

# CIVIL SOCIETY IN THE KENYAN POLITICAL TRANSITION: 1992-2002

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## INTRODUCTION

“Governments cannot lead, they are lost and almost completely helpless, they can only do crisis management at best. Corporations are resigned to fatalism because they are trapped in the hole of market fundamentalism. But we have the Civics with us to show us the way out.... Civics are a bunch of activist idealists in a great hurry. They are in a great hurry to put a stop to runaway, negative globalisation. Civics are a driving factor for the creative disintegration of the present system. They want to build smaller worlds—small defensible spaces where everyone will have a better chance to participate—and on this basis create a united world. Their shortcomings, their insolence, and impatience are of little consequence to what they want our world to be” (Serrano 1999: 164; emphasis added).

The high regard expressed in the above quotation about the capacity of civil society to provide leadership and promote ‘public good’, where other actors and global forces have failed, raises fundamental conceptual/theoretical and practical questions about both the nature and role of the social phenomena broadly termed “*civil society*”. It also raises the question as to whether any generalizations can be made about civil society and in what time and spatial contexts.

This chapter first examines the concept of “civil society” and highlights some of the parameters within which civil society should be understood and its performance measured. In order to do this, the chapter provides a conceptual framework for understanding the wide variety of actors and

institutions that have emerged in Africa since the 1990s that perceive themselves as part of civil society. The chapter then examines and makes an assessment of the performance of some of the many organisations of Kenyan civil society during the country's political transition period, 1992-2002.

## CONCEPTUALISING CIVIL SOCIETY

The concept of civil society like that of 'governance' has gained broad currency, as interest in civil society intensified especially from the 1990s (Harbeson *et al.* 1994; Seligman 1995; Ndegwa 1996; Fatton 1992 and 1995; Cheaka 1998; Shaw and Smith 1996; Van Rooy 1998; Gibbon 1996 and 1999; CIVICUS 1999; Enemuo 1999; Nyang'oro 1999). As Van Rooy (1998) has noted:

Civil society has wandered its way through the academic world on a torturous path. Ideas have been attached and detached, origins have been ascribed and divorced, social meanings have been generated and debunked.

Debates continue to range over a wide area of concerns including what forms of *associational life* qualify as *civil society* and the criteria for such qualification; the *factors* that define the limits of civil society, especially in its relation to the nation state and the rest of society; the overlapping mandates of state and civil society, etc. Some insist that a distinction needs to be made between *associational life* that includes *all types of voluntarily formed and autonomous organisations*, on the one hand, and *civil society* in particular, which is narrowed conceptually to those autonomous and voluntary organisations that demonstrate civic norms (*tolerance, inclusion, non-violence and commitment to promoting public good*). In this connection, some have argued that while *associational life* includes all civic organisations, civil society does not include all organisations that manifest associational life (Naidoo and Tandon 1999). But even with this distinction between civil society and other civic organisations, the question still remains as to whether indeed the majority of civil society organisations demonstrate the said civic norms. It is noted in this connection that much associational life has very little to do with the cre-

ation of civic norms. Instead, some group interactions may lead to the development of norms that do not further the development of the public sphere, much less a civil, open, tolerant, and participatory one based on established rights, as commonly understood. (Callaghy and Ravenhill 1993: 23).

Neo-liberal scholars, such as Diamond, have defined civil society as “the realm of *organised social life that is voluntary, self-generating, self-supporting and autonomous from the state*, and bound by a legal order or set of shared rules”. Civil Society Organisations (hereafter termed CSOs), are thus distinct from society in general in that they involve particular groups of citizens acting collectively in a *public sphere* to express their interests, passions and ideas, exchange information, achieve mutual goals, make demands on the state and hold state officials accountable. (Diamond, et al, 1997:5).

Some Africanist scholars reject the neo-liberal definition and argue that in Africa, the dynamism of the generally unstructured nature of African associational life cannot easily be captured within the formalistic, neo-liberal notions of a formally organised civil society; there is also the problem of the overlapping roles of the African state and civil society and the former’s restriction of civic autonomy. Furthermore, civil society in Africa is complex and highly heterogeneous and hence there is no single uniform phenomenon that can be termed “African civil society”. Indeed, there is no common understanding and/ or consensus about the role CSOs play or should be playing in Africa. There is also no consensus on the demarcation of the “space” that defines the limits of civil society, for example in regard to the overlapping linkages between the “private” and “public” spheres of gendered social activities (Tripp, 1994). There is also no consensus on what *types* of civil society institutions exist (e.g. are political parties, the private sector and government sponsored associations also part of civil society?) and whether the *type* of civil society depends on the *type* of political system. Is civil society necessarily a democratising force? What determines whether and under what conditions a given organisation is or is not involved in political transformation? What is the distinction between those CSOs that seek to *change policy* and those *seeking to appropriate power*? To further complicate the con-

ceptual scenario, some scholars suggest that definitions of civil society in Africa should move away from a focus on *formal* organisations and institutions, to an activity view of civil society, in order to include activities articulated by ethnic and kinship groups, such as families and clans, that would otherwise be dismissed as non-civic activity.

Some scholars also question the perceived *capacity* of the African civic sector and caution against the uncritical embracing of civil society as the alternative to the pervasive weakness and incompetence of the African state in an undemocratic context. They argue that, while it is more than apparent that African states have a long record of failure to fulfil the aspirations of the African people, it is problematic to assume that a viable alternative exists outside the state and that African civil society has the capacities and qualities the African state lacks for democratic governance (Beckman 1991; Mamdani 1996). Some gender scholars also caution that there are good grounds for rejecting any simple polarisation of “state” and “civil society”, as both are production sites with the capacity to generate undemocratic and gender insensitive discourses (Mama 1999: 32).

Adopting a neo-liberal view of African civil societies, Western donor agencies and countries have tantalisingly embraced civil society as an alternative to government; with the result that civil society became a key factor in donor politics of resource allocation from the late 1980s (Van Rooy 1999). The dominant thinking in international donor circles remained that an empowered civil society plays a major role in social change, including poverty alleviation and participation in governance—keeping in check the state’s excesses of political and economic misgovernance (World Bank 1989, 1994). Van Rooy (*Ibid.*) however takes the view that, due to short implementation calendars, donors sometimes put money into civil society without being clear about what impacts their investment should have:

Armed only with a menu of projects and tight timelines and accountability rules, what can donors reasonably do? The danger is that enthusiasm over civil society’s theoretical potential will push caution aside. Along with the promise of civil society, and the hope placed in the work towards social justice undertaken by fragile civil society organisations throughout the world, there are real perils. (Van Rooy 1999).

Many scholars therefore suggest cautious optimism, as there is not sufficient evidence to support the view that single-handedly, the mushrooming associational life in Africa and elsewhere has succeeded where governments and the private sector actors have failed in the following areas:

- ❑ installing democratic governance structures and processes;
- ❑ reversing the deteriorating poverty condition;
- ❑ effectively lobbying for favourable international trade and investment regimes;
- ❑ intervening effectively to promote peace and pre-empt conflicts; as well as
- ❑ responding effectively to the challenges posed by globalisation (Aina 1996; Rosenau 1997; Hirst and Thompson 1999; Nnoli 1999; Campbell 1999; Ninsin 2000).

Indeed, some argue that the expansion and dramatic participation of civil society in the enlarged public space has largely been a rent seeking industry, fuelled by the accelerating economic crisis and lack of alternative forms of livelihood in most African countries.

The diverse conceptualisations and perspectives on civil society suggest that there cannot be one standard conceptualisation of civil society, given the dynamic, heterogeneous and complex nature of this sector and the different forms it takes in different contexts. This is also a pointer to the need for caution in making any generalisations and/ or adopting a 'one size fits all' approach in assessing the role of this social sector, without supporting data.

In this chapter, therefore, we use the term civil society liberally and flexibly to refer to any of the diverse formal and informal associations: NGOs, CBOs, professional bodies, credit rotation groups, burial associations, etc, whose operations take place outside the arena of the state and its related constituent sectors and institutions of governance, including parastatal bodies. Furthermore, Kenya being a class society, civil society, by whatever definition, is not only heterogeneous in its nature and operational focus but also it invariably advances and represents divergent and specific class interests. Class cleavages, differentiated access to political

power as well as other resources, further define the way different groups relate to the state and political society and to the private sector. Indeed there is need to desist from romanticising CSOs. There is no idealised civil society out there waiting to be discovered. Civil society is contextual and the forces of class, ethnic, gender, religious and other social cleavages shape its capacity to act as a catalyst for democratic transformation.

### **TRENDS IN CIVIL SOCIETY: PRE-COLONIAL, COLONIAL AND POST-COLONIAL KENYA**

A study conducted on pre-colonial and post-colonial evolution of Kenya's civil society (Wachira and Katumanga 1999) indicates that the governance structures of civil society basically facilitated internal conflict resolution, while remaining opposed to social class exclusivism. While the colonial and post-colonial states constricted the associational space through legal, administrative and constitutional measures, the pre-colonial social set-up is said to have allowed for the cultural expression, through dances, beer parties, festivities and sports, of civil society. Instead of formalised systems of control of civil society, traditional societies stressed personal discipline and accountability.

In *colonial Kenya*, upon the imposition of the western model of the state with its governance structures, controls over the operation of civil society were introduced in the form of identity cards, licences and policing, that constantly impeded citizens' free action and initiative. At the same time new civil society organisations were created. Some of the institutions established by the settlers included agricultural and professional associations, for example: Kenya Farmers Association (KFA); the Kenya Co-operative Creameries (KCC); and the Law Society of Kenya (LSK). *Maendeleo Ya Wanawake Organisation* (MYWO)—that has remained the largest national women's organisation, with the widest national spread—was a creation of the colonial state, although it was formed to also, presumably, serve the interests of local African women. And various Christian churches served as umbrellas over a substantial section of civil society.

Most of this civil society experienced some form of state control. A few

exceptions that escaped stringent controls in colonial Kenya included MYWO, which from the outset operated as a civic arm of the State, and the Christian Churches that remained somewhat unregulated throughout the colonial and post-colonial eras. Consequently, the churches became an important civic umbrella, sheltering and giving sanctuary to groups that even the post-colonial state, during the Kenyatta and Moi regimes, may otherwise have considered unauthorised and illegal. In so doing, the Church served as a refuge centre for nascent democratic forces that were regarded by government as "dissident" groups, until they were strong enough to confront the state.

The institutional exclusion of African associational forms that emerged in colonial times, and the failure of the colonial state to provide an institutional channel for Africans to express themselves and their grievances, motivated the formation of the informal groups within which many traditional social activities at the local level of community and clan took place. Much politicking in Kenya still takes place outside of formal institutions and structures: funerals, especially among the Luo and Luhya of Western Kenya, weddings, family and clan get-togethers are important associational fora. Informal associations are important because of their ability to act as and provide a social security system critical in times of need. Indeed, given the ritual and symbolic significance of some of the functions, which these associations perform, and the financial implications involved, especially in communal support of funerals, the state would hesitate to rush into ill-advised regulation. Informal social fora therefore easily provide unique opportunities for local political leaders to meet their constituents without the blessings of the administration.

The role of religious organisations also evolved in the post-colonial era. Unlike during the colonial times, when religious institutions mainly served a spiritual and educational function, most mainstream churches and other religious institutions replaced the state as the main provider of services ranging from health and food relief to provision of seeds to farmers. Having almost assumed the role of an alternative state, religious institutions became an effective lobby for citizens' voices of protest and concern over the state's undemocratic governance and its failure to respond to citizens' basic socio-economic needs. Increasingly, therefore, especially

after the post-1992 multiparty general elections, the Moi regime became wary of the religious sector and began to regularly warn this sector to steer off what it viewed as unwarranted interference in the non-religious political territory.

In future, the importance of the influence on the state of both formal and informal associations will vary according to the willingness of the formal state institutions to respond to societal demands. Most formal groups in Kenya must today still meet stringent registration requirements laid down in the NGO Co-ordination Act and the Societies Act, that are not only restrictive, but lead many people to prefer to associate with only the informal groups that they trust. The consequence, then, is not just the fact that for many people most important associational activities take place within the family, the clan and the tribe, but that their organisational capacity for economic and political development is constrained within those limits.

In the *post-colonial* era, some of the civic institutions established by the settlers such as agricultural and professional associations have evolved and become Africanised. These include the Kenya Farmers' Association (KFA), and the Kenya Co-operative Creameries (KCC), both of which have had their fortunes ebbing and flowing depending on the political regime in power. Their effectiveness in future will depend on their margin of autonomy to advance the corporate interests of their members.

In the professional category, the Law Society of Kenya (LSK) has survived and grown, albeit with a chequered career. Up to the early 1970s, mainly Asians and Europeans dominated the LSK. It was not only patronized by the then President Kenyatta, but rarely spoke out on political issues, confining itself mainly to the welfare of its members. The increase in its African membership and change in orientation of its Council in the 1980s saw it increasingly take a critical stance on the repressive activities of the government and most importantly resisting the government's unofficial policy of cooptation of all strategically placed NGOs during the 1980s.<sup>3</sup> Having resisted cooptation, LSK from the mid-eighties became a key player in civil society, teaming up with the

3 • This policy was effectively applied to MYWO, which became KANU-MYWO, and to the Central Organisation of Trade Unions (COTU).

religious bodies, to emerge as an important pro-democracy actor. By 1990, the relationship with the state had been strained to the point of no return, as its key members increasingly took up representation of political actors agitating for return to political pluralism. LSK had finally succeeded in becoming a professional human rights NGO and a catalyst for democratic change.

*Maendeleo Ya Wanawake Organisation* (MYWO), in contrast, having been set up in 1952 as the only national gender based civic arm of the colonial state, and with an all white leadership, initially served to contain pro-Mau Mau women activists/sympathizers and promote passivity and subservience among African women (Nzomo 1996). Although this organisation has grown, become Africanised and evolved over time, it largely continued to be a civic arm for promoting the state interests of both the Kenyatta and Moi regimes. Despite several attempts in the 1990s to disengage itself from state control, it had not succeeded by 2002, when it declared its partisan support towards the then ruling party, KANU, in its political bid to retain power (*EAS*, 16 August 2002).

Thus, for much of the period up to 2002, the only CSOs that were allowed to freely operate without undue harassment or threats of deregistration were ethnic associations, the church-led organisations which were considered less confrontational and MYWO, which remained consistent in its support of the KANU government, especially in political mobilisation of the huge women constituency at election time. The KANU regime could see within the ranks of these two civic sectors certain fractions that could be mobilised in support of government when the need arose.

In contrast, attempts by previously proscribed unions such as the University Academic Staff Union (UASU) and the Kenya Medical Practitioners and Dentists Union (KMPDU) to seek registration by the government failed. Their attempts to use strikes to pressure the government did not succeed. The government reacted to these efforts by using the police to intimidate into silence or self-exile the leadership of these unions.

## POST-COLD WAR LIBERALISATION AND MUSHROOMING OF ASSOCIATIONAL LIFE IN KENYA

The end of the Cold War had far reaching effects globally on the socio-economic and political life of many societies. In Kenya, as in many African countries, the immediate impact was felt in the political arena, with the ascendancy of a new ideological dispensation among Western donor countries that increasingly linked aid disbursement to good governance and economic and political liberalisation. Political liberalisation meant opening up the public political space for a multiplicity of social actors to participate freely. The West's preoccupations with the Cold War had previously hindered the expression of concern over political repression in African countries.

In Kenya, as in many African countries, civic associations and other agents of social change dramatically mushroomed and gained prominence as catalytic social actors, responding to the challenge of undemocratic governance, political instability, poverty, and social fragmentation, which had remained major features of African political and socio-economic conditions for most of the post-colonial era. (Chole 1999; Botchewy 1999; Mkandawire and Soludo 1999: 88). The persistence of these challenging problems and the failure of African governments and the private sectors to find solutions to them gave impetus and justification to the need for continuous search for catalytic social actors, of which civil societies became prominent agents, playing the roles of human rights pressure groups, lobbyists, civic educators and socio-economic service providers to the poor and marginalised groups of their respective countries.

The dramatic growth of the *associative movement* in Kenya, and Africa as a whole, from the beginning of the 1990s thus came to be viewed as both a result of the post Cold War economic and political liberalisation trends, and also a response to the shrinking capacity of African states to provide social welfare and security to their citizens and to govern democratically within their respective territories. These developments facilitated the opening and expansion of the public space for non-state actors to intervene in sectors that had previously been monopolised by the state (Ibrahim 1997; Mkandawire and Soludo 1999).

In Kenya, the 1990s thus inaugurated a new phase of resuscitation and renewal of old CSOs that had been demobilised; as well as dramatic upsurge and vibrancy of new social movements and diverse claimants to socio-economic and political rights. In the process, the very concepts of *entitlement* and *citizenship* began to attain profoundly new emphasis (Ndegwa 1995).

Political liberalisation in Kenya also coincided with a period of increased levels of insecurity, violence and crime, resulting from rising levels of poverty. Thus the post-Cold War era also witnessed new forms of associational life, organised around privatisation of security provision and extra-judicial administration of justice, as well as renewed struggles over property rights and resource entitlements. This trend not only set in motion the formation of multiple organised forces of social control, including local militia and vigilante groups, but also organised terror gangs and death squads, such as carjackers and the Mungiki sect. The latter can be said to represent the unconventional face of civil society but is, nonetheless, a non-state actor engaged in struggles over rights, entitlements, and access to scarce resources. (Ninsin 2000; Hirst 1999; Nzomo 2000).

A related but externally generated factor that further accelerated the mushrooming of Non-Governmental Organisations (NGOs), Community Based Organisations (CBOs) and myriad other formal and informal associations in Kenya, since the 1990s, has been international funding agencies' disillusionment with President Moi's misgovernance and especially rising levels of state managed corruption, to which development failures were attributed. This led to an overwhelming donor interest in civil society as the only available alternative vehicle for delivering development and democratic governance. The donor funding that accompanied this policy shift, brought into action a new set of CSOs, some of which came to be labelled "briefcase NGOs" alias "My Own NGO (MONGO)", alias "Non-Governmental Individuals (NGIs)", to denote their personalised nature and weak institutional base.

## **ROLE OF KENYAN CIVIL SOCIETY IN MULTI-PARTY POLITICAL TRANSITION**

The term *political transition* is normally used to refer to the move

between different sets of rules governing the distribution of power that in some cases is accompanied by regime change (Holmquist and Ford 1998). Kenya went through one political transition in 1991 when the *de jure* single party political system was replaced with a multiparty political system that allowed greater freedom of association, assembly and expression, although at the same time it continued to provide a strong legal basis for the regime of President Daniel Moi to harass and constrain activities of the political opposition, CSOs, and other pressure groups and almost completely derail democratic development in Kenya. This, and the socio-economic crisis that has been on the upsurge for at least fifteen years, provided the catalyst for a growing social movement organised primarily around the following agenda: (a) constitutional reform; (b) upholding of human and women's rights; (c) civic education; (d) and the holding of free and fair multiparty elections as a first step towards the restoration of democratic governance in Kenya. These may be singled out as important political transitional as well as medium term goals, whose realisation CSOs would endeavour to ensure. Towards this end Kenyan CSOs have employed different strategies, including: (a) civic rights awareness education; (b) gender rights awareness education and women's empowerment programmes; and (c) pushing for comprehensive constitutional and governance reforms.

This chapter assesses the performance of the Kenyan CSOs within these three parameters.

### **Transition to Political Pluralism**

Immediately after the end of the Cold War at the end of 1989, Kenyan CSOs led by the Law Society of Kenya (LSK) and the National Council of Churches of Kenya (NCCCK), felt emboldened enough to begin the clamour for governance reforms and expanded political space. Agitation for return to political pluralism began in earnest on 1st January 1990, spearheaded by a radical NCCCK clergyman, Rev. Timothy Njoya, who in his 1990 New Year church sermon, called for the introduction of political pluralism. This cue was soon taken by reform seeking clergymen and politicians—Bishop Henry Okullu, Charles Rubia and Kenneth Matiba, among others—and the clamour for a multi-party system culminated in the detentions without trial of Rubia, Matiba and Raila Odinga and the

subsequent illegal Kamukunji rally and protests of 7 July 1990 and the so-called Saba Saba riots that shook Nairobi and the surrounding areas. Many events later, including the sustained pressure from politicians like Jaramogi Oginga Odinga with active support from CSOs (e.g. the Law Society of Kenya, the Kenya Human Rights Commission and some religious bodies), the government made concessions in the form of the George Saitoti-led KANU Review Committee, and a pressure group, Forum for the Restoration of Democracy (FORD), was formed, being a coalition of old politicians, young lawyers and political activists that became a powerful force in pressurising the Moi regime to concede to the growing demands for political pluralism and constitutional reforms.

This civic-led pressure found support among Western governments based in Kenya, some of who froze further aid disbursement to Kenya, until the Moi government conceded to political pluralism. The combined pressure saw the KANU government in December 1991 amend the constitution to remove section 2A, thus allowing the formation of other political parties.

The reform movement gained momentum immediately after the return to multi-partyism in December 1991 but failed to effect fundamental constitutional changes before the December 1992 elections, clearly indicating the inability of the CSOs to push through to ultimate conclusion its reform agenda. Its allies in the form of political parties demonstrated that, in the final analysis, power considerations took precedence over the reform agenda.

### **Role of CSOs in Constitutional Reform**

The stalled reform process was picked up again in 1993, now focussing on constitutional reform as a key prerequisite for building democratic governance in Kenya. United in this belief, several legal and human rights NGOs, namely, Kenya Human Rights Commission (KHRC), LSK, Citizens' Coalition for Constitutional Change (4C's) mobilised other like-minded sectors of CSOs and opposition parties, to deliberate over the realisation of constitutional reform, as the only basis for democratic development in Kenya. This second initiative at constitutional reform focussed on the *methodology* and *content* of the desired new con-

stitutional order. The initiative resulted in the widely publicised Model Constitution document entitled *Kenya Tuitakayo/The Kenya We Want*, which was endorsed by 28 civil society organisations and key opposition political parties. This initiative, though dismissed by the Moi regime, and which received only lukewarm support from the Kenyan public, in my view, highlighted the key issues that later dominated subsequent discourse on constitutional reform in Kenya.

As a follow up to the 1993 initiative, several coalitions led by opposition political party leaders and geared towards constitutional reforms were formed, including the United Democratic Alliance (UNDA), the National Opposition Alliance (NOA), and the Solidarity Alliance. All failed to pressure Moi and KANU to initiate reforms.

At the close of 1996, radical middle class elements from CSOs led by Citizens Coalition for Constitutional Change (4C's) came together around the question of constitutional reform, and successfully assumed the mandate of instituting constitutional reform in the absence of the cooperation of the incumbent regime, setting the political agenda for the rest of the year. This was a significant achievement, given the diversity of interests and the fragmented nature of the Kenyan CSOs and other pro-democracy forces that supported this initiative.

It is these CSOs that provided leadership and vision to the efforts that resulted in the formation of the 1996 Coalition, National Convention Preparatory Committee (NCPC), bringing together all political parties (except KANU), NGOs and churches. It is this umbrella body that was later transformed into the National Convention Executive Council (NCEC) which presided over a series of violent protest rallies and other forms of mass action and civil disobedience aimed at pressurising the government into conceding and initiating the process of comprehensive constitutional reforms before the December 1997 elections. Within this framework, NCEC organised the disruption of the reading and debating of the national Budget on 19th June 1997, as a way of sensitising, and mobilising support from, the Kenyan public and the entire world, for comprehensive constitutional reforms as the most urgent issue that had to be addressed before the elections. This was partially achieved by successfully disrupting the reading of the

budget through a well-orchestrated commotion in parliament witnessed by foreign envoys and ex-President Moi who were present in parliament.

As a follow up to this event, NCEC called for multiple public rallies on the 7th of July 1997 across the entire republic. Despite the ensuing Nairobi based demonstrations resulting in more than fourteen Kenyans dead, the government remained intransigent. Furthermore, by August 1997, only radical CSOs and a few radical politicians remained committed to the idea of *comprehensive* constitutional reforms as advocated by the NCEC.

Most of the opposition parties joined their KANU political colleagues in a minimum reform initiative that would become known as the Inter-Parties Parliamentary Group (IPPG), under whose auspices Parliamentarians eventually passed the minimum reforms, which they believed were critical for holding free and fair elections. Most of the opposition leadership, blinded by power considerations, deluded themselves that KANU would live up to its promise of not only honouring the entire IPPG package but also instituting comprehensive constitutional reforms after the elections. The IPPG repealed, among others, the notorious Chiefs' Act; allowed for an expanded Electoral Commission (with the additional commissioners being nominated by the opposition). With the repeal of the Public Order Act, the opposition was allowed to hold meetings consequent upon notifying the police. In reality, KANU used the IPPG reform initiative to outmanoeuvre the opposition and derail the CSOs-led constitutional reform initiative. In so doing, it succeeded not only in fragmenting pro-reform forces, but also the opposition political parties, which subsequently lost the 1997 presidential elections. Though both KANU and the opposition parties found common ground in their pursuit of raw power, ordinary Kenyans perceived themselves as the losers and democratic change was once again denied.

After the 1997 elections, the push for constitutional reforms pursued a similar pattern as previously observed, remaining primarily a middle class agenda (Mutunga 1999) featuring most prominently the NCEC and other like minded CSOs that hoped to mobilise support countrywide and, this time round, prevail on the Moi regime to concede to popular

demands for constitutional reforms. The *Safari Park* and *Bomas of Kenya* constitutional initiatives succeeded in getting the government's concession for the commencement of the constitutional review process, launched through the enactment of the Constitution of Kenya Review Act in 2000.

Despite the apparent revival of the reform process, the KANU government continued to procrastinate on the process, as wrangles over the state appointed Commissioners saw the religious sector and other CSOs organise a parallel process that became known as the *Ufungamano Review Process*, which was pitted against the government appointed *Constitutional Review Commission of Kenya* (CKRC), with Prof. Yash Pal Ghai as the Chairman. Attempts by CSOs to pressurize the KANU regime to agree to an all inclusive reform process were further undermined by the decision by one key opposition party, the National Development Party (NDP) of Raila Odinga, to merge with KANU in early 2001. Furthermore, a merger deal brokered between Chairman Ghai and *Ufungamano* leaders, saw CSOs once again fractured between the radicals opposed to the merger and the moderates in favour of the merger.

From mid 2001 up to October 2002, the merged and expanded CRCK team progressed with its mandate of collecting and collating views of Kenyans for a new draft constitution, amidst endless controversies within itself and between it and various political and CSO interest groups. Despite these setbacks, a draft constitution was completed by October 2002 and a Constitutional Conference organised for debating and agreeing on the final draft constitution that would then be tabled before parliament for approval. The Moi government pre-empted this by first dissolving parliament and by extension one third of the constitutional conference delegates, a week before the commencement of the constitutional conference and then stopped indefinitely the conference a day before its official opening. Protests from CSOs and Kenyans generally were ignored. Opposition parties were clearly half hearted in their protests and seemed to be more anxious to get on with their election campaign programmes. Instead they made an election pledge to Kenyans that if they won the elections, they would ensure a new constitution was in place within the first 100 days after taking office. It was on the basis of this

promise that many Kenyans voted for the main opposition coalition organised under the political label the National Rainbow Coalition (NARC). NARC indeed went ahead to win the election with a large majority. More than a month now since taking office, the NARC government, through its new minister of Justice and Constitutional Affairs, has pushed the re-convening of the constitutional conference to June 2003, and denied ever having promised a new constitution within 100 days of taking office. Others, some of them NARC MPs, disagree with the government position on this matter (*EAS* 6 February, pp. 1 & 2).

### **The Role of Civil Society in Civic Education**

Some observers believe that NGO-led civic education efforts, first carried out in the process of voter education in 1992, and later elaborated through more broad constitutional, legal and civic rights education, must have had a positive impact as evidenced by the KANU regime's hostile reaction in the form of harassment and disruption of civil society-led civic education seminars, which in government circles were viewed as essentially anti-KANU rather than as a genuine pro-democracy effort that could be a catalyst for democratic development and peace in Kenya (Kibwana 1994). Civic education, in my view, has played an important role in the democratic political transition in Kenya—especially in raising public civic awareness of individual and collective rights and making citizens aware of their power as voters who are entitled to demand that their elected government rule democratically (Nzomo 2002).

In this regard, since 1992, numerous Kenyan NGOs and grassroot organisations countrywide have been engaged in work aimed at raising public awareness of their rights, entitlements and obligations, as well as on the methods of gaining access to and exercising such rights. Civic education has thus raised the capacity of the public to understand the manner and process of governance.

However, political pluralism over the last 10 years, whatever else it has failed to do, has facilitated the emergence and mushrooming of CSOs, most of which have embraced the mission of civic education as their main agenda, to the point where currently, Kenya is flooded with civic

educators. There are many "briefcase" organisations and individuals, who in recent times have "discovered" that they have the capacity and commitment to educate Kenyans on rights. Indeed, the civic education project has become an industry with too many "experts" and opportunists and too little expertise and genuine commitment. In this connection, the civic education project runs the risk of becoming commercialised to the point of losing its original objective of empowering Kenyans with the civic knowledge that they require in order to gain greater control over their lives and the governance process. The challenge, however, is to sort out the genuine civic educators from the rest.

### **Engendering the Political and the Constitutional Reform Agenda**

The gender-based civil society in Kenya has experienced some of the same constraints as other fractions of CSOs, including fragmentation and lack of a sustainable commonly accepted gender agenda.

Despite this, women NGOs and CBOs have played significant roles not only in the traditional socio-economic arena but also in engendering democratisation especially in the political arena (Nzomo 1993, 1994, 1995, 1996 and 1999). Since the onset of multipartyism, a few radical women's NGOs, notably the League of Kenya Women Voters (LKWV), the National Commission on the Status of Women (NCSW), the Education Centre for Women in Democracy (ECWD), the International Federation of Women Lawyers (FIDA-K), the National Council of Women of Kenya (NCWK) and the Collaborative Centre for Gender and Development (CCGD), among others, initiated civic education with the following components:- (i) gender sensitisation for men and women, (ii) training curriculums aimed at political empowerment and capacity building especially for women as candidates and voters for electoral politics.

Through the civic education initiatives of women's NGOs, working in collaboration with community based women's groups (CBOs), there has been increased gender and civic awareness, whose immediate impact has been observable in the increased numbers of women running for and being elected to political office since 1992; with six of them being elected to parliament in 1992—the highest number ever in post-colonial Kenya.

Though the figure of elected women MPs went down to 4 in 1997, there was an increase in women running for political office and their greater political visibility, with two of them vying for the presidency and one becoming a major presidential contender. The number of elected women MPs has risen to 9 in the 2002 elections, with 8 of them winning under the NARC party ticket. The choice of a large number of women candidates to run on the widely popular party (NARC) ticket certainly contributed to the relatively higher number of elected women MPs than had earlier been predicted.

Another significant achievement of the women's civic groups in Kenya was the formation in 1998 of the short-lived national umbrella body, made up of 43 women's organisations and accommodating 23 women leaders, including 6 MPs, under the label the Women's Political Caucus (WPC). This network contributed to the temporary strengthening of the organisational and delivery capacity of the women's movement.

Indeed, it was through this network that the women's movement effectively lobbied for the engendering of the constitutional reform process, and as a first step, insisted and obtained a fairly good representation in the constitutional review process which, as analysed above, has been through considerable twists and turns since its inception in 2001. The women's lobby groups succeeded in securing at least one-third membership in the drafting committee of the Constitutional Review Commission, as well as in the District and National Forums and as delegates for the Constitutional Conference now postponed to June 2003.

The potential of the WPC was immense, as demonstrated in the initial role it played in engendering the reform process by negotiating and obtaining acceptance of the women's agenda therein. WPC however failed to determine and get consensus on the minimum gender agenda that could glue together its diverse membership, with its conflicting and overlapping interests and alliances. The acrimony and the eventual split of the WPC in 2000 was a testimony of this failure. Indeed the funding agencies' realisation that the coalition of the women's lobby groups would not hold led them in 2000 to decide on splitting the funds allocated for the Engendering the Political Process Programme (EPPP) between the two key factions that emerged out of the original Women's

Caucus—the Kenya Women's Political Alliance and the Kenya Women's Political Caucus. The result of this decision was to reduce the bickering and acrimony, but also to weak the overall effectiveness of the women's movement in influencing the political process, especially during the crucial and historic transition year of 2002, when major political events that would shape the political landscape of the country in the post-Moi era were unfolding.

The 2002 elections were preceded by a two year period during which women's political NGOs were engaged in a well funded preparatory and empowerment period under the so called Engendering the Political Process Programme (EPPP). Despite a well-funded EPPP, for most of 2002, when the succession and constitutional review debates took centre stage in Kenya's political discourse, there was a notable absence of women's voices in those debates. This was noted by several media and gender analysts, who decried the fact that, with a few exceptions, women's voices and political visibility, were almost totally lacking:

It is disheartening to note that in Kenya, women seemed to have resigned to fate. They seem to want things to happen to them without taking the initiative to be part of the change they crave. They refuse to do as much as whisk off a fly on the tip of their noses ... women seem to be waiting for someone else to deliver them. But who will wake up women from their sleep, to do what they ought to do to improve their lot? Even the current jostling for power does not include women. Even the most vocal among them seem to be saying, by their eloquent silence, that the race is too hot for women ... we do not want women to complain later that they were left out. They have to be part of these power shows, and the time to get out is now. (EAS, 21 August 2002)

However, rather belatedly in early November 2002, a loose coalition of women's NGOs, including many of those affiliated to the Women's Political Alliance and Kenya Women's Political Caucus—FIDA-K, LKWV, CCGD, FREDA and NCSW—as well as individual activists and professionals, banded together to form a forum that was initially labelled *Women for NARC*, but was transformed some three weeks later into the *NARC Women Congress (NWC)*. This *ad hoc* women's coalition had a very *short-term political mandate*, but a *more long-term political objective*. The short-term mandate was to employ every available means

to ensure the NARC party won the 2002 elections. For two months, NWC members volunteered their time and even financial resources to produce and disseminate presidential and party campaign materials; organised and conducted training for election party agents; participated in the presidential campaign; and monitored the election day polls. The key objective of this spirit of volunteerism was to obtain a guarantee from the male dominated NARC that if the party won the elections, it would incorporate women as equal partners in the post-election power sharing and would complete and engender the constitutional and governance process generally. A proposed memorandum of understanding to formalise the envisaged partnership was never tabled. Ultimately then, there were no guarantees, save for those contained in NARC's election Agenda document. The envisaged post-election power sharing arrangement has not been adhered to. Indeed, the only gain for women was the nomination of 5 women out of 7 NARC nominees as Members of Parliament.

As shown in Table 000, since Kenya's independence some 40 years ago, women's performance in the area of parliamentary electoral politics has only registered marginal improvement in the 2002 elections.

**Table:** Performance of women in parliamentary elective and appointive politics, 1963-2002

Year	No. nominated to contest polls	No. elected	No. Nominated to Parliament
1963	7	0	0
1969	13	1	1
1974	11	1	1
1979	15	5	1
1992	19	6	0
1997	48	4	5
2002	44	9	8

But in other decision-making structures, it is a mixed bag of gains and losses. For example, whereas for the first time women secured 6 ministerial positions, they lost out on some of the quantitative gains made under

the Moi regime, especially in the appointment of Permanent Secretaries (PSs). Whereas in the last Moi government the civil service was headed by a woman and an additional 6 women were PSs, the Kibaki administration civil service is headed by a man and has only 3 women PSs., as shown in the table below.

**Table:** Women in Key Positions in the NARC Government (by April 2003)

<b>Ministries</b>	<b>Ministers (M) &amp; Assistant Ministers (AM)</b>	<b>Permanent Secretaries</b>	<b>Ministerial Directors</b>
Ministry of Health	Charity Kaluki Ngilu (M)		Florence Musau
Ministry of Water	Martha Karua (M)		
Office of the Vice-President and National Reconstruction:	Linah Jebii Kilimo (M)		
Tourism & Information	Beth Wambui Mugo (AM)	Rebecca Mwikali Nabutola	
Local Government	Beth Njeri Tett (AM)		
Environment, Natural Resources & Wildlife	Prof. Wangari Maathai (AM)	Rachael Arunga	
Labour and Human Resource Development		Deborah Ongewe	
Education, Science and Technology			Naomi W. Wangai
Justice and Constitutional Affairs			P. Uniter Kidullah (Public Prosecution)
Gender, Culture and Sports	Alicen Chelaite (AM)		

Thus in sum, although the gender sector of organised civil society has been an active and sometimes effective lobbyist in engendering democratic change in Kenya since the beginning of the political transition in 1992, this sector missed a strategic political moment in the 2002 politi-

cal transition. It failed to maximize its potential gain at this critical moment and hence become a major player, with adequate capacity to negotiate effectively on power sharing arrangements. This was in part a reflection of the socio-political fragmentation and lack of a common vision and consensus on a minimum gender agenda that is reasonably inclusive and articulates the interests and expectations of women across the board, but also enlists the support of non-gender social sectors.

### **Civil Society: Post 2002 Election Reform Agenda**

The events of October 2002 to January 2003 seem to indicate that CSOs, once again, lost to politicians the power to control and give direction to the constitutional reform agenda. Following the indefinite postponement of the constitutional conference in October 2002, the major pre-occupation shifted towards electioneering, followed by a popularity euphoria around the new NARC government that seems to have rendered ineffective any criticism levelled at the new government. Furthermore NCEC, that was previously quite vocal in its push for constitutional reforms, seems to have lost momentum following the departure of one of its key leaders, who is now a NARC MP. In place of NCEC, Kenya Human Rights Commission (KHRC) has emerged to provide leadership in this regard. In this connection, its executive director in an interview conducted in September 2002 reminded CSOs to remain the custodians of the national interest, arguing that political parties do not see the national interest beyond their selfish pursuit of power. He also appealed to Kenyan voters to make concrete demands on the political leaders who were seeking office from both sides of the political divide, and not to allow anyone to ascend to power unconditionally (EAS, 28 September, 2002, p. 8).

Thus, while on October 2, 2002, the KHRC endorsed Mr. Mwai Kibaki and the National Alliance Party of Kenya for the presidential elections, the KHRC emphasized that the KHRC reserved its independent right to scrutinize and criticize state policies, laws and practices that are inimical to human rights and human dignity, and would accordingly hold the Kibaki Government accountable for its human rights record.

due to its promise, the NARC, in a lengthy press statement published by the local print media a week after the NARC government took office, reminded the government of its yet unfulfilled campaign pledges to Kenyans which required urgent and immediate action (*Daily Nation*, 9 January 2003). These were pledges on:

- ❑ a new Constitution;
- ❑ ending Corruption;
- ❑ establishment of a Truth Commission;
- ❑ formation of a Freedom Fighters committee;
- ❑ gender sensitivity and inclusiveness in governance;
- ❑ establishment of an Office for the First Lady.

It is perhaps too early to make conclusive statements on the likely effectiveness of CSOs in their push for the completion of the stalled constitutional reform process. However, some general assessment of the lessons from the reform process to-date can be made.

First, as already noted, the push for constitutional reforms during the multiparty era has been clearly engineered and led by an urban-based middle class composed of pro-democracy, human and legal rights NGOs, religious organisations and opposition forces. In this connection, constitution making in Kenya has tended to reflect class struggles within this political society, and hence the “national consensus” that is reached largely reflects the interests of some dominant social groups, admittedly with some concessions made to the other dominant groups in society (Mutunga 1999).

Secondly, for those in the opposition or in power, whether or not they supported constitutional reform, the ultimate position taken, was determined primarily by their calculation of the extent to which such reforms would advance or curtail their chances of getting or retaining power. For example, the then ruling party KANU continued to see the reform process as a means to defuse political tensions without any meaningful structural changes of the state and other institutions of governance.

Under such political logic, no constitutional reform initiative could be permitted that would threaten the political and economic interests of the political class. Thus, the numerous amendments to the constitution were aimed at entrenching vested regime interests, thus facilitating corruption and legitimising regime oppression in Kenya. The guided reform process then became the means either to retain *control for those within it* or *capture the state for those outside it* (Katumanga 1998).

Thirdly, the weakness of CSOs and their failure to mobilise mass support was largely due to their failure to link the legal reform agenda to the situation prevailing in the social and economic sectors, e.g. health and education, as well as to pertinent welfare concerns, including pervasive poverty, the inability of the majority Kenyans to access water, shelter, and credit facilities. Despite the fact that a number of CSOs including 4Cs, International Commission of Jurists (ICJ), Kenya Aids NGO Consortium, Kenya Alliance for Advancement of Children, Kenya Pastoralists Forum, Network for Water and Sanitation, Association for Physically Disabled, Shelter Forum and the National Council of NGOs belatedly set up a steering committee whose objective was to campaign for constitutional reforms that would commit the government to treat basic needs as a basic right, this campaign never took off. Little effort was made to mobilise non-middle class target groups, to lobby the government to mainstream reforms in social sectors such as land, education and health.

### **General Constraints to Civic Action in Kenya's Political Transition**

Although Kenyan civil society organisations have for a decade now been at the forefront of agitation for constitutional reforms, civic and gender rights education and training and empowerment campaigns, the impacts of these initiatives in bringing about the desired changes has had mixed results and come short of what their neo-liberal donors and other supporters would have wished to see after a decade of activism. What does the performance examined above tell us?

During the on-going political transition, they remain a deeply divided sector, unable to muster an impact commensurate to their potential.

Broadly speaking, however, the Kenyan civic sector, like its counterpart

elsewhere in Africa, has in its operations displayed some strengths and some weaknesses. Some of the strengths noted include its *resilience, flexibility* and its capacity for employing *diverse approaches* in promoting its defined 'public good,' as well as its ability to mobilise resources to fund the promotion of a target programme. This has been especially notable in its delivery of civic education. In this regard, the participatory approaches used by civil society increase its effectiveness in programme delivery. The important role played by Kenyan human rights NGOs in the push for democratisation since 1990 cannot be overemphasized. These NGOs have taken on the lead role in raising civic awareness of the citizenry; lobbying and pushing for legal and political reforms and generally the democratisation of structures and processes of governance.

But how come then the political class has to-date succeeded in stalling constitutional reform and the transformation of governance structures, despite the noted strengths of CSOs? Studies on Kenya and sub-Saharan Africa generally (Nzomo 2000), indicate that CSOs possess inadequate capacity to intervene effectively in transformative agendas such as poverty eradication and/or radical democratic change. This incapacity derives from some structural shortcomings, which in turn mirror those of the larger society from which CSOs emerge. These include:

- ❑ *social fragmentation*, in some cases manifested as sharp vertical and horizontal divisions on the basis of urban-rural, class, ethnic, religious, gender and political-ideological divides, as well as, on the basis of policy and programmatic differences;
- ❑ *poor co-ordination of activities, with inadequate connectivity between and within various sectors of civil society;*
- ❑ *weak financial base, resulting in a high donor dependency syndrome;*
- ❑ *inadequate flow of information within and between civil society groups, resulting in high duplication of efforts, as well as unnecessary competition and rivalries;*
- ❑ *poor organisational and managerial skills; and*
- ❑ *weak civic and democratic culture.*

Some of the noted weaknesses of Kenyan CSOs are manifested in their general lack of adequate capacity to network and focus on certain com-

mon development goals in order to effectively influence the national political agenda, such as the political transition and legal reform underway in the country. Most of the high profile NGOs in Kenya tend to be urban focussed and single-subject organisations, that are often so pre-occupied with their single and highly localised agenda, that they may not have the interest to develop the necessary outreach capacity to address any other problems around them, and/or to respond to the key emerging challenges, such as the trends and impacts of regional integration and globalisation on the Kenyan political economy.

Some of the weaknesses of the Kenyan civic sector, however, also need to be understood within the larger institutional framework and forces that constrained its capacity to operate during the Kenyatta and Moi regimes. For example, the Moi government played a significant role in fragmenting and obstructing the civic groups it distrusted, constraining their capacity for autonomous action. The state manipulated the laws governing the registration of societies against groups it distrusted and forced NGOs into self-censorship in their advocacy work, for fear of de-registration.

Foreign donors too contributed to CSOs' self-censorship in programme design and implementation, due to the latter's tendency to fund only those CSO programmes that complied with donor priorities and procedures. There was a tendency therefore for CSOs to focus primarily on meeting deadlines for reporting and financial accounting and less on programme quality and impact.<sup>4</sup> CSOs' dependency on donor funding further compels many to design their programmes in line with donor requirements rather than to reflect the CSO's mandate. In so doing, the project's impact and sustainability is compromised. On the other hand, some donors have also complained about a lack of financial probity and discipline on the part of some NGOs which, they claim, give fraudulent accounts and default on performance.

## **CONCLUSIONS: PROSPECTS FOR CIVIL SOCIETY IN KENYA**

The above analysis suggests that there is a lack of conceptual and operational clarity about the phenomenon of civil society, the specificities

4 • According to a 1998 study, some donor favourite Kenyan NGOs received significant funds from the key civil society donors, with one 'favoured' NGO receiving more than 25% of a major donor's total funding to civil society over a two year period, while another received more than 50% of the total donor's support for capacity building advanced to civil society in the country (Maina 1998).

of the actors, as well as the activities and the space of their operation. The analysis also indicates that whichever way the phenomenon of civil society is understood, it is no panacea for changing all that is wrong in Kenya—bad governance, the poverty situation, etc. Civil society is not only highly diverse in its goals, orientations and outreach capacity, it also contains major internal contradictions, social fragmentation, pluralities and multiplicity of social identities, as well as management and institutional weaknesses. This, in addition to the generally unfavourable policy framework that was prevailing up to 2002, and the magnitude of the developmental problem in Kenya, leads me to conclude that we should not romanticise the role of civil society in respect to its capacity for transforming and democratizing the Kenyan political economy.

The above notwithstanding, it needs to be underscored that the role of civil society in Kenya remains crucial in civic education; in lobbying and mobilising popular participation for democratic governance and development, which in this chapter is well demonstrated in those cases where civil society organisations acted in solidarity in pursuit of a common agenda to advance their individual and collective rights and entitlements.

The challenge then is to formulate a strategy to strengthen the institutional, mobilisational, advocacy and service delivery skills of civil society, with the view of making this social sector a more effective and legitimate partner in governance and development matters, alongside the state and other non-state actors at the local level and beyond.

Changing socio-cultural attitudes and mindsets will remain for a long time an important area of civic action. In this connection, while it is absolutely important for now to focus on raising awareness about legal/constitutional issues in order to enlist citizens' participation in the review process, civil society has an even more challenging long term role, namely, to act as a catalyst for changing entrenched socio-cultural values and practices that are likely to hinder the realisation of even the most democratic legal and policy frameworks. A good constitutional order is an important starting point in the move towards democratic governance and development, but hardly an end in itself.

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