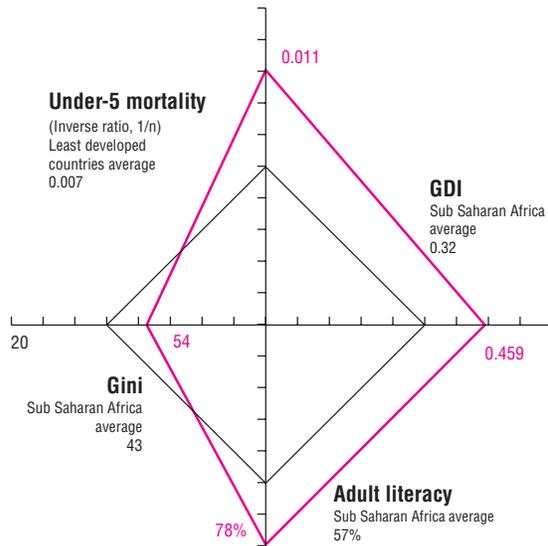


- E. OYUGI
- ODUOR ONG'WEN
- DAVID KIGOZI
- ODHIAMBO NYADUWA

THE HARD ROAD TO POLITICAL EQUITY



The Equity Diamond: National values in terracotta compared to regional ones in blue.

A sharp issue confronts Kenyan society today. Political reform in general, and constitutional reform in particular, have been hot on the agenda for the better part of two years. Political events are moving at such great speed that even the «wallflowers», those sectors who usually watch politics from a strategic distance, have been sucked into the eye of the storm and are actively agitating for constitutional reform.

Many Kenyans are disappointed at the sluggishness of the political reform process, but they are even more disappointed at not having expected this sluggishness. This is due to the high hopes generously invested by Kenyan people in the efforts that led to the historic repeal of Section 2A of the Constitution—a con-

stitutional provision that had, for close to a decade, chained Kenyan political life to the lurching engines of one-party rule.

Let us not just talk in generalities about disappointment. Kenya, is experiencing an intractable stalemate, the main features of which can be summarised as follows: The incumbent Government has lost its popular mandate to rule and has discovered a further basis of power in the fragmentation of reform forces that precludes any unity of action in the pro-reform movement.

On the economic front, things are not better. There is increased poverty, massive inflation and corruption. The 1997 drought and famine worsened the situation. **Everywhere there is considerable anger among Kenyans who pay taxes, council rates and an assortment of levies and fees for services that are simply not provided. The health and education sectors are also in a sorry state.**

The Government has attempted some economic reforms under the aegis of the World Bank and the International Monetary Fund's Structural Adjustment Programmes. The aim was to revive the country's economic growth, to institute a series of policy measures, and to implement plans of action. By 1996, Kenya was showing signs of economic stability and renewed growth.

However, the Government's dithering on issues of corruption and governance once again led the IMF and the World Bank to freeze financial flows in July 1997 and this is adversely affecting the country's economic performance. There is real and growing fear that other bilateral donors will follow suit, thereby sending the economy tumbling as it did after the 1991 freeze.

Kenya's transition to democracy since the repeal of Section 2A of the Constitution thus appears to be stalled, while persistent and serious problems still exist. Kenyans have a long political and economic road to travel to attain a freely functioning democracy.

CIVIL SOCIETY

After the 1992 General Elections, there were various calls for a thorough constitutional review. In 1993, human rights lawyers from the Law Society of Kenya (LSK), the Kenya Human Rights Commission (KHRC) and the International Commission of Jurists (ICJ) Kenya Chapter, came together with church leaders and political activists under the umbrella of the civic pressure group—Citizens

Coalition for Constitutional Change (4Cs)– and set the constitutional reform in top gear by initiating moves to prepare and discuss a model constitution.

After more than one year of discussions, a model constitution –«*The Kenya we Want*»– was produced in November 1994. It drew widespread comments from all sections of the Kenyan society. As the agitation for reforms gathered momentum, the President sought to derail the process by appearing to preempt it. In his New Year's message on 31st December 1994, he promised the nation that his government would soon undertake far-reaching constitutional reform. He said that experts would be invited from Canada, Germany, the United States and Britain to provide expert backup to the process. The announcement was widely welcomed, but, unfortunately, nothing came of it. **Eventually, the President changed his tune to argue that, since the process of constitutional reform was too cumbersome and long, it would have to wait until after the 1997 General Elections.** Earlier, the Attorney General had set up various task forces to review contentious laws, but none of these has produced a report to date.

Undeterred, the reform advocates intensified their agitation. The churches, especially the Catholics and Protestants under the National Council of Churches in Kenya (NCCCK), issued many statements and Pastoral Letters through the Kenya Episcopal Conference and Justice and Peace Commissions. Opposition politicians moved motions in Parliament for reforms, which were naturally defeated by the ruling Kenya African National Union (KANU) parliamentary majority.

By 1996, it was clear to many Kenyans that the KANU government was not going to initiate constitutional reforms. **In one of his addresses during the year, the President said that it was naive to expect the Government to concede to demands for a level playing field. He noted that in Africa, when the incumbent ruler gives in to such demands, it is the surest way to lose power.**

In reaction to this widely expected renegade position, the reform lobby formed a National Convention Planning Committee (NCPC) as a sequel to the coalition between the 4Cs and the Inter-Parties Parliamentary Committee. It was mandated to plan and organise a National Convention which was held in early 1997.

The National Convention Assembly (NCA) brought together actors from various sectors of civil society and the political parties except KANU. One major resolution of the Convention was to demand minimum constitutional reforms before the next General Elections and to accompany the demand with concrete activities to get the Government to undertake the desired reforms. A second was the creation of the National Convention Executive Council (NCEC) as the executive arm of the NCA.

The NCA has triggered off a number of chain reactions in the constitutional reform process and events in the past few months have changed rapidly. **A number of reform rallies have been organised in which thousands of Kenyans came out to register their support for constitutional reform. Security forces have unleashed unprecedented violence on the reform activists. More than 15 lives have been lost.** In June, the Opposition virtually disrupted the budget speech in Parliament and later boycotted the budget debate for three days to pressurise for reforms. The use of mass actions to force the Government to level the playing field for

free and fair elections as the main plank of the reform agenda, has created political conflict among the Opposition parties and between the Opposition and the incumbent Government. The main issue of contest is the legitimacy of the dialogue process.

These events apparently moved the KANU government from its hardline stance. President Moi announced in June 1997 that rules requiring licenses for public meetings would be relaxed henceforth, pending the tabling of a new bill to replace the Public Order Act. The new bill, Peaceful Assemblies Act, later published by the Attorney General, has since been roundly condemned as nothing new but a renaming of the old bill. In July 1997, the Attorney General, at the behest of KANU, published two other bills – the Statute Law (Repeals and Miscellaneous Amendments) and the Constitutional Reform Bill – both of which have also been dismissed by the reform lobby for not taking into account their views.

The President has since met with representatives of religious organisations and the leader of the Official Opposition in Parliament and agreed on dialogue as a means of resolving the stalemate over constitutional reform. However, many observers are of the view that the President and KANU are not sincere in these latest moves, since they continue with arrangements for the General Elections without reforms.

Although the reform advocates and the Government have agreed on the need for dialogue on constitutional reform, there are still some sticky issues: the Government is adamant on reforms after the elections while the reformists want them before; reformists differ on a number of issues, such as representation on the negotiating team, minimal vs. comprehensive reforms, etc. These, however, are likely to be resolved with time.

Many social and political groups have played various roles in the reform process. Voluntary sector organisations, individually or through the umbrella of the NGO Council, have been at the forefront. In November 1996, the NGO Council's General Assembly mandated its National Executive Committee to participate in the debate on constitutional reform, thereby fully involving the sector in the reform debate.

The Central Organization of Trade Unions (COTU), the umbrella workers' union, has not been involved in the process, mainly because of its leadership's association with the incumbent Government. It has never felt obliged to make known its views on constitutional reform. Only recently did it, belatedly, seek to be included in the negotiating process. However, individual leaders of various trade unions have been drawn into the various organs of the constitutional reform lobby. Similarly, the giant Kenya National Union of Teachers (KNUT) has not played an active role in the current round of agitation for reforms.

A number of women's lobby groups are in the forefront of the reform process. These include the League of Women Voters, Federation of Women Lawyers (FIDA), National Commission on the Status of Women (NCSW), National Council of Women of Kenya (NCWK), Education Center for Women in Democracy (ECWD), and Institute of Education in Democracy (IED). Presently, there are over 30 women NGOs whose major aim is to empower women politically. Most of these NGOs are reaching out to women and not only educating on their political rights and responsibilities, but also encouraging them to stand for public office. Individual wom-

en activists such as Wangari Mathai, Maria Nzomo, Tabitha Seii, Wanjiku Kabira, and others have, in their individual capacities, been very vocal on the need for reforms that are gender sensitive.

Sadly, the Maendeleo Ya Wanawake Organization (MYWO), the national umbrella body for women in Kenya, has become the KANU women's wing and no longer champions the aspirations of Kenyan women as it did in the 1970s and early 1980s. Its present leadership is openly pro-KANU and is publicly opposed to constitutional reform.

THE COPENHAGEN COMMITMENT

One of the commitments enjoined upon signatories to the 1992 Copenhagen Social Summit Declaration was transition to democracy. This has been generally understood to entail, among other things, the acceptance of universal principles of fair play and good governance – including the doctrine of separation of powers; commitment to electoral processes that are free, fair and all-inclusive; freedom of association and assembly; reform of out-dated laws; empowerment of the masses through decentralisation; and recognition of the importance of civil society and expansion of its role. The President of the Republic of Kenya was a signatory to the Copenhagen commitments.

The reform package advocated by civil society, particularly with regard to levelling the political playing field, must be understood within the above context. For years now, voices of reason in the media, churches, NGOs, political parties, trade unions, women's lobby groups, farmers and even the diplomatic community, have been pleading with the Government to mellow down and embrace peaceful reforms to avert national disintegration. Instead, the Government has been engaged in manoeuvres to avoid democratic reform.

THE ISSUES UNDER DEBATE

Never before has **voter registration** been so controversial. A state of total confusion marked the beginning of the exercise starting with the apparent glaring flaws in the recruitment of the voter registration clerks. Then came the contentious issue of the new and old generation identity cards (IDs). Initially, the Electoral Commission said both would be valid for registration purposes, but then the President declared that only the new ones could be used.

Both were finally accepted but only after many potential voters without the new generation cards had been turned away. **To date there are fears that nearly four million prospective voters have been disenfranchised for not having the new generation IDs.** The disenfranchised also include those who were hospitalized during the exercise, those living abroad and those who fell victim to the registration personnel's ineptitude.

The Constitution of Kenya empowers the Electoral Commission to review **electoral boundaries** every ten years. The latest exercise was carried out in 1995/1996. The way in which this was done left a lot to be desired. There was open gerrymandering to suit certain

individuals and regions (the so-called KANU zones). Rural constituencies in the so-called KANU zones have in the last ten years been grossly over-represented and all urban areas grossly under-represented. For example, the North Rift districts of Turkana, West Pokot and Samburu had a total of about 170,000 registered voters in 1992. These three districts have eight MPs. Contrast this with Nairobi. The Province had a total of just under 700,000 registered voters and has eight MPs. Something is not quite right! Yet, while the Rift Valley Province gained five more seats during the last review, Nairobi gained none. Table 1 below shows eligible voters per province and their representation in parliament.

Kenya National Assembly voters and seats by provinces					
Province	Registered Voters 1992	Seats 1992	Proj. Reg. Voters 1997	Seats 1997	% Total Seats
Central	1,166,797	25	1,400,000	29	13.8
Coast	635,499	20	763,000	21	10.0
Eastern	1,153,527	32	1,385,000	35	16.7
Nairobi	629,594	8	756,000	8	3.8
North Eastern	129,979	10	156,000	12	5.7
Nyanza	1,158,585	29	1,390,000	32	15.2
Rift Valley	1,818,152	44	2,182,000	49	23.4
Western	819,902	20	984,000	24	11.4
TOTAL	7,548,885	168	8,816,000	210	100

Fuente: Kenya—Presidence '97 (East African Standard)

The current **Electoral Commission** has had credibility problems since its creation before the 1992 elections. In the eyes of Opposition and reform activists, the Commission, appointed solely by the President, is at best partial and at worst, an electoral instrument of KANU. The law gives the Commission autonomy to regulate the electoral process. In fact, the law states clearly that the Commission *«shall not be subject to the direction of any person or authority»*. However, **the Office of the President plays such a central role in the electoral process that the Commission has been rightly accused of mollycoddling the government.** Hence it cannot be trusted to preside over free and fair elections. In any case, the experience of 1992 was instructive.

Reform advocates are calling for a truly independent and non-partisan Electoral Commission with members nominated by all political parties, religious organisations and other organised sectors of the civil society.

As regards **registration of political parties**, these are currently registered under the Societies Act, which deals with the registration and control of societies generally. For no reasonable cause, a number of political parties such as SAFINA and the Islamic Party of Kenya (IPK) have had their applications for registration kept on hold for a number of years. For fairness to prevail, all legitimate political parties should be registered provided they comply with the requirements as laid down in law.

The mass media is a powerful electioneering tool. The political playing field is not level if only a few players have access to the national electronic media. In Kenya, KANU has had total control of the public media for the past six years. Kenya Broadcasting Corporation (KBC) radio and television are public utilities sustained by tax payers. They should not be monopolised by any political party or individual. The channels should give equal opportunity for all the players. Only when the electorate knows what each party has to offer can they make informed choices on representation and leadership.

Elections lose meaning as an expression of people's democratic will and their right to electoral choice when issue-oriented voting is replaced by manipulated voting. **Equality of and transparency in campaign finance** and other electoral resources is essential among candidates and political parties.

In the face of the above, it is clear that there is need for regulation of campaign resources. The Exchequer should make a contribution to the campaigns of each political party. A reasonable expenditure ceiling for all candidates and parties should also be introduced.

Despite constitutional guarantees of **freedom of assembly, association and expression**, there are almost insurmountable roadblocks for opposition politicians and civil institutions who want to organise for the purpose of sharing ideas. Their freedom is curtailed by the high-handedness of the Administration under the guise of the Public Order Act – an archaic, colonial and undemocratic piece of legislation introduced in Kenya in 1950 based on the English 1936 Public Order Act. However, unlike the English Act, which had no provision for obtaining a license for public gatherings, the Kenyan Act outlaws any assembly that is not licensed by Administration officials.

The Public Order Act is considered an unjust law, which is used by the KANU Government to frustrate attempts by members of the opposition and other civil bodies to organise the people and convey messages in the process of political socialisation.

Findings by the Kenya Human Rights Commission show that since 1992, opposition party parliamentarians received licenses for less than 5% of applications, while ruling party parliamentarians – except for two who are known to be independent-minded – received licenses whenever they applied for them. Some ruling party legislators, in fact, admitted they had routinely held meetings without bothering to seek licenses.

Voter education is intended to sensitise people to their civic responsibilities, the hazards which confront the electoral process and the importance of participation, and to encourage the direct participation of citizens in governance. It is a process of empow-

ering the society with skills and knowledge of rules, rights and how to practice responsibilities freely, effectively and without fear.

Ideally, voter education should be the responsibility of every government. **Unfortunately, the Kenyan Government loathes NGO engagement in civic education.** Government leadership argues for example that there is no need for voter education because Kenyans have been voting since 1963. This warped reasoning flies in the face of good governance and the cultivation of a democratic political culture. It has even been argued that organisations conducting civic education pose a threat to security and their activities must therefore be curtailed!

NGOs conducting civic education in general and voter education in particular have had their seminars ruthlessly disrupted by armed police as the Government seeks to gag, sieve, edit and block the flow of information to the public.

Violence is on the upsurge in this country, particularly since the advent of the 1992 ethnic clashes. There are strong and genuine fears that the culture of violence is taking firm roots and becoming increasingly institutionalised. Political violence in particular is a worrying trend. Politicians are sponsoring and organising violence. In the past, party youth-wingers took care of security operations at public meetings and protection of politicians. Sadly, however, mobs, terror gangs or political goons going by various names such as Jeshi la Mzee, Maasai Morans, Baghdad Boys, etc. have sprung up for hire everywhere in the country. They constitute blood-thirsty private militia out to spread terror and mayhem. Experiences during the recent by-elections and reform rallies, as well as the storming of the Law Courts and Parliament precincts, are instructive.

All political parties are guilty of taking advantage of the vulnerability of the many idle and unemployed youths, whom they hire for dirty jobs. In the recent past, some of these hooligans, especially the «Jeshi la Mzee» and «Maasai Morans», have caused mayhem while legally recognised and uniformed security personnel stand by in mock surprise. Their paymasters are said to be politically correct «holy cows». These terror gangs kill or maim and go scott free. Hence many have lost faith in the Government and security forces as their protectors.

- SOCIAL DEVELOPMENT NETWORK
- ECONIEWS AFRICA
- ADIN
- CIDRACS