

DONOR CONDITIONALITIES AND DEMOCRATISATION IN KENYA, 1991-1997.

A thesis submitted in fulfilment of the requirements for the degree of

MASTER OF ARTS

of

RHODES UNIVERSITY

by

IRENE MURIUKI

MARCH 2000

Donor Conditionalities and Democratisation in Kenya, 1991-1997

Abstract

The end of the Cold War and the collapse of the Soviet Union has encouraged democratisation in most parts of Africa. At the same time, Western donors' attitudes towards recipients of foreign aid have changed. This has resulted in a new practice, which attempts to force Third World states to move toward liberal democracy by conditioning lending on the holding of multi-party elections. In Africa this has resulted to the holding of multi-party elections. This study attempts to examine donor conditionalities and democratisation in Kenya by examining the results of 1992 and 1997 multi-party elections. Kenya attained independence from the British and ushered in a multi-party democracy in 1963. Since then, the country has undergone a full circle of political development, starting with a multi-party democracy at independence, through a one party dictatorship between 1982 and 1992 and back to a multi-party democracy in 1993. The need to satisfy foreign donors forced the leadership to amend Section 2(A) of Kenya's constitution that had legalised single-party rule in 1982 thus allowing plural politics. The externally pressured transition to multi-party democracy though has resulted in increased corruption, state-sponsored ethnic violence, continued political authoritarianism and disastrous economic mismanagement of what was once considered a model for the continent. This study urges that Western donors should focus less on elections and more on the fostering of democratic institutions through breaking patterns of neo-patrimonial rule that have informed and continue to inform politics in Kenya. Political reforms have been resisted by the incumbency in the fear that they may curtail the power of the political leadership whose main objective has been to cling to power.

Acknowledgments

I should like to take this opportunity to thank all those who gave me invaluable assistance in the writing of this thesis. My grateful thanks must go to Dr. Rok Ajulu whom I was fortunate to have as my supervisor. Whilst encouraging me to pursue my own ideas, he has been a constant source of incisive and stimulating criticism. In overseeing the progress of this study, he displayed unwavering patience. I am most indebted.

I wish to thank Cecilia of Cory Library, Rhodes University for sparing time to proofread the final draft of this thesis.

I also wish to thank the Department of Political Studies, Rhodes University for the financial support accorded to me in the course of my study. The support went along way in assisting me during the researching and writing of the thesis.

My friends too numerous to mention have created conditions necessary for me to pursue this study. Many of them showed me the direction and took interest in my work. I sincerely thank you all for your encouragement during difficult and discouraging stages of the thesis writing process.

There is one more debt of a less tangible kind which I wish to put on record, and that is to my mother and father. Since the beginning they have given me moral, material and financial support and helped me in many other innumerable ways that I shall forever be grateful for their sacrifices. They with my brothers and sisters have helped boost my morale. This work is dedicated to them.

Table of Contents

Introduction		1
Chapter One:	The Origins of Good Governance and Political Conditionality	4
Chapter Two:	Political Conditionality and the Transition Process in Kenya	20
Chapter Three:	The 1992 and 1997 Multi-Party Elections	44
Chapter Four:	Assessment of the Democratisation Process in Kenya	72
Chapter Five:	Summary and Conclusion	94
References		

List of Tables

- 1.0 *Presidential Vote by province*
- 1.2 *Party parliamentary elections contested and uncontested seats*
- 1.3 *Presidential results (1997 elections)*
- 1.4 *Party's parliamentary strength (elected Members of Parliament only)*
- 1.5 *Party strength in relation to added parliamentary constituencies*

List of Abbreviations

KANU	Kenya African National Union
LEGCO	Legislative Council
KADU	Kenya African Democratic Union
KPU	Kenya People's Union
NEMU	National Election Monitoring Unit
KASA	Kenya African Socialist Association
SRC	Saitoti Review Committee
FORD	Forum for Restoration of Democracy
USAID	United States Agency for International Development
NDI	National Democratic Institute
IIA	Institute of International Affairs
IR	International Republican
NCKK	National Council of Churches of Kenya
IMF	International Monetary Fund
GDP	Gross Domestic Product
UN	United Nations
EU	European Union
DP	Democratic Party of Kenya
KENDA	Kenya National Democratic Alliance
KNC	Kenya National Congress
KSC	Kenya Social Congress
PICK	Party for the Independent Candidates of Kenya
GAP	Green African Party

GP	Green Party
IPK	Islamic Party of Kenya
KNPDP	Kenya National People's Democratic Party
KPP	Kenya People's Party
DEMO	Democratic Movement
KBC	Kenya Broadcasting Corporation
KTN	Kenya Television Network
NSSF	National Social Security Fund
NCEC	National Convention Executive Council
GSU	General Service Unit
IPPG	Inter-Party Parliamentary Group
LPK	Liberal Party of Kenya
NDP	National Democratic Party
DDDG	Donor Democracy Development Group
CJPC	Catholic Justice and Peace Commission
IED	Institute of Education in Democracy
UPPK	United People's Party of Kenya
SPK	Shirikisho Party of Kenya
FPK	Federal Party of Kenya
EIP	Economic Independent Party
RRP	Republican Reformed Party
NTP	National Treaty Party
MP	Member of Parliament

INTRODUCTION

This study attempts to investigate the extent to which political conditionalities have fostered a meaningful transition to democracy in Kenya. The 'winds of change' blowing across Africa since 1990 have brought with them breathtaking political changes. The political liberalisation that has occurred in several African countries has been a product of combined internal and external pressures for change. External pressure, mainly by Western donors, has taken the form of tying aid to political and administrative change, dubbed as political conditionality. Donors are of the view that conditioned aid will promote democracy, human rights and administrative accountability in recipient countries. This thesis therefore is an attempt to assess the extent to which these views hold true in the case of Kenya. The study will specifically examine the progress of the introduction of multi-party politics as a condition for foreign aid in Kenya.

The end of the Cold War and the collapse of the Soviet Union reduced the West's interest in propping up corrupt, brutal and dictatorial regimes. Instead, Western donors began to raise the requirements for governments worthy of their development assistance. A central focus of this effort has been donor pressure on authoritarian regimes to hold multi-party elections, thereby becoming 'democratic'. Studies on democratisation in Africa have caught the attention of scholars, policy makers and political scientists ever since Africa joined what Samuel Huntington (1991) aptly described as the 'third wave of democratisation'. This thesis therefore grapples with a field of study that has raised rigorous academic inquiry. However, not much attention has been devoted to whether or not political conditionalities being imposed by Western donors have brought about meaningful transitions to democracy. In this area of neglect, the contribution of this thesis is to examine the extent to which political conditionalities have bolstered a substantive transition to democracy in Kenya.

It could be argued that Kenya presents a relevant and interesting case to be examined on two counts. Firstly, it is one of the glaring examples in the African continent where political conditionalities have been applied to end single party rule. It therefore provides an appropriate case for us to examine the extent to which political conditionalities have facilitated change

towards a democratic system. Secondly, for the very first time in the approximately 35 years of its independence, the country held competitive elections in 1992 and 1997. The study argues that the need to satisfy foreign donors led the authoritarian regime under President Moi to open up its political system. The most tangible effect that this change initiated was the re-legalisation of political parties, which had been illegalised in 1982 following a constitutional amendment. These were perhaps the most influential events in Kenya's experiment with democracy in the 1990s.

In essence, the study proposes to demonstrate that whilst political conditionalities are essential in enforcing and promoting democracy, especially if a regime is resistant, there is a strong possibility of them harming rather than encouraging substantive democratisation. This is because political conditionalities have been implemented in the context of Africa's neo-patrimonial political systems. In addition, because of the predictable reaction of neo-patrimonial regimes to desperately cling to power, successful attempts have been made by the incumbency in Kenya to manipulate political reforms and remain in power despite the return to multi-partyism. The introduction of multi-party democracy has also been accompanied by large-scale, state-sponsored, ethnic violence, corruption and continued harassment of the opposition. Furthermore, Kenya's economy has been left teetering on the brink of collapse due to the problems of economic mismanagement, rampant corruption and suspended aid. It is against this background that this study proposes to investigate the impact of donor conditionalities on Kenya's democratisation process.

The study stresses that in promoting democratic change in recipient countries, donors ought to realise that political accountability will require not just an initial multi-party election or change of government, but fundamental reform of a country's political institutions to transform an authoritarian regime into a democratic one. Changing a government, and the individuals who hold power at a given time, could be much easier to accomplish and reverse than changing a regime, including rules and institutions governing political life. The study submits that the latter is essential as elections alone have not altered the underlying pattern of neo-patrimonial rule in Africa.

Structure of the Thesis

This study is divided into five chapters.

Chapter One will trace the origins of good governance and political conditionalities. These have emerged in the 1990s as explicit instruments used by donors to advance democracy in recipient countries. It would therefore be inappropriate to enter into a discussion on the extent to which they have promoted democracy in Kenya without attempting to trace their origins.

Chapter Two will look at the rise, decline and rise of multi-partyism. This is in line with setting the stage for the discussion on donor conditionalities and democratisation in Kenya. The chapter thus provides a background to the political developments that eventually led to donor intervention in Kenya's political system.

Chapter Three will focus attention on the 1992 and 1997 multi-party elections. A study of these two elections will hopefully provide a basis for an assessment of the extent to which the transition process, as well as the elections, can be said to have facilitated a change towards a democratic system.

Chapter Four will form the basis of the assessment of the 1992 and 1997 elections. It will attempt to examine the extent to which these elections complied with the democratic principles of free and fair elections. In line with this, the chapter will discuss the extent to which democracy has been deepened and strengthened by such institutions as the Electoral Commission, the Constitution, election monitoring bodies and the voting system.

In Chapter Five, a summary of the main arguments as contained in the thesis will be presented as well as the lessons learnt from Kenya's externally pressured democratisation. From here, the study will conclude its findings.

CHAPTER ONE

THE ORIGINS OF GOOD GOVERNANCE AND POLITICAL CONDITIONALITY

Introduction

This chapter examines the origins of good governance and political conditionality, based on the understanding that they are policies or lending guidelines underlying donor practices in recipient countries. Donors are using aid to impose political conditions aimed at furthering democratic and government reforms or to punish non-compliance with these guidelines. Political conditionality thus mainly refers to the tying of aid to the promotion of political and administrative reforms. Good governance on the other hand involves the promotion of reforms in line with sound management of public institutions. It has focused attention on such tenets as accountability, participation, transparency and predictability or the rule of law. Discussions on good governance have also tended to emphasise the impact of these variables upon economic performance in recipient countries.

The main task of the chapter therefore is to trace developments that may have influenced donors to intervene in recipient countries through the use of conditioned aid. It is divided into three main parts. The first part will attempt to make a distinction between political conditionality and economic conditionality. This follows from the understanding that economic conditionality or what some scholars have dubbed 'first generation conditionality' (Stokke, 1995) preceded political conditionality or 'second generation conditionality'. The second part traces their origins. Section Three is mainly concerned with the characteristics and objectives of good governance and political conditionality as a new lending criteria laid down by donors to recipient countries.

The study observes that much of the current discourse on governance and political conditionality takes place outside of a historical or theoretical context (Brautigam, 1992:3). This chapter therefore will locate the issues on governance and political conditionality within recent political

science debates, donor discussions and international financial institutions publications mainly those of the World Bank.

Economic and Political Conditionality

Economic conditionality was mainly related to structural adjustment programmes which are stabilisation packages initiated and driven by the International Monetary Fund (IMF) and the World Bank to rehabilitate the economies of recipient countries. Primarily these institutions adopted measures that were geared towards free trade. Consequently they imposed conditions such as currency devaluations, liberalisation of trade, removal of government subsidies on consumer goods and privatisation of state enterprises. Aid or support to recipient countries increasingly became conditional on the implementation of these economic reforms.

Political conditionality as opposed to economic conditionality is linked to the adoption of political reforms. It involves the tying of official aid disbursements to the quality of government that recipients provide. Primarily it is aimed at promoting political reforms such as democracy and human rights, mainly the rights to free expression, free association, and popular participation. It has tended to be centred around principles of liberal democracy, largely promoted by the West. The main distinction therefore that can be drawn between the two is that whilst 'economic conditionality' which preceded 'political conditionality' aimed at reforming the economy of a given recipient country, 'political conditionality' aims at reforming the political system of the recipient country.

Origins of Economic Conditionality

As already stated, economic conditionality focused attention on reforming the economies of recipient countries, particularly in sub-Saharan Africa. It emerged as a form of intervention by International Financial Institutions (IFIs) in the economies of recipient countries.

Economic conditionality may be seen as having emerged in the wake of a growing economic

crisis amongst many Third World countries, particularly in sub-Saharan Africa. A number of factors have been advanced as having contributed to the crisis. These have ranged from droughts, increases in the price of petroleum on which the economy of non-oil exporting countries had become dependent, the prolonged recession in industrial countries and the deteriorating terms of trade for raw materials (Stokke, 1995:7).

The available policy responses or safeguards addressed the crisis on a short term basis since these crises were unprecedented in the countries concerned. There was a shortage of policies that would address the long-term and future implications of the economic crisis. Subsequently the countries concerned continued to suffer balance of payments deficits and heavy external debts because the debt servicing problem was compounded by rising interest rates. These problems were further exacerbated by continued deterioration in the terms of trade, production and market opportunities for raw materials that the Third World relied on as their only form of export. Previously the countries confronted by the economic crisis had turned to commercial lending institutions, which in the wake of the crisis declined to offer any further assistance. Thus a number of Third World countries trapped in the crisis became increasingly desperate for support. It was at this point that the IMF and World Bank intervened in the economic crisis in the Third World. Most of the countries suffering the economic crisis turned to these International Financial Institutions (IFIs) for help.

The IMF/World Bank approach to the crisis-ridden countries was highly prescriptive. That is to say that these countries had to observe certain conditions in order to qualify for support from the IMF/World Bank. In any case, the operating principles of these International Financial Institutions (IFIs) required them to set conditions for any form of support to recipient countries. Thus the IMF/World Bank explicitly tied their support to certain conditions. According to their analysis, the crisis of individual countries largely stemmed from excessive government spending resulting in 'large budget deficits and inflation, over-valued currencies, and disproportionate imports in relation to exports' (Fahy, 1984:241). IMF/ World Bank prescriptions were therefore geared to correcting these areas of neglect. Their intervention required countries in need of aid

to reform their domestic economic policies and embark on the implementation of structural adjustment programmes.

At this point IMF/World Bank discourse strongly targeted the economy of individual countries: their political systems were not an issue of concern and even if they were, it was minimal. This is important in the light of the later shift of emphasis that occurred with the adoption of political conditionality.

Origins of Political Conditionality and Good Governance

As demonstrated in the discussion on economic conditionality, the economic crisis in the Third World possibly triggered economic conditionality, which was largely an IMF/World Bank intervention. With regard to political conditionality, three interpretations possibly explain its origins.

The first interpretation is related to the disintegration of both the Soviet bloc and its principal power, the USSR. This disintegration implied that the bipolar international system which had dominated international relations and world politics since World War II was a thing of the past, and that the Cold War had come to an end. With respect to the Third World, what this further meant was that the competition between East and West for clients in these countries, had also been removed. Subsequently, the West was more relaxed and free to promote some of its political aims which it had had to shun as the exigencies of the Cold War had dictated. It was now possible to pursue values like democracy, rule of law and human rights, in addition to market-based economic principles. These replaced the security considerations that had predominated during the Cold War period. Donors mostly drawn from the West also felt compelled to aid only countries that were committed to the political values which they professed, now that they were in a position to advance their own independent policies.

The second interpretation stems from the experience of African countries, with IMF/World Bank imposed economic conditions which possibly triggered the adoption of the 'good governance

approach'. Structural adjustment programmes to rehabilitate the economies of African countries seemingly produced few results in terms of economic recovery, which they were originally aimed at promoting in the face of economic crisis. Eventually there was a growing recognition by the Bretton Woods institutions that the main cause of the crisis lay beyond the economic policies of recipient countries. The concerns of the Bretton Wood institutions were further reinforced by the release by the World Bank of its report '*From Crisis to Sustainable Growth*'. This report put into perspective a number of conditions that it deemed necessary, if meaningful economic recovery was going to be possible in sub-Saharan Africa.

Essentially the Bank put its weight behind 'democratisation and decentralisation of state enterprises'. As a result, states were advised to reduce their role in the economy and to allow it to be guided by market-based principles. Equally important, the report placed great emphasis on 'people's participation, explicitly acknowledging that the success of its structural adjustment programmes had been met with negligible success due to bad political management and poor leadership' in a number of Third World countries. This signaled a shift in terms of the way the Bank interpreted the impasse. Henceforth aid began to be made conditional on not only prescribed economic reforms, but also on political reforms. These prescriptions were encompassed in what eventually came to be known as 'good governance', referring to the desired means and system of government which were instrumental in guaranteeing sound economic development. The report gave wider currency to the word 'governance' defined as 'the exercise of political power to manage a nation's affairs' (Moore, 1993). It forced governments to take responsibility for issues affecting the general populace and remain accountable and more transparent in any government business. The same government was also to remain a custodian of the rule of law, the freedom of the press and human rights, seeking grassroot participation that would be effected by means of pluralistic structures. Good governance, therefore, for the Bank became synonymous with sound management of a particular country's public affairs, a policy which was later adopted by several donors.

Examining the Bank's conceptualisation of 'good governance', it can rightly be argued that its basic content lay in criticising the African state which Gibbon (1993:53) reckons as a 'degenerate and patrimonial institution' because it had failed to secure any meaningful economic development. Gibbon went on to argue that patrimonialism stemmed from 'the rapid expansion of the post-colonial state dynamics', which, according to him, were mainly based on 'nationalist claims, and lacked any internal constraints and regulation'. What this meant was that forces were absent to challenge the way in which the African state operated. This anomaly culminated in arbitrariness, non-accountability and lack of transparency, the very elements that came under concerted criticism from the World Bank and a number of other donors. The primary emphasis of the second interpretation therefore lay in criticising the 'state' and its leadership for having failed to play a meaningful role in the economic development of the crisis-ridden countries.

The third interpretation stems from the developments that took place in the Third World in the late 1980s and early 1990s. The socio-political and economic environment of most Third World countries provoked the populace to challenge the status quo. During the 1980s, internal pressures had been mounting in several countries primarily caused by the economic crisis and hardships that ensued from the failure of the IMF/World Bank prescriptions. In addition, a number of governments then operating under single party regimes came under pressure from domestic pro-democracy activists with some of them taking to the streets in protest against single party rule and its inherent limitations. The rise of the pro-democracy movements for change may also have been bolstered by the developments that were taking place in East and Central Europe. Hard-line single party regimes which had ruled for a considerable number of years suffered electoral defeat. Elsewhere political parties that had been declared illegal were legalised. These developments rekindled the hopes of rising pro-democracy and pro-multi party activists in Africa that democracy was underway. They also bore witness that single party rule was destined to crumble as had been the case in East and Central Europe.

Demands for change in the form of government by pro-democracy veterans were also echoed by a number of bilateral and multilateral donors to Third World countries. Good governance was

sought by the donors who stressed its importance if recipient countries were to continue benefiting from their aid. For the European Community, states were expected to adhere to 'sensible economic policies, democratic decision-making, adequate governmental and financial accountability, the creation of a market-friendly environment for development, measures to combat corruption, the rule of law, freedom of the press and of expression' (Archer, 1994:8). Similarly, Japan simply stated that its aid would be earmarked to countries that promoted 'human rights, democracy and market principles'. The European Bank for Reconstruction and Development held that borrowers mainly drawn from Third World countries had to show a strong commitment to the application of principles of multi-party democracy, pluralism and market economics (Gibbon, 1993:55).

Following from these explicit donor statements on conditioned aid, individual recipient countries which failed to comply were alienated. For example in Kenya, a number of its donors threatened and indeed implemented the suspension of aid commitments on the grounds of the government's lack of commitment to multi-partyism, human rights promotion and economic reforms. Conditioned aid was instrumental in forcing the incumbency to open up its political space, for the first time in over thirty years of Kenya's independence.

Characteristics of Political Conditionality

Generally, political conditionality attached to aid or development assistance is mainly associated with government-to-government relations and international agency-to-government relations. Government-to-government relations encompass the relationship of a particular government, in this case a donor, with another which is the recipient. It is more or less a bilateral relationship. A government-to-international agency relationship signals a commitment by more than one donor country to a certain individual recipient country, possibly constituting a multi-lateral relationship. In both cases, the donor(s) set(s) certain conditions which the recipient ought to meet as a prerequisite for entering into an aid agreement or for continuing to receive aid (Stokke, 1995:14). Such explicit aid relationships further imply that aid is used to impose conditions, in

this case political conditions on recipient countries. In the event of non-compliance with the laid down conditions, donors face termination, reduction or suspension of the aid.

By implication, aid becomes a coercive instrument which donors use to punish regimes that fail to comply with the laid down conditions. The use of conditioned aid to punish non-compliance with the laid down conditions also indicates an asymmetrical relationship between the donor and the recipient country. In virtually all cases, donors set the conditions that recipient countries ought to meet. Rarely are the recipient countries consulted on the conditions that work best for them. This also reveals an imperious characteristic underlying the way in which donors relate to recipient countries.

Aid to a given country can be channeled in two main ways. Firstly, it may involve a state to state agreement whereby the aid committed goes to the state coffers. In most cases, this aid is primarily aimed at offsetting the balance of payments deficits of a given country. As such it comes in as revenue which takes up a portion of the recipient country's budget. Secondly, aid can also be channeled through non-state actor agreements, which also set their own conditions for involving themselves in the activities of a given country (Stokke, 1995:20). Non-state actors may include non-governmental organisations, private sector organisations or the official aid agency of a particular donor, for example Britain's Overseas Development Assistance (ODA), America's US Agency for International Development (USAID) or Sweden's Swedish International Development Authority (SIDA). In most cases, the latter category mainly act as representatives of their respective governments, especially when the authorities of both sides (donor and recipient) do not see eye-to eye.

Objectives of Political Conditionality

The primary role of political conditionality as stipulated by donors has been to promote political change, particularly in line with the principles of liberal democracy. Conditioned aid has also been applied to influence transitions from non-democratic regimes to democratic ones. Following

from this, donors, Baylies (1995:321) remarks, have tended to 'fund governance and democratisation initiatives in countries undergoing political transitions, or use negative sanctions either where progress is deemed to be unsatisfactory, or in order to induce the adoption of democratic procedures'. Thus political conditionality has a two dimensional *modus operandi* in that in as much it rewards, it also punishes.

The next section will look at the three main objectives of political conditionality which the study accepts as the promotion of democracy, human rights and good governance.

Good Governance

A considerable discourse on good governance amongst donors stems from their concerns regarding functioning and effective governing structures in recipient countries. Good governance therefore seems to vest much of its efforts in the state and its relationship to society and more importantly to the economy. It seeks to emphasise the degree to which the state and its leadership can act as effective mechanisms in facilitating development, within the economic realm as well as in public administration, and how political management by the incumbent leadership can enhance meaningful development with regard to the economy, thus translating 'good governance' into effective interaction between politics and economics. In fact, as stressed by Baylies (1995:328), a correlation seems to be emerging in good governance between democracy and economic performance.

Most donors seem to have the same perceptions on the basic policy components of 'good governance'. For example, the British Overseas Development Assistance (ODA) defines components of good government as accountability, legitimacy and competency with democracy. The US stresses the promotion and sustenance of democratic governance and the rule of law (Archer, 1994:15). However, the most comprehensive attempts to explore the agenda and its objectives have been those advanced by the World Bank. As noted earlier, perhaps these emerged following the Bank's diagnosis of poor governance as central to accounting for the failed

economic performance in a number of recipient countries. In the same vein, poor governance also ensured that structural adjustment programmes were met with minimal success. The Bank therefore came to the conclusion that economic recovery, lacking in a variety of the recipient countries, had to be bolstered by reforms of their governing systems (World Bank, 1989; Waller, 1995).

It is in this light that a task force commissioned by the World Bank was set up to explore the issues of 'governance' from its own perspective (Stokke, 1995:26). Good governance was further defined as 'the manner in which power is exercised in the management of a country's economic and social resources for development' (World Bank, 1992:1). Broad and general as this definition may appear, it laid the foundation for the lending criteria that several donors adopted.

It can also be argued that its primary concern, as provided in its definition, confines itself to aspects of administering the public realm, which are mainly accountability, effective decision making and transparency. The Bank tends to restrict itself to these limits. No clear and concise attempt is made to address other issues of political management such as popular participation or democratic governance, even though in its report *From Crisis to Sustainable Growth-1989*, the Bank acknowledged their importance. This is notwithstanding the fact that although the Bank has lacked concise and clearly defined parameters on political issues in line with democratisation, it has been critically involved in the withdrawal or suspension of aid to countries not undergoing political reforms. Kenya's case is an example in point. The Bank's good governance agenda is therefore flawed in terms of its lack of clarity in approach and its actual practice. Its discourse seems to distance itself from the political management of recipient countries, possibly as its mandate dictates, but in practice it is involved.

Democracy

This is probably the commonest objective sought by donors in recipient countries, going by their policy pronouncements on lending. For the US, the spread of democracy hinges on its foreign

policy and increasingly the assertion by the US government is that aid will be used to promote democracy. In the case of Britain, promotion of democracy is a central tenet of its aid conditions. The same applies to the European Union and Scandinavian countries. Promotion of democracy is also central to the activities of the Organisation for Economic Cooperation and Development (OECD) as spelt out by its Development Assistance Committee (DAC) (Baylies, 1995:327).

However, it is not quite clear what democracy entails for a number of these donors, as in most cases it has been restricted to the holding of multi-party elections. Stokke (1995:31) has observed that among the objectives of second generation conditionality, it is a late comer and probably the one surrounded by most ambiguity. This ambiguity perhaps relates to the concept of democracy. What is democracy and what does it constitute? Which form of democracy do donors emphasise most? These questions presuppose that democracy is not monolithic. They also presuppose that various forms of operational democracy do exist and that donors are seemingly more inclined to choose a certain form.

This study submits that donors have tended to limit their demands for democracy in recipient countries to formal, procedural aspects of democracy. These have mainly entailed open competition between a given number of political parties, which they hope will culminate in free and fair elections. Actually, meeting these criteria for a recipient country has been tantamount to securing aid. Other donors have tended to fund initiatives in recipient countries that are aimed at meeting this criterion of democracy. Examples have included funding of electoral activities such as civic and voter education, donating electoral equipment such as ballot boxes and indelible ink among others.

However, the contentious issue surrounding donor emphasis on a formal procedural kind of democracy is mainly linked to the degree to which it has fostered a meaningful transition to democracy. This is based on the understanding that democracy cannot be merely equated to formal procedural aspects which possibly involve multi-party competition. They may be necessary, albeit inadequate, to guarantee a substantive transition to democracy. It is of primary

importance therefore for donors to require institutional reforms that will promote the development of meaningful democracy. What then constitutes meaningful democracy?

This study contends that a maximalist approach should constitute meaningful democracy. Broadly addressed, meaningful democracy should seek to embrace activities by citizens and groups that may be intending to affect government decisions, as well as the open and independent existence of other institutions in addition to the state. It is also important that institutions of government are free from any form of manipulation by interest groups and that they are strengthened through popular representation, transparency and openness in all their undertakings. Emphasis should be laid on reforming key organs of the governing structure, notably the executive, the legislature and the judiciary in order to ensure the existence of a limited government. This ought to be based on the separation of the powers of the three arms such that none of these arms of government will be strong enough to prescribe to another how it should go about its work. To this end, government officials ought to remain subordinate, rational and answerable to publicly recognised procedures.

The liberty and protection of the individual and basic human rights should be the main feature of a democratic system. Competition which is also necessary to the foundation of democracy will also require level playing field for all actors in the context of political parties and the rules laid down must be in conformity with their needs. A body of law with standard operating procedures and indiscriminately applied rules should sum up the above qualities. All these concerns with regard to meaningful democracy are in accordance with the extended and deeper meanings of democracy as explored by theorists such as Linz and Stephan (1978) and Huntington (1991).

Human Rights

Donors mainly draw their ideas on human rights from the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948. In this master document, human rights are broadly defined to include the most fundamental rights, namely the right to

life; freedom from torture, arbitrary arrest and imprisonment; civil and political rights, such as freedom of movement, expression, assembly and religion; and finally economic and social rights, including such rights as employment, shelter, health and education (Stokke, 1995:28). Promotion of basic human rights has therefore been an integral part of the justification of conditioned aid.

However, promotion of these rights is not exactly new in the aid phenomenon as countries like the US, Sweden and the Netherlands have stated the need for countries likely to benefit from their aid to show commitment to issues of human rights (Moore, 1993:7). Albeit stated in their policy statements, this was not the actual case for some donors. For example in 1970, the US formalised respect for fundamental human rights as a condition for its bilateral aid (Nelson and Eglinton, 1992). However it was also during this period that the US, in search of clients mainly in the Third World, granted aid to a number of them that were engaged in human rights violations and dictatorial practices. This situation possibly emerged from a clash between the US's main national interests, which during this period (Cold War) were centred around further containment of communism, through winning as many clients as possible, and its proposed commitment to human rights.

The point we would like to contest is, even if the promotion of human rights forms an integral part of aid objectives, to what extent can this be guaranteed, especially if a clash emerges between their promotion and the national interests of the donor concerned? If the US could support despotic regimes such as Zaire under Mobutu and Kenya under Daniel arap Moi because that served their own interests, to what extent can promotion of human rights through conditioned aid remain certain? In addition, it also implies that the promotion of human rights is not always necessarily compatible with the promotion of a particular donor's national interest.

Seemingly, in the 1990s, the trend amongst most donors has been the promotion of political rights as opposed to civil and economic rights. On this account, countries deemed by the donors to be denying their people rights to free expression, organisation and assembly have been singled out for alienation from donor aid. This, it may be argued, is because a number of these rights

coincide with the principles of formal and popular participation in a form of democracy, which donors are increasingly keen on promoting. It reveals some kind of hierarchy underlying donor concerns with respect to promotion of human rights in recipient countries, whereby political rights seem to take priority over other forms of rights. However as stipulated in the Universal Declaration of Human Rights, all rights ought to assume an equal role since they are all important to mankind and aimed at enhancing its survival.

Conclusion

This chapter set out to investigate the origins of good governance and political conditionality. It has demonstrated that political conditionality which was preceded by economic conditionality, was mainly an IMF/World Bank intervention. The chapter has also demonstrated that economic conditionality driven by the IMF/World Bank was initiated in the wake of an economic impasse in Third World countries.

Three main interpretations have been advanced to account for the origins of political conditionality, which entails the use of aid to enforce political reforms. The first interpretation dealt with the failure of the IMF/World Bank prescriptions to enhance the much sought after economic recovery in Third World countries. The IMF/World Bank declared that the failed economic recovery after the implementation of their structural adjustment programmes was not only as a result of poor economic management, but also poor political management, stemming from bad leadership. This interpretation primarily focused its attention on criticising the African state as a hindrance to sound economic development.

The second interpretation traced the origins of political conditionality as mainly the result of the disintegration of the USSR and the subsequent ending of the Cold War. This had the demonstrated effect of allowing countries that were inclined to the East or West to pursue their own independent policies and political values such as democracy and the promotion of human rights. According to the third interpretation, domestic pro-democracy activists openly challenged

their single party regimes, with demands for democratisation. Events in parts of Eastern and Central Europe where such regimes suffered defeat bolstered their efforts.

According to the three interpretations advanced, the prevailing developments made it possible for donors to apply conditionality in line with promoting political change. The most sought after conditions have included good governance, the promotion of human rights and the promotion of democracy. However, with respect to the latter condition, donors have emphasised the need for recipient countries likely to benefit from their aid to show a degree of commitment towards multi-party democracy. Increasingly, non-compliance has often resulted in the suspension or withdrawal of aid to the country concerned. The next chapter examines political conditionality and the transition process in Kenya.

References

- Archer, Robert, "Markets and Good Government" Andrew Clayton (ed.), *Governance, Democracy and Conditionality: What Role for NGOs?*, INTRAC, Oxford, 1994 pp.7-34.
- Baylies, C., "Political Conditionality and Democratisation", *Review of African Political Economy*, No. 65, 1995 pp.327-333.
- Brautigam, D., "Governance and Economy: A Review", The World Bank, Working Paper series 815, 1991 pp3-27.
- Gibbon Peter, "The World Bank and the New Politics of Aid" Georg Sorensen (ed.), *Political Conditionality*, Frank Cass, London, 1993 pp35-62.
- Fahy, John C., "IMF Conditionality: A Critical Assessment", *OPEC Review*, Autumn 1984 pp.232-254.
- Huntington, S. P., *Third Wave: Democratization in the Late Twentieth Century*, Oklahoma University Press, Oklahoma, 1991.
- Huntington, S., "How countries democratize", *Political Science Quarterly*, 106(4), 1991 pp.579-616.
- Linz, Juan J. and Stephan, A., *The Breakdown of Democratic Regimes*, John Hopkins University Press, Baltimore, 1978.
- Moore, M., "The emergence of the 'Good Government' Agenda: Some milestones" *IDS Bulletin*, 24(1), January 1993 pp.1-7.
- Nelson, J. M. and Eglinton, S. J., "Encouraging Democracy: What Role for Conditioned Aid?", Overseas Development Council Report, Washington DC, 1992.
- Stokke Olav, *Aid and Political Conditionality*, Frank Cass, London 1995 pp.1-60.
- Waller, P., "Aid and Political Conditionality: The case of Germany with particular reference to Kenya" Stokke Olav (ed.), *Aid and Political Conditionality*, Frank Cass, London, 1995pp. 100-134.
- World Bank, "World Bank 1989 Development Report", World Bank, 1990.
- World Bank, "World Bank 1992 Development Report", World Bank, 1993.

CHAPTER TWO

POLITICAL CONDITIONALITIES AND THE TRANSITION PROCESS IN KENYA

Introduction

As discussed in Chapter One, political conditionality has been applied by donors to promote democratic reforms. For most donors, policies on development assistance have tended to stress the need for recipient countries to adopt multi-party democracy as a central condition for aid. This has forced a number of recipient countries to abandon other forms of rule deemed to be undemocratic by donors and show a commitment to political pluralism. Political conditionality therefore has promoted transitions from undemocratic regimes, notably single party rule, authoritarianism and military dictatorship to democratic ones. This chapter examines political conditionalities and the transition process in Kenya from single-party rule to a 'multi-party democracy'.

Kenya attained independence from the British and ushered in a multi-party democracy in 1963. Since then, the country has undergone a full circle of political developments, starting with a multi-party democracy at independence, through a one-party dictatorship between 1982 and 1992 and back to a multi-party democracy in 1993. In 1991, the single-party regime came under concerted internal and external pressure in the form of political conditionality forcing it to amend the constitutional clause that had legalised a single-party political system in 1982 and to allow political pluralism. Thus in a situation like that of Kenya where single party rule has thrived for a considerable length of time, this study finds it relevant to first understand the broader background of political practices and institutions which best inform Kenya's transition processes. It is against this background that the chapter attempts to examine political conditionalities and the transition process in Kenya.

The chapter will argue that political conditionality has been implemented in the context of a neo-patrimonial form of rule, the primary objective of which is to cling to power at all costs due to

personal ambition and greed. Understanding of neo-patrimonial practices, which are largely a form of personalised rule, is also important in enabling us to appreciate the dominance of a repressive regime in Kenya that has continued to pursue political authoritarianism, corruption and the violation of human rights, despite committing itself to political pluralism in 1991.

Rise, Decline and Rise of Multi-partyism in Kenya

The multi-party elections which were held in 1963 were important in granting Kenya self-government status on June 1st of the same year. The main contending parties were the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). KANU won the elections with a majority vote, thus forming the first independent government under Jomo Kenyatta. KADU, on the other hand, emerged as the first parliamentary opposition that was to challenge the KANU government on all important issues and to keep it on its toes both within and outside parliament. However in 1964, the same year that Kenya became a republic, KADU voluntarily dissolved into KANU. It thus ceased to exist as an independent party by joining the ruling party. According to the KADU members, this was done in the interests of formulating and pursuing collective goals necessary for the speedy development of post-independent Kenya (Wanjohi, 1993). This was also a much welcomed development for KANU as Kenyatta offered KADU's top leadership (Ronald Ngala, Daniel Moi and Masinde Muliro) positions in his cabinet.

The dissolution of KADU into KANU formed a coalition of interests, constituting individuals and groups who might have been opposed to government policy, but under the umbrella of KANU. Essentially the coalition meant the disappearance of a formal opposition in Kenya. In form, the coalition did exist to forge the national unity that was deemed to be important by the two parties, however in practice it registered varying view points and opinions mostly on the direction the country ought to have taken in its future development. This polarisation of ideas and opinions culminated into a split between the government and the internal opposition or in this case the 'informal opposition'.

Integration of political opinions under KANU amounted to the establishment of a *de facto* one party state. President Kenyatta, and KANU for that matter, strongly favoured a one-party system of government even though not as a permanent institution. He committed himself never to legislate to make KANU or any other party the only *de jure* party in Kenya. Kenyatta stated that:

should relevant grounds for a multi-party state evolve in future, it is not the intention of my government to block such a trend through prohibitive legislation (cit. in Wanjohi, 1993:27)

Kenyatta's preference for a *de facto* one party system gave him an advantage that he exploited in 1966, when he dismissed some KANU members from the party's mainstream. They had remained radically opposed to the policies that the government was advancing with respect to the country's development strategy. Prominent among these personalities were the then Vice-President Oginga Odinga, who had resigned from the post, and Bildad Kaggia, an Assistant Minister of Education. A KANU Delegates' conference was summoned for March 12-13 1966 at Limuru and these leaders were removed from the party's leadership. This formed the background to the formation of the Kenya People's Union (KPU) with Oginga Odinga as President and Kaggia as the Vice-President.

There then followed what was referred to as the 'Little General Election' when those defecting members of parliament were forced by KANU, by means of a constitutional amendment, to seek a fresh mandate from the electorate. These elections constituted another set of multi-party elections even though the conduct of the government towards the opposition demonstrated its displeasure with plural politics. For example, the Registrar of Societies deliberately delayed KPU's registration, members were often denied licenses to conduct campaigns, their passports were impounded and the public broadcaster, Voice of Kenya (VOK) frequently imposed blackouts on KPU news (NEMU, 1993:7). KPU fared dismally with seven Lower House seats and two Senate seats of the 29 contested. KANU won the rest. On account of the small number of seats that KPU got in the Little General Election, it was not recognised as an official opposition. In the absence of such recognition, it was prone to massive harassment by the government administrative machinery which became its mode of survival for the next three

years. In June 1969, the KANU Secretary General, Tom Mboya, was assassinated. Mboya hailed from Nyanza province, mainly inhabited by the Luo community who had constituted a significant number of the KPU following. His death therefore sparked angry protests by KPU leaders and supporters, who saw it as a move engineered by the government against the Luo community because they supported the opposition. As the wave of protests and demonstrations intensified, Kenyatta placed a ban on all KPU activities and a number of its leaders were detained. However the banning of KPU, which signified the end of multi-partyism, was not followed by legislation to make Kenya a *de jure* one party state. This meant that the formation of other parties was legally possible, even though in practice that was not the case. The banning of KPU also demonstrated the refusal by the government to accept challenges of its right to rule.

It therefore appears that Kenyatta's rule was geared towards strengthening KANU's monopoly through elimination of dissent. The framework within which competition was to take place became purely a KANU affair. The 1969 and 1974 elections marked the first two sets of single-party elections, in which KANU was unopposed. Thus it was able to exercise strict control over the electoral process, having successfully failed to recognise the legitimacy of the opposition. Besides being the country's ruling political party, it had also become the instrument by means of which political and economic power was granted and to decide which ethnic community should receive it. Kenyatta's own Kikuyu community had risen considerably as the main controllers of state patronage. They also occupied significant positions in the main structures of government, notably the executive, judiciary and the military. His main allies consisted of a network of high profile politicians and technocrats, mainly from the Kiambu District of Central Province. Kenyatta's rule saw an increasingly authoritarian state entrenched in ethnic considerations with regard to political and economic power.

However political life under his leadership remained remarkably open and the press comparatively free by African standards. Academic freedom also existed with lecturers enjoying a degree of liberty to voice criticisms in lectures and in the national press. Kenyatta's single-party state also remained willing to incorporate internal dissent, so long as politicians

remained in KANU and did not challenge the presidency. By the time of his death in August 1978, Kenya was reputed to be one of the most open polities enjoying a relatively free press and an independent civil rights movement with respect to the church, trade union movement and the legal society (Throup and Hornsby, 1998). Daniel Arap Moi, who had served as Kenya's Vice-President became President after Kenyatta's death. His rule brought about the legal end of multi-partyism in Kenya. Gradually, the few freedoms Kenyans had enjoyed during Kenyatta's rule came to an end, with the state becoming more authoritarian. Dissent was stifled and political and economic power was directed to specific ethnic groups.

Despite having served in Kenyatta's cabinet as Home Affairs Minister and later on as Vice-President, Moi had not been a popular figure in Kenyan politics. On the one hand he had initially belonged to the opposition but joined KANU following KADU's dissolution in 1964. He had therefore once been opposed to Kenyatta and KANU, who came to dominate Kenya's political and economic processes and he belonged to a different ethnic group (Kalenjin). The Kikuyu during Kenyatta's rule had come to dominate business, commerce and the civil service. Thus Moi's community, which was to constitute his new political power base was not entrenched in the main stream of economic and political life as were the Kikuyu. Needing the confidence of his own ethnic community, Moi was faced with the challenge of having to dismantle the existing Kikuyu coalition and replace it with a Kalenjin one. In person, Moi lacked the charismatic and articulate personality that had characterised the personal leadership of President Kenyatta.

Populism informed the political posturing that his regime undertook during the initial years of his rule. For instance, he released political detainees, unbanned the university student union and promised an 'open government' (Ajulu, 1993:5). These developments, as pointed out, took place against the background of an increasingly elaborate and strong control of economic policy and politics by a small coalition of what constituted the Kikuyu elite. However his commitment to an open government was not sustained in the ensuing years of his rule. Moi's preoccupation like

Kenyatta's, was the need to survive politically and preside over ethnically arranged patterns of resource distribution in order to retain and expand the loyalty of his supporters.

Following an attempted coup against his government in 1982, he presided over the introduction of legislation which was promulgated as Section 2 (A) of the constitution, making KANU the only legal political party in Kenya. A *de jure* one-party system was set up in the same year. This move acted as a deterrent against all those who might have insisted on forming another political party to campaign for the replacement of President Moi. Elsewhere, efforts by Oginga Odinga and George Anyona to form the Kenya African Socialist Alliance (KASA) were rendered futile when Moi banned the organisation, subsequently detained Anyona and put Oginga Odinga under house arrest. Such acts stripped Kenyans of their freedom of popular participation. Although Charles Njonjo, a former Attorney General in Kenyatta's regime and later Minister in Charge of the Constitutional Affairs portfolio in Moi's government, introduced the Bill on Section 2 (A), he was later removed in disgrace. Njonjo was alleged to have tried to prove the removability of a reigning President albeit constitutionally (Wanjohi, 1993:29). In addition, Njonjo was one of the main Kikuyu allies of Kenyatta. His exit was perhaps part of Moi's plan to break the power of the Kikuyu elite that had dominated Kenya's mainstream politics and economy and had also formed Kenyatta's network of allies and his main political coalition. Subsequent changes in the civil service and military were mainly geared to replacing Kikuyu in top positions with members from other ethnic communities.

In 1983, Moi called for general elections which constituted the first elections to be held in a *de jure* one-party state. These elections gave the first legal mandate for Kenya to be governed by a President serving under a one party system. Given the unchallenged mandate to rule Kenya, Moi's government continued to violate principles deemed important in a democratic system. Press freedom was hampered due to the frequent bans imposed on publications critical of the government. Arrests, torture and detentions were also carried out against the editors of these publications. Academic freedom was interfered with as several university lecturers and students were detained for criticising the government. Dissent increasingly became synonymous with

subversion. Some were co-opted by means of rewards in the form of lump sums of money, contracts and job promotions to silence them and to focus their loyalty on the government.

Within the organs of government, parliament was the hardest hit, especially following the introduction of single-party rule. KANU became more assertive of its supremacy in parliament. In fact, as argued by Wanjohi (1993:26), it was even more an expression of the President's power. This was a colonial legacy bequeathed to post-independent Kenya, as the colonial governor in Kenya had enjoyed supreme power over other institutions, the legislative council being largely an advisory council whose decisions were considered for action only if they conformed with those of the governor (Throup and Hornsby, 1998). The objective of KANU's control over the main law-making body, was to widen its political base. Such an objective thus meant the absence of a distinction between the party and government. As one KANU Chairman remarked:

It would be appropriate to note that parliament is one of the institutions of the KANU government and accordingly, it makes laws which operate in accordance with KANU policies governing the affairs of the country. Therefore there is no conflict between party and parliament with regard to political supremacy (cit. in Adar, 1998:81)

Within the organ of the judiciary, President Moi removed the tenure of judges, magistrates and the Attorney General. This implied that he could hire and fire them as he pleased, thus interfering with the integrity and independence of the judiciary.

In 1988, he introduced controversial electoral laws whereby voters were required to queue behind the candidate of their choice. The system also provided that candidates receiving 70% of the votes during nomination, were to be considered unopposed. Such a voting system not only removed the anonymity and rights of the electorate considered fundamental in a democratic system, but it also provided a stage for greater interference in the elections by the presidency. It was also an obvious attempt by KANU to handpick candidates of its choice, so that Moi could have a parliament that was loyal to him and KANU. The electoral process which was visibly flawed as KANU exercised its 'selection within election' (Adar, 1998) was used to

extend the undemocratic rule of the incumbency. Following the 1988 elections, out of the 188 contested parliamentary seats, 50% were unopposed (Throup and Hornsby, 1998: 120).

Political and economic power came to be centred around only those who gave undivided loyalty to KANU and President Moi. His coalition consisted mainly of a very a powerful coalition of Kalenjin elites and a few others from other communities. By the late 1980s, Moi had also shifted control of state resources to members of the Kalenjin community. A number of them controlled key sectors of public enterprises and government parastals. By 1991, the heads of 36 public offices and parastatals came from Moi's own small ethnic group (Ross, 1992:433).

Moi therefore, within a decade of his ascension to power, had managed to systematically establish and institutionalise single-party rule in Kenya. He also succeeded in crushing dissent and removing all forms of political opposition, including members of KANU who challenged the government. Meanwhile there was a steady rise in human rights violations, including detention without trial. It was only intervention by internal movements for change and the country's principal donors that forced KANU to break its monopoly of the political process and allow the formation and operation of other political parties within a multi-party framework.

As stressed earlier, in understanding the transition process in Kenya, it is important that we understand the nature and dominance of Kenyatta and later of Moi's authoritarian regime. The question we need to ask is why they behaved in this manner. In addition, the leadership they adopted seemed to depict a distinct form of rule although Moi's state emerged much more repressive than that of Kenyatta. How best can we account for this variation? These questions can be answered by focusing attention on neo-patrimonial forms of rule which are mainly based on calculations of personal power and political survival.

Neo-patrimonial Rule

Before we examine the case of Kenya, it is important to understand neo-patrimonial rule, trace its development, the types of regimes likely to undergo transitions from neo-patrimonial regimes to democratic ones, and its characteristics.

Neo-patrimonial rule constitutes a form of personalised rule based on personal loyalty, especially towards the leading figure of the regime or the 'strongman'. The right to rule is mainly ascribed to a person rather than an office. Van de Walle and Bratton (1994:461) thus maintain that the essence of politics in neo-patrimonial rule is best defined by the interaction between the 'big man' and his extended retinue. Important positions, whether bureaucratic, political or military, are filled by loyal followers of the strongman, his relatives, friends and kinsmen. Their loyalty is reinforced by their sharing of office, as the strong man in turn commands a web of informal networks or patron-client relationships. Rewards are mainly in the form of public sector jobs, loans, licenses and government contracts. These rewards are mostly distributed via networks constructed to grant undue favour to selected ethnic groupings.

Neo-patrimonial practices are a relic of the colonial period. They stem from the reactions of pre-colonial societies to the social, economic, cultural and political forces of colonialism. This was because, as Berman (1998:305) maintains, colonial states were grounded on the alliance with local 'Big Men', who were mainly the African chiefs, in establishing ethnically defined administrative units. These were linked to the local population by incorporation of patron-client relations. The colonial state and its political economy disrupted African societies and introduced cleavages in others. It opened new sources of wealth and power for some communities and threatened the position and access to resources of others. As a result, Van de Walle and Bratton (1994) remark, ethnicity emerged as a consequent source of conflict in the struggle to take advantage of the opportunities of colonialism and protection from its disruption. It became a reactionary process to colonial domination. It was common for people to associate themselves with those with access to resources and opportunities. Patron-client relationships were

underpinned by mutual obligations of support. Assistance was extended along the lines of kinship, as these were the main political and economic structures underlying African societies. Wealth and power therefore rested on the ability to mobilise and maintain a following of mainly kin groups.

Essentially, neo-patrimonialism is a way of linking the state to the society, but in a rather discriminating manner. The colonial legacy of authoritarianism and pervasive patron-client relationships constructed upon ethnic identities has continued to account for the dominance of the personalistic and materialistic character of African politics. Such networks have penetrated civil society and liberal democracy, thus undermining economic and political reform. Despite efforts aimed at political reforms and commitments to multi-party democracy, the politics of patronage embedded in ethnic considerations have tended to resurface in a number of African states that have undergone transitions.

Recent literature on transitions in the 1990s has not grappled with regime types, in part because most states have displayed a relatively uniform set of dominant political systems and institutions. At least in Africa this has been the case. According to Van de Walle and Bratton (1994), most political institutions in Africa have evolved within neo-patrimonial rule, thus making this a distinctive hallmark of most regimes. Scholarly work devoted to examining regime types has emphasised mainly the nature of the regime (authoritarian, despotic dictatorships) and political outcomes in the face of transitions. Huntington's (1991) analysis also envisages a degree of relationship between the nature of the regime and the transition. He argues that most authoritarian, single-party and military dictatorships will initiate transitions from the top to the bottom. These regimes, even after a transition to democracy if brought into power, continue to exhibit coercion, thus discouraging the meaningful development of popular participation, despite the existence of legislation that permits it.

Impulse to Reform in Neo-patrimonial Rule

Dissent or any form of political opposition is not tolerated by neo-patrimonial rulers. They typically expel potential opponents from government jobs, approved institutions like the ruling party or even the from the country itself (Grosch and Orvis, 1994). The powerful autocrat's ability to coerce unwilling popular compliance, it may be argued, is as a result of his control over the executive and security organs of the government, despite the decline of his legitimacy. Thus, politically, neo-patrimonialism is highly unaccommodating of dissenters. Given such circumstances, it is important to examine what causes hardline regimes to reform. This also presupposes that neo-patrimonial regimes are non-permanent and that they are characterised by inherent limitations that gradually threaten their survival.

In our case, we argue that patronage determines the regime's ability to dominate political and economic power to a large extent. This supports the view that its decline sets the precedence for unrest between those competing for to it, those who have access and those expelled from the system. Its depletion may also considerably threaten the survival of the regime. The impulse to reform in neo-patrimonial rule mainly stems from an economic crisis, particularly as a result of dwindling shares of patronage. This type of rule has the potential to make economic growth highly problematic, thus fueling chronic fiscal crisis. Public resources are mismanaged by those in charge by means of looting from state coffers, corruption and self-enrichment. In addition, political mobilisation leads to a widespread use of patronage which is often used in rather unconstructive ways. A good example is the use, by the regime, of resources meant for public development to reward political friends and to expand the network of its allies, who are all important for its survival. Social unrest cannot be ruled out in the face of shrinking economic opportunities and biased patterns of reward especially those that target a favoured ethnic community.

Dissenters or outsiders mobilise the general populace who are suffering the effects of declining living conditions to rally against the incumbent regime. Demands for an alternative form of

government dominate the agenda of the opposition. The most popular alternative is multi-partyism in the hope that it will give the opposition a democratic chance to challenge the incumbency in an electoral contest. They may also seek the support of the civil society or the international community. Protests and demonstrations which, in most cases, are met with brutal and violent reaction by the government, are organised to discredit the incumbency by blaming them for the prevailing economic declines, declining living standards and political oppression. The opposition also tries to convince the public of its prospects of correcting the issues neglected by the incumbency, under its proposed alternative government. Thus the legitimacy of the ruling regime becomes increasingly an area of contestation by the forces seeking its departure.

As pressure for an alternative government mounts, the regime increasingly resists any political reforms that may challenge its rule. However it is forced to relax its control when its resources have been exhausted as the number of outsiders multiplies. Van de Walle and Bratton (1994:464) observe that the regime usually depends on external forms of funding, mainly export revenue and donor funds. Thus in the event of the absence particularly of the latter, a regime's resistance to the introduction of political and economic reforms may eventually be relaxed. Kenya's case demonstrates the difficulty of this approach.

Neo-patrimonial rule in Kenya

The need to survive by usurping the political and economic power that would guarantee survival, it may be argued, underpinned both Kenyatta's and Moi's rule. Kenyatta had set the pace for actualising his political survival. By the time of his death in 1978, he had managed to personally take charge of key government organs such as the legislature and the executive, elevating decision-making to a central process of his presidency. Increasingly he had also managed to build a strong alliance of insiders mainly drawn from his ethnic community, the Kikuyu. These were rewarded with lucrative posts, promotions and a variety of government contracts, thus facilitating the process of ethnic distribution of patronage.

Kenyatta had also managed to ostracise potential dissenters from the mainstream political process, as seen in 1969 when he placed a ban on all opposition activities. His government continued to cultivate a hostile attitude towards the opposition. He particularly disliked attacks on his presidency and KANU. By 1975, members of parliament, who were KANU members could be detained for taking a different line of opinion from that of the government and for challenging the presidency. Two KANU parliamentarians, Martin Shikuku and Jean Marie Seroney were detained for this type of 'offence' (Wanjohi, 1993:22).

In 1978, Moi inherited a typically authoritarian rule built on the constructs of personalised rule. He was faced by a number of challenges to the extent that a contrast can be drawn between his leadership and that of Kenyatta. His regime, as we have demonstrated, proved to be exceedingly repressive, compared to that of Kenyatta. The socio-political and economic environment in which the two regimes operated were significantly different and much more challenging for Moi. During the initial years of his rule, Moi was to face more difficult circumstances compared to his predecessor Kenyatta.

Firstly, Kenyatta's widespread use of patronage to reward allies had significantly reduced the available resources. Moi therefore had to build his alliance upon a fast dwindling supply of patronage. Secondly, the process of distributing patronage to members of one's ethnic community, widely used by Kenyatta, had elevated his own Kikuyu community both politically and economically. They occupied key posts in the government and other economically strategic positions. Moi, coming from a different ethnic group was faced with the task of having to shift resources and positions from the Kikuyu to his own Kalenjin community. He therefore had to restructure Kenya's political economy to expand the development base and reward his new political allies. He also attempted to expand his influence in other marginal communities such as Western and Coast province, in order to secure relatively strong national support. Moi's initial challenges were further compounded by the attempt in 1982 to topple his regime. It was this scenario that obliged Moi to build an even more repressive state, which would enable him to look for new areas of patronage in an increasingly unchallenged manner.

Consequently, his government embarked on a systematic plan to crack down all dissenters. This move had been officially approved in the constitutional amendment that delegitimised opposition activities and organisations in 1982. Increasingly, Moi was beginning to lose touch with popular perceptions of his regime. This was in spite of the fact that he held personal control over the main organs of government, notably the judiciary and the legislature. Their constitution and operations became a matter for the presidency, thus impeding their independence.

By the mid 1980s, Moi had successfully managed to entrench his power politically and economically. In addition, a number of Kalenjins had been elevated to key government posts and state enterprises. It became abundantly clear, as argued by Ajulu (1998:81), that very few jobs or resources in terms of infrastructure such as roads, schools and hospitals were available for non-Kalenjin communities, especially those that did not support KANU. This regime further elaborated Kenyatta's discriminatory manner of distributing resources. The single-party electoral contest of 1988, whereby electoral reforms such as queue voting and declaration of electoral victory if a candidate garnered 70% of the votes at nominations, enabled him to handpick politicians of his preference.

These developments had an impact on Kenyan society as a whole which is worth examining. Moi's autocratic style of leadership, which was highly insensitive to criticism, fundamentally weakened the already existing but fragile civil society in Kenya. Subsequent harassment, arrests and frequent detentions without trial destabilised independent institutions such as universities, student associations and religious organisations. Other organisations were co-opted and forced to serve as KANU associations, for example organisations such as Maendeleo Ya Wanawake (MYWO), a national women's organisation which had been established to deal with women's issues nation-wide, irrespective of political affiliation, and the Central Organisation of Trade Unions (COTU), an umbrella organisation for most trade unions in Kenya (Adar, 1998:78). Under Moi's repressive regime, society's space for autonomous action was severely limited. In one of his candid speeches Moi declared:

I call on all ministers, assistant ministers and every other person to sing a song like parrots. During Mzee Kenyatta's period I persistently sang the Kenyatta tune until people said: This fellow has nothing except to sing for Kenyatta. I say: I didn't have ideas of my own. Why was I to have my own ideas? I was in Kenyatta's shoes and therefore I had to sing whatever Kenyatta wanted. If I had to sing another song, do you think Kenyatta would have left me alone? Therefore you ought to sing the song I sing. If I put a full stop, you should also put a full stop. This is how the country will move forward. The day you become a big person, you will have the liberty to sing your own song and everybody will sing it (cit.in Friedman, 1997:27).

Economically, the process of using shrinking state resources for the sake of self-enrichment and to reward political friends did not stimulate economic growth and development in Kenya. Indeed during the 1980s, according to the World Bank (1992:220), Kenya recorded a steady drop in its economic performance compared to the first two decades of its independence, which had registered impressive growth. The average annual Gross Domestic Product (GDP) dropped from 6.8% (1965-1980) to 4.2% (1980-1990) with corresponding declines in agriculture, industry and manufacturing. Food aid in cereals had also risen from 2,000 metric tons in 1974/1975 to 62,000 in 1989. Problems of insufficient capital (undercapitalisation), mismanagement and inefficiency struck a number of parastatals, accounting for widespread losses in the economy. The ruin of parastatals due to economically disastrous performance accelerated during Moi's era. The Kenya National Assurance, Kenya Housing Corporation, National Bank of Kenya and Kenya Railways all went into receivership in the 1990s for similar problems. Elsewhere naked corruption in the public sector by government officials resulted in the loss of state funds, especially from the treasury. A case in point was the Goldenberg scandal, in which the state lost US\$455 million (12% of GDP) between 1991 and 1993, with the perpetrators known to be Asian businessmen in association with political barons of the ruling KANU party (Cohen, 1993). No comprehensive efforts were made to bring the culprits to book.

The results of a declining economy meant a steady decline in living standards, ineffective and inefficient bureaucracies and the rise of state-sponsored corruption, all possible conditions for the stirring up of social unrest.

Within the political realm, there was a growing voice emerging from the elites who had either been expelled from the ruling group for failing to comply with the regime's loyalty requirements

or had become displeased with its incompetence and highly repressive character. Examples included Kenneth Matiba who had actually resigned from Moi's own cabinet, Charles Rubia formerly a city mayor, Gitobu Imanyara, who had been detained by the Moi government after the attempted coup in 1982, Raila Oginga and Martin Shikuku, among others. They sought the support of official institutions such as the Law Society Of Kenya (LSK) and Kenya Human Rights Commission while others sought external refuge and appealed to the host governments to intensify pressure on Moi's government.

Liberalising Neo-Patrimonial rule in Kenya

A show of dissatisfaction with the regime in the form of riots protests and demonstrations began to gain momentum. At first the government declared demonstrations illegal and brutally crushed them. Calls for multi-partyism as an alternative system of government were echoed by individuals, especially members of the clergy, groups, and organisations critical of the government.

On 1st January 1990 during a new year sermon, an outspoken and controversial clergyman, Reverend Timothy Njoya, boldly criticised single party rule in Kenya, stating that it was outdated and destined to crumble. In the same vein, Bishop Henry Okullu of the Anglican church appealed for the removal of Section 2 (A) of the constitution which had made Kenya a one-party system to pave way for multi-partyism (Aboum, 1996:102). Most critics also condemned government policies and actions that showed no sensitivity to the Kenyan people. A perfect example that fueled dissent among a cross-section of Kenyans was the demolition of shanty dwellings in Nairobi's Muoroto village on 25 May 1990 and later on of various rural locations of Mombasa.

Tension began to rise in various parts of the country, but mainly intensified in the country's capital city, Nairobi. On July 7 1990, various segments of Kenyan society rioted in what came to be known as *Saba Saba*. The uprising followed the violent dispersal of a meeting called by pro-multi-party activists Kenneth Matiba, Charles Rubia and Raila Odinga. The calling of a

general assembly and the formation of a transitional government were also demanded by an amalgam of civil society, representing the church, legal and human rights associations, student organisations and individuals critical of the government. The government had declined to grant permission for the meeting but the leaders vowed to carry on with it. Their intentions were thwarted on the eve of the rally, when they were arrested and later detained. Riots ensued in most parts of the country, leaving several people dead and thousands injured following a shoot-to-kill order by the government (Wanjohi, 1993:34).

Despite the spate of riots and demonstrations demanding multi-partyism in Kenya's major towns and cities, the Moi led government did not heed the demands. The government reacted by violently restraining the critics and demonstrators. There was an overwhelming rise in tension, as more towns joined in the protests, despite the issue of the shoot-to-kill order by the government. The riots and their suppression resulted in over fifty deaths as a result of the harsh crackdown and the detention of many vocal advocates for change. In an effort to diffuse the tension, a commission chaired by Moi's Vice-President, George Saitoti, was convened. It came to be known as the Saitoti Review Commission (SRC). However Aboum (1996:103) notes that instead of inquiring into the 'Kenya we want', which was its initial and main objective, it hijacked the debate and confined it to 'how to reform the ruling party and its hierarchy'.

There were indications that KANU was quite uncommitted to bringing much wanted change and intent on brutally restraining those advocating change. Its members may have been incapable of reforming a system to which they had paid undivided loyalty. Others possibly could not quite comprehend how feasible it was to introduce reforms that would undermine the party's authority, which had sustained them by means of material rewards. Moreover it may also be argued that the chances of winning in the event of a transition were not quite clear, leaving KANU stalwarts with no option but to cling to the regime and try to contain all manner of dissent. These fears were confirmed when the Saitoti Review Commission tabled its findings at a KANU delegates' conference and members declined to initiate any reforms that would limit KANU's monopoly. In other words, they refused to permit for the reintroduction of a multi-party system of

government. Instead they made changes that would not hamper its monopoly such as the abolition of the queue voting system and the 70% requirement meant to guarantee a candidate victory in an election (Aboum, 1996:105).

President Moi had also repeatedly warned that multi-party politics had the propensity for provoking ethnic animosities in Kenya's ethnically fragmented society. This prediction came true between 1990 and 1992, when violent clashes took place between armed farmers, mainly Kalenjin against Kikuyu in Rift Valley Province, and communities in parts of Western Province. These clashes, which started as sporadic, local attacks, escalated into full-blown ethnic strife as the government failed to intervene. Villages were set ablaze, property worth millions was looted or destroyed, schooling and economic activities, especially in Rift Valley, were seriously disrupted. Several reports in the form of pastoral letters by members of the clergy, human rights reports and some sections of the press blamed some Rift Valley KANU leaders for instigating the clashes that left several Kenyans, and thousands displaced.

In August 1991, the Forum for the Restoration of Democracy (FORD) was formed as a pressure group. The founder members took advantage of a constitutional clause that allowed for the formation of pressure groups without government legislation. Their attempts to hold a rally on November 16, 1991, were quashed following the refusal by the provincial administration to license it. On this particular day, a number of FORD leaders were arrested by the security personnel. This did not serve its intended purpose of restraining dissent, but instead exacerbated the unresolved political deadlock that had struck Kenya over the months.

Calls for political reforms in the direction of multi-partyism were also echoed by the international community, notably the country's principal donors. Countries like the US, through its critical Ambassador, Smith Hempstone, condemned the government's treatment of its critics, to some of whom the embassy had offered political asylum. Germany and the Nordic countries, notably Sweden, Denmark and Norway, also decried the brutal manner in which the government security machinery had dealt with reform advocates. In September 1990, Kenya severed diplomatic

relations with Norway, after the latter's Ambassador to Kenya attended the trial of a political activist, Koigi Wamwere. He had been charged with treason. Consequently, Norway cancelled several projects that had been funded by the Norwegian Agency for International Development (Nyin'guro, 1993:36). Other donors also began to issue threats of possible suspension of aid to Kenya, if the government continued to show a lack of commitment towards pluralist politics.

Britain, Kenya's longest serving Western ally while condemning the government's actions rather mildly compared to its counterparts Germany and the US, also expressed displeasure with the Kenyan government for failing to honour calls for multi-party government and for violently crushing pro-democracy rallies. These representations finally tipped the scale in favour of political pluralism following the unanimous decision in a Consultative Group meeting in Paris to suspend all aid to Kenya until there was political and economic reform. A week later, President Moi announced the repeal of Section 2 (A) of Kenya's constitution which had barred the formation of other parties, eventually making Kenya a *de facto* multi-party system.

Donor intervention in Kenya in the form of political conditionality led an increasingly authoritarian regime to finally accept multi-partyism. This presupposes that donors maintained a relevant position in Kenya and that Kenya's economy was not only dependent on foreign aid, but was also externally driven.

Kenya and the Donors

Kenya was for many years popular with donors and had continued to receive generous amounts of foreign aid. In 1989/1990 net foreign loans and grants constituted 86% of the government's development budget (Grosh and Orvis, 1994). Kenya thus had not yet fallen out of favour with donors prior to the end of the Cold War. Its relations with donors, like those of most African countries, began to take a different course in the late 1980s and early 1990s, closely tied to the end of the Cold War. The first sign may have come in the report *Sub-Saharan Africa: From Crisis to Sustainable Growth*, issued by the World Bank. The report carried references to

'governance' as a factor important to economic performance and called for its improvement. Its central tenets seemed to include transparency of government policy and a commitment, by a particular government, to freedom of speech, expression and popular participation.

More serious signs of things to come emerged in 1990, soon after the US posted a new representative to Kenya, Ambassador Smith Hempstone. In May of the same year, Hempstone moved to report on changes in US policy stating that 'there was a strong tide flowing through the American Congress to concentrate US economic assistance on countries that nourished democratic institutions, defended human rights and practiced multi-party politics'. He also carried a warning message to Kenya, in particular, and Africa, in general, that they faced greater competition with countries in Latin America and the late comer, Eastern Europe for US aid (New York Times, 21 October 1991).

These statements, marked the beginning of acrimonious relations between the donors and the Kenyan government. Much of this controversy was spearheaded by the American government in the person of Smith Hempstone. He very much irritated the Kenyan government and President Moi in particular by cultivating relations with those pro-democracy and human rights activists who were Moi's political opponents. Hempstone decried the detention of Kenneth Matiba and Charles Rubia and even gave refuge to human rights lawyer, Gibson Kamau Kuria, to help him avoid detention, later assisting him in getting out of the country (Weekly Review, 11 May 1990).

The first indication that the new US views on tying aid to democracy and human rights could result in less aid for Kenya came in November 1990 when the US congress voted to freeze \$25 million in military assistance budgeted for Kenya pending change on four human rights issues. The conditions included the restoration of security of tenure for judges and other top civil servants, release on trial of political prisoners, termination of torture for prisoners and the restoration of freedom of expression (Weekly Review, 22 February 1991). Through-out 1990 and 1991 domestic politics in Kenya were characterised by growing vocal opposition to Moi and his

one-party state. More embassies notably those of Germany, Denmark, Britain and Sweden, came out in protest against the government's brutality towards the opposition movement.

The pressure of Western donors for improvement in human rights and democracy escalated with the Consultative Group (CG) meeting of November 1991. Donors voted to defer a decision on non-humanitarian balance of payments to support Kenya for six months, pending progress in the country's implementation of economic and political reforms. Within the economic realm, they maintained that the economic crisis was reflected in the 'public sector deficit, inflation, declining levels of private investment, high unemployment and capital flight' (Grosh and Orvis, 1994). Some of these fiscal crises such as a high rate of unemployment and inflation had also found expression in the emerging social unrest that challenged Moi's government. Donors also expressed much concern over misuse of public funds and the government's lack of transparency and accountability in a number of departments. Essentially they seemed to be revealing the problems that come with neo-patrimonial practices.

The Consultative Group meeting proved to be a turning point for Kenya. On the one hand, having exhausted a significant amount of its resources on unconstructive tendencies, confronted with the problem of suspended aid, the regime was forced to comply. On the other hand, the move by donors to support political and economic reforms added impetus to the prevailing popular domestic protests demanding an alternative government. The legitimacy of Moi's regime was increasingly under concerted challenge, leading him to announce within a week of the Consultative Group meeting that multi-party politics had been restored in Kenya and that elections of that nature would be held in 1992.

Pressure for change to multi-partyism did not alter the regime's desire to cling to power. Instead, minimal reforms as opposed to substantive reforms that would enhance fundamental regime change and dismantle the mechanisms that had been deployed to stifle popular participation, were introduced. Donors also seemed not to have paid much attention to this. Despite the restoration of multi-partyism, there was a steady rise in corruption, state-sponsored ethnic

violence, continued political authoritarianism and bad economic management. This was at the cost of aid cut-offs, the human and economic costs of which were horrendously, high but accompanied by limited political changes.

Conclusion

This chapter sought to examine political conditionalities and the transition process in Kenya. It established that Kenya gained independence as a multi-party system, as provided for in its constitution, but under the leadership of Kenyatta and later of Moi, it slowly degenerated into a single-party authoritarian regime that only opened up its political space in 1991.

The chapter has also situated the leadership of the two regimes (under Kenyatta and Moi) within the context of neo-patrimonial forms of rule which are highly constructed on a personalised system of rule. This kind of rule is best informed by the irrational logic of the incumbency in its need to survive politically and accumulate all the available patronage. Neo-patrimonial regimes form networks of coalition which grant undue favour to one's own ethnic community. It has been established that the availability of patronage defines the regime's durability and the nature of its leadership. Moi inherited a typically authoritarian state with a declining share of patronage. This forced him to build a much more repressive state compared to that of Kenyatta, in order to enable him to look for patronage in an increasingly unchallenged manner.

A fiscal crisis rising from a decline in economic development is instrumental to the crumbling of neo-patrimonial regimes. Declines in living standards coupled with the emergence of an increasingly opposing voice, mainly from the group of 'outsiders', contributes to the rise of social unrest. Concerted internal and international pressure was influential in forcing President Moi to break KANU's monopoly of political power eventually allowing for multi-partyism.

Political conditionality is important in breaking patterns of neo-patrimonial rule that have tended to stifle dissent, but it is quite uncertain the extent to which it can entrench a meaningful

transition to democracy. In Kenya's case, some of the typical characteristics of neo-patrimonialism have been carried forward, despite the move to a multi-party democracy. Even if the regime has espoused political pluralism, it is important to examine the form and content of democracy which it presents.

References

- Abuom, C., "The Churches in the Democratization process in Kenya" Hizkias, A. and Wachira, G., (ed.), *Peace making and Democratization in Africa, Theoretical Perspectives and Church Initiatives*, East African Educational Publishers, Nairobi, 1996 pp.95-116.
- Adar, Korwa G., "Ethnicity and Ethnic Kings: The Enduring Dual Constraint in Kenya's Multiethnic Democratic Experience", *Journal of the Third World Spectrum*, 2(5), 1998 pp.71-98.
- Ajulu, R., "Kenya's 1997 Elections: Making Sense of the Transition Process" *New England Journal of Public Policy*, Fall Winter 1998 pp.73-88.
- Ajulu, R., "Kenya's Democratic Experiment: The 1997 Elections" *Review of African Political Economy*, No.76, 1998 pp.275-288.
- Berman, Bruce, J., "Ethnicity, Patronage and the African State: The Politics of Uncivil Nationalism, *African Affairs*, 1998 pp.305-341.
- Friedman Galia, S., "Church and State in Kenya, 1986-1992: The Churches's involvement in the game of Change", *African Affairs*, 1997 pp.25-32.
- Grosh, Barbara and Orvis, S., "Political Conditionality: Democratization and Economic Performance in Africa. Aid in Kenya in the Post-Cold War era", no Publisher, 1994.
- Huntington, S., "How countries democratize", *Political Science Quarterly*, 106(4), 1991 pp.579-616.
- National Elections Monitoring Unit (NEMU), "The Multi-party General Elections in Kenya 29 December 1992: The Report of the National Election Monitoring Unit", NEMU, 1993.
- Ross, D. Stanley, "The Rule of Law and Lawyers in Kenya", *The Journal of Modern African Studies*, 3(30), 1992 pp.421-442.
- New York Times, 21 October 1991.
- Throup, D. and Hornsby, C., *Multi-party Politics in Kenya: The Kenyatta and Moi State and the Triumph of the System in the 1992 Election*, East African Educational Publishers, Nairobi, 1998.
- Van De Walle, Nicholas and Bratton, Michael, "Neo-patrimonial Regimes and Political Transitions in Africa", *World Politics*, 4(46), 1994 pp.453-489.

Wanjohi, N., *Challenges of Democratic Governance, Parliament, Executive and the Citizen in Kenya*, National Council of Churches of Kenya (NCCCK), Nairobi, 1993.

Wanjohi, G., *Multi-party Electoral Process in Kenya*, National Council of Churches of Kenya (NCCCK), Nairobi, 1993.

Weekly Review, 11 May 1990.

Weekly Review, 22 February 1991.

CHAPTER THREE

THE 1992 AND 1997 MULTI-PARTY ELECTIONS IN KENYA

Introduction

The previous chapter looked at political conditionalities and the transition process in Kenya from a single-party regime to a multi-party democracy. We have shown that, while local pressure on the government was building up, it was ultimately international pressure which led to the liberalisation of Kenya's political system. Thus, multi-party elections were held in 1992 and again in 1997. It is important to examine the democratic quality and content of democracy that these elections presented. This chapter proposes to examine the preparation for these elections, the conduct of the elections and the electoral outcome. This chapter thus focuses its attention on the 1992 and 1997 multi-party elections. It specifically examines the main components of the electoral process notably: the legal framework, voter registration, political party organisation, polling and results.

The 1992 and 1997 multi-party elections form the central focus of this study for two main reasons. Firstly they were the result of Kenya's transition from single-party rule to multi-party rule as a result of a constitutional revision made in 1991. Apart from the 'Little general elections' held in 1966, following the split in the ruling party KANU and the subsequent formation of KPU, these were the first multi-party elections since Kenya gained independence in 1963. On account of the previous absence of competitive political representation, Kenya by 1991 had hardly any significant experience in running multi-party elections. Secondly, these elections also represented for the first time, tangible pressure on the Kenyan government by the donor community with a number of donors deferring substantial aid to Kenya until political and economic reforms had taken place. This premise has led Ajulu (1995:98) to argue that it is an attempt to restructure an authoritarian state through 'imperialist conditionalities'. For this reason, we contend that these developments bear significant implications for the democratisation process in Kenya, as the country attempted to move from single party rule to a multi-party system.

Setting the stage for political pluralism (1991-1992)

Due to international and internal pressure, a number of changes were implemented in the political system. These changes led to the holding of multi-party elections in 1992. The most important achievement was the repeal of the constitutional provision legalising one-party rule. Section 2 (A) of the constitution was repealed allowing for a *de jure* multi-party system. The Amendment Bill read as follows:

The principal object of the Bill is to amend the Constitution to repeal Section 2(A) which provided that KANU shall be the only political party in Kenya. The Bill also makes consequential amendments to the Constitution to enable each party to nominate candidates for Presidential, National Assembly and Civic elections.

(Constitution of Kenya (Amendment)(No.2) Act, 1991)

A new system for the presidential election was also introduced. Under this system, the winner was not only required to secure a majority vote, but also to garner 25% of the votes cast in at least five of the country's eight provinces. In the event of no winner in the first round of the presidential election, then the two candidates with the highest vote count would face a run-off election (NEMU, 1993:21).

The above provision provoked debate amongst the various players, particularly amongst the opposition over its real intentions. On the one hand, the opposition which had just been legalised, but had been operating outside the main law-making body, treated this particular provision with suspicion. It saw it as a way of stopping a candidate who had a majority of votes but from fewer than five provinces from becoming president. It should be recalled that these provisions were solely passed and ratified by KANU, since at the time they were made, KANU was the only official parliamentary party in Kenya. KANU on the other hand justified the importance of the provision by maintaining that it was meant to produce a president who had national appeal (Weekly Review, 20 November 1997).

Further changes included a limitation of presidential tenure to two five year terms and political

parties were made responsible for financing the preliminary elections or the nomination of the party's candidates. Previously the state had organised this particular stage of the elections and borne the expenses. Within this multi-party legal framework, presidential, parliamentary and civic elections were now possible and did indeed take place in 1992. The next section is devoted to the discussion of the 1992 electoral processes.

The Electoral Commission

The Election Laws (Amendment) Act of 1992 established an independent electoral system to oversee the administration of elections. This came to constitute the Electoral Commission of Kenya. It was made responsible for the registration of voters, revision of the voter's roll and directing and supervising of the presidential, national assembly and local government elections. These activities were to be carried out in a non-partisan and fearless environment. However, the credibility and independence of the Electoral Commission came under vigorous attack mainly from the opposition, when its chairman and group of commissioners were solely appointed by the president.

On the one hand, appointed by President Moi, its legal responsibilities and power remained unclear. Its chairman was explicit for example that the Commission had no authority to ensure that 'the media was impartial or to issue permits and licenses for campaign rallies' as these were the responsibilities of the government (Daily Nation, 26 October 1992). On the other hand, the opposition considered it inimical to multi-party democracy for the country's main electoral body to be a composition of KANU appointees and not appointed by all parties concerned. Its partiality and the conduct of the electoral process became a matter of concern, with some opposition leaders calling for a totally independent body, to avoid KANU's circumvention of the Commission's authority in conducting a free and fair election.

Its Chairman, Justice Z. Chesoni, was openly accused by other commissioners and the opposition, of incompetence and restriction of the Commission's decision-making powers to himself. The Commission was repeatedly blamed for lack of openness and transparency in its

undertakings, disorganisation at its main offices and its unwillingness to cooperate with the opposition. For example, there were constant complaints of its refusal to meet the opposition and furnish them with information on polling stations and election officials that the Commission had deployed in their respective constituencies (Daily Nation, 10 December 1992).

Political Parties

The first party to be registered following the repeal of the infamous section 2(A) was FORD under Oginga Odinga and Kenneth Matiba. As has already been indicated FORD, had been a pressure group with people of varied political inclination but having the common objective of breaking KANU's monopoly of political power. Within two months FORD split into two rival parties: FORD-Asili (FORD-A) and FORD-Kenya (FORD-K). Other opposition parties that were formed included the Democratic Party of Kenya (DP) and the Kenya National Congress (KNC) and the Kenya Democratic Alliance (KENDA). By the time nominations took place, apart from KANU, FORD-A, FORD-K DP, KENDA and KNC, the following other parties had also been registered: Kenya Social Congress (KSC), Labour Party Democracy (LPD), Party of Independent Candidates of Kenya (PICK) and Social Democratic Party (SDP). In total, nine parties took part in the nomination of candidates for the presidential, parliamentary and civic elections.

It is also worth noting that not all parties that had applied for registration were granted it as some were denied and on very flimsy grounds. Parties denied registration by the time of nominations included the Green African Party (GAP), the Green Party (GP), the Islamic Party of Kenya (IPK), the Kenya Nationalist People's Democratic Party (KNPDP), the Party of the Proletariat Peasants (PPP) and the Democratic Movement (DEMO) of Ngonywa wa Gakonya. The grounds given for the latter's denial was that it was a religious and not a political organisation. Interestingly enough Ngonywa's Tent of the Living God (which later transformed into DEMO) had previously been denied registration as a church on the ground that it was a political and not a religious organisation (Daily Nation, 20 December 1992).

Voter Registration

The initial concern over the voter registration process conducted by the Electoral Commission was mainly that millions of young Kenyans who had become eligible to vote could not be registered because they did not have identity documents. According to the interim 1989 population census, Kenyans who were between 15 and 18 years were not registered as voters because they had not been issued with identity cards. According to NEMU (1993:42), close to three million Kenyans were not registered for lack of identity cards. Despite the opposition's demand that those without identity documents be issued them immediately, the government did not act accordingly. The most it did was to waive the fee requirement for obtaining an identity document.

Beyond identity document technicalities, the process was hampered by reported cases of voter bribery and importation of voters to given constituencies. In some parts of Kenya, the process was marred with violence. This violence by people who were never apprehended by the government mainly targeted opposition supporters. For instance, three Kenyans were killed on 10 June 1992 by people said to be warriors at the Enosupukia registration centre in Rift Valley Province. Trouble is said to have started after the alleged warriors from the Maasai community ganged up and vowed not to allow any Kikuyu to register or vote. The incident occurred after a senior cabinet minister had ordered non-Maasais in the area to join the Maasai in voting for KANU or to quit the area (Daily Nation, 12 July 1992).

It is also worth noting that the registration of voters started just after hundreds of Kenyans had been killed and thousands displaced from their homes following politically instigated ethnic clashes in parts of Rift Valley and Western Province. Calls were made for the government to resettle those displaced so that they could register themselves as voters. No definitive response to these calls was made by the authorities, therefore it is not easy to tell how many people failed to register due to the clashes.

Campaigning

Legally, election campaigns were supposed to begin after the nomination of candidates supervised by the Electoral Commission. The justification here is that it is only after such nominations that one can speak of being a presidential, parliamentary or civic candidate. A most peculiar aspect of the December 1992 elections is that there really was 'no campaign period'. This was because even after the removal of Section 2 (A) of the constitution, KANU continued to campaign against multi-partyism predicting its potential to stir up ethnic animosities. The opposition on the other hand continued to castigate KANU for the decline in the country's economic performance and its dictatorial practices which had undermined democracy in Kenya. It became difficult to identify precisely when the campaigning exercise began. One would not properly be able to describe the campaign process if one limited the period to the official one. A lot seems to have taken place prior to the campaign period which was just before the polls, which had serious implications for the elections.

In general, campaigning took place in an environment of unequal opportunities for the political parties. KANU enjoyed undue advantage over the opposition. For example, in the area of licensing, the government on a number of occasions denied the opposition licenses to conduct their campaign rallies. The requirement of licenses was actually used by the administration to deny opposition parties and figures the opportunity to address or simply meet the public. For example, in Kilifi District of Coast Province, a FORD-K parliamentary aspirant, Jembe Mwakali had his 13 campaign meetings cancelled by the District Security Committee. In Kikuyu constituency where FORD-K's Paul Muite was standing, the District Commissioner ordered that a license be obtained from his office at the district headquarters, rather than the usual divisional headquarters (NEMU, 1993:40). Permits could also be issued to different parties to hold simultaneous rallies at the same venue without their consent, a practice that was common in Nairobi.

The government and KANU's deliberate attempts to restrain the opposition is also evidenced by the way certain KANU leaders and supporters moved to declare some areas explicit KANU

zones. The opposition was barred from entering any of these zones. In Nandi District of Rift Valley Province, a cabinet minister advised members of his constituency to arm themselves and chase away opposition leaders from Nandi District. Elsewhere, Baringo District (home district of President Moi) and Samburu District in the Rift Valley Province were declared 'KANU zones' (Daily Nation, 17 September 1992).

KANU leaders and Moi made use of state property and personnel on a massive scale during their campaign. On his tours throughout the country, Moi paraded leading civil servants before the people as evidence of how much he had rewarded the locals. For example, on his tour of Western Province in 1992, he paraded the Attorney General and Permanent Secretaries who hailed from the province. In Machakos District of Eastern Province, he paraded a judge of the Court of Appeal and a Deputy Vice-Chancellor in one of the public universities, promising similarly to reward the people if they voted for KANU (NEMU, 1993:66). Other civil servants such as District Commissioners, District Officers and Chiefs blatantly campaigned for KANU.

A state resource like the public broadcasting station (Kenya Broadcasting Corporation) almost became a tool for KANU's campaigns. Both its television and radio stations loudly and persistently broadcast news, events and reports in favour of KANU. The quality of information and footage also reflected a more positive attitude towards KANU.

The total effect of the unequal and unfair opportunities of the campaign process was that, on the one hand, it narrowed the opposition's chances of victory in the election. On the other hand, it increased KANU's prospects of winning the election. Such a victory was to occur in an increasingly unfair context. This was because KANU had continued to enjoy an unmatched advantage over the opposition for a number of reasons.

Firstly, it had close links with the civil service, provincial administration and state bodies such as the Kenya Broadcasting Corporation. Secondly it exercised control and made indiscriminate use of public resources, including public funds, to fund its campaign. Individual sponsorship for all participating parties had significantly hampered parties without strong financial support. Thirdly, KANU was in control of the Electoral Commission and the Attorney General's office,

which in a fair context would have demanded a degree of independence so as to conduct their duties in an impartial manner. Fourthly, the use of intimidation, harassment and even violence targeting the opposition hampered its activities, as well as the fact that the opposition was split and wasted much time and energy on inner power struggles. Given the above circumstances it became increasingly impossible for the opposition to dislodge KANU.

Polling

The electorate cast their vote on 29 December 1992. In most parts of the country polling took place in a relatively calm and peaceful atmosphere. However, violence involving clashes between KANU and opposition supporters were reported at some polling stations particularly in Kisumu and Migori Districts of Nyanza Province. Serious administrative problems which lead to the late start of polling were reported from a number of polling stations. Election materials were also delivered late or never delivered at all at some polling stations. In Amagoro constituency of Western Province, voting only began at 5:10pm and in Tigania constituency of Eastern Province, materials for eight polling stations did not arrive at all (NEMU, 1993). Delays were further compounded by incompetence amongst polling clerks, mainly due to lack of proper training. Other related problems included faulty ballot papers, with candidates' names and party symbols mixed up or omitted and some party symbols were unclear.

Election Results

Eight political parties namely KANU, FORD-A, FORD-K, DP, KNC, KSC, KENDA and PICK contested the elections. The main contenders for the presidential elections were Moi of KANU, Matiba of FORD-A, Kibaki of DP and Oginga Odinga of FORD-K. Other parties emerged with a weak showing possibly due to lack of finances, for example KSC and KNC. With regard to the presidential vote, Moi emerged as the winner because he was able to garner 25% of the vote from five provinces, even though he did not win a majority vote. Thus both the total number of votes received and the percentage obtained per province were important for his victory. Overall he obtained just over 1.9 million votes out of the 5.3 million votes cast in the election. The majority

of the votes cast against him were split among a number of other candidates.

Table 1: Presidential Vote by Province

Province	Daniel Arap Moi	Kenneth Matiba	Mwai Kibaki	Oginga Odinga	Others
Nairobi	62,410 (16%)	165,553 (44%)	69,715 (18%)	75,888 (20%)	7,588 (2%)
Coast	188,296 (62%)	33,399 (11%)	32,201 (10%)	42,796 (14%)	9,660 (3%)
N/Eastern	46,420 (72%)	7,188 (11%)	3,259 (5%)	5,084 (8%)	3,082 (5%)
Western	219,187 (38%)	214,060 (37%)	14,404 (3%)	98,822 (17%)	28,808 (5%)
Eastern	290,372 (37%)	79,436 (10%)	392,481 (50%)	13,673 (2%)	7,849 (1%)
Central	21,918 (2%)	630,194 (60%)	373,147 (35%)	10,668 (1%)	2,320 (2%)
R/Valley	981,488 (71%)	214,727 (16%)	98,302 (7%)	75,465 (5%)	1,509 (1%)
Nyanza	117,554 (15%)	10,299 (1%)	51,998 (6%)	581,490 (75%)	25,894 (3%)
Total	1,927,640	1,354,856	1,035,507	903,886	86,710

Source: National Election Monitoring Unit, 1993

KANU won 100 parliamentary seats out of 188. Of these, 17 were unopposed meaning that KANU was the only party that presented a candidate for nomination in those particular constituencies. The explicit move by KANU to 'zone' some areas from contestation by the opposition, coupled with its subsequent forceful restraint of some of the opposition candidates from presenting their nomination papers before officials, could have rendered its supposed unopposed victory possible. The Rift Valley Province which had some of its constituencies declared explicit KANU zones also had the highest number of unopposed seats.

Table 1.1: Party Parliamentary Election: Contested and Uncontested seats

Party	Contested seats won	Percent	Uncontested seats	Total Parliamentary seats
KANU	70	44%	30	100
FORD-K	31	20%	-	31
FORD-A	31	20%	-	31
DP	23	15%	-	23
PICK	1	0.3%	-	1
KSC	1	0.3%	-	1
KNC	1	0.3%	-	1
OTHERS	-	0.1%	-	-
TOTAL	158	100%	30	188

Source: NEMU, 1993:40

The distribution of votes showed a pattern, indicating a geographical concentration of the vote. Moi maintained a strong showing in his home province of Rift Valley, mainly inhabited by his Kalenjin community, Coast and North Eastern Province. Kenneth Matiba was able to obtain a substantial number of votes also in his home province of Central and also made a remarkable showing in Nairobi province. These provinces are mainly inhabited by the Kikuyu community of which he is a member. Perhaps he would have maintained some showing in Rift Valley were it not for the ethnic clashes that drove a significant number of the Kikuyus out of the Province at the demand of the Kalenjins. Kibaki's performance was also visibly stronger in his home province and related communities (Meru, Embu and Akamba) of Central and Eastern Provinces respectively. Oginga Odinga was only able to collect substantial a vote from his own Nyanza Province inhabited mostly by members of his Luo community. This distinct form of geographical division plays an important part in determining the extent to which democracy can be consolidated in such an ethnically fragmented society. Of course we contend that it is a

hindrance, but as discussed in the previous chapter, practices of neo-patrimonial rule, which have influenced Kenyan politics for many years, have been mainly constructed on networks of ethnic consideration. As such ethnicity has emerged as a spring-board for political mobilisation.

Despite evidence of manifest electoral irregularities which compromised the possibility of a free and fair election, plus KANU's undue and unfair advantage in the electoral process, a number of observer groups not only welcomed the verdict, but also declared it as 'the will of the majority' (Daily Nation, 7 January 1993). Others remarked that the polls constituted 'a giant step towards democracy in Kenya' (Throup and Hornsby, 1998). This was despite the myriad negative elements associated with the whole electoral process, particularly with respect to unequal opportunities between KANU and the opposition. These remarks did not only serve to legitimise the mandate of an increasingly unpopular regime elected through a minority vote, but they also demonstrated the extent to which international observers were out of touch with the reality of the 1992 electoral contest. These remarks, which failed to acknowledge the unfairness of the elections despite substantial evidence, to a large extent compromised the credibility and integrity of international observers, particularly the Commonwealth Group of Observers. Several opposition leaders and supporters decried KANU's attempt to rig the elections with some denouncing the outcome. In addition, KANU had successfully managed to dominate the electoral process in such a way that its victory was inevitable. It would therefore seem that the opposition would need a near miracle to dislodge KANU.

The 1992 multi-party elections did very little to lay the foundations of democracy in Kenya. In a number of ways, KANU continued to assert its dominance, despite the breaking of its monopoly of political power in 1991. The 1992 multi-party elections served to demonstrate the extent to which KANU could manipulate the process and all the institutions meant to defend democracy, in any democratic setup. The same institutions deployed by KANU under single-party rule to manipulate electoral processes were also utilised, this time in a pluralist context. For example, the provincial administration was used to frustrate the efforts of the opposition through harassment and the denial of licenses to freely conduct their activities. The Electoral

Commission, despite its mandate to oversee the democratic conduct of elections, was still linked to the government, as its administrators were solely KANU appointees. It also lacked clear legal guidelines on how it was to administer free and fair elections, especially in the area of ensuring equal access to the electoral process, opportunities to address the media and licensing of parties to conduct campaigns. The Electoral Commission was also highly incompetent and ineffective in the way it went about its duties.

Public institutions and offices such as the broadcasting station (KBC) and the Registrar of Societies were also blatantly biased against the opposition. Thus the shift to multi-party elections in 1992 did not pave the way for the realisation of meaningful democracy. Instead, there was a deliberate attempt by the incumbency to erode rather than strengthen democracy in Kenya. This was to constitute its mode of survival in the post-1992 era, as discussed in the next section.

Post -1992 Scenario

Given the mandate to rule, under the new multi-party political system, KANU continued to strengthen its grip on power while the opposition fragmented and remained divided on virtually every issue. The key tasks that lay ahead of KANU were to rebuild a stable political hierarchy, to contain the opposition and to try to deal with the critical problem of the suspended balance of payment support by the Western donors. The new government therefore was faced with the challenge of wooing the West while at the same time asserting KANU's authority. However, the latter seemed to be its main preoccupation.

KANU continued to marginalise the core opposition supporting communities, especially the Luo and Kikuyu, whilst rewarding its own supporters. It became a common practice for senior KANU members to threaten on the government's behalf to prevent areas that had voted for the opposition from receiving development assistance. For example, in January 1994, a minister in charge of famine relief in the Office of the President threatened that only areas which had voted for KANU would receive relief (Daily Nation, 10 January 1994).

Opposition members were also excluded from development committees within their respective districts, to prevent them from making contributions or influencing development in their constituencies.

Continually, opposition Members of Parliament were harassed, beaten up and threatened by security forces. At least 21 were arrested and charged during 1993. In one instance, a FORD-K legislator from Kisii District, Nyanza Province was so severely beaten by police during a by-election that he had to be carried into court on a stretcher (Standard, 30 June 1993). KANU also attempted to use numerous rewards to tempt vulnerable opposition legislators to defect to the ruling party. This was particularly so in areas dominated by government officials.

Saddened by their defeat and suffering the effects of financial deficiencies, the aftermath of the elections saw the opposition exhausted and frustrated. Those who could not stand the frustrations ended up defecting to KANU. It therefore looked as if opposition in Kenya was a convenient institution to obtain power. Factions mainly emanating from differences in age, ethnicity and personality clashes continued to dominate opposition operations and activities. All the three major opposition parties (DP, FORD-K and FORD-A) experienced severe internal squabbles that left them divided, left, right and centre. Their leaders seemed to spend more time combating each other rather than KANU.

Meanwhile dozens of KANU's defeated Members of Parliament and Ministers moved to occupy senior posts in statutory boards and parastatals. These positions would assist them to continue plundering state resources and also act as political springboards to regain their former positions. This served to further affirm the extent to which the state under KANU remained partisan in its distribution of resources. This distribution of resources was complicated by the decline in opportunities for patronage especially within the parastatals. The pressure by the West to liberalise the economy, reduce corruption and decrease state involvement in the economy, cut the number of important positions available to Moi to reward his loyal supporters.

Human rights violations were steadily on the increase after 1992. The ethnic clashes that had arisen in parts of Rift Valley Province continued throughout 1993 and 1994. The state proved unable to control this strife, despite declaring the affected areas security zones and deploying military personnel (Weekly Review, 20 April 1994). In a real sense, security zones barred mostly the opposition, human rights watchdogs and the press from entering these areas and making independent assessments of the clashes. Meanwhile, Moi continued to point an accusing finger at the opposition, even though some KANU leaders had warned on a number of occasions during the campaigns that those who did not vote for Moi and KANU would suffer the consequences. The clashes therefore provided evidence of how the government was either actively killing its own people or watching as they were being killed.

Elsewhere, the right to freedom of expression especially with respect to the media, were violated, as attacks and restrictions targeting the opposition increased after the elections. Numerous opposition publications were impounded and their editors were arrested and charged with sedition. These publications repeatedly blamed the government for its involvement in and lack of commitment to ending the ethnic genocide. The government was also blamed for the decline in Kenya's economic performance, attributed to corruption and graft by government officials who were never arrested. Reports of a number of corruption scams implicating top government officials also appeared in sections of the press.

The post-1992 scenario seems to have been an unfinished agenda of institutional and government reforms in compliance with multi-party democracy. Democracy had not been entrenched and instead Moi's government was slowly eroding it. It also appears that his government was increasingly unsupportive of the growth and strengthening of institutions of democracy, even restraining their activities. Five years after introducing multi-partyism in Kenya, the KANU government was still caught up in the quagmire of authoritarian rule. It is within this framework of continued government control over political activity in a plural setup that the opposition, members of independent civil society organisations and the international community openly

demanded a change in the constitution to increase political fairness in all political processes before the 1997 multi-party elections could be held.

1997 Multi-Party Elections

These elections were the second set of multi-party elections in Kenya since the inception of political pluralism in 1991. Developments leading to this election, which finally took place on the 29 December 1997, in a number of ways resembled those of the 1992 multi-party elections. The government had come under concerted pressure from the opposition, a cross-section of civil society and the country's donors to institute comprehensive constitutional reforms before elections could take place. An amalgam of civil society (representing religious organisations, various opposition political parties, university lecturers and students) under the umbrella of the National Convention Executive Council (NCEC) led a series of rallies and demonstrations in Nairobi and parts of Kenya. These were similar to the *Saba Saba* revolts of 1990, but this time they were demanding 'constitutional reforms' that would challenge the government's control over political activity in Kenya. As in 1992, Moi's administrative and security personnel reacted by unleashing violence on the demonstrators. Security personnel even went to the extent of storming churches to comb out culprits, beating a controversial clergyman and leaving him for dead (Daily Nation, 7 July 1997).

Much like the sporadic ethnic clashes of 1992, a spate of violence in the form of raids hit parts of Coast Province on the eve of the 1997 multi-party elections. The underlying cause lay in the attempt by the inhabitants (largely the Giriama) to expel non-Coastal communities (predominantly of Kikuyu and Luo origin) through threats and raids on homes, church compounds where displaced groups sought refuge and even police stations (Ajulu, 1998: 277). The political logic for expelling the "foreigners" lay in the fact that the Giriamas had formed a significant part of the KANU vote, but the growing number of non-Coastal communities, mostly drawn from opposition communities had the potential to hamper the consolidation of this vote. Given this hostile environment, it was quite unclear how the 1997 elections were going to take

place . What even further compounded the situation was the damage to the country's infrastructure as a result of the *El nino* floods, making accessibility increasingly difficult.

Setting the Stage for the 1997 multi-party elections

As a result of intense pressure from constitutional reform activists and a number of the country's donors who decried the government's unwarranted brutality in dealing with critics, the government gave in to the demands. Domestic and external pressure mostly in the form of threats to suspend aid had become a more effective tool in dealing with the Moi-led government which had remained recalcitrant to comply with principles of political pluralism. Even though the constitutional reform activists were demanding a complete overhaul of the constitution before elections could be held, the government only approved a few reforms. These minimal reforms, especially those that were aimed at providing a level playing field for the election, were formalised through an inter-party parliamentary initiative, or what came to be known as the Inter Party Parliamentary Group(IPPG).

Among the issues it considered were those constraining freedom of assembly and expression by means of the provincial administration, the conduct of the Electoral Commission and Registrar's Office, the control by the government of the public media (KBC) and the limitation of the presidential powers. In 1992, these offices were the ones used extensively by KANU to undermine the opposition, thus hampering the conduct of a free and fair election. In addition, given that the 1997 multi-party election was approaching, there was a need to set ground rules for a much more equitable deal for all the participants. The IPPG aimed to introduce reforms that would ensure that a free and fair electoral system prevailed for all the political parties. It received overwhelming credit from a number of Kenyans including KANU and opposition leaders, donors and well wishers for its attempt to resolve the looming political deadlock and the manner in which dialogue was conducted in a friendly atmosphere. Others, notably some opposition and NCEC members calling for its boycott, treated the IPPG with suspicion seeing it more as an attempt by KANU to take away the 'constitutional reform' momentum from the NCEC.

According to them, KANU had designed the IPPG to diffuse the tension that had rocked parts of the country. Some also saw it as a form of appeasement by Moi which would not go far in actualising the needed reforms (Weekly Review, 25 October 1997).

Following from the various consultations with parliamentarians, the following reforms were passed:

1. The requirement in the Public Order Act that a permit be obtained from the police before a public meeting was held was replaced by a requirement that organisers of meetings notify the police in advance.
2. It was further agreed that a public meeting could only be stopped if the police deemed it likely to pose clear and present danger to the public.
3. Accordingly the government was required to give sufficient reasons in the event of the banning of political rallies.
4. The Chief's Authority Act which previously allowed chiefs to constrain organisations/rallies was scrapped.
5. The Electoral Commission was mandated to manage the campaign process without interference by the provincial administration.
6. The Electoral Commission was to de-link its activities from those of the state. It was also agreed that the opposition appoint 11 additional commissioners, to enhance the independence of the Electoral Commission.
7. The Electoral Commission was given the powers to monitor fair coverage by the KBC radio and television (Weekly Review 25 October 1997).

Earlier changes made included an increase in the number of political constituencies from 188 to 210, following the constituency boundary review by the Electoral Commission. Thus following from this development the number of contestants was expected to rise.

Political Parties

In 1992, the Registrar of Society had interfered with the operations of some parties by either delaying their applications indefinitely or completely rejecting their applications. However as part of the IPPG package, the Societies Act was revoked to allow the office to consider every registration application and to communicate its decision thereon to the party within 120 days of receipt of application (Weekly Review, 25 October 1997).

Thus the ability to delay applications indefinitely with no valid reason was thwarted. In addition, the IPPG also moved to recommend the registration of pending applications, as parties like SAFINA had sought registration about three years earlier but their registration was still pending. All new parties were registered. Pending registration of the following parties was also effected: the United People's Party of Kenya (UPPK), Shirikisho Party of Kenya (SPK), the Federal Party of Kenya (FPK), the Economic Independent Party (EIP) and the Republican Reformed Party (RRP). Despite the IPPG's proposal on the registration of parties which favoured their subsequent registration, The National Treaty Party (NTP) and the Islamic Party of Kenya (IPK) were denied registration. The registration of the latter which was a religiously inclined party was denied on the grounds that it had the potential to stir religious animosities, following clashes on a number of occasions between its supporters and the administration (Institute for Education in Democracy, Catholic Justice and Peace Commission, National Council of Churches of Kenya, 1998:14). However the truth possibly lay in the fact that as it drew a number of its supporters from Coast Province, which was largely a KANU stronghold, KANU increasingly may have feared that the party's registration would interfere with its vote in the region.

The total number of registered parties rose from eight in 1992 to 27 in 1997. This increase in the number of parties may have been as a result of the changes made following the IPPG reforms. Of the 27 parties registered, 22 participated in the elections and 15 of these fielded presidential candidates. The IPPG had also emphasised that each party take responsibility for the financing, organisation and administration of its nominations (Weekly Review, 25 October 1997). This

once more constrained the operations of smaller parties with minimal resources and maybe serves to explain why some of the registered parties did not participate. Some parties never even conducted nominations, but instead imposed candidates of their choice.

Voter Registration

As in 1992, the process was marred by identity document related problems. This time, following the move by the government to introduce new cards. Delays over the issue of new cards and replacement of old with new ones affected those who intended to register, but did not get the new identity cards in time to do so. The review of constituency boundaries hampered the process, as affected voters were forced to re-locate to their newly established voting stations and at times they were given instructions that were not clear. Despite the move by the Electoral Commission to computerise the process for the very first time, numerous errors ranging from wrong identification, duplication of voters' names, omissions and misplaced voters were reported. The time allocated, which was initially three weeks and later on a further week added, did not give voters, especially those with identity document problems, adequate time to resolve the problems and beat the registration deadline.

Campaigns

This is the period during which most of the IPPG reforms appear to have been put to test. The main issues during this period revolved around campaign licensing, the conduct of various parties and the utilisation of various state resources such as the media. Despite the repeal of the licensing requirement under the Public Order Act, in accordance with IPPG, there were instances as reported in sections of the daily press of opposition meetings and campaigns cancelled by the administration for lack of licenses. This was despite, in some cases, an early notification to the authorities by the party concerned of their intentions to hold political rallies and meetings. Opposition areas notably Nyanza Province experienced this problem.

In spite of the IPPG's provision of equal access by all parties to media resources, KANU activities dominated the reportage of the publicly funded broadcast media. Moi and KANU events which were closely interrelated continued to dominate KBC's screen and air waves. For example, two days before polling day, President Moi's campaign alone received 14.27 minutes of the news bulletin while the remaining parties shared 4 minutes (Monitoring Report by Article 19 and Kenya Human Rights Commission, 1998). The only duty KBC seems to have fulfilled which was in close conformity with the IPPG agreements was the provision of free airtime to all political parties. However, this was not done fairly as there were reports of its failure to allocate screening slots for party programmes that heavily criticised the government. KANU also continued to use state resources for its campaigns notably government vehicles. Civil servants were also visible at campaign rallies, especially district leaders, with some justifying the need to support KANU. For example, a District Commissioner, District Officer and the area chief were reported as having advised a KANU gathering in Vihiga District of Western Province to vote KANU if they wanted development (Daily Nation, 7 November 1997).

During the campaign period, cases of electoral violence were relatively low compared to 1992. This can possibly be attributed to the persistent warnings directed to the various political parties and supporters by the Electoral Commission to adhere to the electoral code of conduct. The electoral code of conduct barred parties from physical incitements, failure to abide by which was tantamount to the disqualification of the party from the electoral process. However there were reports of clashes amongst various parties, including reports of the lynching of opposition supporters by KANU. Unlike in 1992, there were no explicitly KANU zones to the extent that President Moi's own constituency for the first time fielded an opposition candidate, even though he abandoned his campaign following harassment and intimidation from KANU supporters. Threats were also made against 'anti-KANU' communities mostly Nandi, Kericho and Bomet Districts all in Rift Valley Province (Daily Nation, 10 December 1997).

Polling

On the polling day, the commitment of the Electoral Commission to ensuring a free and fair election came under considerable criticism, owing to the magnitude of the problems that marred the process. This led even the eventual winner, KANU to allege that the Electoral Commission had hatched a plot to rig them out.

To begin with, polling which was supposed to last a day went on for five days. *El Nino* floods caused long delays in the transportation of election materials and delivery from the Commission's main warehouse. Polling stations in some constituencies, especially in the North-Eastern Province where the floods had caused most damage to the infrastructure, did not receive any votes at all. The worst areas were Fafi and Lagdera constituencies.

Despite the enthusiasm to vote as reflected in the voter turnout (65.75% as compared to 58.9% in 1992), the extensive logistical and administrative problems delayed and disrupted voting in various parts of the country. Voting material distribution from the commission's warehouse was poorly done to the extent that by the close of the polling, some stations had not yet received their materials. There was also a high number of mix-ups in the allocation of ballot papers. For example, papers destined for Eastern Province found their way to Rift Valley Province. Several reports were received of ballot papers misprinted and with wrongly placed party symbols. Other disturbing cases involved insufficient ballot papers with a constituency having 3,000 registered voters receiving only 400 ballot papers, (Daily Nation, 11 January 1998). Given this magnitude of irregularities compounded by an increasingly disorganised and incompetent Electoral Commission, voting was extended to the following day even though some polling stations never opened on the second day thus denying voters a chance to exercise their rights.

Election Results

Despite the increase in the number of political parties during this election, thanks to the IPPG reforms package, the main contenders in terms of having a meaningful national impact were Daniel Arap Moi of KANU, Mwai Kibaki of DP, Raila Odinga of NDP, Michael Wamalwa of FORD-K and Charity Ngilu of SDP. The results showed very little difference from those of 1992. Moi emerged the winner once more, but this time with a 40.5% vote (see table 1.4). He was followed by Mwai Kibaki with 30.9%, Raila Odinga 10.8%, Michael Wamalwa 8.19% and Charity Ngilu 7.91%.

Table 1.4: Presidential Results

Candidate	Votes	Per Centage
Daniel Moi (KANU)	2,500,856	40.51%
Mwai Kibaki (DP)	1,911,472	30.97 %
Raila Odinga (NDP)	667,886	10.82%
Michael Wamalwa(FORD-K)	505, 704	8.19%
Charity Ngilu	488, 600	7.91%
Others	98, 653	1.60%

Source: Daily Nation 10 January 1998

Moi won majority votes in stronghold areas such as his home province of Rift Valley and North-Eastern Province, perhaps as a result of the government's ability, using state resources, to access parts of this province which had suffered significant flooding. He also won substantially in Coast province. He was able to manage a strong showing in Western Province unlike in 1992, although he may have lost narrowly to Wamalwa. His vote share had risen by about 5% over the 1992 result and he maintained a modest gain throughout, albeit low in opposition strongholds such as Central Province, Nairobi and Nyanza. Kibaki who had finished third in 1992's race, rose to second position with nearly 31%. His victory may have been as a result of Matiba's election

boycott and like Matiba in 1992, he drew most of his support from his fellow Kikuyu and related groups in Meru and Embu of Central and Eastern Province respectively. However he did not manage to collect much support outside his home province. Kibaki's candidacy was also affected by the emergence of Charity Ngilu, who pioneered women's competition for the presidency and had left his party for SDP. Other than Moi and Kibaki, other candidates performed dismally outside their home provinces, once more indicative of a very high geographical concentration of the vote. The very same regional patterns reflected in the presidential race were repeated in the parliamentary contests with parties mainly drawing support from their ethnic base. KANU won 107 seats against the opposition who won 102, representing a marked 38% increase in its share of parliamentary seats as opposed to 1992's 30%.

Table 1.4 Parties' Parliamentary Strength (elected MPs only)

Province	KAN U	DP	NDP	FOR D-K	SDP	SAFIN A	FOR D-P	OTHE RS
Nairobi	1	5	1					
Coast	18	2						1(SPK)
N/Eastern	9					2		
Eastern	16	8		1	9			1(FOR D-A)
Central		17	1		5	3	3	
R/Valley	39	7		3				
Western	15			9				
Nyanza	8		19	4				1(KSC)
Totals	107	39	21	17	14	5	3	3

Source: Institute for Education and Democracy, Catholic Justice and Peace Commission, National Council of Churches of Kenya, 1998.

Election Monitoring and Observation

The 1997 multi-party elections were extensively monitored by independent monitoring and observer groups. After the IPPG reforms, civil society organisations were permitted to conduct voter education freely and trained as many as 30,000 domestic observers. The majority of these organisations had begun work from the outset of the electoral process, meaning that they had practically witnessed the whole process and all its prospects and problems. Internationally, The Commonwealth and US based National Democratic Institute (NDI) also managed to field armies of observers who monitored the campaign, watched the polls and scrutinised the counting process. The election also saw a concerted move by Kenya's donors notably Denmark, The Netherlands, Sweden, Britain and the US in support of a number of election related-activities such as civic education, election monitoring and observation and the procurement of election equipment such as indelible ink. These countries spent as much as \$2 million in coordinated support under the umbrella of the Donor Democracy Development Group (DDDG).

Within the domestic realm, a reinvigorated civil society had made its presence felt. With the exception of NCEC, most organisations played a part in the elections. Notable examples included The Catholic Justice and Peace Commission (CJPC), Institute of Education in Democracy (IED), and the National Council of Churches of Kenya (NCCCK). These groups of observers in their comprehensive reports cited the case of numerous flaws that marred the election, but in spite of these Kenyans to accept the outcome of the election.

The demonstrated effect of a seriously flawed election, largely attributed to the organisational incompetence of the Electoral Commission did not deter a number of monitoring groups and international observers from accepting the verdict to the extent of begging Kenyans to accept the

outcome as well. As we have demonstrated polling in a number of stations was either delayed or did not take place due to lack of materials, misallocation of election materials, especially ballot papers, misprinting of ballot papers and lack of clear details on the modalities of prolonging the voting period as a result of the irregularities. However for a number of election monitoring groups and observers these irregularities were not sustained enough to invalidate the outcome. Thus the groups were equivocal as to whether the elections had been free or not. Statements were released which expressed grave concern about continued polling and counting irregularities, concluding that the electoral process was seriously flawed. These problems were more prevalent after polling was extended by one more day. Constituencies like Westlands in Nairobi Province and Kajiado North in Rift Valley Province experienced grave counting irregularities. In Westlands, the winning parliamentary candidate was alleged to have been rigged in by the Returning Officer, through the alteration of results (Daily Nation, 11 January 1998). However there was a degree of consensus by most monitoring and observer groups attributing the outcome to 'the will of the majority'. This in itself revealed a degree of ambivalence surrounding Western interpretations of electoral outcomes. Although they may have listed the irregularities, they did not strongly condemn the process. Thus there was no resolute conclusion as to whether the elections were free and fair. Such ambiguity surrounding observers' interpretations of the elections makes one wonder if international observers neglected their commitment to democracy by legitimising results that were obviously flawed.

Election reports by election observers and monitors remain critically important to third world countries. Donors, particularly, have tended to rely on such reports in deciding whether a given country qualifies for support or assistance from them. The extent to which these reports are unable to give independent, conclusive and clear interpretations of electoral outcomes makes us doubt their overall commitment and those of the countries and organisations they represent to promoting democracy.

Conclusion

This chapter set out to examine the multi-party elections held in 1992 and 1997. From our discussion of the two elections, it has clearly emerged that the KANU government was not at all committed to the deepening of democracy within a pluralist context. Its interest lay in strengthening its hierarchy and control of the political process in Kenya. Consequently it continued to use institutions such as the Electoral Commission, Registrar's Office and public resources such as the public broadcasting station (KBC) to assert its control and dominance at the expense of the opposition.

KANU's conduct during the 1992 and 1997 electoral processes confirmed its deliberate attempt to derail competitiveness in the electoral contest. For example, the administrative and security structures were manipulated to suit its entrenched interests, thus damaging the electoral environment. Leaders of the opposition were openly harassed and constrained from independently organising themselves, while KANU continued to enjoy greater access to opportunities and resources. This made it very difficult for the opposition to dislodge KANU in 1992 and again in 1997.

In 1997, important legal changes relating to freedom of association, assembly and speech were passed in the IPPG which constituted positive developments in Kenya's democratisation process. However, because these changes were forced on the government as a result of demonstrations and protests by members of the civil society, they indicate its lack of support for the growth of democracy and democratic institutions in Kenya. These changes were introduced barely two months before the 1997 elections. This meant that they had a limited benefit with respect to the conduct of the elections and the new provisions regarding equality were not, in practice, fully implemented or adhered to. For example, the media continued to remain biased towards KANU at the expense of the opposition.

References

- Ajulu, R., "The Transition to Multi-partyism in Kenya: The December 1992 Presidential, Parliamentary and Municipal Elections", Centre for Democratization Studies, Leeds University, Working Papers on Democratization , 1995.
- Ajulu, R., "Kenya's Democratic Experiment: The 1997 Elections" *Review of African Political Economy*, No. 76, 1998 pp.275-288.
- Constitution of Kenya (Amendment) (No.2) Act, 1991.
- Daily Nation, 12 July 1992.
- Daily Nation, 17 September 1992.
- Daily Nation, 26 October 1992.
- Daily Nation, 20 December 1992.
- Daily Nation, 7 January 1993.
- Daily Nation, 10 January 1994.
- Daily Nation, 7 July 1997.
- Daily Nation, 10 December 1997.
- Daily Nation, 11 January 1998.
- Institute for Education in Democracy (IED), Catholic Justice and Peace Commission (CJPC), National Council of Churches of Kenya (NCCCK), *Report on the 1997 General Elections in Kenya 29-30 December, 1997* ", IED, CJPC, NCCCK, Nairobi, 1998.
- National Elections Monitoring Unit (NEMU), *The multi-party General Elections in Kenya 29 December 1992: The Report of the National Election Monitoring Unit (NEMU)*, NEMU, Nairobi, 1993.
- Standard, 30 June 1993.
- Weekly Review, 20 November 1997.

CHAPTER FOUR

ASSESSMENT OF THE DEMOCRATISATION PROCESS IN KENYA

Introduction

Chapter Four seeks to assess the extent to which the two elections complied with the democratic principles of free and fair elections. This stems from the understanding that the conduct of free and fair elections constitutes an integral part of the democratisation process and therefore the successful conclusion of free and fair elections mark a significant step in the transition to meaningful democratisation (see Huntington, 1991; Diamond, 1993; Linz, 1978). As argued in Chapter Three, the undemocratic manner in which the electoral process was conducted paved the way for an unfair outcome in the two elections. Drawing from the theoretical foundations of the principles of free and fair elections, the discussion proposes to examine the degree to which this was the case in the two elections. This chapter will therefore derive its content from the discussion in Chapter Three and also from theoretical studies on elections.

It will be argued that the hope of holding free and fair multi-party elections in a country still emerging from the perils of single-party rule underpinned by struggles for political survival, can only be fulfilled if certain fundamental conditions are met. These conditions are supposed to clear the way for people to freely express their opinions and choose a government that would work within a truly democratic framework. Essentially this will require the dismantling of all institutions and structures that may have been built up over the years by the single party government, entrenched in neo-patrimonial practices for the principal purpose of restraining dissent and popular participation and thus entrenching its power. To this end, it is important to examine those institutions in a plural setup which are critically important for the burgeoning of democracy. The importance, nature and functions of elections need to be examined before embarking on how free and fair the elections were.

Nature and Functions of Elections

While stressing their importance, Wiseman (1996:48) has remarked that they provide a mechanism at the heart of the democratic process 'linking the governed to those who govern them'. Breytenbach views them as essential in providing the electorate with the opportunity to participate in public life, development and institution building, which are important constituents for a functioning democracy (Breytenbach, 1996:48). It therefore follows from this that any attempt to assess the extent of democracy in countries undergoing transitions, as in the case of Kenya, would necessitate an evaluation of the quality of the whole electoral process. However we need to beware of the common mistake made by scholars of equating elections to democracy. Elections have served to legitimise increasingly unpopular regimes as often as they have removed them. We therefore see them as essential and to a large extent relatively peaceful mechanisms of effecting a change of government. Change of government through elections, Breytenbach (1996:50) has remarked, is often a welcome opportunity to 'review the performance of the outgoing administration, identify the shortcomings and engage in the discussion of a new course'.

In outlining their importance, this study maintains that they are necessary, albeit insufficient to guarantee a substantive transition to democracy. At best, they lay a foundation for a transition, hopefully to democracy and democratisation. However, the comprehensive reforms, rules, procedures and institutions that will pave the way for a successful democratic transition need to be not only established, but also backed by the existence of a high degree of acceptance on the part of the various players, particularly the incumbent government.

Competitive, Free and Fair Elections

In a multi-party context which presupposes the existence of more than one party, it is imperative that the elections are competitive. In such a case the official opposition assumes an integral part, on the one hand to ensure that accountability and the integrity of the electoral process are not

undermined by the ruling party and on the other hand, to act as a vocal tool to publicly expose acts committed by the ruling party which may be deemed detrimental to the development of democracy. Therefore any attempts by the ruling party to restrain the activities of the opposition, be it by constraining their freedom of expression, association or even of conducting their election campaign are a crime against democracy. What then constitutes a competitive election? Hayward has provided a tall order of principles that describe competitive elections. According to him, competitive elections are those in which:

- All Law abiding citizens are entitled to vote
- Political organisations are free to put up candidates, debate their merits freely and criticise opponents
- Political organisations campaign with the objective of winning
- Each voter casts one vote and is not hindered in expressing a choice (preferably in secret)
- Votes are honestly counted and results faithfully reported
- The candidate, party or coalition with the most votes wins
- The losing individual or party does not try to use force to alter the outcome or prevent the winner from taking office, and the party in power does not restrict political participation and competition which are within the parameters of existing rules (Hayward, 1978:34).

Where elections answer to the above principles, they may be deemed free and fair. However, this tall order of principles, convincing as it may appear, focuses chiefly on the polling day, assuming that the electoral process was a smooth one. Its description falls short on how best to evaluate the elections of regimes undergoing transitions, as in Kenya's case. The trend amongst poll analysts has been to pay undivided attention to the election day and the polling itself, forgetting that polling is just part of the electoral process. As stressed earlier on, it is also necessary to examine how well a country has fulfilled the conditions that will pave the way for an election that fulfills Hayward's principles of free and fair elections. Following this minimalist approach of assessing elections by observing the behaviour of various players and the outcome, international observer groups, donor communities and various civil societies have vested much energy and resources in monitoring the polls on the polling day. In determining the degree to which elections are free and fair another important component of elections is election monitoring and observation. Their importance lay in determining the degree to which elections are free and fair.

Election Monitoring and Observation

Over the years, one of the most widely used methods of evaluating and assessing elections has been through observation and monitoring. In the 1990s, observation and evaluation of elections in Africa has been significantly internationalised. Scholars like Wiseman (1996:113) view this as a new departure in African politics. In trying to suggest reasons for this, he remarks that the new development could be related to political conditionality, which this study has also admitted is a new agenda amongst donors in dealing with recipient countries.

To expand on his view, this new development of internationalising elections could be related to the imposition of political conditionality, as the integrity of an electoral process can be seen as a partial guide to whether the political conditions attached to external aid are being met. In a large number of cases, donors and the countries they represent have mainly relied on reports by observer groups and organisations to determine their actions with regard to certain regimes. For example, when international observer groups declare an election 'free and fair', aid donors are likely to support the new 'democracy'. The Kenyan elections of 1992 and 1997 demonstrate this approach.

Election monitoring and observation remain important tools, through which independent organisations can contribute to the growth of democracy, by highlighting and bringing to public knowledge the obstacles that may hamper the chances of a democratic victory in the case of an electoral contest. Their integrity in making this contribution may be compromised or reinforced depending on their reports, although in some cases their reports have contradicted the exact results. For example, after the 1992 multi-party elections in Kenya, which according to several reports were significantly flawed, the Commonwealth group of observers in welcoming the results, remarked that they constituted a 'giant step' to multi-party democracy in Kenya (Weekly Review, 7 January 1993). By virtue of this statement the group did in fact enhance the legitimacy of Moi's presidency, which had been achieved on a minority vote. Furthermore, a degree of

contradiction existed in terms of the way the group publicly announced its opinion and the actual content of its report. In its 71-page report, it provided extensive evidence of electoral malpractice on a number of counts

1992 and 1997 Multi-Party Elections - How Free and Fair?

Having provided a theoretical background on elections and what constitutes free and fair elections, in this section the study makes an analysis of the two elections and the degree to which they were free and fair. In doing this, it focuses attention on the institutions of democracy and the extent to which they have strengthened or eroded democracy. It is imperative that we examine the constitution, particularly those provisions that may deter or promote democracy, the electoral institution, access to the electoral system (political party organisation, voter registration, campaigns) and the voting system with respect to the electoral outcome.

Constitution

An important step that ought to be undertaken by the various actors as they attempt to prepare for a switch from single-party rule to multi-partyism is the comprehensive review of the constitution. This will assist in providing a legal framework, within which pluralistic politics can be developed and harnessed. Thus, it is the contention of this study that a constitutional review should go beyond just legitimising political parties, as was the case in 1991, to a thorough and detailed revision of the constitution to wipe out any obstacles to popular participation. This should be carried out in line with the promotion of democratic values. In addition, prior constitutional provisions and resultant laws passed by the single-party but 'legitimate' parliament with the aim of suppressing dissent, and other fundamental freedoms espoused in a plural context need to be wiped out and replaced with those conforming to multi-partyism.

In such developments, the role of institutions such as the executive (which is mainly the presidency), legislature and the judiciary also need to be revisited and restructured to suit a plural setup. There is a dire need to strip the presidency of its excessive powers, bestowed on it during the period of single-party rule, which served to frustrate the independent development of the judiciary, and the legislature. In our case, executive powers should be limited and possibly transferred to the legislature and judiciary in line with strengthening the democracy and independence of these two institutions. Attempts should also be made to break the stranglehold on the instruments of power by the ruling party and presidency, which serve to exploit their power and block free participation. Overall we maintain that the constitutional review should design systematic ways of de-linking the ruling party structure and machinery from that of the government.

The legal amendments of 1991, presided over by KANU, did not necessarily meet some of the above-mentioned condition, and did not pave the way for a free and fair contest in 1992 and 1997. First and foremost, they stemmed from mounting domestic and international pressure to allow for plural politics. This means that it was never the intention of KANU to adopt political pluralism which was forced upon it. Despite the establishment of the Saitoti Review Commission to collate the views of Kenyans on the Constitution, KANU played down the findings of this commission in order to promote its own agenda (See Chapter Two).

Secondly, other than ending KANU's monopoly of the political system through the legalisation of other political parties, the 1991 amendments did nothing to strip the presidency of its excessive powers. Reasons may exist to explain some of these constitutional deficiencies. On the one hand, the repeal of Section 2(A), leading to the existence of opposition political parties, was a KANU affair, as the bill was drawn up and passed by KANU, in the absence of the opposition. On the other hand, NEMU (1993:20) further reports that KANU rejected the call for a national convention, which would possibly have put in place a viable constitutional machinery to express the views and opinions of the majority. The emergence of one such convention in 1997 (NCEC) to force the government to rewrite the constitution before the polls was brutally harassed by the

state authorities. Thus the preliminary constitutional review process at the dawn of multi-partyism in Kenya, was a suspect process in that the very party under pressure to concede to change was responsible for making these changes. It was a case of KANU cutting its own throat by not allowing other potential actors to cut it.

Indeed a careful scrutiny of the major laws passed during the preliminary period for the 1992 elections also revealed that KANU had passed laws that would be to its advantage during the elections and actually did facilitate its victory, as results in Chapter Three have illustrated.

This in various ways served as a headstart in its plan to win the elections. These were

1. The electoral law making each political party responsible for their own party financial matters, which affected the performance of most parties. This made it difficult especially for newly formed parties with no adequate resources to conduct important party activities. Some parties were affected as early as the preliminary stage of the elections, that is party nominations.
2. The electoral law on presidential elections may also have been designed to guarantee a KANU victory. KANU perhaps reasoned that presidential candidates from major ethnic groups which mainly supported the opposition had the potential to win a majority vote, but would be hampered by the need to garner 25% of the vote in each province. This would be to the advantage of KANU which was on average, popular in more than one province. From the results it can be seen that KANU was able to garner more votes in Rift Valley, North Eastern and Coast Province than the other parties, which drew the bulk of their support from their home provinces.

On the basis of the above counts we can deduce that multi-party elections were conducted within a constitutional framework that did not warrant their acceptance as free and fair. Firstly KANU deliberately failed to institute comprehensive reforms that would facilitate free competition in a pluralistic context. Secondly, it introduced laws with the prime aim of winning in event of a contest. Lastly, during the crucial preliminary stage for a pluralistic contest, KANU handled the

whole process of the constitutional review single-handedly, ignoring equally important contributions from other Kenyans.

Establishment of an Independent Electoral Body

The conduct of free and fair elections will require a body independent of all players to oversee the fair and effective operation of all the electoral activities, for example setting the electoral calendar, voter registration, nominations for candidates and the actual polling. This body needs to put in place careful mechanisms that will prevent successful attempts to manipulate the process, especially by the incumbency. Following from this, it is important that those who are members of the body have no vested interest in any particular parties, to secure the independence of the body. It also needs to be constituted of individuals of high integrity, justice and transparency, so as to maintain fairness and impartiality in all processes that may be required. Since it is a body that is charged with overseeing elections for the general public good, all players must participate in the appointment of its office holders. In addition, all its activities and undertakings should be publicly communicated and it should be open to public scrutiny.

The above conditions presuppose that the institution must be empowered by law to carry out the necessary duties that will eventually culminate in free and fair elections. In Kenya, the lack of sufficient powers on the part of the electoral body to carry out its duties of ensuring free and fair elections was stated by its Chairman prior to the 1997 polls.

‘The Law, he said, ‘does not give us power to ensure that polls are free and fair....At the moment, the Commission is looked at and expected to have a jail, a police force, prosecutors and magistrates. Possibly when the next parliament is formed, it should consider giving us more powers.....’ (cit in Ajulu, 1998:275)

This was in spite of the fact that the Electoral Commission, from the time of its inception until November 1997 (after the IPPG reforms), was composed of a group of 11 commissioners handpicked by President Moi. This increasingly compromised its independence. Previously it

was constitutionally a department of the Attorney-General's office and was also supervised by the relevant minister in charge of elections. However Act No.6 of 1992, the Electoral Laws Amendment Act, provided that the Electoral Commission was solely responsible for the discharge of electoral responsibilities (see NEMU, 1993:26).

The work, conduct and integrity of the Electoral Commission prior to and after the elections became the cause of much controversy in the two elections. It was mainly condemned for its unfair conduct and, partisan and increasingly ineffective administration of the elections.

During the preparations for the 1992 elections, for example, several reports highlighted the Electoral Commission's failure to;

1. Register potential voters and its poor conduct of the process of registration of voters, as result of inadequate resources and lack of proper training by its officials.
2. Prosecute perpetrators of electoral violence who in most cases were KANU supporters.
3. Openly disclose information, especially on the issue of critical days in the electoral calendar. For example, polling was announced only three weeks before the actual date of commencement, giving parties very little time to organise themselves.
4. Provide a correct voters' roll. The voter's roll was marred by a magnitude of errors, the most critical ones being the omission of registered voters from the roll. In most cases, the problems went unheeded.
5. Work closely with poll monitors and observers, probably for fear of publicly exposing its ineffectiveness.

The same problems, particularly those surrounding the registration of voters resurfaced in 1997. During the 1997 elections, IPPG reforms gave the Commission a mandate to oversee the election in the absence of KANU government interference. In addition, another group of 10 Commissioners, mainly appointed by the opposition parties to increase its independence, were

added. These changes, welcome as they may have been, did not prevent the Commission from presiding over a seriously flawed election that was not in any way free and fair. The problems mainly stemmed from the disorganised and incompetent manner in which this election was handled. Problems ranged from the prolonged delays in distributing election materials, insufficient materials and incompetent election officials. The worst remained the obvious misprinting of the ballot papers, including wrong names and wrong party symbols. Some names of candidates were either omitted from the ballot paper or interchanged with other names. This had the effect of interfering with the voters' choices.

In addition, the mislocation of ballot papers was a critical problem. These problems led the Commission to extend polling, which some critics have argued gave KANU with its extensive resources, even more time to thoroughly campaign in areas where it feared defeat. This could possibly account for its marked 5% improvement on 1997's results. Despite the number of irregularities brought to the attention of the Electoral Commission by the various election monitors and representatives of opposition parties, the Commission did not offer any credible explanation as to what may have occasioned these anomalies or what steps had been taken to rectify them. Asked to resign, over his failure to account for the magnitude of the irregularities, the Chairman of the Electoral Commission publicly retorted 'no one resigns in Kenya' (Daily Nation, 30 December 1997).

Accessibility to the electoral system

In a democratic context, we contend that the government of the day should create an enabling environment for political organisation and campaigns for all involved. To ensure such equality is the responsibility of the body or institution that is charged with overseeing the free and fair election. However, the government and all its administrative apparatus should also be involved for the success of this initiative. It is meaningless to legitimise political parties if they do not have access to free and unrestrained competition. This provision will also govern the availability of a free and fair election.

In emphasising fair competition, we also stress that anything that surrounds it, ranging from the application of the law, administrative issues, security issues and media access, need to be the responsibility of the incumbent and the relevant electoral body. Such questions as the availability of administrative mechanisms to strengthen free participation, the issue of licenses for political rallies, provision of equal air time to all players and security measures to ensure access to less safe areas must be addressed adequately and fairly if a free and fair contest is to prevail.

(a) Party registration

As a basic tenet of multi-party democracy, those who wish to contest or exercise the right to vote should be free to belong to a party of their choice. In a plural context, this presupposes more than one party in order to provide a choice. Therefore it follows that if an individual is not satisfied with a particular party, they are free to join or form another of their choice as long as they meet the stated legal requirements.

In Kenya, the repeal of Section 2(A) in 1991 was intended to facilitate this right. However, the effective existence of a political party starts with its registration as such by the Registrar of Societies, who refers the registration to the Attorney General's office for approval. Refusal of registration denies a party the opportunity to participate in the electoral process. As demonstrated in the previous chapter, the registration of a political party was not necessarily a smooth process, as some parties were either denied registration or their registration applications were delayed by the office in charge. In 1997, even after the intervention of the IPPG, some parties like IPK were still denied registration and others like SAFINA, with a three-year pending registration were registered barely three weeks before the elections.

These obstacles to the rightful registration of parties through denial or delay constitute an impairment of democracy. The unwarranted delay of SAFINA's registration as a party perhaps may explain its dismal performance in the 1997 elections as it only managed to win six (five

elected and one nominated) seats out of the 210 seats. It did not even field a presidential candidate. This is in spite of the fact that SAFINA's interim leadership was mainly composed of the increasingly popular group of young turks who had decamped from other opposition parties. Had SAFINA been granted registration much earlier, chances are that it would have made a much more visible impact on the polls.

(b) Party operations and organisation

The 1991 constitutional provisions that were later re-emphasised by the IPPG relating to the organisation of parties increasingly disadvantaged some parties. The provisions as stated above required that all parties fund their own activities. This meant minimal success for newly established, smaller parties as opposed to KANU, which was the oldest party and enjoyed a strong organisational hierarchy. In addition, KANU also continued to enjoy the advantage of state resources and personnel which it deployed extensively to aid its campaign.

In the run up to the 1992 elections, KANU facilitated the formation of numerous campaign support groups. Most prominent of these was the 'Youth for KANU 92' and 'Operation Moi Wins' (OMW). These groups were known for the obvious wealth that they displayed, the undisclosed source of which became a subject of much debate. There were also reports that the KANU government, through its principal Bank (Central Bank of Kenya) had printed excess money to fund its campaign, which explained, the extra liquidity that facilitated inflation between 1992 and 1993 (Throup and Hornsby, 1998:344).

Those in charge of the legal and operational supervision of the electoral process, during both elections were mostly KANU government appointees. They included: the Attorney General, the Electoral Commission, Police Commissioner and the Judges of the High Court and Court of Appeal who preside over election petitions. It is little wonder that KANU continued to use them to undermine the opposition and establish its dominance of the electoral process. Despite assuring Kenyans of its intention to intensify security prior to the 1997 elections, the Electoral

Commission failed to do so. Both in 1992 and in 1997, cases were reported of refusal by KANU supporters in the presence of the Electoral Commission officials and government security officers to allow opposition parties to present nomination papers. However, NEMU (1993:52) reports that of all 188 candidates fielded by KANU in 1992 none was a victim of nomination violence, which explains why KANU alone was able to field candidates for all the seats. The three main opposition parties, FORD-K, FORD-A and DP, were variously affected by the violence, especially in many areas of Rift Valley which had been declared to be KANU zones.

(c) Campaigning

This is an integral part of the electoral process when candidates sell their ideas, philosophies and programmes to the electorate. Through them various parties are able to market themselves and their manifestos, clearly indicating why they deserve the vote from the electorate. This process therefore calls for a level of tolerance by the various parties, lack of bias and a level playing field for all parties involved. A campaign process that is biased or that advantages some candidates or parties over others certainly contravenes the principle of free and fair elections. Therefore, the basic objective of evaluating the campaign process lies in identifying elements of favouritism which might make the elections unfair.

The reality of the campaign period in the two elections is that it did not bolster equal opportunities for the various parties. In 1997, this was the case despite the passage of the IPPG reforms in this regard. Several campaign methods seem to have been adopted by the various parties, with the most widely used being the electronic media and public campaign rallies. Their effectiveness though was not automatically guaranteed as it depended on a number of things such as applying for and obtaining rally licenses from relevant authorities, provision of security by the government and the degree of information circulation and coverage.

Drawing from the discussion in Chapter Three, it can generally be deduced that campaigns took place in a context of unequal opportunities. In particular, the public broadcasting corporation

(KBC) was blatantly in favour of KANU and President Moi, at the expense of the opposition. The situation was further compounded by the lack of safeguards for political parties against KBC's unfair practice. The same trend prevailed in the area of licensing for the various campaign rallies. It became increasingly difficult for the opposition to acquire licenses as the relevant authorities often denied them. The administration tended to favour KANU and all its activities.

Voting System

It is important to examine the implications of the two electoral outcomes of Kenya's experiment with democracy. Drawing conclusions from the outcome in the two elections, this study identifies a number of factors that hindered the development of meaningful democracy in Kenya.

Firstly, the disproportionate allocation of parliamentary constituencies which constituted political gerrymandering. There were well-argued claims that the adjustment of constituency boundaries, an exercise that culminated in the creation of 22 new constituencies prior to the 1997 elections, was not fairly done. The Electoral Commission which was mandated to carry out the electoral boundary review process, manipulated electoral areas to suit entrenched political interests. Subsequent demarcation of constituencies did not reflect the objectives of the process in line with the constitutional provision that 'all constituencies should contain nearly equal numbers of inhabitants' (Institute for Education and Democracy, Catholic Justice and Peace Commission, National Council of Churches of Kenya, 1998:40). Instead newly created constituencies mostly favoured sparsely populated areas as opposed to the densely populated areas.

Table:1.5**Party strength in relation to added number of parliamentary constituencies**

Province	No. of Constituencies	No. of Registered Voters	No. of Constituencies Added	Winning party
Nairobi	8	725,620	None	DP
Coast	21	797,378	1	KANU
N/Eastern	11	171,669	1	KANU
Eastern	26	1,464,152	1	KANU
Central	29	1,224,981	4	DP
Rift Valley	49	1,919,672	5	KANU
Western	25	1,024,252	4	KANU
Nyanza	32	1,345,602	3	NDP

Source: National Council of Churches of Kenya, Institute for Education and Democracy, Catholic Justice and Peace Commission, 1998.

For example Rift Valley, a KANU stronghold with 1,919,672 registered voters had 49 parliamentary seats. This is compared to Central and Nyanza Provinces which were opposition strongholds having 29 and 32 seats respectively and a total of 1,345,602 and 1,224,981 registered voters respectively. The above table illustrates that the creation of new constituencies was in KANU's favour. The fact that KANU was able to win 15 of the 22 seats created further lends basis to this claim. The large variations in population in many constituencies violated the principle of equality of the vote. Although there might have been proportional distribution at provincial

level, wide disparities were still present within the districts. In Rift Valley Province, a district like Nakuru, with a total of 396, 614 registered voters had five constituencies, whereas Kerio district in the same province with a total of 94, 201 registered voters had four constituencies (Ajulu, 1995).

Secondly, after two elections following the restoration of multi-partyism, results indicate that over 50% of the Kenyan populace are not yet represented in the government of the day. Indeed this should be the main point in stressing the undemocratic nature of elections in Kenya. As in the 1992 elections, Moi formed the government in 1997 with 40.5% of the vote against the opposition who combined took 59.49% of the votes. This clearly demonstrates the inherent unfairness of the electoral system in which a candidate with a plurality of votes (as opposed to a majority) can be declared president.

Others may want to view it differently, propagating the argument that the lack of an opposition alliance, paved the way for KANU's 'minority victory'. Following from this, the most likely question one would wish to ask is why the opposition has failed to unite after two attempts to oust an increasingly unpopular KANU government. Instead what has ensued are divisions within its main ranks. These concerns can rightly be situated within our earlier argument concerning neo-patrimonial regimes undergoing a transition to democracy, which this study has adopted in trying to understand Kenya's transition.

The opposition in neo-patrimonial regimes undergoing a transition is a composition of dissenters who have retained opposing views or groups of 'outsiders'. The latter are in comparison with the 'insiders' who constitute the ruling coalition. The group of outsiders may also once have been part of the ruling coalition, but were later ostracised for maintaining opposing viewpoints or chose to leave on their own accord. Indeed Van de Walle and Bratton (1994:466) have remarked that 'the practice of expelling rather than accommodating dissenters is the primary cause of an organised opposition'. They may also constitute a group of outsiders who would wish to oust the incumbent regime, so as to gain access to the resources monopolised by the ruling clique. This necessitates

the development and continuation of conflict over who should control what and how. In particular, conflict over the extent of regime transition is more pronounced with the old-guard politicians, Van de Walle and Bratton argue (1994:465), seeking to limit rule changes and thereby ensure that they can benefit from state patronage once they gain state power.

In Kenya, these issues, especially those surrounding power struggles, have rendered opposition unity or alliances impossible. Most of the main opposition figures were originally members of KANU, notably Kenneth Matiba who left KANU and later formed FORD, only to split the party following a leadership wrangle with Oginga Odinga. Mwai Kibaki who formed DP, had even served as KANU's National Chairman, Vice-President and as a minister in charge of the finance and health portfolio. Oginga Odinga, who formed the original FORD, but later parted ways with Matiba to form FORD-K, was at one time Kenya's Vice-President though he resigned to form KPU, which was banned in 1969. Following Oginga's death in 1994, more leadership wrangles ensued further splitting up the parties. Raila Odinga (Odinga's son) parted ways with Kijana Wamalwa who headed FORD-K after Oginga, to form NDP. Others like Paul Muite decamped from FORD-K to form SAFINA, Charity Ngilu originally of DP left for SDP where she ran for presidency.

That some of these individuals emerged as the main opposition contenders, but failed to oust KANU either in 1992 and or in 1997, clearly shows that political contestation in Kenya even in a multi-party context, is not about restoring democratic governance, but more about a struggle for political power. In addition, the fact that these leaders have tended to draw a significant number of their votes from their home provinces confirms that ethnicity is an important tool for political mobilisation.

Ethnicity, which in neo-patrimonial regimes informs the pattern of reward by those with the means and those struggling to reach these means, will remain a hindrance to the burgeoning of democracy and the democratisation process. Perhaps a model that promotes democracy in ethnically fragmented societies like that of Kenya needs to be designed. Prescribed models of democracies,

especially by the West with the dominant one as the Liberal form, which focuses so much attention on political pluralism and competitive politics, have not necessarily promoted democracy. Instead it has elevated entrenched ethnic interests as the dominant pattern of representation.

The Case of political Conditionality in Kenya's Democratic Experience

In this section, attention should be focused on the role of Western donors. Firstly their decision to suspend aid to Kenya forced the intolerant KANU government to legalise multi-party politics in 1991. In 1997, mounting pressure from the members of the civil society and Kenya's donors lead KANU to concede minimal constitutional reforms which culminated in the IPPG. In addition, a number of donors notably the US, Britain and Denmark continued to fund election activities directly or through various organisations both foreign and domestic that were involved in election-related activities. They also sent in several observers and monitors to participate in the evaluation of the two elections. Indeed by international standards the two elections were relatively closely monitored by key among the groups, the Commonwealth delegation.

Going by the number of issues raised by this study which did not contribute to democratic competitiveness, it is impossible to state that the incumbent won the election and re-election freely and fairly. However to the surprise of many, several of the country's donors openly declared the two elections free, fair and indicative of majority will, even though the outcome as this study has shown contradicted this. Even controversial diplomats like Smith Hempstone who in 1990-1992 had brought the government to its knees for failing to heed calls for pluralism, acknowledged KANU's victory as a failure by the opposition to unite. A trickle of aid was restored in late 1993, even though donor attitudes seemed to shift emphasis away from political reforms to economic reforms that were in line with economic liberalisation.

Elsewhere, London Club of foreign creditors moved in to reschedule the external debt which had accumulated to US \$560 million after the 1997 election and the European Union also moved in

to lift its threat of aid suspension (Ajulu, 1998:850). This was in spite of the fact that human rights abuse, particularly state sponsored ethnic violence, in parts of the Rift Valley and Coast Province were steadily on the increase. In addition, poor governance fueled by the rise in corruption, had hit a number of state enterprises. A host of corruption scandals implicating top government officials were brought to public knowledge thanks to a relatively free press, yet most of them got away with it.

These contradictions, emerging from the differences between donor's stated policies on political conditionality and their actual practice, provoke the need to make an inquiry into the whole question of political conditionality. It is quite clear that there has been no meaningful attempt by donors to promote the objectives of political conditionality and good governance. On the one hand, donors seem to pay too much attention to multi-party elections, which to them become more or less the litmus test for democracy. On the other hand, one would expect that, in line with promoting multi-party democracy, free and fair elections are held fundamentally important by custodians of democracy who ought to ensure that these principles are in no way compromised. However, the two multi-party elections heavily manipulated by the incumbent to ensure its hold on power were in no way democratic, even though donors have wanted us to believe that they were.

In Kenya therefore, political conditionality and its stated objectives (promotion of democracy, human rights and administrative reforms) appear to have been dismal failures.³ At least the results of the two elections have served to confirm this. In addition there seems to be polarisation between the stated objectives and the intended objectives of political conditionality by some particular donors. Their intentions seem to be the perpetuation of national self interests other than those of political conditionality. For example, the US has reduced its interest significantly in a host of African countries, Kenya included, following the relaxation of East-West tensions. In 1990, Hempstone clearly spelt this out in his address to Kenyans. US policy has now shifted its emphasis to promoting its own interests, which are mainly the spread and promotion of democracy and human rights, in countries that promote capitalist ideals of economic development. Its foreign

policy hinges upon these values. In a country like Britain, the issue of promoting its own interest is also primary. Kenya stands out as one of Britain's main allies in the region, as Britain has vital and entrenched political and economic interests there. Perhaps this may possibly explain its diplomatic and reluctant attitude in dealing with the KANU government, when other donors had developed acrimonious relations with Kenya for its deliberate hindrance of pluralistic politics. In the event of the situation of Kenya escalating into war, Britain would lose a great deal compared to other Western countries. Germany could afford to be actively involved in pressuring Kenya to adopt multi-partyism since it has no vital interests in Kenya.

Conclusion

This chapter set out to make a conceptual analysis of the 1992 and 1997 multi-party elections. It particularly aimed to examine the extent to which these two elections complied with the democratic principles of free and fair elections. In order to evaluate the integrity of an electoral process and outcome, this chapter has stressed and demonstrated that it is necessary to meet certain preconditions for elections to qualify as free and fair elections. Kenya's showing in the 1992 and 1997 multi-party elections did not meet a number of these conditions.

Following from the evaluation and analysis of the two elections, this chapter concludes that a number of factors militated against a conducive environment for free and fair elections. These have included: lack of a constitutional framework supporting basic democratic principles and values, inequitable distribution and access to electoral resources, disproportionate allocation of parliamentary constituencies, promulgation by the incumbent regime of electoral laws that did not ensure competitive politics and the absence of an effective and efficient electoral body which was independent and impartial.

The above developments, have provided grounds to make out a case against political conditionality and the extent to which donors appear committed to promoting its stated objectives. The results of Kenya's two multi-party elections, which were forced upon it as a result of

domestic pressure and political conditionality, are far from being democratic. Instead, a leadership chosen by a minority of people is given the mandate to govern, following positive performance appraisals by the donors in the two flawed elections. In addition, donors appear to act as their own interests dictate.

References

- Ajulu, R., "Kenya's Democratic Experiment: The 1997 Elections" *Review of African Political Economy*, No. 76, 1998 pp.275-288.
- Ajulu, R., "Kenya's 1992 Election and its implication for Democratization in sub-Saharan Africa", Foundation for Global Dialogue; Occasional Paper No.9, 1997.
- Ajulu, R., "Kenya's 1997 Elections: Making Sense of the Transition Process", *New England Journal of Public Policy*, Fall Winter, 1998 pp. 73-88.
- Ajulu, R., "The Transition to Multi-partyism in Kenya: the December 1992 Presidential, Parliamentary and Municipal Elections" Centre for Democratization Studies, Leeds University, Working Papers on Democratization, 1995.
- Breytenbach, W., *Democratization in sub-Saharan Africa: Transition Elections and Prospects for Consolidation*, Africa Institute of South Africa, Pretoria, 1996.
- Daily Nation, 30 December 1997.
- Hayward, F., *Elections in Independent Africa*, West View Press, Boulder, Colorado, 1987.
- Huntington, S., "How countries democratize", *Political Science Quarterly*, 1991 pp.579-616.
- Linz, Juan J. and Stephan, A., *The Breakdown of Democratic Regimes*, John Hopkins University Press, Baltimore, 1978.
- National Elections Monitoring Unit (NEMU), *The Multi-party General Elections in Kenya 29 December 1992: The Report of the National Election Monitoring Unit*, NEMU, Nairobi, 1993.
- Throup, D. and Hornsby, C., *Multi-party Politics in Kenya: The Kenyatta and Moi State and the Triumph of the System in the 1992 Elections*, East African Educational Publishers, Nairobi, 1998.
- Van De Walle, Nicholas and Bratton, Michael, "Neo-patrimonial Regimes and Political Transitions in Africa", *World Politics*, 4(46), 1994 pp.453-489.
- Weekly Review, 7 January 1993.
- Wiseman, J. A., *The New Struggle for Democracy in Africa*, Routledge, New York, 1995.

CHAPTER FIVE

SUMMARY AND CONCLUSION

This study set out to investigate the extent to which political conditionalities have fostered a meaningful transition to democracy in Kenya. It has demonstrated that Kenya was forced to restore multi-partyism in 1991 after over thirty years of its independence. This was mainly as a result of a decision taken by donors to defer balance of payment support on the grounds of the need for political and economic reforms. Political conditionality thus forced the regime to change its line to comply with multi-partyism. Subsequently multi-party elections were held in 1992 and 1997. These were the country's first multi-party elections since its independence in 1963.

In the foregoing chapters, it was shown that although multi-party elections were held in these two years they did not in any way comply with democratic requirements. They only served to legitimise an increasingly unpopular regime which, despite the advent of political pluralism, continued its political authoritarianism, violation of human rights and poor economic management. Political conditionality, thus in this case has failed to meet its intended objectives of the promotion of democracy, human rights and administrative reforms. It has been implemented in the context of neo-patrimonial rule, whose adherents cling to power at all costs and concentrate their efforts on evolving and maintaining patronage, whilst rewarding the loyalty of their supporters. We have demonstrated that reforms have been resisted by the incumbency in Kenya mainly on the grounds that they have the potential to curtail the power of the political leadership to maintain its group of supporters, while at the same time encouraging dissent.

Within this environment characterised by a tight grip on power, political conditionality has also failed to achieve a meaningful transition to democracy. While international pressure was ultimately important in forcing the government to liberalise the political system, there has been a persistent demonstration by the government of its lack of commitment to the process of multi-party democracy. There is much unfinished business with regard to the growth and support of

institutional and governance reforms in compliance with multi-party democracy. This chapter will attempt to present a summary of the main arguments advanced in the preceding chapters. There after it will present by way of conclusion, the implication of these arguments for democratisation in Kenya.

Summary of the Main Arguments

In Chapter One, it was argued that economic conditionality, which preceded political conditionality, was largely an IMF/World Bank intervention in the economic management of recipient countries. This intervention came in the wake of economic crises in these countries and the solutions came in the form of structural adjustment programmes. Political conditionality and the need to promote good governance followed the collapse of the Soviet Union and the subsequent ending of the Cold War, when donors mainly drawn from the West, relaxed and were in a position to pursue independent policies. This also coincided with the failure by the IMF/World Bank structural adjustment programmes to restore economic recovery in economically crisis-ridden countries, forcing them to adopt 'good governance and political conditionality' as the alternative form of intervention.

A number of donors embarked on the spread of democratic values largely in line with multi-party elections. Political changes taking place in Central and Eastern Europe, whereby single-party regimes were defeated in electoral contests rekindled the hopes of democracy activists in a number Third World countries that were seeking multi-party democracy as an alternative to single-party dictatorships. Subsequently aid to dependent countries was made conditional upon the adoption of democratic values. Thus political conditionality was facilitated by the change from the bipolar world, failure of the IMF/World Bank structural adjustment programmes and political developments in Eastern and Central. It was increasingly a political intervention by donors in the political affairs of recipient countries.

In Chapter Two it was argued that the dominance of single-party rule underpinned by an increasingly repressive regime under Kenyatta and later Moi found expression within neo-patrimonial systems. These constitute forms of personalised rule mainly geared to securing political survival. However, the availability of patronage dictates the regime's dynamics such that in the face of complete depletion, social unrest is highly likely and the regime may be forced to comply if it is to retain its legitimacy. The chapter has therefore argued that the potential limitations of the neo-patrimonial system, further exacerbated by donor intervention through political conditionality, was instrumental in breaking KANU's monopoly of the country's political power after over thirty years.

Chapter Three and Four, which were concerned with the 1992 and 1997 multi-party elections, related that the two elections were in no way free and fair as fundamental reforms necessary to dismantle all the structures of the old undemocratic order had not been effected. Instead lack of a constitutional framework to support basic democratic principles and values, inequitable distribution and access to electoral resources, disproportionate allocation of parliamentary constituencies, the existence of electoral laws designed to favour the regime and the absence of an effective and efficient electoral body militated against a conducive environment for free and fair elections.

What Kind of democracy has been promoted?

The dominant thinking on democracy informing most analysts and Western donors has tended to overemphasise the importance of elections. Elections and democracy have become virtually synonymous to a variety of influential political thinkers and analysts. Their operating definition of democracy has mainly fitted the minimalist approach, which as stated by Breytenbach (1996) contend that the chief ingredients of any democracy are 'contestation through regular contests by the opposition political parties and full participation by adult citizens within the system. In our view, a minimalist approach to democracy may be necessary, but is not alone sufficient to guarantee the consolidation of democracy. The mere fact that multi-party elections have been held

in any given country does not guarantee democracy. Despite the advent of multi-partyism, the government under KANU manipulated the electoral system and delineated political constituencies to suit its own entrenched political interests. Subsequently, KANU was able to prevail with a majority in parliament despite receiving considerably less than a majority of the vote. Even after its re-election in 1992 and again in 1997, it continued to resist carrying out the necessary reforms, especially those that were necessary to advance democracy.

In conclusion, political conditionalities may have forced a very resistant regime to liberalise its political space, but they do not appear to have achieved a substantive transition to democracy. In particular, the results as reflected in the two multi-party elections demonstrate that elections do not necessarily make a democracy, although they constitute an important part of establishing one. The overall failure of the two elections to facilitate a democratic transition serve to remind donors that the good governance agenda is not flawless and that the area needs to be revisited, particularly in regard to its utility in supporting emerging democracies in Africa.

However we cannot completely disqualify the role played by external pressure, as it has had some positive impact in recipient countries. Within the economic realm, pressure from donors, particularly the IMF and the World Bank, led the government to liberalise its economic policy. Politically, the opening up of political space in Kenya, something that was unknown in the country for a considerable length of time, made public a host of scandals that could never have been exposed during the single-party era. Opening up of political space has also allowed for a much freer press and an opposition that albeit heavily divided has continued to criticise the day-to-day activities and policies of the government.

Multi-party politics in Kenya have also revealed the extent to which ethnic considerations as the basis for representation are deeply entrenched in the heterogenous Kenyan society. At least this has been stressed in our argument regarding neo-patrimonial systems. In the 1992 and 1997 electoral outcomes, patterns of ethnic representation emerged in a rather distinct manner. Ethnic considerations are seen to play a dominant role in Kenyan politics and, with the advent of multi-

partyism, much of the political positioning within most political parties has been on ethnic factors. The submission of this thesis is that, these considerations will hinder the successful development of democratic competitiveness. This is on account of the fact that ethnic plurality has led to the escalation of tribal animosities which has resulted in the loss of lives and property and the disruption of economic activity among segments of Kenyan society. In addition, the ethnic violence in Kenya, in most cases has been politically motivated, has also served to reveal that ethnicity can be used manipulatively to divide society and create undesired tensions.

Donors seem to be oblivious of such factors and continue to advocate liberal democracy, which strongly emphasises the existence of several parties even when the fundamental principles of competition are not respected. In most cases in Kenya, parties have been formed according ethnic affiliations. Since ethnic factors have emerged as critical in determining voter allegiance, donors need to support initiatives that discourage divisions and, in cases where ethnicity is deeply entrenched, to support models of democracy which may not necessarily conform to the liberal democracy model, but which take note of a society's level of heterogeneity (ethnic composition), dominant cultural values, level of education and the economic issues which need to be embraced.

Bilateral and multi-lateral donors have a role to play in pushing for substantive political reforms. The IMF/World Bank's organising principles prevent them from pushing a robust political agenda, but under the rubric of 'good governance' they can enact political changes. However much of their emphasis has remained on economic reform. Bilateral donors though are not so constrained since their policies on development assistance clearly articulate their intention to support democratic initiatives in recipient countries. They therefore stand a chance of influencing greater political change in recipient countries, particularly if they work in concert with each other so that there is a degree of consistency. Since most of them seem to be supporting more or less the same tenets of good governance in recipient countries, a collaborative and integrated approach amongst donors in pressing for change remains a credible way of organising themselves.

However the successful development of such initiatives may be hampered by the national interests of individual donor countries, as clashes may exist between donor policies and their respective national interests. For example, Germany, the US and Britain may have pressured Moi to concede to political and economic reforms, but the strength of the argument gives more weight to the whole notion of national interests. Donors therefore appear to be hiding beneath the rubric of 'good governance' yet it is more a case of pursuing their interests. The study contends that if a successful promotion of the stated objectives of political conditionality is to materialise, donors will also have to show greater commitment to transparency and accountability in their relationship with recipient countries.

A degree of spontaneity is also necessary in the way donors relate to recipient countries. The on and off suspension of aid does not appear to be an effective way of introducing fundamental democratic change with the aim of promoting democracy and human rights. It has only served to facilitate a very superficial coating of democracy. Drastic withdrawal of aid has also served to worsen the economic situation in recipient countries through currency devaluation and inflation. Politically, pressured leaders do not appear in any way committed to introduce reforms, as most of the sought reforms seem to challenge their incumbency. Donors therefore need to channel their development assistance only to programmes that benefit the general and poorer populace who continue to suffer the painful effects of suspended aid. Aid can be channeled to programmes that exhibit a high degree of accountability and transparency and demonstrate commitment to meaningful democratic change, instead of using it to threaten undemocratic regimes which will only succumb to pressure to please donors.

Finally, political conditionality is not a sustainable agenda, particularly in Africa, where its stated objectives have been met with dismal results. There is a need for the whole area to be revisited so as to ascertain its utility in most recipient countries, otherwise it will not contribute effectively to the substantive democratisation of recipient countries. There is also a need for 'good governance' and democracy to play key roles not only in fostering change through the proliferation of parties and the holding of elections, but in ensuring genuine participation,

fundamental regime and insitutional change and the public accountability of the government. In Kenya, a genuine nation-wide reconciliation that supercedes ethnic considerations is also important, as Kenyans need to realise that much of the country's domestic stability, economic and political development, as well as the quality of government will largely depend on Kenyans and the leaders they elect and not upon external influence.

References

Breytenbach, W., *Democratization in sub-Saharan Africa: Transition, Elections and Prospects for Consolidation*, Africa Institute of South Africa, Pretoria, 1996.

BIBLIOGRAPHY

1. Journal Articles / Conference papers/ Book Chapters
2. Newspapers and periodicals
3. Government Publications
4. Books

1. Journal Articles / Conference Papers/ Book Chapters

- Abuom, C., "The Churches in the Democratization Process in Kenya" Hirzkias, A. and Wachira, G., (ed.), *Peace Making and Democratization in Africa, Theoretical Perspectives and Church Initiatives*, East African Educational Publishers, Nairobi, 1996 pp.95-116.
- Adar, Korwa G., "Ethnicity and Ethnic Kings: The Enduring Dual Constraint in Kenya's multiethnic Democratic Experience" *Journal of the Third World Spectrum*, 5(2), 1998 pp.71-98.
- Ajulu, R., "Kenya's Democratic Experiment: The 1997 Elections" *Review of African Political Economy*, No.76, 1998 pp.275-288.
- Ajulu, R., "Kenya's 1992 Election and its Implication for Democratization in Sub-Saharan Africa", Foundation for Global Dialogue; Occasional Paper No. 9, 1997.
- Ajulu, R., "Kenya's 1997 Elections: Making Sense of the Transition Process" *New England Journal of Public Policy*, Fall/Winter 1998 pp.73-88.
- Ajulu, R., "The Transition to Multi-partyism in Kenya: the December 1992 Presidential, Parliamentary and Municipal Elections", Centre for Democratization Studies, Leeds University, Working Papers on Democratization.
- Archer, R., "Markets and Good Government" Clayton, A., (ed.) *Governance, Democracy and Conditionality: What Role for NGOs?* INTRAC, Oxford, 1994 pp. 7-34.

- Article 19 "Kenya Post-election political violence", a report by Article 19, 1998.
- Grosh, Barbara, and Orvis S., "Political Conditionality: Democratization and Economic performance in Africa. Aid in Kenya in the Post Cold War era" no publisher, 1994.
- Barkan, D. Joel and Ng'ethe, Njuguna, "Kenya tries again", *Journal of Democracy*, 9(2), April, 1998.
- Barkan, D.J., "The Rise and Fall of a Governance Realm in Kenya" Hyden, G. and Bratton M., (ed.), *Governance and Politics in Africa*, Lynne Rienner Publishers, 1992 pp. 167-190.
- Barya, Jean-John, B., "The New Political Conditionalities of Aid, An Independent view from Africa", *IDS Bulletin*, 24(1), January 1993 pp.16-23.
- Baylies, C., "Political Conditionality and Democratization", *Review of African Political Economy*, No.65, 1995 pp.327-337.
- Berman, Bruce, J. , "Ethnicity, Patronage and The African State: The Politics of Uncivil Nationalism", *African Affairs*, Vol 97, 1998 pp.305-341.
- Biles, P., " Rifts in the Opposition" *Africa Report*, November/December 1992 pp.20-23.
- Brautigam, D., "Governance and Economic: A Review," World Bank, Washington, DC, Working Paper series 815, December 1991 pp.3-27.
- Centre for Governance and Development, "The correlation between Development and AID, Human Rights and Democracy," Report of the Proceedings of the Workshop held on 11th -12th April, 1996, Safari Park Hotel, Nairobi.
- Cohen, M. John, "Importance of Public Service Reform: the case of Kenya", *The Journal of Modern African Studies*, 31(3), 1993 pp.449-476.
- Diamond, Larry, "Most Complex Change in the World" *Democracy in Action*, 17(5), 1993.
- Clough, M., "The US and Africa: Policy of Cynical Disengagement", *Current History*, 91(565) May 1992.
- Fahy, John C., "IMF Conditionality: A Critical Assessment", *OPEC Review*, Autumn 1984.
- Fox, R., "Bleak Future for Multi-party Elections in Kenya", *The Journal of Commonwealth and Comparative Politics*, 30(2), 1995 pp.172-199.

Friedman, Galia S., "Church and State in Kenya, 1986-1992: The Churches's involvement in the game of Change", *African Affairs*, 1997 pp.25-52.

Holmquist, J. and Michael, Ford, "Kenya: Slouching Toward Democracy", in, *Africa Rights Monitors*, 3rd Quarter 1992 pp. 97-124.

Human Rights Watch Africa, "Kenya: Multi-partism Betrayed , Continuing Rural Violence and Restrictions on Freedom of Speech and Assembly", in, *Human Rights Watch/ Africa*, July 1994 pp.1-32.

Huntington, S., "How countries democratize", *Political Science Quarterly*, 106(4), 1991 pp.579-616.

Institute for Education in Democracy (IED), Catholic Justice and Peace Commission (CJPC), National Council of Churches of Kenya (NCCCK), *Report on the 1997 General Elections in Kenya 29-30 December, 1997*, IED, CJPC, NCCCK, Nairobi, 1998.

Kaniaru, M., "The Future of Democracy in Kenya", *Africa Today*, 1st and 2nd Quarters, 1992 pp.122-139.

Kenya Human Rights Commission and Article 19 *Media censorship in a plural context: A joint Report on the Kenya Broadcasting corporation*, Article 19, 1998.

Kibwana Kibutha, "Unfinished Business: The Transition to Multi-Party democracy and Kenya's Post December 1991 Electoral Law Reforms" no Date no Publisher pp.11-25.

Legal Resources Foundation(LRF) "Reforming our constitution" Legal Resources Foundation, No date.

Makinda, M. S., " Democracy and Multi-Party Politics in Africa" *The Journal of Modern African Studies*, 34(4), 1996 pp.555-573.

Maina, W., "Constitutional Crisis in Kenya: An Inquiry into its origins, Nature and prospects for Reform", Paper presented to the IPAR project on Constitution-Making in Kenya, November-December, 1996.

Moore, M., "The emergence of the 'Good Government' Agenda: Some milestones", *IDS Bulletin*, 24(1), January 1993 pp.1-7.

Mutua, M., "Young Turks Versus Old Guard", *Africa Report*, 39(3), May-June 1994 pp.34-36.

National Election Monitoring Unit (NEMU), *The Report of the National Election Monitoring unit*, NEMU, Nairobi, 1993.

Nelson, J.M. and Eglinton, S. J., "Encouraging Democracy: What Role for Conditioned Aid ?", Washington DC, Overseas Development Council Report, 1992.

Nyangweso, Mary, "Some Constraints to Democratization Process in Kenya," paper presented in the 5th East African American Studies Conference held at Kampala, no date, pp.1-27.

Nyinguro, O. P., "The External Sources of Kenya's Democratization Process", paper prepared for the Workshop on Transition to Multi-Party Elections in Kenya, Nairobi, 11-19 July 1993 pp.1-46.

Nowrojee, B., "Pressure for Change", *Africa Report*, 39(1), January/February, 1994 pp.39-41.

Orwa, K., "Kenya's Foreign Policy, 1963-1986" Ochieng, W.R., (ed.) *A Modern History of Kenya, 1895-1980*, Evans Brothers, Nairobi, 1989 pp.219-244.

Robinson, M., "Will Political Conditionality work ?" *IDS Bulletin*, 24(1), 1993 pp.55-66.

Robinson, M., Ketley, R. and Healey, J., "Will Political Reform Bring About improved Economic Management in Sub-Saharan Africa ?" *IDS Bulletin*, 24(1), January 1993 pp.31-38.

Robinson, M., "Governance and Conditionality: NGOs and the New Policy Agenda", Clayton, A., (ed) *Governance, Democracy and Conditionality: What Role for NGOs?* INTRAC, London, 1994 pp.35-52..

Ross, D. Stanley, "The Rule of Law and Lawyers in Kenya" *The Journal of Modern African Studies*, 30(3), 1992 pp.421-442.

Southall, R., "Reforming the State ? Kleptocracy and the Political Transition in Kenya", *Review of African Political Economy*, No.79, March 1999.

Southall, R., "Moi's Flawed Mandate: The Crisis Continues in Kenya", *Review of African Political Economy*, No.5, 1998.

Van De Walle, Nicholas and Bratton, Michael, "Neo-Patrimonial Regimes and Political Transitions in Africa", *World Politics*, 46(4), 1994 pp.453-489.

Waller, P., "Aid and Political Conditionality: The Case of Germany with particular reference to Kenya", Stokke Olav (ed.), *Aid and Political Conditionality*, Frank Cass, London, 1995.

World Bank, World Bank Development Report, World Bank, 1989.

World Bank, World Bank Development Report, World Bank, 1993.

2. Newspapers and Periodicals

Africa Confidential

Daily Nation

Economist

New York Times

Standard

Spectator

Weekly Review

3. Government Publications

Constitution of Kenya (Amendment) (No.2) Act, 1991

4. Books

Bennet, G., *Kenya: A Political History, the Colonial Period*, Oxford University Press, London, 1963.

Brendalyn, P. A., *Democratization and the Protection of Human Rights in Africa: Problems and Progress*, Praeger Publishers, Connecticut, 1995.

Breytenbach, W., *Democratization in sub-Saharan Africa: Transition Elections and prospects for consolidation*, Africa Institute of South Africa, Pretoria, 1996.

- Chazan, N., Mortimer, R. Ravenhill J., and Rothschild, D., *Politics and Society in Contemporary Africa*, Lynne Rienner, London, 1988.
- Clayton, A., *Governance, Democracy and Conditionality: What role for NGOs ?* INTRAC, Oxford, 1994.
- Gibbon, Peter, "The World Bank and the New Politics of Aid" Georg Sorensen (ed.), *Political Conditionality: What Role for NGOs?*, INTRAC, 1994 pp.7-34.
- Gertzel, C., *The Politics of Independent Kenya, 1963-1968*, East African Publishing House, Nairobi, 1979.
- Hayward, F., *Elections in Independent Africa*, West View Press, Boulder, Colorado, 1987.
- Himbara, D., *Kenyan Capitalist, the State and Development*, East African Educational Publishers, Nairobi, 1994.
- Huntington, S. P., *The Third Wave: Democratisation in the Late Twentieth Century*, Oklahoma University Press, 1991.
- Kobia, S., *The Quest For Democracy in Africa*, National Council of Churches of Kenya (NCCCK), Nairobi, 1993.
- Kiai, M. and Ombaka, O., *The Pocket Constitution of Kenya*, Public Law Institute, Nairobi, 1988.
- Linz, Juan, J., and A. Stephan, *The Breakdown of Democratic Regimes*, John Hopkins University Press, Baltimore, 1978.
- Rothchild, D. Chazan, N., *The Precarious Balance, State, and Society in Africa*, Westview Press, London, 1988.
- Ochieng, W. R., *An Economic History of Kenya*, East African Educational Publishers, Nairobi, 1992.
- Sorrensen G., *Democracy, Dictatorship and Development: Economic Development in Selected Regimes of the Third World*, St. Martin's Press ,London, 1991.
- _____ *Democracy and Democratization: Processes and Prospects in a changing world*, West View Press, Boulder, 1991.
- _____ *Political Conditionality*, Frank Cass, London, 1993

Stokke Olav, *Aid and Political Conditionality*, Frank Cass, London, 1995.

Tordoff, W., *Government and Politics in Africa*, Macmillan, London, 1997.

Throup, D. and Hornsby, C., *Multi- Party politics in Kenya, The Kenyatta and Moi State and the Triumph of the System in the 1992 Election*, East African Educational Publishers, Nairobi, 1998.

Wanjohi, N., *Challenges of Democratic Governance, Parliament, Executive and the Citizen in Kenya*, National Council of Churches of Kenya, Nairobi, 1993.

Wanjohi, G., *Multi-party Electoral Process in Kenya*, National Council of Churches of Kenya, 1992.

Wiseman, J. A., *The New struggle For Democracy in Africa*, Aldershot, 1996

_____ *Democracy and Political Change in sub-Saharan*, Routledge,
New York, 1995