

*Discourses*  
*on*  
*Civil Society*  
*in*  
*Kenya*



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## **PREFACE**

The African Research and Resource Forum (ARRF) is a regional policy research institute based in Nairobi with a focus on the most critical governance, security and development issues in Eastern Africa. All the governments in Eastern Africa have introduced national governance reforms, with varying degrees of success in the past one and a half decades. In that process, the role that civil society should play in improving the quality of governance and the lives of ordinary citizens has been an issue of great concern to the governments of the region, civil society groups, donors, academics and the voters. Obviously the relations between state and civil society vary from one country to another. There are disagreements on the direction in which civil society groups have evolved, since the struggle for democracy began in the middle of the 1980s. To understand the issue in greater detail, the ARRF in partnership with the Heinrich Boll Foundation organized a regional workshop on civil society in 2008 which was open to a large number of civil society groups in the region, in addition to the press, public officials and academics. This publication is the result of that collaborative effort between ARRF and the Heinrich Boll Foundation, Kenya office.

The idea of holding a regional discourse on civil society was motivated by a number of reasons. First, there was recognition that civil society worldwide has become a critical player in the management of public affairs. The role of civil society in Eastern Africa is particularly important at this time because of the many challenges facing the region. Some of these challenges have arisen from the efforts being made to establish the East African Community, and attempts at democratization and the improvement of governance among others. Managing these challenges requires the participation of key stake holders. Civil society can generate ideas regarding the successful establishment and eventual functioning of the East African Community. This role is acknowledged in the charter establishing the East African Community.

Secondly, civil society organizations in the region have undergone some changes that are worth exploring. In some countries like Kenya, and also Southern Sudan, civil society actors of the past are now serving in government. For the sector to play its rightful role in the region it is important that changes over time are observed so that weaknesses arising from such transitions do not weaken the movement. Finally, the project assumed that a comparative analysis of civil society from other regions of

Africa would enhance our overall understanding. What works in one situation may not work in the next. There are best practices in one case that others might learn from. It is against this consideration that section two of the publication is devoted to an analysis and perspectives on civil society in other parts of Africa, namely Nigeria, Ethiopia and Zanzibar.

In chapter One, Sall provides an overview of the role civil society in Africa has played in bringing about change. He argues that at first glance there is no evidence of civil society driven change in Africa. He goes on to observe therefore that where new political dispensation has emerged and survived, change was driven by political parties which may or may not have been in alliance with civil society organisations.

In chapter Two, Wanyande examines the contribution made by civil society to the various attempts at political transition in Kenya and the challenges facing the sector. The chapter argues that Kenya has attempted about four political transitions beginning from the imposition of colonial rule. The author argues that civil society did not play any role in the first attempts at transition. The sector however played a major role in attempts at political transition. The chapter ends by observing that civil society currently faces a number of challenges that may hamper its role and effectiveness.

Chapter Three is by Chemengich and looks at the prospects of civil society driven change in Kenya. The author argues that civil society in Kenya is involved in a variety of functions that include service provision, fighting for democracy and good governance, market agitation and religious and spiritual development. The chapter identifies a number of challenges to the effectiveness of Kenyan civil society organisations.

In chapter Four, Charles Olungah discusses the role of the academic community in the process of democratisation in Kenya. The main argument of the chapter is that the academic community has struggled hard against successive oppressive state measures including hostile university environments. Despite this the academic community has been at the forefront in fighting against authoritarian rule.

In chapter Five, Ben Sihanya interrogates the role played by academics and civil society in development policy making and the budgetary process. He sees the academic and civil society becoming increasingly involved in development policy making and in the budgetary process.

Chapter Six by Oculli is on the role of university students and civil society in Nigeria. The chapter analyses the determination of university students in Nigeria to influence change in state policy despite very hostile political and economic environment. The author describes the situation as a real struggle.

In chapter Seven, Gudina discusses the activities of civil society in Ethiopia. In this detailed and well-informed chapter Gudina argues that the political environment in Ethiopia has been and remains hostile to civil society participation in the days of the emperor, under the Dirgue and after the Dirgue was thrown out of power in 1991.

Chapter Eight contains perspectives by Othman on the role of civil society in Zanzibar. The message from the chapter is that civil society in Zanzibar is weak due mainly to the nature of an intolerant the political environment.

All the authors agree that civil society is a critical stakeholder in the change process. This is true whether one is talking about political, economic or even socio- cultural change. There is therefore a case to be made for strengthening civil society in Africa and any other region undergoing change.

**Professor Michael Chege**

*Board Chairman,ARRF*

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ARRF would like to thank the Heinrich Boll Foundation for funding the colloquium in which most of the papers published in this volume were presented. The African Research and Resource Forum (ARRF) would also like to acknowledge the intellectual contribution from the Foundation through repeated discussions on this subject between ARRF staff and Dr Axel Harneit-Sievers, the HBF representative in Kenya. Dr Sievers took a keen personal interest in the project as demonstrated by his personal attendance at a number of workshops whose proceedings culminated in this publication.

The ARRF also wishes to thank all the people who conducted research on this important subject and took time to present their research findings at the various workshops that the ARRF organised and at which lively exchange of ideas took place. We also wish to thank staff of various civil society organizations that took part in the many workshops on strengthening civil society in Kenya. ARRF hopes that this publication will serve to advance our understanding of the role of civil society groups in Kenya and Eastern Africa, as these societies strive to improve both governance and the standards of living of the people of the region.

**SECTION I**

**CIVIL SOCIETY IN KENYA**



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## CHAPTER ONE

# REFLECTIONS ON CIVIL SOCIETY DRIVEN CHANGE: AN OVERVIEW

*Alioune Sall*

This chapter provides an overview of the role of civil society in influencing change. It begins with a definition of the concepts of “civil society” and “change”. We do so because of the polysemic nature of the two concepts.

For civil society the definition we would like to propose “would go beyond the parochial orientation which tends to limit civil society to organized secular groups in urban settings” (Bangura quoted by Okello Oculi). It encompasses a wide range of organizations which are not under the control of governments and which are not for profit as organizations of the private sector. Civil Society Organizations (CSOs) are value-driven rather than profit driven. They include: Non Governmental Organizations (NGOs), Community Based Organizations (CBOs), Faith Based Organizations (FBOs), Trade Unions, Farmers Associations, Academics, Professional Associations, Students Movements and other mass movements which are not affiliated to political organizations Civil society does not encompass political organizations or political society.

In this paper the term change refers to, qualitative change which brings about a new dispensation in political arena, tantamount to a paradigm shift in the epistemological world, in the sense given to paradigm by Kuhn.

Against this definitional backdrop, it would seem at first glance that, empirically, there is no example of civil society driven change to talk about in specific African countries. Where new political dispensation has emerged and came into being, the change was driven by political society and especially political parties which may or may not have been in alliance with civil society organisations. In other words, an exclusively civil society led change is something unheard of in Africa. Even where CSO were quite strong, like in apartheid South Africa with COSATU and SANCO, the alliance they entered into was led by a political party – the African National Congress (ANC).

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There are certainly many factors which account for that reality. Four explanatory factors stand out. The first has to do with the young age of the civil society. In the African context civil society of the kind we are talking about are relatively young, This is because their activities were curtailed by the colonial authorities and even after independence they were not given an opportunity to develop. Most of the CSOs emerged or became active only in the 1990s following the liberalisation of the political and development space. Secondly many of the CSOs in Africa have a very loose structure. Thirdly the CSOs exhibit weak organizational capabilities in addition to having limited scope of work (whether geographical or thematic).

Yet, in spite of these shortcomings one can argue that, notwithstanding the ultimate hegemony of political parties in the alternation process in the political arena, CSOs have been at the initiation phase of many social and political movements which have led to change. The following examples illustrate the point quite well: The student's movement in Senegal in 1966 and particularly in 1968 forced the Government to open up space for dialogue. The movement also influenced the relaxation of the presidential nature of the regime leading to the establishment of a position of Prime Minister. This position had been scrapped from the institutional architecture of the country in December 1962.

Second the trade union movement/strike in Mali, supported by the students' movement which led to a military coup that toppled the regime which had been in place for 22 years. The pressure from the trade unions led eventually to multi-party elections which brought Alpha Oumar Konaré to power. It's worth noting that for long "Alpha", as he is known popularly, was at the helm of a magazine and an NGO whose main activity was education and literacy-related. The trade unions were also in the forefront of change in Upper Volta, when, in 1966, Yameogo was toppled by a junta led by Sangoule Lamizana. The same scenario was repeated in 1981 against Saye Zerbo in a coup staged by young radical officers led, among others, by Thomas Sankara and Blaise Compaoré. The coup brought significant change in the political landscape of the country and had also a symbolic dimension as the country's name was to be changed.

The Faith Based Organizations (FBOs) and the academia were at the forefront of change in Benin where the first "National Conference", following the "Discours de la Baule", was held in 1990. The Conference chaired by an Archbishop ended up with the drafting of a new Constitution, organization of new elections that were won by

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President Soglo, after more than 20 years of “Marxism-beninism” under President Mathieu Kerekou. Closer to us is the Soweto uprising of 1976, starting with children.

It should be noted that in the five examples provided above, where the change process was triggered by CSOs (student’s movements, workers trade unions, FBOs and academic circles) the public space was dominated/controlled by a political party with almost no breathing space for other political actors. In all these examples, there was *de jure* (Mali) or *de facto* a State-Party. As political identities could not be expressed or express themselves freely, dissenting voices had to identify other channels than political parties. Corporatist bodies (trade unions, students’ movements) defending particular interest groups were one of those channels, in as much as they were recognized. The same holds true with spiritual identities in as much as constitutions upheld/ recognized the right for citizens to worship in the way of their choice. In other words, it is the repressive, authoritarian, if not dictatorial nature of these regimes that provided the fertile ground for the expansion/development of the CSOs which became the locus of the resistance to dictatorship. That was so true that NGOs, in the minds of the powers that were considered as a cover for anti-governmental organizations and opposition parties which did not claim their identities but were in the making.

From the examples given above one can argue that change may not have been driven entirely by CSOs but triggered by them. It should also be noted that in all the examples cited above, the historic role played by CSOs in opening up the public and political space has been short-lived for a couple of reasons, mutually reinforcing or separate but very clearly discernable.

In the first place the CSOs transformed and reinvented themselves as political parties aiming at control of the State and positioned themselves as opposition parties.

Secondly, the CSOs were on the contrary massively co-opted in the power as was the case with South Africa where the leaders of the tripartite alliance worked mainly for CSOs. As a result of this dual process, the CSOs found themselves weakened under new dispensation by one of those ironies that history is full of. Expansion of the democratic space rather than being a gain for the CSOs which had contributed to it in significant manner became a loss for the CSOs which then lacked platform or leadership.

In all those countries, as a result of those changes, and opening up of the public/political space, some soul searching is taking place as to the role of the CSOs, and their potential

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for driving a change agenda in Africa. Some argue that the State, particularly if it is a developmental State, will, by its very existence, confine CSOs to a marginal role as it will deal successfully with issues of development, human rights which were the forte, so to speak, of CSOs. Others argue that more than ever CSOs are needed to hold government accountable, particularly in times of transition from an opposition party or liberation movement to one of a Party in charge of/and controlling the state. There may be some validity in both positions but the debate must be contextualized. In other words, what is required is “a concrete analysis of concrete situations” to use Lenin’s words. And it is very likely that one conclusion will be that CSOs are neither totally redundant, even in the framework of developmental states, nor the messiah which will rescue humanity from its sins and protect governments from their tendencies to be abusive. It is very likely that out of a proper assessment, it will appear that CSOs do have a potential to contribute or even play a triggering or leading role in change process in Africa even though they share that privilege or prerogative with other social actors. The issue then is how to actualise that potential? The response can be expressed in three statements: audacity to think, audacity to speak, audacity to act.

### **Audacity to Think**

Real change is always accompanied and preceded by a paradigm shift, the emergence and or consolidation of alternative discourse to the dominant discourse, a discourse which, as we all know since Marx, is the discourse of the dominating classes. Challenging the dominant discourse is therefore a first step for CSOs if they are eager to change the balance of power in society, and contribute to overcoming the alienation mechanisms associated with disempowering discourses. Seeing reality through alternative lenses is the first step on the journey for changing realities. Intellectuals have therefore a major role to play in bringing about change hence the idea of Gramsci referring to political parties as “a collective intellectual”. The same can be said of civil society; at its best they are a collective intellectual which offers a reading of society which is, by necessity, a de-construction of the dominant discourse.

Examples abound where civil society in Africa has played that role of collective intellectual. The examples include the critical analysis of Structural Adjustment Programmes (SAPs) as policy instruments for the management of African economies. Long before the Economic Commission for Africa, then under the leadership of Prof. Adededeji, challenged the wisdom of the Bretton Woods Institutions, intellectuals

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like Samir Amin, NGOs like Oxfam, and Third World Network had provided critical analysis demonstrating that SAPs were misnomers and non starters. The same holds true with the notion of developmental or capable State, embraced today by institutions which, not long ago, were advocating minimalist States. The same can be said about the critical importance of long-term planning in the development process and the utilization of scenarios in strategic planning processes. Research centres and Think Tanks such as CODESRIA, AAPS, AFI have played critical roles in unlocking the minds and refining these alternative discourses without which people would still be boxed in conventional views of development.

There is therefore need to strengthen these centres, to establish new ones and to network them so as to keep up the search for alternative paradigms to the discourse of globalization which obviously has failed to deliver on its promises, as evidenced by breadth and depth of poverty and destitution in Africa. It should be recalled that periods of Renaissance in Africa, whether the Askia of Mali in the 14<sup>th</sup> century, or during the struggle for independence in the 1960s, as well as everywhere in the world have been characterized by an intense intellectual production. From that standpoint, those who advocate African Renaissance should be well advised to invest in intellectual production and engagement rather than sticking to the conventional wisdom as, unfortunately, the Mbeki regime in South Africa Soel Akee did. Development of an African intelligentsia – which goes beyond graduating students – is a prerequisite for any meaningful change.

### **Audacity to Speak**

Ideas, no matter how bright they are, only become tools of change when they are internalised by a wide constituency. Communication is key in that regard. It is a powerful tool. It therefore does not come as a surprise that leaders in change process from the prophets of biblical times to contemporary leaders have been communicators or have secured services of communicators. The challenge in that regard is to be able to depict a possible future that is desirable and the path that can lead to it in such vivid and convincing ways that various constituencies mobilize themselves to reach that desirable future. In view of the need to be as inclusive as possible, and taking into account the diversity of potential actors of change, tailor-made strategies have to be devised to convey the message that change is within reach in our lifetime (Yawezekana in Swahili; Djitu Ten in Creole of Guinea Bissau) and that there is nothing like fate

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or curse which would condemn us to be spectators of our history rather than actors of change.

A related challenge is to be able to document what has come to be known as best practices and disseminate them widely. Here, I am not talking about promotional material on glossy paper which profiles an organization or an individual or even a community. Documenting best practices goes beyond giving a snapshot of a reality. It involves analysing factors, actors, critical uncertainties, trends, strategies (FACTS) behind the considered reality. An analytical capability is therefore required.

Communication and the media are important segments of civil society in as much as they account to a large extent for the success of alternation in countries where they took place. That explains why media Bills are being passed, even in countries supposedly democratic like Botswana and Senegal. That's also why when those restrictive/repressive Bills fail to alter their combativity or simply their professionalism, the media people get banned or jailed. Examples include Sembene's anti-imperialist movie "Ceddo" which was never shown in Senegal under Senghor under the pretext of inappropriate orthography.

In the same way that governments have come to appreciate the power of media, the CSOs should see to it that media are part of their constituency.

### **Audacity to Act**

Change is brought about by action, not by chance. And when it comes to action, 3 modalities can be found:- reactive: fire brigade mentality; Pre-active: insurance premium holder; Pro-active: strategist.

To be proactive, an actor (whether an individual, community) requires capacities. And for that matter, two types of capacities are required. First is the capacity to anticipate: data collection on drivers of change, environmental scanning... knowing that whilst future cannot be predicted with certainty, one can comfortably identify the factors that will shape the future. Anticipation is what future studies are all about. It is therefore important that CSOs engage into future studies by their own or in association with other organizations. In East Africa, there are many future studies already carried out but which need update. Thus in Burundi, "Burundi 2025" is being carried out; Rwanda has completed and is implementing "Rwanda 2020"; Tanzania has carried out years ago under the leadership of Prof Wangwe, then Executive Secretary of ESRF, a future

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study; Uganda did the same with Salim Bachou at the helm; Kenya, with Institute of Economic Affairs (IEA), then led by Betty Maina and Peter Anyang' Nyong'o as Chair of the Board completed "Kenya at crossroads" with the support of Society for International Development (SID). CSOs have to get involved in these national exercises, and make use of them to enhance their capacities of anticipation. Moreover, it would be appropriate, in my view, to organize a meeting of CSOs of the region on future study (methodology, process, use future study).

The second is the capacity to chart a courses of action on the basis of an alternative vision of the future, and are shared by as large constituencies as possible. I am referring you back to what I was calling the audacity to think, to operate paradigmatic shifts vis-à-vis dominant discourses. This dual capacity can be expressed in the metaphor of a pilot. If civil society is to be agents of change, it has to act as a pilot.

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## CHAPTER TWO

# **CIVIL SOCIETY AND TRANSITION POLITICS IN KENYA: HISTORICAL AND CONTEMPORARY PERSPECTIVES**

*Peter Wanyande*

### **Introduction**

This paper attempts to shed insights into the contribution of civil society to the politics of transition in Kenya. The paper highlights some of the actual contributions made by civil society to the politics of transition as well as their potential to contribute to transition politics. This includes a highlight of both the direct and indirect contribution of this sector to the politics of transition. Also taking pride of place in the discussion are the challenges facing civil society. From the discussion on the challenges the way forward for civil society in Kenya should emerge. Since attempts at political transition have been a feature of Kenya's political landscape since the colonial period, the discussion takes an historical approach. This is done in order to place the issues in their right historical perspective.

The paper presents four arguments. First is that any discussion of the role of civil society in the politics of transition must take cognizance of the complexity of transition politics and the fact that the undertaking involves competition first between the conservative forces bent on maintaining the status quo and the progressive groups that wish to make fundamental changes to the existing system on the one hand and on the other, competition within each of these forces. This point is well articulated by Adam Przeworki (1991). The politics of transition thus involves a multiplicity of actors with civil society being only one of them. Consequently it becomes difficult to measure the contribution of any single actor. It is because of this that one has to be careful in crediting or admonishing any of these actors, CSO undivided, with the success or failure of a transition project. The second argument is that not all civil society organizations have made a positive contribution to attempts at political

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transition. A number of them have in fact worked closely with conservative forces in government to frustrate the efforts to effect political transition. This is not surprising in view of the heterogeneity of civil society and the fact that it is made up of groups with diverse interests in a political system both existing and anticipated. The final argument is that the effectiveness of civil society in Kenya has oscillated between being active and being dormant depending on the type of regime in power and the quality of civil society leadership.

### **Conceptual and Theoretical Issues**

Although the term civil society has a long history going as far back as classical Greece, there is no consensus on its precise meaning. While some scholars apply the concept to any non state actor including political parties but excluding family and blood associations or groups others (Nzomo: 2003) include family and blood associations or groups while excluding political parties in defining civil society. Nzomo also includes the informal associations in the rural areas in the category of civil society. Other scholars also consider the media as part of civil society. According to Elmaky, civil society is defined as ‘the group of free and voluntary associations which strand in the middle between the family and the state to achieve interests of its members and must confine itself and activities to the values of respect, tolerance, general agreement and peaceful management of diversity and contradictions’.

Arriving at an agreed definition of civil society is particularly problematic in Kenya where a plethora of non state actors with very different characteristics and ways of conducting business emerged especially since the 1990s with each laying claim to the title civil society. Development partners compound the problem by channelling development assistance to these groups on grounds that civil society is a better performer in the use of development resources than to the state. As a result of this, people began to associate any non- state actor with civil society.

The general understanding of civil society in Kenya has therefore been that it is any organized non –state actor that seeks to work for the political, social and economic wellbeing of its members in particular and the citizens in general. They do this by attempting to limit the freedom and capacity of the state to encroach on the interests, rights and freedoms of citizens.

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Another problem that one meets in any discourse about civil society is the tendency to talk about civil society as a homogeneous entity despite the fact that many of the organizations that claim civil society label exhibit very different characteristics, interest and approaches to their activities. It is also commonly assumed that the interest of civil society and those of the state are and must necessarily be incompatible. The expectation in this regard, is that civil society must always oppose the state. In reality and especially in Kenya, there are a number of civil society organizations that work with the state. For example organizations such Youth for KANU (YK92) worked with the state to defend the Moi government and campaigned for its victory in the December 1992 general elections.

There is also a tendency to assume that civil society has the capacity to perform better than the state in terms of catering for the interests of the citizens and in keeping the state in check. (See for example the views of the World Bank 1989-1994). Finally there is an assumption that civil society is a prerequisite for the institutionalization of democracy in Africa and therefore for effecting genuine political transition. It is against the above conceptual muddle with its potential to mar an objective analysis of the role of civil society that this paper will interrogate the contribution, if any, of this sector to the politics of transition in Kenya.

### **The Concept of Political Transition**

A number of studies have been undertaken on the subject of political transition in Kenya especially since the 1990s. This interest has been kindled by the prospects of regime change that was made possible by the repeal in 1992, of section 2(A) of the constitution that had hitherto criminalized multiparty politics in the country. There is, however, some confusion from some of the literature on the meaning of political transition.

Some scholars use the term to refer to any change of government and or leaders even when the political system remains largely unchanged. Others take the position that transition involves a fundamental change in the philosophy and system of governance and must therefore go beyond change of guard at the helm of the political system or change of administration.

This paper adopts the view that political transition involves a fundamental change in the socio economic and political order of society including the philosophy and practice

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of governance in all its dimensions. It must incorporate a new and more acceptable constitutional dispensation in situations where the constitution was considered a stabling block to good governance. As Anyang points out political transition is therefore to be distinguished from change of administration including the political leadership of a country. (Nyong'o: 2007) A mere change of administration would, qualify as political succession. Having made the above conceptual clarifications it is now appropriate to attempt an analysis of the role played by civil society in attempts as political transition.

### **Attempts at Political Transition in Kenya**

Kenya has attempted four political transitions since the late 19th century. The first occurred with the establishment of British colonial rule in the 1880s. Colonial rule caused fundamental changes in the philosophy and practice of governance of the country. The indigenous governance structures and system were replaced by those of the West. In place of the decentralized system of governance highly centralized political arrangements were introduced. All hitherto independently governing communities were henceforth forced to direct their political loyalty to a central authority, the governor, in Nairobi. The colonial government also fundamentally altered the economic system by, among other things, introducing the money economy to replace barter trade. The social fabric of society was also altered in the sense that society was racially divided and categorized into first, second and third class groups with one set of laws applied to one category of the people- the citizens- and another set to another category - the subject. For details of how this worked refer to Mamdani (1999). The thing to note about this transition is that it was not participatory. Instead it was imposed on the people with one actor, the colonial authority, taking charge. CSOs did not play any significant role.

After absorbing the shock, the Africans organized themselves to resist and overthrow the colonial government and its infrastructure. Among the notable primary resistances to colonial rule were those by the Nandi (1905-1907) The other major threat to rule was the Mau Mau movement.. These resistances set the stage for the second attempt at political transition. A number of organizations and associations were formed to aid this process. Prominent among these were trade unions, political parties and various tribal associations such as the Kavirondo Welfare Association. These organizations joined forces to demand that a new political order complete with a new governing philosophy be put in place. They called for a governance system that was democratic, inclusive,

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just and fair. They also advocated for an economic system that was inclusive and one that would improve the social and economic welfare of the people, the majority of whom had been economically marginalized and impoverished. The people in their individual and collective capacities were calling for a fundamental change in the governance system in its political economic and social dimensions.

Needless to say these efforts were fiercely resisted by the colonial authorities who were determined to maintain the status quo. In this resistance the authorities recruited some Africans to fight on their side. This is the group referred to as Home Guards. Some of them are said to be in government even today. The significant point about this is that in any struggle there will always be opportunists whose activities undermine or frustrate the goal of a struggle. This is true even of civil society actors. Conservative members of civil society are likely to betray the efforts of the more progressive forces. Any efforts to analyze the role of civil society in the politics of transition must thus take this into account. This in fact has been a major source of transition failures in Kenya.

Eventually colonial rule was overthrown by a combined force of nationalists using political parties, civil society in the form of traded unions and ethnic associations. A new constitution was put in place that had the potential to make Kenya a liberal democratic state. The main democratic features of this constitution that distinguished it from the colonial constitution were a devolved state structure, a functioning local government system, separation of powers between the executive, legislature and the judiciary complete with checks and balances. The expectation was that the new government would make a complete break from the colonial type government. It was expected that in line with the manifesto of the nationalist parties and especially Kenya African National Union (KANU), the new political dispensation would be responsive, responsible transparent and accountable to the citizens and therefore democratic. These expectations and hope were, however, quickly frustrated.

The government faced a number of challenges. These included the threat from the trade unions who were former allies of the nationalists in the struggle for transition from colonial rule to independence.

Confronted with these challenges some of which they probably did not anticipate or they were not equal to, the leadership of the country resorted to tactics similar to those used by its predecessors, the colonial government. Instead of multiparty democracy, one party rule was instituted leading to the constricting of political space. Human

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rights violation including detention without trial became the order of the day for people with dissenting political views. Trade unions and other associational life were silenced by the state using all manner of tactics. For the trade unions the state made rules restricting their freedom to elect leaders of their choice. It did this by requiring that after the elections three names be forwarded to the government. The government would then appoint any of the three people as the Secretary General of the Central Organization of Trade Unions, (COTU) the umbrella workers' union. Organizations such as Maendeleo Ya Wanawake were co-opted into the ruling party and made to operate as a wing of the ruling party thus undermining its autonomy and effectiveness in championing the rights of women in the face of government interference. The clamp down on civil society was particularly harsh after Moi took over power in 1978 following the death of President Kenyatta. Moi lacked the confidence that Kenyatta enjoyed partly because Moi did enjoy popular support from the numerically large and politically active ethnic groups such as the Kikuyu and the Luo. He himself was a small ethnic group, the Turgen, a sub group of the Kalenjin community. In addition although Moi had served as Kenyatta's vice president for twelve years he was considered a weak personality. This too cost him popular support. Indeed many politicians of his time saw his presidency as only temporary. One politician from the Kenyatta regime called it a passing cloud. He was therefore sensitive and saw any political groupings outside the state including civil society organizations as a potential threat to his power. In this regard it is instructive that Moi even deregistered sporting clubs such as Abaluhya and Luo football clubs because they had tribal names. He even went on to deregister ethnic welfare associations such as Akamba Union and Luo Union. The regime became extremely authoritarian by any standards.

The failure to make a break with the past system of governance provided grounds for the third attempt at political transition. One of the major differences between this period and the preceding one was the fact that by this time, the country had a fairly vibrant civil society including the media. This was backed by an increasingly politically aware citizenry. The civil society enjoyed strong financial and moral support from the donor community. Donors at this point in time were not quite happy with the state and were keen to see democratic changes in Kenya. Civil society was their natural ally in this objective.

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The academic community also supported the activities of civil society in this struggle. The strong financial bases of these organization enable them hire the services of scholars to assist think through the issues of transition. They presented papers at workshops and seminars organized by civil society. This was particularly the case with the more politically oriented civil society groups. Indeed civil society organizations such as CLARION were managed by people from the academia. Although difficult to measure there seems to be agreement, at least in popular discourse on civil society today that the leadership of civil society groups during this period was led by very committed and dedicated people who understood the role of civil society in transition. It is worth noting that some of these leaders were eventually co-opted in government after the 2002 elections. This has posed major leadership challenge to civil society today as we discuss in a later section of this chapter.

### **Role Played by Civil Society in Transition Politics**

Since the 1990s civil society has been very instrumental in providing civic education. As Mute (2002) rightly observes, civic education shaped the role that individuals... play in the process of change, shaping relationships amongst citizens and influencing the proactive role of citizens in social change and transformation. It empowers citizens to play their role in transition politics. Although the specific impact of these activities has yet to be measured it is generally accepted that it was due to these civic activities that the level of political consciousness in Kenya improved.

Secondly civil society organizations and especially the faith based organizations gave sanctuary to victims of state terror during the struggle for the reintroduction of multiparty politics. The reorganizations were also very vocal against injustices and autocratic tendencies of the Moi government. Bishops such as Henry Okulu and Alexander Muge of the Anglican Church will be remembered for their unrelenting criticism of the atrocities of the Moi government. They gave courage and hope to those who were being persecuted by the state. The media was particularly instrumental in exposing the weaknesses of the government and giving the pro democracy forces a channel through which they engaged the government and the conservative forces that supported the status quo. The media also provided citizens with an opportunity to express their misgivings about the government. This was done through letters to the editor and other newspaper articles.

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Some civil society organization's provided citizens with the much needed services that the state had failed to provide. This served to erode peoples' confidence in the state and thereby hardening the peoples' resolve to demand real change in the governance realm.

The 1980s witnessed the emergence of numerous CSOs engaged in issues of democracy and improved governance. They included the Citizen Coalition for Constitutional Change, CLARION, Centre for Democracy and Governance, the Institute for Education in Democracy (IED), the National election Monitoring Unit (NEMU) the Kenya Human Rights Commission, the National Executive Council. These organizations put considerable pressure on government to improve governance and open up the political space for those who wish to contribute to the country's public affairs. At the height of the clamour for constitutional review, organizations such as CLARION drafted a constitution which they presented to the Office of the President for consideration. This was part of a strategy to force the state to involve the people in constitutional review. The Moi government had initially insisted that the review of the constitution would be done by parliament and the people would have nothing to do with it. Thus CSOs were also instrumental in opening up the political pace. The Civil society organizations worked closely with opposition politicians to contribute to the changes.

Civil society also undertook a spirited campaign to expose electoral fraud and malpractices that characterized elections during Moi's presidency. The sector also lobbied the international al community to put pressure on the government to respect democracy and the voices of the people. In this regard it is important to note that civil society group called on the international community to demand the trial of those who manipulated the 2007 elections.

Prior to the active participation of CSOs in politics, this critical human activity was the preserve of political parties. This however changed with the entry of CSOs in the political arena. The participation of civil society organization in politics has broadened the scope of political players. This development has led to the demystification of politics and given citizens confidence that they too can contribute to political change and that politics is not the preserve of elites.

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## **Challenges to Effective Civil Society Participation in Transition Politics**

It is generally accepted in Kenyan discourse on civil society that the sector is in a flux. Having contributed to the removal of KANU from power with the hope that a new and more democratic system of governance would be put in place, a number of developments that have had great implications for the role and relevance of civil society took place. A discussion with a number of civil society activists reveals that the sector has several challenges. While some of these potential challenges are historical others are relate to social structure of the Kenyan society. Some are also of a contemporary.

One of problems that civil society in Kenya has had to deal with is the hostile political environment. As already indicated, right from the colonial period, successive governments have not been very receptive to civil society activities. This is particularly the case with those CSOs that question the excesses of government and the ruling elite. The media has been a target especially for exposing scandals involving government and powerful state officials. It is imperative to note that even when the space was finally opened and it appeared that civil society organization would freely play their watchdog role the hopes were quickly dashed. The passing by parliament of a media Bill that is likely to gag the media and its signing into law by president Kibaki in January 2007 is an example of how uncomfortable the government is with a free media, the claims that is a liberal government notwithstanding.

Another challenge is the temptation by civil society leaders to join government. Following the 2007 elections, the government took a deliberate move to incorporate some of the most vocal and committed civil society leaders into government. This was the case for example with Njoki Ndungu who was nominated to parliament and John Githongo of Transparency International - Kenya Chapter - who was appointed Permanent Secretary and presidential advisor on matters of governance and corruption. Others such as Kivutha Kibwana chose to join national electoral politics and became members of parliament. The effect of this is that it robbed civil society of leadership. This point ought to be understood against the fact that it takes a long time to build an effective and committed leadership. Indeed some of the problems that the current civil society organizations are grappling with is that of replacing leaders who have left the sector either because they have been co-opted into government or for other reasons.

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Many civil society activists felt that since this was a government established with their support they had to support the regime at whatever cost. They forgot that the two actors have different roles and that civil society has to constantly monitor activities and performance of government with a view to stopping government from engaging in excesses. The decision by civil society whether by design or by default to work very closely with the NARC government was a major undoing as it gave government confidence and courage to allow scandals such as the Anglo Leasing to take place. It certainly affected the ability and freedom of civil society to effectively check on government excesses. The danger with this is that civil society may end up behaving as if they are part of government.

A major challenge for civil society today is to keep a close eye on constitutional review and ensure that the process is not hijacked by the political elite. The sector must mobilize the Kenyan people to reject any short sighted and self serving deals that the political leaders may go into. These deals may delay or completely frustrate the review process.

As champions of democracy and good governance civil society organizations must practice democracy and be seen to do so. Civil society organizations must develop, practice, internalize and institutionalize internal democracy. Currently the public believe that the sector lacks and does not practice internal democracy. Yet for them to be effective in their work they must develop a democratic culture.

Another major weakness exhibited by civil society is their tendency to take ethnic positions on major national issues. This is a weakness that has even taken root in the faith based organizations including the Catholic Church. A good example was the position taken by the catholic bishops regarding the Wako draft constitution. While some supported and campaigned for the adoption of the Wako draft, others campaigned for its rejection at the 2005 referendum. Catholic Bishops from Central Kenya went along with political leaders from the region and called for the adoption of the Wako draft while their counterparts from Nyanza and other parts of the country campaigned for its rejection. The sector is, in other words, unable to transcend ethnic and regional capture. In this sense one can argue that Kenyan civil society is a mirror of the broader society. This must be considered a weakness because the sector stands the danger of perpetuating values and practices that retard the development of this society into a modern nation. Adopting ethnic inspired positions on major issues such

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as elections can also threaten the solidarity of oppositional civil society. They risk becoming reactionary rather than progressive.

There are other challenges facing the CSOs that need to be highlighted. First Civil society currently exhibit extraordinary dependence on donor funding. This makes civil society accountable to those who fund them and not the people they intend to serve and benefit. Second the 1990s, present day civil society has relatively weaker links with the academia. The sector therefore stands the risk of benefiting from appropriate theoretical framework to guide the analysis and understanding of the problems so society that they deal with research findings by academics can form useful tools for advocacy by civil society organizations. The sector must thereof strive to re-establish these useful links. They will obviously have to hire the services of intellectuals at an acceptable fee to conduct research for them.

Third, given the current efforts at regional integration in East Africa it would be useful for civil society to forge links with their counterparts in the rest of the region. Currently this link appears to be weak. Such links are important for the sharing of knowledge and experiences and other support.

Finally, civil society actors must continue to play its watchdog role in the protection of human rights, promotion of freedoms and transparency and accountability in the management of public affairs. The sector must avoid unhealthy competition not just for financial resources but also in terms of the activities they engage in. It would be a major source of weakness if civil society organizations were to engage in unhealthy competition and duplication of activities.

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## CHAPTER THREE

# THE PROSPECTS OF CIVIL SOCIETY DRIVEN CHANGE IN KENYA

*Margaret K. Chemengich*

### **Introduction**

Civil society is an institution whose members are engaged in multifaceted non-state activities with the objective of transforming or preserving identity and way of life. They do this by among other strategies, exerting pressure on state institutions. The activities could be economic, cultural, political or humanitarian. Civil society include trade unions, professional associations, the Church, media, special interest associations, residents associations, students, business and various types of non-governmental organizations (NGOs). Civil society is therefore consists of the totality of voluntary civic and social organizations and institutions that form the basis of a functioning society, parallel to the structures of the state and markets. Civil society can thus be considered as the space that lies between the individual and the state. Civil society organizations are not homogeneous and in their diversity engage in different activities that may include development, democracy and governance among other issues.

After World War II, Marxist theorists portrayed civil society as a center of independent political activity crucial for the struggle against oppression. Civil societies for example, have been instrumental in the fight against dictatorship in Eastern Europe and Latin America in the 1970's and 1980's, while in the 1990's, the global tendency towards democracy opened space for civil society in former dictatorial regimes around the world. In developing countries, reforms such as privatization and other market reforms gave opportunity for civil society participation and less government control.

In this paper we discuss the role played by civil society in democratization, development, market agitation, and religion and spiritual development. We begin with a discussion of civil society as agents of democratization.

### **The Role of Civil Society**

A number of civil society organizations in Kenya work in the areas of human rights,

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democratic development, gender and social awareness among others. The Kenyan CSOs that deal with issues of democratization sprung up after 1992 following the opening up of democratic space that also led to the birth of multi party politics. This was made possible by the repeal of section 2(A) of the constitution that had hitherto outlawed the formation, registration and operation of more than one political party. Some of the civil society agencies championing democratization include the Law Society of Kenya, Women in democracy, Release Political Prisoners group (which is currently inactive), Institute of Education in Democracy, the Students Organization of Nairobi University (SONU), and the Justice and Peace Convention - Kenya (JPC) among others.

In Kenya a number of CSOs including NGOs are actively engaged in development work. Most of the development CSOs including NGOs and the Community Based Organizations (CBOs) began as welfare organizations. They were initially concerned with the provision of social services. This role became critical especially when the state gradually withdrew from the provision of welfare services after independence. Some of the factors that caused the government to withdraw from the provision of some social and welfare services include the worsening economic conditions occasioned by the oil crisis of 1979, the decline in the prices of primary commodities and the failure of the import substitution strategies that were adopted at independence. While the state withdrew from social service provision, it continues to tighten its grip on political space. The activities undertaken by development CSOs and NGOs include relief, service provisioning and human development in both rural and urban areas. International development NGO's provide leadership in this aspect. Some of the key development oriented NGOs include Care International, World Vision, Christian Children's Fund, ActionAid, Adventist Development Relief Agency (ADRA), CordAid among others.

The other category of Kenyan CSOs and NGOs are those engaged in market agitation. They include labour unions, professional associations, informal market associations and market based interest groups. Some examples of formal market associations in Kenya are: Kenya Union of Teachers (KNUT) and Bankers and Financial Workers Union (BIFU). They advocate for better pay for their members. Others are the Kenya chapter of Transparency International, which campaigns against corruption and human rights abuse. The Institute of Economic Affairs, which was registered in 1992, has engaged on issues relating to proper economic governance. This membership driven institute

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was low key before 1992 i.e. before the opening up of the political and development space. While the Institute could have operated as an NGO, given its activities, the members opted to operate as a quasi company/NGO to avoid the stringent rules the government had put in place for NGO registration. The other CSOs in this category are the professional bodies and activity based private sector membership associations of the productive sectors.

There is a large number of Kenyan CSOs that are engaged in matters relating to religious and spiritual development. They include Christian, Islamic, Hindu and traditional religious groups. The religious groups are the most polarized and segregated members of the civil society given the ideologies and tenets held by the members, but are also the most effective in conflict resolution between state and civil institutions. The religious CSOs were active in both pre-independence and post-independence periods. As will be seen, the role of the religious groups also changed as the political regimes changed. They became more vocal in the fight against repression, corruption and violation of human rights as these issues directly affected their flock.

In addition to the above CSOs there are other CSOs that deal with a host of other issues including the preservation of indigenous culture, land matter, development of new forms of social provisioning and access to justice. There are also organized CBOs, vigilante groups and other traditional movements such as *Dini ya Msambwa* in Western Province, *Mungiki* in Central province, *Sungu Sungu* in Kisii area, land lobby groups and others in the urban frontiers like *Jeshi la mzee*, *Baghdad boys*. Most of these groups are normally regarded as living on the margin of society; some may be legal or illegal groups.

## **The Changing Role of Civil Society in Kenya**

### **Pre-Independence Era**

The colonial government viewed the few civic groups made up of indigenous people with a lot of suspicion. The government feared that the CSOs could use their popularity to mobilize citizens against the government. The colonial regime therefore discouraged the formation of civic groups that could participate in the political process. Instead it encouraged only the formation of civic groups that comprised of settlers and colonialists themselves or allowed civic groups that facilitated greater penetration and control of society in line with the colonial policy. The colonial state therefore dominated the

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socio-political and economic space and activities, a legacy that remained until the early 1990's.

In reaction to this, Africans formed associations or groupings that were basically political. These included burial societies and community forums. With time however, these associations became avenues through which individuals expressed their political opinions against the colonizers. The traditional leaders of the clan or community normally provided leadership of these associations in the pre-independence era.

Post World War II developments also saw the growing momentum of African nationalism and the gathering of momentum of trade unions. Among the prominent labour unions was the East African Trade Unions Congress. In 1950, the union organized the boycott of official celebrations marking the granting of a royal charter to Nairobi and articulated grievances which included exploitation of workers, effects of capitalism and racial discrimination. The Union demanded an increase in the minimum wage to workers, an end to payment by race, the abolition of the '*kipande*' and self-government for the East African territories. The union resolved that the real solution to the problem it was addressing was complete independence and sovereignty. The response of the colonial government was to harass and imprison leaders of the union. This partly contributed to the outbreak of Mau Mau in 1952.

The *Mau Mau* was a secret society that required its members to take an oath to reclaim African land that had been illegally appropriated by the Europeans and in the process drive the white man from Kenya. The activities of *Mau Mau* led to the arrest of Mzee Jomo Kenyatta, who was later to be the first president of the Republic of Kenya. Other groupings, which aimed at decolonization, were formed to articulate social, cultural or religious concerns for example "*Dina ya Msambwa*" in Western Kenya, "Nomia Church" in Luo Nyanza and "*Dini ya Kaggia*" and other independent churches in Central province. All these groups had an ethnic base and could not at the national level due to restrictions by the colonial government. The 'ethnicization' of civil society therefore started with the colonial government.

### **Civil Society under the Kenyatta Regime**

Kenya gained independence in 1963. At this time, there were two main political parties: the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). However, KADU was dissolved in 1964 on the grounds that one party system

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was good for the promotion and realisation of national unity. Kenya thus became a *de facto* single party state. KANU experienced serious internal party wrangle after the merger with KADU. These wrangles saw the reappearance of trade unions namely the Kenya Federation of Labour (KFL) and Kenya Africa Workers Congress (KAWC) as a powerful force in Kenyan politics. These two unions were however competing against each other and in 1965; the government deregistered both unions and created the Central Organization of Trade Unions (COTU). Members of both KFL and KAWC were senior officials in COTU. One of the results of this development was the split of the trade union movement with one faction supporting KANU and the government while the other opposed its policies.

The atrophy in the organization and management of KANU led to the resignation of some its members who were officials in COTU. They argued that they had lost hope in fighting within KANU to improve government policies. The government responded by suspending these party from their official positions in COTU on the grounds that it was not possible to criticise the government that sponsored its establishment.

The Kenyatta regime was no different from the colonial state with respect to civil society participation in public matters. Under Kenyatta, the government ensured that civil society engaged only in social and economic activities and not in things political including governance. Voluntary agencies including NGOs, churches and self-help groups were allowed to provide services at the grassroots since they were considered an important force for development and furthermore they supplemented state development endeavours. Only leftist oriented university organizations such as the students union dared to criticize the government.

The media was equally silent during the Kenyatta era because there was only one national broadcasting station at this time, the Voice of Kenya (VOK). This broadcasting station was pro-government and therefore was not expected to agitate for improved democratic governance. There were only three newspapers produced by the print media: Standard, Nation and Kenya Times.

### **Civil Society under the Moi Regime**

President Daniel arap Moi acceded to power in 1978 after the death of Jomo Kenyatta. He inherited a centralized decision making authority. Moi went on to consolidate power in the executive branch of government especially following the attempted coup against

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his government in 1982. While the coup disrupted the country's economic and political affairs it strengthened Moi's reign and authority. In fact, in 1982, a constitutional amendment made Kenya a de jure single party state. As part of the consolidation of presidential power, another constitutional amendment was passed in 1988 which gave president Moi the power to remove and appoint members of the Public Service Commission, the Judicial Service Commission and the judiciary.

The reign of president Moi saw the demobilization of civil society organizations. Co-operative societies and in particular land buying co-operatives were controlled by the state, self-help groups were incorporated in the administrative and political structures, ensuring that their activities could be monitored by state agents. All these groups were required to register with the then Ministry of Culture and Social Services. Failure to do so resulted in denial of donor and government grants. The state was also opposed to activities of religious organizations such as the National Council of Churches of Kenya (NCCCK) and the Catholic Church. The government strengthened their grassroots links by co-opting labour unions, cooperatives; self-help groups including the Maendeleo Ya Wanawake organization into the ruling party. Maendeleo Ya Wanawake was renamed KANU Maendeleo. Civil society was weakened and could not effectively fight for their causes.

The nature of civil society engagement with government at this time was more often than not confrontational. Underground social movements that were not happy with government operations were also proliferating. In limited cases civil society members were detained without trial on grounds that they were a security threat. However, civil society activities blossomed after the repeal of section 2A. In the mean time the most active civil society organisations were those that served the interest of government. Those independent CSOs like the Green Belt Movement, headed by the Nobel Laureate Winner Prof. Wangari Maathai, ran into trouble when it opposed the government's proposal to put up a high-rise building near Uhuru Park.

The growth of civil society in the 1990's was as a result of two factors. First, the country was undergoing structural adjustment programmes initiated by the donor community. The donor community had lost confidence in the government's poor development record and use of donor money. The donor community was therefore looking for alternative organizations through which donor funds could be channelled. Secondly, there were massive retrenchments within the civil service and the government was

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not able to undertake all the development work. This created space for civil society, especially the NGOs to engage in more development work. The NGOs became more vocal as they occupied the development space hitherto occupied by government.

The multi-party era also saw the opening up of the airwaves and the media became more active on political matters. While previously there were only 3 newspapers, there emerged other newspapers including the “*The People Weekly*”. This publication was considered by most citizens to be investigative and would provide information on classified government operations. Several newspapers were being produced including tabloids. Journalists also began to scrutinize government activities without fear. The VOK changed to the Kenya Broadcasting Corporation (KBC) after a second licence was given to a private operator the Kenya Television Network (KTN), owned by the Standard Group. More TV channels such as Nation, TV Africa also were licensed to operate. For the first time, television stations could air programmes focused on political satire such as *Reddykyulass*, *Bulls eye* and *Newshot*.

### **Civil Society in the Post -KANU Era**

The NARC government won the 2002 elections on the platform of zero tolerance on corruption, good governance and accountability. However, the initial euphoria was watered down by the non implementation of the Memorandum of Understanding signed by President Kibaki and Raila Odinga the then Leader of Liberal Democratic Party (LDP). The MOU was a symbol of broad based ethno regional representation and power sharing. The failure to honour the MoU resulted in divisions within NARC. The attempted gagging of the media gave NARC government negative publicity. New massive scam- the Anglo-leasing Affair that was linked to Goldenberg network of business elites and ministers came into the limelight.

These new scandals provided civil society organizations that were concerned about good governance and accountability an opportunity to expose the weaknesses of the NARC government. They included CSOs like Institute of Economic Affairs, Transparency International, and Centre for Governance and Democracy. Other civil society groups that were previously strong in the Moi era such as the Law Society of Kenya, The National Council of Churches among others re-oriented their activities to deal with the challenges at hand: corruption and impunity by the NARC government.

The NARC government had also promised a new constitution within one hundred days

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of being in government. The constitutional debate that went on at Bomas of Kenya (*Bomas*) also saw civil society organizations pushing for different agenda within the constitution. For example, the Kenya Human Rights Commissions advocated for the Bill of Rights to be entrenched in the constitution; The Children’s Rights organizations such as CRADLE advocated for better children’s rights in the new constitution; the Muslims, Hindus, Christians and the other religious groups haggled over religious neutrality of the constitution. The constitutional review process therefore saw a strong interaction of different civil society groups.

The Media became more open and was able to report on any issue. Programmes such as ‘*Up Close and Candid*’, ‘*On the Spot*’, ‘*Showdown*’, ‘*Third Opinion*’ and ‘*Newsline*’ were avenues through which the media interrogated different personalities including high ranking government officials on national issues. Currently there are more than 15 radio stations that broadcast in different vernacular languages. The print media produces more than five independent newspapers. The NARC Government operations made the media more vigilant and investigative.

The Grand Coalition Government, which was created after the December 2007 elections that almost sent the country into civil war, has two centres of power: the presidency and the premiership. Both positions have been entrenched in the constitution. The executive premiership is a new concept. Civil society is yet to develop its niche and place in this new political arrangement. They have however added their voices in the push for transparency and accountability in the coalition government.

### **Globalization and Civil Society**

Globalization has also changed the role played by the civil society. The changes affecting the welfare of households in general has precipitated the need for collaboration between government and civil society in combating the challenges of globalization and at the same time putting efforts in ensuring that benefits that accrued are enjoyed by all citizens. Collaboration in tackling globalization challenges is much easier since there is a common ‘enemy’ or ‘friend’. The benefits of globalization include improvement in technology resulting in better service delivery, better communication among others.

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## **Challenges Facing Civil Society**

The key feature of civil society is their lack of cohesion. Even though they tackle similar problems there is little partnership or collaboration amongst them. While the different civic groups play different roles, they are all part of a jigsaw puzzle like the familiar poem of the “*Six Blind Men of Hindustan*” who went to see the elephant. Like the blind men, the civil society has come up with six different descriptions of the same elephant, based on which part of the animal they happen to touch. The lack of synergy explains why poverty eradication programmes have failed since that there is no synergy between groups working towards poverty reduction and those advocating for human rights.

There is little evidence to show that the activities of civil society have benefited the grassroots. As a result, the development agents and market agitators have been dismissed as elitists who are based in the capitals and pushing foreign agenda as dictated by donors. The rural civil society in particular sees no linkage between the work of most of the NGOs and the intended rural beneficiaries.

Another challenge is that of exclusion. Actions by civil society geared towards achieving gender equity have tended to focus on women alone. However, gender issues do not operate in isolation. All issues affecting the woman such as the existing patriarchal system that disfavours the woman from birth must be addressed, this would include incorporating men in the empowerment programmes. Secondly, in the fight for justice, human rights groups have tended to focus in raising awareness in the demand for justice while leaving out the administration of justice. In addition civil society groups lack the analytical capacities that would adequately prepare them to engage in contemporary issues of globalization and regional integration.

## **Conclusion**

The political environment has defined the role of civil society in Kenya. The activities of civil society organizations whether development or democracy oriented have tended to respond to the policies and actions of the government in power. The nature of engagement under autocratic regime was either collaborative or confrontational.

More receptive regimes that opened chancels for engagement with civil society saw the proliferation of civil society organisational that played different roles including

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democratization and development and the promotion of culture and spiritual development.

In the early years of colonial rule, there were few intermediary organizations that occupied the political space between the state and the household. That space was taken up by cultural and religious institutions that expressed collective identities--such as clan, age-set, and brotherhood to which most rural folks granted allegiance. During the colonial period Kenyans established informal solidarities such as ethnic welfare associations, prophetic movements, and agricultural work groups to cope with urbanization. Some of these associations became political as they protested the indignities of the colonial rulers. After Independence, as the regimes became more and more autocratic the ruling elite suppressed civil society movements. The poor performance of most economies gave the impetus for the resurgence of civil society especially in service provision, democratization and issues of governance.

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## CHAPTER FOUR

# THE ROLE OF ACADEMIA IN DEMOCRATIZATION IN KENYA

*Charles Olungah*

### **Introduction**

The recent violence and wanton destruction of property and loss of life that occurred following the disputed presidential elections of December 27<sup>th</sup> 2007, has given Kenyans an added reason to review the nature of the country's governance. This paper discusses the role of academics in the process of democratization. The paper begins with definition of the key concepts used in the paper, namely academia, and democratization.

### **Academia**

Academia is a collective term for the scientific and cultural community engaged in higher education and research. (Wikipedia, the Free Encyclopedia) The term has come to connote cultural accumulation of knowledge, its development and transmission across generations and its practitioners and transmitters. An academic therefore, can be described as a person who works as a researcher (usually a teacher) at a university or similar institution. He or she is nearly always a holder of an advanced degree and engages in research. Other terms that are frequently and loosely used to refer to an academic are: professor, fellow, lecturer, reader, don and scholar.

Ali Mazrui (1978:347) defines an intellectual as a person who has the capacity to be fascinated by ideas and has acquired the skills to handle some of those ideas effectively. He identifies four types of intellectuals; academic; literary; political and general intellectuals. He says that academic intellectuals are the category that relates intellectual pursuits to higher learning and commits its mental resources to the arts of teaching and research and are found at university campuses. This is the category of people whose role in democratization that this paper is concerned about.

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## Democratization

Democratization is a concept derived from the term democracy and the term democracy, both at the theoretical level and in practice has been one of the most misused or abused concepts. It has meant different things to different people at different times (Akivaga, 2002). Instead of defining democracy, however Akivaga alludes to the conceptualization of the term and the general agreement amongst scholars and practitioners of certain minimum standards or principles and practice that democratic governance must meet. Besides the three forms of democracy identified by Bujra (2005) such as liberal democracy, social democracy and socialist democracy, terms such as Christian democracy, Asian democracy and African democracy<sup>1</sup> are also used.

According to Bujra (2002:3), democratization is a process through which the institutional infrastructure germane to the construction of a democratic polity is established (e.g. parliament, impartial judiciary, electoral institutions and police, independent media etc); civil liberties are codified and guaranteed, the rule of law suffices and a process of constitutionalism evolved. Bujra notes that important concepts associated with democracy include formal political equality, inalienable human rights, right of political participation, accountability to the governed and the rule of law. To this list I would add respect for diversity and the equitable sharing of the spoils emanating from the collective efforts of the citizenry.

PrZeworski (1991:14) on the other hand views democratization as an act of subjecting all interests to competition and of institutionalizing uncertainty. The decisive step toward democracy is the devolution of power from a group of people to a set of rules. Lingnau (1997) however argues that democracies are not just about institutions. They are about people. For purposes of social cohesion and political stability any democratic transition needs to put the citizens at the centre of the transition process. The implication is that the citizens become the core in the decision-making process, in governance and distribution of national wealth, recognizing that in the last analysis, they are the producers of that wealth.

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<sup>1</sup> A common term used by former President Moi to underscore the fact that Africa was different and therefore, required a different set of governance principles other than the liberal democratic principle and multi-party politics that according to him was being pushed by “foreigners”.

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Adejumobi's (2002:290) contribution to the debate is that democratization involves the creation and expansion of the political space for multiple actors to interact, negotiate, compete, and seek self realization within set and permissible rules. Democratization is therefore, not a one-start event, but a continuous process through which society wishes to be governed having established an acceptable democratic order.

### **The Role of Academia in Democratization**

Shivji (2006) underscores the fact that partisan environments need bodies and institutions which can rise above partisan politics and concern themselves with larger social and national issues. He sees the student body and institutions of higher learning as part of that intellectual organization that has the potential to rise to the occasion. He further notes that the intellectual body is like a mirror, it gives the society its own image. They articulate people's hopes and fears, help them give meaning to what may look like the obvious, the innocuous and the mundane.

Melanie (2003) notes that the academia should provide students with opportunities to learn in environments that allow for critical analysis of daily experiences and for the application of theory learned in classroom, to their everyday world. It should offer space for intellectual engagement where the social context is discussed and personal experiences may be understood.

When the knowledge that emanates from daily experience is theorized and applied to everyday living, it has the power to transform individuals and in turn society. This heightens awareness and creates a level of understanding that makes it possible for individuals to appreciate the "otherness".

Freeland (2004) sees academia's role in strengthening the foundation of a democratic society to emanate from the daily contact with young people, the fellowship of colleagues who pursue knowledge, the bustle of campus life, and the satisfaction of commencement. He regards education as the most revolutionary movement in human history and the most powerful force for social justice ever conceived. The enlightened citizenry is the foundation of democracy and for that, leaders who do not wish to involve the people in the affairs of the state more often than not see academics as a problem that must be controlled if not gagged.

Freeland further observes that although most people would quickly identify representative government, free elections, the rule of law, and free press as essential

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institutions for a healthy democracy, few would as readily include our higher education system on such a list. This is despite the fact that colleges and universities are a vital foundation of our political system. He notes that higher education sustains democracy in four ways: It provides a protected arena for free expression, and the nurturing of new thoughts; cultivates an appreciation of democracy and a disposition to public service; offers individuals a chance to discover and nurture their talents and fosters economic growth and, therefore, individual opportunity. He further notes that the academics' belief in free speech provides young people with an essential foundation for democratic life, as the commitment to respecting individuals from all backgrounds accord all a say without discrimination. In addition, democracy requires a corresponding culture of tolerance, trust and respect for divergent opinions and citizens in particular need to have a lot of courage (Wanyande, 2005:53). This would help them resist attempts by those in power to take them for granted, as has been the case in Kenya. This can only be possible through education and de-ethnicization process which academia has the potential to offer.

### **Achievements of Academia in Democratization**

In Kenya academics have constituted the core of change agents against the excesses of the past regimes. They have been the formulators and vehicles of ideological dissemination, representative of the majority and sympathetic to the cause of ordinary people. As a result of their uncompromising stands, the country's academics and the state have never been bedfellows. Many of them have been maimed, killed, detained, sent to jail, tortured, denied employment opportunities, ostracized or forced into exile for taking on the government or for opposing undemocratic governance. This unfortunate scenario has affected both students and lecturers in our public universities.

Other major contributions have been made by the radical lecturers who have created a critical mass amongst their students who have not only questioned the excesses of dictatorial regimes, but participated in enhancing democracy. The presence of academics in a number of civil society organizations and their subsequent entrance to competitive elective politics are all measures that have enhanced democratization process.

Former student leaders at the university started outfits such as '*Kituo cha Sheria*' in collaboration with their lecturers as a means of silently organizing against the repressive

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Moi regime. Later, several civil society organizations interested in governance and widening the democratic space emerged. They have truly played an active role in enhancing democracy. It is however, worth noting that some academics became turn coats as soon as they entered elective politics and power got to their heads.

### **Challenges Faced by Academia in the Process of Democratization**

As noted above it was only from our campuses that dissenting voices could be heard away from the political sycophants and the economic plunderers. One of the reasons why the academics played this role was the relative independence that the universities initially enjoyed. However, the academics has faced a number of setbacks in the recent past. This sorry state has been occasioned by a number of factors.

According to Mamdani (2007), African governments view universities as dangerous centres that must be tamed. The result has been a deliberate attempt to devalue higher education and to economically impoverishment academics. This was extended to university students who because of the structural adjustment programmes introduced in the 1980s can hardly afford a decent meal. The basic concern of most students is survival and it is not uncommon to find the lecture halls empty. Many seminar and public lectures are also attended by just a handful of both students and lectures.

To further demoralise the lecturers and devalue university education generally, there have been massive expansion of universities. This has taken different forms. To start with a number of middle level colleges are being converted into constituent campuses of existing universities at a rate that baffles many. In addition, there is competition for students in the module II or parallel programmes in which departments offering the so called “marketable” courses are oversubscribed at the expense of quality. The lecturers are literally between classes from morning to evening seven days a week and twelve months a year. As a result, the academic has almost no time for research and critical reflection.

The current top university managers in most public universities have frustrated open discussion and discourses on governance. They have limited the democratic space for both students and lecturers to engage the state especially through public debate in the campuses. The processes and procedures for delivery of a public lecture at the universities especially by non university teaching staff and students are very cumbersome and frustrating. This explains why universities have ceased to be hosts to

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public lectures. Public lectures that ordinarily should be hosted by and at Universities are now organised and hosted by institutions such as ARRF.

The staff and students' organizations that were formerly in the forefront in opening up democratic space and ensuring that the rights of students and staff were protected are today shells of their former selves. Most of the elected officials are busy practicing the politics of "entrism", their major preoccupation being personal aggrandizement. For the lecturers, unionism seems to be serving as a means of getting into national politics, incorporation into university management, and a means to government appointment. As for the student leaders, the positions have come to confer certain financial advantages in the form of allowances. The leaders even threaten the rest of the students with expulsions or suspensions from the university courtesy of their proximity to the authorities. In a nutshell, the former spirit of comradeship that united students is no longer practiced.

The bug of survival is not limited to students. It extends to lecturers too. It was not uncommon during the 2007 general elections to see senior professors donning political party T-shirts and appearing in the media to expound on the manifestos of political parties. Others penned down complete falsehoods in support of politicians in what may be summed up as "intellectuals for hire". The democrats within the universities also faced challenges from their sycophantic colleagues who became the intellectual mouthpieces of the excesses of government in all the past regimes.

## **Conclusion**

Democracy must be understood to include critical thinking, empathy, voice, awareness, sensitivity, respect for experiential and community based learning and the ability to connect ideas and experience in reflective practice. Academia provides the means for intellectual exploration of the concerns and experiences that influence students' perspectives about significant issues in their lives including those that divide them such as ethnicity and ethnocentrism.

We need to interrogate the arrogance and economic deprivation that make certain groups of people to behave in a certain way. In matters of democracy and ethnicity the greatest possibilities lie in the connection between the agency of individuals and their ability to understand structure and system, and between the application of theory and the theorizing of application. There is a synergy in the learning process. There is a

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link between exposure and agency. This interaction encourages and supports thorough exploration of the structures, history and systems of assumptions, biases and ideological presumptions about how society functions and why certain stereotypes prevail.

As a way of enhancing the role of academia in contributing to democratization, university curricular should address concepts of justice, equality, opportunity, liberty with a view to instilling democratic principles/ and or aspirations in society. These must be regarded and understood as means of forging unity in diversity and giving every Kenyan a chance to achieve their wild dreams. This engagement is central to the development of civic responsibility and social awareness.

For the sake of Kenya, progressive academic groups and individuals must work to focus current public discourse on issues of peace, justice, equality, ethnic harmony, political uprightness and above all, development for all with dignity. It is true that there will be powerful forces at work to discourage, demonize, stigmatize and undermine voices of dissent. These must be fought. The post 2007 electoral violence has shown that our collective future is at stake and we must openly discuss things that divide.

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## CHAPTER FIVE

# THE CONTRIBUTION OF ACADEMIA AND CIVIL SOCIETY IN DEVELOPMENT POLICY MAKING & BUDGETARY PROCESS

*Ben Sihanya*

### **Introduction**

This article explores three closely-related questions: first, how has the discourse on democracy and especially the quest for constitutional governance impacted on development policy in Kenya? Second, how does the budget and the budgetary process influence development in Kenya? Third, what is the role of academics and civil society organizations in development policy-making and the budgetary process in Kenya? We begin with a clarification of then key concepts used in the paper, namely policy formulation, academic and civil society.

Policy formulation is the process by which a government (or any other entity) translates its vision into statements and actions to guide the achievement of desired outcomes. Good policy making is therefore essential if government is to achieve its aims and deliver real change and benefits. A government's vision is usually contained in policy statements and legislation in operation at each particular time, whether these are national development plans, sessional papers or budgets. Because of its importance, the management of public policy must be guided by certain strategic principles which foster policy and juridical dynamism, in which policy management is seen as a process of social learning. It is a process in which a country embodies new knowledge and enhances its adaptive capability.<sup>2</sup>

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<sup>2</sup> See Calestous Juma and Bernard Sihanya (1992) "Public policy making in Kenya: challenges and options for institutional reform," lecture delivered at the Senior Management Seminar, Kenya Institute of Administration (KIA) Nairobi, on November 4, 1992, and a policy research paper under the African Centre for Technology Studies (ACTS), Nairobi, on file at Innovative Lawyering.

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Some authorities describe an academic as a member of an institution of higher learning, or a scholarly organization.<sup>3</sup> My reading of Max Weber indicates that intellectual rigour, discipline, diligence and integrity are key defining elements of an academic<sup>4</sup>. Other scholars have emphasized social consciousness and an intellectual's or academic's identification with popular struggles in the society in which they live. Hence there is dichotomy between organic intellectuals and those who are not culturally or politically sensitive or authentic.<sup>5</sup> In this study, an academic will refer to a professional who works in the knowledge economy. His or her work entails researching, learning, analyzing, reconstructing, applying, evaluating and communicating ideas.<sup>6</sup>

The Oxford *Concise Dictionary of Politics* defines civil society as 'the set of intermediate associations which are neither the state nor the (extended) family; civil society therefore includes the voluntary associations and firms and other corporate bodies.'<sup>7</sup> Civil society, is itself contested especially between liberal and neo-Marxist scholars. Prof Eugene Kamenka presents a Marxian definition of civil society as follows:

"Marx follows the usage of Adam Ferguson rather than the more complex discussion in Hegel in treating civil society as the world of industry and trade, the pre- or extra political world of the egoistic self-seeking individual standing in a relationship of competition and antagonism to all other individuals. Civil society, which displays Hobbes' war of all against all, is contrasted by Marx with the pretended universalism of the state: the two require each other but stand in fundamental conflict."<sup>8</sup>

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<sup>3</sup> See The American Heritage Dictionary of the English Language (3<sup>rd</sup> ed), Houghton Mifflin Company, New York.

<sup>4</sup> See Max Weber, "Science as a Vocation," in H.H. Gerth and C. Wright Mills (eds) (1946) *From Max Weber: Essays in Sociology*, Oxford University Press, Oxford & New York, pp 129 - 156. Weber also applies these parameters to politics and politicians. See Max Weber, "Politics as a Vocation," in H.H. Gerth and C. Wright Mills (eds) (1946) *From Max Weber: Essays in Sociology?* *op. cit.*, pp. 77 – 128.

<sup>5</sup> Organic is usually used in the Gramscian sense. Gramsci was an Italian (neo) Marxist. See Antonio Gramsci (1971) *Selections from the Prison Notebooks*, International Publishers, New York. See also Antonio Gramsci (1991) *Selections from Cultural Writings*, Harvard University Press, Cambridge, Massachusetts. See also Antonio Gramsci (1977) *Selections from Political Writings 1910 – 1920*, International Publishers, New York.

<sup>6</sup> For this largely liberal definition of an academic, cf. Adebayo Williams in (2000) "Intellectuals and governance" in Goran Hyden, H.W.O. Okoth Ogendo & Dele Olowu (eds) *African Perspectives on Governance*, African World Press, Inc., Trenton, NJ, & Asmara, Eritrea, q.v. 295-318.

<sup>7</sup> See Iain McLean (1996) *Oxford Concise Dictionary of Politics* Oxford University Press, Oxford New York. See also Willy Mutunga (1999) "Constitution - Making from the Middle: Civil Society and Transition Politics in Kenya, 1992 – 1997," SAREAT, Kenya.

<sup>8</sup> See Eugene Kamenka (ed) (1983) *The Portable Karl Marx*, Penguin Books USA Inc, New York.

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Kamenka continues:

“After 1845, when Marx ‘discovered’ the materialist conception of history, he sees civil society as the real source and theatre of all historical development and the state as overcoming civil society only in fantasy, as in fact dominated by it. The sharp separation of the economic, the moral and the political, the dualism of civil society and the state, according to Marx, reaches its apogee in bourgeois society.”

The role of policy has moved to centre-stage in Kenyan and African development discourses over the past 30 or so years.<sup>9</sup> This has been due to the socio-economic crises that have largely been blamed on poor policy and law-making in the African continent. A major cause and effect of policy and juridical failure is associated with the Structural Adjustment Programmes (SAPs) that the World Bank and the International Monetary Fund (IMF) designed and implemented in Kenya and other borrowing countries of the developing world.<sup>10</sup> The efficiency of Kenya’s policy instruments attracted intense scrutiny and study especially with regard to their role in the country’s development. The conclusion was that Kenya’s socio-economic problems could be traced to poor policies as well as their poor implementation.

### **The Discourse on Policy Process**

The movement for constitutional governance and democratization in the late 1980s and 1990s underscored popular participation in governance. The discourse has thus transcended the role of policy and law, as such, and entered the realm of the ‘extent of popular participation’ in policy-making. The content is not dispositive; policy and law-making processes matter. It is in this context that in February 1990, African governments and a number of United Nations agencies, for example, United Nations Economic Commission for Africa (UNECA), held an international conference on popular participation, where the Charter for Popular Participation in Development was adopted by acclamation.<sup>11</sup> Also adopted on that occasion was the Charter for Popular

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<sup>9</sup> See Florence Etta (2005) “Policy making: the new development el dorado” in Florence Etta and Laurent Elder (Eds) *At the Crossroads: ICT Policy Making in East Africa*, East Africa Educational Publishers, Nairobi, p. 3.

<sup>10</sup> See Ben Sihanya (2008) “The IMF and policymaking in Kenya,” in Ben Sihanya (ed) *The Impact of IMF Policies on Education, Health and Women’s Rights in Kenya*, a study commissioned, peer reviewed and published under the auspices of Action Aid International Kenya, Nairobi.

<sup>11</sup> Florence Etta (2005) “Policy making: the new development el dorado,” *op. cit.*

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Participation in Democracy. It called for the emergence of a new era in Africa – an Africa in which democracy, accountability, economic justice and development for transformation became internalized and the empowerment of the people, initiative, enterprise and democratization of the development process are the order of the day in every country.

Eighteen years after the adoption of the Charter for Popular Participation in Development and the Charter for Popular Participation in Democracy, Kenya is yet to fully adopt popular participation in its policy making practices. The extent of participation in policy - making has starkly differed from one administration to another. During the Presidency of Daniel Arap Moi (1978–2002), popular participation, especially by the civil society and academia, was almost non-existent. This was because of the mutual distrust and disdain that existed between the autocratic Moi regime and the restless civil society that continued to harass the system to adopt reforms that would make governance more transparent and democratic.<sup>12</sup> Indeed, the first measure of popular participation in policy making would come in 2000 as a result of donor aid conditionalities.<sup>13</sup>

In the policy domain, Government of the Kenya African National Union (KANU) subscribed to the World Bank’s Poverty Reduction and Growth Facility (PRGF) programme. The conditionality was that the Government had to craft a Poverty Reduction Strategy Paper (PRSP) through wide-ranging consultations and dialogue.<sup>14</sup> Consultations were conducted at the national, provincial and district levels with stakeholders that included the private sector, civil society, development partners and local communities.

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<sup>12</sup> See generally, Willy Mutunga (1999) *Constitution - Making from the Middle: Civil Society and Transition Politics in Kenya, 1992 – 1997*, *op. cit.* See also P.L. Agweli Onalo (2003) *An African Appraisal: Constitution - making in Kenya*, Transafrica Press, Nairobi.

<sup>13</sup> This is in contrast to the law-making process which was democratized and liberalized in around 1991, with the establishing by the Attorney General of the Task Force to review various aspects of Kenyan law. Most of these Task Forces consisted of academics and civil society actors. They also held hearings in various parts of Kenya to solicit or receive public views.

<sup>14</sup> PRSPs were introduced as a joint effort between the IMF and the World Bank to create a country-driven, long-term, comprehensive strategy for poverty reduction, which donors could use as the basis for their programming. For the full PRSP, the Government launched an ambitious consultation process in November 2000, with the PRSP Secretariat in the Ministry of Finance and Planning as the lead agency. See Gerrishon Ikiara, Carolyn Abongo and Walter Eberlei (2001) *PRSP Institutionalization Study: Institutionalizing the PRSP Approach in Kenya*, under the auspices of Strategic Partnerships with Africa. See also, Ben Sihanya (2008) “The IMF and policy making in Kenya,” *op. cit.*

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The election of the National Rainbow Coalition (NARC) Government into power on December 27, 2002 ushered in a new era of participatory policymaking. In a bid to break with the past governance practices, the NARC Government sought to deepen stakeholder consultations with the private sector, civil society and development partners as well as with a cross section of ordinary Kenyans. In early 2003, the Government embarked on the preparation of a policy document called the *Economic Recovery Strategy for Wealth and Employment Creation* (the ERSWEC) which became popularly known as the ERS.<sup>15</sup> This document would focus on reviving the economy and creating employment while also taking on board any important lessons drawn from the previous history of policy making.<sup>16</sup> The ERS process was thoroughly consultative, involving Parliamentarians, trade unionists, local and international professionals, financial institutions, representatives from the Arid and Semi-Arid Lands (ASALs), civil society representatives, development partners and Kenya Government officials.<sup>17</sup>

Developmental policy making has become even more complex in Kenya following the formation of the current Grand Coalition Government in 2008. In 2008, the Grand Coalition Government, through the Ministry of State for Planning, National development and Vision 2030 embarked on coordinating the development of the country's long-term vision, known as Vision 2030. This merged the policies of the Orange Democratic Movement Party of Kenya (ODM) and the Party of National Unity (PNU). It was prepared under the guidance of the National Economic and Social Council (NESC), whose Council Members have been drawn from Government, private sector, academia, labour unions and civil society.<sup>18</sup> The Council was thus in a position to utilize the private sector capacities and synergies through collaboration, engagement and networking in order to promote efficiency and effectiveness of economic planning process.

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<sup>15</sup> See Government of Kenya (2003) *The Economic Recovery Strategy for Wealth and Employment Creation*, Government Printer, Nairobi.

<sup>16</sup> See pages 6, 32, 46 and 48 of the ERS.

<sup>17</sup> See Peter Anyang' Nyong'o (2005) "Planning for policy making and implementation in Kenya: problems and prospects," in Florence Etta and Laurent Elder (eds) *At the Crossroads: ICT Policy Making in East Africa*, East Africa Educational Publishers, Nairobi, at pp. 16, 18. Also see generally, Peter Anyang' Nyong'o (2007) *A Leap into the Future: A Vision for Kenya's Socio-political and Economic Transformation*, African Research and Resource Forum, Nairobi.

<sup>18</sup> See the official website of the Ministry of Planning and Vision 2030, at [www.planning.go.ke](http://www.planning.go.ke) (last accessed on 8/10/08). The Vision 2030 process was a more closed and partisan process during 2006/07.

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It is within this context that the management structure for developing the vision has representation of eminent personalities from the private sector at all levels.<sup>19</sup> In collaboration with staff in the Ministry of State for Planning, National Development and Vision 2030, NESC assisted in putting together a series of private sector consultative forums to seek their views on the process of crafting Vision 2030. The NESC therefore played a pivotal role towards improving Public-Private Partnership (PPP) in Kenya's development process.

This was indeed a good precedent by a government that is reform oriented at least in appearance or rhetoric. However, this example of popular participation has not been replicated in other spheres of governance, for example, the budgeting process. This is in spite of the strong linkage between policy and budgeting. For example, budgets and budget implementation tends to dictate policy implementation, despite the fact that the process of budget preparation is often influenced by the proposed policies. Budget drives policy implementation. In this context, effective participation in policy making goes hand in hand with participation in budgeting.

### **Civil Society and Academia in the Budgetary Process in Kenya**

The budget is an important instrument used by the government of Kenya to define the direction of, and priorities regarding its national developmental policy, the cost implications of government programmes, and the possible sources of revenues during a fiscal year. The basic functions of the budget therefore entail three main components: collection and allocation of resources to priority sectors; provision of public goods and services by the government; and re-distribution of incomes.<sup>20</sup> In addition, the budget strives to ensure economic stabilization, social order and harmony, as well as acting as a measure of government performance and accountability.<sup>21</sup> The budget

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<sup>19</sup> Members of NESC include top Government officials like the Prime Minister Raila Odinga, Deputy Prime Ministers Musalia Mudavadi, and Uhuru Kenyatta and other Ministers and Permanent Secretaries. Members from academia include Prof. Edward Oyugi, and Prof Michael Chege. Members from the private sector include Jimnah Mbaru, Salma Mazrui and Wilfred Murungi. International experts include Lee Yee Cheong (Dato) (Engineer from Malaysia) Dr Chung Kunmo (Energy Expert from South Korea), Hiroyuki Hino (Professor of Economics from Japan) and Dr Victor Koh (Management Consultant from Singapore). See the official website of the National Economic and Social Council, at [www.nesc.org](http://www.nesc.org) (last accessed on 21/10/08).

<sup>20</sup> See Institute of Policy Analysis and Research (IPAR) *Budgetary Process in Kenya: Enhancement of its Public Accountability*, Policy Brief, Volume 10, Issue 1, 2004.

<sup>21</sup> *Ibid.*

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process consists of four major phases: planning and preparation; debate and approval; implementation; and monitoring and evaluation.<sup>22</sup> In the Kenyan context this process is complex and is hardly uni-linear.

Participatory budgeting involves implementing mechanisms that directly involve citizens in decision-making about how to allocate resources and monitor public spending. Participatory budgeting has captured the attention of the policy world, with over 250 cities, mostly in Latin America, adopting some version of participatory budgeting.<sup>23</sup> A discourse on participatory budgeting in Kenya is timely, considering the negative score card that the Kenya Government has maintained in areas of accountability and transparency.<sup>24</sup>

The rationale for participatory budgeting is as follows: first, citizens have a right to know; second, it enhances transparency, credibility and accountability; and third, it enhances efficient and fair allocation of scarce national resources. The fourth reason is that participation enhances better implementation of budget through monitoring and evaluation; fifth, it helps to incorporate the views of a wider range of people; sixth, it helps people to identify more with the budget; and seventh, it promotes solidarity and concern for the common good. Eighth, participation helps to create a collaborative model of governance in which government and civil society can work together; ninth, it promotes the mobilization of entire communities by engaging local groups on issues that matter to them.<sup>25</sup>

Currently, the budgeting process in Kenya is undertaken at three levels: the national level (Treasury budgeting); the local authority level (Civic budgeting); and the constituency level (Constituency Development Fund Budgeting). Local authority and constituency budgeting both depend on Treasury budgeting, and I therefore start by discussing the budget process by the Treasury.

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<sup>22</sup> I adopt this definition of budgeting from Albert K. Mwenda and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, Institute of Economic Affairs (IEA) Research Paper Series No. 4, available at [www.ieakenya.or.ke](http://www.ieakenya.or.ke) (last accessed on 8/9/08).

<sup>23</sup> *Ibid.*

<sup>24</sup> For example, for a long time, Kenya's weak procurement laws were blamed for encouraging corruption in public institutions. Luckily, the debate took a different turn, with focus on the implementation, following the enactment of the Public Procurement and Disposal Act (No. 3 of 2005). The new law has been lauded as an improved piece of legislation.

<sup>25</sup> *Ibid.*

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## Central Government Budgeting

The Central Government budget cycle passes through four major phases: first, planning and preparation; second, debate and approval by Parliament; third, implementation; and fourth, supervision and audit.<sup>26</sup> Budget planning and preparation is usually done by the Ministry of State for Planning, National Development and Vision 2030, alongside other entities. It commences with the preparation of the District Development Plan (DDP) by each District, every five years. The DDP outlines development priorities and aspirations at the District level.<sup>27</sup> The Preparation is supposed to involve popular participation. The DDPs are then collated into a National Development Plan for a three or five year period.<sup>28</sup>

The Treasury usually releases a circular which defines the broad parameters of the budget and sets expenditure ceilings to be adhered to. The calendar includes budget hearings, which allows contribution by citizens and non-Government groups. The proposals from the districts are then consolidated with those of the line ministries and thereafter sector negotiations for allocation of resources begin. These sector hearings lead to bidding for resources, which are then allocated according to expenditure items in the budget. The Minister for Finance also receives presentations from professional associations and groups.<sup>29</sup> These include the Kenya Association of Manufacturers (KAM), the Institute of Certified Public Secretaries of Kenya (ICPSK), Institute of Economic Affairs (IEA), among others. These presentations include expenditure and tax proposals that the Minister may use in drafting the Finance and Appropriation Bills.

This stage of budgeting can be credited for allowing inputs from the private sector and Non-Governmental Organizations (NGOs). However, criticism has also been levelled to the effect that very few groups outside the Government are usually invited to make

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<sup>26</sup> See Albert K. Mwenda and Mary N. Gachochi (2004) "Budget Transparency: Kenyan Perspective," *op. cit.*

<sup>27</sup> Cf. Joel D. Barkan with Michael Chege (1989) "Decentralising the State: District Focus and the politics of reallocation in Kenya," 27 *Journal of Modern African Studies* 431, pp. 431–453.

<sup>28</sup> See Kenya Institute of Public Policy Research and Analysis (KIPPRA) (2004), *Budget Mechanisms and Public Expenditure Tracking in Kenya*, Discussion Paper No. 37, June 2004. . The ERS was such a development plan.

<sup>29</sup> There has been a high turnover in the Ministry of Finance.

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presentations on the budget to the Treasury.<sup>30</sup> The participation of the academia in budgeting has been exhibited within the framework of these private sector groups and NGOs that engage with the Treasury. Technocrats within the Public Service have also provided a useful interface with academia and civil society. For example, Dr Hezron Nyangito, formerly with the Kenya Institute of Public Policy Research and Analysis (KIPPRA) was appointed Deputy Governor of the Central Bank of Kenya (CBK) in September 2008.<sup>31</sup> The CBK has a crucial role in the budget planning and implementation process.

### **Budget Debate and Approval by Parliament**

The second stage is the presentation to Parliament, debate and approval of the budget. After the annual budget is formulated, it must be laid before the legislature on or before 20th June of each financial year.<sup>32</sup> The Minister for Finance presents the Budget to Parliament, usually accompanied by the Appropriations Bill, the Finance Bill, the Fiscal Strategy Paper, the Statistical Annex to the budget, and the Financial Statement.<sup>33</sup> Parliament then transforms itself into a Committee of the Whole House (the Committee of Ways and Means) and debates the budget for the next seven days. The debate is a general one on the policy that the budget intends to support. Upon approval and the passing of the Finance and Appropriations Bills, the government is effectively authorized to raise revenue through taxes and to spend them in accordance with the approved estimates.

The budget process in Parliament provides a good opportunity for participation by scholars and civil society. First, civil society groups, academics and academic institutions, NGOs, the private sector and the mass media have in the past taken

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<sup>30</sup> See Albert K. Mwenda and Mary N. Gachochi (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

<sup>31</sup> Before joining KIPPRA, he was a University of Nairobi lecturer. The appointment to the CBK was quite controversial, after Dr Nyangito was appointed to replace Ms Jacinta Mwatela, who argued that her removal was occasioned by a tender (to De La Rue) for printing currency; that she had questioned.

<sup>32</sup> This is provided by section 100 of the Constitution of Kenya. The practice since the mid - 1990s is that all the budgets of the 3 East African Community (EAC) states are presented on the same day.

<sup>33</sup> The Statistical Annex indicates, among other things, the government's indebtedness to various lending institutions, both domestic and external, while the Financial Statement gives a summary of proposed revenue and expenditure measures.

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advantage of the space offered by Parliament to lobby members of Parliament to make certain representations on their behalf, during the debate and approval stage. Corporations, especially trans-nationals like the tobacco companies such as British American Tobacco (BAT), have been equally aggressive in lobbying legislators. However, the ability of legislators to positively influence fundamental changes to the budget tabled in Parliament has been constrained by the legislative framework. Section 48 of the Constitution constrains Parliament from imposing or altering taxation measures in place except where they have an effect in reduction. Because the budget speech is usually aired live from Parliament, the mass media takes the opportunity to scrutinize and make a commentary on various aspects of the budget. The media has used this opportunity to act as a watchdog for the public. Journalists such as Owino Opondo have continued to pen insightful articles on Parliamentary debates surrounding the budget, and offered expert advice on the subject.<sup>34</sup>

### **Budget Implementation and Execution**

The third stage is budget implementation or execution.<sup>35</sup> Once Parliament has approved the budget, the Controller and Auditor General (CAG) is mandated under the Exchequer and Audit Act<sup>36</sup> to ensure that all proposed withdrawals from the Consolidated Fund are as authorized by law.<sup>37</sup> This entails the final disbursement of funds to various implementing departments and ministries. Budgetary resources are disbursed to line ministries and departments through exchequer issues. Permanent Secretaries of various ministries assume the role of accounting officers and are responsible for the funds that are disbursed to their ministries.<sup>38</sup> The Permanent Secretaries are allowed to grant Authority to Incur Expenditure (AIE) to various district departmental heads to implement the government programmes at the district level.

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<sup>34</sup> Journalists whose main focus is Parliamentary activities have lately come together under the Kenya Parliamentary Journalists Association (KPJA), a forum through which Journalists reporting on Parliament coalesce to strengthen their capacities on the various aspects of covering Parliamentary debate. For example, in June 2008, KPJA, together with Friedrich Ebert Stiftung (FES) held a workshop in Nakuru to sensitize Parliamentary journalists on the workings of the Coalition Government in a bid to improve their reporting.

<sup>35</sup> See Albert K. Mwenda and Mary N. Gachochi (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

<sup>36</sup> Cap 412 of the Laws of Kenya.

<sup>37</sup> The Consolidated Fund is regulated by sections 99 - 105 of the Constitution.

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This stage has proved to be the most opaque aspect of budgeting in Kenya. The Government has used the Official Secrets Act<sup>39</sup> to perpetuate secrecy around expenditures by Government. This has led to mega scandals in government, including the Goldenberg scandal, the Anglo Leasing scandal and, recently, the sale of the Grand Regency hotel and the De La Rue currency printing scandal. In all these instances, civil society and academia have taken up advocacy and informational roles to bring the debate to the public limelight, and also educate the public on the details as well as the socio-economic, political and constitutional ramifications of these scandals. For example, organizations like Transparency International (TI Kenya) have been instrumental in unearthing details of the Anglo Leasing scandal, and pushing the Government to take action.

The journalists, other communicators and the mass media have also kept the debate alive in print and across the airwaves, attracting the disdain and wrath of the Government in the process. Academics and professionals have used the media as a forum to publish expert opinions on these scandals. A good example is the debate surrounding the Grand Regency. Various individuals, including lawyers Donald Kipkorir, Ahmednasir Abdulahi and Paul Mwangi, have used newspaper columns to debate the salient aspects of Kenya's procurement regulations, including the Public Procurement and Disposal Act,<sup>40</sup> and various loopholes in relation to budget implementation.<sup>41</sup> These roles have assisted the public to understand loopholes that exist in public procurement, and to push the government to undertake reforms.

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<sup>38</sup> The Grand Coalition Government established about 40 ministries and an equivalent number of Permanent Secretaries. It is remarkable that under section 22(5) of the Constitution, there may be two or more Permanent Secretaries per ministry, or one to supervise more than one ministry. The Solicitor General, Mr Wanjuki Muchemi, was controversially appointed the Accounting Officer in the State Law Office. See Republic of Kenya (2008) *Presidential Circular No. 1/2008: Organization of the Government of the Republic of Kenya*, Government Printer, Nairobi.

<sup>39</sup> Cap. 187, Laws of Kenya.

<sup>40</sup> Act No. 3 of 2005.

<sup>41</sup> Kipkorir writes in the Nation newspaper. Ahmednasir Abdullahi write in the Sunday Standard newspaper.

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## **Budget Supervision and Audit**

The fourth stage is budget supervision and audit.<sup>42</sup> However, it does not strictly follow budget implementation. As budget execution is underway, it allows for simultaneous *control* and accountability. There should be active and effective internal audit (supplemented by expenditure tracking surveys).<sup>43</sup> At the end of the financial year, the Treasury prepares accounts by the end of October. The Controller and Auditor General (CAG) then audits them and, at the end of 7 months (a period which may be extended by the National Assembly), sends the report to the Finance Minister, who tables it in the National Assembly.<sup>44</sup> In the past, the reports have been tabled in Parliament two years after they are prepared.<sup>45</sup>

Once the report reaches Parliament, it is discussed by the Parliamentary Accounts Committee (PAC) which then reports its findings to the House. Treasury, through the Minister of Finance, is then required to explain what action it has taken on the PAC recommendations. The Public Investments Committee (PIC) also examines the reports and accounts of public investments, and engages Parliament and Treasury in similar fashion.

## **The Constituency Development Fund (CDF)**

The CDF was established in 2003 by the Constituency Development Fund Act<sup>46</sup> and operationalized by the Kenya Gazette Supplement No. 107 of January 9, 2004. The Fund comprises an annual budgetary allocation equivalent to 7.5% of the government's ordinary yearly revenue and any other money that may accrue to the Fund. Some politicians, academics, civil society organizations and members of the public have referred to the Constituency Development Fund (CDF) as a devolved fund.<sup>47</sup> It is not a

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<sup>42</sup> See Albert K. Mwenda and Mary N. Gachocho (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

<sup>43</sup> See Kenya Institute of Public Policy Research and Analysis (KIPPRA) (2004), *Budget mechanisms and public expenditure tracking in Kenya*, *op. cit.*

<sup>44</sup> The CAG is appointed and operates under section 110 of the Constitution and the Public Audit Act (No. 12 of 2003). The CAG is Mrs Priscilla Njeri Komora.

<sup>45</sup> See Institute of Policy Analysis and Research (IPAR) *Budgetary Process in Kenya: Enhancement of its Public Accountability*, *op. cit.*

<sup>46</sup> Act No. 11 of 2003.

<sup>47</sup> See Kenya Institute of Public Policy Research and Analysis (KIPPRA) (2004), *Budget Mechanisms and Public Expenditure Tracking in Kenya*, *op. cit.* See also the Party of National Unity (PNU) 2007 general elections campaign manifesto. See also, Mwangi S. Kimenyi (2005) *Efficiency and Efficacy of Kenya's Constituencies Development Fund: Theory and Evidence*, Economics Working Papers, Department of Economics, University of Connecticut.

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devolved fund. It is the Executive (through the Ministry of State for Planning, National Development and Vision 2030, and the Treasury) that decides on the amount of money distributed to each Constituency.<sup>48</sup> The Fund is administered by an officer under the direction of a National Management Committee. The Fund is administered according to the rules and regulations laid out in the CDF Act.

The CDF Act established four committees to manage the Fund. These are the National Management Committee (NMC), the National Constituency Development Fund Committee (CDFC), both of which are national committees, and the District Projects Committee (DPC) and the Constituencies Development Committees (CDCs) which are grassroots committees.<sup>49</sup>

The National Management Committee ensures that allocations and disbursements of funds are made to the constituencies. It is mandated to ensure prudent management of the funds, and to receive and discuss annual reports and returns from the constituencies. The NMC is made of 4 Permanent Secretaries from the Ministries of Finance, Planning National Development and Vision 2030, Regional Development, Agriculture, the Clerk to the National Assembly, an officer administering the Fund, and 8 Ministerial appointees nominated by the following bodies: the Kenya Farmers Union (KFU), the Institute of Engineers of Kenya (IEK), the Kenya National Chamber of Commerce (KNCC), the Catholic Church, the Kenya National Union of Teachers (KNUT), the NGO Council of Kenya,<sup>50</sup> the National Council of Churches of Kenya (NCCCK), and the Supreme Council of Kenya Muslims (SUPKEM).<sup>51</sup>

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<sup>48</sup> For example, in September 2008, there was controversy in Parliament over the Constituency Poverty Index that was to be used in determining the distribution of funds to Constituencies. Legislators had claimed that the Kenya Integrated Household Budget Survey 2005/2006 had been doctored to favour certain Constituencies. In light of the controversy, the Minister for Planning simply shelved the Constituency Poverty Index and used old poverty indexes to determine the distribution of funds. See Susan Anyangu (2008) “Minister unveils Shs. 10 billion CDF kitty,” *The Standard* newspaper (Nairobi), September 17, 2008. In the early term of the NARC Government, Parliamentarians black-mailed the then Minister for Finance, David Mwiraria, to increase the percentage allocation of the CDF in the budget, if he wanted them to pass the budget. He “bribed” them and they obliged. As a financial bill, the CDF Bill must be approved by the President. See Section 46 of the Constitution on law making.

<sup>49</sup> These are established under sections 6, 27, 39 and 23 respectively of the CDF Act (No. 10 of 2003).

<sup>50</sup> The NGO Council is established under section ... of the Non Governmental Organizations Co-ordination Act (No. 19 of 1990) as amended. The Council has been inactive for some time due to leadership and electoral disputes which ended in the High Court at Nairobi.

<sup>51</sup> Section 6 of the CDF Act.

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The composition of the NMC encourages hands-on involvement of civil society, NGOs, the private and independent sector groups like KNCC, and trade unions in CDF budgeting. The NMC, LDCs, CDCs, DPCs and CFC and citizens usually conduct monitoring of CDF projects.<sup>52</sup> Groups such as Muslims for Human Rights (MUHURI) have been actively involved in CDF budgeting. Since 2005, MUHURI has been monitoring expenditures made under the CDF at the Coast Province. Through this process, MUHURI has developed strong contacts with local communities that are often the beneficiaries of CDF expenditures and has in turn used their assistance to identify problems and irregularities in the implementation of the CDF.<sup>53</sup> Auditing of the CDF is done by internal auditors from the Fund as well as auditors from the Office of the Controller and Auditor General.<sup>54</sup>

### **The Local Authorities Transfer Fund (LATF)**

The Local Authorities Transfer Fund (LATF) was established by the Local Authorities Transfer Fund Act of 1998, and operationalized on June 10, 1999. The Act was intended to “supplement the financing of services and facilities that Local Authorities are required to provide under the Local Government Act”<sup>55</sup>. Politicians, commentators and academics disagree on whether the LATF is a devolved fund. However, this label attracts the same criticism as the CDF, in that LATF is also largely controlled by the Executive, which disburses the funds.

### **The Role of the Judiciary in Budgeting**

The two arms of government, the Executive and the Legislature, have an expressly legislated role in the budgeting process.<sup>56</sup> The Judiciary, on the other hand, has no direct

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<sup>52</sup> See Centre for Governance and Development (2007) *National Devolved Funds Report: Institutional Structures and Procedures*, Research Report 3, April 2007.

<sup>53</sup> See Vivek Ramkumar and Sowmya Kidambi (undated) “*Twataka pesa zetu (we want our money): a public budget hearing in Kenya*,” available at [www.internationalbudget.org/resources/library/HearingKenya.pdf](http://www.internationalbudget.org/resources/library/HearingKenya.pdf) (last accessed on 14/10/08).

<sup>54</sup> Centre for Governance and Development (2007) *National Devolved Funds Report: Institutional Structures and Procedures*, op. cit.

<sup>55</sup> Cap. 265, Laws of Kenya.

<sup>56</sup> See sections 99-100 of the Constitution, the Public Audit Act and the Exchequer and Audit Act.

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role in the mainstream budgeting process. However, the Judiciary can still undertake an important role in interpreting the laws governing budgeting. For example, of late, there has emerged a “rights-based approach” to budgeting. This approach posits that government budgeting should be guided by national and international human rights standards.<sup>57</sup> To this extent, academics, civil society and other advocacy groups engaged in budget work could use section 82 of the Constitution which provides for the right against discrimination, to conduct public interest litigation against the Government regarding historical injustices and inequities in the development agenda and processes. The judiciary would then be required to step up to uphold these rights against discrimination.<sup>58</sup>

The Kenyan judiciary has traditionally been conservative in its approach towards cases whose prayers sought are aimed at constraining the powers of the Government or questioning Government policy. In a study of the role of the judiciary in controversial and sensitive matters of public law and policy with a focus on questions of human rights and social justice Prof. J.B Ojwang’ and Prof. Otieno Odek<sup>59</sup> concluded that the institution seems to have adopted a dual typology in handling human rights questions. On the one hand, the judiciary appeared to be neutral and to observe the role of law and hence secure justice in horizontal conflicts or human rights questions. (These are cases between citizens *inter se*, and courts tended to protect rights, especially where the disputants were similarly situated in terms of economic or political power relations). On the other hand, the judiciary has subverted the cause of justice in vertical conflicts between the state or political or economic elite and ordinary citizens. This analysis still holds true today.

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<sup>57</sup> For a detailed discussion on rights-based approaches generally, see Celestine Nyamu Musembi and Samuel Musyoki (2004) “Kenyan civil society perspectives on rights, rights-based approaches to development, and participation,” Institute of Development Studies (IDS), Brighton, Sussex, England, available at [www.ids.ac.uk/ids/bookshop/wp/wp235.pdf](http://www.ids.ac.uk/ids/bookshop/wp/wp235.pdf) (last accessed on 14/10/08) See also United Nations Development Programme (UNDP) (2006) “Applying a human rights-based approach to development cooperation and programming,” available at [www.hurilink.org/tools/Applying\\_a\\_HR\\_approach\\_to\\_UNDP\\_Technical\\_Cooperation--unr\\_revision.pdf](http://www.hurilink.org/tools/Applying_a_HR_approach_to_UNDP_Technical_Cooperation--unr_revision.pdf) (last accessed on 14/10/08).

<sup>58</sup> Some of these issues have arisen indirectly, for instance, where the Central Government Departments and officials have been sued for licensing the importation of sugar, thereby adversely affecting the local farmers’ market access, in a context in which the Ministry of Finance has in the past subsidized coffee farmers while taxing sugar cane farmers.

<sup>59</sup> See J.B. Ojwang’ and J.A. Otieno Odek (1988) “The Judiciary in sensitive areas of public law: emerging approaches to human rights litigation in Kenya,” *Netherlands International Law Review* (The Hague) Vol. XXXV No. 1 (1988), pp. 1-35.

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David Trubek and Alvaro Santos say the following regarding the role of judges:

“Much current development thought continues to present private law as a neutral framework in which economic actors establish relations in a realm of freedom. This is contrasted with the sphere of public or ‘regulatory’ law, which is presented as coercive, and an ‘intervention’ in an otherwise level playing field. Moreover, in this vision, the judges who decide cases involving private law issues are represented not as making regulatory or distributional decisions; they are simply deriving results from abstract principles.”<sup>60</sup>

They continue:

“Our authors challenge this body of thought, which has played a major role in the Second [law in development] Movement. They reject the public-private distinction on which it is based, making clear that the background rules of property and contract, constructed by judicial decisions, are just as coercive and interventionist as public regulatory law. They show that these background norms structure behavioural incentives and play a key role in the distribution of economic resources and power in society.”<sup>61</sup>

But some influential judges and authors like Charles Newbold argue that judges have no role in policy making.<sup>62</sup> This is a typical (neo) liberal perspective which does not reflect the reality or the need to secure justice for the underclass, the powerless; especially those who are marginalized by skewed economic and budgetary policies and processes.

### **An Audit of the Role of Civil Society and Academics in Kenya’s Budgeting Process**

As outlined above, public budgeting, especially treasury budgeting in Kenya is a complex process that can sometimes be arcane, closed to the public and understood only by experts. In an efficient and constitutional system, however, the process should incorporate citizen insight, participation and control in a way that can enhance transparency, accountability and participatory democracy.

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<sup>60</sup> See David M. Trubek and Alvaro Santos (2006) “Introduction: the third moment in law and development theory and the emergence of a new critical practice,” David Trubek and Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press.

<sup>61</sup> *Ibid.* My interpolation. The book discusses three moments in law in development: the classical, the neo-liberal phase, and the current.

<sup>62</sup> See Charles Newbold (1969) “Judges as policy makers,” *Eastern Africa Law Review* 1.

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Civil society and academia have a very important role to play in the budgetary process, especially in situations where participation through representative, elected democracy is deficient. Budget work for academia and civil society involves several related activities, ranging from training in budget literacy skills, budget analysis, civic action and advocacy. In this regard Shultz argues:

“Ultimately, the goal of civil society budget work is to lift out, from the pages and pages of often undecipherable figures, the real stories behind the numbers. When done well, citizens’ budget efforts strip away the complexity to reveal the basic value choices buried underneath....Making these choices clearer opens up new possibilities for citizen involvement in those decisions.”<sup>63</sup>

A number of studies on the extent of participation in Kenya’s budgetary process have been conducted by a number of institutions, including the Institute of Economic Affairs (IEA), Kenya Institute of Public Policy Research and Analysis (KIPPRA), Institute of Policy Analysis and Research (IPAR) and the United States Agency for International Development (USAID). These studies and reports provide a glimpse of the progress registered in opening up the budgeting process in Kenya.<sup>64</sup>

In 2003, the Institute of Economic Affairs (IEA) conducted a comprehensive study on the extent of transparency and participation in Kenyan budgetary process.<sup>65</sup>

With regard to participation of civil society and academia, the report found that 81% of the respondents found the overall citizen participation to be poor. Secondly the study reported that 78% of the Civil Society Organizations interviewed found the budgetary process non-participatory. Another major finding was that the submission of budget proposals to the Treasury was rated as minimal.<sup>66</sup> Despite being invited to send budget proposals, respondents felt that their proposals were not given the due attention.

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<sup>63</sup> J. Shultz (2002) *Promises to Keep: Using Budgets as a Tool to Advance Economic, Social and Cultural Rights*. Reflections and strategies based on a three-day dialogue between international human rights and budget activists, convened by the Mexico City office of the Ford Foundation and FUNDAR-Center for Analysis and Research, in Cuernavaca, Mexico, 2002. Mexico City, Fundar.

<sup>64</sup> Some of these reports have already been cited earlier and further below in the paper.

<sup>65</sup> See Albert K. Mwenda and Mary N. Gachochi (2004) *Budget Transparency: Kenyan Perspective*, *op. cit.*

<sup>66</sup> Only about 50 % of the respondents such as Centre for Governance and Development (CGD), Institute of Certified Public Secretaries of Kenya (ICPSK), PriceWaterhouseCoopers (PWC), Kenya Association of Manufacturers (KAM), and Retirement Benefit Authority (RBA) indicated having submitted budget proposals to the treasury. ICPSK for example indicated having made budget proposals to guide the policy and fiscal formulation. *Ibid.*

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It was also reported that 86% of civil society organizations and 78% of academics polled said they had never attended budget meetings either at district, Ministerial or national level. The low attendance and contributions to the budget meetings by respondents, was attributed to lack of awareness and information regarding budget meetings.

The study reported further that the majority of the respondents i.e. 67% of the academics and 100% of the CSOs were not aware of the guidelines for planning and preparing the budget. The guidelines have been limited to government departments and ministries. In addition 75% of CSOs and 88% of academics said they had not seen Government support in enhancing a participatory budgeting process. Finally government support was not evident in the legal and institutional frameworks governing the participation of the public in the budget process. Most of the respondents noted that the legal and regulatory frameworks have not been conducive to govern on their participation.

The report identified five factors limiting stakeholder participation in the budgetary process: lack of technical expertise; lack of financial resources; inadequate legal and institutional framework; geographical location; time constraints. There have been indications that since the report was published, the extent of participation in budgeting has improved. In December 2006, USAID released the annual report on their Parliamentary Strengthening Programme that is implemented by State University of New York (SUNY) Kenya.<sup>67</sup> The report states:

“The budget process is getting more and more influenced by multiple political actors as SUNY is evidently playing a significant role. Through the land mark activities of pre and post budget seminars SUNY is facilitating the interaction between Parliament and these actors. The budget making process is becoming transparent to many actors. Parliament on the other hand is taking advantage of these episodes and consequently opening up and allowing proposals from these actors to improve the outcome of the budget as well as informing the debating of the appropriation and the budget policy.”<sup>68</sup>

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<sup>67</sup> See USAID (2006) *Parliamentary Strengthening Programme Annual Report*, available at [www.usaid.org](http://www.usaid.org) The Parliamentary Strengthening Programme is implemented by State University of New York (SUNY) Kenya.

<sup>68</sup> *Ibid.*

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The USAID report continues:

“These traditional activities of pre and post budget by SUNY have yielded result as the Executive branch has realized the necessity of collaborating with parliament in the budget making process as opposed to a viewing it as competition.”<sup>69</sup>

According to the USAID report, the issues submitted by USAID-funded Civil Society Organizations (CSOs) were not clearly captured in the debate in the House. Only 54.7% of issues were debated in the House, and reflected in the Finance Act.<sup>70</sup> Organizations that submitted budget proposals to Parliament included the Nairobi Stock Exchange (NSE), Kenya Association of Manufacturers (KAM), Institute of Certified Public Accountants of Kenya (ICPAK), Institute of Economic Affairs (IEA), and PriceWaterHouse Coopers (PWC).<sup>71</sup>

The above reports have indicated an improvement in the prospects of participatory budgeting in Kenya. Despite the challenges, a number of civil society and academic organizations have done a commendable job in contributing to the formulation, debate, and monitoring and evaluation of the budgetary process in Kenya. These include the African Research and Resource Forum (ARRF), Institute of Economic Affairs (IEA), Centre for Governance and Development (CGD), Institute of Policy Analysis and Research (IPAR), and Transparency International (TI), among others. Indeed IEA has been proactive in engaging the Official Opposition in Parliament. IEA develops parallel budgets known as “alternative budgets” that the Official Opposition in Parliament uses to interrogate the budget tabled by the Finance Minister.<sup>72</sup>

However, there has never been a more urgent time as now for CSOs and academia to be involved in the budgeting process. The post election violence that the country is just recovering from has uncovered a myriad of problems that can be traced to poor budgeting in the past.<sup>73</sup> Ethnic, regional, gender, class and race inequalities that have historically

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> At the height of the Kenyan post-election crisis in January and February 2008, erstwhile political protagonists, academics, commentators and the general public closed ranks on the reality of ethnic governance generally, and ethnic budgeting in Kenya, perpetrated by successive Governments since independence. Indeed, the Report by the Justice Philip Waki Commission to Investigate Post Election Violence (CIPEV), released on 16<sup>th</sup> October 2008, blamed President Kibaki’s governance for polarizing Kenyans along ethnic lines. It states that Kibaki retreated into his ethnic Kikuyu enclave immediately after being elected on a nationalist platform in December 2002.

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festered and burst to the fore early this year have been consciously constructed by the state as a result of closed door budgeting policies.<sup>74</sup> Other consequences of closed door budgeting are corruption, unemployment and poverty.

In order to overcome the above challenges, there must be legislative and administrative reform in the budgeting process in order to open up all stages of the budgeting process to stakeholders. Secondly, civil society and the academia should also proactively engage the government in realizing participatory budgeting. Below I look at specific proposals on increasing the participation of civil society and academia to secure the public interest and the interest of key stakeholders in the budgeting process in Kenya.

### **Towards a More Participatory Budgeting Process**

In the face of poor participation by CSOs and academia in the budgeting process, there is need for reform in the way the Kenya Government and stakeholders have engaged each other over budgeting issues since Independence in 1963. This is necessary for number reasons. First, there is need for constitutional and legislative reforms aimed at opening up the budgeting process. The Constitutional and legislative framework for budgeting in Kenya should be reviewed to inculcate citizen and stakeholder participation in all stages of the budgeting process. The review should aim to increase the role and capacity of Parliament to oversee the entire budgetary process, and to effectively engage with other stakeholders in the processes of budget formulation, implementation and monitoring and evaluation (M&E).<sup>75</sup> Currently, there is before parliament, the Fiscal Management Bill 2007. This is a private Member's Bill sponsored by Mr Oloo Aringo during the 9<sup>th</sup> Parliament.<sup>76</sup> The principal objective of this Bill is to provide for

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<sup>74</sup> See Ben Sihanya (2006) *Constitutional Political Economy of Ethnic Inequality and Poverty in Kenya, 1963-2006 and Beyond: Human Rights, Class Formation and Development* a study under the auspices of Society for International Development (SID), available on file at Innovative Lawyering. See Sang Kipyego Stephen (2008) *Historical Injustices in the Public Service in Kenya: Ethnicity in Public Service Appointments*, Dissertation submitted to the University of Nairobi in partial fulfilment of the degree of Bachelor of Laws (LLB), available on file at Innovative Lawyering.

<sup>75</sup> See the earlier discussion on the role of Parliament in debate and approval of the budget tabled by the Finance Minister, and also the role of Parliament in the Committees created under the Constituencies Development Fund Act.

<sup>76</sup> The original Bill introduced by Mr. Oloo Aringo (Nominated MP, NARC - LDP) was known as the Fiscal Management Bill 2006. The Fiscal Management Bill, 2007 is slightly different from the Fiscal Management Bill, 2006 in that: first, it renames the Fiscal Analysis and Appropriations Committee as the Budget Committee; second, it introduces two new definitions – “Impounding” and “Department,” and also

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effective regulation and oversight of the national budget process and the establishment of the office of Fiscal Analysis and a concomitant Budget Committee to revitalize the involvement and participation of the National Assembly, its committees and its members in the formulation and regulation of the national budget.

Parliament has also reviewed its standing orders<sup>77</sup> to create a more efficient House Committee system, especially with regard to budgetary approval processes. In August 22, 2008, members of parliament approved amendments to standing orders expected to make the House more responsive to the new Grand Coalition Government system. With regard to budgeting, budgetary proposals for various government ministries would not be passed unscrutinized as was the case then. Instead, Cabinet Ministers concerned would appear before the relevant Parliamentary Committees to explain how the money would be spent.<sup>78</sup>

For better access to budget information by civil society and academia, the Official Secrets Act should be repealed and a Freedom of Information law enacted. Currently, the Government has indicated its willingness to repeal the Official Secrets Act and enact the Freedom of Information Bill into law.

Secondly the budgeting process must be further decentralized to provincial and district levels so as to move the process closer to CSOs, academics and the citizens at the grassroots, in order to foster participation. This reform is tied to wider constitutional reforms, especially on decentralization of Government.

There is need for policy review of the budgeting processes at the Treasury. Government, in collaboration with stakeholders, must shed light into the budgetary process by formulating and disseminating guidelines on participation in the budgeting process. Treasury should improve its level of engagement with CSOs and academics by calling for budget proposals from them, inviting them to deliberate over these budget proposals, and incorporating their proposals into the final budget.<sup>79</sup>

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enacts sanctions for departments that materially fail to implement audit recommendations or wilfully and persistently fail to comply with the provisions of the Act.

<sup>77</sup> Standing Order 147 and 148 which provide for the House PAC and PIC to interrogate CAG's audit reports are some of the provisions needing reforms.

<sup>78</sup> See Peter Opiyo (2008) "Radical proposals to amend House Standing Orders," *The Standard* newspaper (Nairobi) Friday August 22, 2008.

<sup>79</sup> See USAID's report on Parliamentary Strengthening, which I have discussed earlier in this paper. The report evaluates the level of incorporation of stakeholder views in the Finance Bill.

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The government should strengthen its Public - Private Partnerships (PPP) policy by promoting and facilitating capacity-building among key stakeholders in the budgeting process. Capacity-building should involve training on budget analysis, advocacy, and reporting. This will improve their participation in the formulation, debate and monitoring and evaluation of budget implementation.

Finally, Treasury should assist in dissemination of budget information. This involves simplifying data for easier appreciation and use by stakeholders. For example, the budget tabled before Parliament usually consists of more than 1000 pages. These should be an abridged version that underscores the main highlights of the budget.

## **Conclusion**

Budgets and budget processes are important in the economic, political, cultural and constitutional development process of Kenya. Yet during the regime of Jomo Kenyatta, Daniel Arap Moi and Mwai Kibaki respectively, budgets and budget processes have historically focused on the interests of economically, politically and intellectually powerful groups. These groups have also been ethnically affiliated to the President and the powerful cliques around the President. There has been a struggle to make the budget inclusive in content and process, through participation. Academics and civil society organizations and activists have increasingly staked a claim, in spite of serious challenges.

The reform proposals outlined in this paper are important to realize equity in the content of the budget as well as participation in budgeting in Kenya. Civil society and academia must seize the current constitutional review debate and the general quest for reform directed at the Grand Coalition Government to advocate for greater reforms that will entrench further participatory policymaking and budgeting in Kenya. This will forge a powerful partnership between the state and key stakeholders like CSOs, academia, the private sector and the citizens generally in addressing and giving priority to problems that continue to plague the development agenda in Kenya.

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