

DEMOCRACY REPORT

FOR

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0.1 Staging Posts of Democratisation

1) Summary

The first quarter-century after independence was characterised by a process of increasing restriction on political opposition, first outside the ruling KANU party, then inside it, and by the steady accumulation of powers in the office of the executive presidency at the expense of parliamentary and judicial independence. In more recent years this process has been counterbalanced by the development of an active civil

society, comprising religious organisations, social movements and NGOs, which have resisted the state to campaign successfully in the 1990s for the restoration of multi-party elections and to initiate a process of constitutional reform. However, the emergence of a more pluralist political system since 1990 has been marred by an intensification of overt and politically inspired inter-ethnic competition. The most distinctive feature of Kenyan politics has been the unbroken rule of Daniel arap Moi as President for over twenty years, including his re-election in 1992 and 1997 against a divided opposition. His agreement to retire from the Presidency at the end of his current term of office opens up the possibility of a new political future for the country.

Key Political Dates

10th Century	Malindi founded on the coast and became a centre for a rich African Arab trading culture
1698	Portuguese forced to withdraw from their armed occupation, which had begun in the 16 th Century
1920:	Kenya was under British control from the late nineteenth century, organised in 1920 as a colony (inland) and protectorate (along the coast).
1923	Indian people admitted to the colony's Legislative Council
1920s-30s	Half the local population died as Indian workers building the East African railway to Uganda brought small pox to the country. White settlers took land and as late as 1948, 4,200sq km of the approximately 5,000 sq km of fertile land was held between 5,000 Europeans while one million people occupied fewer than 1,000 sq km. (New Internationalist)
1944	Africans appointed to Legislative Council
1952-1956	The Mau Mau uprising forced Independence, inspired by Kikuyu resentment of the country's best land being controlled by Europeans.
1963	December 12, Kenya became an independent member of the Commonwealth
1964	Kenya established as a republic with Jomo Kenyatta as first President. By the end of the year Kenya had become a <i>de facto</i> one party state, with the merging of the opposition KADU into the ruling party, KANU
1969	Emergent new opposition party KPU banned.
1974	Both President Kenyatta and Vice-President Daniel T arap Moi unopposed for re-election.
1978	Death of Kenyatta, succeeded by Moi.
1979	Moi elected President unopposed, though almost half the members of the National Assembly were defeated in competitive elections between KANU endorsed candidates.
1982	Attempted coup by members of the Kenyan Air Force crushed, the existing Air Force disbanded and opposition figures arrested on charges of treason. One-party system recognised as <i>de jure</i> by constitutional amendment.
1983	Moi re-elected President.
1988	Moi declared re-elected without a vote, and most dissident voices removed from the National Assembly.
1990	Popular pressure for a multi-party and pluralist political system intensified by widespread revulsion at the assassination of Foreign Minister Robert Ouko. Violent government crackdown on demonstrations.
1991	Combined pressure from civil society, excluded politicians and international donor organisations led Moi to accept constitutional amendment allowing multi-party elections.
1992	Multi-party elections won by KANU and Moi against a divided opposition (Forum for Restoration of Democracy, FORD-A and FORD-K), amid charges of intimidation, electoral fraud and vote-rigging. Many people displaced by political violence.
1995-6	Government showdown with opposition and dissident groups campaigning for constitutional reform and a limitation on the President's powers.
1997	Moi takes measures to quell dissent amid increasing demands for constitutional reform. The Bomas and Safari Park negotiations lead to concession in the form of The Constitution of Kenya Review Act 1997, which sought to establish a bi-partisan Constitutional Review Commission. Moi re-elected for a further 5 year term with 40% of the popular vote.
1998	More radical reformers from the previously established National Constitutional Executive Convention (NCEC) viewed the process as insufficiently independent of government, and through campaigning won the establishment of an Inter-Party Constitutional Committee (IPCC) which enabled a programme for the review process to be agreed.
1999	The review process stalled as a result of disagreement between the government and the other stakeholders over membership and representation in the Constitutional Commission, resulting in two review bodies emerging: the Church-led Ufungamano and the Government-led Parliamentary Select Committee. The latter is charged with the task of collecting views on how to rectify the flawed Constitutional Review Act, but is also seen by many as an executive ploy to exclude other stakeholders.

2) Legislature and Presidency

The Bunge/National Assembly has 224 members, 210 members elected for a five year term in single-seat constituencies, 12 members nominated by parliamentary parties and 2 ex-officio members. The directly elected President similarly holds office for a five year term, to run concurrently with the National Assembly.

	National Elections 1992				National Elections 1997			
	Presidential		National Assembly		President		National Assembly	
	Candidate	% of vote	Seats won	Percentage of 180 directly elected seats	Candidate	% of vote	Seats won	Percentage of 210 directly elected seats
KANU	Moi	36%	93	51.66%	Moi	41%	108	51.43%
FORD-A	Matiba	26%	31	17.22%				
DP	Kibaki	19%	23	12.77%	Kibaki	31%	39	18.57%
FORD-K	Odinga	17%	31	17.22%	Wamalwa	8%	17	8.10%
NDP					Odinga	11%	21	10%
SDP					Ngilu	8%	15	6.66%
Safina							4	1.90%
Others			2	1.11%			6	2.86%
Total		98%	180	99.98%		99%	210	99.52%

Source: Barkan 1993; Barkan and Ng'ethe 1998

List of abbreviations

DP	Democratic Party
Ford-A	Forum for the Restoration of Democracy-Asili
Ford-K	Forum for the Restoration of Democracy-Kenya
KANU	Kenya African National Union
NDP	National Development Party
Safina	
SDP	Social Democratic Party

Daniel Toroitich arap Moi became acting president upon the death of Jomo Kenyatta on August 22, 1978. He was designated President on October 10 and inaugurated to fill the remaining year of Kenyatta's term on October 14, following uncontested nomination by KANU. He was subsequently named to a regular five-year term in November 1979; unopposed for redesignation in 1983 and 1988; elected by popular vote on December 29, 1992 and inaugurated on January 4, 1993; re-elected December 29, 1997, and inaugurated to another five-year term on January 5, 1998.

0.2 Economy and People

1) Summary

Kenya is primarily an agricultural economy. Although there is a modern urban-based cash economy, over two thirds of Kenya's population still depend on the household farming system for their livelihoods, a fact that underscores the importance of access to land in order to guarantee economic rights. Of the total land area, about 12 per cent is suitable for intensive cultivation. Subsistence farming dominates, with 60-80 per cent of output produced by women (Banks and Muller, 1998), although production for export of cash crops, particularly tea and coffee, constitutes an important forex earning sector. Manufacturing accounts for only 10 per cent of GDP (ADB). Tourism was the leading foreign exchange earner in the 1990's but has since been eclipsed by tea. Kenya has an external debt stable at about \$7 billion since 1990 (Sayer, 1998), although large foreign exchange losses have been attributed to irregular banking activity. During the 1980s and 1990s health and education have deteriorated, while unemployment has risen. According to the International Committee of the Red Cross (ICRC), it is growing poverty and social tensions in Kenya which are at the root of urban violence, student rioting on the streets of Nairobi and workers' demonstrations. In the late 1980s the government responded to economic deterioration by liberalising investment procedures, and by conducting limited privatisation of state enterprises and encouraging small-scale entrepreneurs in the informal non-farm sector. Financing from external donors has been interrupted, particularly by the World Bank and the International Monetary Fund, on the grounds that more substantial reforms and political liberalisation are required to arrest corruption .

In a regional context, the Great Lakes and Horn of Africa is in a period of instability, with many countries in situations of conflict and/or natural disaster. Kenya, along with Djibouti and Tanzania, has been affected by influxes of refugees.

2) Economic and social indicators

i) Monetary Indicators, 1990s

Year	GDP % real growth	Inflation (average)	Exchange Rate (average: Ks/US\$)	Debt service ratio
1991	2.3	19.6	28.1	30.5
1992	0.4	27.3	36.2	32.9
1993	0.4	46.1	58.0	28.5
1998	1.8	6.6	61.91	-
1999*	1.5	1.8	74.23	-

* Year to July

Sources: World Bank, Economist Intelligence Unit; Financial Times 1993 "Survey of Kenya" citing Central Bank of Kenya, accessed via <http://www.ftdiscovery.ft.com> on 16-11-1999

ii) Human Development Indicators, with selected comparator countries

	HDI Rank (of 174 countries)	Real per capita GDP (PPP\$ 1997)	Population below national poverty line	% Population not expected to survive to		Life expectancy at birth (years)	
				Age 40 (1997)	Age 60 (1997)	1970	1997
Kenya	136	1,190	40%	28.2	56	49.7	52.0
Nigeria	146	920	66%	33.4	52	42.7	50.1
Brazil	79	6,480	17%	11.5	27	58.7	66.8
Mexico	50	8,370	34%	8.3	19	61.1	72.2
Bangladesh	150	1,050	48%	21.5	38	44.2	58.1
United States	3	29,010	No data	No data	13	70.7	76.7

iii) Indicators of inequality with selected comparator countries

	Real GDP per capita (PPP\$) 1997					
	Average	Male*	Female*	Poorest 20% **	Richest 20% **	Richest 20% to poorest 20% **
Kenya	1,190	1,366	1,013	238	4,347	18.3
Nigeria	920	1,293	553	308	3,769	12.3
Brazil	6,480	9,205	3,813	578	18,563	32.1
Mexico	8,370	12,216	4,594	1,437	19,383	13.5
Bangladesh	1,050	1,320	767	606	2,445	4.0
United States	29,010	34,639	23,540	No data	No data	No data

*Data refer to latest year available

** Data refer to latest year available in the period 1980-1994

Sources: Financial Times 1993 "Survey of Kenya" citing Central Bank of Kenya, accessed via internet on 16-11-1999; UNDP 1999 Human Development Report 1999 OUP Oxford; World Bank Kenya at a Glance Sep 1999; Africa Financing Review 1 Sep 1999 accessed via internet on 16-11-1999

iv) Education (Enrolment) In 1995 only 70% of the primary school age population (6-13yrs) was enrolled in primary schools, while 27% of the secondary school age population (14-17yrs) were enrolled at that level. Enrolment in universities is low, with a transition rate of only 7% from secondary schools. (ROK, National Development Plan 1997-2001)

v) Employment

At around 3 million, the unemployed account for roughly 20% of the labour force. Agriculture employs 78% of the employed labour force, industry 7.8% and services

14.2%. The annual employment growth rate stood at 3.3% between 1987 and 1995, while annual GDP growth was only 3.2% between 1993 - 1996 and 1.3% in 1997, meaning that unemployment is only likely to worsen.

vi) Health services

The health infrastructure in the country translates into 1.9 beds per 1,000 persons. In addition, 42% of the population are within 4km of a health facility while 75% are within 8km (ROK, National Development Plan 1997 - 2001). The doctor/patient ratio dropped from 1:5,600 in 1994 to 1:6,800 in 1996 (cf Ayacko and Musambayi 1998). The government (MOH) provides 69% of the manpower in the health sector and 51% of the facilities. The private and voluntary sector accounts for the remaining 49% of health facilities. (Ayacko and Katumanga 1997)

3) Population

Kenya's population of 28.4million (1997) is made up of a large number of different groups of people reflecting a long history of movement and inward migration. Although over 40 distinct groups have been identified some boundaries are difficult to define. The five groups who are most numerous, and who together make up over 70 per cent of the population are the:

Kikuyu	5,550,000	20%
Luhya	3,400,000	14%
Luo	3,150,000	11%
Kamba	2,700,000	10%
Kalenjin	2,700,000	11 %

Source: World Directory of Minorities, ed. by Minority Rights Group International, 1997, 'Kenya', ps.490-493

These groups can also be divided by a broader, language-based view of ethnicity, with the Kikuyu, Luhya and Kamba joined as Bantu speakers who together make up two-thirds of the population. Most other Kenyans are Nilotic speakers, a group which includes the Luo and Kalenjin. The remaining largest group are those of Hamitic or Somali origins, who are Cushitic speakers. There are also non-African minorities of Europeans, Asians (mainly Indians and Pakistanis), and Arabs. Kiswahili and English are the two dominant languages, followed by Kikuyu and Luo.

The pastoral peoples of north-eastern Kenya, including the Somali, Boran, Rendille, and Gabra, are cushitic speakers. They occupy one third of the country, mostly in the arid region, but make up only 3 per cent of the population. The Kenyan Asian and Arab populations numbered less than half of one per cent in the 1989 census. They nonetheless wield a significant commercial power. Only 3,184 Kenyan Europeans were counted in the census, although many more than that are temporarily resident.

4) Children and their prospects

Kenya has a young population on average, with about 15.5 million people, or 60 per cent of the population, below 25 years of age and 45% below 15. Nearly 1 in 10 infants are not expected to survive to their fifth birthday. (ROK 1996, UNDP 1999). Current average population growth at 2.5 per cent, and labour force growth at 2.7 per cent, compares with a current economic growth rate of 1.5 per cent.

Children's life chances with selected comparator countries

	Population (%) with access to...		Infant mortality rate (per 1,000 live births) [c]		Malnutrition among children under age 5 (% , around 1995) [d]	Incidence per 100,000 of...	
	safe water (1990-1997)* [a]	health services (1981-1992)* [b]	1970	1997		AIDS (1997) [e]	TB (1996)
Kenya	47	No data	96	57	22	263.1	125.6
Nigeria	51	33	120	112	36	14.4	23.7
Brazil	24	No data	95	37	6	69.4	54.0
Mexico	15	9	79	29	14	34.3	11.7
Bangladesh	5	26	148	81	56	No data	52.6
United States	No data	No data	20	7	1	225.3	7.9

Source (unless otherwise stated): United Nations Development Programme 1999 Human Development Report OUP Oxford citing World Bank 1997 World Development Report 1997 OUP New York and UNICEF 1999 The State of the World's Children 1999 OUP New York

* Data for latest available year in given range.

[a] access to safe water defined as availability of uncontaminated (treated or untreated) water "not more than 200 metres away" in urban areas. "In rural areas access implies that members of the household do not have to spend a disproportionate part of the day fetching water" (World Bank 1997 "Technical Notes")

[b] Access to health care defined as availability of treatment for "common disease and injuries, including essential drugs in the national list, ... within one hour's walk or travel" (World Bank 1997 as above)

[c] Under-five mortality rate: "The probability of dying between birth and exactly five years of age times 1,000." UNDP 1999 "Definition of statistical terms"

[d] Source: Unicef 1999 "Statistical Data" Figures for combined moderate and severe malnutrition. Severe malnutrition is defined as "children below age five who are below minus three standard deviations from the median weight for age of the reference population". Moderate malnutrition is defined as minus two standard deviations from median age for the appropriate reference group (UNDP 1999 as above)

[e] Data refers to cumulative reported cases among adults and children.

0.3 Ratification of key international treaties and covenants

	Republic of Kenya action with respect to	Status of document (all
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	selected conventions and treaties	countries)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (1984)	Accession 21 Feb 1997 (no reservations)	Signatories: 66 Parties: 118.
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. (1950)	No action	Signatories: 14 Parties: 73.
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. (1962)	No action	Signatories: 17 Parties: 49
Convention on the Elimination of All Forms of Discrimination against Women. (1979)	Accession 9 Mar 1984 (no reservations)	Signatories: 97 Parties: 165
Convention on the Nationality of Married Women. (1957)	No action	Signatories: 28 Parties: 69.
Convention on the Prevention and Punishment of the Crime of Genocide. (1948)	No action	Signatories 42 Parties 130
Convention on the Rights of the Child. (1989)	Accession 30 Jul 1990	Signatories: 140 Parties: 191
International Covenant on Civil and Political Rights. (1966)	Accession 1 May 1972 (no reservations)	Signatories: 60 Parties: 144
Optional Protocol to the International Covenant on Civil and Political Rights. (1966)	No action	Signatories: 25 Parties: 95 (b)
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty. (1989)	No action	Signatories: 24 Parties: 42
International Covenant on Economic, Social and Cultural Rights. (1966)	Accession 1 May 1972. Reservations: “While the Kenya Government recognises and endorses the principles laid down in paragraph 2 of article 10 of the Covenant, the present circumstances obtaining in Kenya do not render necessary or expedient the imposition of those principles by legislation”.#	Signatories: 61 Parties: 142.
International Convention on the Elimination of All Forms of Racial Discrimination. (1966).	No action	Signatories: 77 Parties: 155
Convention relating to the Status of Refugees. (1951).	Accession 16 May 1966 (no reservations)	Signatories: 20 Parties: 134.

Financial support to mothers before and after childbirth.

Source: United Nations Treaty Collection “Multilateral Treaties deposited with the Secretary-General”

b) On 23 October 1997, the Government of Jamaica notified the Secretary-General of its denunciation of the Protocol.

1.0 Nationhood and citizenship

Is there public agreement on a common citizenship without discrimination?

Executive summary

Citizenship in Kenya is inclusive and formally equal for all the country's minorities. However, many groups feel vulnerable, especially populations which are in a minority in a number of rural areas, and those with cross-border affiliations. Moreover, the fact that political parties tended to be supported along ethnic lines, combined with the unbroken rule of KANU for nearly forty years, has meant that those who do not belong to KANU's constituency have felt like second class citizens. This division has also led to fundamental disagreements over the Constitution, which has been regularly amended by KANU to further centralise and concentrate power in the hands of the executive Presidency. Proposals from opposition parties and civil society groups for radical constitutional revision in the direction of greater pluralism and accountability have been the source of much friction with government, with the effect that two rival commissions have emerged (1999), one led by religious leaders with support of the civil society and the

1.1

How inclusive is the political nation and state citizenship of all who live within the territory?

- Citizenship laws are inclusive but discriminate against women and minorities in certain respects.

Kenya is a country of great ethnic, religious and cultural diversity. State citizenship is inclusive, and does not discriminate on grounds of these differences. However, there are significant groups of residents whose citizenship or access to citizenship is insecure with corresponding problems for their legal status.

Migrants and refugees

Kenya has accommodated hundreds of thousands of economic migrants and refugees from civil wars in neighbouring countries during the past few years. The Kenyan government has been criticised for the squalid conditions in which refugees are housed and for the wholesale arrests of foreign residents on spurious grounds.

Borderland residents with dual identities

In the North Eastern Province are groups of pastoralists of Somali and Ethiopian descent, whose Kenyan citizenship is not fully recognized by the government, especially in disputed border areas. Kenyan Somalis throughout the country feel that they are treated as second-class citizens through association with these border conflicts. A specific grievance of theirs has been the requirement since 1989 for Kenyan Somalis to carry a separate pink identity card, in addition to the national identity card carried by all Kenyans. Other groups with complex identities include Kenyans of Arab origin who may also owe allegiance to Saudi Arabia or Yemen.

Women who do not enjoy full citizenship rights in all respects.

- The assent of a male parent or husband required for a woman to acquire a Kenyan passport.
- No automatic naturalization of foreign male spouses for Kenyan women as is the case with foreign spouses for Kenyan men
- Children born in a foreign country of a Kenyan father and a foreign mother automatically acquire Kenyan citizenship. The same does not apply to children born in a foreign country of a Kenyan mother and a foreign father.

Citizenship Laws

Every one born inside the country with one parent a Kenyan citizen has automatic Kenyan citizenship. A person born outside the country does not have automatic citizenship where only the mother is Kenyan. Only citizens of selected African and British Commonwealth countries are normally eligible to apply for naturalization. In making an application for naturalization, a person

- must be aged at least 21 years;
- must have been ordinarily and lawfully resident in Kenya for at least 12 months immediately prior to his application and for an aggregate total of at least four years in the seven year period prior to his application [Constitution §93].

The applicant must also satisfy the authorities as to his “good character”; that he intends to continue to reside in Kenya; and must be able to demonstrate an “adequate knowledge of the Swahili language” [*ibid.*]. Citizenship acquired through naturalization may be revoked by the Minister if he is satisfied that the person has been disloyal to the state [§94]; and may be revoked during peace time if a prison sentence of twelve months or longer is imposed on the person within the first five years of his naturalization.

It is not possible to combine Kenyan citizenship with that of another country. People holding dual citizenship are required to either renounce their Kenyan nationality or to take an oath of allegiance to the state upon reaching the age of 21 years [§97].

1.2

How far are cultural differences acknowledged, and how well are minorities protected?

- Cultural differences are, on the whole, acknowledged. Some minorities enjoy less than satisfactory protection.

Save for the provision in section 70 of the constitution that all Kenyans irrespective of race, tribe, place of origin or residence, political opinion, colour, creed or sex, are entitled to the fundamental rights and freedoms, there is no specific provision for the protection of minorities.

Kenya has not yet ratified the International Convention on the Elimination of All Forms of Racial Discrimination, nor signed the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Kenya is a country of minorities, and all have been vulnerable at one time or another. From colonial times onwards ethnicity has been politicized around access to scarce land, jobs and business opportunities, and also has been used as a mechanism of social control by the state. The ownership by European settlers of the most fertile land and the dominance in trade and commerce of the Asian community has left both groups vulnerable to low-level harassment in the period since Independence. However, the most serious conflicts have been experienced by minority populations in rural areas where they do not comprise the largest ethnic group. These conflicts have their origin in the pressures of land scarcity and different forms of land use, and have been exacerbated by the economic and political expediency of the political elite, often for electoral purposes.

Minorities who have experienced denial of basic rights in recent years have included:

- Kikuyu, Luhya, Luo, Kisii, and Kamba residents of Rift Valley Province. Since 1992, over 200,000 have been displaced from their homes, and up to 1,000 killed at the hands of organized bands of Kalenjin and Maasai youth, whose activities have gone unhindered, if not actively colluded in, by the authorities. The Kalenjin in turn have suffered reprisals.
- Somali and other pastoralists. Hostility between Somalis and the authorities have led to continuous conflict over efforts to control movement, such as the impounding of cattle, resulting in serious abuses, including massacres in Garissa in 1980 (300 people) and Wajir in 1984 (up to 2,000) and 1987 (300). (figures from World Directory of Minorities).
- Muslims and people of Arab descent.
- The Okiek and Aweer. These hunter-gatherers are dependent on forest resources, but government policies of defining forest as 'state land', to be allocated to politicians and powerful local investors, have jeopardised their communal livelihood.
- Upcountry people resident at the Coast have been victims of sporadic attacks especially in the run-up to the general elections in 1992 and 1997.

Despite these chronic conflicts, however, Kenya has not disintegrated into civil war, and many citizens do not identify with tribal and ethnic politics. Encouraging developments include the growth of an educated middle-class which cuts across ethnic lines, and the development of a vigorous civil society whose institutions are inclusive rather than exclusive. Also patterns of urban living and migration have lessened the identification with ethnicity and geographical location. At the same time, recent efforts by Kenyans pastoralists to protect themselves by creating a

National Pastoralists Forum, and the Pastoralists Parliamentary Group which cut across political and tribal divisions is another encouraging development.

There is also increased advocacy for the recognition of basic needs as basic rights and the need to incorporate the same into the national constitution under a social and economic rights clause.

1.3

How much consensus is there on state boundaries and constitutional arrangements?

- The majority of citizens, save for cross-border communities, recognise state boundaries.

Kenya has internationally recognized borders and is not currently in any formal territorial dispute with any of its neighbours, though state boundaries are often violated by local populations in a number of border areas.

There is little consensus regarding constitutional arrangements. Disagreements underlying the independence constitution of 1963, between a section advocating a centralized form of government with a strong executive, and one supporting a federalist system have continued to this day. The 1963 constitution represented an agreement on institutional procedures and mechanisms rather than one on substantive values (Maina, 1998:28). This compromise has been undermined by successive constitutional amendments on Presidential initiative in the direction of greater centralization and executive authority.

A Constitutional Review Act to set up a Constitutional Review Commission was enacted in 1997 under pressure from a coalition of opposition parties and human rights and religious organizations, but the review process is currently stalled because of disagreements with the government over the membership and powers of the Commission.

Main areas of concern and reform proposals include:

- Reducing the power of the Executive Presidency
- Reinstating judicial independence
- Devolution of powers to sub-national levels
- Ensuring the effective and independent functioning of the Attorney General and Auditor General
- Protecting the independence of the Electoral Commission
- Promoting gender equity
- Promoting rights of minorities as groups.
- Distribution of national resources such as land

1.4

How far do constitutional and political arrangements enable major societal divisions to be moderated or reconciled?

▪ There is no formal or regularised framework for mediating societal divisions. The identification of the population according to ethnic groupings constituted an instrument of political control in colonial times. Since independence power and patronage have tended to be distributed along ethnic lines, with Kenyatta favouring the Kikuyu and Moi the Kalenjin and other smaller groups which comprised the electoral base of the former KADU party. With the return of multi-party politics in 1992, new parties have formed and campaigned around a core of ethnic support, usually highly concentrated geographically. Only the ruling KANU party has any substantial regional diversity in its support, though it has virtually no following among two of the largest four ethnic groups namely the Kikuyu and Luo. A Constitutional Amendment passed in 1992 requiring a successful presidential candidate to secure 25% of the vote in at least five of the eight provinces was seen by the opposition as a presidential manoeuvre to favour KANU rather than as a genuine attempt to foster a more consensual and inclusive type of politics (see 6.2). The constitution as it stands does not seem to facilitate moderation of societal divisions. Hence the current need for constitutional review.

1.5

How impartial and inclusive are the procedures for amending the constitution?

- The National Assembly, under existing constitutional arrangements has the sole discretion over constitutional amendments.

Constitutional change requires a 65 per cent majority in the National Assembly in order to secure broad national agreement. However, the dominance of KANU in the Assembly, reinforced by the banning of the opposition party in 1969, has meant that the 65 per cent requirement has provided little check on constitutional amendments for partisan reasons. Between 1964 and 1990 the constitution was changed 24 times. Some amendments such as the switch to a one-party state in 1982 were accomplished in less than two hours (subsequently reversed in 1992).

Other key amendments have included:

- Removing the entrenched power of local government
- Creating a unicameral legislature
- Reducing the independence of the civil service through the assertion that its members hold office 'during the pleasure of the President'
- Removing security of tenure from the offices of Attorney General and Auditor General (subsequently reversed in 1987).
- Removing security of tenure from High Court and Appeal Court judges (subsequently reversed in 1987).
- Increasing the President's powers to declare and sustain states of emergency
- Stipulating that the Preservation of Public Security Act could override constitutionally guaranteed civil rights (slightly modified as part of the Inter-Parties Parliamentary Group (IPPG) reforms, 1997).

1.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

The history of the Constitutional Review process since 1996 reflects the broader historical tension between KANU's determination to ensure unimpeded executive dominance over government, and the opposition's demand for a more accountable and transparent system, subject to Parliament and the rule of law. Substantive disagreements have been expressed in terms of procedural wrangling and delay in the process of constitutional revision itself. Key stages of this process have been the following:

1997: Bomas and Safari Park negotiations consolidated the process of constitutional reform, culminating in The Constitution of Kenya Review Act, 1997, which sought to establish a Constitutional Review Commission appointed by the President with the agreement of opposition parties and including groups from civil society. The Commission would be required to undertake consultations with the public and to make recommendations to the government, though it is not obliged to act on these recommendations. Disagreements over the composition of the Commission has led to the emergence of two review processes - the Church-led Ufungamano initiative and the Government-led Parliamentary Select Committee.

1998: More radical reformers from the previously established National Constitutional Executive Convention (NCEC) found the new review process still insufficiently independent of the government. They led protests following the December 1997 elections, culminating in a call for a national strike on 3 April 1998. The strike call was poorly supported, but on the eve of the intended action, the government announced it was to establish an Inter-Party Constitutional Committee (IPCC), which included a number of MPs who had been supportive of the NCEC's stance, and which set up an agreed programme for the constitutional review process.

1999: The review process stalled as a result of disagreement between the government and the other stakeholders over membership and representation in the Constitutional Commission, consequently, two review bodies emerged as indicated above. A parliamentary Select Committee has now been formed and mandated to collect views on how to rectify the flawed Constitutional Review Act (1997). But the Committee has received lukewarm reception from many quarters because it is seen as an executive ploy to control the process as it is not inclusive of other 'stakeholders' and is thus not 'people-driven'.

2.0 The rule of law

Are state and society consistently subject to the law?

Executive summary

It is accepted in general terms that the Kenyan State claims to uphold to the rule of law. But that is as far as it goes. Since the birth of the Kenya State in 1963, many governments and public officials have consistently deviated from norms of the rule of law with impunity. This has been done through self-serving amendments to the constitution and selective invocation of domestic law to interfere with the independence of the judiciary and assault the enshrined individual rights with serious repercussions to political, economic, and individual rights and freedoms. The upshot of the assault to the rule of law are the tribal clashes that have occurred in the Rift Valley, Western Kenya, Coastal region, and most recently, Laikipia district. In general, state and society are not consistently subject to the rule of law.

2.1

How far is the rule of law operative throughout the territory?

- The rule of law is more apparent than real.

“The Kenyan legal system is composed of acts of Parliament, principles of common law and equity and African customary law, in that order of hierarchy in the application of laws, as regulated by section 3 (1) of the Judicature Act. The Kenyan Constitution has enabled the existence of a plurality of personal laws by recognising the diverse and heterogeneous nature of the Kenyan community, which effectively allows for the application of customary personal laws in matters such as adoption, marriage, divorce and burial insofar as it is not repugnant to justice and morality or inconsistent with any written law.” (UN 1998a).

Much of the English-derived law and jurisprudence was adopted wholesale at independence. It was developed in colonial times as a means for the administrative control of the African population, and this legacy has shaped the approach to law-making of successive governments.

The President has the power to call a state of emergency, involving the use of special security powers and the curtailment of civil rights including access by the media and international observers to the areas involved. This has been used on a number of occasions.

The rule of law is compromised in the following ways:

- **Cross border conflict:** There is a condition of chronic insecurity in the North Eastern Province due to fierce competition for scarce pasture land between the Oromo and the Degodia along the border with Ethiopia. Armed incursions and massacres have taken place from both sides of the border, with substantial

displacement of populations. Gun control is a serious problem within the Province, and there is much criticism of the government both for its inadequate protection and for the brutality of its security operations when it does intervene. The NEP remains comparatively closed and inaccessible as a region.

- **Extra-legal justice and vigilantism:** In 1998 the UN Special Rapporteur expressed concern at the high number of mob killings and called upon the government to take every measure to prevent such crimes, to investigate them promptly, bring the perpetrators to justice, and to provide compensation to the victims' families (UN 1998a).
- **Law Enforcement Agencies exceeding their legal powers:** The incidence of police violence in breaking up peaceful demonstrations, and in treating suspects in the course of arrest and while in custody, is a recurrent and disturbing phenomenon.

Specific incidences in this regard include the following:

- 1967 - State of emergency in North Eastern Province
- 1982 - State of emergency for close to 4 months in the whole country following a coup attempt.
- 1992 - Security zone established for 3 months in Molo area, Nakuru district which barred all except security personnel from visiting the district.
- Widespread insecurity in the whole country in the form of cattle rustling, house break-ins, carjackings, street muggings, bank robberies, and apparent random gunning down of individuals.
- Non-prosecution of perpetrators of economic crimes
- Self-admitted existence of corruption in the judiciary.
- Widespread corruption in the public sector

See also 2.5 and 3.1

2.2

To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?

- Transparency and accountability of public officials is wanting.

There is the Public Service Commission; Judicial service Commission for judicial officers, and Teachers Service Commission for teachers; all responsible for appointments and discipline in their respective spheres; civil service code of regulations and force standing order for police.

- There is no set of regulations for political officials
- There is no overall national code of conduct for public officials
- Where codes exist as in the civil service among others, they are poorly administered

Immunities

The President has constitutional immunity from criminal and civil proceedings during his time in office (§14). In a presidentially dominated executive, this immunity is *de*

facto extended to other officials at the President's discretion, including the right to pardon convicted persons e.g. presidential releases of prisoners from time to time during festive seasons such as independence day.

For financial accountability of office holders see 7.6, for corruption see 9.1.

2.3

How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?

- The judiciary and courts are nominally independent from the executive, but the President's excessive powers of patronage keep the former beholden to him.

The 1963 Constitution contained safeguards guaranteeing the independence of the judiciary. Although judges in the High Court and Court of Appeal were appointed by the President, they enjoyed security of tenure. This security was ended by a Constitutional Amendment in 1988, which gave the President the right to remove judges from office. The appointment and dismissal of the Auditor and Attorney Generals, is also at the discretion of the President (reversed in 1987).

The Attorney General has the authority to institute, take-over, and “discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority” - although this power does not extend to appeals relating to criminal convictions [§26(3,7)]

There has been a history of political intervention in individual legal cases, and of individual judges with independent or pro-human rights records being excluded from hearing certain cases (UN 1998b).

In early 1998 the UN Special Rapporteur on the independence of judges and lawyers expressed “continued concern over the number of allegations received with regard to the harassment of lawyers and the lack of independence of the judiciary in Kenya” (UN 1998b).

- Magistrates are appointed by the Judicial Service Commission (which in turn is appointed by the president) mostly on permanent and pensionable terms, but at times on contractual basis subject to renewal.
- The Kadhi is appointed by the Chief Justice through the Judicial Service Commission on permanent and pensionable terms.
- There are other specialised tribunals such as the Rent Restriction Tribunal, Business Premises Tribunal, the Industrial Court, and Court Martial. The latter is presided over by an ad hoc Judge-Advocate.
- The High Court has supervisory powers over all the courts above and all decisions of the said courts except the Industrial Court are appealable in the High Court and Court of Appeal.

2.4

How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration?

- Justice and due process is elusive for a majority of the poor as well as rural and slum dwellers.

In line with international practice, the constitution guarantees basic rights to justice, including the rights to a public trial, to the presumption of innocence and to legal representation. [(72(10), and (77(2)]. The 1992 revised edition of the constitution provides for legal aid for 'indigent' citizens who wish to pursue claims for infringement of fundamental rights. However, legal aid is not a budgetary priority, and some defendants have been tried and sentenced to without having had a lawyer.

The Constitution also stipulates that persons arrested for non-capital offences should be brought before a court within 24 hours, and within 14 days for a capital offence ((73(3)). However, in practice, people can be detained indefinitely on remand without being brought to trial (E/CN.4/1998/101/Add.1). There are also reported incidents of defendants being ill-treated or tortured to make them plead guilty (see 2.5).

- The cost of justice is very high and due to insufficient income, few can afford legal representation.
- Administration of property under customary law especially land and fixed property is problematic. However, customary law is complex because it is based on each ethnic group and is thus difficult to juxtapose with statutory law.
- Lack of adequate personnel in the judiciary hinders prompt trial and has led to a backlog of cases in the judiciary (justice delayed is justice denied?). The dilapidated state, or total lack of information management equipment such as computers has also contributed to the demoralization of judges and magistrates.
- Women are particularly affected by customary law especially as it relates to property inheritance because it provides for inheritance along male lines.
- Female circumcision still takes place in a number of ethnic groups under customary culture.
- Little available redress in the event of official abuse of power. The little redress is normally available through human rights civic organisations such as Kituo cha Sheria, LSK, FIDA, Public Law Institute and Kenya Human Rights Commission
- Kenya has no equivalent of an ombudsman.

2.5

How far do the criminal justice and penal systems observe due rules of impartial and equitable treatment in their operations?

- The politically powerful and the well-to-do are observed to generally receive deferential treatment by the criminal justice and penal systems.

Kenya ratified the UN Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment in 1997

Although the constitution explicitly forbids torture, and confessions so obtained are inadmissible as evidence in criminal trials, the UN Special Rapporteur on torture has received repeated allegations of torture to extract confessions while in custody or detention, including beatings and electric shocks, rape and the threat of rape. Women and street-children are particularly vulnerable to abuse in custody, with children especially vulnerable where they are held in the same cells as adults.

Prison conditions throughout Kenya are poor, with severe overcrowding and insanitary conditions as standard. In the year 1996, 630 prisoners are reported to have died in custody, the majority from infectious diseases due to insanitary conditions, lack of food and inadequate medical care. The prison population in 1996 stood at 41,000 for a prison capacity of around 24,000 (Amnesty International, 1997).

Capital punishment is still in force, though is rarely carried out. In 1998, 168 people were sentenced to death, and more than 900 people were awaiting execution, though none were carried out in that year. (Amnesty, 1999).

- “While in Special Branch custody, Geoffrey Ndung’u Gichuki was hung from a tree, string ties around his upper arms preventing blood circulation, and a rope tied around his forehead to keep his head against the tree trunk while Special Branch officers beat him repeatedly all over his body. During the torture, his arm was so badly injured that he developed gangrene, and had to have his arm amputated at the shoulder. Geoffrey Ndung’u Gichuki was never charged with a criminal offence and to Amnesty International’s knowledge, his torturers remain at work” (The African Law Review Issue No. 76).
- On 10th December 1998, at a workshop organized to mark the 50th anniversary of the UN Declaration of Human Rights, the Assistant Commissioner of Police, Mr. Stephen Kimenchi, stated that torture of suspects had occurred on the direct orders of senior politicians. He offered “an unconditional apology on behalf of the police to all Kenyans who have been brutalized by security personnel” (Africa Research Bulletin, 25, 1 1999:13379).

2.6

How much confidence do people have in the legal system to deliver fair and effective justice?

- Justice is largely considered to be a luxury of the rich and powerful, hence little public confidence in the legal system.
- There is little confidence in the police and legal system on the part of the different sections of society as indicated by a recent survey over the same whereby 80 per cent of those sampled indicated they had no confidence in the two institutions (USAID, 1999).
- According to an editorial in the Nation newspaper, Chief Justice Bernard Chunga, Director of Public Prosecutions, Uniter Kidullah, and the Chairman of the Law Society of Kenya, Gibson Kamau Kuria, spoke in October 1999 of “the need to

clean up the [legal] profession. Mr. Chunga said as CJ he would spare no efforts to fight corruption, and other social vices in general, While Mrs. Kidullah was more specific: In graphic language she said the legal profession had been “convicted, sentenced to death and buried” because of graft. The editorial continues by stating that “The bench is also riddled with compromised magistrates and even judges who will dispense justice only for a consideration.” (The Nation October 25, 1999).

2.7

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

External and internal monitoring is taking place. Human Rights Commission, The International Federation of Women Lawyers (FIDA), and the International Commission of Jurists are active in the critical review process of the judicial and penal systems. Locally based civil society groups such as Clarion, Kituo cha Sheria, and Public Law Institute are also active in this regard.

3.0 Civil and political rights

Are civil and political rights equally guaranteed for all?

Executive summary:

Kenya has ratified all relevant UN conventions necessary for the full and unhindered enjoyment of civil and political rights, viz; the international convention on civil and political rights; the convention on the elimination of all forms of discrimination against women and; the convention on the rights of the child. Kenya has further acceded to the OAU charter on the rights of the African child. However, violation of rights, especially those of women and children continues, and maybe increasing, not least because the dualist approach to integrating international instruments as pursued by Kenya (where international instruments have to go through municipal legislation to acquire the force of law) prevents these instruments from having force of law domestically. The disciplined forces enjoy considerable public confidence, but not so the police, who having failed on many occasions to guarantee the safety of public life and property, and having also committed a worrying number of extra-judicial killings themselves, are not held in high regard. Privatized violence, particularly in the form of vigilantism is taking shape and the general public has assumed an increasingly violent disposition. Constitutional guarantees of the freedom of expression, association and assembly generally hold but are enjoyed at the pleasure of the powers that be; a residual act can always be conveniently invoked to deny any or all of these rights. Kenyans enjoy freedom of worship as well as linguistic and cultural expression though in-built biases result in minorities suffering some limitations in this regard.

3.1

How free are all people from physical violation of their person, and from fear of it?

- All categories of citizens are vulnerable to physical harm, generally fearful and therefore obsessed with security.

In May 1996 the President established a Standing Committee on Human Rights to investigate human rights violations within a limited mandate. The Committee's members are appointed by the President, who is not required to make its reports public. In 1999 the Committee requested a change in its constitution, so that it would be given a statutory basis, and its membership be appointed by Parliament.

Over the past decade, citizens have lost their lives through violence in the following ways:

- At the hands of the police and security services. A report of the independent Kenyan Human Rights Commission stated that 632 persons had died in Kenya in 1996 ‘because of acts of omission or commission’ by the Government, of whom about 130 were killed by the security forces. In respect of these cases, only 12 officers had been charged and only two convicted (UN 1997d)

For Torture see 2.5

- Through political and inter-ethnic violence. Violent attacks on supporters of opposition parties have taken place around the elections of both 1992 and 1997, especially in the coastal region and the Rift Valley, with considerable loss of life and displacement of populations. Human Rights Watch reported that in 1992 “ruling party members paid the attackers a fee for each house burned or person killed and that government vehicles had been used to transport attackers” (HRW 1999). For violence in both areas see also 1.2.
- Through street violence and vigilantism, see 2.1
- Through other forms of murder

Statistical Summary

Activity	Year		
	1998	1997	1996
Mob Justice	139	132	-
Banditry	794	429	-
Police shootings	<u>222</u>	<u>182</u>	<u>130</u>
Total	1155	743	632

Source: Kenya Human Rights Commission (1998), *ICJ-K Rule of Law Report 1999*

Reported cases of defilement, rape and grievous assault also indicate worrisome trends (ICJ-Kenya 1999).

Violence against women

Violence on women and especially wife battery is common. Findings from a recent survey by Kangemi Women’s Empowerment Centre, albeit on the higher side because Kangemi is a slum area in Nairobi, may nonetheless provide an indicative overview of the forms and level of violence faced by women in the country and the dismal levels of judicial and administrative interventions against it.

...three out of five women in the community experience domestic violence. Almost 3 out of 10 women have been sexually abused. Women above 18 reported cases of rape, incest, sexual harassment and exploitation by older men in authority while most of those aged below 18 had been sexually abused by matatu touts, schoolmates, relatives and friends. Health facilities reported 22 cases of violence against women, 19 rapes - in which 16 victims were women, 18 cases of wife beating, 14 sexual abuse/defilement and incest cases and 10 of psychological cruelty.

Police and the chief reported 243 cases of wife beating, but only one man was prosecuted. Of the 12 rapes, only 5 offenders were punished. The rest were either not identified or the victims did not pursue the matter. Moreover, there were two incest cases but no action was taken to "avoid embarrassment". Two cases of defilement were reported but no further action was taken. Part of the problem lies in the fact that despite its willingness to commit itself to international law instruments, very little has been done to ensure that Kenya's domestic law conforms with the international standards in respect to women's human rights (Daily Nation, May 14 1997). Section 30 of the constitution vests the legislative power of the republic in parliament and hence an international convention does not become part of Kenyan law until it is incorporated into domestic law by a bill or motion passed in parliament. The effect of ratification without incorporation into domestic law is that although Kenya is bound in international law by an international instrument, the citizenry can not rely on the conventions (FIDA-K 1997, L'etwal International 1999)

Kenya lacks specific laws governing violence within the home. Martha Karua, MP for Gichugu, has been quoted as saying that the courts apply the law on violence unevenly, and tend to impose lesser sanctions on perpetrators of domestic violence (The Nation, Oct 22. 1999)

Violence against children

Kenya has ratified the UN Convention on the Rights of the Child, but a number of its provisions are not fully observed in domestic practice, including the definition of childhood, the rights of juveniles to be tried in special courts, and the separation of children from adults in detention. The UN Special Rapporteur has expressed particular concern over:

- The commercial exploitation of children and juveniles which, while not on the level of south east Asia, was reported to be "growing at great speed" (UN 1998a)
- The sexual abuse of children domestically, According to Human Rights Watch, 38% of all children are sexually abused by the age of 18, of whom 89% by a family member or person known to the victim; the majority report severe damage and long lasting consequences later in life (Mwiti 1997)
- The failure of the Government to submit regular reports to the UN Committee, as it is required to do under the terms of the Convention (UN 1998a).

The Director of the children's department confirms that there exists lack of data on sexual exploitation and that conceptual ambiguities regarding the terms sexual exploitation, sexual abuse and commercial sexual exploitation makes reporting difficult and hinders the promulgation of corrective legislation.

3.2

How effective and equal is the protection of the freedoms of movement, expression, association and assembly?

- Freedoms of movement, expression, association and assembly generally hold but can be withheld whimsically or by legal fiat.

The Constitution protects the freedoms of movement, expression, association and assembly. However a constitutional amendment of June 1996 gives the President wide-ranging powers under the Preservation of Public Security Act to limit or suspend these freedoms in the interests of public security, of which he remains the sole judge.

Freedom of movement

There is general freedom of movement in the country. However, a number of legal instruments inherited from the colonial era may be used from time to time to restrict the free movement of persons. These include laws on trespass and vagrancy. The Public Order Act (cap 56) of 1950 further violates freedom of movement by the provision that allows provincial police chiefs to impose curfew. In the North Eastern Province and parts of the Rift Valley and Coast provinces, *de jure* restriction on movement is imposed by the outlying District Act (cap 104) of 1902 and the Special Districts Administration Act (cap 105) of 1954. *De facto* restriction on movement in the aforesaid regions has also been imposed by insecurity. Armed police escort is often required to move in those areas.

Freedom of expression

Kenya enjoys a relatively free and independent press. However, it is limited by a number of restrictive laws which prohibit the publication of inaccurate material “likely to cause fear and alarm to the public and to disturb the public peace”, and which set high financial penalties for libel. The stiff financial penalties set for libel appear designed to promote self censorship by media houses. An example of the use of the Public Security Act to suppress the free flow of information occurred in the period 1993-95, during the disturbances in several parts of the Rift Valley, when “regulations made it a criminal offence for any person to publish or communicate any information concerning the restricted area that had been prohibited from publication by the government” (Article 19). Amendment to the public order Act under the Inter-Parties Parliamentary Group (IPPG) deal modified the government's power to restrict publications deemed prejudicial to the interests of the state. The law now restricts the government to issuing prohibitions only where this can be “reasonably justifiable in a democratic society” (A 19). According to the International Commission of Jurists, the Kenyan Official Secrets Act, derived from the British, is a further deterrent to publication because of its “lack of clear guidelines on classification and declassification” (The East African, Oct 15. 1999)

Freedom of Association

The societies Act enables the registration of the widest possible range of associative organizations. The caveat however lies in the wide discretionary powers vested in the registrar of societies to determine which organizations can and cannot be registered.

The NGO Co-ordination Act requires the registration of all NGOs. Organisations have been refused registration, without explanation of the grounds for doing so, and have been subsequently defamed by the government as 'illegal' (Article 19). After the US Embassy bomb, the government cancelled registration of five Muslim NGOs (see 11.1).

The requirement of political parties to register has also been used as an instrument by the government to obstruct its competitors. Before the 1992 election the registration of opposition parties was delayed until shortly before election time while permits to hold rallies were also withheld from the parties. Before the 1997 election the registration of a new party (Safina) was delayed, and opposition leaders were refused access to certain districts.

Freedom of Assembly

Over the years, the country has witnessed repeated examples of meetings and demonstration critical of the government being dispersed by the police, often with violence. A wave of public protests in 1997 sought the repeal of laws granting wide powers to the executive to declare such meetings illegal. The Inter Parties Parliamentary Group (IPPG) brokered a deal engendering significant watering down of the public order Act just before the general elections in 1997. In theory, the amended act now only requires convenors of a public rally to notify the local police and administration and further restricts powers of the police to halt demonstrations to only those instances where police can show there is "clear and present danger to public order" (A 19). In practice arbitrary administrative behaviour still curbs unwanted assemblies.

Nonetheless, the right of opposition parties, trade unions and civil society groups to mobilize has never been better enjoyed or more officially recognized.

3.3

How secure is the freedom for all to practise their own religion, language or culture?

- Save for rare exceptions, religious, lingual and cultural expression are freely enjoyed

Freedom to practice one's religion is well protected in Kenya, though religious organisations are vulnerable to official harassment if they are seen as a threat by the government. The rights of minority languages are more limited, owing to lingering aspects of colonial administrative practice and their low public visibility compared to the numerically stronger communities. These disparities are exacerbated by biases in print and electronic media, which give voice to the dominant communities. The state owned Kenya Broadcasting Corporation (KBC) for instance accords privileged airtime to the major languages. It is also the larger communities, particularly the Luo and Kikuyu, who have the numbers, the inclination and resources to sustain vernacular publications- the so-called alternative press.

Religious leaders have been among the most outspoken critics of the regime, and were an important force in pressing for multi-party politics. The suspicious death of a leading government critic, Bishop Muge, in August 1990, caused widespread public

revulsion and intensified the pressure for political reform (Throup, 1995). The distinctive interface between culture and religion has sustained the conflict between indigenous cultures and modern religion, especially Christianity. The dominant mainstream Christian denominations- Catholic and Anglican church- have traditionally objected to accommodating indigenous cultures and beliefs. This is what has contributed to the proliferation of splinter traditionalist Christian sects including, *Interalia*, Legio Maria, Tent of the Living God and Dini ya Musambwa.

Pastoralist cultures are under threat from the loss of land. This is most clearly exemplified in the fate of the Maasai, whose grazing land has been successively appropriated by European settlers, by members of the Kenyan political elite, by the state for the development of game parks and by neighbouring sedentary communities. [Wildlife tourism is currently worth US\$350million per year, nearly half the value of the tourist industry as a whole, but this is at the expense of the cultures of marginal groups]. The Kenyan Wildlife Service's 'partnership programme' shares some of revenues from tourism with local communities, but only partially compensates for the loss of collective rights.

3.4

How free from harassment and intimidation are individuals and groups working to improve human rights?

- Human rights activists and organizations work in a difficult but not absolutely insurmountable environment.

Kenya has a number of NGOs engaged in human rights monitoring and advocacy, the more established ones being the Kenyan Human Rights Commission (KHRC), the Law Society of Kenya (LSK), the International Federation of Women Lawyers (FIDA-K) and the International Commission of Jurists Kenyan Branch (ICJ). Recent entrants in this field include the Coalition on Violence against Women (COVAW) and People Against Torture (PAT). These have proved a constant thorn in the government's side and their members subjected to varying forms of harassment. During 1998 the support given by some of these groups to the constitutional reform agenda of the independent National Convention Executive Council led the government to threaten them with deregistration.

3.5

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

There is a constitutional review initiative in existence whose agenda includes a review of legislation which restricts civil and political rights and freedoms, but its progress is currently stalled (see 1.6)

In July 1998 the Akiwumi Commission was established to investigate 'ethnic' violence in Kenya since 1991. There is some skepticism among opposition and civil society groups about whether its findings will be published, especially if they show

evidence of collusion between the authorities and those participating in acts of violence. These suspicions also owe, in part, to the poor reputation of commissions and task forces in the country. As illustrations; a parliamentary select committee on 'land clashes' headed by former Changamwe MP Kennedy Kiliku has not had its report publicly published; the report by the Task force on laws relating to women chaired by Lady Justice Effie Owuor is yet to be tabled in parliament almost six months after it was finalised; the commission of inquiry into the death of former foreign affairs Minister Dr. Robert Ouko was dissolved before it could complete its work.

A government task force on criminal law is engaged in reviewing legislation on children with the aim of bringing the definition of a child into line with the International Covenant (under 18) and strengthening provisions for the criminalisation and punishment of commercial sexual exploitation of children.

4.0 Economic and social rights

Are economic and social rights equally guaranteed for all?

Executive summary

Kenya acceded to the 1966 covenant on economic, social and cultural rights in May 1972 and is also a signatory to 7 out of the 8 main ILO conventions. However, she pleads inability to guarantee the same in the view of internal and external constraints. Land, on which 78% of the labour force eke out their living, is not universally available, though bold moves have been made to improve access of small holders to land. Women suffer general vulnerability in accessing this crucial resource and their overall property status is tenuous in both customary and statutory law. Unemployment remains very high and worse in urban centres. At current rates of growth in employment opportunities, no meaningful progress can be expected any time soon in this regard. The official social security system, though riven by inefficiency and corruption, is generally working and regularly doles out benefits to claimants. Food is aplenty but poor distribution, compounded by drought and displacement of populations often begets hunger. Access to decent housing and clean water is guaranteed for roughly one half of the population. The Aids pandemic has squandered the gains made over the years in life expectancy and also interacts intimately with the prevailing poverty situation. The labour movement is vibrant but the mutual understanding between government and enterprise on the matter of labour, bruising encounters with government over pay strikes, and lately, retrenchment programmes, have taken the punch out of the unions.

4.1

How far is access to work or social security available to all, without discrimination?

- Access to means of livelihood and social security for a large proportion of citizens is not guaranteed.

Economic and social rights in Kenya are fundamentally related to access to land and grazing, the means to maintain a livelihood for the majority of the population in rural areas (78% of all employment in Kenya is in the agriculture and allied sector). With the arrival of European settlers in the 1890s, the African populations were progressively displaced from the fertile agricultural land, and prevented from producing cash crops – tea, coffee or pyrethrum which would have competed with the Europeans. By the end of the 1930s white settlers had come to own around 75% of the fertile land.

Although some of this land has been redistributed to African small holders since independence, the cultivated land is insufficient to provide employment and a livelihood for all the rural population. Nearly 50% of the rural population lives below the poverty line (National Poverty Eradication Plan 1999) and there is extensive migration to the towns. Particularly severe problems are experienced by:

- Female headed households, which are over-represented among the population living in absolute poverty (Kenya Human Development Report 1999). Although women perform the majority of agricultural labour, they are disadvantaged in their access to land and credit, and are particularly vulnerable in the event of divorce, separation or being widowed. Both in customary and statutory law, women have been denied the privilege of enjoying their parents wealth/estate. In customary law, only men/sons are talked about as heirs to their parents estate. On the other hand, the law of succession Act, Cap 160 of the laws of Kenya states that "...a woman's interest in the estate of a deceased husband terminates upon remarriage...". This however does not apply to men. Islamic faith and other traditional religions also curtail women's right to inherit property. Small-holders who have been driven off their farms through political and ethnic conflict, or have suffered expropriation at the hands of the political elite.
- Pastoralists and others whose access to land has depended on collective communal rights, which have been eroded by the government- and World Bank-funded policy of individualising legal tenure.
- Those living in areas subject to floods (1998) and drought (1997 and 1998).

'Kenya's three million small holdings account for over 70% of agricultural production and over 85% of agricultural employment, on less than half of the cultivable land' (Sayer, 1998:31)

'It is estimated that the urban population of Kenya grows at a rate of up to 4.5% annually.... which is in direct correlation to deteriorating living standards, overcrowding and high unemployment' (UN 1998a)

Unemployment

Out of an estimated labour force of 14.4 million in 1997, the number of unemployed stands at about three million, with urban unemployment of around 25%. About half a million people will enter the labour market each year during the next decade. An average economic growth rate of over 4% per annum would be required to maintain the existing unemployment rate, and over 6% to reduce it significantly. The average recent rate of growth has been under 2%. In the light of this situation the government has sought to limit the types of employment open to migrant workers, in contravention of the requirements of the relevant ILO convention (#143).

'We worry for our children to get through school, but then there are no jobs, even when they are qualified. Every office you pass, it says 'No Work'. If you don't know people, you can't get work, even if you're educated. Or you pay bribes. It's the rich who get the jobs' quoted in Sayer (1998: 46)

Minimum wages

Minimum wage legislation is in force across most sectors of the economy, which is currently set at Ksh. 2,470 (US\$ 34) per month.

Social Security

The National Social Security Fund (NSSF), financed through employer and employee contributions, provides benefit entitlements in the event of unemployment or illness. It makes insufficient provision, however, for permanent incapacity, and no provision for compensation for death arising as a result of industrial accidents.

The fund has built up an impressive membership of 2.6 million workers since inception in 1966. Active membership fluctuates between 900,000 and 1.2 million. Between 1966 and December 1999, a total of more than Kshs 12 billion (US \$170 million) had been paid out to 658,860 claimants (NSSF 2000). However, NSSF has been plagued with corruption in recent years. Whereas workers can self-insure with the NSSF outside the regular organizational/formal channels, the fund primarily caters for modern sector workers, who at 1.7 million account for roughly 33% of the estimated 5.1 million people employed in 1998. Workers in the informal sector, who at 3.4 million account for 66% of the total employed outside rural small agricultural and pastoralist activities (ROK Economic survey 1999) and those that have never been employed are not covered by the NSSF. The majority of rural agricultural workers and herdsmen have no social security, especially those that do not have land of their own, except in the form of traditional care from the extended family which is, in any case, disintegrating.

There is also a vibrant private social security market, provided by private insurance companies but this caters largely for the urban elite. Indeed there are an estimated 3 million insurance policy holders according to the Association of Kenya Insurers (AKI), which represent roughly 20% of the labour force of over 14 million. The Workmen's Compensation Act (chapter 236) of 1970 defines employers liability for compensation arising from death or injuries sustained and for occupational diseases. Private companies however violate this Act with impunity and are pushing for its amendment, citing financial difficulties arising from "unreasonable" settlements awarded by Kenyan courts.

4.2

How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?

- Access to basic necessities is problematic to the socially excluded.

Although Kenya is potentially self-sufficient in food production, it is estimated that a third of children suffer from malnutrition (ROK, 1996). Deaths from hunger are a recurrent phenomenon in areas subject to drought and to the displacement of populations through violence. An estimated 37% of the population was food poor in 1992, i.e. unable to consume 2250 calories per day (World Bank, Kenya Poverty Assessment, 1995). A study by the World Bank (1996) found that about 6% of poor

households “reported experiencing severe hunger” even under “normal” environmental and political conditions.

Crop failure has been particularly serious in 1999 in the north and north-east of the country. Drought in North western Kenya and even in parts of the traditional food baskets of Rift Valley and central province recently shocked the nation. Food security is further compromised by a number of agrarian acts inherited from the colonial state...

Act	Implication
1. Crops Authority Act	<ul style="list-style-type: none"> • Controls production, distribution, exchange of commodities • Fixes prices and sale of produce
2. Agricultural Act (Cap 318) gives minister of Agriculture power over land management as well as production storage and marketing of agriculture produce.	<ul style="list-style-type: none"> • Authorizes minister to fix prices of producer crops • Prohibits sale of produce, except through agents appointed by the minister • Can prohibit cultivation of land and keeping of stock • Can order crops produced in particular areas to be processed in a given area
3. National Cereals and Produce Act (Cap 338) controls marketing and processing of maize, wheat, millet, rice and sorghum.	<ul style="list-style-type: none"> • Restricts movement and sale of cereals (the staple food for majority of Kenyans) • Fixes prices for these commodities

Migration to the towns has enormously increased the pressures on urban housing. It is estimated that ‘over 50% of the urban population in Kenya lives in unplanned slum area, which do not receive any government funding’ (UN 1998a)

Currently only 50% of the population has access to a clean water supply. The government’s objective of improving this dramatically by the year 2000 has been hampered by the highly uneven rainfall across the country and the low potential for groundwater development. The government is sponsoring many community-based initiatives in waste removal and sanitation with the aim of improving and increasing access to sanitation from its current level, also around 50% of the population.

4.3

To what extent is the health of the population protected, in all spheres and stages of life?

- The targets and objects of health care are as yet unrealised and have become more elusive.

Between 1964 and 1979 improvements in health care raised life expectancy from 44 to 55 years. During the 1990s government spending on health care has fallen by one third under the impact of 'structural adjustment' policies – charging for medical services has been imposed to make up the shortfall. Although this new source of financing has enabled the number of healthcare facilities and hospital beds to keep pace with the growth in population, it has led to growing disparities in access to healthcare between rich and poor, and between urban and rural areas. The generally inferior access to health care services in rural areas is made even more tenuous by the prohibitive costs of transport, inability to pay charges and the lack of drugs and other essential supplies to local health centres. The regional distribution of health provision is also extremely uneven, and not specifically targeted at high concentrations of the rural poor. Further, 56% of all workers in the health sector work in urban areas. Gaps in state provision of health services are made up for by NGOs and the private sector, which currently provide over 40% of health care services and over 50% of family planning services (Sayer 1998, EIU 1999).

AIDS AND MALARIA

“Virtually every sector of Kenyan society has felt the impact of HIV/AIDS, which has caused a decrease in life expectancy of between 5 and 10 years and an increase in child mortality. The Kenya National AIDS Control Programme (NAS COP) estimates that between 750,000 to 1 million Kenyans are now living with HIV/AIDS and that that AIDS has orphaned half a million children. However, the majority of AIDS cases go unreported and many persons living with the virus are not aware of their status, so that the true nature of the problem is very difficult to ascertain. Variations occur between urban and rural areas, with HIV positivity found in 10 per cent to 11 per cent of urban adults and over 4.5 per cent in rural adults. One very disconcerting factor is that 49 per cent of women receiving prenatal care in health centres in Kenya are diagnosed HIV+” (UN 1998a)

In 1996 it was estimated that AIDS patients occupied nearly half of all hospital beds (EIU 1999)

In recognition of the AIDS menace, the government in 1999 declared AIDS a national disaster, the very first time the scourge has been accorded the profile it deserves.

The Kenya Medical Research Institute (KEMRI) estimates that about three quarters of Kenya's population (20 million) are at risk of contracting malaria, which is second only to AIDS as the leading source of infant and adult mortality.

4.4

How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship?

- Access to formal educational opportunities has dramatically reduced, compounded by poverty and budgetary constraints.

There has been a similar pattern of government spending on education as on health since independence, with sustained and substantial expansion in the 1960s and 1970s, and retrenchment in the 1980s and 1990s, accompanied by the imposition of fees. The school system is now heavily dependent on parental contributions, which meet

one third of the cost of primary schooling and two-thirds of secondary. The age-participation rate for primary education is 80%, though only 44% complete the eight years, and less than 30% of the age group are able to enrol for secondary education. These figures conceal considerable regional disparities, with 90% primary enrolment in agricultural Western and Central Provinces, but only 20% in the pastoral Northeast. There are also significant differences between the participation rates of boys and girls at all levels of education (ROK 1996, EIU 1999).

'While there is no indication of major discrimination against females in access to basic education and health services, the completion rate for primary school education is lower for females, and in times of economic difficulty, female students are likely to drop out of primary school. Girls from poor and rural families typically do not attend secondary school' (ROK 1996)

4.5

How free are trade unions and other work-related associations to organise and represent their members' interests?

- Trade unions enjoy legal recognition but are generally ineffective in articulating and realising members' interests.

Although Kenya has ratified some of the relevant ILO conventions, the registration of trade unions remains under tight government control, and registration has frequently been denied to workers attempting to organise in the public sector, especially in health, education and the civil service. In addition, official intimidation of striking workers and the arrest and harassment of senior union officials has severely restricted the rights to union organisation and collective bargaining, and has brought the government into conflict with the ILO and the international Confederation of Free Trade Unions.

According to one group of commentators 'credible workers representation is for the most part lacking in Kenya. The Labour Unions are for the most part weakened through co-option and.... workers are for the most part badly informed of their rights as workers and union members. Despite a high degree of regulation and legislative protection, very few rights are enforced and the labour courts are notoriously slow and may even be biased in adjudicating disputes' (Cliffe et al. 1999: 48). The courts were for instance unsympathetic to the cause of striking bank workers, university academic staff and doctors in public hospitals who in the recent past have sought to pressurize the government or their employers to improve their wages and conditions of work.

The more prominent labour organizations in rural settings are Plantation Workers Unions and crop marketing/Cooperatives. The Kenya National Farmers Union is meant to engage in advocacy on behalf of farmers but the union is weak and its leadership fractious. It is also largely ineffective in policy advocacy. The other specialized associative organizations within the rural farming sector such as the Kenya Planters Cooperative Union have had mixed advocacy success. Increasingly the cooperative movement, which brings together small holder cash crop producers (e.g. tea, coffee, and rice), is becoming more vocal on behalf of its members.

4.6

How rigorous and transparent are the rules on corporate governance, and how effectively are corporations regulated in the public interest?

- The legal and institutional framework for corporate governance is porous and, thus far, has not yielded any spectacular results.

Regulation of businesses is effected through a number of acts covering health and safety at work, including requirements to establish health and safety committees, to notify accidents and occupational diseases, to provide medical attention at the workplace and to pay for the transportation of injured workers to hospital. An Employment Act regulates conditions of employment including contracts of service, payment of wages, leave, housing and other welfare.

A number of vibrant professional associations exist (including Association of Certified Public Accountants of Kenya, Kenya Medical Association, Association of Bankers etc), one of whose major mandates is to encourage better corporate governance. Some of these organizations have been behind recent debate on the quality of financial disclosures (i.e corporate financial disclosures). Courtesy of such efforts, full disclosure is now demanded of companies in order to be listed in the stock market. Regulatory bodies in the ilk of Capital Markets Authority and others also promote better corporate governance. However, corporate governance still requires more research in Kenya, especially on its contribution to poor economic governance in general.

The financial regulations of companies is governed by the Companies Act, which requires firms to undergo regular audit by external and reputable firms, which audits are deposited with the registrar of companies. Additionally, companies are obligated by law to file correct returns for purposes of determining their tax liabilities.

4.7

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

Recent government initiatives (1998-99) have included:

- Concentration of development policy on poverty alleviation, with microprojects geared towards employment and income generation in the informal sector, improved access to skills and infrastructure, and the management of arid and semi-arid lands. This has been complemented by the development of a National Poverty Eradication Plan and creation of the Poverty Eradication Commission in 1999.
- Development of the National Aids Control Programme, with education programmes to assist prevention, and to help communities to care for the persons living with AIDS and children orphaned by it. Declaration of Aids as National disaster in 1999.
- A country-wide polio immunisation campaign, the fourth in a series since 1996, which has raised immunisation from 43% to over 85% of the under-fives

- An environmental Management Act to establish authorities throughout the country to regulate environmental damage and set standards for water and air quality, toxic substances, etc.
- In 1996 the government began to restructure the ministry of health to facilitate the implementation of its proposals on improving health care. Under the scheme, financial and administrative authority for health provision was decentralized to the districts from the beginning of 1996 (ROK 1996).
- A commission to review the 8-4-4 (8 years in primary, and 4 each in secondary school and university) system of education had already reported in 1999, but the findings are not yet public, save for occasional leaks to the press.
- Attempts to create an enabling environment for the informal sector and some attempts also at harmonizing Business Licencing through the establishment of a one stop licencing regime.
- Creation of the commercial court in Milimani to decongest the court system and facilitate the quick arbitration of disputes between individuals and firms as well as between firms themselves.

Most of these measures enjoy public support but some of them for example the environmental management Bill might not enjoy the total support of the governing elite.

5.0 Free and Fair elections

Do elections give the people control over governments and their policies?

Executive summary

In the Kenyan political system, representation is on a single-member single-constituency basis rather than proportional representation as is the case with South Africa. The situation in Kenya is thus such that members of parliament are accountable to their electors and this accountability is strengthened by the *harambee* (community self-help) system. In similar manner, local government elections make councillors accountable to local communities. Nonetheless, there is little input from the people to party policies at the national level. Policy-making is centralized in the executive arm where power is disproportionately centred to the disadvantage of other institutions including parliament. Hence the executive has overwhelming control over policy. In addition, since the country's independence in 1963, there has been no regime change with elections at most yielding only recycling of individuals. Thus elections do not give people control over governments and their policies. To some extent, they give electors control over individual office bearers.

5.1

How far is appointment to governmental and legislative office determined by popular competitive election, and how frequently do elections lead to change in the governing parties or personnel?

- Elections are held regularly after 5 years. Personnel changes have resulted but no change as yet in regime or governing party.

The President is directly elected on a plurality vote, subject to a rule which requires the winning candidate to secure at least 25% of the vote in five of the eight provinces. Members of the National Assembly are elected by the system of first-past-the-post in single-member constituencies, though an additional twelve members are appointed by the President on the basis of nominations from the parties according to their strength in the assembly. Elections for the Presidency and the National Assembly are held simultaneously, every five years. Cabinet members are drawn from the Assembly.

KANU has held governmental office uninterrupted since 1963, and President Moi since 1978. In the period of *de facto* and *de jure* one party rule between 1964 and 1992, competitive elections were held for the National Assembly, though not for the Presidency, and changes in government personnel were forced when a number of Cabinet members were voted out of office (e.g. in 1979 and 1983).

Since the return of multi-party elections in 1992, President Moi and KANU have succeeded in holding on to power through a combination of factors:

- Divisions within the opposition (see section 6.2)
- Harassment of opposition parties (see 5.3)
- Intimidation and displacement of opposition voters (see 5.2)
- Patronage in the distribution of government spending to the ruling party's areas of electoral support (see 5.3)
- Inducements to opposition MPs to join KANU (see 6.4)
- Gerrymandering i.e. substantial variations in the numerical size of constituencies, which favour KANU voters (see 5.4).
- Monopoly by government over channels of political communication especially national Radio and Television.

5.2

How inclusive and accessible for all citizens are the registration and voting procedures, how independent are they of government and party control, and how free from intimidation and abuse?

- Kenyan electoral laws provide for universal adult suffrage, but gerrymandering, manipulation of registration and voting regulations are exercised to good advantage by the ruling party.

National elections with multi-party competition took place in December 1992 and December 1997. The Parliamentary Parties Group initiative of 1997 gave opposition parties a chance to nominate members to the Electoral Commission. The Electoral Commission, which oversees the electoral process, is thus composed of representatives of the major parties on a proportional basis. But its impartiality is still questionable given that the majority of its members, including its chairman, are government appointees.

The most serious infringement of the basic rights of voters has occurred in the months prior to the elections, when members of ethnic groups likely to support opposition parties have been subjected to violence and displacement from their homes. Throughout 1992 attacks occurred on non-Kalenjin settlers across Rift Valley Province and adjacent areas, leaving a reported 1,500 people dead and 200,000 homeless. Similar attacks occurred in the coastal region in the months prior to the 1997 elections, leaving 10,000 homeless – mainly Kikuyu and Luo opponents of the ruling party. President Moi has sought to use these clashes to discredit multi-party elections, though the evidence suggests that the attacks were connived, if not initiated by, members of his own government and party (Barkan and Ng'ethe, 1998).

Other citizens denied the right to vote have included around a million on each occasion, mainly eighteen year olds, through refusal or delay in issuing identity cards as the basis for voter registration (Barkan 1993; HRW 1998).

In the light of these and other manipulations of the registration and campaigning processes (see 5.3), the fact that polling in both elections, conducted under the watchful eye of domestic and international observers, was held to be mainly 'free and fair' tells only part of the story. Even so, the international observer group in 1997 identified five per cent of the parliamentary contests where the irregularities in the

poll and count were ‘so great as to invalidate the elections in these parliamentary constituencies, and consequently the legitimacy of the overall KANU majority in the National Assembly’ (quoted in Barkan and Ng’ethe, 1998).

Electoral malpractices during the 1997 general elections include:

- Change of polling stations on the eve of the election
- ‘Misplacement’ of ballot papers for entire constituencies
- Late opening of polling stations
- Manipulation of illiterate voters by election officers

5.3

How fair are the procedures for the registration of candidates and parties, and how far is there fair access for them to the media and other means of communication with the voters?

- No provision exists for independent candidates. Parties register relatively freely but the ruling party enjoys unfettered access to state owned media.

All presidential candidates require their nominations to be signed by at least 1,000 registered voters. All candidates for presidential, parliamentary, and local council elections may only contest elections under a duly registered party. Candidates may be barred from standing for a range of electoral and other offences, though the president has the power to waive disqualification in individual cases.

Government actions served to create a highly uneven ‘playing field’ in the election campaigns of 1992 and 1997 in the following ways:

- By delaying the registration of opposition parties until shortly before the election. In 1992 this applied to all opposition parties, in 1997 to newly formed ones, including Safina;
- By preventing opposition candidates from handing in nomination papers in areas of KANU strength (in 1992 seventeen candidates were affected);
- By refusing opposition parties permits to hold rallies, and by denying them access to certain areas of the country;
- By maintaining a government monopoly over the broadcast media until late in the campaign;
- By using public funds to finance pro-KANU campaign organizations. In 1992 the flow of such funds was so great that there was an estimated increase of 40% in money supply in the last quarter of the year.

‘The contrast in the degree of fairness between the long pre-election period and the actual voting and counting clearly indicates that judgements of elections cannot be limited to the election itself.... In the case of Kenya (in 1992) most observers gave the government and its Electoral Commission failing or near-failing grades on each of the many steps leading up to the casting of ballots, but accorded them relatively high marks on election day itself’ (Barkan, 1993: 95)

5.4

How effective a range of choice does the electoral and party system allow the voters, how equally do their votes count, and how closely does the composition of the legislature and the selection of the executive reflect the choices they make?

- Voters have a wide choice of candidates but the votes of the larger communities and urban dwellers count for less than those of the less numerous communities.

The tendency of parties to form along ethnic lines, together with divisions within the opposition, have denied voters a nation-wide alternative government and presidency to that of KANU and President Moi. A distinction should be made, however, between presidential elections, where opposition divisions are a key factor in Moi's success, and Assembly elections, where the dominant factor working in KANU's favour is the differential size of the constituencies.

Distribution of vote: Presidential and Parliamentary elections

Year	Winning percentage of national vote gained by Moi	Percentage of elected National Assembly seats won by KANU	Total votes for KANU parliamentarians	Total votes for opposition parliamentarians
1992	36	53	1.4 million	3.2 million
1997	41	51		

Average number of voters in constituencies won in 1997

- a) by KANU: 36,350
- b) by opposition parties: 53,387

Average constituency size: 43,307
Smallest constituency: 7,501
Largest constituency: 114,354

Source: Barkan and Ng'ethe, 1998:40

5.5

How far does the legislature reflect the social composition of the electorate?

- Representation in the legislature is skewed in favour of men and regime friendly communities.

The unequal size of constituencies (see 5.4) gives some ethnic groups disproportionate representation in parliament compared with others. Under section 33 of the Constitution, the aim behind the nominated members is for them to represent interests and sections of society otherwise under represented, such as women.

- 1963-97: Only two women ever nominated to parliament

- Currently, 5 out of the 12 nominated MPs are women
- Currently, out of 210 elected MPs, only 4 are women.

Percentage of posts held by women in selected comparator countries

Country	Seats in National Assembly, 1997	Ministerial posts, 1996	Sub-ministerial office, 1996
Kenya	3.6% ¹	3.4%	6.6%
Nigeria	7.3 ^{2&3}	7.7%	5.6%
Brazil	6.5% ²	4.3%	15.5%
Mexico	17.7% ²	15.8%	5.9%
Bangladesh	9.1% ¹	7.7%	0.0%
United States	11.2% ²	14.3%	34.5%

¹ Unicameral Parliament

² Bi-cameral parliament (percentages of houses combined)

³ Data for upper house only

Source: IPU, 1999; UNDP, 1999

5.6

What proportion of the electorate votes, and how far are the election results accepted by all political forces in the country and outside?

- Turnout in general elections is above 50 per cent. The results of the last two elections have been hotly disputed internally but international opinion, while noting irregularities, considered the results to “generally reflect the wishes of the electorate”.

The percentage turnout of registered voters has been 68% in both elections, though this figure has obscured significant variations between Kenya’s eight provinces, with the Central and Rift Valley provinces exceeding 75% in both 1992 and 1997, Nairobi, Coast and North Eastern only managing around 50%, and the remaining three (Eastern, Western and Nyanza) about average.

In 1992 all three opposition parties and a large section of the civil society rejected the election results. Opposition parties went ahead and boycotted the first session of the National Assembly. After 1997 elections the leader of the official opposition party (DP) challenged the results of the presidential election in a court petition. After both elections the inter-ethnic violence that had been precipitated in the run-up period, continued, albeit sporadically. In both elections outside observers noted the flaws (see 5.3) but adjudged the elections as generally free and fair.

5.7

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- On and off constitutional review process
- Civic education campaigns by civil society organizations
- Ongoing review of electoral boundaries every ten years
- Sharing of nominated MPs between political parties on a proportional basis.

6.0 Role of political parties in Democratization

Does the party system assist the working of democracy?

Executive summary

There is an emerging party system in Kenya, which would be difficult to reverse; and this augurs well for the eventuality of a new democratic dispensation in the country. However, the parties are weak and far from being institutionalized. As such, they largely depend on the party leader and his ability to mobilize resources. Parties in Kenya will thus contribute more to the working of democracy if and when they become institutionalized and cease to be regarded as belonging to their leaders who remain the main sources of finances that keep the political parties operative. Mainstream parties tend to have a very strong ethnic base, which has led to a highly fragmented, but potentially stable party system. However the fragmentation has the potential to produce unstable governments, an eventuality that might threaten democracy.

6.1

How freely are parties able to form, recruit members and campaign for office?

- Considerable room exists for party formation but recruitment and campaigns are restricted for opposition parties in ruling party strongholds.

The constitutional change to allow multi-party competition was forced on a reluctant President Moi in 1992 by a combination of pressure from civil society groups and the withholding of aid by international donors. A number of parties opposed to the governing KANU were formed, and have survived a process of continuous official harassment during the 1990s (see 5.3) to contest the elections of 1992 and 1997 and maintain a substantial opposition to the government in the National Assembly. However their limited base of electoral support, and the personal rivalries between their leaders, have prevented them from becoming a credible alternative government-in-waiting (see 6.2).

Main political parties

- KANU: Kenya Africa National Union. Formed 1960, won 1963 election, absorbed Kenya Africa Democratic Union (KADU) in 1964. In power ever since under Presidents Kenyatta and Moi.
- FORD-K: Forum for Restoration of Democracy – Kenya Founded in 1991, contested 1992 election under former Vice president Odinga, coming fourth. Its vote dropped substantially in 1997 under a new leader, Wamalwa but retained position four.

- FORD-A: Forum for Restoration of Democracy – Asili. Founded in 1992 as a break away from the earlier FORD, it came second in 1992 elections under Matiba. Virtually defunct by 1997 elections due to internal splits.
- DP: Democratic Party. Founded in 1992 under Kibaki, who came third in the 1992 elections and second in 1997 with a much improved vote.
- NDP: National development Party. Revived in 1996 with defection of Raila Odinga (the elder Odinga’s son) from FORD-K. Came third in 1997 elections.
- SDP: Social Democratic Party. Revived in 1997 by defections from FORD-K and by the leadership of Charity Ngilu, it came fifth in the 1997 elections.
- Safina. Formed in 1995 by a group including Richard Leakey, whose international links then gave the government excuse to refuse it registration until late in 1997, it did not present a presidential candidate in the 1997 elections.

In all the major political parties there seems to exist a measure of transparency in the recruitment of party leaders at the local levels, at the national level elections of party leaders are often a matter of deal making to include the broadest possible representation of Kenya’s ethnic make up. This is often done by the parties in order to create and maintain the façade of national character.

6.2

How effective is the party system in forming and sustaining governments in office?

- The two multiparty elections held so far have produced a working majority in parliament for the ruling party.

The chief weakness of the party system in Kenya is the inability of the opposition parties to present a united alternative to President Moi, so leaving KANU as the only formation able to form a government (see table).

Provinces where Presidential candidates received over 20% of the vote in 1997

	Nairobi	Central	East-ern	Coast	North Eastern	Rift Valley	West-ern	Nyanza
Moi (KANU)	21		35	63	73	69	46	24
Kibaki (DP)	44	89	28		21	21		
Odinga (NDP)								57
Wamalwa (FORD-K)							48	
Ngilu (SDP)			33					

Source: Barkan and Ng’ethe, 1998

The history of locally-based support for political parties can be traced to colonial times when the British, in order to isolate the Kikuyu, prohibited parties from organizing nationally. This legacy has, however, been reinforced by the practice of presidents Kenyatta and Moi of using public office as a vehicle for ethnically-focused patronage, through the appointment to government positions and the distribution of public spending on infrastructure, health and education services. The expectation of using public office for personal economic gain has also hindered the opposition leaders from uniting behind a single Presidential candidate who might represent national interests transcending local loyalties.

KANU has had its own history of internal factionalism, with the party currently divided into two wings, so-called KANU-A and KANU-B. Many commentators believe that it is only the person of President Moi that is holding the party together, and that his retirement in 2002, if it occurs, may lead to a reconfiguration of the party system.

6.3

How free are opposition or non-governing parties to organize within the legislature, and how effectively do they contribute to government accountability?

- Non-governing parties are able to question the government's activities in parliament and also chair the two house watchdog committees.
- KANU has managed to forge a working relationship with NDP and FORD-K in parliament and thus manages to control affairs of the house.
- Opposition party contribution to government accountability is through two house committees - Public Accounts Committee -PAC and Public Investments Committee- PIC which audit government accounts and public investments portfolios. However, they both amount to closing the sty after the horse has left. Nonetheless, this constant highlighting of government misdeeds and shortcomings keeps the public aware of what government is doing and this has gone some way towards keeping government on its toes.
- The opposition had the majority members in the Public Accounts Committee and Public Investments Committee in the 7th parliament but KANU forced change of the rules so that membership to these two committees is now based on the proportion of Members of Parliament resulting in KANU having majority representation; although they are still chaired by opposition Members of Parliament.
- Opposition has been able to successfully table a number of bills e.g. the all-important Parliamentary Service Commission Bill that has strengthened parliament vis-à-vis the executive and the Political Parties Funding Bill requiring government to fund parties.
- Opposition has also brought a number of no-confidence motions, though unsuccessfully, including the Gender Equality Bill and Beijing Platform for Action.

- Opposition is free within parliament to organize but is constrained by enormous executive powers, especially powers to prorogue parliament (to adjourn parliament indefinitely i.e. *sine die*).

6.4

How fair and effective are the rules governing party discipline in the legislature, and to what extent is 'floor crossing' discouraged?

- KANU and all the other parliamentary parties have house whips. Political defections have since lost their appeal to both KANU and the opposition.

The practice of floor crossing began in the 1960s when Moi and his parliamentary followers in KADU defected to the ruling party, thus effectively ending KADU's existence. Under section 40 of the Constitution, a member of the National Assembly who changes their party allegiance, other than when a whole party dissolves or merges, is required to vacate their seat and face a by-election. Between the elections of 1992 and 1997 the government persuaded 24 opposition MPs to defect to KANU, with a subsequent gain to KANU of 12 seats. There have been two defections to KANU since the 1997 elections which indicates that the practice has slowed down in favour of cooperation with some opposition parties notably NDPs and to some extent, FORD-K.

'The persuasion was a carrot and stick affair. 'Carrots' included cash bribes to defectors, along with the promise of KANU nomination and funding for the by-election. 'Sticks' included police harassment and the cutting of government resources to the constituency of the targeted MP'. Barkan and Ng'ethe (1998, 48)

Party discipline in the house is not always effectively enforced for voting purposes. Due to factionalism in KANU, KANU MP's have sometimes voted with the opposition but not on crucial matters such as votes of no confidence. KANU also uses its parliamentary group meetings- usually chaired by the President- to exhort its members of parliament to toe the official line in voting for important motions. The provision for party whip allows all parties to enforce discipline among their parliamentarians. This provision has been used recently by the NDP to de-whip two of its members of parliament considered rebellious by the party hierarchy. By de-whipping, a party effectively bars the affected parliamentarian from moving any motion for and on behalf of the party.

6.5

How far are parties effective membership organizations, and how far are members able to influence party policy and candidate selection?

- Party policy is the preserve of a small group within each party and the party leaders, who also influence nomination of candidates in some cases.

Parties in Kenya are generally membership organizations but only in theory. None has complete membership register, they organize for membership drives only in the run-up to elections and party policy remains the preserve of party leaders.

- KANU for instance has not held elections since 1988 contrary to its own constitution and the general law governing societies.
- The Official Opposition, DP has held its grassroots elections; other opposition parties have not. Party affiliation is reflected only during general elections.
- None of the parties has a complete membership register.
- Little party revenue is generated from party members.
- Although candidate selection is by members' votes, cases abound where such selection is done by the party leader single-handedly e.g. NDP. Party members do not influence party policy but they have to a large extent influenced candidate selection.
- All parties have abolished expulsion clauses in their constitutions as a reaction to the old one-party system. This invites indiscipline in the parties, which, on the upward side, is positive for internal party democracy as it allows party leaders to be challenged and held to account for their actions.

6.6

How far does the system of party financing prevent the subordination of parties to special interests?

- No law as yet regulates party financing, hence political parties are susceptible to special interests.

Although government resources were not poured into the KANU campaign in 1997 with the same reckless abandon as in 1992 (see 5.3), KANU candidates were publicly subsidized by the use of government offices and of vehicles and staff from parastatal enterprises. Public donations to various campaigns – women's groups, street children, youth employment, etc. – were also diverted by the decidedly KANU-sympathetic provincial administration into election funds.

A bill seeking to establish state funding for political parties was passed by the National Assembly in July 1999 and will take effect in the next (9th) parliament (2002-2007). Parties are currently funded through a combination of membership fees and patronage of party leaders, the latter being the most important source of funds.

- The major contending parties especially KANU and DP are beholden to special interests, in particular, business interests.

6.7

To what extent do parties cross ethnic, religious and linguistic divisions?

- Parties are largely organised on ethnic basis except KANU and to some extent, DP, the current official opposition. See 6.2.

6.8

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- The bill to fund political parties from public funds passed in 1999 and is set to take effect in 2002.
- Amendments to the constitution in 1997 abolishing permits for public rallies.
- Passage of a Parliamentary Service Commission Bill in 1999, which should enhance the role of parliament and, *ipso facto*, parliamentary parties.
- Ongoing review of electoral boundaries every ten years.

7.0 Government effectiveness and accountability

Is government accountable to the people and their representatives?

Executive summary

Corruption, huge debt servicing commitments and low institutional capacity compromise the ability of government to deliver publicly valued goods to its citizens. As such, public confidence in everything that government does or touches is generally low. The power balance between elective and appointive public officials under Kenyatta's regime was clearly in favour of the latter. Under Moi, this balance has been tenuous and swings on the pendulum of political expediency. It would seem however, that the pressure brought to bear on Kenya by international financial institutions has forced the president to strengthen the hand of technocrats in the management of public affairs. Existing constitutional arrangements invest in parliament the sole discretion to make and amend legislation but the executive maintains a stranglehold on the affairs of the legislature. Two house watchdog committees; Public Accounts Committee (PAC) and the Public Investments Committee (PIC) provide a framework for scrutiny of public expenditure by elected representatives. However, excessive executive powers and judicial inaction mean that practically, the role of these committees is that of regularly generating a catalogue of malfeasance by public officials. The minister for finance for instance continues to draw on the consolidated fund impudently. Citizens' access to government information is not assured and is further hindered by a bevy of mutually contradictory legislation.

7.1

How far is the elected government able to influence or control those matters that are important to the lives of its people, and how well is it informed, organised and resourced to do so?

- The Government is generally considered ill equipped to cater for the varied needs of its citizens.

Government capacity to serve the needs of its people is limited by a number of factors:

- The extent of internal and external indebtedness. Domestic debt servicing takes 18% of government revenues, and external servicing 26% of foreign exchange receipts. Both requirements can only be met by new borrowing, 'a spiral which may have potentially catastrophic consequences' (EIU; World Bank)

- The requirement to make substantial cuts in spending on public services under debt- servicing agreements with the IMF, and to introduce charges for health and education. Corruption at all levels of government and the misappropriation of public funds, e.g. for electoral purposes (See 5.3; 9.1)
- Low institutional capacity in the public sector, including over-staffing and under-skilling in key departments.
- Poor infrastructural outlay that compromises the ability of the government to access certain populations, especially in Arid and Semi Arid areas.

7.2

How much public confidence is there in the effectiveness of government and its political leadership?

- Public confidence in the government and the leadership is low.

A study commissioned by USAID in 1997 revealed a generally poor regard for the effectiveness of government and the leadership. Asked if they had “a lot of confidence” in public institutions and officers (the police, the judiciary, members of parliament, political parties, the electoral commission, the president and councillors) less than 5% of respondents consistently replied in the affirmative for all the above (Thalman et al, 1997). The people’s obvious antipathy towards formal public institutions seems almost directly proportional to their faith in social and religious institutions as well as the non-governmental sector. For instance, a relatively large 56% of respondents thought that local NGOs were actively involved in solving problems of the community as opposed to only 19% who thought the same of the government (ibid)

Regular opinion polling has not been institutionalized as yet as a means for gauging the public mood and position on policy issues. Public opinion polls have only recently assumed relative importance in the country but they are encountering considerable resistance from especially members of the ruling elite who treat them as heresy. A new form of opinion polling has recently been started by new TV channels wherein viewers state their positions on topical public issues via call-in sessions during talk shows and interviews on TV.

7.3

How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?

- Civil servants take their orders from elected leaders but generally play a frontal role in formal policy formulation and implementation because of expertise.

An effective civil service requires a balance to be struck between competing considerations. It has to be sufficiently independent to offer impartial or unwelcome

advice to ministers, and to protect standards of integrity in the conduct of government business; but not so independent that it can evade political accountability or frustrate an elected government's policies. Amendment 4 of the Constitution, which declares that the civil servants 'hold office during the pleasure of the President', ensures that public officials are subject to firm political direction. At the same time the President's power to appoint and dismiss at will compromises civil service independence, especially in standing up to government wrong-doing. Moreover, the unbroken period of one-party rule over nearly forty years makes any distinction between party and state, or between political and administrative considerations, hard to sustain.

Recent changes in which a number of technocrats largely drawn from the private sector took over at key government ministries seem to have strengthened the hand of civil servants at the expense of ministers who are elected leaders.

7.4

How extensive and effective are the powers of the legislature to initiate, scrutinise and amend legislation?

- The legislature has adequate powers to make and unmake laws.
- A 65 per cent majority of legislators in the National Assembly is required to make constitutional changes at the 2nd and 3rd readings of proposals for such changes. Such proposals for constitutional change are tabled in the form of bills by MPs at the behest of sponsoring parties. The bills are vigorously debated and where necessary amended. Presidential assent is required to translate such bills into law. Where such assent is not forthcoming within the legally specified period, bills automatically become law. Thus far, such assent has been assured after the necessary parliamentary processes have been fulfilled. The numerical superiority of the ruling party in the house however means that legislation which does not sit well with the executive cannot sail through.
- Members can also initiate private bills seeking to amend legislation but success in this case depends on the negotiations and compromises that can be forged with the major parties. Parliament can pass motions but the government is not obligated to translate passed motions into law.
- Parliament lacks the research and information technology necessary to make members' scrutiny and promulgation of legislation effective and efficient.

7.5

How extensive and effective are the powers of the legislature to scrutinise the executive and hold it to account?

- Current constitutional arrangements give the executive considerable leverage over the legislature, hence rendering the latter largely unable to contain the former.

The Kenyan political system, modelled as it is on the British one, allows the executive to exercise dominant control over parliament through its party majority and extensive powers of patronage. Thorough scrutiny in practice depends upon the effectiveness of opposition parties, and occasional independent voices in the ruling party.

- Parliament lacks the research and information technology necessary to make members' scrutiny and promulgation of legislation effective and efficient.
- Following a 1963 amendment, the clerk of the National Assembly, who determines the business of the house, has been appointed by, and solely answerable to the president.
- The president has powers over the life of parliament; he can convene, prorogue or dissolve it at his pleasure.
- Members of parliament routinely seek and mandatorily receive information and clarification from government ministries and public officials regarding their activities and expenditure. Members of Parliament have the power to censure ministers by voting to 'name' them in the House. A named MP is barred from Parliament for the following three sittings. Ministers themselves are however frequently out of the house to answer questions and tend to either delegate or postpone answering questions directed at them.
- Parliament may institute select committees from time to time, reporting back to it, for purposes of probing matters of national importance. On receiving reports from a select committee, parliament votes to adopt, reject or to take note of that report. Further action is left to the discretion of the executive.
- A motion of adjournment (urgency) may be called to discuss a matter of national importance.
- A motion of censure (no confidence) may be moved against the government

7.6

How rigorous are the procedures for approval and supervision of taxation and public expenditure?

- Elaborate bureaucracy is in place for scrutinising public finance management but flouting procedure is the norm.

The constitution provides the framework of financial accountability by requiring that all revenues and public expenditure be authorised by Parliament, and by establishing an independent office of Comptroller and Auditor-General to ensure that all expenditure is approved by law and all moneys ‘have been applied to the purposes for which they were appropriated’ (§105). The Comptroller is required to submit an annual report to Parliament, including audited accounts of all government ministries and all constitutionally established courts and commissions. In addition, the *Financial Regulations of Kenya* provide a legally binding set of rules governing the composition of budgets for individual ministries, agencies and projects, including highly desegregated expenditure ceilings. However, this framework of accountability is weakened in practice by a number of factors:

- Inadequate capacity of the Comptroller’s and Auditor General’s Office.
- Late submission of the annual report and audit to the Assembly (e.g. 1996-97).
- The PAC and PIC have no monitoring capacity and therefore debate the comptroller’s report after the damage has been done.
- The replacement of the House estimates committee by *ad hoc* decisions to increase public spending in politically favoured ministries.

‘There has been a lack of major improvement in public expenditure management and control in recent years. Stark discrepancies have emerged between the intended and the realised level of composition of public sector expenditure.... For both recurrent and development outlays, financial ‘informality’, defined as the use of financing instruments outside the legal framework, continues to persist’ (IMF 1998a).

- The failure of the AG’s office to take action on the comptroller’s report.

A report produced by the Dutch Embassy to Nairobi in July 1999 describes the budgetary control procedures as ‘an exercise in futility’, and expresses particular concern about recent usage of the Consolidated Fund for unbudgeted expenditure (‘Kenya’s Policy and Institutional Environment and Areas for Effective Development Assistance’. Cited in Nation 8 Jul, 1999)

A systematic analysis of the Auditor General's reports by the Center for Governance and Democracy (CGD), an independent Kenyan NGO shows that over the past seven years the government may have lost up to to KShs 83 billion (\$ 1.1 billion) in wasteful expenditure. Another KShs 113 billion (\$1.5 billion) could have gone into payments for goods and services not delivered and to irregular transactions (The East African June 21, 1994 Pg4)... But the Public Accounts Committee (PAC) and the Public Investment Committee (PIC) which ought to oversee public expenditure and rein in corruption do not have the powers to prosecute. Furthermore, corruptibility, it seems, may have become so institutionalized that committee members from the opposition have themselves not been entirely free from accusations of corruption. In addition, the ruling party has recently (April 1999) succeeded in changing parliamentary rules so that the party has majority representation in both PAC and PIC, a move that is likely not only to weaken them but is also contrary to common practice in commonwealth countries which require the opposition to chair and hold majority representation in house watchdog Committees. (Ng'ethe, Musambayi; HIID report, 1999)

7.7

How comprehensive and effective is legislation giving citizens the right of access to government information?

- Citizens access to government information is not legally assured.

There is currently no effective right of citizens to government information, and no independent means of monitoring the accuracy of briefings by the Ministry of Information. According to a recent report by the Kenya section of the ICJ, "in practice the concept of public information translates into government propaganda". The Official Secrets Act is a colonial legacy, which restricts access to information 'for any unauthorised purpose that endangers the security or interests of the state', as defined by the government of the day.

7.8

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- An on-going Civil Service reform programme was established in 1993, with the aim of substantially reducing the numbers of civil servants through 'natural wastage' and merging a number of ministries. It also undertakes the review and reform of individual government agencies. This process culminated in the reduction of ministries from 27 to 15 through the merger of related ministries and departments.
- The ongoing ministerial rationalization has been accompanied by monetary and fiscal policies designed to streamline government spending. However it is yet to produce the spectacular results achieved between 1982-84 when overall budget deficit was reduced to 3.9 per cent of GDP and Public expenditure as a percentage of GDP declined from 35 per cent to 29 per cent (Ikiara and Tostensen 1995).

- The introduction of an economic recovery team dominated by professionals from the private sector and international agencies has been given a wide charter to oversee government fiscal discipline.
- The on and off constitutional review process

8.0 Civilian control of the military and police

Are the military and police forces under civilian control?

Executive summary

Civilian control over the disciplined forces seems total: The civilian chief executive doubles as the commander in chief of the defence forces; pay strikes are unheard of while chain of command orders are generally obeyed and military courts have no jurisdiction over civilians but the reverse is true. Public accountability for the actions of the army, but more so the paramilitary forces and special police units however leave a lot to be desired. The latter two have in the past carried out brutal operations against dissenting or “restless” populations and opponents of the regime on “orders from above”. In Kenyan parlance, this implies being answerable only to the (chief) executive. Women are underrepresented in the armed forces and the generally accepted view is that the regime-friendly minority communities are over-represented in all services and cadres of the disciplined forces. The former northern frontier district remains a security nightmare and has witnessed an unending cycle of violence chiefly in the forms of banditry, inter-ethnic conflict and cattle rustling. The notoriously brutal General Service Unit (GSU), a paramilitary police force, has seen action in virtually every part of the country. International Criminals and drug cartels in collaboration with local counterparts are suspected to be using Kenya as a safe haven and transit point respectively.

8.1

How effective is civilian control over the armed forces and how free is political life from military involvement?

- The civilian administration enjoys sufficient control of the Armed Forces and the military generally steers clear of politics.

The armed forces are for the most part under effective civilian control . Kenya’s armed forces have not intervened to bring down the state, save for feeble attempts by sections of the forces in 1964 and 1982 that were easily crushed, and a 1970 coup plot that was nipped in the bud. Importantly, loyalist troops moved quickly to re-install Moi’s civilian regime in 1982.

- Unlike most African countries, Kenya’s disciplined forces have not gone on pay strikes in memory and generally obey chain of command orders.
- Civilian courts can try military officers but military tribunals have no jurisdiction over civilians.

- An elected civilian president is the commander in chief of the Armed Forces. He appoints the Chief of General Staff as well as service commanders.
- Thus far, the Armed forces remain little more than instruments in readiness for emergencies.

Civilian control of the Armed Forces has been enhanced by a number of factors:

- Civilian leaders have generally treated the Armed Forces respectfully and at the same time offered perquisites and inducements from time to time: military salaries are the most regularly revised upwards; goods and services in the barracks are heavily subsidized by government; expenditure on defence is not open to public scrutiny; senior military officers regularly receive highly esteemed national honours.
- Civilian rulers have not resorted to use the Armed Forces to solve struggles of a purely political nature. Indeed, civilian politicians appear to prefer using vigilante groups that are easily demobilized, for their political struggles.
- A large and growing professional cadre in the military has known no life outside the barracks and are regularly engaged in civic action and nation building. They have come in handy during national emergencies (e.g Mtongwe ferry disaster (1997), the *el nino* floods destruction (1998), the 1998 US Embassy bomb blast.
- Armed Forces personnel are not totally isolated from general society. Interaction between them and other members of society are periodic and limited but intense: university lecturers teach their officer corps; military officers enroll in civilian institutions of learning; civilian chaplains minister to the military faithful; military parades are a permanent, and highly valued feature of national public holidays.
- The Armed Forces have not been used for general internal control, save for what civilian leaders consider to best approximate insurgency (e.g operations in security zones)
- Politically ambitious military and police officers are easily recruited into the ranks of the political class upon retirement from active duty. An ex-chief of general staff and several senior military and police officers have served terms in parliament and in parastatal organizations.
- Societal speculation on the affairs of the armed forces is not prohibited but is not encouraged either.

8.2

How publicly accountable are the police and security services for their activities?

- Public accountability for actions of police and security services has improved over the years but still leaves a lot to be desired.

Army and paramilitary police operations in declared “security zones” are generally not open to public scrutiny. Many incidents have been recorded throughout the 1990s of the police acting violently towards protesters, detainees and those engaged in the peaceful exercise of their rights of expression and assembly (see 2.2, 3.1, 3.2).

Because of the long history of single party rule, the distinctions between the state and the political interests of KANU has become blurred, with a corresponding diminution of public accountability. The police are often caught between the demands of politicians and the lawful exercise of their duties. In the absence of an effective system of political accountability, it is the press and public opinion that provide the main pressure for holding the police to account.

An Act of Parliament was passed in 1999, creating the National Intelligence Security Service (NISS) to replace the now defunct Directorate of Security Intelligence, which was better known as the Special Branch. Until its dissolution, the branch was known to use crude methods including torture, to extort information from suspects. Officers of the branch had sweeping powers, roaming the country and arresting, detaining and torturing people with impunity. It targeted mostly political dissidents up to 1992. The Special branch used arbitrary powers to arrest and detain suspects, often holding them incommunicado. Delinked from the police department, the NISS is said to be a “civil service intelligence”, with only advisory but no execution powers. Headed by a Director-General, the NISS, unlike its predecessor has no powers to arrest, detain and prosecute anyone. NISS officials are not allowed to use any force, or inhuman and degrading treatment on suspects when gathering information. The reformed body is run by civilians unlike the Special Branch that recruited from the police force. NISS functions include investigating, gathering, evaluating, collating, interpreting, disseminating and storing information whether in or outside Kenya, for detecting and identifying any potential threat to national security. It now merely advises the President and the Government on steps that ought to be taken to protect national security interests- political, military or economic (Sunday Nation March 19, 2000).

“In December [1996], the Commissioner of Police was dismissed following a public outcry at the shooting by police of three unarmed students during demonstrations at Egerton and Kenyatta universities” (Amnesty International 1997).

At a seminar in December 1998, the Assistant Commissioner of Police is reported to have said that ‘the police have always been torn between protecting their jobs, by complying with unlawful orders from powerful politicians or other well-connected people, or acting in line with their conscience and risking the loss of their livelihood’ (*Africa Research Bulletin*, 25/1/99: 13379).

8.3

How far does the composition of the army, police and security services reflect the social composition of society at large?

- The social composition of the disciplined forces roughly approximates the make up of society but with significant exceptions, specifically regarding minority communities and women.

- Reliable data is unavailable on the social composition of the Armed Forces. The impression from informal observation is that women are under-represented in the Armed Forces and that regime friendly minority communities might be over-represented in the forces. The women’s service corps was recently disbanded (1999) and women officers integrated into regular units of the armed forces.
- The tribal complexity of Kenya's Armed Forces has been a politically potent issue since the colonial era. Historically, the colonial army was deliberately recruited from minority social strata or ethnic groups thought to be suspicious of nationalist movements dominated by numerically stronger communities such as the Luo and Kikuyu. This historical fact and the ascendancy of the Kalenjin and allied minority communities after 1978 account for the perception that these communities are over-represented in the Armed Forces.
- Even though representation in the Armed Forces may not be perfectly proportional and complaints abound about recruitment and promotional malpractices, the Armed Forces appear for all intents and purposes, to be national. Effort is evidently put into recruiting the widest possible cross section of the general population into the disciplined forces.

8.4

How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?

- Organized crime and paramilitary activity have seen an upsurge in recent years and acquired something like a permanent feature in the country.

There is a condition of chronic insecurity in the border areas with Ethiopia and Somalia, with frequent incursions of armed gangs across the border, and problems of gun control in the north and north-east of the country (see 2.1).

There is an emerging problem of armed cattle rustlers who bear resemblance to private militia. Recent years have witnessed the transformation of northern Kenya's traditional raiding parties into armies of up to a thousand armed combatants (P. Goldsmith 1999). Such evidence suggests that cattle rustling, initially a traditional practice, has become commercialized, militarized and politicized and has assumed an important place in what is now being referred to as the illicit arena of market activities or the "bandit economy". "The bandit economy" also engenders a symbiosis between organized crime and official corruption. The other activities in the "bandit economy" include car jacking, land grabbing, government corruption, bank robberies, and drugs and arms trafficking.

A reputable periodical estimates the value of the bandit economy between 1990-99 as shown below

Sector and activity	One year returns	Five year	Ranking in
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	(Kshs)	returns (Kshs)	order of significance
Car jacking	1.56 billion	7.8 billion	4
Land grabbing;			
• Karura forest		6.2 billion	
• other government plots		3.5 billion	
Total land		9.7 billion	3
Government corruption	25.5 billion	127.4 billion	1
Bank robberies;			
• Violent		0.3 billion	
• Non-violent		21.9 billion	
Total robberies		22.2 billion	2
Cattle rustling	66 million	0.8 billion	5
Drug trafficking	not available	not available	
Arms trafficking	not available	not available	

Cf: East African Alternatives, September/October 1999. "The militarization of politics in Kenya: of private militia and the Bandit Economy". Source: Compiled from data availed by annual police report(s), The Auditor General's Report(s), documents from ministry of lands.

The increasing frequency of drug hauls at the port of Mombasa, at Jomo Kenyatta International Airport and on the roads suggests that Kenya is becoming an important transit country for international drug traffickers. Hashish, Mandrax and Cocaine are the drugs that are frequently seized. It is widely believed in police, court and media circles that kingpins of drug cartels operating in Nairobi and Mombasa are protected by senior government officials and politicians. Police officers and members of the judiciary are also suspected of colluding with known drug traffickers to frustrate arrests and conviction. (Daily Nation, February 22, 2000)

Nairobi chief magistrate Boaz Olao says courts are dealing with a "faceless drug syndicate" in the country. He questioned the sincerity of police in apprehending suspected drug traffickers who jump bail-even when their passports were impounded they manage to get out of the country. He denied bail to 9 Tanzanians, 2 Kenyans and 2 Pakistanis... Daily Nation Feb 24,2000

A number of internationally sought drug barons and Mafia dons are suspected to be safely settled in Kenya, especially the coastal town of Malindi and gone into "legitimate" business.

8.5

What measures, if any, are being taken to remedy public identified problems in this field, and what degree of political priority and public support do they have?

In a review of 1998, The Nation concluded “ the police force came out better than in previous years by showing more readiness to acknowledge faults and listen to criticism. A committee of senior police officers is collecting views on what needs to be done to reform the force” (31 Dec 1998).

- An increasing number of joint police-public initiatives to combat crime are being witnessed, including community security committees. The Nairobi Central Business District (CBD) community has for instance helped establish mobile police outposts within the CBD. There is also more public disclosure of deficiencies in the police force and crime.
- Stiff penalties have been established for drugs-related offences such as a maximum 10 yrs for possession and more for trafficking of drugs.
- The anti narcotics unit in the police force has been strengthened and equipped with modern facilities for tracking down drug caches and bursting cartels.
- The suspected kingpin of the drug syndicate in the coast, Mohammed Ibrahim Akasha whose haul of drugs valued at Kshs 940 million (US \$ 12.5m) was seized in early 2000 has had his bank accounts frozen and assets seized by the state. Interpol is assisting Kenya to trace him in his suspected hideout in Europe.
- The creation of the civilian-run National Intelligence Security Service (NISS), replacing the Directorate of Security Intelligence, in 1999.
- The council of Imams and Preachers have launched a campaign against suspected drug dealers. The council led worshippers in demolishing the house of a man believed to be a distributor for suspected drug tycoon Ibrahim Akasha (Nation, March 13, 2000).

9.0 Minimizing corruption

Are public officials free from corruption?

Executive summary

Corruption in Kenya has become part and parcel of the government bureaucracy. It is one of the single most important manifestations of economic malgovernance. All exercises in curbing corruption seem to lack the necessary political will and seem to be intended to please the donors. Those who have stood up against corruption have been sacked, dismissed, or shuttled to inconsequential positions; some it is suspected have been killed. Nonetheless, out of pressure from civil society organizations and international donors, the Kenya Anti-Corruption Authority (KACA) was established in 1998 and is in the process of probing and prosecuting corruption cases although the general perception is that it is dealing with small time thieves in the public service as major economic saboteurs remain untouched.

9.1

How effective is the separation of public office from the personal business and family interests of office holders?

- The use of public office for private gain is rampant.

There is a price on most transactions in Kenya which involve access to resources. A distinction needs to be made between the petty bribes which citizens have to pay for everyday services, such as getting a driving licence or ID card, and the large-scale misappropriation of public funds by the political elite. Private industrial and commercial firms in which prominent state functionaries have interests enjoy preferential treatment in the awards of lucrative tenders for large government projects, including the construction of roads, buildings and key installations such as for power generation.

Kenya was ranked 52 out of 54 at the Transparency International corruption index in 1996, and 75 out of 85 in 1998. The level of corruption has been a recurrent issue for international donors, and contributed to the suspension of IMF financial support in 1991 and 1997. Sectors particularly affected by corruption include:

- Banking, involving embezzlement (e.g. The Goldenberg affair, 1992) and the debt default on the part of government ministers (including aides of President Moi, 1999).
- Road construction and repairs, with Ministry officials colluding in overpricing by consultants and contractors.
- Import/export trade, with false accounting and evasion of duty (e.g. sugar imports 1997)

- The energy sector, where the World Bank refused to endorse programmes while a particular minister remained in charge (1990).
- Government licensing, most recently involving non-transparent bidding for the country's second cellular telephone operating licence (1999)
- Land 'grabbing', where vacant government land or land traditionally used by pastoralists is reclassified as 'state land' and distributed to members of national and local governments and their administrations.
- The alleged redirection of government funds to pay private debts (e.g. Eldoret Municipal council, November 1999)
- Looting of parastatals and government through inflated bills and payment for undelivered goods and services, commonly known in business circles as "air supply".

Corruption in Kenya is systematic and endemic. The economic costs of corruption are very high and it is widely acknowledged that corruption cases are so diverse and sometimes so ingenious as to defy being captured adequately by watchdog institutions or even the media, hence corruption is arguably under-reported.

9.2

How effective are the arrangements for protecting office holders and the public from involvement in bribery?

- The Anti-corruption Authority is generally considered to target lowly civil servants and petty offenders, hence public cynicism about it is high.

'Whistleblowers' and those involved in investigating corruption do so at considerable personal risk. Dr. Robert Ouko, minister of foreign affairs, was murdered in 1990, reportedly to prevent him revealing illegal deals by corrupt officials. Samuel Chebii, head of customs, was removed from his post after his department reported the discovery of a massive import duty evasion involving government officials, though he was subsequently reinstated following pressure from the IMF (1995). But such is the pervasiveness of corruption among civil servants that Mr. Chebii has since been interdicted on charges of corruption. Judges involved in trying corruption cases are also vulnerable to bribery (e.g. the Goldenberg case, 1999).

Those who have been victimised for displaying an overt commitment to fighting corruption include:

- John Harun Mwau; removed from chairmanship of KACA when he moved against high-ranking Treasury officials suspected of misappropriating public funds.
- Simeon Nyachae; transferred from Treasury as Finance Minister when he published names of debtors to the government-owned National Bank, including political bigwigs, ministers, and high ranking public officials most of whom owed hundreds of millions of shillings in unsecured bank loans.

9.3

How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectional interests, or the misuse of public funds?

- The existing framework for controlling election financing is largely ineffective, unrealistic and routinely ignored by politicians.
- In theory, there is a rule limiting campaign expenditure to the now ridiculously low amount of Ksh. 40,000 (USD 600). But this has never been enforced.
- The requirement that politicians may not use public resources for campaign purposes is also routinely flouted as members of the ruling party have indirectly accessed public funds for their campaigns.
- There is no public financing of political parties although a bill to that effect has been passed by parliament.
- Elections are enormously expensive. It is estimated that the average cost of financing a successful campaign is Ksh. 300,000 (USD 5,000) (personal interview with MPs) This figure has gone up many times during the last 2 multi-party elections.

(For misuse of public funds, see 5.3 and 9.1)

9.4

How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption, including overseas?

- Some corporate organizations, especially the multinationals seem to have some influence over policy, but overall, the corporate sector is not at the centre of policy making
- The political class has been hostile to the indigenous private sector for the last twenty years or so. However, on-going liberalization of the economy has created some openings for private sector influence on policy especially through the Kenya Association of Manufacturers and Federation of Kenya Employers.
- It is generally accepted that the private sector especially multinational corporations are part and parcel of corruption in the country.
- No law governing contribution of businesses to parties/elections

Contribution to campaign finances ensures that business tycoons have influence over governmental policy e.g. in 1996 sugar imports were suspended by the Cabinet to allow local stocks to be exhausted and the importation system regularised. The ban was however soon lifted following lobbying by influential importers of sugar.

Institutional weaknesses and a legislative vacuum before the enactment of the environmental bill have largely been blamed for the failure of the government to enforce best practice by industries in the management of industrial waste and the exploitation of natural resources through *inter alia*, mining, lumbering and fishing. However many huge multinational and local industrial concerns are held to have

capitalised on the less than transparent ways of public officials to dispose industrial waste indiscriminately and exploit natural resources in unsustainable and environmentally unfriendly ways.

Donors have for long been held to be beyond reproach as regards transparency in their dealings with the domestic government and firms contracted to execute projects they fund. In the recent past questions have increasingly emerged on the credibility of especially multilateral donors, with the uncovering of increasing numbers of irregularly awarded and often times hugely inflated contracts in projects they support.

9.5

How much confidence do people have that public officials and public services are free from corruption?

- Public officials are considered to be generally corrupt.

The general perception is that public officials are corrupt, given that one can hardly get any service from a government officer without giving an inducement. According to ICJ-K 1998 survey even parliamentarians are bribed to vote for or against given motion in the house. Ksh. 476 billion (US \$6.4 billion) is the figure calculated for government inefficiency and corruption between 1992 and 1997 in a study by a Kenyan NGO published in September 1998. This is the equivalent of nearly one third of the annual government revenue. Based on an analysis of the annual reports of the Controller and Auditor-General, the Centre for Governance and Development (CGD) defines five main areas of wastage: revenue under-collected, pending bills, wasted funds, irregular payments, and payments for undelivered goods and services. (The Nation 28 September 1999)

A recent study by the Dutch embassy concluded that the “Budget process in Kenya fails to address the needs of Kenyans due to lack of political rationalization, general inefficiencies and corruption” (8 July 1999)

9.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- A Parliamentary Committee on corruption was set up in 1999.
- An Anti Corruption Authority was set up in 1998 under an Act of Parliament but its chairman was removed from office within a year of appointment after a long court battle in which he was accused of acting *ultra vires*; a new chairman was appointed in 1999.
- Residents in some parts of the country have organized to confront corrupt local government officials.

- Increasing lobbying and advocacy by civic society to create a national code of ethics for leaders.
- Attempts to reform the judiciary following an internal inquiry on the status of the judiciary (the Kwach report 1999).
- The Controller and Auditor General routinely audits public finance expenditure and investment portfolios and recommends measures to be taken to stop misappropriation of public funds.
- A new group of technocrats was installed in key government ministries in 1999. The team has identified corruption as one of the economic ills to be fought is the economy is to recover.

The above measures have public support but the public remains sceptical about the political will to curb corruption.

10.0 The media and open government

Do the media operate in a way that sustains democratic values?

Executive summary

The print media has increasingly taken an independent stand on issues and topical debates in ways that contribute to the enhancement of democratic values. However, the government still has control over the most important channels of political communication, namely the electronic media, (Radio and Television) which have a national reach, and controls this media in ways that are inimical to the sustenance of democracy. Additionally, the recent introduction of prohibitive libel costs prevents journalists from freely writing about a number of issues. Nonetheless, the emergence of the so-called alternative press is a sign of greater press freedom.

10.1

How independent are the media from government, how pluralistic is their ownership, and how free are they from subordination to foreign governments or multinational companies?

- Both private domestic and multinational investors have huge stakes in the media. The state is a major player in broadcasting.

A distinction must be made between the broadcast media, which are largely government-owned and controlled, and the press, which is pluralistic and maintains a stout independence despite government restrictions.

Broadcasting

- The only broadcaster with nation-wide radio and TV reach is the state-owned Kenya Broadcasting Corporation (KBC), which the government controls through the appointment of its governing board. The KBC operates largely as the voice of government in political matters, although in theory. It is supposed to run independently as a commercial corporation.

The Kenya Human Rights Commission and Article 19 monitored the output of the Kenya Broadcasting Commission during the 1997 election period and concluded that the organisation was 'clearly incapable of achieving meaningful objectivity' (Kenya Human Rights Commission and Article 19, 1997).

- TV talk shows have become a regular feature in all TV stations. Phone-in and chat shows are also popular on TV but participation is primarily a Nairobi affair

- Recently, there has been an emergence of private FM stations, which now number about ten; three of which are foreign-owned and controlled. These FM radio stations however have limited geographical coverage.

No. of radio receivers (1996): 2,600,000
No. of TV receivers (1996): 350,000
Total population (1997) 28.4million

- Generally, acquiring broadcasting licences from the government has been difficult.

Press

The major newspapers are privately owned. The Aga Khan’s Nation Group of newspapers, including The East African and The Daily Nation, take a politically independent line from the government, as do many individual journalists. However, the press operates under a number of government restrictions, formal and informal:

- The Books and Newspapers Act gives the Registrar-General the power to license and proscribe publications, and to prosecute journalists. A number of publications have been banned during the 1990s, though some of these proscriptions have been subsequently overturned in the High Court.
- The Defamation Act and associated sections of the Penal Code restricts the publication of certain types of material (see 3.2)
- Individual journalists have been subjected to harassment and intimidation (see 10.4)
- Foreign journalists can be deported for publishing articles critical of the government.

Circulation of newspapers

1. Nation Group - independent -	200,000
2. The Standard – “independent” -	75,000
3. The People - independent -	40,000
4. Kenya Times - government -	20,000
5. East African - independent -	60,000

10.2

How representative are the media of different opinions and how accessible are they to different sections of society?

- The media generally gives voice to varied opinions and is accessed fairly easily by the literate sections of society. Radio is the most accessible

Both public and private radio stations are currently running independently produced programmes, through which local views can be debated by communities and aired nationally. Independent production is facilitated by groups like the Rural

Correspondents Association, Development Through Media and the Africa Broadcasting Network (Cliffe et al.).

For data on radio and press, see 10.1

10.3

How effective are the media and other independent bodies in investigating government and powerful corporations?

- The media can be quite effective investigating government and the private sector.
- Investigative journalism revealed the financial scams in the Ministry of Health; Kenya Cooperative Creameries; Kenya National Assurance Company; and Tana and Athi Rivers Development Authority among others; as well as in government departments such as Department of Defence where recent revelations of discontent led to reshuffles of key personnel.

10.4

How free are journalists from restrictive laws, harassment and intimidation?

- Although press harassment has decreased since the advent of multi-party competition in 1992, journalists continue to be intimidated in a number of ways.

Prosecution

During the 1990s, journalists have been prosecuted under the Contempt of Court Act for criticizing the judiciary; under the Defamation Act for reporting police violence and allegations of torture and corruption; and under the Preservation of Public Security Act for articles about ethnic conflict. The Chief's Authority Act, which gives local chiefs authority to prevent journalists from carrying out their work and to confiscate equipment, has also been used periodically.

Official threats and corruption

During the 1990s there has been a number of reported incidents of police harassment and beatings of individual journalists, as well as by members of the governing party KANU.

'In March 1998 John Wanjala, a *Daily Nation* journalist, was reportedly beaten with whips and kicked for an hour by the police, and suffered injuries to the legs and chest' (Amnesty International, 1999).

'According to the Network for the Defence of Independent Media in Africa, at a press conference on 17 October 1998, Minister Shariff Nassir warned that KANU would no longer tolerate insults from the press. He is alleged... to have urged KANU's supporters to take a more aggressive line against the press' (IFEX).

According to the Kenya Union of Journalists, an average of three journalists are harassed, intimidated, prosecuted, or threatened with prosecution every month. Glaring cases of harassment and unfair prosecution include:

- In mid 1998 David Makali of the Media Institute was abducted and beaten in Karura Forest for writing an article detailing high level involvement in drug trafficking, including cultivation of *Cannabis Sativa* (bhang) in Mt. Kenya Forest.
- In December, 1999, the top Managing Editors of the *People Daily* were ‘grilled’ by senior Criminal Investigation Department (CID) officers for a report detailing increasing malcontent and disaffection within the Department of Defence.
- In January 2000 Johannes Wandetto, a *People Daily* Correspondent in the town of Kitale was jailed for 18 months without an option of a fine for “irresponsibly” writing about how Presidential Guards were ambushed and their weapons taken away with minimal resistance in the district of West Pokot on their way from a Presidential function in North Eastern Kenya.

10.5

How free are private citizens from intrusion and harassment by the media

- Citizens are generally free from intrusion and harassment by the media.
- The emergent alternative press has increasingly become intrusive in people’s daily lives. It has taken to publishing highly personal matters, including the sexual lives, especially of prominent public figures.

10.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- Increased FM radio stations within the last one year.
- Increased private television stations with a fiercely independent inclination.
- Major newspapers have sold shares to the public thereby engendering some public control of these media.
- There is an on-going review of press law under the Horace Awori Commission, set up by the Attorney General which is supposed to hand in its report in a few months’ time.

11.0 Political participation

Is there full citizen participation in public life?

Executive summary

The range of associative and voluntary organizations is extensive and represents key social, economic and political interests. The level of public participation in these organizations is high. The government has ambivalent attitudes towards these civics. Those civics that espouse liberal political ideals are derided as serving foreign interests and dangerous while the so-called developmental and self help civics are hailed as "partners in progress". The democracy and governance civics are materially independent of the state, courtesy of donor support. However, questions now abound whether sustained donors support is guaranteed and if those civics have the capacity to hold on to the political space conceded by the state without donor support. Elected office continues to elude the majority of interested women and their representation at executive and managerial positions in both public and private offices is dismally low. Under Moi, so-called marginal communities enjoy unprecedented access to public office and parliamentary representation clearly beyond their numerical strength and human capital development relative to other communities. The emergence of multi-partyism has enhanced political participatory space but state institutions in general, are still steeped in the old non-participatory culture.

11.1

How extensive is the range of voluntary associations, citizen groups, social movements etc. and how independent are they from government?

- Civil society is vibrant and largely independent of government. There have emerged incipient but mostly transient social movements.

Kenya has a varied and dense network of voluntary and civic associations. Urban civil society appears to be qualitatively different from that found in rural areas. Rural associations are orientated essentially towards improving the material quality of life; a large proportion of rural voluntary organizations are credit unions, co-operatives and labour pools. Student and professional groups are concentrated in urban civil society and played a major role in pressing the government to reinstate multi-party politics in the period 1990-92. The former groups greatly outweigh the latter in terms of their impact on people's daily lives and in number. Political activism is however present in both urban and rural spheres; commentators commonly accord the protestant churches a leading role in political activism nationally.

There are a number of social movements occurring, some urban, some rural, but much of associational life in Kenya still takes place within formally registered bodies. In the rural areas the nascent social movements are mostly seen as a green revolution of sorts, wherein rice, tea, coffee, and sugar-cane farmers are organizing around particularistic issues such as pricing and marketing of their produce and overall, seeking the democratization of decision making in the agricultural sector. Broadly speaking, social movements are also revolving around students, informal economic entrepreneurs, cultural revivalist groups and quasi-cultic religious organizations. Many of these latter social movements are however largely spontaneous eruptions with little potential to emerge as powerful pressure groups capable of dictating crucial political and economic discourses or processes.

The government has adopted a somewhat schizophrenic approach to the voluntary sector. It has actively promoted voluntary self-help organisations over the past twenty years, such as those bracketed under the Harambee movement (see 12.3) and in the artisanal (Jua Kali) sector. These organisations are valuable because they may provide a substitute for government-funded service provision, especially in rural areas, and, importantly, are a ready means for mobilizing citizens behind government and party programmes – patronage dispensed through citizens' organizations played a significant, unofficial role in government expenditure in the run-up to the 1992 election. It has been suggested that the government supports development NGOs to evade its responsibilities over service provision. The presence of KANU and other political parties in the voluntary sector may extend the reach of ethnic politics.

On the other hand, the President, Ministers and ruling party officials have repeatedly branded the voluntary sector as 'dangerous' and destabilizing and have expressly sought to control those groups with a political or social message that runs contrary to government policy. This is particularly the case with democracy and governance NGOs, of which there has been a proliferation in the 1990s partly as a result of new sums of money made available by foreign donors (in November 1999, ruling party officials denounced the activities of civic education NGOs in Coastal Province (a KANU stronghold) and the government expelled aid workers from North Eastern Province on grounds of national security). Growing evidence suggests that as civil society liberates political space from the state, the same space is increasingly occupied by especially bilateral donors. Lack of full accountability by some civil society organizations has given the government ammunition to use against its opponents in civil society.

Hundreds of NGO's and several tens of thousands of Community Based Organizations (CBO's) are registered in Kenya by the NGO bureau and the registrar of societies respectively. There is also an NGO regulatory council-the executive directorate of the NGO board. On paper, NGOs are subject to considerable regulation but in practice, it is mainly those organisations involved in political or advocacy work that have to deal with protracted bureaucracy and harassment. In an apparent attempt to force NGOs to register under the 1990 NGO Co-ordination Act, the government withdrew tax advantages from organisations registered elsewhere in October 1999. The Act places a requirement of fiscal transparency on organisations, but also subordinates them to the government appointed NGO Co-ordinating Board, situated

in the Office of the President, which has wide discretionary powers to monitor and ban groups.

Additionally, all organisations are vetted by the National Intelligence Service before being allowed to register, a process that may last a year or more. The Board continues to make politically expedient use of its powers to ban groups. But NGO's are finding means to subvert the limiting environment imposed by the NGO Coordinating Act. For instance, some civic organizations have been started as "projects" of parent NGO's, while others on the other hand have been registered as Trusts.

Urban civil society is qualitatively different from that found in the rural areas, which are essentially oriented towards improving the material quality of life. Thus formal NGO's, religious, labour and professional groups dominate urban civil society. By typology, urban NGO's may be classified as:

- Human Rights advocacy groups
- Democracy and Governance organizations
- Welfare organizations dealing with the welfare of street children; women in slum areas; and the aged
- Research and training organizations
- Environmental Protection organizations
- International Development Agencies

11.2

How extensive is citizen participation in voluntary associations and self-management organisations, and in other voluntary public activity?

- Citizen participation in civic organizations is very high.

Most Kenyans are actively engaged in associations for the promotion of their own welfare and for religious purposes. A recent survey showed that public participation is greatest in;

- Associations for promotion of economic interests and welfare
- Church or religious groups
- Human Rights and political organizations

In descending order (Thalman et al, 1997).

In rural Kenya, participation in voluntary or self-help groups is an essential part of life. The World Bank (1996) estimates that each village has between 5 and 17 voluntary organisations, making a total of 300,000 nationwide. The state's role in instigating voluntary activity during the 1970s and 1980s under schemes such as Harambee and District Focus was such that it was not until the mid-1980s that

voluntary organisations (including development NGOs) could “really [be] distinguished from the state” (Kanyinga 1995: 74).

The only resource available to many rural groups is the labour of its members. It has been commented that in terms of development work, voluntary groups are poorly organised, trained and equipped; work is often replicated and there is a lack of communication between groups at all levels. This latter criticism may also be used to describe the relationships within and between professional civic organisations and Churches in urban Kenya during the 1990s.

11.3

How far do women participate in political life and public office at all levels?

- Women have inferior access to leadership opportunities, except in local community groups.

Women have a far stronger presence in the voluntary sector than in party politics or national government. Currently, there are nine women members of the National Assembly and there is no woman in the cabinet. In independent Kenya, only one woman has been a minister, albeit in the peripheral Ministry of Culture and Social Services.

There is one woman Provincial Commissioner, two Permanent Secretaries, five women judges and one woman appellate judge. This backdrop compares with 23,000 voluntary organizations that in 1996 were registered as being specifically women’s groups (World Bank 1996; 51). Although women constitute 53% of the labour force, they occupy only 4.9% of the executive and managerial positions (Kenya Human Development report 1999). This implies that women are underrepresented in those jobs that are more satisfying, better paying and offer higher chances of individual upward mobility. On a positive note, it is encouraging that most urban women are competing favourably with men for well paid office work and in other sectors (ICJ-K 1999 Rule of Law Report)

“The participation of women in the labour force increased to 487,100 persons in 1998, representing an expansion rate of 2.9% over 1997. The expansion of women’s participation in the labour force was much faster than the overall 1.1% expansion in wage employment. The proportion of women in total wage employment hence rose from 28.7% in 1997 to 29.3% in 1998. Improved access to education and continued removal of barriers to economic participation of females is believed to account for the opening of opportunities to women. Educational services remain the main employer of women.... In this sector they actually outnumber men (ROK, Economic survey 1999). In the civil service, women make up about 35% of the workforce but are largely concentrated in the community and social services, including health and education.

In electoral politics, a report on the 1997 elections published by the UNDP, and the Kenyan Electoral Commission (1999) noted that it was unsafe for women candidates to do door-to-door canvassing in the evenings, placing them at a disadvantage (The

Nation, October 19, 1999). In view of the power of money in Kenyan politics, women's lack of independent wealth is most likely far more disabling (see 5.5). There are in excess of 300,000 women's groups all over Kenya and women also have leadership positions in many churches, especially in rural areas.

11.4

How equal is access for all social groups to public office, and how fairly are they represented within it?

- Representation in public office is not ideal and is elusive for especially women and youth.

The first-past-the-post electoral system used throughout Kenya means that elected public office is realistically open to minority groups only where they form a local majority or can co-operate with other minorities to defeat KANU. The smaller size of constituencies for local government elections mean that minority groups stand a better chance of being returned to office. Women, the youth and the disabled suffer general disadvantages in accessing appointive as well as elected public office. It is generally agreed that under existing electoral arrangements, the so-called marginal communities—who are usually supportive of the ruling party—are over-represented in the National Assembly (seen also 5.4). Significant minorities such as Arabs, Asians and Europeans largely shun competition for elected public office. The withdrawal of the public service staff list in 1978 has made it possible for the holders of power to manipulate recruitment practices since then, without anybody being able to verify the manipulation. This means that it is difficult, to assess the ethnic composition of the public service. By their very nature, local authorities tend to be ethnically homogeneous, save for the ones in larger metropolitan centers such as Nairobi, Mombasa, Kisumu, Nakuru, and Eldoret .

11.5

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- Attempts by Women's NGOs, to create an environment favourable to women's better access to decision-making bodies. For example, the target set of one-third women's representation in parliament and civic bodies.
- Some political parties reserve 20 per cent of nominations for women but out of historical biases and sometimes disinterest by women, this quota is rarely met.
- NGO's have been carrying out civic education to make citizens view political participation as important to their well being.
- Recent (1999) appointment of a woman Provincial Commissioner and a woman Appellate Judge (see 11.3)

12.0 Government responsiveness

Is government responsive to the concerns of its citizens?

Executive summary

Public consultation on government policy and legislation has historically been minimal. The situation is changing somewhat, with general civil society becoming more assertive and civil servants getting more inclined to take public concerns on board the policy agenda. The direct nature of constituency representation means that elected representatives keep in constant touch with "facts on the ground" as distance with constituents can be politically suicidal. The status and quality of public service provision is low and consultation with users very limited. The private and voluntary sectors fill in the gaps created by missing or dilapidated public institutions. Self help initiatives have also emerged as coping mechanisms in the wake of generally inefficient public services. The public in general has come to expect little of the state with respect to services, save for probably security and critical infrastructural outlays.

12.1

How open and systematic are the procedures for public consultation on government policy and legislation, and how equal is the access for relevant interests to government?

- Public consultation on policy and legislation is nascent. Politically well connected industrial concerns traditionally curry favour with the government, especially with respect to lucrative tenders.
- There is an increase in public consultation as a result of recent democratic openings due to multi-partyism. But the procedures are not yet systematic, neither is there access by all interested parties.
- Given the concentration of power in the executive and the president's tight control over the realization of that power (by virtue of his influence over the civil service (see 1.2) and the KANU party machine (see 6.2)), there was little room available for public consultation and discussion on matters of policy or government direction especially in the single party era. There has been considerable loosening in this area since the return of multi-partyism. Civil servants are now more open to consultation by the public on policy issues. Indeed senior civil servants including ministers are now regularly invited, and often attend, civil society forums where government policy is under scrutiny. These developments owe, in large part, to the fact that general civil society is beginning to assert itself. The growing assertiveness of civil society was witnessed in its recent (Feb, 2000) demands to meet the IMF team that was negotiating aid resumption to Kenya, a demand which was met. In the late 1990s, the government has continued to express concern about NGOs, local and international, which have criticised government policy or

corruption. One area of particular concern for the government is the recent growth in NGOs focusing on advocacy and civic education – if successful in their aims, such organisations could potentially swell the number of government critics to a point where its hold on power becomes untenable.

The government's understandable interest in attracting foreign investment and enhancing trade has led to a situation where employers' and manufacturers' associations have unrivalled access to government ministers (see also 9.4). Conversely, the overwhelming majority of citizens'/voluntary associations are not organised to represent their members' political interests. Rural Kenyans have little influence over government, if simply because they are largely unseen and are not in a position to impose sanctions, in spite of their apparent numerical strength. But rural producer organizations have in the recent past waged vociferous, sometimes violent, but often successful struggles with the state over policy directly affecting them.

The voluntary sector (here development NGOs) has been able, albeit in a protracted struggle, to organise and ensure some important changes in legislation governing the sector in the period 1990-92; the changes achieved were in legislation that had been passed without consultation and were secured in spite of rather than by the means of the government's repeated promises to listen. The NGOs finally threatened a strike in order to force change (see also 12.1). Strikes and the threat of strike action has been far less effective in other sectors (notably education). The government's attitude towards workers in the public sector (broadly defined) has been ambivalent in the 1990s. A large pool of educated unemployed workers allows the government to call the bluff of public employees with threats to replace those who refuse to return to work.

Access to government, in terms of public tendering, is skewed around particular personal interests. See 9.1.

12.2

How accessible are elected representatives to their constituents?

- Elected representatives are generally accessible to their constituents
- Commentators routinely refer to national and provincial public office as vehicles for patronage and self-enrichment. Whatever the adverse effects for the economy and national cohesiveness, the division of office along ethnic lines does ensure that 'representatives' of dominant groups are broadly accountable to their constituents. Unfortunately, it would appear that representatives are more likely to fall out of favour with the more vocal of their constituents should they fail to win or to dispense government resources for the region – a situation that intensifies corruption and patronage within and between communities at local and national level. In opposition strongholds, the electorate identify with representatives (usually populists) who consistently articulate their grievances and concerns. This has been partly responsible for the attempts by government to deny accessibility of constituents to some opposition parliamentarians.

- Members of parliament are doing increasing advocacy and lobbying around cash crops produced in their respective areas. For instance, there are strong lobby groups of MPs for coffee/ tea, rice, fish and sugar. The MPs from pastoral communities also have their own lobby.
- MP's regularly raise questions in parliament on matters affecting their constituents collectively and individually. These may range from the macro such as budgetary allocations and development projects to the mundane but important such as access of bursary funds for an individual student.

12.3

How accessible and reliable are public services for those who need them, and how systematic is consultation with users over service delivery?

- Public services are generally accessible but of poor quality and little consultation with users actually takes place.

The state's role in service provision has been severely impaired by lack of resources at all levels and by central government's progressive aggrandizement of administrative and executive responsibilities. For illustrative purposes, only 42% of Kenyans have access to safe water with the proportion much lower in rural areas. As commented in 11.1 (above), since independence the government has been largely successful in mobilizing local people for development and welfare issues. These efforts are supplemented by the Kenyan churches and by foreign-based NGOs, particularly in the health sector where NGOs provide between 45-50 per cent of all health-care services and over 50 per cent of all family planning services. In terms of health care, the poor are deterred or excluded from those services that are provided by government by:

- Cost sharing. Although doctors may waive charges, this is rarely the case. Incidents are recorded in which patients have been required to provide paper for their prescription.
- Lack of infrastructure of all kinds. It is not unusual for patients to have to walk to primary health care centres, which in rural areas may be up to 25km away. Roads are seldom maintained making the journey harder, and upon arrival a patient may find that the health centre lacks almost all supplies, from dressing and bandages upwards.
- Lack of money to pay admission fees or undergo costly operations. Specialized treatment remains the preserve of the well to do.

The acute lack of resources in the government as a whole means that on the irregular occasions when the state does spend on goods (such as emergency food relief or medicines) it is not unusual for them to be misappropriated by civil servants or officials. Only 1% of the poor in a World Bank study (1996) reported having received food aid, although 6% reported never having sufficient food. The majority of secondary school age children cannot proceed with their education for lack of opportunities or resources (see also 4.4). The poor families are unable to give their children even the nominally free primary education. Harambee or self-help initiatives

are the most common provider of services to the poor; while this means that necessary work is done, it increases the burden on the hardest working section of the population (and particularly women) and is the source of considerable inefficiency. The lack of specialisation means that in times of hardship (such as caused by drought), the amount of time available for social services and development diminishes with the result that “the poor fall outside most informal and formal self-help systems” (World Bank 1996: 46). The problem is compounded by the fact that there is very little, if any public consultation with users of services.

“Virtually the only resource [a rural community] has is the labour of those who reside within it. If they want certain basic improvements in their environment and in their services, for the most part, they will have to do it themselves” Thomas-Slayter (1995: 148). Nonetheless, at least the minimum infrastructure necessary to facilitate economic activity of the people exists.

12.4

How much confidence do people have in the ability of government to solve the main problems confronting society, and in their own ability to influence it?

- Generally people have little confidence in the government’s ability.

No government would easily surmount the mountain of problems that Kenya faces, embracing hunger, AIDS, political violence and corruption. The government appears to have been more concerned to cling onto power by repression and subterfuge during the 1990s and does not appear to have paid any regard to trying to win genuine popular support by bettering the living conditions and prospects of the population. To this end, each economic liberalisation has almost without exception been accompanied by a tightening of power. The self-help initiatives of the immediate post-independence era would appear to remain the mainstay of government policy towards development. The government does occasionally provide blocks of financial aid for self-help and development projects (e.g. Ksh 1bn for the Jua Kali sector in September 1999), but this does little to alter the fact that most Kenyans have little confidence in the state, and would appear to expect little of it. Additionally, without a substantial reorganization of the political system, and of the country’s economic relationships, there is little prospect that the will or the means to improve the quality of human life will exist. Despite knowledge of the interface between malgovernance and their poverty, the poor do not articulate their concerns and expectations of government from a rights perspective as they have not appropriated the language of rights (Basic Rights Steering Committee, 1999). This language is now being popularized by civic organizations.

12.5

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- Government has established a Poverty Eradication Commission.
- A consortium of NGO's led by Action Aid-Kenya are spearheading a "Basic Needs are Basic Rights" campaign to sensitize the people to demand their basic rights and to influence government to create a facilitative environment for the realization of those rights.
- The IMF is now conditioning continued assistance to Kenya on the commitment of government to reduce poverty as evidenced in its promulgation of the Poverty Reduction and Growth Facility to replace the much maligned Enhanced Structural Adjustment Facility.
- Sections of the political class, civil society organizations and religious groups spearheading demands for a people driven constitutional review instead of a government approved process of constitutional reform.

13.0 Decentralization

Are decisions taken at the level of government which is most appropriate for the people affected?

Executive summary

A number of factors hamper the effectiveness of local councils that are the levels of government most appropriate for the people. These factors include lack of autonomy on the part of the councils; the dominant role of central government in local affairs; lack of finances as cess money collected at the local level is channelled to the centre to be spent according to priorities established there; lack of proper devolution of powers; as well as political manipulation. On the whole, though Kenya is now a multi-party political system, the centralized institutions of personal rule under the previous one party system have not been dismantled. Hence development planning and decision-making are still centrally determined.

13.1

How independent are the sub-central tiers of government from the centre, and how far do they have the powers and resources to carry out their responsibilities?

- Local authorities work at the mercy of central government. They control meagre resources, perform residual functions and offer mediocre services.
- Local politics are not conceptually distinct from national politics in Kenya. The confusion arises partly from the lingering legacy of the single party system.

Under the colonial British system, settler communities were granted rights to representation and local democracy that were not replicated in the administration of 'native' areas until immediately before independence. Local government in Kenya currently has five tiers; City council; Municipal councils, Town councils, Urban councils, and County councils at the lowest level.

The independence constitution set in motion a devolution process, the intended aim of which was to create a relatively autonomous federal government consisting of eight provinces; however, a brief period of co-operation between KADU and white settlers in local government in the early 1960s signalled to KANU that regional government had the potential to weaken its national hold on power. The central government began cutting away at the powers of the nascent regional governments.

- In 1964, the eight regional assemblies were abolished. They had been established by the constitution to define the responsibilities of, and to set up, local authorities. This was followed by the absorption of powers foreseen for the regional assemblies into the civil service. Beginning in the mid-1960s, 'all ministries

resumed full control of their activities in the provinces' (Gertzel 1974: 35 cited in Southall et al 1996), a process that was completed with the transfer of responsibility for health and education to the centre in 1970 under the Transfer of Functions Act of 1969.

- A one party state was developed which effectively squeezed out room for political autonomy at the local level. Within this system, the KANU party was dominant and effective power was exercised by the provincial administration on behalf of an all-powerful executive.
- Despite official talk of decentralised district planning best symbolised by the District Focus for rural Development adopted in 1982 and ostensibly intended to give local authorities a greater say in development issues, in practice, it required that councils prioritize their activities according to the objectives set out in the government's five year plan. Development activities themselves often emphasize self-reliance and self-help within the community, reducing expectations of government at all levels and, as a corollary, adversely affecting participation in local government.

Local government is further undermined by:

- The quality of councillors and rising corruption. Local government offers minority groups the most secure access to state resources; elected office appears to be regarded as a route to accumulation, although the extent of available resources at this level is such as not to appear to allow for self-enrichment. The hollowing out of official powers and responsibilities appears to have deterred many competent and motivated individuals who in different circumstances may have stood for election.
- Lack of control over council officials. The conditions and terms of service of council civil servants are controlled by central government, giving them an incentive to obstruct elected representatives' plans if they challenge, or are likely to be unpopular with, the ruling party.
- Chronic underfunding. Insufficient resources are available to government at all levels as a result of indebtedness, corruption and mismanagement. The decay of buildings, public parks and leisure facilities under local authority control is evident in all urban areas; the economically damaging (and physically dangerous) state of the road network across Kenya is a further visible reminder. Opposition dominated councils have the added disadvantages that grants in aid from central government may be even less generous than those distributed to KANU-controlled areas; while it is also alleged that government agencies commonly delay forwarding funds and paying rates/taxes.
- Cess funds collected by local government are forwarded to the central government to be redistributed on the basis of priorities set at the centre.
- Local Government Act which gives the Minister of Local Government enormous powers over the local authorities.

In essence, no government since independence (or the prior colonial government) appears to have valued decentralized government. Where the government has encouraged mobilization at local level, this has been for development initiatives intended to gain political capital for the ruling elite and party though sometimes packaged in order to appear 'apolitical.'

In an editorial in early September 1999, the nation writes: “at...local level...leaders have miserably failed to enable their people to properly exercise democratic governance... civic leaders in successive councils since 1992 have only excelled in political rivalry and presided over the plunder of ... resources.” Referring specifically to Nairobi City Council, the paper notes: “Instead of being forums through which leaders articulate the concerns and interests of voters, council meetings have often been characterised by fisticuffs, name calling and heckling (2 September 1999)

13.2

How far are these levels of government subject to free and fair electoral authorization, and to the criteria of openness, accountability and responsiveness in their operation?

- Local authorities are the by word for inefficiency, corruption and complacency. Local Authority elections are held simultaneously with national elections but voters do not take them seriously.

Multi-party elections to local authorities were reinstated in 1992 after almost thirty years of one-party rule. The first-past-the-post electoral system used in all Kenyan elections is less of a disadvantage to minority ethnic groups in local elections than it is at the national level (owing to the comparatively smaller size of constituencies and wards and to geographical concentration of groups members within them). However, representativeness of local government is undermined by a number of factors, including:

- The power of the minister for local government under the Local Government Act to appoint up to one third of the members of each local council, ostensibly to ensure the representation of special interests. This power appears to be used exclusively to appoint KANU-members to opposition dominated councils. In 1992, 1,304 councillors were elected to office, a further 585 were appointed (Southall 1996: 510).
- The practice of holding elections to local government at the same as elections to national political office. Local issues tend to play a distinctly subordinate role to events on the national stage. This is compounded by the tendency among voters to vote for an MP together with his slate of councillors.
- The absence of clear reporting on electoral results at local level. The national media failed without exception to report the outcome of the 1992 and 1997 contests, partly because attention was distracted by the national elections but perhaps significantly because the Electoral Commission appears to have failed to have compiled comprehensive results. The only official results were those published in the Kenya Gazette, which stated only councillors’ names and wards not their political parties.
- Defections of councillors to KANU. A practice also noted at national level (see 6.4), ruling party members are reported to encourage opposition councillors to change allegiance – however, this practice is hampered by the legal requirement to hold a by-election in seats where this occurs.

The independence of local government is further affected by:

- The President's power to perfunctorily dissolve elected councils and appoint administrative Commissions in their place. 12 local authorities were dissolved on grounds of mismanagement between 1970 and 1992 – the policy appears to have been pursued primarily to “secure adherence to ministerial policy” (Southall 1996: 508). Although appointed commissions are officially justified on the grounds that they are rich in technocratic skills and responsibility which ‘discredited’ councils are alleged to lack, the case of Nairobi city council demonstrates that their record is scarcely better. An elected authority resumed responsibility for the capital in 1998 after a suspension of 15 years, during which time three appointed commissions had presided over the decay of the entirety of the city's infrastructure and services.
- It is noteworthy that there is no direct link between traditional authority and local government in Kenya since the lowest cadre of local administrators, chiefs and assistant chiefs, are appointed civil servants. They in turn appoint the village elders.

13.3

How extensive is the co-operation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy, and in service provision?

- Local Authorities hardly consult stakeholders.

Voluntary self-help groups play a vital role in the lives of ordinary Kenyans (and especially the poor) in all parts of the country. The government has actively supported the formation of such groups over several decades (see 11.1); commentators report that informal self-help organizations are a key means of access to the community for local representatives and party officials. Rather than co-operation, this practice suggests local government plays a rather more important role in maintaining the state's presence and control over the grassroots.

- The role of NGOs in local development is increasing. In theory, the NGOs must have their programmes and projects go through District Development Committees but in practice, many do not bother.
- Cooperation between government and other partners at the local level is particularly noticeable in relief, health and education

13.4

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of priority and public support do they have?

- The current constitutional review process (due to report one year before the next scheduled elections in 2002) is widely expected to suggest a strengthening of

devolved government. KANU is expected to be supportive of any proposed changes: stronger decentralized government would allow KANU politicians to protect their interests by shifting political power to their heartlands in the Rift Valley and the Coast Provinces, limiting the losses that may be incurred in the event of a change in national government.

- The sporadic, but occasionally protracted, violence in these two provinces since 1992 may indicate attempts by members of the ruling party to further strengthen their positions by creating ethnically unitary areas.
- Revision of the Chief's Authority Act under the IPPG in 1997 to Administrative Officers' Authority Act.
- A pointer to future devolution of power could be the recently initiated Local Authorities Transfer Fund whose objective is to establish mechanisms for the transfer of funds from the central government to local authorities in accordance with their development plans and prioritised needs.

14.0 International dimensions of democracy

Are the country's external relations conducted in accordance with democratic norms?

Executive summary

Kenya's historically intimate interaction with western powers largely informed the content of her international relations and the character of her foreign policy for the larger part of her post colonial existence. But the collapse of the cold war dramatically reduced Kenya's geo-strategic significance and suddenly, she found herself holding the short end of the stick in the politics of Aid conditionality that succeeded the era of soft aid. Since then, her protestations notwithstanding, Kenya has virtually become hostage to IFI's, especially the Bretton Woods institutions. Kenya has ratified the main international human rights instruments and generally makes the best endeavours to facilitate the work of the UN, save for hiccups in respect of cooperating with the Arusha-based war crimes tribunal over members of the Rwandan regime of former President Juvenal Habyarimana. Having borne the brunt of refugee influxes from the entire region, Kenya has developed a decidedly anti-refugee sentiment. Refugees and asylum seekers especially from war-torn Somalia have been intimidated, harassed and sometimes repatriated against their will. Kenya's support for democracy abroad has been lukewarm though she has on several occasions sent troops to UN peace missions and led many regional conflict mediation initiatives.

14.1

How free is the governance of the country from subordination to external agencies, economic, cultural or political?

- In spirit and substance, Kenya is beholden to her international benefactors (especially IMF and World Bank).

Owing to the level of government indebtedness and the country's trade imbalances, international financial institutions have been able to secure substantial leverage over the Kenyan government in setting the terms for new aid and credit arrangements. These have involved the restructuring of public finances, privatisation of parastatals, decontrol of prices and other liberalising measures, improved fiscal transparency and accountability, and civil service reform. Dissatisfaction with the pace of reform led to the suspension of payments by the IMF in 1991 and again in 1997. In the former year suspension was also used to help secure Moi's agreement to a return to multi-party competition. The 1997 suspension was still in force as of September 1999 though

officials from the IMF and World Bank are currently negotiating with the government. The framework under which Aid is to be resumed is, reportedly, considered humiliating in the high echelons of government. The civil service now has in its numbers, a team of technocrats reportedly paid by the IFIS to oversee reforms in public fiscal policy and public management in general.

Since 1980 Kenya has had an agreement with the USA, allowing US forces access to air and naval facilities in exchange for military and economic aid. This has enabled the US to exert considerable leverage over the government, including issues of political reform and human rights.

14.2

How far are government relations with external donors based on principles of partnership and transparency?

- Kenya's relations with foreign donors are subordinative.

Aid and credit conditionality has all the manifestations of an externally imposed agenda, and some of the economic liberalisation measures have met with strong domestic opposition. Government response to reform proposals has been one of reluctance, and relations with donors have been correspondingly fractious throughout the 1990s. In March 1993, for example, Moi described the IMF conditions for the resumption of credit as 'cruel, dictatorial and unrealistic'. Donors in turn have demanded evidence of implementation of reform programmes, rather than simply intentions, as a condition for the continuation of aid and credit. The government has established sectoral co-ordination units to oversee the implementation of donor-assisted projects, holding monthly informal meetings with the resident donor community. There is also an Inter-Ministerial Committee which reports to donors on progress and problems, involving both sectoral and macro economic adjustment programmes. In recent years donors have increasingly worked with civic groups and NGOs, bypassing the government where the latter's intentions and delivery efficiency are judged to be lesser than those of organisations in civil society. The external penetration of Kenyan civil society is thus considerable, and relations between CSOs and donors are variable, despite the existence of a number of co-ordinating bodies among donors themselves.

14.3

How far does the government support UN human rights treaties and respect international law?

- Kenya generally observes UN human rights treaties but often pleads inability to guarantee some in view of constraints or reservations.

Kenya is a signatory to the main human rights treaties (see 0.3) and also the Rome Statute of the International Criminal Court. It has ratified conventions on the prevention of bacteriological and chemical weapons, and has signaled its intention to ratify the Ottawa Convention on Landmines. It is one of 16 African countries that are yet to ratify the unilateral ban on landmines use. President Moi was reported in 1995 to have refused to co-operate with the war crimes tribunal at the Hague in respect of officials of the Rwandan regime of former president, Juvenal Habyarimana, who had taken up residence in Nairobi. Members of the Habyarimana family as well as the aforesaid genocide suspects are still believed to be living freely in Nairobi.

14.4

How far does the government respect its international obligations in its treatment of refugees and asylum seekers, and how free from arbitrary discrimination is its immigration policy?

- Refugees and asylum seekers are often welcome. Refugees in particular are now something of a burden to Kenya. Some complain of mistreatment.
- During the 1990s Kenya has seen a massive inflow of refugees from civil war and repression in neighbouring Somalia, Ethiopia, the Sudan, Rwanda and Burundi, numbering well over half a million people in all. These have placed an enormous strain on the country's resources, and have contributed to the instability in Kenya's own border areas, particularly in the north and Northeast. Conditions in many of the country's refugee camps have been described as 'appalling', and refugees have been subject to periodic police crackdowns and arrests.
- Kenyan authorities handed over Abdullah Ocalan, leader of the Kurdish People's Workers Party (PKK) to Turkish authorities.
- Kenya housed ex-Somali dictator, Siad Barre, for a while after he was overthrown. Kenya has set generally stringent conditions for immigration though Somali's, Sudanese, Zaireans, Tanzanians and Ugandans have a significant presence in the country. Harassment and intimidation of immigrants, especially of Somali origin, is common.
- Kenya houses Ugandan "revolutionary" fugitive, Alice Lakwena.

14.5

How consistent is the government in its support for human rights and democracy abroad?

- Kenya has a mixed record in support for human rights and democracy abroad.
- The government of President Moi has traditionally supported ruling regimes, human rights records notwithstanding (Rwanda, Somali, Zaire, Uganda).
- Kenya provided lukewarm support to liberation movements in Southern Africa. While maintaining the OAU line on most regional and global affairs (including the Middle East question), Nairobi has quietly sought and obtained Israeli military, financial and technical assistance.

14.6

What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?

- Kenya has played a major role in regional conflict mediation efforts, most notably the Inter Governmental Authority on Drought and Development (IGADD), Peace Initiative for Uganda- Sudan, Eritrea-Ethiopia and Somali. - Kenya has also taken part in virtually all mediation rounds of the Burundi conflict. She made belated attempts to resolve the Zairean political crisis in favour of the Mobutu regime. Kenya's diplomatic efforts have produced generally mixed results.
- Kenya is taking steps to eventually ratify the unilateral ban on the production and use of landmines.
- Kenya played an instrumental role in initiating the international convention on the rights of the child.

Prospects For Democratic Progress in Kenya

Some Conclusions

The Historical Context

A faithful assessment of democratic progress in Kenya must of necessity begin from a cursory glance at three epochs (pre-colonial, colonial and post-colonial) that have shaped her political history. Precolonial Kenya has been portrayed by most accounts as having been peopled by indigenous communities, which in their different ways, generally promoted egalitarianism, and therefore, social democracy. The colonial order, based as it was on the social and economic logic of subjugation was inevitably oppressive to the indigenous African peoples: Africans were not only denied full access to the means of production but also, could not maximize on the limited associational space that the colonial order offered. Further, Whites-only adult suffrage in the early colonial period went against the democratic precept of majoritarian rule and meant that the first Legislative Council was made up entirely of European settlers. Forced labour and compulsory taxation deepened the sense of social vulnerability and uprootment of Africans. It was no coincidence therefore, that the earliest forms of resistance to colonial rule came in the form of associations seeking avenues to sustain the social and moral codes of kinship that had formerly guaranteed the security of community members. The most important political epoch for the purpose of this particular assessment however, is the post-colonial era. This is the subject to which we now turn.

The first few years of Kenya's independence witnessed systematic attempts on the part of the new African leadership to overcome the debilitating constraints of the colonial legacy first by reorganizing public institutions and secondly, by fortifying themselves politically, especially through centralizing political power. Thus, those institutions that perpetuated formalized rivalry with the ruling coalition were reshaped or eradicated. Thirdly, the new leadership showed little inclination to uphold the precepts of the independence constitution, which they now viewed as a necessary compromise that was made to hasten the transfer of power and not necessarily a binding instrument. This process of political consolidation engaged in by the new political elite facilitated the emergence of the phenomenon of personal rule whose main characteristic feature was clientelist politics. Hence political and administrative actions were only partly rooted in the state institutions and organizations and largely anchored on cronyism, kinship, factional alliances, and ethnic fellowship. This authoritarian and personalistic leadership engendered a number of problems across the entire spectrum of governance and created a precedent for the assault on democratic precepts.

First, recruitment and deployment of human resources was often not based on a system of merit, achievement or any other Weberian so-called, rational and objective criteria, rather, the basic considerations were personal, ethnic and perceived loyalty to

those holding the reins of power. Inevitably, this mode of public recruitment undermined professionalism, morale, and a sense of commitment to duty in the entire public service, leading to bureaucratic inertia and institutional decay. Corruption and rent seeking also flourished, especially as key public functionaries owed their loyalty to political patrons rather than to the offices they held and the people they were expected to serve.

Second, the all powerful Provincial Administration, which had so effectively served the colonial masters, was retained after independence, ostensibly to manage development by mobilizing the people's productive forces and promoting grassroots participation in planning and implementation of development initiatives. Curiously, however, the authority-bearing function of the Provincial Administration did not appear to have been well linked to its development mobilization function. Hence the Provincial Administration continued to be used as an instrument of state penetration of society and for absolute control by the chief executive.

The passing away of Jomo Kenyatta, Kenya's first Head of State, ushered in the regime of Daniel arap Moi, which did not differ much from that of his predecessor in form and substance, save for leadership style and personnel. Indeed, under Moi, the few remaining vestiges of democracy that survived the first regime came under heavy attack. The other two most noteworthy aspects of Moi's regime have been institutional decay and the implosion of corruption. Commentators have often suggested that the second post-independence regime has portrayed a general ambivalence towards economic growth and a lack of appreciation of the role of formal institutions. Thus under Moi, grand corruption (often referred to as kleptocracy) inhibited the performance of public institutions and the optimal use of resources.

Some Conclusions

1. It is imperative for any country claiming to be open to facilitate communication between the government, civil society organizations, and the electorate. The electorate communicates to the government the requirements that would lead to good life in society. Intra-electoral communication on the other hand is based on the need to mobilize individuals with similar interests for purposes of articulating their common interests to the government in a collective and effective way. On its part, the government communicates to the electorate the policies, decisions, and legislation formulated for the welfare of society and the just government of citizens. In Kenya however, the government controls the major channels of political communication, both radio and television, that have a nation-wide reach, and monopolizes their use to the exclusion of opposition groups and all manner of civil society organizations contesting for space in the country's political arena.
2. Equally important in an open society is the question of political participation, which entails taking part in the processes by which policies are conceived, formulated, and implemented. Such participation, it is often argued, must be voluntary for it to be genuine. Political participation is central to democratic governance and could be facilitated through decentralization of decision making to

the local levels and also through extensive use of consultative mechanisms such as referenda to determine the policies to be implemented. The Kenyan experience is that though attempts have been made by civil society organizations to maximize the people's direct participation, the tendency on the part of the political elite is to favour minimal participation by the people in the political process, especially by way of exercising their right to vote in periodic elections. In addition, since referenda and public opinion polls are never used in the Kenyan political process, citizens' participation ends at the polling stations. In essence therefore, by voting, the people exercise and renounce their right of political participation at one and the same time. Self evidently, democracy goes beyond the mere right to vote in a government - important as that is. Democracy is about a whole set of rights that citizens must be afforded if a government is to be considered open, accountable, and participatory. Democracy also ought to be a condition where the people effectively control those who exercise authority in their name. This is often not the case in Kenya. Arguably therefore, Kenya's claims to democracy may in reality be just that - only claims.

3. The notion of sharing powers is also central to democratic practice. It refers to the functional distribution of powers between the executive, the legislature, and the judicial branches of the state. The notion of sharing powers is a key plank of good governance because it ensures the functional utility of the doctrine of mutual control and accountability. The Kenyan political system is not characterized a recognizable distribution of powers between the key arms of the state along, say the American system. Rather it is an injudicious mix of elements of American presidentialism and British parliamentary democracy. Consequently, although a number of devices exist in the constitution that empower parliament to control the executive, the fact that parliament operates at the mercy of the executive who has powers to summon, prorogue, and dissolve it, waters down its effectiveness. Further, the president appoints the key members of the judiciary, which appointments are not subject to vetting by any institution. This effectively negates the notion of power sharing for purposes of mutual control and accountability.
4. Generally therefore, the problem of governance in Kenya revolves around the manner in which the state has been (mis)used for self-aggrandizement by the political elite. The elites have used public resources, both material and symbolic, to foster, protect, and promote their own private interests without due regard to the people's basic needs and the overall public interest. The situation is compounded by the fact that the presidency in Kenya has been placed above the law during a president's incumbency. The occupants of this all-powerful office are under no obligation to explain or account for their activities. In the circumstances, they have tended to behave as if there is no after tenure. It is for this reason that the argument has been advanced to the effect that for good governance to be engendered in the Kenyan body politic, there is a clear and urgent need to overhaul the institutions of the current authoritarian state beginning with its pinnacle - the presidency.
5. One of the most important elements of democracy is competitive elections; competitive in the sense that the electorate has a realistic chance to choose between alternative forms of government, political platforms and programmes. the single

party era of 1969 to 1991, first *de facto*, then *de jure*, was thus antithetical to the essential tenets of democratic practice. One of the greatest strengths of the progress towards democracy in Kenya has thus been the end of the monolithism and the re-emergence and legitimization of political pluralism since 1991.

6. It has often been suggested that the sustaining strength of democracy is its claim to affording the people a chance to exercise control over their political leaders and to throw out the 'rescals' at regular intervals if they are not delivering. To this extent, Kenya has, on the upward side, consistently held regular elections since her independence in 1963. Even more significantly, the upshot of this regularized participation of the people in recruiting their governors is that it has contributed in no mean measure to the emergence in Kenya of a culture that openly questions all governmental structures and institutions, which culture has taken firm root as a result of the steps taken towards democratization. This culture is an important ingredient of democracy as it ensures that the political leaders remaining sensitive to public opinion and therefore ensuring a measure of accountability in the management of public affairs. On the downward side, it is noteworthy that elections in Kenya have thus far only assured some replacement of political personnel and have not resulted in change of regime or government. This, in spite of two multi-party elections held since 1992. This is a negative measure of democratic progress.
7. The recognition of the fact that the presidency in Kenya is too powerful is another strength in the democratization process in Kenya. It is this recognition among other factors that has led to a fervent push for constitutional reform for purposes of democratizing the presidency by way of divesting it of its overwhelming powers and investing them in other institutions of governance. Furthermore, it is noteworthy that under the aegis of Inter-Parties Parliamentary Group (IPPG) in the run-up to the 1997 general elections, some of the most oppressive laws in the country were repealed and/or modified. These include the obnoxious Chief's Authority Act, the law requiring licensing of all public meetings, nomination of members of the Electoral Commission (amended to allow for nomination by major political parties), and selection of the twelve nominated members of parliament (now done on the basis of proportional party seats in parliament), among others. These changes are also a positive indicator of democratic progress. Concomitant with the aforesaid is the emergence of a self-propelled civil society that is non-traditional and non-donor dependent. This constitutes a significant strength in the process of democratization because of the role played by civil society in articulating its interests vis-à-vis the state and seeking to alter, in the interests of the common good, the manner in which society's scarce values are authoritatively allocated. Civil society thus constitutes an important buffer between the state and the individual and in this regard it has been instrumental in push further the democratic agenda in Kenya.
8. The above notwithstanding, the process of democratization in Kenya is replete with noticeable weaknesses and problems. First and foremost is the ethnic base of the political parties that have emerged on the Kenyan political scene. This ethnic base of political parties may potentially be a boon to party-based parliamentary democracy, specifically by way of stabilizing political parties, at least around the

loose notion of ethnic solidarity. however, it is more likely to be the bane of democracy if the existing political parties eventually stabilize around parochial, if not churlish interests and further fragment themselves to the point of failing to agree on any issue except the least important. This phenomenon is already manifesting itself in the repeated failure to agree on a strategy for challenging the incumbent KANU regime. It thus remains a matter of conjecture whether these ethnically mobilized political parties will be able to successfully organize party succession in the form of a peaceful turn over of power from one party to another, which is a critical indication of successful transition to democracy.

9. A corollary to the above weakness is the lack of party vision in the existing political parties. The concept vision first explains what is wrong with society, secondly it describes how society ought to be reconstituted, and thirdly, it explains the means of restructuring the existing society and realizing the ideal. In its origins, a vision is the product of artifice, a creation, rather than the result of spontaneity. It is party vision that will facilitate the emergence and development of parties as institutions and their mission. In the absence of party vision in Kenya, politicians have come to perfect the politics of opportunism, where they are in one party today and they announce their defection to another party the following day, depending on their own changing political fortunes.. This is potentially the greatest danger to the institutionalization of the parties and *ipso facto*, multi-partyism.
10. Another major factor is the issue of access to, and control of, information. As already pointed out above, a major claim of democracy is the existence an environment wherein people make their wishes known to office-holders and can, at regular intervals, replace their rulers. Towards this end, the availability of a vibrant mass media autonomous of government ownership and unfettered by censorship is crucial. The situation in Kenya however, is such that the government controls the major channels of political communication, namely Radio and Television, and monopolizes usage of the same to the exclusion of other actors vying for space in the political arena. Though a number of independent print media houses and privately owned Radio and Television stations exist, the print media is limited in its circulation while the private Radio and Television channels have, through licensing, been deliberately limited in their reach and programming. Thus they operate largely in Nairobi and mainly for entertainment and commercial advertising. Those with a nation-wide reach or have such potential, including the Kenya Broadcasting Corporation and to some extent, the Kenya Television Network, are controlled by the government, thus ensuring that they remain largely public relations organs for the incumbent regime.
11. Without accurate knowledge of the actions of leaders and without an understanding of the relationship between those actions and popular goals, a meaningful articulation of interests and exercise of political influence by the citizens is impossible. Similarly, without access to the all-important channels of political communication, the activism of democratic governance by opposition political parties and civil society organizations remains the proverbial cry in the wilderness as the ruling elite engage in a top-down information flow which they manipulate to facilitate public cooperation and support. All this is compounded by

the existence of the Official Secrets Act, which further constrains the flow of information.

12. It should be noted further, that in spite of the few legal and constitutional changes to allow for multi-partyism, the single-party constitutional structures still remain in place. The constitutional roots of parliament for instance, remain weak and precarious. Sections 58 and 59 of the Kenya Constitution empower the president to summon, prorogue, and dissolve parliament at will. In effect, the institution of parliament has no clear calendar of its own and operates at the mercy of the president. Democratic governance under such a constitutional framework is, one would say, a mirage. In the same vein one notes that the idea of constitutionalism, though traditionally familiar to the people, has not been appropriated by the state, with the latter actively preventing the re-emergence of constitutionalism among the people. This is done through shielding society from constitutional activists such as civil society organizations intending to re-awaken constitutionalism through civic education.
13. A further hindrance to democratization as revealed in opinion polls, is public cynicism with regard to public issues and lack of faith and trust in public institutions. This is a result of corruption and the misuse of the state for aggrandizement by the political elite. Perhaps the greatest danger to progress in democracy in Kenya is the question of social inequality. There exist extreme and, one may say, obscene inequalities between the rich and the poor, the privileged and under-privileged, and between the urban and rural areas. In this context, democracy, understood as rules and institutions of governance, sounds hollow and meaningless to the landless, the unemployed, and the hungry. This is compounded by insecurity borne of poverty and lack of economic growth. The majority Kenyans are thus alienated from the political process.
14. Given the above, what then are the prospects for democracy in Kenya? This brief summary presents likely scenarios in Kenya's democratic progression and discusses the forces that may propel it. However, these reflections are not meant to be predictions and cannot possibly be definitive as that is not only impossible but also, clearly beyond the scope of this assessment. The aforesaid notwithstanding, it is yet possible to argue, on the basis of overwhelming evidence, that barring any dramatic twist of events, Kenya's progress on the democratic path, at whatever pace, is assured. The qualification of this bold assertion is that such progress will not only be unpredictable but inconsistent, given that the widely acknowledged phenomenon of taking two steps forward and one step back in the democratization process may eventually become an established pattern. Indeed, the higher likelihood is that Kenyans will occasionally have to fight for democracy and will also witness certain democratic gains made over the years plundered by the ruling elite and paradoxically, by opposition groups angling for political mileage and leverage. The point being made here is that the possibility that backward and forward movements may occur simultaneously as part of the same trajectory cannot be ignored.
15. Seemingly, the prospects for democratic progress will for the foreseeable future hinge on internal rather than external factors. While they are by no means

exhaustive, three pertinent areas that appear to be intimately linked with any forward movement on the democratic plane are easily identifiable. They are: constitutional/political reforms; economic reforms; and a socio-psychological revolution. No doubt, progress on these fronts will bring the state closer to the people and portends well for the deepening of the democratic ethic in society. Such progress should also complement ongoing efforts by civil society organizations to create a participant civic culture, on which further democratic progression in Kenya inevitably depends.

16. However, in our considered opinion, progress in the three areas mentioned cannot suffice in and of themselves, and will only contribute to sustainable democratization in Kenya if they feed on a number of mutually reinforcing and mutually interrelated processes, four of which are discussed presently. The first is the process of cultural and normative fusion, which involves the acquisition of shared values, lifestyle, and view of one's place in the current political dispensation. Cultural interaction between the different ethnic groups is of decisive importance to this process. Thus there is need to not only emphasize but also guarantees the constitutional provision of freedom of movement and settlement by Kenyans anywhere within the republic. The second is the process of promoting economic inter-penetration and exchange relationships between the various communities and ethnic groups. This process in turn relies on a commitment to the idea of economic interdependence and equitable distribution of the country's tangible and intangible resources. The most vital aspect of this process is the contribution it makes to the evolving of a consciously recognized vested interest in the national economy on the part of the various ethnicities.
17. The third is the process of social integration. This is the process by which the gaps between the rich and the poor, the privileged and under-privileged, and generally between the haves and have-nots are gradually narrowed. Needless to add, there is need for development resources to be distributed as equitably as possible; and citizens be afforded the enabling environment to develop their productive capacities to the full without let or hindrance. The fourth process is that of conflict resolution. This consists in building democratic institutions and consolidating procedures at all levels of society that enable leaders to emerge and mediate or facilitate the resolution of clashes of interests, divergences in values and opinions, and conflicts over rights and duties, with minimum social disruption. Importantly, the actualization of these four processes in Kenya will facilitate the accumulation by all citizens of the psychological consciousness of a shared national experience, which is crucial to generating a collective trust in the state and its institutions. Kenyans will thus work together to preserve and enhance the national project in which they will all have a vested interest.
18. The ideal postulated above in turn depends upon the quality of leadership that Kenyans will be provided by their present and future governors, given the backdrop of lowly developed political culture; the ethnic basis of political mobilization compounded by growing intolerance between contending political forces; and the entrenchment of presidentialism in Kenyans' collective psyche. This obsession with the presidency has for instance been largely blamed by commentators for the failure to implement all the recommendations of the Inter-

Parties Parliamentary Group (IPPG) that successfully negotiated the peaceful conduct of the 1997 general elections, following an unprecedented violent build-up. Thus the question of the Moi succession has so preoccupied the ruling party and its opponents as to leave little room for the promulgation of creative political arrangements to guide Kenyans into the post-Moi political dispensation. It is therefore imperative that the emergent national leaders unequivocally accept democracy and develop the capacity to mediate conflict. Without this, Kenya's nascent democracy can easily be subverted and the progress made reversed.

19. The prospect for democracy is therefore only partly a function of institutional arrangements in a static sense. It is also a function of historic, economic, socio-geographical, and psychological factors. The challenge to Kenyans is to recognize and accept the multi-faceted dimensions of democratic progress. The methodological challenge to scholars is to capture these dimensions to begin with, and at a more refined level, to attempt an assessment, either theoretical or empirical, of which of the dimensions is likely to drive the others.

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