation to result in positive outcomes, including service delivery then; the representatives must be authorized to act, must act in a way that reflects the desires and preferences of those who they represent, and that there should be a control mechanism by the represented to hold the representatives accountable for their actions. Of the three provided conditions, the concept of whether representatives can act in a way that reflects public opinion or preferences remains the most contentious one. Scholars opine that in most instances, political representatives do not make decisions as guided by public opinion but are rather self-interest-based actors who also represent the elites. As de Malberg (2019) points out, the primary purpose of political representation is basically to form an autocratic regime that serves the interests of the ruling class. He terms a representative government as a form of aristocracy aimed at discriminating among citizens and excluding the electorates from the major decision-making processes.

Therefore, for political representation to meet its intended objectives, including enhancing service delivery efficiency, it must be founded on democratic practice. Democratic theorists assert that political representation is an intrinsic part of democracy. This implies that the political representatives should act as guided by public opinion and be transparent and accountable. Pitkin (1967) notes that political leaders have the primary mandate to act based on the needs and wishes of the people that they represent. This assertion is complemented by the works of Dahl (1998), in

which he avers that political representatives' actions and opinions must resonate with the wants of the people they represent.

Previous studies conducted by Bratton & Ray (2002) found that political representation impacts policy and legitimacy hence its correlation to efficient service delivery within the political system. According to their studies, the more representative a particular group is within a legislative house, the more likely it is to formulate policies or legislation relevant to the specific groups. For instance, in Norway, the number of women in the Norwegian Municipal Council progressively and positively influenced legislation geared towards child support and care. In the same vein, the more the number of women in Kenya's legislative bodies and other political institutions, the more the clamor in gender affiliated policies geared towards gender equality and inclusivity.

In the context of Kenya, attempts to enhance political representation are indeed increasing in a bid to improve governance and service delivery. This is evident in the contemporary clamor for constitutional change through the Building Bridges Initiative that among its objectives is to increase political representation and enhance service delivery. Normatively, when political representatives pursue special interests through clientelist policies and disregard the population's wants, public resources are most likely to be diverted to non-priority programs, hence negatively impacting public service delivery. Therefore, as democratic

theorists opined, political representatives must commit to the actions that reflect the electorate's needs and wants to change the lifestyles of the people they represent and gain legitimacy. Therefore, the political representatives must continually engage the electorates on policy matters through well-established mechanisms of citizen engagements, including community development forums and committees, citizen satisfaction or preference surveys, among others.

Furthermore, the political representatives derive their authority and legitimacy from the electorates. Their work is to aggregate the preferences of the electorates. Political representation is most likely to deter public service delivery, especially when political representatives do not pursue public-centric policies and actions but rather pursue clientelist policies. Studies suggest that representation is democracy. Through quality political representations, the policy preferences of the electorates are most likely to be followed, and this has the spillover effect of enhancing efficacy in the provision of government services.

The positive correlation between public service delivery and political representation is further corroborated by the findings of the World Bank in their 2016 report titled, "Making Politics Work for Development: Harnessing Transparency and Citizen Participation. According to the report findings, the inclusiveness of governments has a more significant impact on the country's economic outcomes. They identified direct and indirect citizen participation in governance as critical determinants of a state's policies.

Therefore, there seems to be a consensus among democracy theorists that quality political participation and representation leads to effective and efficient public service delivery. This only happens when the political representatives pursue general interests and not self-interests and act as representatives of those they represent. The elites should not compromise them. In Kenya, there exists a public feeling that the concept of political representation has not been fully domesticated as propounded by democratic theorists. Most of the policy actions by political representatives do not entirely reflect the will of the people. As a result, there is an increase in the lack of public trust in major public institutions, including the Executive, Judiciary, and the Legislature. Public trust in political parties, which are basically the significant elements of political representation, continues to dwindle due to the ineffectiveness and unresponsiveness of most political representatives in addressing the demands of the general population or the electorates. In a nutshell, for the electorates to gain effective and efficient services, they must ensure that they elect representatives who are accountable and responsive to their ever-changing wants, needs, or preferences.

The Decline in trust on Political Institutions

There is a general consensus that in most developing countries, there is a decline in trust of major political institutions, including the arms of government and even the civil society. According to democratic theory, political actors serving in different capacities in different political institutions derive their power and authority from the

electorates; hence they only perform their roles as representatives of the people. The Parliament, for instance, therefore, exercises “horizontal accountability” on other institutions by ensuring that government actions reflect the opinions and preferences of those that they represent. According to Kurlantzick (2013), stronger legislatures are good for democracy. Dahlberg, Linde, and Holmberg (2015) further argue that when governments are able to give what the people they represent want, they will be able to enjoy absolute support that is critical in enhancing government actions. These assertions equally corroborate the findings of Theisis-Morse, (2002), who argued that the citizens tend to be more satisfied when they get what they want hence encouraging popular legitimacy. Generally, there seems to exist an increase in mistrust of the electorates on the political institutions.

A study conducted by Afrobarometer in assessing the public perception of political institutions, including the Executive and the Legislature, is indeed in line with the assumptions that the public is most likely to distrust political institutions when the institutions do not serve public interests. Mwombela (2014) opined that the Parliament of Tanzania is simply a rubber stamp institution for the Executive. According to Afrobarometer (2014) research findings, most of the Tanzanians have lost confidence in their political institutions because the political representatives of the institutions do not regularly represent the will of the people. This has led to averagely low ratings of both the Executive and the Parliament.

These findings are equally buttressed by Bertelsmann Transformation Index (BTI) findings which asserted that trust in democratic institutions such as governments, the media, and even the Parliaments continue to fall to a new low. The study found out that this decline in trust is largely linked to the disconnect that exists between political representation and service delivery. It holds the view that most political actors, including the legislators who ought to represent the public will, are precisely interested in securing and maintaining power, acquiring wealth, and maintaining their status than improving the social livings standards of the population or even in addressing the social injustices that characterize countries.

The study found out that the unresponsiveness of political institutions to promptly address public-centered challenges, including poverty, high cost of living, poor health services, fuels the mistrust of political institutions. As a result of the unresponsiveness of the political institutions leading to public mistrust of the institutions, there continue to be a rise in political polarization across the globe. In countries such as Indonesia, Libya, Sudan, Czech Republic, Slovakia, Kenya, among others, there have been reported strikes and demonstrations by the general public against the state, a clear justification that the general public does not have trust in actions and processes initiated and implemented by political actors.

According to a field study by Sahin & Taşpinar (2014), trust is very necessary for the establishment of a good relationship

between the electorates and the government. Citizens are not most likely to oblige to rules and regulations of the state if they have a mistrust of political institutions. They opine that mistrusts against the government breeds resistance against policies implemented by the political institutions hence culminating in riots against the government. Their study equally noted that autocratic regimes are most likely to experience high trust issues in political institutions as compared to democratic regimes.

Kenya is never an exemption to this discussion. With the intensified reporting on police brutality, corruption and mismanagement of funds, electoral riggings, among others, the level of public trust in political institutions continues to decline. For instance, a study by Afrobarometer (2015) established that following the violence that characterized the 2007, 2013, and 2017 elections, public trust in electoral institutions did decline. The study further noted that with the continued demonstrations and strikes and the annulment of the 2017 elections, there was a significant shift in the confidence in public institutions. In the same vein, government policies, including the imposition of new taxation policies and the contentious and draconian Security Amendment Bill, do not reflect public preferences hence have collectively contributed to the state of political representation and distrust of political institutions.

With the rising cost of living, inflated budgets, high debt margin, and the prevailing rate of corruption within the state, there exists a public feeling that the political institutions

such as the Legislature have subordinated their oversight and legislative roles for self-interest missions. As a result, most citizens continue to lose confidence in the efficacy and effectiveness of public institutions in addressing the ever-changing wants of the electorates.

Further analysis by Afrobarometer (2016) report finds out that across 36 countries, Africans did express public trust in informal institutions such as religious leaders compared to formal or executive institutions. According to their study carried out between 2014 /2015, 72% had confidence in their religious leaders while only 54% trusted public institutions. The study further noted that the electoral and legislative institutions recorded low institutional trust on an average basis.

Afrobarometer (2016) study further found out that there exists a relationship between public trust and corruption. Institutional trust is linked to the perceptions of the electorates on corruption. Electorates are most likely to develop public confidence in institutions when they feel that the public institution's officeholders are honest and responsive to their needs. With several development issues, including high poverty index, increase in local and foreign debt, corruption, among others, public trust in public institutions declined to 59 % in 2016, according to Afrobarometer findings. This is primarily linked to the existence of irresponsive political structures in Kenya that are not geared towards amicably sorting the problems that the people of Kenya face. Highly corrupt countries such as

Nigeria recorded low levels of public trust, estimated at only 31% based on the study findings. Therefore, trust is inversely related to corruption.

In a nutshell, public trust in government is the foundation of government sustainability and legitimacy of the political system. For public trust to be maintained, the political institutions must professionally carry out their mandates as defined by the law. As democratic theorists opine, the public institutions must act as representatives of those they govern. Therefore, the more the government addresses the demands of the electorates, the more likely the public shall develop trust in them.

According to International Institute for Democracy and Electoral Assistance (2017), political parties, governments and parliaments are increasingly viewed as unable to address complex and rising policy problems. According to their findings, there exists a crisis of legitimacy of democratic institutions and processes and a decline in public trust in the political institutions. The study finds that due to the unresponsiveness of the political institutions to address complex problems, there is a disconnect between the politicians and the electorates. The study further asserts that the inability of political institutions, including the political parties and Legislature and Executive, to address transnational challenges, including insecurity, poverty, globalization challenges, migration, inequality, and marginalization, contributes to a decline in legitimacy and trust democratic governance. These findings present a clear

picture of Kenya in which the inability of the government to address health concerns, including the COVID 19 pandemic, reduce the debt burden, conduct free and fair elections, and manage the question of marginalization and inequality, remain among the primary drivers to mistrust on political institutions.

4. KENYA'S DEMOCRATIC TRAJECTORY

The extent of democratic consolidation in Kenya remains a quite topical issue in academic discourse. Since holding its first multi-party elections in 1992, the democratic trend continues to be on the decline. Noteworthy, developing countries face a crisis of democracy, especially regarding sovereignty, legitimacy, and political representation. As noted earlier, there is a disconnect between political representation and service delivery, culminating in a lack of public trust and confidence in existing public institutions.

A study conducted by Bertelsmann Transformation Index, 2010 and 2020, supports the notion of a general trend of democratic decay in most developing countries. In their survey findings, over the ten years (2010-2020), there has been a general decline of 0.79 points on democracy within the continent. This implies that in 31 of the 55 countries, citizens were less convinced of the value of democracy compared to their standpoint ten years ago. Bertelsmann Transformation Index (2020) notes that the general decline in support for democracy among the citizens is primarily linked to the electorates' dissatisfaction with the general

functioning of the government. The electorates believe that the governments manifest autocratic tendencies; hence their actions do not reflect public preferences.

Invalidating the extent of democratic backsliding across the globe, the Bertelsmann Transformation Index (2020), the study found out that of 128 countries, 45 countries were classified as autocracies. In these countries, to maintain the status quo, the regime undermines democratically elected oversight bodies and limits political participation rights, including the right to vote and freedom of expression. On a positive note, 55 of the 128 countries were identified as democracies. Of concern was the fact that the extent of political transformation in these countries was at 0.29 points, lower than the BTI report of 2010. This implies that there is indeed a general trend of democratic erosion globally.

The quality of democracy in Kenya has indeed lessened. In the BTI (2020) study findings, Kenya was categorized as one that inhibits autocratic tendencies. The study found out that following the disputed presidential election that overturned the victory of President Uhuru Kenyatta, the public trust in political institutions declined. The study noted that in the period between 2017 and 2019, Kenya, Honduras, Guatemala, and Turkey, among others, engaged in actions that reveal autocratic tendencies. Kenya, for instance, embarked on cracking down on opposition politicians, excessive use of force against the civilians, lack of internal parties' democracies, and the use of trickery and force to influence legislation.

Free, fair, credible, accountable, and regular elections remain one of the central tenets of democracy. Previous democratic processes, in exception of the 2002 elections, have remained highly contentious, with massive rigging, intimidation, bribery, and voter manipulation usually characterizing these elections. It is against this backdrop that political representatives who are usually products of rigged elections have remained less assertive in addressing the needs of the population hence poor service delivery—at the same time, classifying Kenya as among the Highly Deficient Democracies International Institute for Democracy and Electoral Assistance. (2017) pointed out that Kenya is among the countries that face regression from democracy to autocracy.

The findings of BTI are corroborated by the study findings of Index (2020) as published by Economist Intelligence. According to their findings, the overall democracy index across the globe continues to be on the decline. Kenya, for instance, was rated at 95 out of the over 290 countries as among the countries with less democracy. To be precise, the Index (2020) found out that in 2020, the average democracy global score declined from 5.44 in 2019 to 5.37 on a scale of 0-10. These unfortunate trends were largely driven by the prevalent of regressions across all regions. The democratic regressions, including military coups, strikes, and demonstrations, were largely informed by a public feeling that the representative institutions, including the Executive and the Legislature, were not performing their representative roles as defined in the constitutions. Globally,

only 23 countries were categorized as full democracies, while 35 and 57 countries were classified as hybrid regimes and authoritarian regimes, respectively (Index 2020).

A study by International Institute for Democracy and Electoral Assistance. (2017) confirms the notion that globally, the democratic trend has reported a fluctuating curve. The report notes that though most countries have experienced a democratic decline, democracy overall has recorded positive progress when compared to the last forty years. In Kenya, for instance, despite making certain democratic improvements, her democracy is deficient ineffective checks and balances, impartial administration, and respect for fundamental human rights. According to Kivoi (2010), there exist patterns of clientelism that exacerbate the ability of political institutions to impartially carry out their representative roles and responsibilities, including checks and balances on the management of public resources and the effectiveness of public institutions on public service delivery.

According to Transparency International (2020), persistent corruption undermines the country's development trajectory and largely contributes to its democratic backsliding. The study ranks Kenya among the most corrupt countries in Africa, scoring only 31% out of 100 %. Corruption continues to hinder service delivery within the state. This provides a clear justification of a lack of accountability and transparency mechanisms that are aimed at ensuring prudent use of public resources.

According to an Index Report by Mohammed Ibrahim Foundation, Kenya joins a list of other countries that records a declining score on major democratic indicators. The 2020 reports argued that in the period between 2010 and 2019, Kenya's score on participation, inclusion, and respect for fundamental human rights reduced from a score of 52.2 to 51.6, indicating a decline of 0.6. The study also found out that Kenya recorded a declining score of 2.3 in her adherence to the rule of law and the level of professionalism of her security agencies. Whereas the study also recorded a positive trend in other development indicators, including gender inclusivity, the country's score on the extent of transparency and accountability declined by 10.3 (61.9 in 2010 to 51.6 in 2019)

Evidently, Kenya is yet to domesticate most of the major tenets or indicators of democracy. Whereas elections are consistently regular, they are rarely transparent, accountable, and fair. In most instances, incumbents continue to use excessive force in order to maintain the status quo. With weak political institutions and irresponsive political representatives, political accountability and service delivery remain a serious concern for developing countries, including Kenya. Currently, according to Economic Intelligence Unit (2016), Kenya's overall democratic Index places it at number 95.

While describing Kenya's political system as an elected autocracy, Kurlantzick (2013) points out that Kenya lacks strong public institutions to restrain powerful actors that are intolerant to opposition politics as well as the provision of

public goods to the electorates. Therefore, it can be deduced that Kenya exhibits a worrying democratic trend. The level of trust in democratic institutions continues to decline; corruption presents itself as an institutionalized crime, and the country's economic trajectory remains worrisome. Just like other countries, Kenya is yet to fully reap the proceeds of democracy that include, among others, efficiency in service delivery to the general public as well as enhanced accountability and transparency in the management of public resources and increased public participation in the running of the affairs of government.

5. THE DISCORD IN POLITICAL REPRESENTATION

Africa presents itself as a continent with a disregard for democratic ideas. Evidently, there is a gradual increase in mistrust of political institutions, level of corruption, and mismanagement of funds as a result of a lack of proper political representation. This is illustrated by the findings of Guasti & de Almeida (2019), who posits that in most "democracies," the general public continue to question the authority of elected representatives as well as the functioning of the existing systems of representative democracy by alleging that the established systems are practically misrepresentative. As a result, the continent is yet to fully "take off" in economic development. With the failures associated with representative democracy, especially on the arguments that the representatives rarely represent the aspirations of the electorates, there continues to be a reigning claim that representative democracy is not democracy at all but rather an elective aristocracy.

This paper avers that as a result of political misrepresentation, there continues to be a rise in corruption in the world and that it has also led to a rise in populism and machine politics. The rise in populism continues to put democracy at greater risk. In an attempt to retain power, populists tend to discredit formal institutions such as the Legislature, Executive, and Civil Society. This paper holds the view that the distrust in political institutions, usually as a result of political misrepresentation, remains a significant contributor to the rise in populism. Scholars opine that populist ideology is grounded on the philosophy that the ruling class or the elites are corrupt and hence the population needs responsible representatives. However, despite making such claims, populists rarely make necessary commitments to enhance political representation in the world.

The nexus between the rise of populism and political misrepresentation is put forth by Kurlantzick (2013), who posits that the immediate cause of the rise in populism is the failures of representative institutions, including the political parties which fail to meet the concerns of the electorates. In Kenya, for instance, there exists a general feeling that previous and current regimes have failed to pursue people-centered initiatives as defined in their manifestos. The governments have continually been on the receiving end for, among other reasons failing to address issues of marginalization, poverty, foreign debt and unemployment, better health services, universal education, among others. Therefore, the failure of elected representatives to commit to their promises harbors the rise of populism in Africa. As

exemplified in the research findings by Sahin & Taşpınar (2014), there is a general increase in the level of distrust in most public institutions. This implies that the electorates view the public institutions as irresponsible, unresponsive, and unaccountable.

Machine politics equally remain a defining feature of most developing countries. As a result of political misrepresentation and public pressure on the government on service delivery, most regimes have resorted to using excessive force against the electorates who demand better services from the government. Kenya, for instance, is synonymous with the use of excessive force against protestors demanding better services from the government as well as putting pressure on political and independent institutions to carry out independent and accountable elections. This scenario has equally been exemplified in countries such as Uganda, Egypt, and even Libya, which have witnessed domestic conflicts in the recent past.

6. WAY FORWARD

This paper concludes by holding the view that Africa is currently experiencing a democratic decline. This is in support of the findings by BTI (2020), which states that democratic backsliding and authoritarianism are currently growing across the globe. The paper holds the view that lack of quality political representation fosters corruption, mistrust in political institutions, machine politics, and the rise of populism across the globe. With these new developments, the continents and Kenya's efforts to

industrialize and improve the living standards of the electorates may remain a mirage. While considering the fact that there exist several challenges that bedevil efforts to democratic consolidation in Africa and Kenya in specific, this paper avers that building democratic resilience lies at the center of enhancing democratic ideals in Kenya. The paper argues that in order to build democratic resilience, there is a need to have quality political representation that is responsive to the needs and desires of the electorates.

Moving forward, Kenya must strengthen and rebuild its political institutions in order to thwart the global threat of populism that threatens democratic consolidation in Kenya. With lessons learned from countries such as the United States after the historic election outcome of 2020 between President Donald Trump and Joe Biden, there is an urgent need for the country to develop a high-quality political representation that reflects the needs of the population. With a quality political representation, there shall be very efficient checks and balances on public resources, and the trust and legitimacy of public institutions will equally be restored. Therefore, it is through quality political representation that development and efficient public services will be achieved in Kenya.

Strengthening democracy globally and Kenya in specific requires building very resilient political institutions that are able to withstand parochial or narrow interests. This requires the governments to regularly fund both public and independent institutions in order to enhance

their functioning. In order to attain a quality political representation, Kenya's must revisit their voting patterns. They must learn to democratically elect representatives who are responsible, accountable and competent and not vote based on ethnic, tribal or racial lines. Establishing a proper control or accountability mechanism on the elected representatives is indeed very necessary. The leaders must learn to be held accountable to their actions.

Therefore, building effective political institutions is central to enhancing service delivery in the developing countries. Evidently, as evidenced with the findings in Tanzania, political institutions such as the Legislature are simply considered as a rubberstamp organ of the Executive. This is despite the fact that the Legislature is one of the major institutions of representative democracy. The paper therefore avers with the prevailing democratic condition in Kenya, building democratic resilience remains among the primary tools to fostering development and service delivery. The legitimacy and effectiveness of representative democracy will remain questionable if Kenya does not work towards building democratic resilience. In so doing, Kenya will be able to neutralize the threats and challenges that are intricately linked to democratic consolidation. The primary purpose of each and every government is to better the lives of the population through effective service delivery. Democratization provides better prospects to realizing this great objective.

CHAPTER FOUR

INFLUENCE OF CIVIL SOCIETY ORGANIZATIONS ON REFORMS AND POLITICAL PROCESS.

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1. ABSTRACT

Civil Society Organizations (CSOs) do have and continue attracting attention in development discourse or matters. They are in most cases deemed to provide options or ways that promote good governance and adherence to the rule of law. CSOs play a critical role in the political and reform agenda of a country. An understanding of their contributions against governance related challenges in Kenya needs to be taken to account, studied and researched. This paper attends to two questions: 1, what is the significance of CSOs? A comparison of the impact or contribution of CSOs in the last five years, vis-a-vis in the 1990s and 2, how can we revive, build capacities and strengthen the CSOs to enhance their role in advocacy, putting duty bearers on check and promoting civic engagement of the public?

This paper brings out CSOs' role in the promotion of reform agenda in Kenya, the challenges they have faced or face and to whether their significance or impact has been felt. This paper also highlights CSOs challenges including the legal frameworks, lack of key and needed capacities as well as limited funds, staff, offices and equipments to be able to sustain their vigor and consistency in promoting good governance. The methodology involves a desk review of written materials and in-depth phone call interviews. The paper shares some recommendations to the stakeholders including the government to accommodate CSOs and hence provide them with required support systems and laws to operate seamlessly.

2. INTRODUCTION

To find a finite definition for CSOs in Kenya may be a challenge, as there are a multitude of these organizations with very varied characteristics plus approaches since the 1990s. In Kenya, the CSOs include; Non-Governmental Organizations (NGOs), faith-based organizations, self-help groups, professional associations, cooperatives, social clubs, media and the community-based organizations. Civil society has increasingly been recognized as a building block for democracy and economic development at the Global level. Civil societies are ideally civic institutions working for the public good. A strong civil society can enhance social cohesion and pluralism, advance meritocracy, ethics and quality standards, act against volatility in times of crisis as well as protect communities against state injustices or negligence. A true democracy needs a well-functioning and legitimate government. However, civil society in its mandate has been a strong catalyst in challenging the power of the State. Kenyan civil society has been successful in expediting different methods to ensure that the State remains tamed through checking, monitoring and taking actions to restrain the power of political leaders as well as that of State officials. Civil society actors have continuously been aggressive checkmates and watchdogs on how state officials and agencies use their powers including in public expenditure. The CSOs do raise public concern and awareness about any abuse of power while actively and robustly taking advocacy actions ranging from public demonstrations, to picketing and to litigation.

The CSO's have also successfully been involved in research and documentation of results or facts to expose corruption or corrupt dealings of public officials, with demands for accountability and improved or good governance. Civil society through its different formations, has been a leading agent in highlighting and tackling corruption, especially through push for public access to information as in *Access to Information Act 2016*, whistle blowing and public campaigns or dialogues on corruption. Whereas anti-corruption laws and bodies have existed in Kenya, their effective functionality depends on active support and consistent participation of civil society. In many cases, the civil society have come up with effective, progressive, transparency and accountability tools to provide potential solutions to some of the corruption problems in Kenya. Civil society also promotes political and public participation through civic education on citizens' rights and obligations. This remains critical in developing citizens' skills to work with one another and complement each other to solve common problems, to deliberate and debate on public issues, and freely express their views.

Civil society has been a major player in conflict mitigation efforts and propagating values of the democratic space, such as being accommodative, tolerant, being moderate, accepting compromise, and respect for opinions or opposing points of thought. Civil society recognizes that these values cannot simply be taught; that they need to be experienced through practice simulations and direct involvement. Civil society has in the past developed formal

programs and training of trainers (TOTs) to teach groups to solve their own disputes through bargaining, negotiation and accommodation. Civil society has given space for the expression of diverse and divergent interests, for example, they have been pushing for the needs and concerns of their specific members, as the women, students, farmers, environmentalists, trade unionists, lawyers, doctors, youth etc.

Civil society also provides a training ground for political, civic and private leaders. Civil society has helped identify and train new leaders who have held and dealt with key public issues. Some of those trained normally get recruited or inspired to compete for political office. Some go ahead to serve in local and national sphere, both in politics and private or professional sectors. In collaboration with the mass media, CSOs come together to provide debating forums for public policies as well as disseminating the same information about issues using different methods or mediums. Civil society leads in taking and championing action to safeguard public interest. For example, litigating, drafting petitions, policy papers and presenting the policy positions to the appropriate government institutions.

Civil society organizations also play a key role in the monitoring of electoral processes and management. A good example in Kenya is the Elections Observations Group (ELOG). A broad coalition of impartial organizations coming together to neutrally monitor elections in all the different polling stations to ensure that voting plus vote counting

remains entirely free, fair, peaceful and transparent. Some of the feedback, results, data and information of such vital civil society involvement have been useful as evidence in electoral disputes in the past. Through digital activism, the civil society has been very instrumental in advocating for fairness and good governance. An example is the use of trending hush tags that has of recent taken the space where many have opted to be keyboard voices. It is imperative to note that civil society being independent of the State does not mean that it must always criticize or oppose the ruling regime. CSO's help make the authority or governments more accountable, responsive, inclusive, effective, and hence legitimate. A vigorous and strong civil society is needed in a democracy such as Kenya. It strengthens citizens' respect for the Government while promoting their positive democratic engagement to seek justice, accountability and service from their government.

3. BACKGROUND

Civil Society Organizations' history in Kenya dates back from the **1920s** when Africans began forming welfare associations. Most Africans used these associations to advocate for their rights as well as to express their dissatisfaction with the colonialists. CSOs' activities at the time were mainly focused on welfare because the coming together of people was not really entertained by then masters, the colonialists. The common types of organizations were mainly religious and philanthropic. In the 1940s, numerous groups were formed that were largely women groups, these groups evolved to the present day Maendeleo Ya Wanawake Organization.

According to **Mbote (2002)**, he argues that in the 1930s and 1940s, there were four major types of CSOs. There were charitable organizations, which were Christian initiatives, among them the Young Men Christian Association and the Young Women Christian Association that were operational by 1930. There were also ethnic-based organizations that were welfare in nature. These were involved in self-help activities mainly in urban areas. There was another category of CSOs that was more secular in nature that emerged after the Second World War. Among these were the War Veterans' Association and the Kenya Farmers Association. Originally, Kenya Farmers Association was a white settlers' association but after independence African farmers were involved. Other categories of CSOs that existed in the 1930s and 1940s in Kenya were the occupational and professional bodies.

These CSOs have been credited for bringing some of the bold changes in Kenya. Some of them include:

- **The enactment of 1990 NGO Act.**
The CSOs worked hard to make it appropriate as well as enabling when the then Government wanted to use it to literally kill the sector. A positive law was later passed in 1992 after rigorous push by the then CSOs. The NGO Act more or less provided for an enabling environment for registration and regulation of more than 80% of the civil society organizations.

- **The removal of single party regime of KANU and ushering in of multi-party politics in Kenya in the 1990s.**

CSOs came together under the 'Ufungamano Initiative' held initiatives and campaigns to remove section 2A of the constitution that barred multi-party politics in Kenya. At long last this section was changed which later led to the removal of KANU regime through an electoral process in the year 2002.

- **CSOs campaigned and drummed support for the new constitution (CoK 2010).**

That constitution was passed with overwhelming numbers of Kenyans in 2010. That new constitution remains a critical milestone and achievement which many in the CSO fraternity had worked tirelessly for more than 20 years. Its passage was deemed as the greatest "bloodless revolutions" in Africa. The constitution 2010 provides space and protects rights of citizens including affirmative action to minorities, women and persons with disabilities. In it, there is a greater need for engagement in order to hold the state or government accountable for its implementation. There have been to date attempts to amend the constitutions including the Building Bridges Initiative in Kenya (BBI). The Civil Society has critical role to play to guard the gains and the progressive constitution.

The new progressive Public Benefits Organizations, PBO Act 2013.

The Act which provides for a bold step forward from 1990 NGO Act and only if fully implemented as passed in 2013 is a product of the CSO advocacy. The law aligns very well with provision of the Constitution of Kenya 2010. It also creates space for self-regulation and harmonization of the wider CSO sector unlike the NGO Act that only covered the organizations were registered under the NGO Act, 1990.

4. METHODOLOGY

This paper shares on CSOs role in the reform agenda in Kenya and the relevant interventions needed to strengthen them. The methodology to come up with this paper entailed a detailed desk review of historical publications, reports and other papers previously done by players in the CSO sector. The methodology also involved phone calls and dialogues to clarify or ascertain the information gathered.

5. DISCUSSION

PART ONE:

The significance of CSOs. A comparison of the impact or contribution of CSOs in the last five years, vis-a-vis in the 1990's

Well, generally it is clear that the significance of CSOs in Kenya was largely felt in the 1990s and is slowly getting weaker and weaker. There has been a growing movement of civil society on the implementation of the constitution and

championing for devolution of powers and resources for example under the banners of Tekeleza Katiba Movement, the Punguza Mizigo, Linda Katiba among others. Civil society has also been working and organizing political parties into a formidable socio-political movement especially between the year 1997 and 2002. Since the 1990's the power in, vigor and relevance of CSOs has been falling to the losing end.

CSOs helped in facilitating justice for the 2007-2008 post-election violence, which left more than 1,100 people dead in Kenya. When the Kenyan Government showed little or no sign of taking action against the perpetrators of the violence, CSOs led the calls for the matter to be addressed and referred to the International Criminal Court (ICC). Those CSOs remained vocal in demanding that the Kenya Government cooperates and fulfills its legal obligations to the court. Their voices and concerns grew louder as two of the parties implicated, Mr. Uhuru Kenyatta and Mr. William Ruto, then who ran for Kenya's presidency and later won. They are now President and Deputy President, respectively for a second term. ICC prosecutors dropped the charges against the now President Kenyatta in December 2014, complaining of Kenya having blocked the case by not cooperating with the investigation process. Since then, President Kenyatta's administration seems not to have forgotten the civil society's role for its troubles with the ICC. The Jubilee administration has made it very difficult for CSOs trying their best to diminish civil society's influence. According to Mr. Otieno Namwaya, from Kenya researcher for Human Rights Watch, ***"the atmosphere has been that of***

apprehension and suspicion, with civil society increasingly becoming apprehensive and suspicious that the Jubilee administration of President Kenyatta is aiming at closing the space.'

After Kenya's independence in 1963, there was need to build the then young nation of Kenya and to address the teething poverty that had affected its citizens. Growth of CSOs shot by 150% from 1970s to 1980s as they sought to fill the gap where the government had failed in meeting people's needs. These CSOs were not well tolerated at that time by the State for they were seen as a threat to national security. This hampered their operations due to suspicions that existed between them and the State. The sharp Global economic decline in the 1980s forced the World Bank and IMF to prescribe market forces to address the challenge. However, these did not work. That situation set the stage for further CSOs growth because they were viewed by the populace as the option and solution to their problems. A key problem that faced the people was unequal distribution of resources that still persist up to date. CSOs were expected to address the marginalization of communities through tapping opportunities and redistributing them to people on equal basis. Some CSOs took on political activism role to push for social political change.

In Kenya, repressive regimes were precipitated by introduction of a single party electoral system and the transfer of supervision of elections to Provincial Administration, that was controlled by President Jomo

Kenyatta and Daniel Moi regimes during which electoral malpractices flourished (Wanyande et al 2007). The electoral system produced illegitimate representatives who were not able to articulate the needs and interests of the electorate. Policies were formulated to meet the interests of the representatives and not those of the electorate. Pilferage of public resources through corruption, land grabbing and high salaries was the norm among the elected leaders. The transition from Jomo Kenyatta to Moi era did not witness much change in governance hence this triggered CSOs to push for change in early 1990s through demand for reintroduction of multiparty democracy. CSOs role in pointing out corruption scandals was loud in the 1990. Those, including the Anglo-Leasing, the Grand Regency and the maize and oil saga were voiced out by the CSOs. Many of these scandals remain unresolved to date. As Kanyinga (2007) points out, there has been transition without any serious changes in the governance and administration of the country since independence in politics and in development. CSOs have intervened by promoting public participation in local governance, although such contributions have not been comprehensively interrogated.

Since the 1990s, when multi-party politics was re-introduced in Kenya, the country has seen numerous political transitions. In 2010, a new constitution was promulgated, paving the way for the devolved system of government and thus 47 counties. This constitutional transition, though welcomed with optimism, has since become bogged down by numerous challenges that are hampering its

implementation. Presently, a political agitation for yet another referendum has emerged through the BBI process. In Kenya, like in other developing countries, the role of civil society is crucial in the quest for social justice, transparency and accountability. Civil society activism has often provided an objective voice to temper political extremism. It is often credited with giving momentum to the struggle for constitutional and democratic reform. An example is the wave of reforms in the 1990s to constitutional change and the reintroduction of multi-party democracy, which ultimately resulted in the collapse of the dictatorial, single party regime of the late President Daniel Arap Moi.

CSOs also played a crucial role in the 2005 constitutional referendum as well as the one in 2010, educating citizens on the review process and the content of the proposed new constitution. However, after the 2010 constitutional referendum, we have witnessed a decline in the assertive role and voice of civil society on critical national issues and debates. The decline has been largely attributed to among other internal wrangles fueled by ethnicity and political patronage among civil society members. Some civil society organizations members and individuals have been co-opted into government or joined elective positions over the last decade which has really diluted and depleted their dynamism. There is a noticeable vacuum, characterized by a profound silence in the face of ongoing human rights abuses, impunity and a lack of transparency and accountability from the State. Such developments threaten the progressive constitutional and democratic spaces and could see Kenya return to the dictatorial rule of the 1990s.

The proposed amendments to the Public Benefits Organizations (PBO) Act of 2013, have further exasperated the efforts of civil society. These amendments have been cited as an indicator of the government's resolution to intimidate civil society into silence, despite hopes fostered by the promulgation of the new constitution and the devolved system of governance, that has brought with it significant transformation in public service delivery. The central government has many at times been accused of frustrating the process by withholding funds and implementing parallel governance structures to remain in control. It is these challenges that two new initiatives for referendum emerged; Pesa Mashinani and Okoa Kenya. The former was led by the Council of Governors (COG) while the latter was headed by a coalition of opposition parties under the umbrella Coalition for Reform and Democracy (CORD), that was led by the former Prime Minister Raila Odinga. The Pesa Mashinani initiative championed for an increase in national revenue allocated to supporting devolved structures in the counties. The campaign opined that the current allocation of 43% was based on the 2009 and 2010 national revenue collections, which was not up to date with the current reality. However, the fight on this between members of county assemblies and their governors prompted a number of impeachment motions of the governors. Some saw the initiative as a tactic to acquire more funds for political reason, rather than development and improvement of the welfare of citizens at the county level. The Okoa Kenya initiative on the other hand, which was founded on failed demands by CORD for political dialogue with Kenya's government back in July

2014, focused on a 13-point agenda centered on devolution, judicial and electoral reform, land, national cohesion and insecurity. Its opponents saw this as a strategy to discredit the government so as to gain political millage.

While the Pesa Mashinani initiative may have been motivated by political self-interest, the Okoa Kenya initiative had complexities and questions to which it did not seem to provide suitable answers. More generally, the CORD coalition as the main opposition, did not demonstrate to the public of its idea of good governance structures, or how these could work in Kenya. Entrenched ethnic politics continue to serve as one of the primary dividers and obstacles to a coherent and united political agenda for all Kenyans. By and large, the two initiatives, as well as those by the ruling coalition, were caught up in a political context characterized by heightened political temperatures, confusion and an obvious lack of objectivity. The voice of reason, the Civil Society was vividly absent from the debate, and the need for a neutral and objective arbitrator to promote citizens' understanding, involvement and participation in this process was missing in action. It is imperative that civil society reclaims its collective voice, devoid of ethnic politics and manipulation by the political elite and seek to regain its vibrancy as the custodian and protector of citizens on issues that affect them.

The new political dispensation has threatened the resilience of Kenya's democratic institutions necessary in ensuring accountability based on the principles of separation of powers, as guided by the Kenya constitution 2010. While

speaking in a forum organized by Uwazi Consortium in Nairobi in May 2019, the former Deputy Speaker of the National Assembly, Farah Maalim said that, ***“civil society organizations have become partisan after allowing themselves to be influenced by political parties instead of operating independently.”*** The civil society has been subject to partisan interests after the handshake between President Uhuru Kenyatta and former Prime Minister Raila Odinga. This new development continues to weaken civil society's oversight and advocacy role against bad governance. ***“CSOs should be the vigilante of social justice, whether there is handshake or not,”*** said Maalim, and added that CSOs, being the brain of the political class, ought not be co-opted into government or opposition but should instead seek social justice on issues affecting the society. He further urged the CSOs to fill the gap that was left after the handshake when the government and the opposition merged.

The Dean at the School of Law in Africa Nazarene University, Dr. Duncan Ojwang, also supported Maalim saying that the CSOs needed to fill the gap beyond the political society. He echoed Maalim's sentiments that CSOs were not doing very well after the handshake because in the past, they were working together on issues with the opposition, but today they follow individuals and political personalities. ***“CSOs were riding on the back of the opposition and that is where the problem came after the post-handshake era. The CSOs were left on the horns of a dilemma. When the individual shifts politically, then the CSOs are left hanging,”*** said Dr. Ojwang. He stated that the civil society should fill the vacuum

beyond the political society arguing the opposition has been weakened after the handshake. The East African Centre for Law and Justice Chief Executive, Ms. Joy Mdivo also said that the handshake had nothing to do with the common mwananchi but the comfort of two individuals, adding that the Building Bridges Initiative (BBI) did not include CSOs, a fact which was reiterated by USIU professor of History and International Relations Prof. Macharia Munene.

6. CHALLENGES FACED BY THE CSO SECTOR

The major challenge today in the CSO space is their shrinking civic state. The days of proper financing to CSOs and influence ended with the 90s and early 2000s. These were the times characterized by rigorous and intense activism against oppressive regime of KANU. Availability of donor funds to CSOs and their leadership as well as limited restrictions to activism spurred a vibrant sector in Kenya; like had never been seen before. CSO had influence on matters of the state, acted together as a pressure group and brought changes to government and society at large. Unfortunately, this state did not last long. With the birth of multiparty politics, a result of what CSOs had fought for, many in the CSO sector felt that they had achieved much in the sector leading to several key personalities and activists leaving the sector to join the government. This move and situation left the CSO sector somehow moribund without critical muscle and leadership to push for changes like in the 90's. The sector slowly waned in influence and clout as years came by. To-date, the sector lacks a credible central

coordination body to coordinate all the CSOs. Among the many challenges and issues facing the sector include the following:

a) Credibility issues confront the sector all through.

CSOs have lost voice and worse off, they begun undercutting each other at national and grassroots level. Some individualistic elements have also infiltrated the sector with dozens of brief case CSOs that are established for personal gain. Politicians, religious and 'terror' groups have also set up CSOs to legitimize their unethical practices and as vehicles to achieve their goals. It is becoming harder each day to provide the alternative voice that was the domain of the 90s'. A critical question today: "how does the sector highlight ills in government while they themselves are guilty of the same ills or even worse?" The sector cannot be an authoritative voice unless it upholds the standards and values that it stood for in earlier years.

b) Capacity of the sector is wanting.

The sector no longer has leaders who work for a cause as it was in earlier years. Instead, it has become a job opportunity, where people work just to earn a living like in any other job. With the exodus of past CSO leaders to political or government positions, the challenge lies on how to breed new leaders ready to work for citizens' cause and that of the sector. Today, who can be bold enough to speak

out and challenge negative forces and injustice when need arises? Another capacity challenge is that those workers at the grassroots do not have skills and know-how to become effective agents of change. Lack of these skills inhibits their ability to compete effectively with larger players in the sector; particularly because they compete for the same funds with larger and well established national and internationally connected CSOs. There is clear challenge when International NGOs and local NGOs are compared and when CBOs and NGOs are put together.

c) Dimming Financial Base for the space.

As said earlier, the days of opulence, influence and well-funded sector are dimming very fast each passing day. The sector is facing a serious financial crunch because donors have been forced by the economic conditions in their countries to cut on aid. With the Covid-19 pandemic in place, the future for CSOs to get donor funds is bleak. Added to this, the accountability issues within the sector, lack of capacity and leadership including the branding by state operatives of CSOs as "supporters of terror", weaken their bargaining positions with Government and development partners. The 'big brother or sister syndrome' where the CSOs in the grassroots mainly look upon the Nairobi based national CSOs for direction on reform agenda even on issues affecting the local population like the IDPs, Peace Building, conservation, PBO legislative amendments among others. The syndrome and attitude have negatively affected

the ability of the locally based CSOs to cultivate a culture of self-drive and initiative in response to the reform agenda even in the counties. The overbearing nature of the national and Nairobi based CSOs has also occupied the space of the regional CSOs in form of skewed programme designing, implementation and partnership agreements creating a deep dependency syndrome by the “smaller” CSOs.

It is critical to develop mechanism where this relationship becomes mutual, symbiotic and support the growth of the sector instead of constricting it. There exists a large number of unregistered CSOs, those called ‘green movements. These groups are held together by loose cultural norms, values and systems. The activities of these groups are not formally recognized when analyzing civil society in Kenya. They remain invisible and do not attract any support from any quarter. The green sector has a lot of influence on citizens and their activities do have far reaching implication as it was witnessed with Mungiki, Sabaot Land Defense Forces (SLDF) and other vigilantes at the Coast like Mombasa Republican Council (MRC), Nairobi and Western provinces, all which are organized to fill in existing service vacuum.

d) The challenge with or at the coordinating bodies

The umbrella organizations such as NGO councils and CSO Reference Groups have been branded as being ‘elitist’ and urban based. There is need for critical thinking and attempts to reconcile their varying needs, particularly on how to

coordinate them as one vibrant sector while making them fully responsive to their key audience, the citizens.

e) Challenge of mandate of Civil Society Sector Vis a’ vis the state

Ideally the question is, what should CSOs do and should they not do? Whether they should “mop up” the failures of the state by providing services where the state has failed to do so, or carry out activities that hold the State to account? The sector should be engaged in holding duty bearers to account. However, the more and more we see CSOs mopping up the failures of the State and forsaking its primary responsibility of supporting citizens to demand for their rights from duty bearers

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f) Being associated or blamed as being agents of ‘hostile’ nations

There were indications that the state was trying to use this kind of profiling and branding to introduce punitive legislations through the amendments to the PBO Act. The government was seen to have written to donors and Embassies with allegations that the link to terror was creating serious apprehension. The move was seen as a means to silence legitimate voices through the amendments of the PBO Act. In support of this view, the state closed down 500 CSOs for failing to submit annual returns to the NGO coordination board and a few others for possible links to terror in December 2014.

PART TWO:

How can we revive, build capacities and strengthen the CSO's to enhance their role in advocacy, putting duty bearers on check and promoting civic engagement of the public?

As discussed above, it is evident that indeed the current CSOs capacities need to be strengthened, while some being challenged to rise to the occasion. Below are some suggestions to be considered:

1) CSOs need to plan ahead of time and be proactive

CSOs need to plan ahead of time to beat the unexpected or unforeseen challenges. They should have a think-tank that can listen to the future and also to the citizens to proactively predict future scenarios so as to provide means of managing them when or if they arise.

2) Develop proper structure and coordination mechanisms

CSOs must move with speed to establish a vibrant network having its roots drawn from the 47 counties. This network could have a General Assembly elected from all 47 counties as well as have representation from National and International NGOs, an elected board and a much empowered secretariat to run active and sustained programs. The same secretariat can help rally and mobilize most if not all the CSOs in the country to register with it as members.

3) The need for capacity building

As discussed above, the apparent leadership vacuum in CSO leadership that had been occupied by legendary activists like Kivutha Kibwana, Timothy Njoya, and Wangari Maathai at the national front needs to be filled up by strong leaders. The sector currently seriously lacks this vital leadership and capacity. CSOs can establish a CSO Leadership Institute. The Institute can offer regular courses, coaching and mentorship on CSO management, leadership, resource mobilization, citizen participation and value-based programming. With the largely developing virtual space, various approaches including online courses, coaching and support, regular training and conferencing would serve across boards.

4) Develop and put standards and certification for CSOs

It is indeed unreasonable to charge and accuse the government for lack of transparency and accountability yet the CSOs suffer and face the same accountability challenges. CSOs need to strengthen the functionality of CSO certification or accreditation of the organizations. The standards and self-regulation mechanism if taken into consideration can help the sector deal with the evil and corruption therein CSOs.

5) Rigorous advocacy for the full implementation of PBO Act 2013

CSOs should coalesce and advocate for the full implementation of PBO Act, 2013. The Act is a very

progressive law from 1990 NGO Act that was a product of the vibrancy of the previous CSO advocacy.

6) Invest in their branding and visibility as a sector

The sector unfortunately is of late being misunderstood by the public and political leadership for absence of proper profiling of itself and its activities. The CSO was viewed to have played a major role in the predicaments of the President Uhuru Kenyatta and his deputy Dr. William Ruto in Hague case at the ICC. For this reason, the CSOs are largely viewed as the enemies of the government and the citizens. Today, it is very difficult to implement an active advocacy agenda especially in Rift Valley and Central parts of Kenya, where the two leaders come from and enjoy huge support because the residents would not receive it positively. A deliberate move to work on the CSOs profile and publicity of their mandate and activities would go a long way in reviving the sector. It would also help in nesting new and creative resource mobilization strategies.

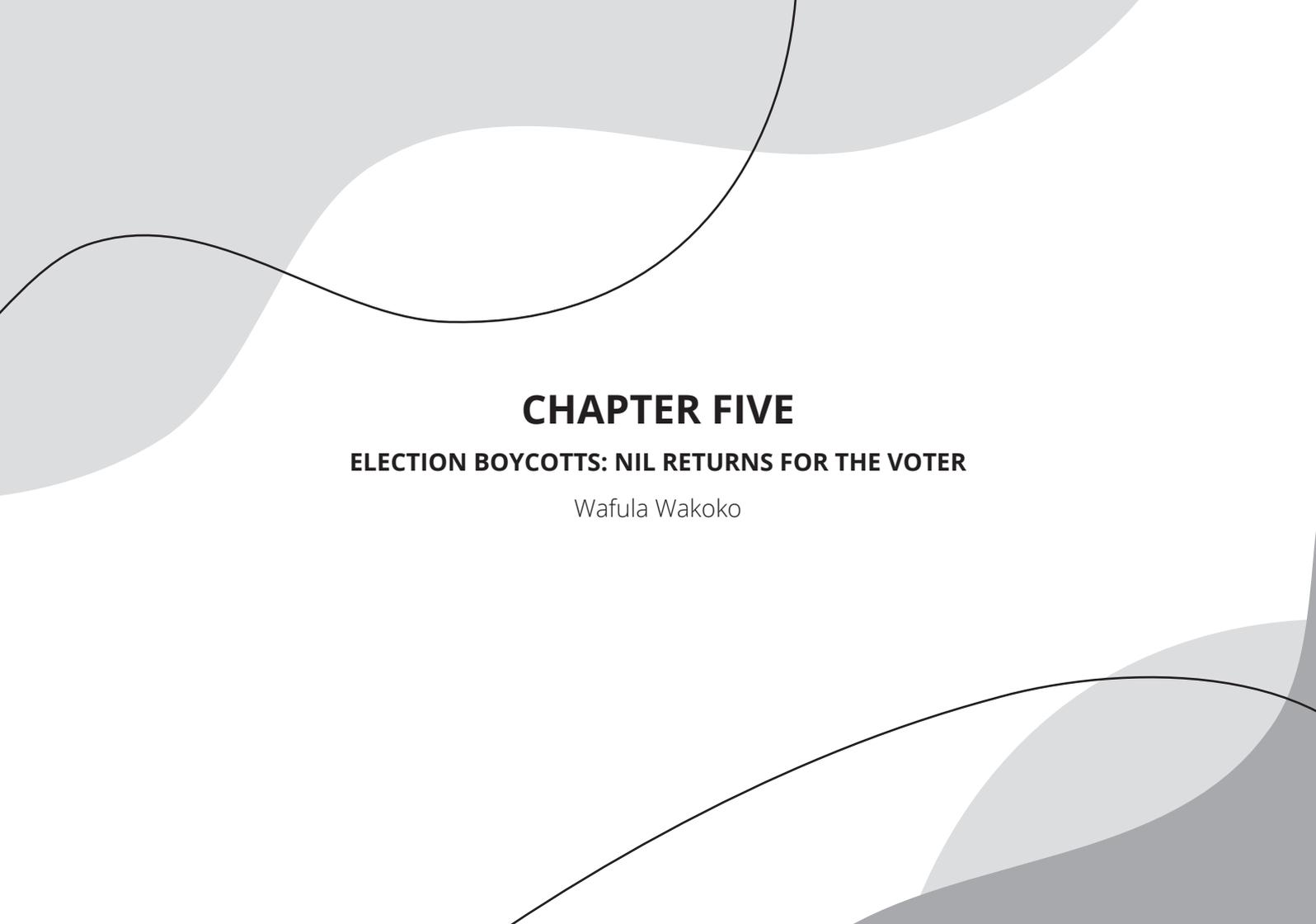
7) To work closely with the Council of Governors and County Assemblies Forum

The two organs play a vital role in how devolution affects citizens. Engaging the two organs is important to help harmonize and provide an enabling environment for CSOs at county level as well as help in engaging national government on governance and legal issues. The governors remain critical stakeholder in the push for the implementation of PBO Act, 2013. Their engagement and involvement would also help CSOs to be on the public space and have it easy

to run advocacy programs on the ground with ease. The CSOs should therefore put in place plans and resources to engage these county orientated -decision making forums.

7. CONCLUSION

The impact and success in the CSO sector will largely be determined by the way it will engage with the national government and how it will work with county governments in the interest of the public. It is evidenced that the CSO sector succeeded in pushing for reforms when they come together and demonstrated that it is possible to be the alternative voice of reason when it comes to reforms and citizens' development agenda. CSOs did previously successfully midwife some of the challenging reforms processes in Kenya, at a cost of painful situations including; tears, wounds, citizens' lives and negative image profiling of the CSO leaders. Besides the challenges in the sector, with the above recommendations on how to strengthen it, there is hope that it can take back and up to its space, with the broadened and enhanced scope provided by the new constitution CoK 2010, that has two levels of governments to hold to account for commitments on citizens' rights and service delivery. The space to engage has and is still widening both vertically and horizontally therefore, greater energy, vigor and sustenance is required.



CHAPTER FIVE

ELECTION BOYCOTTS: NIL RETURNS FOR THE VOTER

Wafula Wakoko

I. INTRODUCTION

It is argued that the legalization of multiparty politics in Africa with a focus on Kenya and Ghana was fueled, not by the prevailing administrations appreciating the need for multipartyism, but the fear of economic sanctions (Adejumobi, 2000).⁴ Equally, elections regardless of their quality are perceived simply as a marker of democracy (Adejumobi, 2000).⁵ Administrations will therefore strive to hold periodic elections to illustrate their cosmetic appreciation of democracy. As shown later in the Chapter, performative elections have informed voters and aspirants to adopt non-participation as a strategy of demanding accountability from public institutions. Nonetheless, as it shall be illustrated, non-participation in electoral processes as a strategy has and continues to be ineffective.

Boycott of electoral processes, popular uprisings, and military action are some of the paths taken by individuals who do not consider the possibilities of free and fair elections. The results of these methods consist of diminished rule of law, loss of lives particularly women and children, destruction of property, and weakened public institutions. The evidence contained in this Chapter illustrates that failure to participate in elections does not work in advancing democratic ideals. There is and has been a disconnect

between elections in books and elections in motion. There is perception and evidence that elements of free and fair elections as enumerated in the Constitution of Kenya are suggestions. This state of affairs has translated into a relatively thin number of people who are active political party members, a thin number of registered voters that participate in electoral processes, and a thin number of persons who contest elections. The climax of these in Kenya has been a refusal by political players to contest elections, refusal to file election petitions, and registered voters not participating in elections.

What then is to replace elections? Is it by design that the political environment makes it impossible for Kenyans to effectively participate in political and electoral activities? Is there an alternative to elections save for rethinking how citizens can meaningfully participate in electoral processes? On paper and ideally, elections are a peaceful means through which citizens determine governments. It is the will of the citizenry that carries weight. Salient elements incidental to elections comprise political party membership, voter registration and related processes, and participation in party primaries. In light of the failures of the non-participation strategy, elections are seemingly the most viable method through which citizens can hold governments and political representatives accountable.

While appreciating elections as the best available way forward, for now, it is important to address factors that make elections unattractive by focusing on the six elections

⁴ Adejumobi, S. (2000). Elections in Africa: A Fading Shadow of Democracy? *International Political Science Review*, 21(1), 59-73.

⁵ Ibid.

that are held in Kenya.⁶ Although there is no blanket solution, there are entry points that Kenyans can rely on in the journey of arriving at meaningful participation.

Structure of Chapter

This Chapter is divided into 6 Parts. Part I is this introduction. Part II discusses the electoral activities and processes that Kenyans can participate in. Part III discusses select election boycotts including a summary of failures of boycotts. Finally, while Part V discusses the salient features of elections in Kenya, Part VI provides the conclusion.

II. ELECTORAL ACTIVITIES AND PROCESSES

Activities in the electoral cycle are components of an election. Election and political parties' management are ingredients of an election' they comprise activities and processes through which Kenyans can take part in preceding the actual casting of the ballot. Select activities and processes are discussed hereunder;

a) Political Party Membership and attendant benefits

The Constitution of Kenya contemplates in Article 38 that every adult citizen has the right to form or be a member of a political party. The primary law on party membership reinforces the same by specifically confining party

⁶ President, Governor, Member of Senate, 290 Member of National Assembly, 47 Member of National Assembly, and Member of County Assembly elections.

membership to citizens (Political Parties Act No. 11 of 2011 Section 7 (5)). A reading of Article 38 of the Constitution illustrates that one does not need to be a registered voter to be eligible to form or join a political party. According to the Registrar of Political Parties as of 31st May 2021, Kenya had 73 fully registered political parties. The total number of party members as of the same date was 16,311,226 with 9,717,827 and 6,593,399 as males and females respectively. The data does address intersex persons. For purposes of the 2017 General election, the IEBC registered voters were 19,611,423 registered voters.

Qualifications that a provisionally registered party must satisfy to apply for full registration include recruitment of a minimum of one thousand registered voters from each of at least twenty-four counties (Political Parties Act No. 11 of 2011 Section 7 (5)). Does this in any way mean that parties are confined to registered voters? The first response lies under the constitutional provision in Article 24 on limitation of rights and fundamental freedoms that calls for specific expression to limit a right; an aspect that has not been met. Even if this were the case, limiting parties to registered voters would fall short of satisfying the standard of reasonable restrictions. The first consequence would be that once the available registered voters are depleted; no more parties can be registered—there will be a shrinking space for persons to participate in political processes by confining them to existing parties. Further, although taking power through elections is a fundamental component of political parties, parties are not built solely for election

purposes. An additional response is the deliberate textual nature of Parliament in enacting the Act; the Statute explicitly bars non-citizens from being members of a political party in Kenya. There is no reason to therefore imagine what Parliament intended when the text of the Statute is bare.

The Electoral law in Kenya dictates closed party primaries. For one to participate in the party primaries as defined in the Political Parties Act No.11 of 2011 Section 2, the person must be a member of the respective political party. The Elections Act, 2011 stipulates in Section 28 (1) (a) that a political party that nominates a person for a general election has to submit a party membership list to the Independent Electoral and Boundaries Commission (IEBC) at least one hundred and twenty days before the date of the election. Connectedly, persons who participate in either electing or electing candidates must have been party members as of the time the party membership list was submitted to the IEBC (Elections Act No. 24 of 2011 Section 31 (2D)). In some electoral areas, where a party has a strong social base, party candidates that win party primaries automatically win the general election. The immediate implication of not being a party member and consequently not participating in party primaries is that elected representatives are not a reflection of popular will. This translates into limited representation of interests.

Given that voter registration status is not a requirement to join a party, can all party members participate in party primaries since the register for party primaries is developed by parties under Section 28 of the Elections Act, 2011? It is

however contemplated under the Constitution (Article 38, 81 and 83) that party primaries have to meet the standards of general elections as party primaries are a component of an election. However, a party is entitled to determine its membership requirements including the eligibility criteria of party membership as laid out in the Second Schedule to the Political Parties Act (Political Parties Act. 24 of 2011 Second Schedule Paragraph 6 (1)).

Elections based on proportional representation by use of party lists are dependent on party membership as parties submit party lists to IEBC (Constitution of Kenya Article 90 (2) (a) & (b)). Persons nominated as party candidates on party lists are required to be members of the respective parties on the date of submission of party lists (Elections Act No. 24 of 2011 Section 34 (8)). All the forty-seven county assemblies in Kenya are two-thirds gender compliant as a result of party-list elections. There are, however, genuine reasons that have made and continue to make Kenyans, particularly women, not participate in party politics and consequently not participate in party primaries and elections (Nyabola & Pommerolle 2018). The reasons include lack of interest, violence, male-dominated political parties, and the role of money in politics.

b) Voter registration and attendant activities

The IEBC has the mandate to and carries out continuous voter registration (Constitution of Kenya Article 88 (4) (a)). Continuous voter registration takes place at the 290 constituency offices (one office in a constituency). For some,

access to the constituency offices may be limited due to the vast sizes of some constituencies (Okoti, 2017).

Adult Kenyans are entitled to be registered as voters (Constitution of Kenya Article 38 (3) (a)). Justifiable reasons and standards that limit one's right to be registered as a voter are indicated under Article 24 of the Constitution. The qualifications for registration as a voter are enumerated under Article 83(1) of the Constitution. Persons who apply for registration must possess either a national identity card (ID card) or a Kenyan passport as these documents are evidence of whether one is an adult citizen (Elections Act No. 24 of 2011 Section 5 (3)). The election law does not address whether the validity of a passport in terms of being expired is material for purposes of an application to register as a voter. The law is only concerned with a passport being an identifying document. The IEBC requires a valid Kenyan passport; this does not align with the law (IEBC, 2021).⁷

As a travel document, a passport must be valid (Kenya Citizenship and Immigration Act No.12 of 2011). However, a passport under the Elections Act is an identification document, its expiry does not negate the identification qualities.

⁷ IEBC - registration. iebc.or.ke. (2021). Retrieved 14 September 2021, from <https://www.iebc.or.ke/registration/?aspirant>

There is qualified access to ID cards for communities in North Eastern and Upper Eastern regions of the country, Nubians, and Muslims in general face administrative hurdles in the form of identity vetting (UNHCR, 2018). Principally, it is for the authorities to establish whether an applicant is Kenyan, however, the mode of vetting in the highlighted cases amounts to profiling based on discriminatory practices. Additionally, although some laws including the Persons Deprived of Liberty Act, 2014 recognize the existence of intersex persons, the Births and Deaths Registration Act and Registration of Persons Act that are primary laws on identification documents still employ sex in terms of male and female. This has an impact on the number of people who can apply for voter registration and participate in elections noting the exceptions to continuous voter registration under the Elections Act (Elections Act No. 24 of 2011 Section 5). There is no mechanism to determine whether an applicant is of unsound mind unless declared as such (Elections Act No. 24 of 2011 Section 9).

The current legal regime does not call for proof of residency as a requirement for voter registration in a particular registration centre. This poses the risk of the political class ferrying people from one region to register in another region. Nonetheless, it allows Kenyans to register as voters in electoral areas of their choice. For ease of accountability and access to elected representatives, it is a mark of true representation for one to register in areas where they normally reside. Noting that a voter can only vote in a polling station in which they were registered (Elections Act

No. 24 of 2011 Section 10 (1)), although the voting day is a public holiday, it is convenient for a voter to vote in their area of residency as opposed to traveling elsewhere. There are valid reasons why some Kenyans may not register as voters in their areas of residency; this includes what Kenyans may consider as home. This paper shall however not pursue this discussion. Connectedly, a voter is at liberty to, without offering any explanation, at least ninety days before an election, transfer their vote from one electoral area to another (Elections Act No. 24 of 2011 Section 7). This promotes the platform for voters to participate in electoral processes.⁸

Voters have the opportunity to participate in the inspection and verification of the register of voters (Elections Act No. 24 of 2011 Section 6 & 6A). These activities comprise voters rectifying their particulars and verifying their biometric data. These exercises are significant as they serve as a confirmation that voters' details are captured correctly to avoid disenfranchisement on the polling day.

c) Proposal and support for independent candidates

The year 2010 marked the introduction of independent candidates (Constitution of Kenya Article 85) in Kenyan politics under the Constitution hence expanding platforms through which Kenyans can be represented and form a

⁸ Where a voter changes their area of residency wherein they had registered as voters, they are at liberty to transfer their vote.

government. The independent candidates' platform is an alternative to political parties; Kenyans generally and voters need not be confined to political parties (Wakoko, 2020). A person who wishes to contest elections as an independent candidate must have proposers and supporters; these are persons who are registered as voters. An independent candidate is required to have a proposer and seconder who must be registered as voters in the candidate's electoral area and not be members of any political party (Elections (General) Regulations, 2012, regulation 39). All independent candidates' elections require supporters but for purposes of this section, we shall use the Member of National Assembly election. An independent candidate for the position of Member of National Assembly requires at least one thousand voters registered in the constituency as supporters; this is mandatory (Elections (General) Regulations, 2012, regulation 24). Just as political party candidates are selected by the party members, independent candidates are selected by members of the public without regard to whether the supporters are party members.

d) Political party and candidates' agents

Political parties or their candidates and independent candidates have the right to appoint election agents at each polling station (Elections Act No. 24 of 2011 Section 30). The IEBC provides agents with official badges to access polling stations and tallying centres (Elections (General) Regulations, 2012, regulation 62 (4)). Agents represent their appointing parties or candidates by documenting and reporting activities incidental to the voting processes from

the point of opening the polling stations to the declaration of election results. The presence of agents builds up to transparency and a degree of limiting poll officials from engaging in conduct that deviates from the standard of conducting elections. Still, even in the circumstances where standards of conducting elections are not upheld, the documentation serves as an alarm to election observers and duty bearers, a reference point, and evidence that may be adduced in court during election petitions. Alive to Kenyan politics where some parties have strong social bases, it may be a daunting task for an unpopular party to deploy agents to such areas on safety grounds. Parties may also not want to spend finances on facilitating agents in areas where they have slim chances of winning an election; this is a missed opportunity to document matters that can be raised during an election petition.

Cognizant of the definition of a polling station (Elections (General) Regulations, 2012, regulation 7), the importance of agents notwithstanding, where candidates, as opposed to parties, appoint agents, it becomes impractical for agents to fit and perform their duties in a polling station. Parties have different reasons for not appointing agents for their candidates and this includes the financial cost. Party candidates on the other hand, in a general election where six elections are happening on the same date, may not opt to rely on party agents due to mistrust within a party or competing interests among candidates. Regardless of the challenges, agents are a transparency and accountability ingredient in the conduct of elections.

e) Party Constitution and Nomination Rules

Party constitutions and nomination rules are primary sources of conditions that parties adhere to. They provide standards that parties must adhere to in the conduct of their activities including selection or election of party candidates and change of party constitutions or rules. Party members are integral to making changes to party particulars. At the provisional level of party registration, applicants for registration are required to submit a party constitution or rules to the Registrar of Political Parties (Political Parties Act No.11 of 2011 Section 6 (d)). The two documents must satisfy the standards stipulated in the Political Parties Act No. 11 of 2011 Section 9. Upon receipt of the application, the Registrar through a Gazette Notice and at least two newspapers of nationwide circulation invites objections from the public on any issue regarding registration of the party. This allows the public to voice their comments on the constitution. Where a fully registered party intends to change its particulars including a party constitution, the public has an opportunity to make representations on the constitution (Political Parties Act No.11 of 2011 Section 20). Representations are not a preserve of party members.

The cited nomination rules are the ones submitted to IEBC under Section 27 of the Elections Act. They form a substantial part of the reference point during dispute resolution. Other forms of participation include participation in legal reform processes, resignation from parties to join other parties, resignation from parties to become independent candidates.

III. SELECT ELECTION BOYCOTTS

Election boycotts take different styles comprising parties, candidates, and voters' refusal to take part in both pre-poll activities and polling day activities in the form of voting. They may be major or minor, be peaceful or violent campaigns.⁹ Minor boycotts may however include voters refusing to participate in electoral processes without engaging in any campaign for reforms; this caliber of a boycott is fueled by voter-disillusionment. This section of writing will employ the phrase 'election boycotts' to mean refusal to participate in polling day activities in the form of voting. The styles for boycotting an election may include creating an environment where voting cannot take place through violence, buying identification documents from voters, and symbolic acts that signify boycotting. Existing scholarship and experiences enumerate a variety of reasons for election boycotts (Beaulieu & Hyde, 2008). Opposition political parties boycott elections due to the broad ground of electoral unfairness that includes the absence of an independent Election Management Body. It is also argued that opposition parties may boycott elections if they are apprehensive of losing the immediate elections (Beaulieu & Hyde, 2008). That motivation for boycotting an election may not be seeking legal, institutional, and electoral reforms but as a strategy to acquire benefits that cannot be derived from contesting in elections (Beaulieu, 2007).

⁹ Major and minor are used to denote the magnitude and effect of the boycott.

a) Matiba 1997

Kenya witnessed Kenneth Matiba boycott the 1997 general election on grounds of lack of a level playing field and the government's commitment to rig the elections (Holmquist & Ford, 1998). Matiba urged his supporters and other political parties to burn their voter's cards, and he in fact burned his as a gesture of protesting the impending election (AP Archive, 2015). Besides Matiba's broadcasted reasons for the boycott, losing the leadership of FORD-Asili to Martin Shikuku and costly legal suits were have been touted as his main reasons (Holmquist & Ford, 1998). Nonetheless, the number of registered voters in the run-up to the 29/30th December 1997 election was 9, 030, 092, the voter turnout was at 6 096 479, and 15 political parties took part in the presidential election (EISA Kenya, 2010). At the point of writing this paper, I did not encounter evidence of how the KANU administration provided a better environment for the conduct of free and fair elections due to Matiba's boycott.

b) Raila Odinga 2017

In 2016, the Coalition for Reforms and Democracy (CORD) through Raila Odinga called for the resignation of IEBC members on grounds of structured and continued favouritism for Uhuru Kenyatta (Odinga, 2016). CORD detailed the bias of IEBC in the run-up to both the 2013 and 2017 general elections. It accused IEBC of biased registration of voters through the disproportionate allocation of Biometric Voter Registration machines and reporting election preparedness to Kenyatta. He further asserted that the IEBC through its Chairman had made

personalized attacks, through an Affidavit filed in court, by referring to Raila as a perennial loser and complainant who was incapable of accepting defeat. Raila asserted that that the failure of the IEBC members to resign from office would culminate to there being no election (KTN News Kenya, 2015). Subsequently, the IEBC members exited the stage ushering in a set of new IEBC Chairman and members on 18th January 2017 as illustrated through Kenya Gazette Vol. CXIX-No.8 Gazette Notice Numbers 399 and 400 published on the same date; six months to the date of the general election.

The 8th August 2017 results as declared by IEBC comprised Uhuru and Raila garnering 8,203,290 and 6,762,224 votes respectively. Aggrieved by the conduct and results, the National Super Alliance (NASA) through Raila and Another as Petitioners challenged the presidential election at the Supreme Court (Presidential Petition No. 1 of 2017, Odinga & others). The Supreme Court made various orders including a declaration that the presidential result was null and void as the election had not been conducted in accordance with the Constitution and the applicable law. The court further ordered for a fresh election to be conducted, which election IEBC scheduled for 26th October 2017.

As a precondition to participating in the fresh election, the NASA coalition made various demands titled "*Irreducible Minimums*" (Akombe, 2017). The demands included non-participation of 8th August Returning Officers in the fresh election save provision of logistical support, non-

participation of select IEBC personnel who took part in the general elections, and unfettered access of the media to the polling and tallying centres. NASA also rejected the "project team" that IEBC established to put in place to perform secretariat functions in the fresh election. The IEBC conceded to some of the requests did not budge on various demands including the project team and Returning Officers (IEBC, 2017).

On grounds that the IEBC was incapable of conducting a free and fair election and the urgent need for electoral reforms, on 10th October 2017, NASA withdrew its candidature from the fresh presidential election. Connectedly, Raila urged his supporters and voters not to take part in the said election. This led to demonstrations that informed the postponement of elections in several electoral areas as discussed later in the Chapter. Nonetheless, an election was held and IEBC declared Uhuru as the President-elect with 7,483,895 votes (IEBC, 2021). Other presidential candidates on the ballot got a total of 132, 322 votes.

The period that followed was punctuated with NASA demonstrations, excessive use of force by the police whereby security agencies injured and killed Kenyan citizens (European Union Election Observation Mission, 2016). When 9th March 2018 arrived, Uhuru and Raila announced a truce under the phrase *Handshake* and committed to working together. This development resulted in the Building Bridges Initiative whose focus included the amendment of Kenya's 2010 Constitution (BBI Steering Committee, 2020).

It has been argued that the handshake made Raila and by extension the Orange Democratic Movement part of the government with the effect of not keeping the government in check, a role played by opposition candidates and parties (Nyanjom, 2018). Rightfully so, Raila has been a crusader of government-led projects and initiatives. Notably, the High Court found, *inter alia*, that the attempt at amending the Constitution was unconstitutional (High Court Petition No. E282 of 2020).

c) Kyagulanyi Robert Election Petition

In Uganda of January 2021, following a general election, the Electoral Commission declared presidential election results that comprised 6,042,898 and 3,631,437 votes for Yoweri Museveni and Kyagulanyi Robert respectively (The Electoral Commission, 2021). Aggrieved with the conduct of elections and elections results, on 1st February 2021, Kyagulanyi lodged an election petition with the Supreme Court of Uganda with claims that the election was not free and fair, and was marred with gross irregularities, violence, and rigging. It is to be noted that according to Human Rights Watch, the election period was dotted with police brutality instigated by the government against the opposition including Kyagulanyi. Nonetheless, he withdrew the petition citing bias hence the inability to offer a fair hearing (Kamoga, 2021).

Following Kenya's 2007 general election, Raila elected not to file an election petition on the basis of lack of independence within the judicial system. The aftermath was violence and

subsequently a government of national unity between the Kibaki and Raila factions. It would not have been possible for the Kibaki administration to peaceably govern the country. Opting out of legal structures to pursue alternative justice as illustrated in the two cases only seems possible if the country is ungovernable. At the time of writing this paper, Museveni was still the President of Uganda. Although armed with valid reasons for withdrawing the election petition, there is no record of the court's determination on the Kyagulanyi claims; this does not reflect a win.

IV. SALIENT FEATURES OF ELECTIONS IN KENYA

The Constitution of Kenya as read with Statutes established under provide the building blocks of an election; this paper has focused on several features as indicated and discussed below;

a) Voter turnout

Legal legitimacy (as opposed to any other tribe of legitimacy) of an election rests at the feet of what the law deems to be legitimate; not perceived popular opinion that has not been expressed within the avenues through which such expressions are meant to be made. Unless the law has prescribed a minimum number of votes that a candidate must get, a low voter turnout does not affect the legal legitimacy of one's win. Where the threshold of winning an election is pegged on calculating voter turnout based on votes cast and not all registered voters, boycotting such an election may prove to be a miscalculation. Although a boycott translates to low voter turnout, it is immaterial to a

candidate or party whose focus is winning regardless of the thin numbers. Where the legal requirement for winning an election is simply first-past-the-post, a candidate with merely one vote in an electoral area stands as duly elected. Due to calls for boycotts by the Liberation Tigers of Tamil Eelam, Sri Lanka holds a record of a candidate who became a member of parliament in an election where only ten persons voted; the ten votes were his highway to parliament (Staino, 2021). In Nepal, calls for a boycott by opposition parties led to a 20% voter turn-out in local elections yet the votes cast determined persons who formed governing bodies (Staino, 2021).

In Kenya, the minimum number of votes for one to win a presidential election is based on votes cast and not the total number of registered voters. In this respect, regardless of a low voter turn-out, the set constitutional standard is not a top shelf that requires a ladder to reach, particularly for incumbents. For a candidate to be declared elected as president, they have to receive more than half of all the votes cast in the election and at least twenty-five percent of the votes cast in twenty-four counties (Constitution of Kenya Article 138 (4)). In circumstances of a fresh election, the candidate who wins is one who gets more the greatest number of votes (Constitution of Kenya Article 138 (7)). In the other five elections, the candidate with the greatest votes becomes declared the winner, regardless of the number of voters that voted.

b) Universal suffrage

In conducting elections, an IEBC has a responsibility to ensure that all adult Kenyans are facilitated to take part in electoral processes. The legal framework demands an electoral system that comprises universal suffrage (Constitution of Kenya Article 81 (d)). The conduct of elections is supposed to be designed in a way to enable eligible Kenyans to vote (Constitution of Kenya Article 83 (3)). Connectedly, it is mandatory for the vote to be cast in an environment that is conducive for a free and fair election; the principles of which are enumerated in law to include the absence of violence and intimidation (Constitution of Kenya Article 81 (e) (ii)).

At the threat of violence or actual violence, IEBC cannot conduct a free and fair election since it would not fulfill the requisite elements of a free and fair election; simply, it cannot conduct an election in a constituency, county, or a ward (Elections Act No. 24 of 2011 Section 55B). To prevent a scenario where an IEBC does not conduct elections throughout the country due to violence, the primary law on elections contemplates postponement of elections. Furthermore, the IEBC is at liberty to declare results without having conducted elections in all electoral areas as long as it is satisfied that votes in those areas will not affect the declared results (Elections Act No. 24 of 2011 Section 55B (3)). The year 2017 saw IEBC postpone October 26th repeat elections in four counties; Kisumu, Homa Bay, Siaya, and Migori Counties on account of a serious breach of peace from 26th to 28th October, 2017 (Muriuki, 2021). On 27th October 2017, the IEBC postponed elections meant to be

conducted on 28th October 2017, in 28 constituencies, to a date to be determined as indicated the IEBC Chairman's speech of 27th October 2017 (Annex 1).

Would postponing an election in a certain electoral be a reasonable restriction? Answers lie in the purpose of postponement. Violence and intimidation diminish possibilities of a free and fair election. Voters are supposed to vote in an environment where the expression of their will does not become detrimental to their persons and property. To prevent this, the IEBC postpones the election to a further date. The postponement is meant to ensure the greatest enjoyment of political rights.

c) Independent and Impartial Electoral Management Body

Emerging democracies tend to favour the constitution of independent bodies to conduct elections while in some established democracies, government officials whose neutrality is generally accepted conduct elections (International IDEA, 2002). The purpose of the former is to make the electorate and competing political parties have a semblance of belief that the referee of elections is neutral. A semblance of belief because public trust cannot be legislated, it is the public institutions that have a duty to conduct their affairs in such a way that the public can believe in them; this is through transparency and accountability.

Elements of an independent EMB include tenure, composition and qualifications, financial independence,

transparency measures, effectiveness, and neutrality. These elements are reflected in the establishment, structure, and operations of the IEBC under both the Constitution and the Independent Electoral and Boundaries Act, 2011. The admirable content of laws on the independence of EMB notwithstanding, it is the practicality of it that matters.

An observation of election management in Kenya reveals an ever-mutating nature of the EMB oscillating between lacking and having public trust depending on the position of the audience. Through Inter-Parties Parliamentary Group (IPPG) reforms in 1997, the independence constitution was amended through the Constitution of Kenya (Amendment) Act, 1997, with its commencement date being 7th November 1997. This led to the composition of the Electoral Commission of Kenya (ECK) to expand from eleven to twenty-one members. As a result of the IPPG accord, parliamentary opposition parties appointed ten more commissioners making ECK a twenty-one-member body. With elections slated for 29th December, there cannot be a convincing argument on the value of the additional ten members to ECK—even in terms of protecting the interests of their appointing political parties, all significant pre-electoral preparations had already been concluded. Notably, the results declared by ECK were contested on various fronts including the failure of ECK to conduct elections as stipulated under the law through the Kibaki versus Moi case.

However, ECK's conduct in the conduct of the 2002 presidential election was celebrated as depicted through

the winning party National Rainbow Coalition and the concession speech of the KANU candidate, Uhuru Kenyatta. ECK's conduct of the 2005 referendum and 2007 elections drew conflicting reactions in regards to the neutrality of ECK. Although rightfully, the ECK chairman is on record for admitting to not knowing the genuine winner of the 2007 presidential election. Duty bearers have the duty to build public trust through transparent processes to avoid the public speculating on their operations.

d) Other Factors

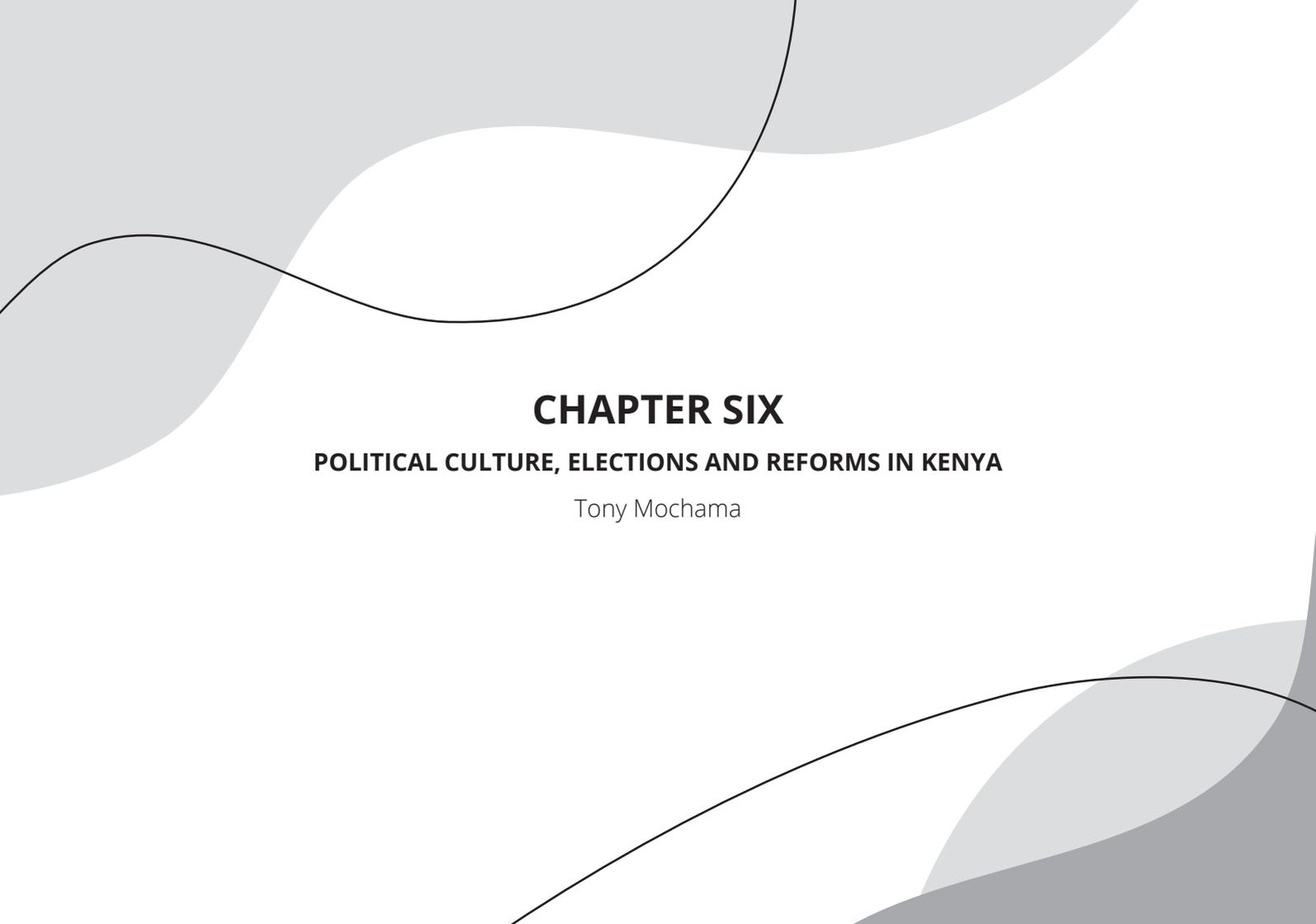
Other factors in Kenya elections that this Chapter shall not address due to the scope of the paper are the role of technology, qualitative and quantitative nature of elections, the integrity of candidates, resolution of pre- and post-electoral disputes, and election observation.

V. CONCLUSION

Election boycotts as tools of checking governments and duty bearers in elections only work if the boycotts make it impossible for the government of the day to govern. And often, in this case, the administration and the boycotting

entities often find a way to work together; this is in a situation where the opposition has employed tactics that hinder the government of the day to govern. Every so often, the compromise reached between the government and opposition is rarely in favour of the citizens' interests. Available data illustrates that boycotts amount to opposition parties having bargaining power. On the other hand, where a party or a candidate stages a minor boycott, evidence shows that it would amount to nothing unless the goal of the boycott was to simply assert a certain principle.

There is limited evidence to illustrate the gains of non-participation in electoral processes. Not being at the decision-making table means key decisions are made without the absentee's input. Yet one's presence does not guarantee that the environment would be conducive for voicing one's opinion. Voters organizing around activities that precede polling day and fidelity of duty bearers to their duties are key elements to meaningful participation in electoral processes.



CHAPTER SIX

POLITICAL CULTURE, ELECTIONS AND REFORMS IN KENYA

Tony Mochama

1. INTRODUCTION

Kenya became a *de facto*, if not *de jure*, one party state after the 1969 General Elections, in which the **KPU** (*Kenya Peoples' Union*) was not allowed to participate. Ironically, even as KANU now took official monopoly of power in the country as a political party, a large number of radical legislators - led by Kenyatta's own former private secretary (and ex Mau Mau detainee) Josiah Mwangi Kariuki - swept their way into the National Assembly. Even with the official onus of 'Assistant Minister' around his neck like an albatross, this did not stop J.M Kariuki, as he was popularly known, and his merry band of 'parliamentary activists' as we must recognize them as being, from speaking Truth to Power.

The number of these parliamentary activists numbered around forty, almost all of them backbenchers, who not only regularly condemned government policy throughout the 1969-1974 parliament, forcing the government to withdraw a number of proposed Bills, but also called out the first symptoms of grand corruption in the country, with chief Parliamentary Activist J.M. Kariuki warning that Kenya had become a country of ten millionaires, and ten million beggars. In 2021, it is actually a country of ten million below-the poverty -line citizens, and ten multi-billionaire families.

It was this brand of populist activism, appealing to both landless Kikuyus in Central Province to radicalized Luo intellectuals all the way across to lakeside Kisumu, this brand of political "*sumu*" (poison) that excited the masses, and that would get Kariuki assassinated in March, 1975.

Immediately after the General Elections of 1974, these KANU parliamentary activists were in fact able to capture control of the day-to-day working of the National Assembly, criticizing the government's developmental policies and attacking the State's over reliance on western aid from the parliamentary floor, in a fiery way that is much needed (but woefully absent) in today's legislative chambers - as policy flops, and Chinese aid with its debt chokes out any meaningful national development (outside of infrastructure), thanks to trillion-shilling debts, and ten trillion shilling deficits in our government's ever in-the-blood-red budgetary books.

Parliamentary Activism went on past its peak until 1981, with then powerful Attorney General Charles Njonjo condemning a handful of parliamentary activists like the young James Orenge for fighting the State from the floor, and branding these firebrands as the 'Seven Bearded Sisters'.

2. 1990-1992, CLERGY AND 'OPPOSITION' ACTIVISM

On January 1st, 1990, Reverend Timothy Njoya in a sermon at Saint Andrew's church in Nairobi spoke of the Christmas overthrow of Romanian dictator Nicolai Ceaucescu, and said 'change must come to Kenya in the New Year.' Four months later, following the grisly murder of Kenya's Foreign Minister, Robert Ouko, at *Got Alil*, two leading political figures, Charles Rubia and the maverick mogul Kenneth Matiba held a press conference at Chester House that courageously called KANU out for its circle of centralised corruption, cycle of economic decline and the climate of oppression at the epicenter of its

cancerous rule, as per its implacable critics. The politicians had now opened a second front, following clergy activism those last 4 years (1986-1990). The *Forum for the Restoration of Democracy* (FORD) became, literally, a vehicle for Kenya's activists, including those in the legal field like Paul Muite, who demanded a seat on the table of a political representation, asking that section 2(A) of the constitution (that made Kenya a one-party State) be immediately repealed to pave way for multi-party democracy.

President Moi attempted to do this theoretically by forming the *Saitoti Commission* in 1990, and thereafter revoking the loathed section (2) A to pave way for the coming General Elections.

He did this in early December, 1991, thanks to the Kamkunji II rally of mid-November, 1991. Thousands of ordinary Kenyans, led by a cross-section of activists, had stormed their way to 'Kamkunji Stadium' that 16th of November, led by the likes of activists Masinde Muliro, Martin Shikuku, Phillip Gachoka and the aggressive James Aggrey Orenge, even as activist lawyer Paul Muite and political agitator Raila Odinga got arrested *a priori* to said rally.

A few deaths, and a lot of rioting, had followed this rally, piling the pressure on President Moi. George Anyona, the Kisii politician from Nyamira, proved to be the most radical of activists. A founder of the *Kenya Socialist Alliance*, and in the aftermath of the *Saba Saba* (7/7) riots of 1990, Anyona had been arrested and jailed for writing tens of 'seditious'

articles, calling for 'uprisings' against the regime. Upon his release almost two years later, in 1992, he complained that "FORD was in too much of a hurry to form a party and take power, (which would be *same forest, different monkeys*);", resigning from FORD, he instead attempted to establish a local chapter of *Amnesty International* (to fight for the release of political activists,) as well as launching Alternative View, an organ to educate wananchi about the political culture required to sustain multi-party democracy.

"Only by strengthening the foundations of civil society", Anyona argued to Masinde Muliro, and urged upon FORD's Jaramogi Odinga" can political freedom be permanently secured in Kenya." And indeed, it is Civil Society after the General Election, led by men like Professor Kivutha Kibwana as spokesperson of the civil society NGO, the National Convention Executive Council (NCEC) that even as they agitated for constitutional reforms through bullhorns *a la* Prof. Yash Pal Ghai, created the ground ripples that become the 'activist earthquake' of the year 2002.

The 'Rainbow Revolution.' – Mass Activism.

"*Yote yawezekanaaa, bila Moi!*" sang the triumphant masses in the twilight of 2002. President Moi's political greenhorn Uhuru Kenyatta of KANU had just been defeated in a landslide in the 2002 Elections, that swept president Mwai Kibaki, with a coalition of political parties called NARC (National Alliance Rainbow Coalition), popularly called "Rainbow Alliance," to power, on the crest of a mass swell

of activism by people across Kenya. One knows that mass activism, in the real sense of the masses, has caught on like wildfire in Australia when the biggest club-banger of the year is a politically rebellious song that's number one for months (Gidigidi Majimaji's '*Unwogable*' anthem), and political lines just pop up in popular youth hits like E-Sir's line: '*There's always defiance, like Rainbow Alliance ...*' From mid-March to the very last day of that watershed year of 2002, all the activism that had gone on in Kenya since its Independence for decades before – the post-uhuru populism of Jaramogi Oginga Odinga, the Parliamentary activism of J.M Kariuki and Company, activism by the clergy, agitation by the opposition parties, Non-Governmental Organizations (NGOs), activism by other Non-State Actors – everything culminated and was blindingly illuminated in nine months of activism work, or labour, to bring to birth a 'new regime' other than the KANU one that had ruled Kenya since its Independence.

The 2002 *mwanachi* activism, as we may call it, was also a peoples' mass protest against a sitting president's political project, the *hoi-polloi* versus *Moi*, correctly seeing the attempt by the status quo to impose Uhuru on the nation as a post-presidency act of protection and self-preservation. Also, before 2002, the Opposition had always been split, a house divided against itself. All the harangues of Jaramogi, the countryside bazaars of Kibaki, the calls to action by the Young Turks (opposition lawyers like Muite and Gitobu Imanyara), the paraphernalia of publicity, exhortations by the recklessly brave Raila Odinga, woman-to-man persuasions of Charity Ngilu for a new political dispensation (matriarchy,

and *masaa ni ya* Ngilu through SDP), appeals to the spirit of uhuru and political plans from the pulpit had been split by the sword of ethnicity, at the very heart of politics in our country. To instruct public opinion, to keep activism almost level with events, and to make Kenyan masses 'marinated' enough to make big reformist moves at general elections, government and anti-government narrative has to be made both simple and interesting, placed in black-and-white, posed as '*Good vs Bad*', like in the movies.

In 2002, it came down to the brilliant campaigns and colorful coalition of NARC versus the same old, same ole of a party that had been in power for 40 years. The masses were 'activated' enough, in those nine magical months, to ride the rainbow in euphoric fashion, sure that at its end arch was the proverbial pot of gold that would solve all of Kenya's political and economic problems, and reform the country from its culture of corruption, now that the 40-year-old, 'dragon' had been slain at the polls.

3. DIGITAL AND JUDICIAL ACTIVISM

Shortly after the furiously disputed 2007 General Elections that pitted incumbent president Mwai Kibaki vs. perennial challenger Raila Odinga (now widely believed to have won *that* 2007 election), the PEV that took 1, 133 Kenyan lives broke out across the country. It was also around this time that the internet 'broke out' as a political space among Kenyans, mostly middleclass ones with the Net or access to cyber cafes, and with no shortages of *opis* or outrage about the slaughter, which they typed about from the comfort of

their couches or sofas – thus creating ‘Digital Activism’ in the process.

Some of it was cynical, like Mutahi Nguny’s blatantly tribal theories of ‘Tyranny & Numbers,’ some of it was outright dangerous, like the blogging of journalist Bogonko Bosire with his *‘Jackal News’* site which went after what he saw as the chief perpetrators of the 2008 P.E.V. and paid for it with his life as many of us who knew him believe after he disappeared without a trace.

Other individuals like photographer Bonnie Mwangi were not content with just ‘documenting’ ongoing political events, and being what is derogatorily referred to as ‘keyboard warriors’; they went to the Nyayo stadium on national days to disrupt the president’s speech, they took to the street with the bloodied cadavers of swine (after we’d coined the term ‘M-Pig’ in national articles) to protest our ‘parliament of pigs’ in regard to the unbridled greed of the members of the August House. Other bloggers like Alai & Nyakundi often landed in police cells for making all sorts of allegations, true and false, against the authorities, but always speaking citizens’ concerns to *‘the Man’*.

Political activist heroines like Wanjeri Nderu-Musembi converted consumer spaces on Facebook like their *‘Buyer Beware’* to a place where even politicians were exposed, like the ‘Buyer Beware’ campaign against former Nairobi Governor Mike Mbuvi Sonko, whom they referred to as *‘Omupablo’* a reference to the late notorious drug lord Pablo

Escobar of the Medellin Cartel. And then, of course, there are the millions of Kenyans on twitter (*Team #KOT*) who on any given day, exchange ‘activist’ tweets on the state of politics and the Body Politic in Kenya.

If one was still in any doubt of the power of activism on social media in the third decade of the 21st century, one only has to look across the Atlantic at the United States of America. “Conservative” activist ex-president Donald Trump has been forever banned from Twitter (and at least up to January, 2023, by Facebook, when they will review his ban) for his ‘activism’ on social media that provided the communication dynamite that incited rampaging mobs to attack the capital in Washington, DC, in an attempt at an American ‘activist insurrection on Jan Six.

Judicial Activism

On the afternoon of Thursday, May 13, 2021, the same #KOT was in jubilant mood and ‘activist’ mode as the Judiciary (High Court) ruled against the B.B.I - the *Building Bridges Initiative* that has been the ‘baby’ of the Executive since 2018, and that was designed to alter the 2010 *Katiba* to make new adaptations of power in Kenya. From State House to Capitol Hill (where Raila Odinga operates from) there was shock and silence in the face of this judicial activism hammer blow that, with five falls of the gavel, halted ‘reggae’ in its tracks – and derailed the agenda of the lame duck fourth president of Kenya. Ours here isn’t to debate the merits and demerits of the decision, but the derring-do of the judges in rendering this SLAP-IN-THE FACE to an Executive that

has, in the last 4 years, saddled and ridden both legislative chambers roughshod, like two humbled horses strapped to an hansom, as the population stares from the sidewalk in silence, with no more strength to walk the talk that it does on Twitter with its typing fingers.

The BBI decision was the latest blow-back from a Judiciary that has been at war with the Executive since it first ruled against president Kenyatta's election in 2017 - a decision that the executive (in the person of president Uhuru) ominously vowed to 'revisit' at Burma market. And has done so by ignoring court orders, refusing to appoint judges forwarded from the Judicial Service Commission (JSC) and slashing the operational budget of this Third Arm of Government almost in half, thus making justice delivery in Kenya that much less efficient. Former Chief Justice David Maraga became an open activist against the Executive early on. "It is a mockery for the president and his government to demand citizens obey laws when the disobey it themselves," he said. "This disregard of Court Orders by the Executive is part of the pattern by an Executive that is out to undermine the Kenyan Judiciary."

LSK (Law Society of Kenya) president Nelson Havi described the 321-page judgment as an indictment of president Kenyatta, saying that the breach of the Constitution was a serious issue that he can be personally held accountable for. According to Havi there is no decision of the High Court that is as clear on presidential misconduct. "On the judges' appointment, they said he breached the constitution. If it

were Israel or India, he'd have resigned. You realized they referred to him as 'Mr. Kenyatta,' which means they have stripped him of the stature of a president. Unfortunately, parliament has been emasculated by the Executive and will (therefore) not impeach him, but it goes a long way to dent his image as a leader..."

A few weeks later, former Chief Justice Willy Mutunga went after the executive quite cuttingly: 'The scientific formulation in the provision of the constitution on the appointment of judges was intended precisely to be an antidote to this kind of whimsical and capricious presidential conduct such as is being seen in ugly display in this matter. State offices are not the personal property of any individual office, and all Kenyans have a right to seek to serve in the manner prescribed by law. No individual or authority can arbitrarily renounce, withdraw or abrogate this right. Most disturbing is the president's decision to omit the names of judges and judicial officers from the list. Strikingly, the presidential 'LIST of HATE' Law has even mysteriously changed, meaning that the objection to the judges' nomination is driven more by *personal pique* (the italics are mine) rather than principle.' This is not the way to conduct serious business of State.'

Before the 2010 constitution that also granted judges Security of Tenure, and the JSC powers of appointment, courts were often so anxious not to offend the executive that they entangled themselves in their own procedures, fictions and inhibitions, to accommodate the rusty curb of old father Almighty, the president. They lovingly worshipped

at the shrine of parliamentary sovereignty, even as they obsequiously licked the boots of the Executive. But now our Judiciary reasons like the Enlightened jurists of the seventeenth and eighteenth centuries, who while asserting the sovereignty of His Majesty, strongly maintain(ed) that in the event of 'The King' wishing to issue bad edicts... the Sovereign Courts owe it to their reputation to offer to this prince grave remonstrations, and to try in every sort of way to turn from this course. "By stopping reggae," judicial activism is trying to change an unconstitutional river course.

4. BODY POLITIC OF KENYA

When it comes down to the Body Politic of elections in Kenya, it is an unfortunate truth that they are contested not on the split lines of ideas, or the fracture of ideology, at both individual or party level; but rather on the 'rivalry narrative' or outright 'ethnic balkanization' as we shall shortly demonstrate, when we pull the quartet of slimy, lime-green frogs of the elections of 1966, 1983, 1997 and 2007, out of the murky ponds of ghosts of General Elections gone by, in our past.

Without the luxury of space, halfway as we are through our discourse, let the hands of our metaphorical time-piece whirr us all the way back...to the Little General Elections' of 1966. At what came to be known as the Limuru conference in the March of 1966, then country V.P and KANU deputy leader Jaramogi Oginga Odinga's post as KANU V.P. was abolished in a highly manipulated process, the last 'Julius Caesar' stab act in a process that had seen his supporters

(like freedom-fighter Bildad Kaggia) stripped of position both within Government and parliament.

Jaramogi then retreated to his new political outfit, the Kenya Peoples' Union (**KPU**) just in time for what came to be known as the Little General Election of 1966. KPU tried to frame the difference between itself and the ruling party KANU as a mere ideological conflict between its 'African socialism' versus KANU's harsh capitalism model, but the government used State machinery to both harass and malign the KPU, up and down the country, in the campaigns. It was tarred as a divisive, unpatriotic, foreign-financed and misguided, subversive and tribalistic political outfit, and when only nine KPU MPs survived the purge at the polls - two from Luhyaland and seven from Luo constituencies-the ruling party gleefully jumped on the fact to brand it a mostly 'Luo affair,' as opposed to a legitimate national opposition institution.

After October 1969, the infamous incident where Jomo Kenyatta's motorcade was stoned, following the assassination and burial of Tom Mboya, the man whom the world will never forget, but who was also the *Man Who Helped Bury the Luo* politically (as the brains behind Odinga's downfall in Mboya's own supremacy vendetta), the State went on an all-out mission to balkanize Luo Nyanza as the hotbed of 'radicalism' in the country. In practical terms, and for a period that lasted over half a century (until the famous 'handshake' between 'dynasty' scions president Uhuru and opposition leader Raila Odinga in early 2018), there was

little-to-none deliberate development in Luo Nyanza by successive regimes.

Roads were not constructed, hospitals were not built, schools were allowed to fall apart, and a nasty narrative about Luos as mere 'rioters and stone throwers' was left to foster in the national psyche, especially in Central Province where this shameful and deliberate ethnic narrative degenerated down to the level of discussion of genitalia as a quality of leadership. Only on this *Madaraka Day* of June 1st, 2021, did we see president Uhuru in Kisumu to inspect the last line of the Kenya Shillings (Kshs). 3.8 billion Nakuru-Kisumu meter Gauge Railway, with Gov. Nyong'o in tow, the refurbishment of the Kisumu port 40 years after the collapse of the *East African Community*, the Kshs 600 million *Uhuru Business Park*, the Jomo Kenyatta Intl. stadium for Kshs 415 million (alongside the Jaramogi Oginga Odinga sports complex), the inland container depot at Kibos, Olkaria-Lessos- Kisumu electricity project and Kshs. 470 million *Railways Marine* school, whether real, or more elephant projects, meant to literally cement his name in Kisumu.

Then, of course, there's the 'little' matter of his having fallen out with his Kalenjin deputy, D.P William S. Ruto, who has numbers both in his tribal highlands as well as many urban masses behind him, and whom Uhuru seeks to lock out of the Presidency. So that the once maligned ethnic base of Odinga is required to be quiet and support the 'Big Four Agenda.' As the saying goes, one cannot make noise when their mouth is full and *the teeth are chewing!*

1983

Following the attempted coup of 1982, by the time elections rolled around in 1983, the rivalry narrative that permeates our elections had grown its umbra and umbrage far beyond the 'there cannot be two bulls in one kraal' warning to Jaramogi by President Jomo in early 1966, or the literal "*we shall brook no opposition*" rhetoric of de jure single party State, amalgamated under KANU, living by the "peace, love and unity" *Nyayo* sloganeering. Using the failed coup attempt of August 1st, 1982, as a Thorian hammer, President Daniel Toroitich Arap Moi used the general elections of 1983 as a contest to purge the system of Kikuyu power brokers, shatter his powerful Minister of Justice & Constitutional Affairs, the erudite Charles Njonjo's power base, and politically scatter their supporters to the four winds. But quite a number of educated and outspoken politicians were returned to parliament. Charles Rubia, Arthur Magugu and especially Kenneth Matiba - men prepared to defend Kikuyu interests to their last coin, and not the malleable '*Moi-polloi*' MPs that this president would have preferred at that time of transition. Nevertheless, after the coup attempt, the political climate following the crackdowns was one of FEAR, as people went to prison, and a handful swung from the gallows of Kamiti prison for treason.

Then after Charles Njonjo was named, shamed and disgraced in the circus of the "Traitor Affair" in 1984, and forced out permanently into the Siberia, where political activity chills in the permafrost, the culture of paranoia took over Kenya's political terrain, tundra and *terra firma*.

Political strife across the districts become focused on control of the local party branch (KANU), which provided people with an institutional base from which to challenge sitting MPs. In parliament, in this culture of political paranoia, legislators traded 'traitor' allegations and counter-charges, in a desperado bid to survive/outlive rivals, with little regard as to how their actions were undermining democracy in the country. A political party in that decade, while posing as a symbol of unity, became the behemoth of the Balkanization of the nation. "You were either for us," a senior KANU figure who does not wish to be named tells us, "or we would cut off your balls!" Some claim this happened literally in the Nyayo house 'torture' chambers; but more often being cut off from loans, or cut off from KANU membership, was enough to castrate any and all would be dissenters, and make them terrified of not towing the party line.

Needless to say, the chilling effect on both 'Freedom of Expression' and the freedom of association in the county were immediate, with citizen dissidents, especially after 1955 being arrested, detained, fined and/or jailed on charges of sedition (for having 'illegal' magazines) or associating with prohibited underground political movements like *Mwakenya*. This political culture of repression is what directly led to the rigged general elections of 1988 (*Mlolongo* system) and the Activism that we've discussed in the previous section, and the reforms that followed, including the repeal of section 2(A) of the Constitution. That preceded the 1992 general elections that made Kenya, finally, a true multi-party democracy. This 10-year cycle of political culture of Oppression, activism to

open it up, and reforms to pave the way to what we now call Kenya's 'Second Liberation' has been played and re-played across our nation's sixty-year history- albeit often in less stark and demarcated lines than 1983-1992.

It also led to the finally undeniable fact of how much of our political culture was not just brewed, but at the bottom of the beaker, based on ethnicity – or what Kenyans simply refer to as TRIBES.

The 1997 TRIBAL ELECTION

The *Oxford Complete Word Finder* dictionary defines '**tribe**', *noun*, in the following manner: *a group of especially primitive families or communities, linked by social, economic, religious or blood-ties, usually having a common culture and dialect, and recognized leader. 2, any similar natural or political division.* These definitions ring crystal clear true in Kenya. And the culture of 'Tribalism' in our political culture, as defined by the above definition, was never as clear as in the **1997 General Elections**, that clearly demonstrated, once the results were out, that in our newish multi-party democracy, the culture was that of "the tyranny of tribal numbers," to quote that political gadfly, Mutahi Ngunyi.

In that election, the overall winner president Daniel Arap Moi won 70% of the Rift valley vote, the first runners' up, Mwai Kibaki won an astounding 90% of the Kikuyu vote in Central province; Raila Amolo Odinga, bronze medalist in the presidential stakes, took 86.7% of the Luo vote. Charity

Kaluki Ngilu, who romped home fifth, had seventy percent of Kamba vote in her handbag. Only Kijana Wamalwa, with just 50% of his native Luhya vote, showed a substantial weakness in otherwise air-tight tribal votes for the tribal 'chiefs' of communities.

So that our politics in Kenya are the politics of identity rather ideas, which leads to the main political problem that has dogged Kenya for decades –the *political culture of Tribalism*. As we saw earlier, the first Kenyan MPs and appointed ministers were regarded as beings elected to take home 'goodies' to their constituents and '*maendeleo*' (big development) to their tribal areas – not to think in holistic or universal ways in matters of progress. Having been a pan-Africanist in the 1940s, a chameleon-like ideological detainee in the 50s and a nationalist in the 1960s, after 1969, we can say Jomo Kenyatta, increasingly cocooned in Gatundu, became a tribal jingoist in the 1970s. His follower, president Moi, liked or had to play the tribal 'Divide and Rule' card (first perfected by the colonialists) as a way of political survival in the 1997 elections. He got 2.5 million (or 40% of the vote) as compared to Kibaki's 30%.

Even as they spoke fables of a 'United Kenya' on the beige of the political table, every one of them was shuffling tribal cards, and dealing them ruthlessly from underneath the green of the gambling table. But this culture of political ethnicity was to give way, ten years later, to an **ethnic balkanization + rivalry narrative** that was to blow wide open the Pandora's Box of tribal tensions that political

Cassandras had long warned about since the 1992 Molo 'clashes' – and the Chimeras of what happens when *Katiba* required transitions don't happen emerge from *in camera*. The monkey may have gone after the banana, but now if had a machine-gun in its hands.

2007-Post Election Violence

Saturday, January 12, 2008

The Orange Democratic Movement (**ODM**) calls for mass protests against the 'government.' The police commissioner, a retired army general called Brigadier Ali vows to 'crush all rallies...' It will be the opening statement of the file that eventually gets him into very hot political soup. His name will go into the infamous "Waki" envelope of folks suspected of plotting the PEV (and then into *bahasha ya Ocampo*) as one of those most culpable in this ongoing PEV, for 'ordering the executions of protesters and slum residents in Kibera by the police on Jan 12, 2008.' The sixty-day orgy of violence and displacements that left 1, 133 Kenyans dead, and over half a million as IDPs (internally displaced persons) in their own country in the January and February of 2008 is what *wananchi* have singularly come to refer to as **PEV** (Post Election Violence). Electoral behavior is remarkably uniform in different democracies in the world. The Individual voter is used, wooed, bamboozled, cajoled, brow-beaten, flattered and bribed by the various political parties, and the politician who persuades the most voters usually wins. In a multi-party democracy, the large minority which votes for the winning party cannot be *identified* with the electorate to the detriment of the defeated only slightly smaller minority.

But in the 2007 campaigns, ethnic balkanization in Kenya had reached such a crescendo that a party like the ODM could openly campaign on the narrative of “41 versus One” tribe, the targeted group being the Agikuyu, the ethnic community and base of then incumbent -president Mwai Kibaki, creating a strong ‘siege’ mentality among members of the community. When, regardless of the actual numbers, Kibaki ‘won’ the election and was sworn in at dusk at State House in the dying last light of 2007, the ‘Rivalry narrative,’ brewed in the political culture of ‘Tribal leaders’ that had first been demonstrated in the 1997 General elections (as we’ve seen) reached its deadly crescendo; and the poisonous cauldron of negative ethnicity finally bubbled over into actual bloodshed on the ground.

The culmination of that dark drama would eventually see a sitting president (Uhuru) and his deputy (William Ruto) as co-defendants at the *International Criminal Court* (ICC) sitting at The Hague, a spectacle unprecedented anywhere else on Earth. Ironically, it would be this political culture of ethnicity and voter identifying with the tribal leader that would see former warring Kalenjin and Kikuyu tribes join hands to help the communities ‘reconcile’ by electing the I.C.C bound dynamic duo of UhuRuto in the year 2013. Thus, not just proving the common adage that in political “there are no permanent enemies or friends” (as Dr. Ruto would find out 5 years later in regard to the former) but also that in Kenya’s political culture, tribal alliances are equally in flux every five years in this nation.

Constitutional /Character and Civic culture of Reforms in Kenya

Referenda in Kenya have more often been a barrier rather than a passport to radical political; reforms. In the year 2002, the NARC alliance of opposition political parties rode roughshod over KANU and swept to power, partially on the promise that it would complete the Constitution-making process in its first 100 days – a key premise for ‘king maker’ Raila Odinga, who was to be premier as per a secret MOU (*Memorandum of Understanding*) that the parties signed. Once safely perched in power, the Mwai Kibaki side of the Rainbow Alliance remembered that “no person can be appointed prime minister, as that position doesn’t exist in the Constitution.” Eventually, that Kibaki side of the coalition held a national constitutional conference at the *Bomas of Kenya*, ignored the devolution and government structure proposed there - and came up with its own *Proposed Constitution of Kenya, 2005*, popularly called ‘Wako Draft’ as it was cooked up at the offices of then Attorney General, Amos Wako.

Furious at the *Wako Draft* (that proposed a strong Executive and centrally run-government), the **LDP** (Liberal Democratic Party) wing of Odinga campaigned against the Wako Draft of the *Katiba* that the NAK (*National Alliance of Kenya*) side of government brought to the public in the year 2005, by way of ratification by referendum, and which Odinga vowed would be swept away by a ‘tsunami of wananchi’ (the Asian Tsunami having been in the December of 2004).

Once the Wako Draft was decisively defeated at the polls, after what lawyer Mkangi Bobby calls an 'al fresco fist fight for the soul of Kenya', President Mwai Kibaki had no choice but to disentangle his Banana government from the coalition cart in which it sat with Odinga's oranges.

It would take the Election of 2007, and its vile and violent aftermath, to organically create the *National Accord and Reconciliation Act of 2008*, tasked through its Agenda 4 discourse to finalize and create a way in which to deliver a new constitution for Kenya, that contained the reforms (like devolved structure of government) from the original *Bomas of Kenya* draft document. Moi came to power in Kenya as the leader of a coalition (within KANU) that was openly opposed to the continued dominance of the Kenyatta family and a coterie of Kiambu 'Mafioso.' During his first honeymoon year in office in 1979, the new president released political prisoners like Martin Shikuku and Jean Seroney, and artist detainees like Ngugi wa Thiongo.

A season of reform seemed to have been born, as Kenyans were praised by the likes of U.S President Carter as the first black African state to peacefully transfer power, constitutionally, from one President to another, yet African states got independence decades earlier, beginning with the Maroc in 1956, which just tells one how democratically unevolved the continent was. But with the 1979 General election, President Moi, who had refrained thus far from undertaking a major cabinet reshuffle when he was first sworn in, in 1978, showed that his democratic reforms were qualified, and not universal, in form or quantity.

Rigged results in the Rift Valley ensured that his perceived rivals like said Seroney, ex-minister Masinde Muliro, and Taita Towett went out, and were replaced by loyal henchmen like Jonathan Arap Ngeno, G.G. Kariuki, and the man who would become shadow king, Nicholas Biwott. So serious was this Rift rigging that the supervisor of Elections, Mr. Norman Montgomery, resigned. He would be the first and last such reform-minded election head in Kenya to do so, with the 2007 chair Samuel Kivuitu shouting at the press at the very height of the PEV in Kenya: *'Why should I resign? I've done nothing wrong! In-fact, I do not know who won these elections.'*

5. CONCLUSION

Constitution 2010 - 'REFORM KATIBA'?

According to constitutional lawyer Bobby Mkangi, one of the men who worked on the 2010 *Katiba*, "getting a new constitution in place was a valuable face-saving device after the 2008 PEV; it was a hero mantle-piece item for P.M. Raila Odinga (who hoped to run on *that* jewel of reform), as well as a heritage artifact for president Kibaki, now thinking about his historical legacy."

In spite of the incessant bickering that characterised their GNU (*Government of National Unity*) administration, it 'converged their personal ambitions', according to Mkangi 'and kept their eyes on the prize long enough for the two to be able to promulgate a new reform-minded *Katiba*' (on Aug 27, 2010). In this Constitution, power belonged to the people. It provided for a multi-party democracy republic, Separation of Powers, devolved government, an expanded

hence comprehensive Bill of Rights, an Independent Judiciary, independent commissions, and so on, all geared to giving space for Wanjiku to have power under 'the people of Kenya being sovereign.'

Eleven years down the line, though, what we have from that reform-minded and article-guided 2010 *Katiba* is what Prof. Okoth Ogendo termed as a "Constitution *without constitutionalism*." Actors, like the Executive, who purport to be enacting a play, but refuse to follow the script. Bobby Mkangi also expresses great disappointment that almost sixty years after our *uhuru*, Kenyans cannot imagine beyond what the colonialists thought and formed for us – Ethno-regional political organizational and methods of mobilization along those lines. "Are we saying that we cannot forge imaginations, narratives and objectives, loosely put, *ideologies!* that can make us climb out of and unite in addition to or beyond our sub-national identities?"

He compares the *Building Bridges Initiative (BBI)* to the old Kiswahili cartoon character Kazi Bure, who at once prided himself as being '*mshambulizi matata wa AFC leopards, lakini vile vile defender matata asiyepitika wa Gor Mahia*,'; in the sense that BBI has built a bridge ostensibly between the long-battling Luo and Kikuyu communities, as Uhuru rights the sins of his Father-while burning down the constitutional bridge built eleven years ago through the vaunted reforms of the 2010 *Katiba*, which has led the Executive into judicial headwinds. "I think if we examine ourselves" Mkangi says, "we have not, to use the Karl Popper's term, 'falsified' the current dispensation in order to arrive at an objective deduction

that it (the *Constitution*) has reached creative incompetence, hence the need for new words & phraseology.'

In my book '*Political Party after Political Party*,' I concluded on a pessimistic note thus: "By the June of 2021, the country is likely to be on its third fully fledged *Katiba*, and will lead most *wananchi* to believe that we live in some sort of Tocqueville dystopia when it comes to our constitution; for *Katibas* are not like diapers or innerwear to be changed regularly, even when one had made a bit of a mess in them ...'

In the same chapter, I also bemoaned the fact that that the Supreme Court is supposed to "act as a bulwark of freedom against executive or parliamentary encroachment, but even that Maignot Line seems to have been bypassed by the political leaders with their BBI panzers (with others like Baba – Raila Odinga- having long proclaimed that 'nobody can stop reggae' in reference to this process)."

Well, it is June, 2021, and the glass still seems to be half-full, with the **High Court of Kenya** as the most liberal and reform-minded bench in that branch of government, standing as the Stalingrad as against the 'unstoppable' *Wehrmacht* of the BBI, at least as of the time of writing.

Whatever happened next, in this political battle to hold the 2010 *Katiba* frontiers so hard fought for, with all their reforms, only time told; and you, the reader, are now living in that 'political culture.' If it is an 'Unconstitutional' moment, the activist 'marines', as always, are on the way.

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