

POLITICAL SUCCESSION
IN EAST AFRICA:
In Search for a Limited Leadership

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Dedicated to

All those who fight for and cherish limited political leadership





Contents

Acknowledgements	vii
Notes on Contributors and Editors	viii
Table of Cases	xi
Table of Statutes	xii
Abbreviations	xiii
Glossary	xv
CHAPTER ONE:	1
Political Succession in East Africa	
<i>Hon. Mr. Justice Joseph Sinde Warioba</i>	
1.1 Introduction	1
1.2 The Way Forward	7
1.3 Consolidating the Fixed Term for the Presidency	10
CHAPTER TWO:	13
After the Floods – The Rainbow: Contextualising NARC’s Election Victory - Lessons Learnt and the Challenges Ahead	
<i>Dr. Katumanga Musambayi</i>	
2.1 Introduction	13
2.2 From the Harambee Whisker to the Nyayo Rungu	15
2.3 1982-1985: of The Rungu and the Great Purge	20
2.4 Of Guided Pluralism, State Banditism and the Drift Towards State Collapse	30
2.5 Absence of an Alternative Leadership and the Gathering Storm before the Rainbow	34
2.6 State Security Institutions and the Rainbow Victory	43



2.7	Postscript	46
2.7.1	Rainbows are not for Ever	46
2.7.2	After the Floods and the NARC Rainbow, Fire Next Time!	51

CHAPTER THREE: 55

Single Party to Multipartyism in Tanzania: Reality, Challenges and Lessons

Dr. Mohammed Ali Bakari

3.1	Introduction	55
3.2	The Political Context	56
3.3	The Mode of Transition in Tanzania	59
3.4	Challenges to Political Succession in Tanzania	62
3.5	Stateness Challenge	66
3.6	Other Challenges	67
3.7	Leadership Succession under Multipartyism in Tanzania	67
3.8	Lessons from Tanzania	72
3.9	Two Contrasting Scenarios: Tanzania and Kenya	74
3.10	Conclusions: What is to be Done?	75
3.11	Postscript	76

CHAPTER FOUR: 83

Political Succession in Uganda: Threats and Opportunities

Benson Tusasirwe

4.1	Introduction	83
4.2	Scope of the Work	84
4.3	1962 - 1986: The Triumph of Violence over Constitutionalism	85
4.4	NRM and the Promise of Revival of Constitutionalism	87
4.5	The 1995 Constitution and the Question of Political Succession	90
4.6	The Conduct and Lessons of the 2001 Presidential Elections	92
4.7	The Essence of the Proposed Removal of Presidential Term Limits	94
4.8	Opportunities and Threats	97
4.9	Conclusion: What is to be Done?	101
4.10	Postscript	102



CHAPTER FIVE: _____ 109

Political Parties in Transitions: The Kenyan Experience

Prof. Dr. Makau Mutua

5.1	Democracy and the Liberal State _____	109
5.2	Political Parties in the Kenyan Transition _____	113
5.3	NARC and the Politics of Reform _____	117
5.4	Whither Political Parties: Transitions in East Africa _____	120

CHAPTER SIX: _____ 123

Political Succession in Zanzibar

Prof. Haroub Othman

6.1	Introduction _____	123
6.2	The Road to Independence _____	123
6.3	Succession in the Sultanate _____	126
6.4	The Revolutionary Succession _____	127
6.5	Exit Jumbe – Enter Mwinyi _____	128
6.6	Cracks in the Zanzibar Leadership _____	129
6.7	The ‘Komando’ Presidency _____	130
6.8	Karume the Son – The Resurrection of a Dynasty? _____	131
6.9	Conclusion _____	132

ANNEXTURE: _____ 135

Resolutions adopted by the East African Conference on Political Succession held in Kampala, Uganda from 10th to 11th July, 2003 _____	135
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Readings on Politics and Constitutionalism in East Africa _____	137
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Political Parties Act, 1992 (Act No. 5 of 1992) (Tanzania).



Abbreviations

AG	Attorney General
ASP	Afro-Shiraz Party
CCM	<i>Chama Cha Mapinduzi</i>
CID	Criminal Investigations Department
COMESA	Common Market for Eastern and Southern Africa
COTU	Central Organisation of Trade Unions
CUF	Civic United Front
DP	Democratic Party
DRC	Democratic Republic of the Congo
EAJPHR	East African Journal of Peace and Human Rights
FORD	Forum for Restoration of Democracy (Kenya)
GDP	Gross Domestic Product
GEMA	Gikuyu Embu Meru Association
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immune Deficiency Syndrome
IPPG	Inter Parliamentary Parties Group
ITGD-EA	Intermediate Technology Group East Africa
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KCK	<i>Kituo Cha Katiba</i>
KMKM	<i>Kikosi Maalumu cha Kuzuia Magendo</i> (Special Anti-Smuggling Unit in Zanzibar)
Kshs	Kenya Shillings



LDP	Liberal Democratic Party
LRA	Lord Resistance Army
MNCs	Multinational Corporations
NAK	National Alliance of Kenya
NARC	National Rainbow Coalition
NCEC	National Coalition Executive Council
NDP	National Development Party
NEC	National Executive Committee
NRA	National Resistance Army
NRM	National Resistance Movement
OAU	Organisation of African Unity
ODM	Orange Democratic Movement
REDET	Research and Education for Democracy in Tanzania
RMC	Review and Monitoring Committee
SDP	Social Democratic Party
SPLM/A	Sudanese Peoples Liberation Movement/Army
TANU	Tanganyika African National Union
TPDF	Tanzania Peoples Defence Forces
UNCHS	United Nations Centre for Human Settlements (Habitat)
UPC	Uganda Peoples Congress
USA	United States of America
USD	United States Dollar
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba People's Party



Glossary

<i>Al Qaeda</i>	Also known as <i>al-Qa'ida</i> means the "Base." It is the Islamic front for Jihad against Jews and Crusaders and liberation of the Holy Places. It was established in 1990 by Sheikh Osama bin Laden
<i>Al-itihaad</i>	Literary means Islamic Unity. It is alleged to be a fundamentalist Islamic group based in Somalia and is believed to have branches in several countries
<i>amour proper</i>	Sometimes written <i>amour propre</i> means self-love based upon relationships, status. Its goal is esteem, status; an end in itself, ultimately empty and irrational; introduces dependence on others. It is related to "self-esteem" and tendency to think better of myself constantly affronted by the tendency of others to think more of themselves
<i>Beit el Ajaib</i>	The House of Wonders (The Sultan's Palace in Zanzibar)
<i>Bwana</i>	Mister (also Sir)
<i>coup d'etat</i>	to overthrow a government (revolution)
<i>de facto</i>	in fact
<i>de jure</i>	in law
<i>harambee</i>	Self-help support undertakings
<i>harambee</i>	let us pull together. Self help public fundraisings in Kenya
<i>Kamkunji</i>	famous and popular meeting grounds in Nairobi
<i>Kikosi Maalumu cha Kuzuia Magendo</i>	Special Anti-Smuggling Unit in Zanzibar
<i>Komando</i>	Kiswahili for Commando. This is the title which Dr.



	Salmin Amour Juma, the former President of Zanzibar (1990-2000) was given by his followers who regarded him as a “Commando” in the political war.
<i>Lingala</i>	A language spoken by the people of the Democratic Republic of the Congo (DRC) and popularised through music in East and Central Africa
<i>maendeleo ya wanawake</i>	Women Umbrella Organisation
<i>Majimbo</i>	provinces
<i>makuru</i>	head men
<i>mali yetu</i>	Our Property
<i>mlolongo</i>	Queue (a Voting System in Kenya)
<i>mpenda watoto na akina mama</i>	He who loves children and women
<i>msaliti</i>	traitor
<i>Muafaka</i>	Accord (Agreement)
<i>mugambi</i>	Spokesman
<i>mungiki</i>	The name <i>Mungiki</i> means “multitude” in the Kikuyu language of Kenya. It is a political/religious movement whose leaders allege is “homegrown” organization committed to upholding the traditional African way of worship, culture and lifestyle
<i>muungano wa mageuzi</i>	a coalition of those agitating for change
<i>mwenzetu</i>	Our Colleague (one of us)
<i>mzee</i>	Old man or Elder; a person who commands respect – usually an adult male
<i>nafuata Nyayo</i>	am following the footsteps
<i>nyayo rungu</i>	Footsteps with a club
<i>nyayo</i>	Footsteps
<i>Pombe haramu</i>	Illicit brew (Alcohol)
<i>rais wa vitendo</i>	the president of action



<i>raison d'être</i>	A basic, essential purpose; a reason to exist. Reason for being.
<i>saba saba</i>	Seven Seven (7th July, 1990 in Kenya and 7th July, 1954 when TANU was established in Tanzania)
<i>shambas</i>	farms
<i>tawala Kenya tawala</i>	rule Kenya rule
<i>tawala Rais Moi tawala Kenya</i>	rule President Moi rule Kenya
<i>ufungamano</i>	religious sector
<i>uhuru</i>	Independence or Freedom
<i>Ujamaa na Kujitegemea</i>	socialism and self reliance, a brand of African socialism
<i>ukabila</i>	ethnism or tribalism
<i>unbwogable</i>	undefeatable
<i>viongozi wasiotosheka</i>	disgruntled leaders
<i>wananchi</i>	Citizens or common people
<i>yote yawezekana bila Moi</i>	All is possible without Moi



CHAPTER ONE

Political Succession in East Africa

Hon. Mr. Justice Joseph Sinde Warioba

In Tanzania in 1985 people did not want to let go of Mwalimu Nyerere because they thought they could not get another good leader. All the same he retired and president Mwinyi came. In ten years later, 1995 some people wanted Mwinyi to continue because he was a good leader. Even now some people want President Mkapa to continue for the same reason. This shows the country is not bankrupt of good leaders.

Judge Warioba

1.1 Introduction

Political succession is a very topical issue not only in East Africa but the whole of Africa. Historically, before colonisation, our societies had a known system of succession. By whatever name the leader was known, whether chief, king or spokesman, there was a system by which the successor was chosen. In some societies the succession was hereditary. It could be the son or daughter of a particular wife (normally the senior wife or queen) or one designated by the chief or king according to criteria determined by the culture of that society or tribe. In certain cases the succession was matrilineal in that the nephew would succeed. This was intended to make sure that the successor had royal blood because people were not sure that a son of the chief would be born of the chief.

In some societies the successor had to possess certain qualities such as the ability to bring rain (rainmaker) or to lead in battle. Some societies had no hereditary leaders and the choice of a successor depended on special qualities such as the ability to arbitrate. Such a leader was called *mugambi* (spokesman). Normally,



however, in most systems succession was limited to certain classes or clans in the society or tribe.

These systems of succession were largely retained during the period of colonisation. The colonial administrations did however interfere whenever they were interested to have someone succeed in order to consolidate their system of indirect rule.

At independence the colonial administrations introduced a succession system modelled on their metropolitan systems. In East Africa the Westminster model was introduced i.e. the so-called parliamentary system. There was a head of State, the Queen of Britain, represented by the governor general in Tanganyika and Kenya, a president in Uganda and the Sultan in Zanzibar. The chief executive was the Prime Minister who was the leader of the majority party in parliament. Within a short time, however, all the four countries had become republics with a presidential system. The change came by constitutional amendment, except in Zanzibar where it was brought by revolution. The president became head of State, head of government and commander in chief of the armed forces. Presidents were elected directly by the people. Parliament consisted of the president and the national assembly. The national assembly passed legislation, which became effective only after obtaining the consent of the president. In Kenya the president had also to be an elected member representing a constituency, in addition to being elected by the whole country as president.

The system adopted at independence had a clear criterion for succession. There was a constitutional head of State, the Queen of Britain in the case of Tanzania and Kenya, the president in Uganda and the Sultan in Zanzibar. The head of government (Prime Minister) was determined through parliamentary elections. The leader of the political party that won the elections would become the Prime Minister. The Prime Minister would be replaced if in a subsequent election another party won. The party in power would also cause change of the Prime Minister if the incumbent died or there was change in the party leadership as is normal in parliamentary democracies.

The presidential system changed the order of succession. Presidents were elected by the people and could be removed only by the election of another person or death. At independence the constitutions of all the East African States allowed multiparty politics. However all of them changed within a short time. In 1965, a year after the union of Tanganyika and Zanzibar to become Tanzania, the country becomes a *de jure* one party State. In 1969 Kenya became a *de facto* one



party State after the prescription of the Kenya People's Union and subsequently it also became a *de jure* one party State. In 1971 Uganda came under a military regime. The possibility of changing the head of government through multiparty competitive politics was gone.

Under the constitution in each country the president had enormous powers. In fact all executive power was vested in the president. He could appoint and fire ministers, senior administrative officers and heads of parastatal organisations. The president was also the leader of the ruling party and equally wielded enormous powers. **As a result presidents were habitually re-elected.** This system created the phenomenon of the perpetual incumbency.

The constitutions provided for the election of a president within three months if a vacancy arose. During the three months the vice president or some other person chosen by the cabinet would perform the functions of president. As such no automatic succession was provided. Vice presidents were picked under certain criteria which did not include grooming. In Tanzania the vice president would come from Zanzibar or the Mainland depending on where the president came from. In Kenya he was hand picked and could be fired just like any Minister and it did happen. President Kibaki is one example. He served as vice president for ten years and then he was fired.

Before Moi became President of Kenya it was demonstrated that the position of vice president did not entitle the holder to succeed. By 1974 Kenyatta's health was causing concern among the leadership in Kenya. In the event he died in office, his vice president, Daniel arap Moi, would act as president for three months. Those who did not favour him thought he would gain undue advantage in the subsequent election if he acted as president during the campaign period. The famous change; the constitution movement, was thus initiated. As Paul Ngei, one of the ministers in Kenyatta's cabinet, said:

During the three months that allows the vice president to become president ... a lot of things can happen. If you give me that period I can really teach you a lesson and I can assure you it would not be a pleasant one.

That statement implied either a vice president was not considered the next strongest leader after the president or he did not belong to the suitable political clan within the leadership.

Tanzania now has a provision for the succession of the vice president to the presidency if a vacancy arises as a result of the president dying in office or is



forced to leave for some other reasons. If the president has done less than three years of his term the remaining period will count as the first term of the successor. If, however, that period is less than three years of the term it will be disregarded and the new president can serve for another two full terms. This does not however guarantee the individual political certainty. If he is not politically strong he might end up by only serving the balance of the term of his predecessor, since the nomination process is now open to any leader within the political parties. Kenya and Uganda still retain the system of electing a president within a certain period if a vacancy arises.

Tanzania and Uganda have Prime Ministers and Kenya is debating the issue. The position of the Prime Minister does not occupy any prominence in the succession equation. He is picked by the president and is one of the ministers who can be regarded as leader of government business in the house. In the 1984 constitutional amendments in Tanzania the Prime Minister was made the person in charge of the day to day administration of government. This was modelled on the French system but it fell short of conferring the strong powers that the French Prime Minister has. It is true that under the Tanzania constitution the President appoints the cabinet after consultation with the Prime Minister, but the real power still resides in the president. Uganda has several deputy Prime Ministers but again these have no real political clout. The appointments are basically for political accommodation rather than a reflection of the political strength of the individuals. In the presidential nomination process in 1995 in Tanzania among the candidates there was a Prime Minister and two former Prime Ministers. The nomination went to someone who had not been Prime Minister.

Although theoretically succession could come through elections, the combination of president and party chairman with enormous executive and political power, created a modern chief who would rule until he died. This was common in many African countries. Even where there was a multiparty system but one party was dominant the scenario was the same. In East and Southern Africa it is only in Botswana, Tanzania and South Africa where a president stepped down and handed power to another person.¹ The handover was however, within the same party which was in power.

¹We can now add Mozambique (where Joaquim Chissano stepped down in December, 2004 after 18 years in office and was succeeded by Armando Emilio Guebuza); Namibia (where in November, 2004 Sam Nujoma left office after 14 years in office and was replaced by Hifikepunye Pohamba; and Malawi (where after almost 30 years personal rule of Dr. Hastings Kamuzu Banda new political dispensation saw the coming into office of Bakili Muluzi in 1994. In return, after 10 years in office, Muluzi gave power to his anointed successor Dr. Bingu wa Mutharika in May, 2004).



In 1975 President Nyerere was elected for the fourth time in Tanzania. He privately made a decision not to run for office again in 1980. When he made his decision known to his colleagues in the party they did not agree with him and put pressure on him to change his mind. One of the major reasons they gave was that there was no system of succession. They argued that if he stepped down without putting a system in place there would be chaos. This again demonstrated that the vice president was not considered as an automatic successor and by implication they did not think of him as suitable.

Nyerere agreed to run for office again in 1980 but he set in motion a comprehensive review of the constitution which ultimately led to far reaching amendments which included limitation on the presidential period to two five year terms. It was not easy to agree to that amendment. Even when the limited term was agreed upon in principle a substantial number of the leaders in the decision making organ of his party wanted a longer period, ranging up to four five year terms. If it were not for the single-minded determination of Nyerere, the amendment to the constitution would not have come at the time it did.

Even after the amendment had been effected there were suggestions that President Nyerere should continue to serve until he had done the two terms under the new constitution. In addition to posterity the other reason why he had initiated a review of the constitution was his desire to find an exit. So he stuck to his decision and left the presidency in 1985. This, however, did not stop leaders to agitate for lengthening the term. At the end of President Mwinyi's term in 1995 there were calls for changing the constitution to allow for another term. The same happened in Zanzibar in the year 2000 by a spirited change the constitution movement. Both attempts failed. But even now there are still utterances that a change should be made. These utterances are muted only because President Mkapa has made it clear that he does not intend to seek a third term.

Since the 1980's a number of countries in our region have adopted the two terms system; Kenya, Uganda, Tanzania Malawi, Zambia, Namibia and South Africa. But the debate to allow for a longer time still rages. In Namibia it succeeded and President Sam Nujoma was allowed to serve a third term upon a purportedly personalised amendment. There were also murmurs in Kenya before the recent 2002 General elections and there was a spirited attempt by President Frederick Chiluba to change the Zambia constitution in the year 2001. Malawi did the same while in Uganda the debate is ongoing. South Africa is quiet but this is possibly due to the action of influential Mandela who willingly stepped down



in 1999. It cannot be guaranteed after Mandela has left the scene. As a by the way suggestions to enlarge the presidential term have also been made in the old countries. Recently President Bill Clinton made a suggestion that the president of the USA should be allowed more than two terms.

Political recruitment has a heavy bearing on succession. During the struggle for independence leaders emerged as a result of ability. After independence political structures were consolidated, including procedures for nominating candidates. These procedures conferred enormous power on the leader of the party and the top policy making organs. In Kenya, Uganda and Tanzania the introduction of a single party system or movement democracy, created a political clan. Anyone keen to engage in politics had to join the party or movement. Independent candidates were banned and political patronage set in. Widespread corruption in politics has compounded the situation. For one to break into the political league one has to know who is who **in the political party** and also to have a full bag.

The nominations of candidates for civic, parliamentary and political party posts are heavily influenced by party procedures rather than the ability of the contestants. The final decision is made by party organs which are sometimes not free of factors such as tribal, ethnic and religious affiliations and corruption and know-who. This system of political recruitment has begun to show some problems. In the 2000 elections in Tanzania corruption, tribal and religious discrimination have caused tension within some political parties. Sometimes intra-party problems were the issues in political campaigns, in that a candidate had to campaign to win party followers who were dissatisfied with his nomination. In Kenya the intra – party problems led to the disintegration of KANU during the nomination process for the 2002 presidential elections.

In summary we have, in the last forty years, moved from traditional systems of succession to a more modern system. Heads of governments are now elected by universal suffrage. The systems obtaining in East Africa are, however, far from being satisfactory. We still suffer from “the chief” mindset whereby once someone takes the helm perpetual incumbency is still in our mind. We have made a good start but much remains to be done.



1.2 The Way Forward

In order to move forward to a smooth, more democratic and transparent system of succession we need to put in place a number of things. The first step is to consolidate democracy in the context of globalisation. Kenya and Tanzania have adopted multiparty democracy. Uganda is a non-party State. It is governed under a movement system where political candidates run independently but within one political movement. There is currently a debate in the country on whether Uganda should adopt multiparty democracy or not. Given the fact that political parties have always existed within the movement, and given the current global bias, it is a matter of time before Uganda returns to multiparty democracy.

Multiparty competitive politics however, does not by itself guarantee a smooth transparent power transition. Kenya and Tanzania have numerous political parties but only a few are strong parties. In both countries only a few have representation in parliament and fewer field presidential candidates. In addition most opposition parties are weak, fragmented and internally quarrelsome. In Tanzania there is one dominant party and in Kenya there are about three or four out of about twenty. In two previous elections the president in Kenya was elected by a minority because the opposition was fragmented. In the last election the opposition united and won. But that does not guarantee a smooth succession because rumblings have begun in NARC and the signs are that there is a possibility for a breakdown over succession. It is important therefore to consolidate multiparty politics in order to be assured of some system of succession through elections. We need a system with a viable opposition as an alternative to the ruling party.

Secondly, it is important to consolidate the division of power among the three pillars of government. Currently there is no clear division between the executive and the legislature. The presidency is very much an influential part of parliament. Apart from the president having the power to consent to bills in order for them to become law, ministers are members of the legislature. Their number is not small. In some cases such as Uganda they are about one third of the house. This gives undue advantage to the executive in the functions of the legislature. With the power of the president as party leader and the presence of ministers in the legislature, the president is almost the de facto leader of government business in the legislature. Where there is a dominant political party as in Tanzania the whip line almost turns the executive into the legislature. In fact members of parliament in Tanzania were freer during the one-party era when there was no party parliamentary whip than they are today.



One way to change this is to adopt a purely presidential system instead of maintaining the current mixed presidential – parliamentary system. The ministers should be appointed outside the legislature and if a member of parliament is chosen as a minister he should relinquish his seat. The president is elected nationally and his government should be national in character instead of being drawn from constituency representatives. There is the argument that the government should consist of representatives of the people rather than people who have not been elected. This can be countered that the president has been elected with a mandate and what he needs are assistants to fulfil the mandate. In any case ministers as members of parliament are sometimes under pressure to bring development in their constituencies so that they can be re-elected and being in government causes strain in their duty as national leaders. Additionally the absence of ministers from the legislature allows more freedom to members of the legislature. Mozambique has successfully instituted a purely presidential system and democracy is more vigorous in that country.

Thirdly, we have to improve the nomination procedures so that they become more transparent. All political parties, whether ruling or in opposition, have systems which are not exactly transparent. The party leaders and top party organs have enormous power and discretion which are not transparent. Sometimes their choices are not in tune with the wishes of people.

In 1995 *Chama Cha Mapinduzi*, (CCM) the ruling party in Tanzania introduced a competitive system in the nomination process. Anyone with the necessary qualifications could obtain the endorsement of a set minimum of party members in a set minimum of political regions in both the Mainland and Zanzibar to qualify to appear before the top policy organ, National Executive Committee of CCM (NEC) which short-listed the candidates. Some seventeen candidates fulfilled the conditions and appeared before the NEC. The party electoral rules specified that the NEC would forward up to five candidates to the party congress. In the event three were short listed and the congress voted twice to elect the candidate.

The competition in the primary electoral system in CCM caused some strains in the party. The alliances which emerged around candidates caused some political uneasiness which was repeated during the parliamentary elections in 2000. In some constituencies some party functionaries and members became hostile to the party candidate because their preferred aspirant was not chosen.

In Kenya the situation was more intriguing. The presidential candidate was designated by the party leader, President Moi. The process was dubbed the



“Uhuru Project” and the subsequent formal nomination caused deep differences which led to a heavy breakaway that led to KANU losing the elections. It is possible that this scenario can be repeated elsewhere if the nomination process is not made more democratic.

The system of primary election as a process of nomination is attractive. All party members could be given the opportunity to vote in the nomination process and the candidate who secures the largest number should win. If no one secures a majority then delegates chosen by some criteria similar to the United States systems could convene and elect the candidates. This system is however, expensive for the East Africa countries. Modification could, however, be introduced to make it simple. For example lower echelons of political parties could be given more say in the nomination process rather than leave it to a smaller organ at the top to shortlist a few candidates. In the alternatives all aspirants could appear before the congress. Whatever system is evolved, however, the problems of corruption, ethnic, tribal, religious and gender discrimination and generalised rigging which are so prevalent in elections, have to be fought and eliminated or reduced. What we should avoid is to go back to a very restrictive system whereby a single leader or the top organ of the party designates a single candidate.

Fourthly, political recruitment into leadership should be made more open. Succession at the top is a culmination. The process begins at the bottom. Currently independent candidates are not allowed to stand for civic and parliamentary elections. For example, with the introduction of multiparty democracy in 1992, Tanzania outlawed independent candidates. The High Court struck down the provision in 1995 on the ground that it was unconstitutional because it had interfered with the constitutional right of the individual to be elected as a representative. The government, however, moved fast to restore the ban by passing new legislation.

It is argued as a reason to prohibit independent candidacy that in competitive party politics elections are normally run on the basis of political platforms or policies. These platforms are an aggregate of the views of many, and there is always party machinery and mechanisms to spread the policy to the people. A single individual is unlikely to have a general policy framework and mechanism for that purpose. In fact, in countries where party policies are well defined and the party machinery is in place it is rare for an individual to emerge as an independent candidate and, if he does so success is rare.



However the real problem that leads people to resort to independent candidacy is dissatisfaction with the selection system. Those who resort to independent candidacy are normally members of political parties whose policies are clear. But because of the weakness of the nomination process they believe they are not selected because of factors of unfairness, such as corruption or the mindset of know-who-is who ("the *mwenzetu*" mindset). Independent candidacy, apart from being a human and constitutional right, would lead to improvement of the candidate selection system. Civic and parliamentary election, which in a sense is a system of succession at that level, will have enormous influence on the system at the top. To retain the monopoly of political parties is to perpetuate the discretion of a small group of people to determine succession in a manner which is not transparent.

1.3 Consolidating the Fixed Term for the Presidency

Finally the system of a fixed term for the presidency should be consolidated. As stated earlier several countries in our part of Africa have adopted a two term presidential system but the debate to change the system is still there. A fixed term will facilitate a smooth succession. It is a system which will remove us from the traditional "chief" mindset and it will also prevent ushering in dictators. It does not matter how many terms we agree on, though the two five year term is most suitable. It is a period which is long enough to give a good leader time to make important achievements and short enough for the people to tolerate a poor leader.

It is proper to debate the issue of a fixed term. But once the debate is over and the constitution is made it is important to put matters to rest. In all the countries where the debate has taken place the issue has been personalised. The argument is always that the president has done a good job and he should be given another term. In Namibia the debate centred on retaining President Nujoma and the same was the case in the other countries. What I am saying is that we should not seek to change the constitution on the basis of a personality.

It is true that a country can get a good leader and people may become reluctant to let go. That does not mean the country is bankrupt of good leaders. Another equally good leader can emerge. In Tanzania in 1985 people did not want to let go of Mwalimu Nyerere because they thought they could not get another good leader. All the same he retired and president Mwinyi came. In ten years later, 1995



some people wanted Mwinyi to continue because he was a good leader. Even now some people want President Mkapa to continue for the same reason. This shows the country is not bankrupt of good leaders.

It does not also mean that there is no life after the presidency. There is of course, life after the presidency. Nyerere lived for fourteen years after he retired and he remained very much a national and international leader. Mandela stepped down as president four years ago but he is still a leader of national and international renown. So is President Masire of Botswana who is still a respected and influential leader in his country and is now doing a commendable job in conflict resolution in Africa. Again, as a by the way, President Carter left office more than twenty years ago but he has all along played a national and international role.

Attempts to amend constitutions in order to retain individuals in positions of leadership are sometimes a cause of unnecessary political conflict which results in fragmentation of political parties. This in turn is a source of political instability in the nation. The attempt to change the constitution of Zambia caused the disintegration of the ruling party, the Movement for Multiparty Democracy. The result was a conflict ridden election in 2001 which has plunged Zambia into a very fragile political situation. The experience of Malawi is almost the same.

Sometimes the call for enlarging the incumbency of a leader is driven by people with a personal agenda. Sometimes some leaders advocate a change of the constitution to retain the incumbent because such an incumbent is their constituency. It is however beneficial for a leader to leave when the people still like him. He will still have a role in the life of the nation. The longer he stays the more the chance to become unpopular and when he leaves there is no meaningful role he can play.

In sum what I am saying is that in order to have a democratic, smooth and predictable succession we should consolidate democratic principles, consolidate the political institutions and consolidate procedures and practises which are transparent in the election of leaders. Sustainable peace and stability will depend on political tranquillity. If we fail to consolidate the democratic achievement we have made so far we run the danger of perpetuating political conflict of a nature which will affect our economic and social development.



CHAPTER TWO

After the Floods – The Rainbow: Contextualising NARC’s Election Victory - Lessons Learnt and the Challenges Ahead

Katumanga Musambayi



Politics was like wooing a lady. You promise her anything she wants to hear, even a plane but when she gets into your house of course there are no planes.

Daniel Arap Moi

“Yote yawezekana bila Moi” [All is possible without Moi]

Kenyans in 2002

2.1 Introduction

Few minutes past the noon of 30th December, 2002 President Daniel Arap Moi and his security detail wove their way in a sea of Kenyan masses overflowing *Uhuru* Park to hand over power to Mr. Mwai Kibaki the president-elect. Not only were dust and abuses hurled at the former number one but that his successor as if in synchrony with the public mood merely made a passing reference to him. At the nearby Kenyatta International Conference Centre (expropriated from the public but which would later be reposessed by the new government) ecstatic and ideologically intoxicated crowds swam and danced in unison to the tune “*Mali Yetu*” (Our Property). The president-elect too had difficulties making his way to the dais as highly charged crowds chanted and danced to the now famous tune “*Yote yawezekana bila Moi*” (All is possible without Moi). So hostile were crowds towards the former Head of State that attempts by presidents from Uganda and Tanzania to acknowledge and honour him were met with hostile rebukes.



Mwai Kibaki seemed to sum up this mood when he noted:

I am inheriting a country which has been badly ravaged by years of misrule and ineptitude ... and the era of anything goes ... and roadside policy declarations ... One would have preferred to overlook some of the all too obvious human errors and forge ahead, but it would be unfair to Kenyans not to ask questions about certain deliberate actions or policies of the past that continue to have consequences on the present.²

What was it about Moi's reign that had generated this intense level of hostility and catharsis? How does one account for the success of the National Rainbow Coalition (NARC). How did this former herds-boy as one commentator would note "with such limited abilities who spoke in broken Kiswahili that could not be improved with 50 years of practice"³ manage to hang on to power for this long? What challenges lay ahead for NARC? What lessons can be derived from its victory? This Chapter attempts an examination and analysis of circumstances surrounding the defeat of KANU in the 27th December, 2002 elections in Kenya. It specifically seeks to understand the role of ideology in regime construction and deconstruction through electoral process. The Chapter seeks to argue that Uncle Dan's (as he was "popularly" referred to) control of the State was a function of his ideological constructions (that enabled him to gradually gain control of the leavers of the State through dissimulation), his successful construction of a ladder of small tyrants aligned to him (through whom Kenyans were terrorised and numbed into submission), and his ability to impoverish his *Wananchi* (Citizens) into hopelessness at one level and the creation of bandit billionaires through whom the society was accessed largesse's and the absence of an organised alternative leadership at the other accounts for the longevity of his regime. The work is organised around six core parts. Part one situates the evolution of the *Nyayo* regime. Part two discusses the great purge engendered by the regime between 1982 and 1985. Part three examines the politics of regime consolidation. Part four underlying the institutionalisation of a plural political system after 1991. Part five discusses the political events prior to the political "down pour" that engendered the rainbow. Part six contextualizes the role of State security institutions in the NARC victory. The Postscript recapitulates on events leading to the death of the Rainbow and draws out some lessons out of the success and death of NARC.

²See "Lets Unite in Forgiveness, Reconciliation and Hard Work," Kibaki's inaugural speech in No. 80 *Nairobi Law Monthly*, February, 2003, pp. 7-9.

³Makhoha, K., "You will be Sorry When Moi Goes," *Daily Nation* (Nairobi), 13th December, 2002.



2.2 From the *Harambee Whisker* to the *Nyayo Rungu*⁴

The ability of a regime to sustain control over political power is a function of its capacity to evolve an organising ideology within which the larger part of the society is able to organise for politics. To the extent that such an ideology is able to dissimulate domination and engenders a sense of legitimization it will be able to glue together social values and institutions within which politics are processed. Notably the starting point of regime construction and consolidation is the evolution of an organising ideology. Ideology serves several roles. Core in this is its provision of alternative images within which existing social reality is given interpretation. It seeks to provide explanation and alternative answers to existential problems; it also helps in the identification of “enemies” while equally prescribing options on how they should be dealt with. More critical, ideology not only fragments opponents but also Interpol’s the “chosen ones” thus spawning the process of unification which results the sparing of adherents into action.

For this process to take effect, the actor considering himself as an alternative leader engages himself in a concerted process of deconstructing the existing dominant ideology with a view to replacing it with an alternative one that serves to conceal domination. The prevailing existential conditions can help facilitate this process, especially if high levels of felt sense of relative deprivation characterise the setting. Existence of high levels of alienation tends to create a messianic syndrome characterised by tendencies where in people seek liberating figures to help them resolve their problem. A crafty leader can maximize on the perceived vacuum of leadership to thrust himself on the pedestal of power as the awaited messiah.

If the public response to Moi’s exit exemplified the Calferian rejection it was also an inverted mirror image of his “hail the king welcome” consequent to the death of Mzee Kenyatta in 1978. Kenyatta had presided over a highly ethicised regime whose consequences included high level of ethnic arrogance, social polarisation, corruption and several unresolved assassinations of presumed opponents. Prior to this, he had received overwhelming support to the extent of defeating Change the Constitution Movement - CCM attempts to derail his succession ambitions. But as we shall soon demonstrate, these events were lost to him in the fog of history as he began preparing his exit. When the old man passed away in his sleep in Mombasa, majority of Kenyans fatigued of the 15 years of the near imperial

⁴Mzee Jomo Kenyatta walked a round with a Whisker while Daniel Arap Moi on the other hand carried a club.



rule of the charismatic and domineering old man, embraced Moi, while casting a shadow of doubt on his capacity to steer the nation. In the minds of the holdovers of the old regime, he was a mere passing cloud. This steamed more out of Moi's ability to camouflage his real self and "true intensions." The image he sought to wear was that of a humble selfless man. His opponents would soon realize that beneath that image of a timid man laid a calculating crafty and hardened political operative full of *amour propre*.

Appreciating the dominant role of the Kikuyu elite in the State's socio-economic and political fabric Moi, sought to reassure them as he bide for the right moment to contain them. Notably he vowed to follow Kenyatta's *Nyayo's* (footsteps). This declaration was meant to reassure the powerful Kikuyu ethnic group at one level and the erstwhile western allies at another. He not only appointed Mwai Kibaki as his vice-president but also retained all the Kenyatta ministers who made it back to parliament in the subsequent 1979 elections. This dissimulation enabled him to establish relations of domination over his "enemies" in the ancient regime while presenting himself as an all-forgiving man. He would accomplish this process by maximizing on a tool kit of strategies. One of these was displacement. In response to attempts of his former opponents to reinvent themselves, Moi would expurgate them as wolves in sheep skins. The objective here was to create an impression that they were untrustworthy enemies of the public who engaged in nocturnal subversive activities.⁵ Through euphemism, Moi sought to have his actions and those of his institutions described in terms that elicited a positive evaluation from the public. For instance, he declared what he called war on corruption. With the help of his King Maker Charles Mugane Njonjo, Moi attacked the police accusing them of corruption and night meetings. It is not hard to understand this logic, the Police constituted part of the old regime structures that had been used to undermine and humiliate him while Vice-President. He eventually overhauled the entire force and in the process managed to capture one critical instrument for regime consolidation.

One critical element in evolution and consolidation of leadership is the process of constructing on self as an alternative to the existing crowd of pretenders to State leadership. Leadership is about mobilising institutional and material resources of a given society by motivated individuals seeking to fulfil their own interests and those of their followers in cooperation or in competition with others. This presupposes dominance over others with superior ideas on how the

⁵BAILEY, J., *Kenya: The National Epic*, Nairobi: Kenway Publications, 1993, p. 247.



society should be re-organised, evolution of organisational structures within which society can be mobilised and of political opponent from strategic points where they can mobilise resources to threaten the alternative leader. Leadership presupposes hard work, commitment, perseverance, determination and resolve. These elements evolve over time and are reinforced by experience. Successful leadership demands knowledge of societal problems and the demonstration of commitment to change, a factor that facilitates the elicitation of trust from potential followers. Moi gave an impression to have these qualities. He also sought to neutralise potential opponents. For Moi those who needed immediate neutralisation belonged to the economically powerful Gikuyu, Embu, and Meru Association - GEMA through which his erstwhile Kiambu opponents sought to control the State. GEMA had to be neutralised for several reasons; it still had the financial muscle that could cause the new regime lots of problems. The new regime had no intention of leaving loose an independent source of capital it could not control.

Publicly *Bwana Nyayo* as he was called rationalised the proscription of GEMA and other like-minded ethnic associations as a means through which national unity could be consolidated. In reality the ban merely meant to consolidate his control over the State and standing in the society. Indeed to capture the social realm any parallel civil society organisation that could engender an independent organising space for potential opponent had to be neutralised. Moi targeted the Football sector. Here the dominant Luo Union, Gor Mahia and Abaluhya football clubs with a religious following in their respective Luo and Luhya ethnic groups were compelled to change their names. Gor Mahia was eventually reprieved. Before long Parastatals were forced to withdraw their players from these clubs and to form their own. These actions literally grounded these clubs to the extent that by the late 1990s they were on the throng of natural death.

Without these alternative platforms no Kikuyu, Luo or Luhya politicians would be able to organise overtly as an alternative against. Moi took advantage of the 1979 elections to rig out the likes of Masinde Muliro (his former chief in KADU). Future patrons of these clubs would always be members of his cabinet known for their loyalty to him. He achieved domination by fragmenting those individuals and groups capable of mounting an effective challenge to his regime. Members of GEMA like Kihika Kimani who had previously organised land buying companies and collected millions from peasants without distributing the same were arrested and haunted out of the political orbit. The *Shambas* (farms) were subdivided and



titles distributed by the president himself to the *Wananchi*. This factor endeared him to them as it cut GEMA from the Kikuyu masses.

To consolidate this attempt to make himself stand out as the only knowing it all protector of national interest i.e. the Baobab in the Nyika shrubs, Moi went round the Republic fund-raising for schools, building gabions against soil erosion and waging war on what was called *Pombe haramu* (the illicit traditional beer). Other populist schemes included the introduction of a 10% raise in employment on all State institutions in 1979 thus raising public sector employment by 46,800. He also decreed that all Kenyans must know how to read and write by the end of 1984.⁶ These populist schemes endeared him to the public allowing him to legitimise himself as the kind Daniel whose overwhelming love was enabling him to innovatively and pragmatically resolve existential problems of the society. He becomes, the sole, all caring father of the nation and *Rais wa vitendo* (the president of actions). His “magnamity” was extended to the political realm where, all political detainees were released. The political doyen of the Kenyan politics the late Jaramogi Odinga was “pardoned” and given a job as the Chairman of Cotton Lint. In reintegrating Odinga in the mainstream politics, Moi was seeking to rally the Luo behind his regime.⁷ Odinga would be quickly shunted back to the cold on the grounds that he had abused Jomo Kenyatta by calling him a land grabber.

To Moi this was an affront on the dignity of the nation. In reality this was yet another gimmick through which latent ideological constructions to fragment the Luo from the Kikuyu by turning the latter back to the illusionary glory days of the “Great father of the nation” who according to the moral ethnicity of the nation deserved respect. This process was meant to legitimise him as a true defender of Kenyatta heritage. Before long his declaration *nafuata Nyayo* (I am following the footsteps) become the rallying call for the entrenchment of his regime. It became “a philosophy”. It talked of love peace and unity with Moi as the embodiment of these elements. *Fuata Nyayo* became an analogy for rallying the nation behind Moi. Nyayoism becomes the doctrine of the father of the nation. It constituted KANU's thought, the teachings of the great guide, teacher number one, farmer number one and *Mpenda watoto na kina mama* (the lover of children and women).⁸ Praise, songs and the media was placed under the praise of this one man. He

⁶See *Drum Magazine* (Nairobi), April, 1982.

⁷This re-entry in the main stream politics was short-lived when KANU refused to clear him to contest the Bondo seat left vacant by Hezekiah Ougo on the grounds that he had abused Jomo Kenyatta by calling him a land grabber.

⁸In one of the famous songs of those days, Moi was praised for loving women and children. He was thanked for these noble gestures.



was everything. Those who were deemed as opponents were perceived as non *Nyaoists*.

As he talked compassion he began to crack down on those he perceived as ideologues, “the dissidents under the pay of foreign masters envious of Kenya’s development record.” Moi saw himself as the grand wise old man, the head of the great family. He knew what was good for everybody. He had the moral right to punish the delinquent children as a way to put them back on track for their own good. The first to bear the brunt were the intelligentsia who had accused him of high handedness, ignorance, corruption, limited vision demonstrated by his auctioning of the nation to western imperialist⁹ He in turn used polemical strategies to accuse them of merely aping foreign ideologies (in this case Marxism). Some of his cronies went as far as calling for the arrest of Karl Marx for confusing university students.¹⁰ Moi pointed out to them his expertise, in practical politics as opposed to the intellectuals whose foreign ideologies and ideas he sought to de-legitimise and negate as erroneous and divorced from the practical reality.

Moi’s ideological construction here was epiphenomenal. It was a system of ideas that merely expressed the interests of his dominant faction while seeking to represent class relations in an illusionary fashion i.e. blaming the University of its inability to manufacture vehicles. In so doing, he succeeded in fooling the society into believing that such activities were the only *raison d’être* for the existence of universities. He would set up a production line under the aegis of the Kenya Railways.¹¹ Not content with arrests and detentions of several University academic staff unions were proscribed a long side the civil servants union in 1980. As he increasingly became intolerant he continued to construct himself as a God fearing good Christian. Every Sunday he appeared in church with a coterie of his sycophants and ministers. He ensured that these were beamed on the national TV and radio as the first items. Indeed being seen in church with the president was an indication of one’s proximity to the centre of power and an avenue for getting right connections for primitive accumulation.

It is imperative to note that Moi ascended to the Kenyan throne at the moment when international economic and political situation was increasingly deteriorating. In the region, the East African Community had not only collapsed,

⁹This orientation crystallised as the Moi administration signed accords allowing the USA to use Kenyan military facilities for its defence objectives around the globe.

¹⁰This call had been made by the long serving Nakuru KANU Chairman the late Kariuki Chotara.

¹¹After expending several billions, three Nyayo Pioneer cars were produced in 1988 only to end up embarrassing him when they refused to start in front of tens of thousands at Kasarani sports complex in Nairobi.



but that relations between Kenya and Tanzania had plummeted. Uganda was at war first with Tanzania and later with itself in the process affecting Kenya's trade.¹² However to Moi's advantage the cold war rivalry also peaked up, animated by the Iranian revolution and the invasion of Afghanistan by the Soviet Union. Kenya was courted by the west for its bases and Moi was more than willing to oblige. Consequent to signing military treaties allowing the US to use its military facilities, Moi received political, financial and military support. This support was crucial for his regime consolidation project.

Firstly, it allowed him to extract resources from outside (avoiding unpopular internal extraction) and to use these resources to expand and consolidate his support base. With the help of military aid, he was able to expand both the military, and other security structures especially the secret police (the special branch and the CID) that he needed to deal with the nascent opposition against his regime. It is fair to argue that external support facilitated not only regime entrenchment but also violence against his opponents. In the said period of 1978-81 Moi also engaged in regime validation projects by undertaking several trips abroad from France to Britain and USA in 1978. He went back to USA and Britain in 1980 before heading to Saudi Arabia, Abu Dhabi, Iraq and China. He followed this up by hosting a successful OAU summit in Nairobi.¹³ Validation process was meant to enhance his image internally as a respected world Statesman and thus reinvent his image *Vis a Vis* Kenyatta's. His decision to reconcile with Somalia had the net effect of diminishing the *Shifita* menace in the North Eastern province. Indeed shortly after that many resisters handed in their weapons.

2.3 1982-1985: of the *Rungu* and the Great Purge

Moi took advantage of the support extended to his feigned attempt to deal with those deemed corrupt to start purging out of the system those he could not manipulate or control. As his highhandedness increased so did opposition to his regime consolidation projects. Attempts by Jaramogi Oginga Odinga and George Anyona to found their own party was dealt with by a Constitution of Kenya Amendment Act, 1982,¹⁴ which outlawed any legal opposition. The amendment also created the powerful post of Chief Secretary. This was followed

¹²See MUSAMBAYI, Katumanga "The Politics of Regime Consolidation and Entrenchment: Moi's Foreign Policy 1978-94," *IFRA Travaux et Documents*, 23rd May, 1995.

¹³ACR VOL V XIII 1980-81 B225.

¹⁴Act No. 7 of 1982.



by an attempted *coup d'état* mounted by a section of the Air Force. Even though well informed of the plot the regime did little to counter the plotters thus leading to the contention that the coup was a trap mounted to facilitate consolidation of his rule.

What is crucial to note is that the regime used the failed coup to purge all officers it considered unreliable. More important, it used it to facilitate the ethnicisation of the military to the extent that by the time Moi was exiting power, out of 17 officers at the rank of major Generals, 7 were from his own ethnic group. The same process would be repeated in other security structures. Out of 8 provincial police chiefs 5 were from one ethnic group together with their deputies.¹⁵ Thus while Moi would throughout his presidency condemn *Ukabila* (ethnism) he would in reality remain its architect, champion and operator. This would be followed up in the parastatals. If they were not members of his ethnic group, they were mainly his cronies ranging from political rejects to professional looters. But unlike Kenyatta's ethnicity, which had the benefit of a substantial number of competent individuals thus allowing them to loot the State's surplus, Moi's ate both the surplus and the deficits.

In this period and time Moi's attention turned to Mwai Kibaki and Charles Njonjo, the two senior Kenyatta leftovers who had been instrumental to his assuming power. In the classic case of fragmentation, Moi sought to take advantage of the existing mutual suspicions between the two and to animate them to his advantage. He tended to blame Njonjo for festering Mwai Kibaki on his back as a Vice-President. This he pointed out to Njonjo when the latter requested him to tamper his heavy schedule. His complaint was that Kibaki was not forthcoming enough to take up part of his duties. Thus according to Moi, his Vice-President had failed the test of loyalty. But the first to go was Njonjo. In a well orchestrated expurgation process. In a public rally in Kisii, Moi constructed an enemy in Njonjo calling him a traitor. He was portrayed as evil, harmful, conniving and a threat to national interest. He was accused of undermining State interests by engendering the collapse of the East African Community and maintaining relations with the then apartheid South Africa.¹⁶ This was despite the fact that Kenya had always maintained geo-strategic and economic interests with South Africa. This strategy against Njonjo did have an overall objective of uniting the nation behind him while destroying those he deemed as threats to

¹⁵"Officials Worry Over Intact Moi Security System," *Sunday Nation* (Nairobi), 26th January, 2003.

¹⁶See MUSAMBAYI, Katumanga, *The Politics of Foreign Policy Execution: Consistency and/or Inconsistency in the Kenya Foreign Policy Towards South Africa, 1978 – 1982*, (Unpublished Thesis, 1996).



his power. Njonjo was forced to resign from the cabinet position as Minister for Constitutional Affairs and the legislature before being put through the humbling and humiliating process of a judicial inquiry commission that found him guilty. In a classic mode of ideological unification process, Moi sought to demonstrate his “magnanimity” by “pardoning” Njonjo. This was not before religious songs that had sought to demonise Judas Iscariot for betraying Jesus had been appropriated to expurgate Njonjo. The song *Msaliti* (traitor) provides a good example:

Wafuasi walianza kutazamana, ni nani atakaye msaliti Yesu.

Kati yao hawakuweza kumtambua, atakaye msaliti.

Siku ile ya kwanza Yesu kasulubiwa alikuwa ameketi na wafuasi wake kati yao hawakuweza kumtambua Yuda takaye msaliti.

[Rough Translation]

The disciples begin to look at one another, who would betray Jesus?

It was difficult to tell who among them could betray him.

*On that first day of crucifixion he was seated among his disciple,
none was able to identify he would betray him.*

In this song, Moi was substituted for Jesus, and Njonjo for Judas; the disciples were substituted for the cabinet. Sang during national holidays by the military band, the religious significance tended to be immediately appropriated by the political through a clear process of displacement. The sad act of Judas cemented the “evil nature” of Njonjo and the public sympathy reserved by the Christians for Jesus was this time reserved for Daniel, the humble peace loving man who was being stabbed in the back by the more cunning Njonjo. This was to mark the emergence of the construction of the big man through songs. To begin with, *Lingala* music¹⁷ was banned on national radio in the name of promoting Kenyan music. In reality this action sought to create the needed space for “patriotic songs” which were many and all of them geared towards playing certain ideological objectives. There are those that sought to extirpate and fragment opponents such as the one entitled “*Viongozi Wasiotosheka*” (disgruntled leaders). These were accused of seeking to rock the Nyayo boat of peace, love and unity. In a bid to legitimise the President, he was said to be wise, all knowing of all the problems

¹⁷*Lingala* is the language spoken by the people of the Democratic Republic of Congo (DRC) and their music is very popular in the East African region and beyond.



and in possession of solutions. Others noted his love for children as others called on *Wananchi* to listen to Moi. Others noted the fact that the new government of Kenya was that one of the Bible and every Sunday the president went to church to follow the footsteps.

With Njonjo out of the way, it was only a matter of time before Kibaki followed suit. In an orchestrated campaign initiated from the State House MP Waruru Kanja was set upon Mwai Kibaki. This move was meant to dissimulate the true intentions of the President. The animosity between Kibaki and Kanja fragmentalising as it was, of the Kikuyu community was meant to undermine Kibaki within his home district and in the process isolate him nationally through the loss of legitimacy. Kibaki was accused of sponsoring alternative candidates within the ruling party with the hope of displacing the President.

Kibaki was finally replaced as Vice-President subsequent to the 1988 *mlolongo* elections (Queuing Elections). President Moi took advantage of the prevailing cold war situation to engage in regime validation actions. This was meant to facilitate extraction of resources from the external environment with the objective of rewarding allies and constraining negative actions of opponents.

Another objective of validation process was to use external visits and engagement of peace negotiations at a regional level for purposes of cementing his legitimacy internally. Engagement in regional peace initiatives such as Uganda peace talks, reconciliation with Somalia, reinforced his image as that of the “prince of peace” (as one of his ministers of education once described him). External extraction enabled him access heavy loans and credit lines from the West. This was critical in the process of reconstructing his Air Force subsequent to the coup attempt of 1982.¹⁸ But as external political, military and economic support under girded political repression, Moi increasingly began to display symptoms of paranoia. The first targets were the intellectuals in the University and other members of the intelligentsia who had formed *Mwakenya* with the objective of opposing his repressive rule.

Many were detained, while others were tortured to death.¹⁹ Interestingly, these torture cells were located in the Nyayo House, a building constructed as an epitome to symbolise peace, love and unity.²⁰ While the police have been blamed for these extra legal actions, it turned out that those involved were a

¹⁸ *Africa Analysis* (London), July 1990.

¹⁹ KHAPOYA, Vincent, “Kenya’s Foreign Policy,” in ALUKO, O. (ed.), *The Political Economy of African Foreign Policies*, 1988.

²⁰ See *Daily Nation* (Nairobi), 12th February, 2003.



special unit under the Permanent Secretary responsible for internal security. To understand the efficiency of these officers and their criminal activities, one needs to understand the modes of their recruitment. They were recruited out of the most notorious and sadistic lot of the police. Most were promoted without going through normal courses undertaken by other officers.²¹ They were under the control of the late Hezekiah Oyugi, then Permanent Secretary in charge of provincial administration and internal security. Oyugi's unit was able to reign terror on the entire nation for a period of 10 years. More than 2000 people were said to have been arrested and 500 were said to have been killed. Similar violence was unleashed by the military in North Eastern Province. A total of 3000 people were massacred at Wagalla airstrip in 1983 by an army unit.

According to Bernard Njiinu, a former police commissioner:

Oyugi was just an executor of what was decided elsewhere. Somebody may have noted the character flaws in Oyugi and decided to use him and let him carry the cross.²²

That this unit could carry out its illegal activities without the knowledge of the national security committee is a pointer to the type of regime Moi was running.²³ Njiinu points to the tendency to pick people with questionable character and to appoint them into position without reference to capacity and merit. What counted was loyalty to him. Such persons were always beholden to the president who in the process manipulated them to serve his particularistic interests.

Njiinu captures this succinctly with respect to his successor at the high command of the police force Philip Kilonzo:

I advised him that his choice of (the late Kilonzo) as my successor was unsuitable ... I know Kilonzo as well as my PPO in Nairobi and would have been the last person to recommend him as my replacement.

Kilonzo turned out to be implicated negatively in the assassination of Robert Ouko the then Minister for Foreign Affairs and International Co-operation. He was also accused of covering up of the murder of Julie Ward,²⁴ a young British

²¹See *Daily Nation* (Nairobi) "New Team to Probe Rights Abuses," 13th February, 2003, p. 4. Most of these officers were mysteriously eliminated after performing other criminal activities for the State. See *Daily Nation* (Nairobi), 12th February, 2003.

²²See "Former Police Chief Speaks Out on Mwakenya Crack down," *Sunday Nation* (Nairobi), March, 2003, p. 10.

²³National Security Committee, which is chaired by the Vice-President, has in it the Commissioner of Police, Minister in charge of national security, the chief of intelligence, C.I.D, the Permanent Secretary responsible for internal security, and Chief of General Staff as members.

²⁴See "Mwakenya: How Njiinu was Side-lined in the Operation," *Sunday Nation* (Nairobi), 2nd March, 2003, p. 11.

tourist whose charred body was found in Masai Mara Game Reserve. To facilitate the illegal prosecutions, Oyugi had his close accomplices in the judiciary in the name of Bernard Chunga. It would be surprising that he would later be appointed as the Chief Justice despite the existence of other competent Judges.²⁵ Moi also appointed another police commissioner despite the fact that the officer had been interdicted while serving as provincial police commissioner. He also appointed Justice Zacharias Chesoni as chairman of the Electoral Commission prior to the 1992 flawed elections despite the fact that he had earlier on been forced out of judiciary as a judge of the Court of Appeal on recommendations of the Judicial Service Commission for conduct unbecoming of a judge. He would later on appoint him Chief Justice of Kenya.

The consequence of these and many other appointments to the institutional probity and capacity was telling. This was a strategy to ensure maximum loyalty at one level and at another to ensure that there were pliable characters to implement the regimes biddings. Where appointments were not used, Moi used hard cash to buy off opponents and to reward supporters. In most cases people would be sent to State banks to get cash for patronage purposes on behalf of the regime only to later on be dumped after they had played their role in destroying their opponents on behalf of the regime. These strategies combined to facilitate Moi's effective control over the State. In the end both thin and thick versions of false consciousness emerged to engulf the State. While at first he camouflaged exclusion of certain ethnic groups in the name of correcting historical marginalisation in the second strategy he created a sense of pervasive fear of consequences of rebellion against him. Before the oppressed bore down to him evolving a near kind of *servitude volontaire*.²⁶

But as his regime engaged in repression, the president and his cohorts began a process of massive predation of both development aid and public utility assets. Classic examples include the Kenya Post and Telecommunication Corporation decision to buy 500 maisonettes on outer-ring road at the cost of Kshs. 300,000/= each. While total price was set at Ksh. 165 million, despite the payment little came out of this. From corruption, there was accumulations the president and his cronies soon acquired Firestone East Africa, First National Bank of Chicago, Kenol, Union Carbide, Marshalls, and Prudential Bank.²⁷ Moi himself is said to

²⁵Bernard Chunga was forced to quite after the New Government set up an inquiry commission to investigate his conduct during the terrible days of Mwakenya trials and influence pedalling in the judiciary.

²⁶See Etienne la Boetsie on *Servitude Volontaire - Servitude Volontaire - Traduction en Français Moderne et post face de Severine Auffret. Edition mille et nuit, No 76.*

²⁷See KISIERO, Jaindi, Cocktail of Cash and Politics, *Daily Nation* (Nairobi) 24th December, 2002, p. 15.



own Bein Hogg insurance Brokers, Lion of Kenya Insurance Company, Insurance Company of East Africa, a ranch in Laikipia, a large farm in Eldoret, a Dairy Farm in Rift Valley, American Life Insurance Company, Kobil/Kenol with Nicholas Biwott, Nairobi Airport Services, Transnational Bank, KTN, Farming concerns in Kabarak, Sacho, Cherangani, Kilgoris, Mau Narok and Trans Nzoia, part of Safaricom, Ambank and Raiply Plywood in Eldoret. His favourite son Gideon owns Ostrade world, Sea and Rose Limited, Mugoya Construction, Chemusi and Company, French Produce Limited, Equity Stockbrokers, Kenship Maritime, First Forces Security Services, Regent Management, Signon Freight, Cartrack Kenya Limited, Trade world Kenya, Sielei Properties, Giant Forex Bureau, Sanbury Limited, Samburi Investments, Chesco Limited.²⁸

He also began the process of constitutional amendments that sought to barricade his regime against any form of opposition. Constitution of Kenya Amendment Act, 1986 was legislated.²⁹ This removed the security of tenure of the judges of the High court, the Attorney General and the Controller and Auditor General. Henceforth, the holders of these offices did so at his pleasure. In 1987, the Constitution of Kenya (Amendment Act), 1987³⁰ made offences such as treason punishable by death. Constitutional (Amendment Act), 1988³¹ empowered the police to detain suspects of capital offences for 14 days before taking them to court. While at one level the use of the Special Branch and criminal elements within the police to hound the opponents of the regime and therefore constrict their associational space, the now controlled judiciary was used to carry out the Executive's will. Suspects were hauled in courts and sentenced in the wee hours of the evening.

Apart from the use of the special branch officers to instil fear and thus control the society, Moi turned to the provincial administration. He set up what became known as special district officers in juxtaposition to the official district officer structures. These officers reported directly to him and the head of internal security. They reported on their colleagues and superiors. There was also what became known as district officer environmental. Officially these were to oversee the forests. In reality the structure was a means through which he sought to ethnicise the provincial administration at one level and at another a means through which the perceived guerrillas could be denied an organisational space

²⁸*The Concord Weekly* (Nairobi), 30th November, 2002, p. 11.

²⁹Act No. 4 of 1986.

³⁰Act No. 20 of 1987.

³¹Act No. 4 of 1988.



in the forests. His constructions of these structures were under the control of the then permanent secretary provincial administration in charge of internal security Hezekiah Oyugi.³²

The provincial administration was critical for facilitating effective control. It over saw repression; it ensured that those who had not paid for the membership of the *partie unique* did not get services. It was used to mobilise the public for compulsory *harambee* (self help public fundraisings). The president had a penchant for these. All his Ministers and Heads of parastatals attended them. With time these became indirect forms of violent taxations with the party youth wingers and the provincial administration ensuring that every body contributed. In the rural area they become means through which both the provincial administration and party youth enriched themselves. The president went round the State to hold *harambees* and used the same to lampoon and destroy opponents while constructing alternatives centres of regional power. Those seeking favours and parastatal chiefs used these to loot public institution and to send the same to the president's *harambees*. In their forms of hidden resistance, peasants composed songs in opposition to the *harambee* violence. One such song was that composed by Jacob Luseno titled *makuru* (headmen). In the song the artist points to the violence and highhandedness of headmen. He laments their taking off with household items and belongings of peasants in abide to raise funds for schools in total disregards of the costs and peasant moral ethnicity.

The rest of the political opponents were weeded out through the *mlolongo* queue voting system, leaving Moi with the pliable parliament he wanted. But still facing opposition from the Church and other senior politicians like Martin Shikuku, Masinde Muliro, his erstwhile colleagues from KADU, Moi set up what became known as the KANU Disciplinary Committee that grilled, disciplined and expelled politicians deemed to be opposed to the regime. Those disciplined by this committee include Joseph Munyao (MP for Mbooni), suspended for not standing up when Moi mentioned his name at a public rally in Machakos, Kimani wa Nyoike (MP for Nyandarua South), for revealing in glory of a praise song in his honour based on a tune dedicated to the president. The song in question was *Tawala Kenya tawala, tawala Rais Moi tawala Kenya tawala* (Continue to rule Kenya, rule Kenya president Moi). Others included the late Emmanuel Maitha (MP for

³²See also *Sunday East African* (Nairobi) 16th February, 2003. See Also "I am No Nyayo House Torturer –Minister," *East African Standard* (Nairobi), 17th February, 2003, pp. 1-2.



Kisauni) for showing disrespect for KANU. Masinde Muliro and Martin Shikuku were suspended and subsequently expelled for agitating for multipartism.³³

In the economic realm, Moi sought to downsize the GEMA capital that had shifted into banking and financial institutions. He launched a crackdown on indigenous financial institutions that saw them collapse one after another. These included; Continental Bank, Rural Urban Credit Finance, United Finance Bank and Tropical Building Society. The collapsing Kikuyu owned and Indian-owned financial institutions replaced financial institutions. These institutions had to be downsized because they provided alternative credit for industrial and financial credit – “enemy territory.”³⁴ By downsizing the Kikuyu banking institutions, Moi’s main power game involved the process of strengthening parastatal banks tightly controlled by his men and using the same to provide loans and credit facilities to those deemed as politically correct. The State favoured the Asian capitals mainly because it did not constitute a political threat and could also be relied upon to pay political taxes. But in destroying the budding African *bourgeois*, Moi ensured that they would not transform their industrial based accumulation into financial capital critical for meaningful industrialisation. Capturing the Asian businessmen ensure that they would constantly access political taxes to the regime while denying the same to the regime opponents.

Moi’s reign on the Nyayo throne was generally hostile to any source of capital that he did not control, lest it constituted a source of opposition. Notably, he opted to gag agrarian based credit institutions. Kenya Farmers Association for instance, was deregistered and was reconstituted as Kenya Grain Growers Cooperative Union, under his patronage.³⁵ He would sum up his consolidation process by capturing and affiliating to KANU both the Central Organisation of Trade Unions (COTU) and the *Maendeleo ya Wanawake* (the Giant women group). Through co-optation and patronage, he also assumed control of the National Chamber of Commerce and Industry and the Kenya Association of Manufacturers. Thus, by 1989, Moi would demand from his ministers’ total obedience. “From today henceforth, I want all ministers to sing after me like parrots.” The height of monolithism had arrived. With it was his dominant control of all the State institutions of ideological transmission, the Radio, the TV and the Newspapers. While the Radio sang songs in his praise composed by parastatal mass choirs,

³³See “Whipping and Grovelling before the dreaded KANU Team,” *Daily Nation* (Nairobi), 24th December, 2002 p. 12-13.

³⁴Otienyo 1993 cf Katumanga, M., “The Political Economy of Constitutional Amendments in Kenya, 1895 – 1997,” Nairobi: SAREAT, p. 26.

³⁵See NGUNYI, G.M. and J. Gathiaka, “State-Civil Society Relations in Kenya in the 1990s,” in GIBBON, Peter (ed.), *The Socio-Political Context of Adjustment in Sub-Saharan Africa*, Uppsala: Scandinavian Institute of African Studies.



his portraits dominated the TV screens, public institutions and schools, most of which bore his name as they sang his praises in the loyalty pledge recited every morning by students. As if to entomb him, all civil servants were forced to contribute a percentage of their salaries in 1988 to facilitate the construction of the symbols of his Nyayo era or error, in this case, the ten-ton steel and gravel that was erected in the Central Park of Nairobi.

The period between 1983 and 1989 was also characterised by Moi's attempt to build an image of a doer, an innovator and a resolver of all society's problems. He engaged himself in a wide range of projects ranging from the destruction of forests to set up the Nyayo tea zones, the Nyayo wards, the Nyayo buses, and the Nyayo 8-4-4 education system. The common denominator in all these projects was the corruption that accompanied the operations, the disaster that their failures visited on the society and the net effects that the nation must continue to grapple with. In a bid to stand out as the initiator, Moi would not let any administrator, Minister or State functionary to upstage him in any project designs, such that an attempt to set up a transport system in Nairobi was brought to an abrupt end by his Nyayo bus venture. By the time it collapsed, the government had incurred a loss of Kshs. 235,997,560/= in the seven years due to mismanagement and looting.³⁶

Apart from the fact that these projects were poorly integrated with the formal State institutions, they had a tinge of populism. Moi sought to appear to be doing new things or doing old ones in the new way, a process that can be described as simply restlessness. Indeed, this comes closer to his description of leadership as leadership on the run. The innovativeness of the regime had merely contributed to the personalisation of a State that seemed to be in motion but heading absolutely nowhere. It merely contributed to institutional inflation. This was undergirded by the assumption that the best way to solve problems is to create a new institution for them. Worse still, was the tendency to view the said institutions as a resting ground or rewards to clients in his patron-client hierarchy for both the patrons and himself to access public largess. Indeed, the post-Moi administration points to extreme levels of predation undertaken by his cronies in public institutions on their assets. It is indeed in the context of this search for legitimacy that one begins to understand the huge cabinet portfolios and civil service departments that Moi created during his reign. There were a total of 28 ministries, 148 departments, 550 divisions most of which overlapped in roles but in the end translating into an

³⁶See Khakhundu Agunda, "Policy from the Podium," *Daily Nation* (Nairobi), 12th December, 2002, p. 10.



enormous expenditure. In 1993 for instance, government spending accounted for Kshs. 116.7 million out of a GDP of Kshs 333.6 billion. Only 16% of this went to development. The rest was recurrent expenditure mostly on salaries.

In a bid to stand out above the rest, Moi also cultivated the tendency of issuing presidential directives and pronouncements that were presumed to have the force of the law given the mere fact that they came from the President. They were expected to be implemented immediately with immediate effect, despite the fact that most of them were misguided and merely wrecked havoc while paralysing government policy making process. Yet this was a means through which the President sought to lampoon the public service for its inertia and in the process legitimised and constructed himself out as the indomitable Mr. Nyayo who was always on the run. The State institutions of ideological transmission always ensured that this point was not lost out to the public.

2.4 Of Guided Pluralism, State Banditism and the Drift Towards State Collapse

Increased repression against opponents, corruption and the rigging of the 1988 *Mlolongo* elections had a net effect of crystallising opposition forces against Moi. Conservative politicians like Kenneth Matiba and Charles Rubia teamed up with the radicals like Oginga Odinga, Martin Shikuku, Masinde Muliro and young lawyers and activists like Paul Muite, James Orendo,³⁷ John Khaminwa, Mohammed Noor, Raila Odinga and fiery church leaders like Timothy Njoya, Ndingi Mwana Nzeki, Archbishop John Okullu, David Gitari and Kipsang Muge to demand an alternative political dispensation in Kenya. High levels of corruption would constitute a major concern of the former erstwhile allies of Moi. It would be alleged later that US concerns over these constituted the rift between the Moi regime and his then Minister for foreign affairs, Dr. Robert Ouko that led to his assassination.³⁸ Ouko's assassination merely animated discontent that would build up into the 7th July, 1990 Saba Saba demonstrations for multipartism. It is instructive to note that *Saba Saba* rally had been called by Rubia and Matiba. Both were detained on the eve of the rally. Others detained were Raila Odinga,

³⁷It is instructive to note that James Orendo remained one of the few politicians manifestly opposed to the Moi rule. He had stood out in the 80s in his opposition to the regime, a factor that forced him into exile. The regime responded by harassing him economically, politically and by use of outright violence on his person and family.

³⁸Interestingly, all actors involved in the Ouko assassination have died in mysterious circumstances. They include senior police officers who carried out the investigations. See Atemi Caleb, "Ouko Murder Unresolved 13 Years on," *East African Standard* (Nairobi), 12th February, 2003, pp. 1 and 14; and HEMPSTONE, Smith, *The Rogue Ambassador: An African Memoir*, Sewanee, Tennessee: University of the South Press, 1997.

Mohamed Noor, John Khaminwa and Gitobu Imanyara. Moi's erstwhile friends in the Paris club responded by conditionalising aid to economic and political reforms. The US for instance imposed economic and political embargo in Kenya amounting to US\$ 7 and 8 million respectively. At the domestic level, inflation shot up to 29% in 1992 up from 19.6% in 1991, leading to erosion of real wages by 12%. Agriculture declined by 4.2% while manufacturing sector grew by a mere 1.2% in 1991. By 1992, the depreciation of the Kenya Shilling had reached an unprecedented 35% in 1992. The political instability affected tourism industry which plummeted. The decision by the Paris Club members to suspend the balance of payments support amounting to US\$ 350 million in 1991 merely compounded the politico-economic environment.³⁹

The opposition on the other hand crystallised itself and became known as Forum for Restoration of Democracy in Kenya (FORD)⁴⁰ banding together Jaramogi Oginga Odinga, Martin Shikuku, Masinde Muliro, Ahmed Bamariz and Philip Gachoka. Moi reluctantly conceded to the restoration of pluralism through the Constitution of Kenya Amendment Act, 1991,⁴¹ which repealed Section 2A and the restoration of the security of tenure to the judges of the High Court, Court of Appeal, the Attorney General and Controller and Auditor General, through the Constitution of Kenya (Amendment Act) of 1990. If these constitutional amendments gave the impression that the President was seeking to accommodate opposition forces, and in the process reverse the increasingly hostile external environment, the praxis of the State pointed to different objectives. Clearly the behaviour of regime actors pointed to a well-orchestrated strategy to constrict this grudgingly conceded associational space.

Several nested tactics were put into action. The first revolved around threats against ethnic groups identified with the opposition, most of who had settled in the Rift Valley, the home country of President Moi. Cabinet Ministers like William Ole Ntimama called on non Maasais to "lie low like envelopes" promising to evict them. The rest of regime engineers in the Kalenjin heartland repeated these threats. It was not a surprise therefore that they would institute politically instigated clashes that raged in the Rift Valley, parts of Western and Nyanza provinces. The rallying point of the regime engineers was loud and clear. If opposition groups insisted on pluralism, which threatened the Moi regime, they likewise demanded the *Majimbo* system that would engender their expulsion from the Rift Valley.

³⁹Katunga M. "The Political Economy of Constitutional Amendments in Kenya 1895- 1997," SAREAT /IPAR, 1998, p. 30.

⁴⁰Appellation given by James Orengo, one of the core conceptualisers of FORD and who would brave odds to appear at KAMUKUNJI for the proscribed meeting called by FORD.

⁴¹Acts Nos. 2 and 12 of 1991.



At another level, Moi instituted constitutional amendments that sought to entrench him in power. In July 1992, he introduced the 25% rule Bill, which stipulated that a winning candidate at the presidential election garners 25% in at least 5 of the 8 electoral provinces. Moi's calculation here was that the opposition could be manipulated into disintegration along ethnic lines, making it impossible for it to beat KANU. Predictably enough, through a combination of State machinations led by the police, the provincial administration and the special branch at one level, and the opposition chiefs' self centeredness and ethnic bigotry oversaw not only the trifurcation of FORD: the FORD Asili faction led by Matiba and Shikuku, FORD Kenya led by Odinga and Muliro and Kenya National Congress led by Kimani Wa Nyoike and their defeat in the subsequent general elections at another. Their situation had not been helped by the collapse of negotiations between FORD Kenya and the Mwai Kibaki led conservative Democratic Party. Moi romped through with less than 40% of the popular vote and began his first term as the first President in the multiparty era.

An equally disastrous tactic used by the incumbent was his decision to use State financial institutions to print money for elections, a factor that caused hyperinflation after the 1992 elections in the process de-generating the economic situation. This tactic of survival seemed to have reinforced Moi's belief in using resources as a means of buying political support. His regime would follow this up with the Goldenberg theft of an estimated 65.6 billion shillings from the Treasury through a fictitious export of Gold by a certain Kamlesh Pattni.⁴² Evidence adduced by Ibrahim Ali, the former owner of Duty Free shops and allies of the President would point to the fact that the Goldenberg scandal went beyond the Minister who approved it to the Head of State himself. It is not strange that the case would remain unresolved a decade after it was unearthed. It basically pointed to another trait of President Moi as a person who remained loyal to nobody but himself. Throughout the 1990s he would be nested in survival games pitting allies against each other, humiliating and sacking his vice-presidents at will. After replacing Kibaki with Dr Josephat Karanja, he had the latter hounded out of office through orchestrated innuendos that he had carried himself around as an acting president. He then appointed Prof. George Saitoti only to later set councillors on him, relieving him of his duties after the 1997 elections and reappointing him on the roadside.

⁴²See Jaindi Kisiero, "Sharing Guilt over Kenya's Biggest Scam," *Daily Nation* (Nairobi), 24th December, 2002, p. 17.

Reeling under aid embargo, Moi turned to internal extraction process to keep the regime afloat. Public properties, government houses, forests, were all allocated with impunity in a bid to buy support and raise funds for patronage. The regime increasingly seemed to sustain a bandit economy, built around variegated forms of predatory activities. By the mid 1990's the President was literally running a bandit economy. His accomplices would with approval of the cabinet loot the Treasury over 60 billion Kenya shillings in the Goldenberg Scandal. As Mutahi Ngunyi notes, for every 5 shillings, 1 shilling was lost in corruption. The bandit economy collected 20% of the formal economy to the benefit of less than 250 people out of a population of 31 million.⁴³ It is not a wonder that conservative figures would put corruption in the period between 1994-95 to have reached Kshs. 127.4 billion. By 1999 cattle rustling was claiming an average of Kshs. 480,000,000 per predation forests and public land amounted to Kshs. 9.7 billion between 1990-99.⁴⁴ The Nairobi City Commission alone had lost over 20 billion shillings worth of assets over two decades.⁴⁵ Credit institutions had also been "eaten up" by his cohorts. Agricultural Finance Corporation for instance lost USD 78 million.⁴⁶ The government had also lost Ksh 2.5billion in fake road constructions.⁴⁷

Businessmen aligned to the regime were allowed to import fertilizer, grain and sugar tax-free in the process killing the agricultural sector. Cowboy contractors went on a spree of building non-existent roads and getting paid billions for the same. Notorious in this included the Mugoya and Mugoya Construction Company.⁴⁸ School fields, research institutions, land were allocated with impunity to allies in a bid to raise funds. Another equally effective tactic of holding onto power was increasing privatisation of public institutions of violence and the appropriation of private institutions of violence. With respect to the former, special squads of security personnel were unleashed on opposition opponents and social formations resisting predation on public property. Professor Wangari Maathai's attempts to save the Karura forests fall in this category. With respect to the latter the regime encouraged the formation of rural and urban based vigilante militias that could once in a while be unleashed on opposition forces.

It is some of these vigilante groups that played a major role in both the 1992 politically instigated clashes and the 1997 clashes in Mombasa that saw the

⁴³See Wambui Chege, "War on Graft as NARC's Acid Test," *East African Standard* (Nairobi), 25th February, 2003.

⁴⁴See "The Bandit Economy," *East African Alternatives* (Nairobi), September/October, 1999, p. 21.

⁴⁵See "Looters Grabbed Ksh 20b in Nairobi," Volume 7 No. 4 *Kenya Confidential* (Nairobi), January – February, 2003.

⁴⁶See "Kirwa Orders Probe of the USD 78m Looses at AFC," *The East African*, 10th -16th February, 2003, p. 1.

⁴⁷See "Shs 2.5b Lost on Road Contract Swindles," *Daily Nation* (Nairobi), 23rd January, 2003, p. 1.

⁴⁸To raise funds for campaigns the regime paid 8 billion shillings to contractors over fictitious repairs at the Jomo Kenyatta Airport. It had paid Kshs 4.5 billion in treasury bonds to contractors for work never done. See "Kibaki: Sh 8 billion Bill is KANU's Dirty Money," *Daily Nation* (Nairobi), 19th December, 2002, p. 1.



displacement of over 100,000 people and the death of another 100.⁴⁹ Some of the vigilante groups previously aligned to the opposition were eventually infiltrated and appropriated by the regime to the extent that by 2002, they had matured to literally threaten national integrity. In this category is the *Mungiki* group. In the rural frontier, the regime aligned itself and indeed gave blessings to activities of militarised ethnic militias. Core in this were the Pokot armed rustlers. These were allowed to engage in cattle rustling activities whose consequences were meant to achieve several political objectives. Predate on opposition supporting communities in districts like Trans Nzoia and Marakwet, attack non-Pokot citizens settled in Pokot country and in the process raise resources for buying support at the local level and for pleasing local elites at another. The end result of this was the emergence of a situation under which the State's sovereignty in certain regions seemed to be shared at one level, and at another at which the whole notion of the right to citizenship was totally deconstructed with non Pokots denied the right to vote and forced out of the Pokot country.

2.5 Absence of an Alternative Leadership and the Gathering Storm before the Rainbow

The Moi regime survived this long, due to the fact that the opposition had failed to evolve an alternative leadership. Leadership here presupposed motivated individuals with an organising ideology and alternative institutions who seek to mobilise society in competition or co-operation with others with a view to achieving their interests and those of their followers. Over the period of 10 years the opposition would remain anti-Moi as opposed to countering him, failure of analysis of the objective conditions and thus constructing a fitting counter Moi theory of State deconstruction ensured that politicians organised within the Moi divide and rule ideology which in turn merely reinforced his control over power. This was not helped by divisivism and opportunism that characterised the political class.

It is this absence of leadership that saw civil society organisations lead by members of the former leftist intellectuals coalesce themselves together under the National Coalition Executive Council (NCEC) to press for Constitutional reforms. National Coalition Executive Council mass action activities began on 3rd May

⁴⁹See Otsieno, N. and Kulundu, H. "Will NARC Prosecute Past Crimes Against Humanity: Some Key Members of the Government were Implicated," *Expression Today*, February, 2003, p. 3.



1997 at Kamukunji grounds and despite the heavy loss of life that characterised this process, the regime still resisted calls for constitutional reforms. When it did concede, it repealed the Public Order Act, the Chief's Authority Act; the two Acts that since the colonial days had been used to constrict associational space. It soon entered into a "dialogue" with some opposition leaders culminating in what became known as Inter-Parliamentary Party Group talks for minimum constitutional reforms. Despite signing the IPPG accord on minimum reforms, the regime carried on with its past activities that prevented opposition parties from freely associating for electoral processes. It is in this context of mischief, violence, corruption and dilapidating poverty that the 1997 elections were held, which saw Moi garner a second term with less than 40% of the vote after the opposition lost the election.

No doubt, the Kenyan polity was disillusioned and felt let down by the political class. What seemed to have emerged was a situation in which the latter seemed divorced from the objective reality of the Kenyan polity. Years of civic education, mass action by the NCEC and decremental deprivation were spawning anarchy. This was manifested by the increasing levels of militarization and emerging bandit economies in the rural and urban frontiers at one level and the urban armies whose violence contributed further to the erosion of regime legitimacy on the other. The State's institutional capacity to provide values diminished. Unable to guarantee security, the State increasingly distanced itself from society as the regime sought to merely hang on to power. Worse still, much of the main opposition leadership seemed to have run out of ideas on how to get Moi out of power and instead opted to diminish their losses by cutting deals with him. Leading opposition parties had their political power base on one or two ethnic groups. NDP had its support among the Luo, DP among the Kikuyu, Ford Kenya among the Luhya. The ruling party was as equally ethnic as the rest. Yet it also benefited from the constant help of the State security structures especially the provincial administration. It equally had access to State resources which it used to construct patronage networks. Given this situation and more so absence of an alternative organising ideology that was national none of the main stream opposition parties was able to organise beyond its region of control. Any attempts were thwarted by the State using both the provincial administration and its institutions of ideology. In any case opposition leaders were all trapped in their ethnic cocoons. None was thinking national. Each faction sought to propel its ethnic candidate to power. How this was going to be possible given the 25% rule was not discussed. No wonder then that the public seemed convinced that voting



for the opposition was a waste of time. This realisation merely compounded the pessimism that engulfed the society. Yet a few politicians seemed to have the courage to continue with the struggle against the Moi regime beyond attempts at facilitating the turn of their ethnic groups to “eat.” Core in these was James Orengo. He managed to put together *Muungano wa Mageuzi*. *Mageuzi* hit the road defying the Moi regime’s ban and violence from both State and opposition militia groups. *Mageuzi* had several net effects on the political chessboard. Core in these was the demystifications of the regional opposition “lords.” Orengo and company were able to take them on in their own back yard without their permission or presence. *Mageuzi* drew crowds across ethnic lines. They were mainly Kenyans tired of ethnic politics that seemed to reinforce Moi’s control over reins of power. The public was willing to listen to them given the fact that they seemed to defy Moi, they were daring and talked national issues away from ethnic succession politics. The liberation of this polity from the control of certain politicians had other net effects. It pushed both mainstream opposition leaders and Moi into serious talks on coalition building. Moi sought to draw Kibaki and his Democratic Party (DP) in to some form of co-operation as a prelude to a coalition. When this failed, he sought Odinga’s National Development Party (NDP). Left out DP attempted to re-organise under the banner of GEMA before retreating to enter into talks with FORD Kenya of Wamalwa Kijana.

Moi strongly believed he was in control and could use the NDP to achieve his objectives. For starts, this seemed to work with the NDP supporters increasingly removed from public protest arenas into serving as fifth columns against their former erstwhile allies in the opposition. NDP was also instrumental in ensuring that he could manipulate the Constitution making process in his favour as a parallel review program emerged under the auspices of the *Ufungamano* religious sector. But as it captured the imagination of the public, *Mageuzi* leadership failed to evolve a clear workable strategy for removing Moi. It lacked an organising ideology, program for change and organisational framework. It increasingly appeared more as a front for change without thrusting on to the pedestal of Kenyan politics its leader. Indeed as Orengo stood out as its apparent leader, he began to elicit opposition from his colleagues who did not favour the idea of abandoning their ethnic chiefs whose blessings they still needed if they were to win the forthcoming elections. *Mageuzi* missed out on tactics too, it had allegedly not anticipated “friendly fire” from its opposition colleagues and had thus not evolved concrete measures on how to deal with the same. *Mageuzi* seemed to seek a maximum program geared towards overhauling the State using mass revolt/



insurrection. Yet this presupposed a clear leadership, structures, program and infiltration of State security structures. More confusing was also the fact that core leaders undermined themselves by failing to decamp their “ethnic cocoons” they called parties. They instead remained fixated on electoral politics. The death nail of her efforts ended with Orengo’s shift into Social Democratic Party (SDP). This move seemed to confirm *Mageuzi’s* status as a mere pressure front against both the mainstream opposition and the regime chiefs.

For a short while, most intellectuals and masses sought to give Orengo and his new party the SDP a chance. Along with Anyang’ Nyong’o, they were perceived to offer a credible alternative to both the DP and FORD Kenya. This hope was however short-lived. SDP became riddled with schisms that would subsequently undermine both Nyong’o and Orengo’s credentials as alternatives. It sowed seeds of disillusionment among potential members of the party. KANU’s internal politics of succession would eventually animate the dull political scene.

To understand this politics, one needs to re-examine Moi’s survival strategies. He had all through perfected the art of fragmenting the society while seeking some limited of unification through patronage and banditism. In 1992 and 1997 elections he had fragmented opposition to him through attempts at ethnic unification around ethnic succession of the presidency. In the end he had created an apparent impression among the Luhya, the Kamba and Coastal groups that each of groups’ sons would succeed only if they gave him support. Much of the nation waited to see how the *professor of politics* would realise these feet without fragmenting his party. Moi himself embarked on his mission of self-succession by manipulating and playing his faithful allies against each other. Core in his game plan was the need to have major ethnic groups, the Luhya, Luo and Kikuyu uniting under KANU. To this end, he needed Odinga’s NDP. The latter demanded the neutralisation of Joseph Kamotho and George Saitoti, KANU’s Secretary General and Vice President respectively. Uncle Dan had no problem in accepting this. In any case he did not have Saitoti in mind as his successor. In any case he sought to use NDP to get rid of him. He had somebody else in mind. On the other hand, to bring in the core regions of Western, Coast, Eastern and Central, Moi opted to have the party Constitution changed to cater for four chairmen. On 18th March, 2002, he would publicly humiliate both Saitoti and Kamotho at Kasarani Sports Ground, ensuring that they did not present themselves as candidates.

As if to confirm his intentions of sticking to the political scene Moi contended:



Even if I declare that I will retire, will I not still be the KANU chairman? My influence is still intact. It is everywhere and I will ask those asking me to retire at the constituency level and tell the electorate about your development record.

What Moi seemed to mean here was that he would only leave the title of the president. Indeed, this was an attempt to dissimilate his true intentions of dominating the political scene. The four party chairmen Kalonzo Musyoka, Katana Ngala, Musalia Mudavadi and Uhuru Kenyatta basically seemed to represent the Kamba, the Coastal population, the Luhya and the Kikuyu with the new Secretary General Raila Odinga bringing in the Luo. When the process was over, it had literally transformed the succession politics in the Nation. More specifically, it put KANU at the centre stage of the same. Moi had succeeded in polarising the nation vertically at one level while uniting ethnic groups around their sons then perceived as apparent successors to the old professor in politics.

Parallel to these KANU troubles were concerted by opposition chiefs to forge a united front. This process had seen FORD Kenya's Wamalwa Kijana, DPs Mwai Kibaki and National Party of Kenya's Charity Ngilu enter into breakfast talks geared towards forming a united front against KANU. Few people took their breakfast discussions serious even as they began to set up structures with a view to institutionalise their coalition building process. Underlying this was the fact that each of the three sought the presidency. None was willing to step aside for others. There was pressure from their handlers afraid of what their constituency would say if the president went else where. The three turned to professional and neutral actors like Dr. Willy Mutunga to help in the process of uniting them. To Mutunga, it was rather obvious that Kibaki who had the largest following be the torch bearer. Wamalwa handlers would have none of this. For them, Kikuyus had had their chance and thus needed to leave out to others (in this case the Luhyas (Read - him). The situation was made difficult by the KANU propaganda that seemed hostile to a Kikuyu presidency even while courting the Kikuyu. This situation merely seemed to spawn vertical polarisation. Moi would animate the same when he began to show favour for one of his political sons against others. The anointed successor seemed to be an outsider Uhuru Kenyatta. Opposition and discontent in the party began to rise. His decision to officially anoint Uhuru Kenyatta in Lugari district, and later on in Mount Elgon District and in the process humiliating Musalia Mudavadi before his Luhya constituents merely animated

⁵⁰See "Niyayo Sayings: Moi End of an Era," *Daily Nation* (Nairobi), 24th December, 2002, p. 23.



the anti-Moi sentiments that had began developing across the entire Republic. It also began the process of deconstructing the ideological myth of invincibility Moi had erected around himself over a period of 24 years. He began meeting open resistance that saw him get ridiculed publicly wherever he went, from Lugari to Kisumu and to Nairobi where crowds constantly heckled him as he attempted to keep his now disintegrating party together. In a visit to Kakamega, the capital of the Luhya country, the President was stoned and he had to be flown out by a helicopter from the Bukhungu Stadium.

By September, a clear faction led by Raila Odinga, George Saitoti, Musalia Mudavadi, Joseph Kamotho, Moody Awori and Kalonzo Musyoka had emerged under the banner of the Rainbow Coalition. Mudavadi's abandonment of the rainbow faction equally alienated him from his political power base, which shifted stoically to the opposition. To the majority of his supporters, he was a mere wimp who could not be trusted by the leadership of the Nation. For his Luhya supporters, Mudavadi had humiliated and embarrassed them, he had betrayed his colleagues who had been sacked consequent to supporting him, sought the Luhya support only to abandon them. As the KANU factions drifted apart, NAK hit the road to popularise itself. It toured core regions of the State to drum up support for the Mwai Kibaki – Wamalwa - Ngilu ticket. Attempts were made to bring in Kipruto Kirwa and Simon Nyachae of FORD - people. While Kirwa joined the alliance Nyachae would refuse hoping to join hands with Raila and core. The Raila led KANU faction would eventually pull out of the mainstream to merge with NAK to form the National Rainbow Coalition (NARC). This merger seemed to write an epitaph on KANU's 40 years reign. Uncle Dan's attempt curb the Luhya revolt by appointing Musalia Mudavadi Vice President⁵¹ was perceived as an insult by Luhya who greeted the VP with violence wherever he visited his own home area.

What seemed to be happening here was the demystification of Moi. Masses were no longer terrified by him. More important, their pressure on all leaders to unite seemed to point to the fact that they were no longer being bought by the Uhuru project. The President was increasingly seen as unreliable, self centred and therefore acting against the interest of the common man. Worse still, an alternative leadership with an apparent trust seemed to be evolving. People like Odinga, Awori, and Saitoti appeared to command sympathy due to their

⁵¹See "Mudavadi is New VP," *Daily Nation*, (Nairobi) 5th November, 2002, p. 1.



perceived betrayal. Moi's actions not only seemed to alienate ethnic groups as a block but also forced them to think national as a means through which they could exact their revenge on him. This explains the decision by masses in Western Kenya to ask Nyachae and others to unite with others before coming back to seek votes from them. It was not a wonder that they would tell Wamalwa to accept to deputise Kibaki. Yet Moi still had his secret weapons that he hoped to unleash at the last minute. Core in these was the Electoral Commission. After delaying the reappointment of Chairman Samuel Kivuitu, Moi would finally do it consequent to pressure. He would however demand to understand the legal basis under which the opposition sought to present one candidate from the Commission.

Dissatisfied by the latter's answer allowing their candidature, Moi turned to the Attorney General Wako. The latter called Kivuitu for answers incensing the Chairman who threatened to resign. What Moi sought was to have the opposition candidate barred on legal grounds thus generating last minute confusion in the opposition ranks. Try as it may, using State resources, including the payments of more than 6 billion shillings for fictitious constructions in a bid to raise funds for campaigns. The fate of KANU seemed sealed, especially when NARC came up with Mwai Kibaki as the opposition candidate. NARC immediately hit the road once it failed to gain the acceptance of Nyachae who disapproved what he called the imposition of Kibaki on the opposition. More important NARC evolved structures that would help organise her campaign. It set up what become known as the Summit. This consisted of the top leaders most of whom had initially stood out as candidates. They included Kalonzo Muysoka, Moody Awori, Charity Ngilu, Mwai Kibaki, Kipruto Kirwa, George Saitoti, Raila Odinga, and Wamalwa Kijana. It was the main decision-making organ. Apart from structuring the decision-making process, it pointed to collective decision-making, a departure from the centralising logic of Moi and KANU. The summit would prove crucial when Kibaki and Wamalwa were taken ill. The Summit exemplified the emerging coalition of social groups in Kenya for national unity. It began to symbolise a real rainbow in the mythic psychic of the Kenyan polity. Yet the evolution of the summit seemed to point to other factors. Symbolically, it pointed to the fact that opposition politics as the State had known them since 1991 could not work in Kenya.

The Kenyan political class had failed to develop and organise political parties as valves for policy discourses and means through which they could accede to power. Parties could only be structured along socio-economic lines and in a context where



the political classes are more or less agreed to the general nature and logic of the State. Where this is not the case, they get ethnicised and individualised becoming personal clubs that existed more on paper and indeed got activated at election moments. Parties as they existed had merely fed and animated ethnic jingoism. The coming together and more critically to remove KANU from power was a realisation that in a State structured on ethnic identities like Kenya and given its stage of social political and economic development only broad based politics can work. The winner take it all logic is only bad a recipe for chaos. This hurried coalition without the requisite well negotiated maximum and minimum programs would eventually generate hiccups for NARC once in power. What is important to note is that the summit came up with a memorandum of understanding binding the winner to practice politics of inclusion and consultation with the other senior members of the coalition. The two NAK and Rainbow coalition partners were to share positions at a ratio of 50-50.

On the other hand, the *professor of politics* was increasingly becoming an ordinary mortal. He had always perceived politics in real Machiavellian terms preferring to be feared rather than being respected. He viewed politics as a game in which its mastery meant application of lies and manipulation with the best master planner emerging as the winner. As the grand master he had never experienced defeat. Indeed he had publicly noted that defeat was not in his vocabulary. The rest were pawns on the grand game to displace, replace, circulate out of and re-circulate as he willed depending on his shifting interests, strategy and objectives. Indeed reminded of his inclination to use and dump friends Moi retorted that:

Politics was like wooing a lady. You promise her anything she wants to hear, even a plane but when she gets into your house of course there are no planes.

To Moi politics was not football that was played in a level playing field. You did that at your own peril. But if he believed this orientation would help him, he was in for a rude shock. Mr. Nyayo as he was to be called expected that all would accept his choice of Uhuru Kenyatta. After all he knew what was good for Kenyans, the rest of the politicians including his Vice-President were not fit. His warning of chaos should he depart without his chosen successor being accepted as President, fell on the deaf ears of Raila and others who told him off in public demystifying the man further. The selection of Kenyatta bifurcated his party and by extension exposed the reality that his regime had over the years been eaten up by termites of corruption.



It was only a matter of time before the ideology of ethnicity around which he had built his rule began to work against him. Rainbow took on new symbolic meanings as poor peasants feeling cheated by Moi and KANU sought meaning to rainbow in their religious imaginations. Soon they would symbolically equate KANU's 40 years to the forty days required for a meaningful fast geared towards the extirpation of evil and purification. The Jews had been in the desert for forty years, Jesus had fasted for forty days, and Swahili sayings talked of the forty days of a thief. Forty was a symbolic number, to them, KANU could not go against this logic and get back to power. The rainbow usually appears after the floods. The mess KANU had created was equated to the floods. The party had not been helped any better by the way it hoodwinked and deluded teachers on the question of their salaries. The latter would have their day in the ballot booth. Several stood on the opposition NARC party. It is no wonder that many KANU leaders would blame them for their defeat. Worse still Moi's image as a self-centred politician was cemented by his decision to dissolve the Constitutional Review Commission just when it was arranging for the constitutional conference in October, 2002. KANU's and Moi's fate seemed sealed by time elections neared. Yet NARC had to contend with several hiccups. For start, it had to organise its primary elections. Yet it had inadequate funds and capacity to handle the same. Candidates were asked to pay sums for the candidacy to NARC. Part of this was used to fund the coalition's electoral activities. It is the hurried manner and the huge numbers that NARC attracted that would partly explain the chaos that characterised the electoral process. More important is also the lack of democratic ethos. Few of the Kenyan politicians are willing to accept defeat. Elections are only deemed to be free and fair to the extent that a given individual is the winner. Disagreements were compounded by the fact that core leaders of the coalition were also involved in their own parallel struggles over supremacy in certain regions. There were cases of when the headquarters would issue a clearance certificate only for one of the core actors to issue an alternative. There were cases where some of the members of the summit exempted themselves from the electoral contests, allowing the process to go ahead only to have certificates issued to them by the headquarters. The case of Moody Awori stands out. In others candidates and their supporters squared it up threatening splits. To resolve this, NARC promised prior nominations to some of the actors. This was the case with Fidelis Gumo and Betty Tett. The latter was "nominated MP." Yet the public was willing to ignore all these short comings.

Despite financial problems and accident of its presidential candidate NARC



forged ahead. Kibaki eventually found himself in hospital in London along with his running mate. Undeterred NARC leaders led by Raila Odinga hit the campaign trail criss-crossing the length and breadth of the nation campaigning for Kibaki and NARC. To meet attempts at rigging by KANU, NARC rallied its supports to volunteer their services and cell phones for election monitoring. This would prove crucial in ensuring pinpointing on the spot reporting of returns in polling stations. NARC also received funding from friendly local Asians. With an organised headquarter and a tireless campaign team led by Odinga NARC began cruising to victory. It would use newspaper and television arts to argue its case for a new alternative. Its adverts showed the contrast between Mwai Kibaki and the inexperienced Uhuru Kenyatta. Kibaki was portrayed as his own man; Uhuru on the other hand was portrayed as Moi in continuity. NARC pointed to years on institutional collapse and misrule of KANU to the ray of hope that NARC held out. There was the rainbow light juxtaposed to darkness said to spawn by KANU. When the rainbow appeared in some areas of the State on the 27th December, 2002, it was interpreted as the arrival of the day of God's judgment for the KANU thieves and his sign of the delivery of Kenyans from the Yoke of KANU's ethnicised and debilitating poverty affecting more than 60% of the population. NARC had evolved an alternative mobilising ideology. It now had one leader supported by the major ethnic groups and more critical, it had a message. It would have a new Constitution in place within the first one hundred days in power. It would honour the teachers' salary award; it would end corruption and punish those responsible. It would provide free primary education. All these issues found resonance in the minds of Kenyans. Kenyatta was portrayed as Moi part two, rejecting him meant rejecting Moi and liberating the Nation. Everything was possible but only after Moi. Everybody seemed to be mobilising against him even among his own Kalenjin Community entrenching the feeling that his party was apparently headed to defeat.

2.6 State Security Institutions and the Rainbow Victory

In his bid to rally the larger ethnic groups behind KANU Moi failed to mobilise bandit forces KANU had relied on in the previous elections to displace people. His only other remaining institutions were the security structures support but here it was also shaky. The intelligence had warned him against his Uhuru project without success. In the Police open discussions notwithstanding threats pointed to the unpopularity of KANU. The other core institution remaining thus was the



military. This institution would prove inutile to KANU but critical to the success of the Kenyan transition. Since mid 1990's the military had been undergoing meaningful changes both at institutional level but also at personnel level. While recruitment and deployment still suffered from ethnicity, the officer core had been changing in orientation. These changes are in no less term attributed to General Daudi Tonje. Tonje had for a start imposed term limits on service commanders. Each of them had a limited tenure stretching up to four years. The net impact was a rapid movement upwards from the middle ranks parallel to circulation from the system as well. This factor helped uplift the morale of officers. More important, it depersonalised the institution. Coupled with this was the setting up of the National Defence Staff College. This institution of learning and excellence evolved close relations with the University. It began to award degrees and diplomas in international studies. Officers were accessed high level policy and academics related subjects that broadened their understanding of their role and national interests. Almost all senior officers in the military command structures have gone through these courses. Naturally, they were professionalized by the time elections were being called. Despite the fact that a few senior officers tried to drag the institution into the process on the ruling party's side by seeking to support one urban vigilante group logistically to cause chaos, the institution at most remained an observer. Their neutrality was demonstrated when they organised succession. As a matter of fact the entire program was set out by the military. This compared unfavourably to the shoddy arrangements of the civil exemplified failure of protocol and security arrangement on the 30th December, 2002.

Links between *Mungiki* and the regime had by the election of 2002 grown to the extent that they would benefit from gifts of military Land Rovers fitted with sophisticated communication equipment. *Mungiki* also field candidates in the 2002 elections despite the fact that it had been proscribed by the regime. In January 2003, a few days after the elections it would massacre more than 20 people in the Rift Valley capital - Nakuru. The new regime's response was the arrest of more than 1000 adherents of the sect.⁵² The election-rigging project was to be facilitated by certain actors within the military using helicopters of the 50 air cavalry.⁵³ These plans were however scuttled by two self reinforcing factors. The first was the decision taken by the Electoral Commission to count ballots

⁵²See "Scandal of Army Vehicles Diverted to Mungiki Militia," *Daily Nation* (Nairobi), 31st January, 2003, p. 1.

⁵³Some members of the military who had been reassigned for special missions in relation to the elections accessed this information to this researcher. Indeed prior to the elections certain officers considered to be unreliable for this project were reassigned from their units and replaced by friendly types.



at every polling station and declare the same on the spot. Thanks to NARC's organisational capacity and agreement with a local independent radio and TV station – the Citizen, these results were relayed to the public immediately. This made it impossible for any rigging or fiddling with figures to take effect. Secondly, there was the threat made by Raila Odinga to mobilise two million Kenyans to march to the State House. Given the obvious lead that Kibaki had established it was becoming increasingly clear that people would have actually marched on to the State House.⁵⁴

In this sense the day had been cast for Moi. His twenty-four year rule ground to a halt with a thunder the weight of the contradictions he had sowed over the time he reigned on the *harambee* - *Nyayo* throne. Mwai Kibaki beat his candidate by over 70% of the popular vote. Most of his Minister and Vice-President were also defeated leaving KANU with 60 seats only in the Legislature. He would however resist attempts by his cronies to hung on to power by urging Uhuru Kenyatta the KANU candidate to concede defeat.

Underlying this was the fact that Moi took the threat by Raila to mobilise over 2 million Kenyans to march on to the State House seriously enough to opt for a peaceful handover. Underlying this was the fact that he had never seen himself nor favoured the idea of exile. He had also preferred the Kenyan climate to the European climates. In any case the fate of Mobutu especially France's decision to deny him entry was not the humiliation Moi wanted to experience. As he came to hand over power, the giraffe seemed wounded and humbled in its own arrogance and pride. The emboldened lumpiness had their last laugh as they threw stones at and heckled the now demystified ancient master of theirs. Dejected and humiliated by the words of his successor that he had inherited a shell of a nation on its knees, with a domestic debt of Kshs 259 million Moi would rush to the State House where he waited for ten minutes to hand over the House to Mwai Kibaki before flying off to Kabarak in an Air force helicopter. In a few minutes the flight major landed the helicopter, handed Moi the presidential standard, posed for a memorial photograph, saluted him for the last time and flew back to Nairobi leaving behind a dejected Moi⁵⁵ and the 24-year reign characterised by road side policy declarations and near State collapse at one level and an ecstatic city with eyes on a rainbow of hope. Daniel was after all not a *professor of politics but a professor in politics*.

⁵⁴Senior officers monitoring the process intimated this researcher that they had monitored swelling crowds marching from the Kibera slums towards the County Hall (where the Electoral Commission was operating from) in a bid to force the Chairman to declare Kibaki the winner.

⁵⁵The retired Chiraf (Giraffe) had lost its elegance that it would yell at journalist. *Nafuata mimi paka Nyumbani ... patia hao chai ... ama patia hao nyama kama nataka ...* [You are haunting me until home. Give them tea if they want or give them meat ...] as he stormed in to his State House.



2.7 Postscript

Rainbows are not for Ever

In response to question with respect to the survival of NARC, we noted that it would not. We predicated our answer on the behaviour of the Kenyan political elite. We noted that the dominant faction in the NARC leadership is unlikely to fulfil pre-election alliance agreements. Underlying this, are several factors. Firstly, it is the nature of the political elite in Kenya. Since the foundation of the State in 1895, elite factions that have controlled political power have by nature been exclusivist, consumerist and violent. They have tended to use the State's instruments of violence to consolidate their control over power, considered to be critical for resource extraction purposes. The fact that it has by nature been consumerist elite, has meant that power is retained to engender extraction of resources to the exclusion of potential rivals. The excluded bid for their time. If and when they gain power, the process is repeated. If the colonial power excluded the Africans out of accumulation until the wee hours of independence when it sought to nurture the successor elite, Kenyatta's regime sought to consolidate GEMA's control over the state. This saw the exclusion of the Indian capital with the help of trade licensing Acts. They would have to wait for the Moi regime to be rehabilitated.⁵⁶

The GEMA capital on the other hand found itself marginalised, especially during 24 years of the Nyayo era. The bifurcation of the GEMA capital between pro-Matiba (Ford Asili) and Democratic Party (DP) engendered the defeat of the opposition in the 1992 elections. The same would be repeated in the 1997 elections despite the unification of the GEMA communities under Mwai Kibaki. The bifurcation of KANU that saw the emergence of LDP and the eventual coalition of the latter with NAK provided the begrudged and excluded GEMA capital, the best chance to regain control over the reigns of the State. The GEMA elites promised to share power with other elites across the republic. Indeed, Kiraitu Murungi's presentation of NAK's recommendations to the constitutional review Commission espoused the intention to create the post of Prime Minister, whose occupant would share power with the president. Under these recommendations, the Prime Minister would be the head of Government and ensure implementation of government policies while also directing its day to day operations. To Kiraitu:

⁵⁶See Katumanga Musambayi: The Political economy of Constitutional Amendments in Kenya 1895-1997 (Sareat- Working paper 005/98).



The enormous powers vested in the presidency have transformed the Kenyan president into an authoritarian imperial monarch exercising feudal powers. The president is both the head of state and government. The presidency has ultimate control of the armed forces, the police; the civil service the parliament, the judiciary, the ruling party ... has more powers than those enjoyed by the governor at the height of colonialism. NAK proposes that the powers of the president be drastically reduced and the powers of the government be exercised by a Prime Minister... the president should appoint the cabinet on the advice of the Prime Minister.⁵⁷

To Kiraitu, there was to be a president, vice president Prime Minister, and three deputy Prime Ministers. It is on the basis of this construction which seemed similar to LDP's that the two factions came together to form NARC. To the entire nation, it was apparent that while Mwai Kibaki would be president, Raila Odinga would emerge Prime Minister following a speeded up constitution drafting process. Had the promises been honoured, it would have meant the diffusion of power among various actors and by inference the regions. However, once elections were over, and this faction had gained power, the motivation to honour their pledges dissipated. Facilitating this was the fact that the so-called Memorandum of Understanding which was negotiated outside existing state structures and was based on a mere trust, something rare among a begrudged elite faction used to politics of exclusivism.

Notably, once in power, there was neither motivation nor means of holding it onto its promises. Without the necessary structures and institutions that could have compelled this group to honour its promises, the memorandum was as good as dead. It was thus not strange that this elite begun procrastinating with respect to the Constitution Making process. When it came to appointments to the cabinet, it would not hold discussions with the LDP faction, neither would it honour the list of prospective ministers it had demanded from the latter. Instead of picking out Joseph Nyaga, Joseph Kamotho, William Ole Ntimama, Oburu Odinga, Adhu Awiti as ministers, it opted to substitute them with Njeru Ndwiga, John Michuki, the late Geoffrey Papai, Raphael Tuju, Ochilo Ayako, Anyang' Ny'ongo respectively. This sowed seeds of discord in the coalition. Retreats to Mount Kenya failed to patch up the emerging wedge. It became clear that the Mount Kenya faction within the NARC had declared war on Raila Odinga. It had gone to the extent of ensuring the defeat of the former in a contest for the

⁵⁷See *East African Standard* (Nairobi), Monday, 15th September, 2003, p. 2.



chairmanship of Parliamentary Constitution Review Committee in favour of a Non-NARC member, Paul Muite.

As it increasingly became clear that Raila Odinga seemed to have control over delegates in the Constitution Review Conference, this faction of GEMA opened war on Odinga and his LDP. The height of this conflict came on Sunday, 14th September 2003, when the president categorically pointed out that he had no intention whatsoever of conceding to two power centres, emphasizing that he was in charge. This was followed up by other members of NAK from Mt. Kenya pointing out their misgivings on the idea of Prime Ministership. None was more forthright in betraying the initial intent of GEMA than John Michuki when he observed that he and others had supported the creation of the post of a Prime Minister as a means of ensuring that one of their own shared power with Moi. Now that Moi was gone and they now had power, the need for the post is no longer there.

Notably, any horizontal diffusion of power to a Prime Minister is perceived by this faction as a threat to its attempts to consolidate control over the state. The death of the Vice President Kijana Wamalwa merely compounded the NAK crisis. The Mount Kenya faction of NARC opted to have Mody Awori of LDP as Vice President with the objective of creating schisms in LDP. The assassination of Dr. Odhiambo Mbai, chairman of the devolution committee and the resultant ethnic polarisation it engendered, merely stretched NARC unity to its limits. As opposed to pursuing a nation-centric state building projects, Kibaki increasingly reined himself towards regime consolidation. If in March 2002 Kibaki would propose that the powers of the president be drastically reduced in September 2003, he would state that:

there was only one head of State and at the moment I am the one, until you are the president, there is only one authorised by Kenyans to do the work of the head of state and he is there.⁵⁸

Three years down the road, this failure to honour the pre-election accords and the drift through regime consolidation at one level and increased primitive accumulation by the new power elite at another pushed the coalition towards its collapse. Ngungyi captures this succinctly when he argues that one of the factions in NARC is responsible for re-inventing and colonising corruption:

⁵⁸See *East African Standard* (Nairobi), 15th September, 2003, p. 1.



Unlike the case in the KANU days when corruption was available to all, this has now become the preserve of a few. And the disturbing thing is that these “sharks” are not apologetic about it. They are cutting deals in the open with “corruption gurus” of the KANU regime.⁵⁹

Disagreements over the constitution and corruption increasingly pushed cabinet disagreements to the fore. Ministers began to abuse each other with abandon. In a bid to neutralize LDP Kibaki brought into the cabinet some select members of the official opposition KANU and FORD People of Simeon Nyachae. While he sought to justify this in the name of national unity, in reality the president seemed to be taking the state steps back on the political stairs. For starts those brought in were individuals the public had rejected in a costly election. They had joined the government without consulting their own political entities in the process cementing the logic of opportunism. Neither could the arrangement be referred to as a coalition. What is in place is an alliance of war-lords who have negotiated themselves in power through the instrumentalisation of ethnicity. No attempt has been made to negotiate over programs which are usually at the core of any coalition building process. It is this that determines who joins the government and the Ministry to be taken up. Clearly the NARC regime was increasingly leaving up to analogies that had sought to paint Kibaki not as the initiator of change but rather a mere MOIBAKI (Moi remains). Instead of propelling the State away from ethnic jingoism his regime engineers seemed hell bent to keep it there. Attempts to resolve the disagreements over the constitution failed completely with the NAK faction excluding the LDP from the Parliamentary Select Committee on the Constitution. Consequent to mutilating the Bomas draft, parliament passed its “acceptable” Wako Draft and hoped the same would be passed by Wanachi in the November 21st Referendum. LDP’s response to this was to join hands with the Uhuru Kenyatta faction of KANU under the Orange Democratic Movement banner.

The referendum campaigns brought out the crudest forms of ethnic jingoism. The main victim of this venom was Raila Odinga. Yesterdays’ human rights crusaders like Kiraitu Murungi were at the fore front warning GEMA community of the Odinga threat. The referendum was cast as a state project and a contest between Raila and Kibaki by Kiraitu Murungi. Kiraitu went as far as ridiculing Parliamentarians like Hon Uhuru Kenyatta and Maoka Maore for following an uncircumcised person like Odinga. Not only was Odinga denigrated but also

⁵⁹See NGUYI, M., “Death that Raises More Questions than Answers,” Sunday Nation (Nairobi), 21st September, 2003, p. 15.



expurgated as Satan whose head needed to be cut off. In attempting to fragment Orange support in Central province Odinga was represented by regime engineers as one of those scheming to take the presidency out of the GEMA communities and hence the need to unite and fight him. This strategy of first fragmenting ethnic groups from others before uniting them behind one purported defender of the ethnic interest was repeated throughout the campaigns. It revolved around the now perfected art of ethnic instrumentalism that allows elite to maximize on both class and ethnicity in a bid to hang on to political power.

Ethnicity in this sense is an instrument used to camouflage and conceal elite domination and control over political power. Politics are symbolically constructed in a manner that makes them appeal to ethnic sentiments about common origins, destiny, collectivity and social responsibility. Politics that appeal to people are those that invoke solidarity and the myth of “protecting” the interests of the ethnic group from the constructed “enemies”. Before long the Ethnic group becomes veritable competitor to the State in its attempts to command loyalty. Unfortunately, this accentuates divisions among different ethnic groups. To cut across ethnic divide, elite merely seek to organize alliances which seek to facilitate the capture of power and in the process, access to State resources. Except for a few nationalistic elite, most of those in and outside powers have no inclination towards restructuring the State to the extent of situating it at the centre of Human transformation. Underlying this is the fact that such a state would be anti-thetical to their economic and political interests. In any case they are from the onset constrained by their intellectual laziness. Indeed its emergence would lead to their political and subsequent economic death.

Thus most of Kenya's political elite are constantly nested in two strategies, the maximum and the minimum. While the former entails attempts at grabbing power to “eat on behalf of their ethnic group,” where this fails, they tend to have no problem in relapsing in the latter which entails retaining control over their ethnic base. This way, they can negotiate deals with others. In a well choreographed play, mimicking a Jesus syndrome each regional notable goes on the offensive in his regional base accompanied by his quisling equivalence of disciples and shouts himself hoarse on the need for the ethnic group to remain united and to elect him “for its only through him and his party that presidency will come to the ethnic group, the absurdity of all this is the fact that in a context of forty two ethnic groups none can assume the presidency on its own even if it voted to the last man including those newly born and the dead ones. Immediately after the elections,



the play culminates into an anti-climax of sorts when the Sun god around whom political power revolves and who maximizing on his neo-patrimonial inclinations re-appoints and situates each ethnic warlord in the political solar system on the basis of his/her ethnic harvest.

In the case of the referendum Musikari Kombo for instance went out of his way to tell Luhyas' they needed to unite under him in FORD Kenya. Those who followed this message saw Raila and LDP as a front for Luos. Voting for the referendum was seen as a means of ensuring a bigger cake for Luhyas in the post referendum cabinet. The government eventually lost the referendum its Banana ministers having abused public resources. Some Ministers had promised to spend as much as 3 billion shillings.⁶⁰ The President himself had sought to influence results by creating districts within a short span than his predecessors had. Orange Democratic Movement (ODM) gathered 3.5 million votes or 57% to 2.5 million or 43 % garnered by Banana Group of the President. All provinces except Central Province home to his ethnic group voted against the Constitutions. While the main issues revolved around the issue of powers to the Presidency, devolution, land and the religious courts, the ethnisation of the debate reduced the referendum to the issue of maintaining control over the presidency (Banana) and the need to prevent domination. The president responded to the defeat by dissolving his cabinet save for himself, the vice president and the Attorney General Amos Wako promising to form a new one within two weeks.⁶¹ When he did 20 appointees refused to take up their oath for one reason or another.⁶² While the LDP luminaries were kept out, attempts to bring in the official KANU faction were rejected despite overt efforts that saw Kibaki invite Moi for talks. Most dramatic were rejections of appointments by miffed ministers Musikari Kombo and Charity Ngilu. Each sought to have their allies included in the cabinet.⁶³ They were eventually included after the president gave in to their demands.

After the Floods and the NARC Rainbow, Fire Next Time!

Having excluded the LDP out of his cabinet Kibaki more or less officially killed NARC. The same was confirmed by Odinga when he noted:

⁶⁰Minister Kiraitu is reported to have promised 5 million shillings to each constituency to campaign for the yes Group. Mps were also said to have relieved between 100000 to 500000. See "Shilling 3 billion War chest unleashed as referendum heat rises," *The East African Standard* (Nairobi), 11/9/2005, p. 15.

⁶¹See "Cabinet Sacked," *Daily Nation* (Nairobi) 24th November, 2005, pp. 1-3.

⁶²See "Cabinet Shocked," *The East African Standard* (Nairobi), 8th December, 2005, pp. 1-3; and "Kibaki Cabinet Crisis," *Daily Nation* (Nairobi), 9th December, 2005, pp. 1-9.

⁶³Kombo demanded 7 slots in the New Cabinet, 5 additional assistant Ministers, 7 Ambassadorial positions, Two permanent secretaries, 11 District Commissioners and 3 Parastatal heads. See "Secrets of Kombo's wish list to Kibaki," *The East African Standard* (Nairobi), 12th December, 2005, p. 1.



Twice in a fortnight, President Kibaki revealed how profoundly out of touch he was with the country's needs and desires. The referendum's results had showed how badly he is out of touch with reality. The subsequent cabinet announcement was a stunning indication that he had no clue on what it takes to put together a government acceptable to the Kenyan people. The National Rainbow Coalition was dead in June last year when the President decided to include opposition MPs from KANU and FORD P in government.⁶⁴

With the largest cabinet ever formed in Kenya, Kibaki more or less broke the last of his promise to have a lean cabinet informed by competence. In seeking to reward loyalty all sorts of characters have found their way into his cabinet. What is amazing for Kenyan politics is the sheer hypocrisy and opportunism that surrounds Members of Parliament way of doing business. It would have been expected that with NARC officially dead KANU should indeed be forming a new coalition. Instead what now exists is a minority government that is likely to plunge the State into a prostrate status. Those in NARC seek fresh for starts. It is the fore going that continues to reproduce politics of accumulation and exclusion in the process making politics a zero sum and exclusive game. Political competition ends up reproducing the predatory Leviathan except for changes in guard. On the other hand disagreements and quarrels among elite immediately find their expressions along ethnic polarities and disorganised violence. The foregoing explains, the reluctance of party 'leaders' to engender internal democracy, to seek to operationalise party programs or indeed to popularize parties beyond the "leader's" ethnic group. Parties in this sense are instruments for attaining individual interest – sources of accumulation and thus veritable threats to State security given their deployment to activities inimical to national cohesion. With NARC dead, an effort towards putting into place a new coalition of parties is in the offing in the name of Orange Democratic Movement (ODM).

These experiences from the Kenyan political process enable us to discern several summations. That opposition groups can unseat incumbent regimes to the extent that the later are deemed illegitimate. The felt sense of illegitimacy of a regime is inversely placed to the levels of legitimacy enjoyed by the opposition. The credibility of the opposition is dependent on its ability to present a credible alternative program, united front, organising ideology that is national structures and leadership. Without a demonstration of political will, understanding of national problems and commitment to change opposition groups are unlikely

⁶⁴See "Raila: Kibaki to Blame Over Crisis," *Daily Nation* (Nairobi), 13th December, 2005, p. 2.



to unseat incumbents. On the other hand success of a unified opposition front can only succeed to the extent that the ruling coalition is unable to demonstrate commitment to national development and is instead distracted by pursuit and defence of personal interests. This situation can be made worse in a situation where it is bifurcated at the leadership level. Where this is not the case and indeed where it demonstrates a commitment leadership at national program and organising ideology and carries out leadership selection fairly, it is unlikely to be defeated. Consolidation of democratisation will depend on the ability of the regime to consolidate State penetration in the society to engender security, law and order. It will be imperative that the State rebuilds infrastructure and manages to acquire and monopolise the means of violence over the society. It must be able to stem corruption and impunity. More important, it must revive the economy. It can only do this within the context of the region. Kenya can no longer hope to stabilise itself politically and economically outside the framework of the eastern African region. It will have to proactively involve itself in regional politics in Sudan, Democratic Republic of the Congo, Rwanda, Somalia and Uganda. This is mainly due to the fact that stability in these States impacts on her core and middle range elements of her national interest. As observed earlier some of her security concerns can only be addressed within the regional matrix.

The ability to undertake this mission is incumbent on the evolution of a focussed strong willed leadership. This is currently lacking. The absence of this and tendencies to instrumentalise ethnicity threatens the very survival of Kenya as an entity and security of the entire region. While the Kenyan public continues to demonstrate maturity in politics the political elite is yet to evolve critical norms of trust and respect for institutional ethos. The official collapse of NARC and the emergence Orange is a point to several factors. The first is the increasing realisation that political liberalism and its economic variant are not going to work in Kenya. Kenyans are increasingly inclined towards broad based forms of structures. Secondly, to the extent that the opposition main thrust is mere capture of power with responding to the question what is the purpose for which captured power is intended little value will be realised in the defeat of incumbents. To the extent that trust is absent among political elite, pluralism can not take root. Political Pluralism demands that existing termite⁶⁵ economies are deconstructed. Underlying this is the need by the State to undertake state-building tasks such as construction of educational, economic and communication

⁶⁵See MKANDAWIRE Thandika: "Thinking About Developmental States in Africa," http://unu.edu/hq/academic/pg_area4/mkandawire.html



infrastructure. Here the use of its instruments such as the military to socialize its youth from ethnic politics while constructing infrastructure will lay ground for plural politics. The argument here is that the opening up of the state through education and infrastructure to allow movement of goods, services and persons will see groups deal with each other outside the particularistic prisms of political elite. Such infrastructure will also allow social citizenship to take root. To enhance this, access to means of production is *sine qua non* for this process.


Decentralisation of the State is also critical. Decentralisation is at the core of facilitating the liberation of productive local forces which are critical to enhancing horizontal accountability of local authorities to community based organisations, local cooperatives and other associational live. Accountability at this level helps to build leadership that can eventually feed in to political parties. Decentralisation is also critical to under-girding social pluralism. Social pluralism is predicated on the existence of a multi-cultural political community anchored by a multiplicity of associations, such as Trade Unions, farmers unions, student unions, religious and cultural associations. The vibrancy of such associations not only provides a vanguard against errant politicians but that they also help to generate ideas and leadership useful for the development of a plural society. A combination of social citizenship and political pluralism is likely to increase political participation. Their presence is a pointer to the fact that political parties are not the only mode of political organisation. As for Kenya, the presence of these multiplicities of organisational life is also likely to enable future political entities to structure themselves around these. For instance it is not out of question for an organised leadership to structure itself around farmers unions and other agrarian organisations in opposition to conservative forces structured around liberal policies.

While a legal framework can be operationalised to govern the operations of political parties, their institutionalisation is a function of the presence of requisite leadership, and material setting of the society. As Kenya continues to get subbed in to the international global markets and indeed seek to integrate, political groups must seek to anticipate the likely consequences. Such entities must not only seek to evolve their own policy positions, but must also seek to regionalize themselves and to evolve international networks if they have to remain relevant. Hence our argument that if NARC come with the rainbow as a sign of broad based logic, its collapse and ethnic polarisation risks not floods this time round but fire next time.

CHAPTER THREE

Single Party to Multipartyism in Tanzania: Reality, Challenges and Lessons

Mohammed Ali Bakari

 *Given the attitude of the political leadership in Tanzania, and from the hindsight of the manner in which the transition has been managed, there is no likelihood in the near future of a breakthrough from a single Party heritage to multiparty politics with its necessary ingredients. I am therefore tempted to postulate that Tanzania (Mainland) may probably be the last in East Africa (preceded by Kenya, possibly Zanzibar and perhaps Uganda, which is yet start the transition process) to cross the red line of genuine political succession from a single authoritarian regime to a multiparty democratic political system.*

Mohammed Bakari

3.1 Introduction

For most of the African countries which were either under a single party system or military junta, it is now more than a decade since they reverted to multipartyism after three decades of authoritarianism. Reasons for the reversion multipartyism for those countries which had already experienced multipartyism prior to and after independence and the first inception for those which had never before experienced a multiparty system were basically similar in Africa and elsewhere. The socio-economic and political realities and hence challenges these countries have been facing and will continue to face, however, are somewhat different. Thus, there are different lessons to be learnt from these diverse experiences. It has been hypothesised and studies have been undertaken to illustrate the proposition that different patterns of transition are expected to evolve largely as a result of differences in prevailing socio-economic and political realities including the nature of the regime under transition.⁶⁶

⁶⁶See LINZ, Juan and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South East Asia, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press, 1996.



The socio-economic and political realities of the three East African countries of both pre-and post-independence periods were remarkably different. Although all the three countries were under the same colonial master they had different levels of economic development, and different patterns of property ownership and class stratification, different patterns of ethno-regional configuration, and thus different forms of nationalist struggles. Again, at independence these three countries adopted remarkably different political ideologies, different economic policies, and different political structures, as well as somewhat different leadership systems.

However, apart from all these diversities, some important common characteristics could be discerned including the fact that they all invariably practised authoritarianism under either a single party system in the case of Tanzania and Kenya and for most of the time military rule in Uganda. Whereas Kenya and Tanzania reintroduced a multiparty system in 1992, Uganda is still under movementocracy (a system incorporating both features of a military regime and a single party system). It is now more than a decade since Tanzania and Kenya reverted to multipartyism. This is long enough for making a preliminary appraisal. The purpose of this chapter, however, is not to give a detailed account of how the process of political succession from a single party to multipartyism has been going on in Tanzania based on empirical research, but rather is to briefly sketch the realities and peculiarities of the specific context, challenges that have been encountered and finally lessons that could be learnt there from.

3.2 The Political Context

Tanzania's impressive record of relative political stability, lack of serious ethnic, regional and religious strife for a long time since independence gives it some advantages over its East African neighbours. However, this record of relative peace and stability if not properly nurture could also degenerate into fatalism or apathy. If today, Kenya fares better than Tanzania in the process of political succession from a single party to a multiparty system, it is not simply because of the exceptionally favourable structural context of the former, but instead it is essentially because of political engineering. Apart from the conscious decisions and actions by political leaders and the masses, the historical and structural factors do play an important role in shaping the transition process. In the case of Tanzania, one of the crucial starting points of the discussion on political succession is the

legacy of its one party authoritarian system. In this section, therefore, we shall briefly explain how the single party legacy has impacted on the democratisation processes in Tanzania.

The ruling party in Tanzania, Tanganyika African National Union (TANU) and later *Chama Cha Mapinduzi* (CCM),⁶⁷ was certainly one of the most successful African parties in establishing an elaborate nation-wide structure from the centre to the grassroots. It was able to perform such basic functions of political parties such as leadership recruitment, policy making, and legitimation of the political system through regular intra-party elections. In spite of its phenomenal success in various respects compared to other African political parties, it was clear right from its inception that the system was suffering from inherent weaknesses of a monolithic party system. Consequently, its legitimacy was consistently but invariably contested as Baregu aptly puts it:

The demands for multipartyism and democracy in Tanzania are the culmination of a long and cumulative (albeit uneven) struggle against authoritarian rule. At the time of independence in 1961, The Tanganyika African National Union (TANU), led by Julius Nyerere, arrogated power to itself and forcefully imposed one-party rule. The move was resisted right from the start and continued to be resisted until 1992. Thus the political legitimacy of the one-party State has been contested throughout this period.⁶⁸

As pointed out earlier, the single party system in Tanzania remarkably distinguished itself from most African political parties in terms of party penetration in society and a hegemonic position it occupied. The evolution of a single party rule in Tanzania reached a point whereby one could hardly distinguish between the party and the State. There were times when Party posts were held concurrently with government posts. District Commissioners and Regional Commissioners, for example, were also District Party Secretaries and Regional Party Secretaries, respectively. It was estimated that about 90 per cent of the Party funds were provided by the government. The Party was also at liberty to enjoy the services of government personnel and other resources including information and expertise.⁶⁹ The pronounced lack of dichotomy between the State and the Party prompted some scholars⁷⁰ to question the identity of CCM as

⁶⁷*Chama Cha Mapinduzi* came out of merger between the two ruling parties i.e. Tanganyika African National Union (TANU) on the Mainland and Afro-Shiraz Party (ASP) in Zanzibar in February, 1977.

⁶⁸BAREGU, Mwesiga, "The Rise and Fall of the One Party-State in Tanzania," in WIDNER, J.A. (ed.), *Economic Change and Political Liberalisation in Sub-Saharan Africa*, London: Johns Hopkins University Press, 1994, p. 194.

⁶⁹McHENRY, D.E., *Limited Choices: The Political Struggle for Socialism in Tanzania*, London: Lynne Rienner, 1994, p. 57.

⁷⁰See for instance SHIVJI, Issa G. (ed.), *The State and the Working People in Tanzania*, London and Dakar: CODESRIA, 1985; and SHIVJI, Issa G., *Class Struggles in Tanzania*, London: Heinemann Educational Books Ltd., 1976.



a political party, and instead, it was considered as a *State-party* or a *party-State* for it was not fitting in the conventional model of a political Party, which is ideally based on voluntary membership, which derives its legitimacy and resources from the people, and which does not excessively rely on State coercion and the use of public resources for its operations and survival.

Ideologically, the ruling Party in Tanzania was identifying itself with the workers and peasants. This ideological appeal started basically with the Arusha Declaration of 1967. Under the Arusha Declaration and subsequently the Party Guidelines of 1971, Party and government leaders were required to abstain from capitalist activities. In 1991, however, following the Zanzibar Declaration, the Arusha Declaration and Party Guidelines were practically abandoned. There are now increasing reports of corrupt deals between politicians and bureaucrats who collude with businessmen and investors, both local and foreign in swindling public resources.⁷¹ It is now widely believed that politicians and government officials in strategic resourceful positions are getting richer at the expense of the majority poor whose standards of living are consistently on the decline. Unlike Kenya at independence, where the State was manned by a sizeable section of the *petty bourgeoisie* – rich farmers, traders, in addition to urban based intelligentsia, which had established itself to have a strong foothold in the colonial economy, in Tanzania the State class was relatively poor and its first initiatives to accumulate were aborted by the Arusha Declaration in 1967.

With the liberalisation of economy from the mid-1980s, and subsequent abandonment of the Arusha Declaration, politicians and bureaucrats in Tanzania seem to have a relatively free hand for wealth accumulation. Unlike their counterparts in Kenya, where they were allowed to accumulate right from the start, in Tanzania they have started late and are now obsessed with property accumulation (*ulimbukeni*) using all means available including swindling of public resources. Because they have just started, they seem to be more aggressive and uncontrollable. In addition to other factors, these developments have contributed to the declining legitimacy of the ruling Party in Tanzania.

Initially, the Party was claiming to represent popular interests but with economic liberalisation, they seem to be getting richer at the expense of the majority who were poor. At one time in the late 1980s, the late Mwalimu Julius K. Nyerere, then

⁷¹See GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA, Report of the Presidential Commission on Corruption, Dar es Salaam: Government Printer, Dar es Salaam, 1996.



a retired President but still remaining the Party Chairman raised a concern that the Party leaders had alienated themselves from the people. This suggests that the traditional basis of legitimacy and support for the ruling Party is now shaky.

Until now the ruling Party is grappling with the ideological crisis. There is a wide rift between what is officially stated and the actual practice. The Zanzibar Declaration of 1991 certainly scrapped off the Arusha Declaration. Funny, however, CCM still claims that it continues to build socialism and self reliance. Again, even the country's Constitution in Article 3 (1) states that Tanzania is a democratic socialist State.

3.3 The Mode of Transition in Tanzania

Following the dramatic political events in Eastern Europe from the late 1980s people in various countries engaged themselves in political and academic discussions about the future of authoritarian regimes under single Party systems or military rule. The national political debate in Tanzania started almost immediately following the remarks by the then Chairman of the ruling Party and retired President Mwalimu Julius K. Nyerere. In February 1990, Nyerere publicly stated that it was not longer treasonous to talk about multipartyism in Tanzania. In his remarks, he stated that:

When you see your neighbour being shaved, wet your head to avoid a dry shave.⁷²

A month later, the then President, Ali H. Mwinyi, overtly expressed his reservation with multipartyism claiming that Tanzania was not ripe for multiparty politics and that the system would instigate tribal, regional and other forms of conflicts and destroy the long cherished peace and stability.

However, because of the mounting domestic and external pressure as well as the influential role of Nyerere not only as a Party Chairman but also an influential personality in his own right, the debate on multipartyism started with vigour. The role of an individual personality in the person of Nyerere needs to be underlined not as a primary factor, but as one of the influential factors. From the Tanzania's experience, we could observe that the influence of a great political personality may facilitate or hinder political succession. In the case of Tanzania, Nyerere played

⁷²See *Daily News* (Tanzania), 22nd February, 1990.



both a facilitating and constraining roles. Whereas he was the first national leader in the country to open up a national debate on multipartyism at a time President Arap Moi had issued a directive that whoever showed up two fingers (a symbol of multiparty advocacy) should have his fingers mutilated.

On the hand, Nyerere in some ways helped to obstruct political succession. In 1993, he successfully aborted an already approved parliamentary Bill directing the government to form the Tanganyika Government within the Union arrangement. It is also believed that Nyerere significantly influenced the nomination of the CCM presidential candidate in 1995. Thus, to some observers, the presence of Nyerere's personality and his unwavering support for the ruling Party helped to undermine the democratisation process in Tanzania, including the discrediting of the opposition as he effectively participated in the 1995 election campaigns on the side of the ruling Party. Again, when Zanzibar was plunged into political impasse after the 1995 General Elections, Nyerere was incapable or unwilling to intervene and resolutely use his revered personality to help resolve the crisis.

Likewise, it is also claimed that the arrogance of the ruling Party in Tanzania to resist genuine political reforms was in part attributed to the presence of the *Father of the Nation*, who could employ his charisma to rescue the country under crisis as he did in 1993 when he successfully aborted the restructuring of the Union into a clear federal structure of three governments. From the foregoing, therefore, it could be asserted that the personality factor in Tanzania played both positive and negative roles as far as political succession is concerned. This is probably one of the peculiar experiences of Tanzania which could not be found in Kenya or Uganda.

Prior to the introduction of multipartyism in Tanzania, a Presidential Commission was appointed charged with the task of collecting people's views regarding their preference to a single party or multiparty system. This Commission, which was named after its Chairman, the late Chief Justice Francis Nyalali held 1061 meetings all over the country and received 36,299 verbal and written submissions, which produced 77.2% of responses in favour of the continuation of a one party system and 21.5% in favour of a multiparty system. Yet, the Nyalali Commission recommended the establishment of a multiparty system. What is instructive here is that the Commission's recommendation was not based on statistical justification, but political prudence and rational judgement.

Relatedly, it is also instructive to note that these statistics of people preferences ought to be interpreted with caution. The inquiry was perceived by most



independent analysts as a Government/Party exercise in that people were not free to express their views, and that the methodology which was used was not scientific – it was neither based on random sampling nor stratified sampling. Thus the statistical findings of the Nyalali Commission were not valid, as the election results of 1995 (under unlevelled ground) indicated that only 61.8% of the popular vote was in favour of the ruling Party's presidential candidate. Since the interpretation of the Commission was not confined with quantitative data, the Commission was able to make prudent recommendations, including:

- (i). the restructuring of the Union into a truly federal structure of three governments;
- (ii). the formation of a Constitutional Commission which would draft a constitution to presented to the public for discussion and approval;
- (iii). repealing or amending laws that restrict freedom of association – about forty laws were singled out for the exercise;
- (iv). the formation of political parties;
- (v). the provision of civic education;
- (vi). the establishment of three independent electoral commissions, one for the Union government, one for the mainland and one for Zanzibar;
- (vii). a mixed electoral system – PR using the additional member system, etc.

Almost all the above recommendations were rejected by the government and the ruling party including with the exception of recommendation (iv).

Since most of the important recommendations of the Nyalali Commission have not been implemented to date, political succession in Tanzania from a single party to multiparty politics is fraught with formidable challenges which are not likely to be overcome in the near future. The challenges that beset the democratisation in Tanzania could be classified into two categories. The first category involves those directly emanating from the structural context such as underdevelopment, poverty, poor infrastructure, illiteracy, ethnic, regional and religious diversities, legacies of the single party system, etc.

The second category, which is also in various ways related and influenced by the first category, involves proximate/contingent factors such as the structure of the political system, rules and regulations, decisions and actions by the political

⁷³UNITED REPUBLIC OF TANZANIA, *The Presidential Commission on the Single or Multiparty System in Tanzania*, Dar es Salaam: Government Printer, 1991, p. 7.



leadership as well as the various strategies and means employed to manage the democratisation processes. Whereas it is quite difficult to deal with the first set of challenges, it is relatively easier to deal with the second set of challenges if there a serious commitment on the part of the regime and vigilance on the part of the people organised through political parties, civil organisations, the media, etc. Besides, it is assumed that if the contingent challenges are properly addressed, the structural challenges could also be automatically tackled. For the sake of discussion, we shall mention a few challenges in the following section.

3.4 Challenges to Political Succession in Tanzania

For about three decades Tanzania was pursuing developmental policies – political, economic, educational and cultural aimed at forging a secular national identity transcending diverse social groups under the banner of *Ujamaa na Kujitegemea* (socialism and self reliance, a brand of African socialism).

The economic liberalisation and later political reforms, however, posed serious challenges to the process of national integration in Tanzania. Initially, national integration was based on a monolithic and uncompetitive system whereby the State was omni provider and manager of virtually everything. Thus, with the advent of multiparty politics, and market economy, Tanzania which had by regional comparisons achieved a relatively impressed degree of national integration, is now worried about the prospects of not only developing further its national identity but even sustaining the level of national integration achieved prior to economic and political reforms.

Whereas ethnic and regional biases are yet to be pronounced, there are already indications that religious fractures are widening.⁷⁴ These fractures have not yet assumed a clear form of Muslim-Christian conflict, but there are already quite convincing indicators to suggest the relations between the State and the Muslim community are not as cordial as they used to be prior to economic and political reforms of the 1980s and 1990s, respectively. The resurgence of religious ferment, however, should not be explained as simply an outcome of economic and political reforms, these factors were more of catalysts rather than basic causal factors. To be sure, there was some feeling of relative deprivation among the Muslims immediately after independence.

⁷⁴CAMPBELL, J., "Nationalism, Ethnicity and Religion: Fundamental Conflicts and the Politics of Identity in Tanzania," Vol. 5 No. 1 *Nations and Nationalism*, 1999, p. 105; and REDET Religious Study, forthcoming.



What economic liberalisation did essentially was the creation a bigger stratum of people deriving their livelihood independently from the State, enrichment of the section of the people, increasing unemployment and deterioration of living standards particularly among the urban wage labourers. Political reforms, on the other hand, provided avenues through which grievances could be vented. Political parties, the press, religious institutions and civic institutions could reach out people and mobilise them for whatever causes appealing to them. Thus, under conditions of economic liberalisation and political reforms, sentiments hidden underground were ignited and resurfaced.

Islamic resurgence in Tanzania seems to be more political inclined in terms of influencing national politics rather than the motivation to establish a religious based State. It is essentially an outcome of the perceived political, education and economic marginalisation rather than a struggle aimed at maintaining religion-cultural purity of the Muslim community in the country. That is why even the highly secularised among Muslims (including some belonging to the ruling clique or those aspiring to join the system) seem to join or sympathise with the Islamic cause for a better representation and treatment in the public domain.

At present, there is resurgence of religion as a significant factor in political realignment in Tanzania. This trend is not overtly acknowledged by the ruling Party. However, time and again the main opposition party, Civic United Front (CUF) has been branded by the ruling Party and some intellectuals as religious based. It appears however that even within the ruling Party there are clear indications that political realignments are now increasingly informed of religious and ethno-regional cleavages. This is likely to affect Tanzania's politics particularly the Mainland. In the case of a predominantly Muslim Zanzibar, this does not seem to be a serious problem between the two main contending Parties, although the general trend in the country may also have an impact on Zanzibar.

One of the best approaches to deal with the above challenge is to consciously and devotedly develop civic and public culture; create an accountable government, which is free from discrimination – legal, structural and behavioural. Forging of a national identity out of diverse religious, ethnic and regional interests needs prudent leadership and political will. This undertaking is possible under good governance with accountability, openness, transparency, effective representation and participation. However, the current 'seemingly' suspicious attitude of the State towards Muslims in Tanzania which is fuelled by the US led global war on terrorism is unlikely to positively change the Muslim-State relations in Tanzania.



This situation might therefore pose a serious challenge to national integration as well as leadership succession.

Another structural challenge that has been negatively affecting political succession in Tanzania relates to the level of development, i.e., the state of underdevelopment with its attendant effects such as poverty, poor infrastructure, illiteracy, a relatively weak middle class, etc. This largely determines the extent and manner in which people organise themselves to exercise control over the State, influence public policy and challenge the ruling Party.

Partly as a result of such factors, opposition Parties have not been able to penetrate the rural hinterland where the majority of the electorate live. Because of the poor infrastructure, lack of resources, weak organisational structures and skills, and lack of a unified opposition front, opposition parties have not been effective in reaching out the electorate. There are certainly some government restrictions in some cases where opposition Parties have been restricted by government authorities and the Police force to conduct their political activities, e.g. during election campaigns,⁷⁵ but the main obstacle to political mobilisation is due to the weaknesses of the opposition Parties themselves. This structural challenge is very difficult to address in the short-term, because it is tied to the status of socio-economic development.

Another prominent challenge that is presumably peculiar to Tanzania under multipartyism is the role of the bureaucracy, the army and the Police force. It is quite obvious that the legacy of a single party authoritarian regime is much more felt in Tanzania than in any other country in East Africa. These institutions were highly indoctrinated and politicised under a single party system. In the case of the civil servants or public servants, these were not allowed to engage in active politics. In case, they wanted to do so, they are required to resign from their posts. Formally and legally civil servants have disengaged from active politics. However, because of the single Party system, they are still politically partisan in favour of the ruling Party.

As for the military, after the dissolution of the Tanganyika Rifles in 1964 and its replacement by the Tanzania Peoples Defence Forces (TPDF), the army recruits came from TANU Youth League on the Mainland and Afro-Shiraz Party Youth League in Zanzibar. Thus, since 1964, TPDF was a politically committed army, and Party branches were introduced in the army. Political Commissioners were

⁷⁵TEMCO. *Reports of the Tanzania Election Monitoring Group*. Dar es Salaam, 1995 and 2000.



appointed and given honorary military commissions to work in the army. In fact, the political commissioners were even more powerful than professional officers. Military training included a heavy dose of political education, and promotion partly depended on passing political education examinations. As a further development to entrench the army in politics, in 1987, the Army constituted a “region” within the central Party organs just like any other administrative regions in the country. As a result of extensive politicisation of the army, many soldiers are serving in the top civilian posts. There are soldiers among MPs, Ministers and Deputy Ministers, Regional/ District Commissioners, Ambassadors, Judges in the Judiciary, Executives in public institutions, etc.

Thus, given this background the army and other security and defence establishments have not been able to practically disengage themselves from politics in the advent of multiparty politics as required by law – and they are conspicuously in favour of the ruling Party and maintenance of the *status quo*. The 26/27 January, 2001 killings in Zanzibar and Pemba and most of the election flaws that are reported are some of the indicators of the excessive partisanship of the defence and security as well as the civil service in Tanzania. Again, in East Africa this is a peculiar challenge to Tanzania.

According to the Commonwealth Observers, the 1995 General Elections were characterised by incidents of election materials’ shortage and cheating all over the country. Government officials had openly supported the ruling Party in some constituencies, and the report concluded that the election was not free and fair.⁷⁶ None of these reports shows a clear record of election management in Tanzania. There are limits to what one can do to make an election ‘fair’ if a long incumbency has produced a bureaucracy in Party’s image and a system of patronage that makes key groups and individuals reluctant to change sides.

Related to the above challenge is the very danger of the patronage system. In the case of Tanzania, as pointed out earlier, the ruling Party continues to enjoy solid support from bureaucrats, technocrats, the army and the police force. With the advent of multipartyism these segments of the State have remained unquestionably loyal to the ruling Party. It is not clear whether this was due to a generous treatment by the State, heavy indoctrination by the ruling Party or it is due to the absence of credible opposition Parties to which they could shift loyalty.

⁷⁶See *The Guardian* (Tanzania), 3rd November, 2003. See also TEMCO. *Reports of the Tanzania Election Monitoring Group*. Dar es Salaam, 1995 and 2000; and Mainland By-elections in May 2003.



The use of patronage has both short and long term negative consequences for a political Party. In fact, patronage can reduce a Party's ability to get votes, its influence on policy choice and output, its share of patronage resources, its control over its own members and activists, its cohesion, its pool of loyal activists, and its ability to change strategy. Besides, an administration staffed by patronage appointees may not efficiently implement programs from which the sponsoring Party could be reaping electoral advantages.

Voters are not to be trusted under a patronage system: if you can no longer provide, they will shift to the highest bidder. If a Party falls out of power, if it later comes to power it may find that a Ministry has been packed by a rival Party loyalists and some of them are not removable. When its supply of divisible resources shrinks, it cannot survive or it remains a weakened Party. It does not have other sources of legitimacy.

3.5 Stateness Challenge

During the transition from a single party system to multipartyism, Tanzania unlike her neighbours is facing a unique crisis of stateness. The controversy over the status of the Union – whether it is unitary State or federal State envisaged by the founders has been a persistent political factor. This controversy is probably as old as the Union itself, but it has gained a great impetus with the introduction of multiparty politics.

Some lawyers and political analysts are now worried that in case one political Party happens to rule in Zanzibar and another controls the Union government, this eventuality is likely to create a constitutional crisis. The constitutional amendments made so far have not yet adequately resolved that likely crisis. Thus, as of necessity, if two different Parties will be in power one for the Zanzibar government and the other for the Union government, and then we should expect major constitutional changes. The spirit of the constitutional amendments made thus far was that CCM will remain in power for a long time in both parts of the Union. The separation of the Zanzibar President from the Union Vice Presidency, for example, is presumably going to create an administrative and even political crisis if a Zanzibar President comes from a different party from that of the Union President. The experience of law-making in Tanzania is that laws are made with the spirit and purpose of serving the interests of the ruling party and not for a long term application and relevance.



3.6 Other Challenges

- (1). How to penetrate the rural hinterland where the majority of constituencies lie – poor infrastructure, lack of resources, weak organisational structures of the parties, lack of a unified front – pulling resources together, government restrictions – how these people would be treated by the authorities – e.g. during campaigns people are denied fuel and accommodation in guest houses.⁷⁷ In Kenya, this challenge has been dealt with as a result of relatively strong ethnic blocs who integrate urban based elites and prominent tribal personalities and rural based communities. This simplifies the problem of communication and mobilisation. In Tanzania, there is no such kind of strong ethnic and regional affinity which could be easily tapped for political mobilisation.
- (2). How to depoliticise the highly indoctrinated and patronised bureaucracy. This is one of the most serious problems confronting political succession in Tanzania.
- (3). How to depoliticise the defence and security establishments which were groomed and excessively indoctrinated under a single party system.
- (4). How to forge a unified front against the ruling party between two religious communities which are clearly suspicious of each other, i.e., Muslims and Christians.
- (5). How to form a unified front between the relatively weak political parties whose level of penetration into society is very low.

3.7 Leadership Succession under Multipartyism in Tanzania

Under multiparty politics, there are two levels of competition. The first level is intra-party competition for nomination. In the case of Tanzania, intra-party competition is only practiced if the incumbent President is not aspiring for re-election. In 1995, when President Salmin Amour Juma of Zanzibar stood for re-election, nobody was allowed to vie for the post. Whereas, in the case of the Union presidential election, when Mwinyi had finished his two five-year terms and hence barred from re-contesting there was a fierce intra-party duel

⁷⁷See TEMCO. *Reports of the Tanzania Election Monitoring Group*. Dar es Salaam, 1995 and 2000; and Mainland By-elections in May 2003.



for nomination. The two leading contenders were Benjamin Mkapa and Jakaya Kikwete. The nomination process, though presided by Nyerere, the charismatic former Party Chairman, was fraught with elite factionalism and novel forms of alliances among politicians. Interesting to note was that the Zanzibar block within the National Executive Committee (NEC) is believed to have casted a decisive vote for Mkapa. It was widely believed that the Zanzibar block voting for Mkapa was in exchange for the latter's support for the Zanzibar faction in their wrestling with the opposition at home. President Mkapa apparently kept his commitment - he persistently claimed that the political crisis in Zanzibar was an internal affair of Zanzibaris themselves. Hence, President Salmin enjoyed a free hand in repressing the opposition in Zanzibar and the Union government was readily accessible in providing adequate support for the purpose.

For the 2000 presidential elections, the nomination tussle shifted to the Zanzibar presidency as the incumbent president had finished his two five year terms. It has to be recalled that the 1984 Constitution of Zanzibar limited the presidential term to two five-year terms. As early as 1999, there was an attempt in Zanzibar to change a constitutional provision setting a limit to the presidential tenure to two five-year terms. The then Zanzibar Attorney-General (AG) had already prepared a Bill to that effect and submitted it to the Minister for Constitutional Affairs, Iddi Pandu Hassan who was supposed to table it to the House of Representatives. Interestingly, the AG clearly stated that he (AG) had not seen any other leader who could be better than Dr. Salmin.⁷⁸ As a follow-up to that pronouncement, the then Zanzibari Government Spokesman, Hafidh Ali appealed to citizens to kindly request Dr. Salmin to re-contest.⁷⁹ Again, the Presidential Adviser on Pemba Affairs and a group of Pemba elders echoed the same request.

While all this was happening, Dr. Salmin was silent. When the issue was becoming hotter, some of the senior leaders within CCM picked it up and clearly stated their objection to the envisaged constitutional amendment to extend the tenure to allow Dr. Salmin to recontest for a third term. Hassan Nassor Moyo (a former Union Minister) was among the first senior CCM leaders to publicly oppose such a move when he said, "Salmin is tied by the Constitution."⁸⁰ Ultimately, because of pressure within the Party as well as external pressure, the ploy had to be dropped.

⁷⁸See *Nipashe* (Tanzania), 14th September, 1999.

⁷⁹See *Mtanzania* (Tanzania), 27th October, 1999.

⁸⁰See *Rai* (Tanzania), 25 - 31 March, 1999.



Whether Dr. Salmin really intended to re-contest, it is not difficult to tell. His silence on the issue and the fact that the Bill had already been prepared to that effect are clear indicators that he had a serious desire to stand again.

Having failed to change the Constitution and extend his presidential term, Dr. Salmin in a brinkmanship style of politics sought to prepare a successor of his choice. He put all his weight behind his Chief Minister, Dr. Mohammed Bilal. Since the incumbent was not standing, six aspirants took the nomination forms. These were the Union Deputy Minister for Finance, Abdisalaam Issa Khatib; Minister for Transport and son of the first President of Zanzibar, Amani Karume; the late Ambassador Ahmed Hassan Diria (later withdrew); Chief Minister, Dr. Mohammed Bilal; businessman and sports adviser to the Zanzibar President, Mohammed Raza (who was 39 years old although the minimum age for the post is 40); and Zanzibar Minister for Finance, Ms. Amina Salum Ali.

The inter-party competition for nomination was fierce to the extent of raising divisive issues of dirty campaign. The citizenship of the late Ambassador Diria, for example was questioned. Amani Karume, whose father was the first president of Zanzibar, was not spared either. A highly placed party functionary raised an allegation that his father (Karume) was a dealer who sold Zanzibar out. In the preferential vote cast by the Zanzibar CCM special committee of NEC, Dr. Bilal won by far. Amani emerged third. Thereafter, NEC met in Dodoma to nominate the presidential candidates. To the surprise of many, Amani emerged victorious. Before, the NEC meeting there were widespread rumours that the Salmin block had threatened to defect from the party and/or break the Union if their candidate Dr. Bilal would not be nominated. Dr. Bilal was not nominated and the Salmin camp went back to Zanzibar quietly.

Instructive to note is that Amani, who was not popular within CCM – Zanzibar, defeated Dr. Bilal who had a very strong support of CCM-Zanzibar. The victory of Amani versus Bilal was not an easy struggle. It was quite obvious that the national intelligence, the media both public and private as well as external forces backed Amani's campaign.

An interesting question is why there was such a fierce struggle for power within the ruling party? That was the situation in 1995 in the nomination of both the Union and Zanzibar presidential candidates. It was the situation in regard to the Union presidential candidate in 1995. The problem repeated itself in 2000 with respect to the Zanzibar presidential candidate. The fact that such a problem happened even under a single party system, and that it has recurred in all cases



when the incumbent President in not re-contesting, then would be safe to draw a conclusion that when the incumbent is not standing for re-election, there is room for intra-party struggle for power. After the 1995 election, President Mkapa accommodated some of his contenders. Kikwete, for example, was appointed Foreign Minister. After the 2000 election, by contrast, Amani seems to have isolated the pro-Salmin forces.

Another dimension of the crisis of leadership succession under a multiparty system is the possibility of power transfer to the opposition party if it wins. The ruling Party and its governments acceded to multiparty politics not because of the commitment to democracy but because it was an inevitable outcome due to pressure exerted by external and domestic forces. The way the transition process has been managed, the rules of the electoral game, the formation of electoral management bodies, the Constitution in place and the various laws enacted attest to the fact that the ruling class in Tanzania is not yet prepared to accept an impartial verdict of a democratic game. The management of elections and its outcomes particularly in Zanzibar in both 1995 and 2000 elections, the massive deployment of security and defence forces, the grabbing of ballot boxes by the police and army when the counting was going on clearly pre-empted the possibility of transfer of power to an opposition party through a democratic means. In the case, of Zanzibar, it appears that the ruling stratum still clings to the revolution as a source of their legitimacy instead of democratic elections. Karume's prediction in the late 1960s might be correct:

Nearly 30 years ago (i.e., 1967) as a young and naïve journalist I asked the late Zanzibar President, Sheikh Abeid Amani Karume, when there would be elections (multiparty was implied but not used expression in those days) in Zanzibar including Pemba. He was clearly irritated by my question and replied that there would be no such elections for 50 years. The following year I interviewed him again and posed a similar question. I could add another ten years to what he had told me the previous year, he replied.⁸¹

According to Karume's prediction in 1967/68, multiparty elections could be held in Zanzibar around 2010 and 2020. But multiparty politics was introduced earlier in 1992 and the first multiparty election was held in 1995, i.e., about 15 years earlier according to Karume's prediction. But this hardly nullifies Karume's prediction. The two multiparty general elections of 1995 and 2000 were seriously

⁸¹MARTIN, David, "Democracy versus Diplomacy: The Case for Dialogue in Zanzibar," paper presented at the International Conference on Democracy and Development held in Zanzibar from 5th -7th July, 1997, p. 1.



flawed by situation which led to political stalemate. That is to say, the challenge of leadership succession in Zanzibar has to be viewed from the historical perspective as a result of the 1964 Revolution. The prevailing attitude among the revolutionaries in Zanzibar and which seems to be supported by the Union government is that the Zanzibar government derives its legitimacy for the 1964 Revolution and therefore power cannot be transferred to an opposition Party which is perceived to despise the “Holy” Revolution and which is suspected of intending to break the Union.⁸²

From the above account of the crisis of leadership succession in Tanzania we can summarise some of the determinant factors of the possibility of power transfer. These include:

- (i). **Modality of accession to power:** This is clearly illustrated by the fear of power transfer in Zanzibar. Since the ruling party associates itself with the revolution, it is not inclined to transfer or even share it with opposition parties. This is not to suggest that those nationalist parties that won independence through a constitutional means (like TANU/CCM) are willing to transfer power to opposition parties. They also tend to cling to power as they regard themselves as custodians of independence because of their historical role during the nationalist struggles.
- (ii). **Record of use/misuse of power:** In the case of Zanzibar, there is a clear record of abuse of power not only during the early days of the Revolution but even after the 2000 general elections. This raises fear of prosecution. No wonder that in 1999, there was an attempt by the Salmin government to enact a special constitutional provision giving the President immunity from prosecution when he finishes his office tenure.
- (iii). **Strength of the opposition:** When the opposition is relatively strong and when it enjoys some support from some of the strategic State apparatuses such as the military, the police, the judiciary, etc – the regime in power may be compelled to think twice when it comes to the critical decision of whether to cling to power or concede defeat through a democratic election.
- (iv). **Loyalty of State apparatuses:** When the incumbent authoritarian regime enjoys unwavering support from the State apparatuses particularly the coercive ones – the army, the police, the intelligence, and the judiciary there

⁸²This position was clearly stated by President Mkapa while addressing a campaign rally at Micheweni, Pemba in October, 2000. He said that power could not be surrendered to the people who despise the Revolution and who intended to break the Union. He further said that there are people who had sworn in to defend the Constitution.



can be less inclination to concede defeat through a democratic election. The regime in Tanzania is well placed to enjoy such privileges. Added to that it enjoys strong support from the civil service.

- (v). **Support from strategic groups of the civil society.** In Tanzania, the intellectuals, the church, the big business and the media are conspicuously inclined to the ruling party. There are important sections of society for legitimisation purposes. The support from these sections may be either out by political conviction or opportunism. Whatever form, such support is important for the survival of the regime.
- (vi). **Cohesion of the party:** In Tanzania, the ruling party is impressively cohesive and it has an extensive organisational network from the national level to the grassroots, it cannot be compared with say, the ruling party in Kenya. The latter is seriously undermined by ethno-regional cleavages.
- (vii). **External factors:** The extent of external pressure is a very important factor in regime's calculations. The Tanzanian regime is generally in good terms with Western donors and the latter are not predisposed to exert strong pressure on the regime to accept the verdict of a democratic game.
- (viii). **Form of Government:** There is a widely accepted assumption that in majoritarian presidential systems, the stake is relatively higher and hence fiercer competition for the highest office unlike in the PR – parliamentary forms of government.

3.8 Lessons from Tanzania

1. The problem of piecemeal constitutional changes and the way democratisation process could be slowed down. Several Presidential Commissions have been formed to study the situation and make recommendations for constitutional reforms but the ruling party has been reluctant to adopt those changes.
2. Disallowing access to resources to opposition parties: businessmen can only help opposition parties at their own risk. The same applies to government employees. Senior government officials are barred from active participation in politics and all government employees can only contest in elections after they have resigned from their jobs. There is no assurance that they can go back to their jobs after the elections whether they have



won or they have been defeated.

3. Politicisation, indoctrination and patronage of the civil service and the army, and the police force in Tanzania have made such institutions hostile to political reforms. Instead of playing a facilitating role such institutions are still afflicted with the legacies of a single party authoritarian system.
4. Personality factor might be very influential in facilitating or obstructing political succession. The retired president, the late Julius K. Nyerere played an instrumental role in both facilitating and obstructing the democratisation process in Tanzania. One variant of the theories of Statesmanship posits that a strong Statesmanship is incompatible with democratic governance, i.e., democratic governance is supposed to rely on the legal system and institutions and not on an individual.
5. A smaller constituent party of a given polity may have an impact on the entire political system. The political crisis of Zanzibar has had a great impact on the politics of the entire United Republic of Tanzania.
6. Political succession becomes very difficult when there is a serious contest on the form of the State – whether it should be unitary or federal in the case of Tanzania. This increases the degree of uncertainty and apprehension on the part of the ruling party that should an opposition party win the general election, the structure of the State would be fundamentally altered.
7. Unless the opposition forms a united front against a long standing ruling party, chances of ousting it from power or even of winning a large number of parliamentary seats and provide a serious challenge in parliament are very slim.
8. International interests are much more interested in political stability rather than democratisation *per se*. The exceptionally cordial relationship between the Tanzanian State and Western donors today bears testimony to the above assertion. It is only when peace and stability are seriously at stake as was the case with Zanzibar particularly after the January 2001 killings when the Western interests would strive to flex their muscles to press for political change. It may also be recalled that the Western interests adopted a tougher position against the Moi regime pressing for the introduction of a multiparty system only after the killings at Kamukunji in 1991.



3.9 Two Contrasting Scenarios: Tanzania and Kenya

In both Tanzania and Kenya the democratisation process was seriously blocked right from its inception. In the case of Tanzania it is still seriously blocked. In the case of Kenya, a critical point has already been crossed over, i.e., power has been transferred from the long standing authoritarian regime to a democratically elected coalition of opposition parties. Among the arguments advanced to comparatively explain the democratisation processes in the two countries is that democratisation is largely determined by the balance of power among the contending groups or parties. In other words, Tanzania has not managed to cross the critical point of political succession because it has a relatively weak opposition. By contrast, Kenya has managed to cross over the critical point because of its relatively strong opposition. This argument could not be simply cast out as baseless. It constitutes one of the two important sets of explanations.

Tanzania opposition parties had few obvious starting points unlike Zanzibar and Kenya. Some of the obvious sources of opposition: business people, the urban poor, regions with a sense of relative deprivation or neglected areas, disgruntled former leaders and members of the ruling Party, as well as dissident intellectuals. When the ruling coalition splits avenue for political succession Kenya experienced serious political split a few months before the general election. Massive defections – such experience has not happened in Tanzania. The ruling coalition bonded by patronage had collapsed in Kenya.

There are a good number of dissident intellectuals in Kenya, and very few in Tanzania. Chances for political succession are not so bright. Opposition parties have been left to people without organisational skills and resources needed to manage political Parties. In Tanzania, intellectuals shy away from opposition politics. There is now a noticeable trend of intellectuals joining the ruling Party in anticipation of securing parliamentary seats and enjoy the Tshs. 20 millions gratuity after every five year term, the amount which is higher than a pension of a university professor who has served in the teaching profession for about 40 years.

In principle, there is nothing inherently wrong with the same ruling Party winning each and every general election. But given the attitude of the political leadership in Tanzania, and from the hindsight of the manner in which the transition has been managed, there is no likelihood in the near future of a breakthrough from a single Party heritage to multiparty politics with its necessary



ingredients. I am therefore tempted to postulate that Tanzania (Mainland) may probably be the last in East Africa (preceded by Kenya, possibly Zanzibar and perhaps Uganda, which is yet to start the transition process) to cross the red line of genuine political succession from a single authoritarian regime to a multiparty democratic political system.

3.10 Conclusions: What is to be Done?

In the spirit of East African Co-operation, politics of individual States cannot be relegated to a back seat. It is very unlikely for nation States with fundamental differences in their political systems to be able to harmoniously and productively co-operate in the form of a regional arrangement. The demise the East African Community in 1977 was in part due to the fact that the three member States had fundamentally different political systems. The current initiative of East African Co-operation envisages not only close economic co-operation but also strong political relations. This is only possible, even these countries would learn from their common and diverse experiences in the process of democratisation and institutionalisation of good governance. In the past years, it was claimed that Tanzanian politicians used to send a team of experts to Kenya, and presumably vice versa, to learn the best tactics of rigging elections, it is now high time that such teams were dispatched to a neighbouring country to learn the best rules and tactics of conducting free and fair elections. Democracy should be “the only game in town.”

There should be a concerted effort to develop civil society. This institution is credited with key roles as far as good governance is concerned. First, it creates channels other than political Parties for the articulation, aggregation and representation of interests. Secondly, and related to the foregoing, it monitors and restrains the exercise of power by democratic States. In the case of authoritarian States it helps to democratise them.⁸³ My conclusion, however, would differ from those who consider civil society as the single most important and urgent factor in the consolidation of democracy. Countries just emerging from long periods of reactionary authoritarianism lack the legal and bureaucratic means to curb corruption. It is therefore incumbent upon a free press, civic groups and well as political parties to press for institutional reform that could help curb corruption.

⁸³DIAMOND, Larry and Marc F. Plattner (eds.) *The Global Resurgence of Democracy*, 2nd edn. Baltimore London: The Johns Hopkins University Press, 1996, p. 230.



The most urgent factor in the consolidation of democracy is political institutionalisation. This involves institutional and behavioural changes that ultimately make democracy entrenched and thus unlikely to break down. The promotion of democratic citizenship, and culture, inclusion and representation of the important sections of society, but what is most urgently required is political institutionalisation. Whereas there is obviously an impressive progress in democratic citizenship and culture particularly among the ordinary people, the efforts and initiatives towards political institutionalisation in terms of both legal and institutional set up, the process is dishearteningly very slow, which in turn contributes to slow the process of building civic competence.

3.11 Postscript

The challenges that were observed as of July 2003 (when the earlier version of this chapter was presented) have remained more or less the same after the third multiparty general election in Tanzania. Interestingly, however, the 2005 general elections provided yet another ground for the testing of the earlier assumptions and observations. In this brief update of the political developments relating to the challenges of multipartism in Tanzania we will specifically address ourselves to the salient challenges to political succession.

As it was explained in the earlier version, political succession in Tanzania is shaped by a myriad of factors whose relative influence may change from one election to another. This intricate combination of factors may make certain outcomes predictable and sometimes quite unpredictable. At a general level, some of the important factors that featured during the intra-party nomination process within the ruling party (CCM) include lack of ideological content, reciprocity, regionalism, religion, generation factor, the role of incumbent president, and the role of the media as well as corruption.

Because in the 2005 Union election the incumbent president had finished his two five year terms, i.e., the maximum limit for the presidential tenure, the contest for nomination was very fierce. This time the competition was stiffer than it was in 1995 when Mwinyi had finished his two five year terms. The intensity of intra-party contestation and dirty politics associated with it indicated as if the contest was between different parties. Eleven members of CCM applied for party nomination. These were: Fredrick Sumaye, the Prime Minister; Dr. Salim A. Salim former OAU Secretary General; John Malecela, the CCM Vice Chairman;



Jakaya Kikwete, Minister for Foreign Affairs and International Cooperation; Professor Mark Mwandosya, Minister for Communication and Transport; Dr. Abdalla Kigoda, Minister for Planning and Privatisation; Dr. William Shija (MP), Iddi Simba (MP), Ambassador Patrick Chokala, Ambassador Ali Karume, John Magale Shibuda (NEC member).

To begin with, the impact of ideological challenge seems to be quite conspicuous. The absence of Nyerere and the crumbling of the ideological bond of the party are among the salient factors shaping succession politics in Tanzania. Now, more than any time since the introduction of multipartyism, succession politics becomes increasingly uncontrollable. What seems to put together members of the party with different ideological outlooks is apparently the fight for the plate – economic benefits accrued by virtue of occupying a political or public office. The unprecedented level of corruption that was witnessed during the nomination process, not only for the presidential candidacy, but even for the parliamentary and councillorship candidates attests to that emerging political phenomenon. This phenomenon poses a critical challenge as regards the role of money in electoral politics and the future of Tanzania's politics in general.

With regard to reciprocity, the Zanzibar group has been consistently behaving as a bloc even under situations when there is internal rivalries as it was in the 2005 nomination process where CCM-Zanzibar was experiencing intra-party rivalries between the Karume faction and the Salmin/Bilal faction. President Karume of Zanzibar who is believed to be a close ally of Kikwete is believed to have rallied his members from Zanzibar to reciprocate for the support given by Kikwete to his candidacy in the 2000 nomination process for the Zanzibar presidential candidate. Kikwete and his associates played a very significant role in support of Amani Karume leading to the defeat Dr. Bilal who had the highest score from CCM-Zanzibar. Likewise, the downfall of Dr Salim Ahmed Salim in the nomination process could be largely attributed to the bloc position adopted by CCM members from Zanzibar. He was associated with Hizbu (allegedly an Arab aristocratic party) and with Arab lineage, factors which discredited him in the eyes of those who claim to be custodians of the 1964 Zanzibar revolution.

With respect to the generation factor, Kikwete's landslide victory in the nomination process signals the growing power and resolve of the young generation versus old guards. Kikwete (a 55 year old seasoned politician who grew up within the party hierarchy) apparently seemed to carry with him the aspirations of the youth who seem to have developed feelings of disenchantment



caused by the old guards' tight grip on power. Kikwete skillfully capitalised on the youth enthusiasm and aspirations without antagonizing himself overtly with the old guards. Although he drew unproportional support from the youth, he was also able to solicit support from some sections of the old guards.

Given the intensity of contestation, lack of ideological bond, and an elder statesman who could impose some restraint, the nomination process within the party got almost out of hand when top government and party leaders publicly declared their stand in support of a particular candidate. The Kagera Regional Commissioner, for example, explicitly backed Kikwete whereas the Morogoro and Mwanza Regional Commissioners backed the Prime Minister, Fredrick Sumaye. Ultimately, party bosses intervened to discourage such behaviour and pronouncements.

Religion, as it has been in the past was also an important factor in the 2005 nomination process for the presidential candidate within CCM. Of the eleven candidates, four of them were Muslims, namely Kikwete, Salim, Abdallah Kigoda and Iddi Simba. Since the outgoing president was a Christian, the great chances this time was to nominate a Muslim. Incidentally, of the eleven candidates, the top two candidates, Kikwete and Salim were all Muslims. Apparently, both Muslims and Christians were sensitive to the religious factor during the nomination process as a way of maintaining unity and integrity of nation with an approximately equal number of Muslim and Christian believers.

Regionalism likewise could be detected in the presidential contest. Apart from the Zanzibar factor as a region with a bloc vote tendency, some of the presidential aspirants were said to draw unproportional support from certain regions. Professor Mark Mwandosya, for example, it was believed that his support was essentially from his home region, the Southern region (the Southern Highlands).

Another interesting feature of the current Tanzania's politics and election processes from the nomination to the campaign phase is the role of the media. The media in Tanzania has been increasingly playing a very influential role in promoting and ruining the images of political parties and their candidates. In the intra-party nomination process within CCM, for example, In a conspicuously partisan way, one of the prestigious media houses in Tanzania, the Habari Corporation was backing Jakaya Kikwete, The *Citizens* and *Mwananchi* initially were said to be pro Dr. Salim Ahmed Salim but changed direction in favour of Kikwete due to internal politics regarding the ownership of the papers. Salim was later destroyed by the media by associating him with Hizbu (the Zanzibar



Nationalist Party, allegedly an Arab aristocratic party), i.e., doubting his recognition of the Zanzibar revolution. The media went further questioning his citizenship status and patriotism – i.e., that his parents are not of Tanzanian origin and that most of his relatives are based in the Gulf. The media also unfavourably presented the images of other aspirants. John Malecela was portrayed as too old (branded as “the grandfather”) and worn out politician unfit for the upcoming challenges; and Fredrick Sumaye was portrayed as the most corrupt leaders among all the contestants.

The role of the incumbent president cannot be ignored in the nomination processes. Whereas in the 1995 nomination process, the incumbent president, Ali Hassan Mwinyi could not stretch his muscles in the presence of the retired president, J.K. Nyerere, leaving the latter to run the show, this time the incumbent president, Ben Mkapa played a rather influential role. Although it is said that initially he had his favourite candidate, his reading of political dynamics made him change his position. Apparently, he had learned the bad experience of Kenya when KANU disintegrated following the attempt by the then President Moi to impose his candidate, Uhuru Kenyatta, in what came to be branded by the media as a failed “Uhuru Project”. Although Mkapa did not attempt to nominate his successor or making his favourite choice known, he tactfully sought to influence the nomination process in favour of some candidates at the expense of others. Among the tactics he used included disallowing the presentation of the CCM Regional Political Affairs Committee to the party’s Central Committee; blocking the name of Malecela not to go to the National Executive Committee; discarding the one person three votes system and by stressing five qualities of a presidential candidate (in addition to those provided by the party guidelines).

In the case of the candidate for the Zanzibar presidency, the seemingly established convention that the incumbent president must not be challenged within the party was put to test in the 2005 general election. It is becoming an established pattern that when the incumbent president is not recontesting there is bound to be quite a stiff competition within the party. President Amani A. Karume, who had served for only one five year term was challenged by Dr. Mohammed G. Bilal, member of CCM Central Committee and former Zanzibar Chief Minister. Dr. Bilal picked nomination forms and was ultimately convinced or compelled by party bosses in the Central Committee to withdraw his name and allow Amani Karume to finish his second five year term. The decision by Dr. Bilal to contest signalled the extent to which factionalism had affected the ruling party in Zanzibar. So the



party bosses in Dodoma had to intervene to rescue the situation.

The lesson we can learn from this experience therefore is that the unwritten convention of not challenging an incumbent president cannot be taken for granted. The party (establishment) still seems to be quite committed to respect this convention arguably for the purpose of maintaining the integrity of the party by containing intra-party squables for power.

Whereas the party bosses managed to maintain the convention of not challenging the incumbent for the Zanzibar presidency, the other unwritten convention was discarded this time. Although the URT constitution only provides that if a president of the URT comes from one part of the Union his Vice president should come from the other constituent part, it looks as if there was a "pattern" established since the single party era. When Mwalimu retired in 1985, there were three contestants for the presidential nomination, Rashid Kawawa from the mainland (who withdrew before voting in the National Executive Committee) and the contest remained between Salim Ahmed Salim and Ali Hassan Mwinyi, both from Zanzibar. In the same vein, in 1995 when Mwinyi ended his two five-year terms, all the contestants were from the mainland and nobody from Zanzibar. This time (2005), however, out of eleven contestants within CCM only one was a Zanzibari, i.e., Salim Ahmed Salim. The fact that for the first time Tanzania has had two consecutive presidents coming from the mainland does not seem to have caused any serious concern on the part of Zanzibar. However, this does not imply that a third consecutive president from the mainland in 2015 will not.

Just as there are challenges to the ruling party (CCM), there are even more formidable challenges to the opposition parties. Of the three multiparty general elections held in Tanzania since 1995, the performance of opposition parties in the 2005 general election has been the worst. In terms of party development and penetration into the society, not much has been achieved by the opposition parties. CCM, the ruling party remains the only well established party with strong organisational networks across the country. Among the opposition parties, it is only CUF, which has been able to establish an organisation network in many parts of the country. Surprisingly, however, of the seven constituency seats won by the opposition on the mainland, CUF, with 10% of the total popular vote has not been able to get even a single seat. The only constituency seats for CUF are those from Pemba (18 seats) and one from Unguja. CHADEMA, with 6% of the popular vote has won five seats, and TLP and UDP with less than 1% have got one seat each.



In spite of the organisational weaknesses of the opposition parties and lack of resources, the overwhelming victory of the ruling party for presidency (80% of the popular vote), and for the parliamentary and councillorship seats was not expected by political analysts. The trend of the electoral campaigns indicated that the opposition parties were poised to secure quite a good number of seats. In the case of the presidential race, for example, Prof. Ibrahim Lipumba (CUF) and Freeman Mbowe (CHADEMA) were crowd pullers wherever they went for electoral campaigns. One assumption here is that the number of people turning up for campaign rallies does not necessarily translate into votes. But, the other assumption is that there might be other factors that determine electoral performance including credibility of the electoral process in terms of the political, legal and institutional set-up managing the election as would be clearly illustrated by the Zanzibar case whereby the opposition seems to be stronger in terms of the number of followers but the election outcomes are determined by powers that be.

The other challenge for the opposition parties is that the three multiparty general elections have attested to the fact without forging a united front or strong coalition and seeking to change the rules of the game governing political competition, there is virtually no possibility of unseating the ruling party or winning a larger number of seats. If, for example, opposition parties would have put up a single candidate in some constituencies, they could probably have gathered more votes and seats where CCM has won by a small margin.

Thus, in the light of the systemic constraints – political, legal and institutional (i.e., including the absence of an independent body to manage elections), it is imperative to rethink multipartism in Tanzania. Opposition parties ought to seriously recognize the fact that they are operating under a *de facto* one party state. The political and legal environment is basically that of a single party regime. The opposition parties are suffocated – they cannot breathe fresh air. Even where they can win, victory may not be granted, as has been consistently the case in Zanzibar.

For the ruling party, the main challenge still remains, to transform itself from a state-party into a proper political party in a conventional sense. Although it operates under a *de jure* multiparty system, it cannot define its identity independent of the state, it cannot rely on voluntary membership and voluntary contributions from its members and supporters, nor can it have its political activities without state resources and instruments of coercion.




It seems such a transformation could only be possible in the event of losing an election as was the case with KANU in Kenya; even if it will be able to win state power in the subsequent elections, its identity as a state-party is gone. Or alternatively, such a transformation can be possible in the event of the emergence of a powerful opposition that will be able to force the ruling party and the regime in power to the redrawing of the rules of the game.

All in all, the political future of Tanzania is still uncertain for the country has not experienced a peaceful transfer of power from one party to another, nor has it been successful in managing reasonably free and fair elections whose results are not contested by the major political contestants.

CHAPTER FOUR

Political Succession in Uganda: Threats and Opportunities

Benson Tusasirwe

 *Even some of our leaders talked glibly of the impossibility of maintaining a constitutional democracy in Africa because it was alien to the African conception of government. This argument, if it can be so termed, was of course always advanced by those who stood to benefit by the forcible abolition of all forms of opposition. ... The point must be made, and this cannot be overemphasised, that the capacity of modern African governments to oppress their citizens, who for the most part are illiterate, is far greater than anything that could have been devised by an African polity during pre-colonial times.*

Samwiri R. Karugire⁸⁴

4.1 Introduction

Uganda has had four Constitutions since acquisition of Independence in 1962.⁸⁵ Every single one of these Constitutions contained elaborate provisions prescribing the procedure for transfer of governmental power from incumbent Heads of State and their governments to their successors in office. It is one of the bitter ironies of Uganda's existence as a nation that in spite of those constitutional provisions, this country has not had a peaceful transfer of power through the normal electoral process other than that from Paulo Muwanga's Military Commission to the Obote II Government in 1980. But even that hand-over followed a thoroughly discredited election – an election that was so riddled with irregularities that one can hardly assert with a straight face that the resultant transfer of power was peaceful, constitutional and/or legitimate. On

⁸⁴KARUGIRE, S.R., *A Political History of Uganda*, Nairobi: Heinemann Educational Books, 1980, p. 196.

⁸⁵These were: The 1962 Constitution, the "Pigeon-hole Constitution of 1966, the Republican Constitution of 1967 and the 1995 Constitution now in force.



all the other occasions, power was either literally grabbed at gun-point or was assumed in questionable ways.

So it was that when Yoweri Museveni took the presidential oath on 29th January, 1986, he thereby became Uganda's 9th Head of State in a space of 24 years, an average of 2.6 years per President.

On 22nd September, 1995, after one of the most protracted constitution-making exercises the African continent has ever witnessed, the Constitution of the Republic of Uganda, 1995⁸⁶ was adopted amidst ululations and great fanfare.

Like the legendary Hercules of Greek mythology, the 1995 Constitution has gone through great labours and tests. Though its implementation and operationalisation on the ground has often been problematic it has, generally made a good account of itself. But as it heads for the 8th anniversary of its birth, the 1995 Constitution is about to face the toughest and perhaps decisive test of its short and rather exciting lifespan. This is the test of whether the Constitution will successfully operate as a means of transferring power from its chief architect, or whether it will be tinkered with or even kicked aside, to allow the incumbent seek a further presidential term outside the limits set by the Constitution in its present form.

4.2 Scope of the Work

In this Chapter, we examine the question of political succession in Uganda and in particular, the opportunities for and the threats to a smooth transition in the political leadership of the country in the coming months and years.

By way of background, we begin with an overview of the various changes of government Uganda has had in the past. This will enable us to determine whether the historical circumstances surrounding those political phenomena are likely to replicate themselves under the present conditions. We then analyse the provisions of the 1995 Constitution dealing with the question of political succession. We shall assess the considerations underlying these provisions, and an attempt will also be made to assess their viability.

Thereafter, we examine the unfolding political events and power relations vis-a-vis the constitutional provisions relating to transfer of governmental power. We specifically address the now obvious moves which are in the offing to lift

⁸⁶Hereinafter referred to as "The 1995 Constitution."



presidential terms limits, and explore the factors driving these moves. We then pose the all important questions: - Will the Constitution survive, or in fact should it? What will be the implications of deviating from the present Constitution?

Political actors have, over the centuries, perfected the art of pretending to do all manner of things in the name of people, even when that is obviously not the truth. It is already being suggested in some circles that the real interests and democratic aspirations of the people (whoever these are) will be best served through the removal of presidential term limits so that the question of whether a person should be or should cease to be President depends on the will of the people expressed through the electoral process, rather than some piece of paper dictating who should or should not be eligible for presidency. We assess the validity of this claim.

4.3 1962 - 1986: The Triumph of Violence over Constitutionalism

Unlike Kenya and many other polities, Uganda did not have to resort to war to get rid of its colonial masters. The provisions of the Independence Constitution were widely discussed between the British government and representatives of those of the Uganda stakeholders who were influential enough to have a say. Because of the pressure from all the various interested groups, including the British themselves, the resulting constitutional dispensation contained the germs for its own destruction, because it had attempted to reconcile the irreconcilable.⁸⁷

Whatever its shortfalls, however, the 1962 Constitution and the government it put in place came in by peaceful means. The excitement that came with the politicking on the eve of independence largely remained well within acceptable limits.

From October 1962 to 1966, Obote, the Prime Minister and Head of Government, demonstrated preparedness to abide by and respect the constitutional provisions, but only as long as they served him. Hence whereas he insisted on holding a referendum on the lost counties question because the Constitution so required, he then went on to sign the instrument transferring the counties to Bunyoro in accordance with the results of the referendum, although the same Constitution

⁸⁷For example the dispute between Buganda and Bunyoro over the lost counties, as well as that between the self confessed traditionalists and the so-called nationalists were virtually incapable of being addressed to the satisfaction of all sides under the same dispensation, as the events shortly after independence proved. See generally KANYEIHAMBA, G.W., *Constitutional Law and Government in Uganda*, (1975); IBINGIRA, G.S.K., *The Forging of an African Nation*, London: Viking, 1973; and KARUGIRE, *A Political History of Uganda*, op. cit.

clearly vested such power only in the President who had obstinately refused to sign the instrument.⁸⁸ Such an attitude, of only upholding the Constitution when it suits the executive was to prove costly for the country.

Uganda's experiment with democracy was short-lived. Obote, with the help of the military, abrogated the 1962 Constitution and replaced it with the 1966 Constitution which the Members of Parliament were bullied into passing before they had read it.⁸⁹ Obote then ordered the army to storm Kabaka Mutesa's Palace. The Kabaka who was then President, fled into exile where he died in misery. In short order, the 1967 Constitution was enacted, transforming Uganda into a Republic.⁹⁰

The violent way in which the above change of power was effected, which the constitutional court⁹¹ labelled as a legal revolution in accordance with the Kelsenian principles, opened the proverbial Pandora's box. The military had tested victory.⁹² It was not long before they decided to go all the way. In January 1971, Idi Amin, Obote's Army Commander whom the latter had used to get rid of Mutesa, turned the tables on him and overthrew him.⁹³ It should be noted that the last elections had been held way back in 1962.

From 1964 onwards, opposition political parties had been ruthlessly suppressed and undermined. Later Obote used the excuse of the state of emergency after 1966 to completely emasculate what had remained of the Democratic Party (DP) such that by 1969 when opposition parties were banned by Statutory Instrument, they had in fact ceased to operate in the open years back.

Amin's supposed life presidency lasted only 8 years and in 1979 he was overthrown by an alliance of Uganda émigrés and the Tanzania Peoples' Defence Forces (TPDF). Professor Yusuf Lule, who was installed under the Uganda National Liberation Front (UNLF) arrangement, ruled for the whole of 68 days,

⁸⁸See IBINGIRA, *The Forging of an African Nation*, op. cit and OKOTH, PG. "The Historical Dimensions of Democracy in Uganda: A Review of the Problems and Prospects," in OLOKA-ONYANGO, Joseph et. al. (Eds.); *Law and the Struggle for Democracy in East Africa*, Nairobi: Claripress, 1996, p. 46.

⁸⁹In the National Assembly Session where the 1966 Constitution was proposed, only Prime Minister Obote addressed the House. The members almost unanimously adopted the new Constitution and only got to pick their copies from their pigeon holes on their way out, hence the term "Pigeon-hole Constitution."

⁹⁰Unlike the 1966 Constitution, the 1967 one was debated fairly extensively by parliament which transformed itself into a constituent assembly for the purpose, under the Constituent Assembly, 12/1967.

⁹¹In *Uganda v. Commissioner of Prison, ex parte Matovu* (1966) EA 514.

⁹²Before that, in 1964, the armies of all three East African States had staged mutinies demanding huge increase in remuneration and promotions of the rank and file. In the case of Uganda, both demands were promptly complied with. See IBINGIRA, *The Forging of an African Nation*, op. cit.

⁹³See MAMDANI, *Imperialism and Fascism in Uganda*, Nairobi: Heinemann Educational Books (E.A.) Ltd., 1983; MUDOOLA, "Institution Building, the case of the NRM and the Military in Uganda" in HANSEN, Holger Bernt and Michael TWADDLE, Uganda Now: *Changing Uganda – Developing Uganda – From Chaos to Order*, Oxford/ Kampala/ Nairobi/ and Athens: James Currey/ Fountain Publishers/ East African Educational Publishers and Ohio University Press, 1991, p. 230, and KANYEIHAMBA G.W., *Constitutional and Political History of Uganda, From 1894 to the Present* (2002).



was voted out of office by the National Consultative Council which, in exercise of questionable authority, hand-picked Mr. Godfrey Binaisa. The latter went out of office as easily as he had come in. In yet another coup, but mercifully a bloodless one this time, the Military Commission headed by Paulo Muwanga, with Yoweri Museveni as Vice Chairman, took over.⁹⁴

Following the 1980 elections in which UPC was declared winner, Obote once again became President. A number of groups questioned the legitimacy of Obote's victory and launched guerrilla campaigns. The over-stretched army resorted to brutal tactics in order to contain the situation, but this only further alienated the populace. The army virtually disintegrated in Obote's hands and, in 1985, one faction overthrew Obote for the second and, for sure, the last time in his life. Tito Okello was sworn in as Head of State.

In the meantime, one of the guerrilla groups, the National Resistance Army/Movement (NRA/M) was closing in on Kampala. An attempt was made to negotiate a power-sharing arrangement, in the famous Nairobi peace talks.⁹⁵ Within weeks, the agreement fell through and the NRA/M overrun Kampala, threw out the Okello Junta and took power in the seventh and, for now, last unconstitutional change of governments. In short, up to 1986, political succession in Uganda was anything but constitutional or democratic.

4.4 NRM and the Promise of Revival of Constitutionalism

The founding lights of what later became NRM had their political vision shaped by their revulsion for what they saw as the incompetence, corruption and even criminality of those in charge of the affairs of Uganda and other African States in the 1960s and 1970s. They saw the African State as a failed State being presided over by anti-people predators, and promised to change the *status quo*. In the 1970s, most of these young men had gone into exile, mainly in Tanzania where, in Mwalimu Julius K. Nyerere, they found a hero. When they returned in 1980, their short contact with some State power was rudely interrupted by Obote who returned with his old ways. They did not even wait for him to unleash tyranny

⁹⁴For a fuller treatment of these events see NABUDERE, Dani Wadada, *Imperialism and Revolution in Uganda*, London and Dar es Salaam: Onyx Press Ltd and Tanzania Publishing House, 1980; MUDOOLA, "Institution Building, the case of the NRM and the Military in Uganda," op. cit; OKOTH, P.G., "The Historical Dimensions of Democracy in Uganda: A Review of the Problems and Prospects," op. cit, KIRUNDA KIVEJINJA, *Uganda, the Crisis of Confidence*, (1995) and KANYEIHAMBA, *Constitutional and Political History of Uganda, From 1894 to the Present*, op. cit., Chapter 3, 4 and 5.

⁹⁵Sometimes uncharitably called peace jokes because of the manner and circumstances in which they were held, and the contemptuous way in which the positions arrived at the said talks was trashed.



- they were sure he would. Using the pretext of a rigged election, they launched a guerrilla war in February, 1982.⁹⁶

When NRM/A finally captured power, it was clear to Museveni and his team that Ugandans had been there and seen it all. They had taken Amin's 18 reasons for removing Obote seriously only to realise that Amin was far worse. They had seen the "liberators" of 1979 turn on the population. They had seen Obote, the hero of 27th May return exactly where he had left off in 1971. Could the new liberators who emerged out of the bushes of Luwero in rugs be any better?

It was therefore clear to Yoweri Museveni that he had to project his group as the genuine piece - a group fundamentally and incomparably different from all the earlier false liberators. So at the first opportunity, during the swearing in ceremony on 29th January, 1986, he declared:

No one should think that what is happening today is a mere change of guards: it is a fundamental change in the politics of the country. In Africa, we have seen so many changes that change as such is nothing short of mere turmoil. We have had one group getting rid of another only for it to be worse than the group it displaced. Please, do not count us in that group of people. The NRM is a clear-headed movement with objectives and a good membership.⁹⁷

The initial document through which the high-minded principles underpinning the NRM were set out was the *Ten Point Programme*.

In the first years of its rule, the NRM made remarkable strides in implementing its vision. As an instrument for the realisation of popular democracy, Resistance Councils (RCs) were set up throughout the country. These exercised executive, judicial and some minor legislative powers.⁹⁸

In this chapter, we are concerned with political and constitutional issues. We therefore will not attempt to address the economic policies and other areas of performance of the NRM. In the constitutional arena, the NRM did not immediately bring in a totally new Constitution. Rather, through Legal Notice

⁹⁶Up to 1996, rigging of the 1980 elections was still being given as the principal justification for launching the guerrilla war. But because the last two presidential and parliamentary elections were clearly tainted with perhaps even worse irregularities that line has since been virtually abandoned.

⁹⁷Reproduced in MUSEVENI, Yoweri, *The Path of Liberation* (1989).

⁹⁸See the Resistance Councils and Committees Statute No. 9 of 1987, and the Resistance Committees (Judicial Powers) Statute, No. 1 of 1988. See also KASFIR, Nelson, "Movement, Democracy, Legitimacy and Power in Uganda" in MUGAJU, Justus & OLOKA-ONYANGO, Joseph (eds.), *No Party Democracy in Uganda Myths and Realities*, Kampala: Fountain Publishers, 2000, p. 60; See also MAMDANI, Mahmood, "Pluralism and the Right of Association," in MAMDANI, Mahmood and OLOKA-ONYANGO, Joseph (eds.), *Uganda, Studies in Living Conditions, Popular Movements and Constitutionalism*, Vienna: JEP Book Series, 1994, and OLOKA-ONYANGO, Joseph, "Judicial Power and Constitutionalism in Uganda" in MAMDANI and OLOKA-ONYANGO (eds.), *Uganda, Studies in Living Conditions, Popular Movements and Constitutionalism*, ibid.



No. 1 of 1986, amendments were introduced to the 1967 Constitution, mainly those necessary to bring it into line with the intended structure of government.

In particular, political parties were frozen and competition for political positions was to be on the basis of the so-called “individual merit” under the movement system in which everybody belonged, as it were, by legal fiat.

Initially, the NRM was to be strictly an interim government to last only 4 years up to 1989, but it was later extended for another 5 years,⁹⁹ then by the 1995 Constitution itself, to 1996.

It was understood from the outset that the NRM as an interim arrangement would come to an end with the enactment of a new Constitution. Yet every attempt was made to delay the enactment of the new Constitution for as long as possible. As John Ssenkumba has put it:

Indications that the NRM intended to stay much longer began to emerge when it initiated a seemingly indefinite transitional process marked by deliberate foot-dragging and evasiveness. The process was not genuinely negotiable for the simple reason that it was more of a grant from the benevolent NRM to a helpless and traumatised Uganda.¹⁰⁰

It was therefore clear, even before the 1995 Constitution came to be, that the group which captured power in 1986 was not going to leave in a hurry. Ugandans, however, have always been a patient lot who even patiently sat out Amin’s terror until the Tanzanians and a few exiles came and did the dirty work for them. Accordingly, they were able to see through this snail-pace process of enacting a new Constitution.

In 1986, a Ministry of Constitutional Affairs was created.¹⁰¹ Then in 1988, the Uganda Constitutional Commission (the Odoki Commission) was established.¹⁰²

The Commission traversed the country, gathered views and wrote its report and a Draft Constitution. Almost four years after its appointment, the Commission delivered its report on 31st December, 1992.¹⁰³ In 1993, the Constituent Assembly Statute was passed. The Constituent Assembly was then elected. The Assembly

⁹⁹See Legal Notice No. 1 of 1986, Amendment No. 2 of 1989.

¹⁰⁰SSENKUMBA, John, NRM Politics, *Political Parties and the Demobilisation of Organised Political Forces*; CBR Working Paper No. 59 (2000), p. 3.

¹⁰¹ODOKI, Benjamin J., “Writing a Democratic Constitution” in Volume 1 No. 2 *East African Journal of Peace and Human Rights*, 1993, p. 200.

¹⁰²Through the Uganda Constitutional Commission Statute 5/1988. On the work of this Commission see *inter alia*, ODOKI, Benjamin, J., *The Search for a National Consensus: The Making of the 1995 Uganda Constitution*, Kampala: Fountain Publishers, 2004.

¹⁰³OTHMAN, Haroub and Nassali, Maria, *Towards Political Liberalisation in Uganda*, Kampala: Fountain Publishers, 2000, p. 14.



debated the Constitution between 1994-1995. Finally on 8th October, 1995, the Constitution was promulgated.¹⁰⁴

4.5 The 1995 Constitution and the Question of Political Succession

It was hoped that the 1995 Constitution would pave a platform for peace, democracy, constitutionalism, the rule of law and ultimately meaningful development. These aspirations were captured firstly in the preamble and secondly, in the statement of National Objectives and Directive Principles of State Policy. Though these two are not justifiable in the same way as the actual provisions of the Constitution, they provide an important benchmark on which the performance of the State and other actors can be measured. In addition, they are normally used to determine the intended meaning, spirit and purpose of the actual provisions of the Constitution in the course of constitutional interpretation by courts.¹⁰⁵

The Preamble to the 1995 Constitution recalls Uganda's history of political and constitutional instability and the commitment of the people to the building of a better future by establishing a socio-economic and political order through a popular and durable national Constitution built on the principles of unity, peace, equality, democracy, freedom, social justice and progress.

The National Objectives and Directives Principles of State Policy, in item III (V) thereof, enjoin the State to provide a peaceful, secure and stable political environment. Under item II, the State and the people are enjoined to promote democratic principles.

The substantive provisions relating to election, tenure and removal of the President are set out in Chapter 7 of the Constitution.¹⁰⁶ Article 103 required the President, for the first time in the history of Uganda, to be elected by universal adult suffrage through a secret ballot. Once so elected, a person would then only cease to be President if he died, resigned,¹⁰⁷ or was removed from office.¹⁰⁸ The

¹⁰⁴BARYA, John-Jean, "Political Parties, the Movement and the Referendum on Political Systems in Uganda: One Step Forward, Two Steps Back?" In MUJAJU and OLOKA ONYANGO, *No Party Democracy in Uganda Myths and Realities*, op. cit., p. 24.

¹⁰⁵See Judgement of the Constitutional Court of Uganda (Egonda Ntende, J. in *Tinyefuza v. Attorney General*, Constitutional Petition No. 1 of 1997 and of the Supreme Court of Ghana in *New Patriotic Party v. Inspector General of Police*, Writ No. 4/93. National Objectives and Directive Principles of State Policy are a relatively new feature, but are now set out in the Constitutions of Namibia (1990), Ghana (1992), Uganda (1995 and Nigeria (1979).

¹⁰⁶In particular, Article 103, 105 and 107 respectively.

¹⁰⁷See accordance with Article 105 (3) (b) and (4).

¹⁰⁸Under Article 107.



other and more normal way in which a presidency may come to an end is upon the expiration of the presidential term provided for in the Constitution.¹⁰⁹

The most important provisions for our purpose in the present discourse are contained in Article 105 Clause (1) and (2) which state:

- (1). A person elected under this Constitution shall, subject to Clause (3) of this Article, hold office for a term of five years.
- (2). A person shall not be elected under this constitution to hold office as president for more than two terms as prescribed in this article.

The above provisions were clearly understood to be to the effect that any period the incumbent had served prior to the coming into force of the 1995 Constitution was not to be taken into account. By this sleight of hand, President Museveni was entitled to bid for at most two new five-year terms.

Whereas this, like the aforementioned endless constitution-making exercise, was clearly designed to squeeze out more mileage on the part of the NRM, now renamed the Movement. Ugandans, some grudgingly, accepted the arrangement as a *fait accompli*. As widely expected Museveni offered himself for election in 1996 and 2001. Ridding on the back of incumbency, the State and personal resources at his disposal, the weaknesses of the opposition, a well organised and orchestrated campaign peppered with graphic portrayal of skeletons and other grim reminders of the dark old days of tyranny and anarchy and a legal regime that was clearly tilted in favour of the incumbent and against his opponents and, to be fair, the President's personal stature and his government's achievements, Museveni sailed through in both cases with huge majorities.

It is however, important to note that in both cases, 1996 and 2001, allegations of massive rigging, unlawful campaigning and other electoral malpractices could not be brushed aside. In the case of the 2001 elections, an election petition was filed in court and heard.¹¹⁰ The Supreme Court, by a majority of three to two, found that although there were substantial irregularities and malpractices, these had not affected the results of the election in a substantial manner so as to nullify the election.

¹⁰⁹Article 105 (3) (a).

¹¹⁰*Dr. Kiiza Besigye v. Yoweri K. Museveni and the Electoral Commission*, Presidential Petition No. 1 of 2001.



4.6 The Conduct and Lessons of the 2001 Presidential Elections

The 2001 presidential election and the events surrounding it sent out important signals. Dr. Kiiza Besigye, a relative non-entity, took on the incumbent and, as it were, gave him a ride for his money, forcing the Museveni team to resort to crude methods including use the army and paramilitary organisations, bribery, manipulation of the voters' register, and other forms of outright rigging to secure an embarrassing victory.¹¹¹

In movement circles, the question then could no longer be postponed: If one needed to break the law and virtually unleash terror in order to secure a clear victory for Museveni - with his impressive record of past achievements, personal stature and influence, would the movement be able to successfully push through any less endowed candidate in 2006 even if there was the usual rigging? If victory could not be guaranteed, what was to be done?

The way this question was answered split the movement into several schools of thought. One school, championed by the likes of Eriya Kategaya, Bidandi Ssali, and Miria Matembe and, for some time, the late James Wapakhabulo and Dr. Chrispus Kiyonga maintained that the NRM should transform itself into a political party and hopefully defeat the so-called multipartists at their own game. The second school suggested that only Museveni could guarantee a victory and only then under the movement arrangement. That therefore the movement should work towards amendment of the 1995 Constitution to remove the two term limit and so pave the way for Museveni to stand for another term.

The other school of thought, which was really a sugar-coated version of the second, was that political parties should be freed from the ban they have been under since 1986. The Movement should then reconstitute itself into a "political organisation" (not "party," which term is, for some reason, an unacceptable tag, to some "movementists"). That the Constitution should then be amended to lift term limits whereupon Museveni would offer himself as the candidate for the reconstituted movement. This last version is what has now been apparently zeroed on.

In March 2003, the Movement National Conference was convened at Kyankwanzi. Formally, the questions of lifting presidential term limits was not

¹¹¹These are a matter of court record, the only question being as to whether they substantially affected the result.



even on the agenda when the meeting was called. Nevertheless the question ended up taking centre stage. According to the accounts of what transpired, the President made several proposals, of which four are important for our purpose, namely:

- (1). Opening up the political space and redefining the Movement and its position therein.
- (2). Lifting presidential term limits.
- (3). Reviewing the relationship between the executive and the legislature.
- (4). Restructuring the Judiciary.

The resolutions of the Kyankwanzi conference which were subsequently approved by the National Executive Council (NEC) of the Movement and then submitted to the Constitutional Review Commission to be considered for incorporation in the proposed amendment to the Constitution, were far reaching.

The justification given for opening political space was twofold: To accommodate donor pressure and to get rid of those who maintained that it was unacceptable to keep some people in a political system by prescription, against their will. It was asserted that the movement would be stronger without those.

The second proposal was organically linked to the first, and was the most controversial. To date, no official record of what the President said has been released to the public. But when reacting to press reports of what transpired at Kyankwanzi, Dr. Kiyonga, the National Political Commissar, and Mr. Amama Mbabazi, the Minister of Defence, quoted the president as having said:

I have been hearing people talking of a third term. This is not the correct way to put the issue. The correct way to put it is, probably, to talk of removing the limit of two consecutive year presidential terms so that the question of who leads the country depends on the popular vote, as is the case in some countries in the world.

The President was clearly only complaining about form, not the substance. He did not say the question of rifting the presidential term limits should not arise. Indeed he suggested that it was a legitimate question. All he did was to advise his supporters to be a little more sophisticated and circuitous in their approach. This circuitous approach actually disguises the not too honest motive of the proponents of the third term.



The President himself has been careful not to be categorically on the question. He has maintained, when answering questions on the matter, that the question is irrelevant. That people should concentrate on debating issues of development. Yet the only way this debate could come to a decisive end is by the President categorically stating that he will not be seeking another term. Moreover, if the question is irrelevant, why did he find it necessary to override other items on the agenda to force a debate on the issue, and why did he leave the Kyankwanzi conference before other matters were addressed?

The other proposals are also connected to the above two. The President's wish to "tame" the Judiciary has been a matter of record. In particular following a number of constitutional and other cases which were decided against the State,¹¹² and his own embarrassingly narrow victory in the *Kiiza Besigye v. Museveni* case, the President realised that so long as the Judiciary manifested an independent streak, at least once in a while, any questionable exercise of power was potentially challengeable. Mindful that the period after any extension of the presidential term of office would witness sensitive constitutional litigation, the President would clearly love to have a Judiciary he can rely on. The President has never been hesitant to express his wish to replace the current crop of judges with those who are not "anti movement," whatever that means.¹¹³

The proposal on the Legislature, too, was in the same vein - an attempt to subordinate the other arms of the State to the Executive - in clear reversal of the spirit and historical considerations behind the checks and balances regime enshrined in the 1995 Constitution.

4.7 The Essence of the Proposed Removal of Presidential Term Limits

In the meantime, the debate on whether or not the presidential term limits should be removed proceeds with a passion only we Africans seem to be capable of generating. Supporters of the indefinite term, which has been misleadingly called the third term,¹¹⁴ have made novel arguments to back up their case. These arguments, however, cannot stand the barest scrutiny.

¹¹²Especially *Paul K. Ssemogerere and Zachary Olum v. The Attorney General*, Constitution Petition No. 3 of 1999.

¹¹³Ironically almost all the current Judges of the High Court and Justices of the appellate Courts were either appointed or promoted by the incumbent president.

¹¹⁴In essence, the proposal is not to allow Museveni to stand for another term but, rather, to lift term limits altogether, in effect paving way for the possibility of a life presidency, at least theoretically.



One justification famously made by Brigadier Jim Muhwezi was that because Museveni has been such a good and selfless leader, he should be allowed to contest for another term as a bonus - a token of appreciation by a grateful nation. This argument, if it can rank as one, is absurd. Presidency is supposed to be for the purpose of service, not a gift given in gratitude to an illustrious hero. And since when did the presidency cease to be a serious business, a sacrifice, and become a retirement gift?

The President has himself in the past insisted that he is only doing a service to Ugandans by leading them and would be happier looking after his cows? How do you reward a great leader by imposing on his head a grindstone - the famous *lubengo*?

The second justification has been equally untenable. That Museveni should be allowed another term because he is still capable of doing some good. Hon. Nobert Mao calls this the *kikamulo* argument – that you must not let a leader go until you have squeezed the last drop of utility out of him.¹¹⁵ Of course even the most senile of leaders will still have some value in him/her.

The third argument, which is voiced with a lot of hedging because of its insulting nature, is that there is no immediately available alternative. That other than Museveni, no one in the Movement or the “opposition” is capable of keeping this country together. Of course this assertion is not proven. Museveni’s own presidential qualities were unknown until he became President. Not even his own village mates of Nyabushozi could trust him with the far easier task of representing them in Parliament in 1980 when he lost, hands down, to Sam Kutesa. There is no institution in this country for practicing and mastering the art of presidency. Incidentally the very same sentiments pervaded UPC, the very same UPC which twice failed to hold on to power when the supposedly gifted Obote was President.

The fourth justification is that other arms of government – the Legislature and the Judiciary have no term limits. Again this argument makes little sense. Unlike the presidency, the legislature is not a one person institution. Its decisions, resolutions and actions are group matters. If some of the members became hopelessly incompetent, senile or dangerous, the danger they pose is absorbed by the other members of the group. It is most unlikely that an individual member of parliament can pose a substantial threat to the entire nation. Likewise the decision of a single judge is subject to a system of appeals, not so with the exercise

¹¹⁵In a talk given at the monthly lawyers’ luncheon at Grand Imperial Hotel, on the 27th June, 2003.



of presidential power. Besides, even if it were wrong for parliamentarians and judicial officers to have unlimited terms, this wrong would not justify a similar wrong in respect of the presidency.

The last and most forceful argument has always been that it is undemocratic to take away from the people the power to choose who they want to govern them. That a Constitution has no business limiting the people's choice. That accordingly, the question of whether an incumbent should be returned should be left to the electorate. If this was what democracy was about, democracy would be a very unfortunate idea indeed. Fortunately, it is not.

Democracy recognises necessity for setting parameters. If the above argument was to be accepted, then you would not have retirement age provisions. You would in fact not need to have terms at all. You would let people rule until the people chase them away. You would not even set qualifications for presidency. Ultimately you would not need rules. You would let the people do whatever they wanted. The question should be whether the rule has value.

When the Constituent Assembly debated the issue of term limits, it was actually unanimous on the need for term limits. It was clear that one of the greatest problems with African politics was the tendency of those in leadership to use the advantage of incumbency to perpetuate themselves in power endlessly; to the detriment of the people they governed. By the time of the Constituent Assembly debates, a clear change had started to take root in African power politics. The primacy of the military in African politics had been greatly reduced. Whereas the armed forces still served the executive mainly as an instrument of internal repression rather than serving its normal role of protecting the sovereignty and territorial integrity of the State, they could no longer stage coups at their pleasure, install military heads of State and expect them to be given red-carpet treatment all over the world.¹¹⁶ Likewise, life presidents who had caused so much destruction were out of fashion. One after the other, nations formerly brutalised by such tyrants had embraced democracy, and in almost all cases, the historical experience taught the people to set constitutional limits to presidential terms.

It has been suggested that Britain and a few other countries do not have term limits. True, but in their history, such countries have not had to contend with incumbents who, by tilting the playing field in their favour, end up abusing term limits. No single British Prime Minister in living memory has ruled for more than

¹¹⁶See JJUUKO, Frederick W., "The State, Democracy and Constitutionalism in Africa," Volume 2 No. 1 *East African Journal of Peace and Human Rights*, 1995, p. 7.



11 years.¹¹⁷ The example of the US¹¹⁸ clearly shows that as soon as the danger of what Professor Oloka-Onyango¹¹⁹ calls *stayism* manifests itself, a real democracy reacts by imposing constitutional term limits.

4.8 Opportunities and Threats

The real fears of those who advocate removal of term limits are disguised in sophisticated arguments and concealed with typical NRM casuistry. The real fear is that the movement which has since re-baptised itself NRM is incapable of presiding over a smooth transfer of power first of all internally and secondly at the wider national level.

The movement has never been capable of practising internal democracy. Right from the bush days, Museveni has always been its Chairman/President since the death of Professor Yusuf Lule. Until it converted itself into "The Movement," NRM had never even bothered to elect its Chairman, National Political Commissar or other officials. The leadership of Museveni was always a given. As Nelson Kasfir has pointed out:

The NRM leadership paid no serious attention to its internal democratic structure, until the 1995 Constitution required, it to do so. Before 1995, the NRM had never held a national convention, never elected any of its officers and never systematically consulted its membership about its policies. It has always been a tightly organised small group with an unchallenged leader, one which made its policy decisions informally. ... The anomaly of a "movement" democracy whose leadership ruled the country, but had not been chosen democratically, was not directly confronted.¹²⁰

Indeed, the movement was more of an organisation of leaders rather than of people, since the leaders had the first and last word, and the rest of the population, who were members by legislative prescription had no say in the conduct of the movement's affairs and did not participate in electing the leaders. The arguments that have always been used to attack parties, that they are cliques of professional politicians whose primary interest is to secure positions and privilege for themselves, and who themselves do not practice the democracy they preach, apply with equal force to the movement.¹²¹ If the organisations or groups

¹¹⁷Margaret Thatcher (1979-1990) served the longest.

¹¹⁸When they imposed term limits after F.D.R. Roosevelt had overstayed his presidency till he died in office.

¹¹⁹See OLOKA-ONYANGO, "Dictatorship and Presidential Power in a Post-Kyankwanzi Uganda" (2003), unpublished.

¹²⁰KASFIR, Nelson, "Movement, Democracy, Legitimacy and Power in Uganda" op. cit., p. 73.

¹²¹MAMDANI, Mahmood, "Pluralism and the Right of Association," in MAMDANI, Mahmood and OLOKA-ONYANGO, Joseph (eds.), *Uganda, Studies in Living Conditions, Popular Movements and Constitutionalism*, op. cit., p.519 at p. 556.



from which the leaders emerge are themselves undemocratic can one expect such leaders, nurtured in autocracy, to be democratic?

The NRM/Movement approach to management bred internal dictatorship.¹²² It also stifled internal criticism whereby dissent was seen as insubordination and even as crime. Dr. Besigye, Onyango Odongo and Winnie Byanyima were, in short order, jettisoned for speaking their minds, and their contributions to the movement have since been virtually written out of the record.

So after 17 years of internal dictatorship, the Movement now finds itself in a trap of its own making. The Movement now finds itself in a situation where it has neither nurtured individuals equipped to take over power, especially the presidency, nor built institutions that can be used to execute a smooth transfer of power. Having found themselves incapable of contemplating life after Museveni, the players within the Movement are now attempting the uphill task of forcing a life presidency in this day and age. Others, of course, have a personal investment in the Museveni presidency.

The ongoing move to turn the Movement into a political organisation, as if it has hitherto not been one, it self defeating, and it only proves how little we have moved as a country since 1986. Basically the very existence of NRM and the suspension of political parties were supposed to be justified by the need to restore peace, stability and sanity whereupon normal political activity would be allowed. In other words, NRM was like the minister for privatisation who can only be said to have effectively performed his duties if he privatises all the State enterprises available for privatisation, meaning that he can only be said to have scored by rendering himself irrelevant. Likewise NRM's ultimate success would have been in creating conditions which made it unnecessary to have it. By moving back to the 1986 position, the movement has literally conceded that all along we have never moved from point A.

Meanwhile the old intolerance of dissent continues to pervade the Movement. The three Ministers who openly expressed opposition to the machinations for the lifting of term limits were promptly dropped from cabinet,¹²³ and have since been savaged by State functionaries who, as with Besigye and Byanyima, are busy writing the three out of history.

The way these dissenters some of whom were hitherto supposedly personal friends of the President have been treated is the most glaring evidence of the

¹²²See BYANYIMA; Winne, "The Bubble has Exploded on Museveni," *The Sunday Monitor* (Kampala), 1st June, 2003.

¹²³These were Eriya Kategaya, Bidandi Ssali and Miria Matembe.



extent to which the President and his hangers – on are prepared to go in pursuit of the lifting of term limits, his protestations of indifference notwithstanding. What chances then does the 1995 Constitution have for surviving this onslaught?

The 1995 Constitution contains its own safeguards against unwarranted and harmful amendments. Chapter 18 lays down special procedures for amending the Constitution. Some provisions cannot be amended, save with the support of two-thirds of all Members of Parliament at the second and third reading, following by a Referendum on the amendment. Others require the said majority followed by ratification of the amendment by two-thirds of the Members of the District Councils of at least two-thirds of the Districts of Uganda. All the other provisions can be amended with the support of a two-thirds majority on the second and third reading with no further requirement other than presidential assent.

Article 259, which lays down the provisions which can only be amended using the first approach above lists Article 105 (1) (which puts the duration of each presidential term at 5 years). It does not include Article 105(2), the one which sets the two-term limit, and neither does Article 260 which provides for the second scenario. It follows, therefore, that in accordance with Article 261, clause (2) of Article 105 is one of those provision that can be amended without hassle provided you have the support of two-third of all the Members of Parliament (not merely those present).

This number is not difficult to get, considering the composition and past voting trends of our Parliament. It should be noted that when the Constitution was amended by the Sixth Parliament in 2000, the government not only secured far more than the required votes, but was even able to persuade Parliament to suspend its own rules of procedure and pass the amendment in record time.

So if proponents of the “third term” are really determined, and they are, and if they have the support of the presidency, as they do, they could easily pass the necessary amendment unless by some unusual discovery of a conscience or by a stroke of nationalism, the majority of the members of parliament are somehow persuaded not to support such a motion.

As it were the final arbiter in this regard is going to be Parliament. Unfortunately the past record of that House and its predecessor does not give one too much hope.

The other option is to mobilise donor pressure, since our leaders seem to be more prepared to listen to donors than to their own people, for the obvious reason



that donors have the clout to enforce their will. Unfortunately, past experience shows that other than the Scandinavian countries, most of the Western powers are not terribly bothered about democracy in the third world, and have often maintained close relations with dictatorial regimes.

The other hope is to use civic pressure to shame the proponents of the “third term” to drop it, or to convince the President that no purpose is served by that pursuit. It is inconceivable how the Museveni can maintain the high regard in which he was hitherto been held, if he is to descend to the levels of the Kamuzu Bandas, Muluzis, Nujomas, Chilubas, Mugabes and others of that ilk.

It is however a sad commentary on the strength of our civil society, the reality of our sovereignty and the depth of our nationalism that the only way one can expect sense to prevail is if, like the biblical Saul, parliamentarians are converted by a bolt of light or if the donors bully us into doing what is good for us, or if the Head of State is moved by the fear of eroding his own legacy to do what is so obviously right.

When the 1995 Constitution was promulgated, it was against the background of history of a tinkering with the Constitution for short-term expediency Obote had swept aside the 1962 Constitution because it did not suit his designs. The 1967 was deliberately designed to give the President virtually unlimited power. Obote was able to exercise virtually all the powers the 1967 conferred on him. These were not enough and he was often forced to exceed the few limits set by that Constitution. All that power, however, did not prevent him from being overthrown.

The 1995 Constitution was supposed to be different. It was supposed to derive its strength from a system of checks and balances. In addition, it was supposed to stand the test of time. In 2000, it was amended merely to override the ramifications of a court decision.¹²⁴ Now we are proposed to amend the Constitution yet again, to cater for what are clearly the narrow interests of limited group of persons. In this one blow, the founders of the NRM “revolution” or what remains of them, will have wiped out an edifice that took nine years (from 1986 to 1995) to build. Worse still, they will have buried, perhaps forever, the hopes of a desperate nation.

I suggest to you that if the Constitution is amended to remove term limits, which will be one of the final stages in wiping out constitutionalism as we had started to know it. Thereafter, there will be absolutely nothing to prevent the Executive from tinkering with the laws whenever they seem to be inconvenient.

¹²⁴In *Ssemogerere and Olum v. Attorney General* (Supra).



I also suggest to you that once the Constitution is amended on such indefensible grounds, there will be no further hope for any peaceful opposition. There are many people in this country who have never accepted the prevailing state of affairs or the Museveni leadership. They have a legitimate right to harbour such sentiments and even to express them. For years, they have sat on their hands, hoping that at all costs there will be a change after 2006. If you now tell them to forget about change – forever, it is not hard to see what extremes they could easily resort to. And given a leadership which has shown that it is prepared to do literary anything to stay in power, it is equally not hard to see what the “third termists” will do to crack down on the increasingly restless opposition. The current moves designed to frustrate political succession, therefore can only breed anarchy. It looks irresponsible to me, to insist on pushing the country on a course of self-destruction after one has done so much to pull the same country out of the purgatory in which it had sunk.

4.9 Conclusion: What is to be done?

In politics as in other areas, very few things are ever as clear as the choice now before Ugandans. In 1989 when NRM extended its life, it was understandable to maintain that in the four short years it had been in power, it had hardly managed to put in place the basics for a transition. In 1995 when the Constitution laid down transitional provisions¹²⁵ and thereby perpetrated the Movement in power until such a time as the people would chose whether to return to the multiparty system or continue with the Movement system, again this was discomfoting to some people but it generally made sense. In 2001, when President Museveni, in his campaign manifesto specifically asked for a final term to complete his programmes, he was clearly within his rights.

But to seek to justify any attempts to tinker with the Constitution now to enable Museveni to remain in power for even a day beyond the present term can not be justified. It is even worse to expect the people to believe that the proponents of the lifting of presidential term limits are acting in good faith in the interest of the country. As George Orwell said, in a different context:

One has to belong to the intelligentsia to believe things like that, for no ordinary man could be such a fool.

¹²⁵In chapter 19, i.e. Article 263 – 297.



If ever there was a cause worthy of support, it is the cause of firmly resisting any attempt to frustrate political succession in accordance with the Constitution as it stands.

4.10 Postscript

Snakes, boa constrictors, lizards and other reptiles are interesting creatures. Every once in a while, they slough off their old skins and grow new ones and, by this simple process, they look young all over again. The process is called moulting. The problem, though, is that the youthfulness induced by moulting is only skin-deep. The reptile keeps growing old and finally collapses in helpless senility – its moulting antics notwithstanding. So, too, political arrangements which purport to rejuvenate their one-time greatness.

By July 2003 when this presentation was made, the Movement was in the initial stages of attempting to give itself a fresh constitutional lease of life. By then the proponents of the “third-term” project were still remarkably shy about their true intentions. They chose to hide behind abstract arguments steeped in sophistry. They invoked the sovereign power of the people. They even suggested that in fact there was nothing to show that President Museveni was interested in another term of office.

Two-and-a-half years down the road, most of this writer’s worst fears have come to be realised. Through sheer weight of numbers sustained by means of skilful application of carrots (monetary bribes, promotions and promises of office and political support) and sticks (intimidation, blackmail, threats to support rival candidates), the movement was able to ram through Parliament constitutional amendments providing for removal of presidential term limits, establishment of a multi-party system, unprecedented powers for the presidency and a structure of local government that effectively reverses the popular decentralisation of yesteryear.

As already pointed out, the National Executive Council (NEC) of the Movement had, in March 2003, been “persuaded” by President Museveni to accept a return to multi-partism, albeit for the worst of reasons. The Kyakwanzi resolutions were followed up with a *de factor* lifting of the ban on political parties, without bothering to first amend the constitutional provisions under which the ban

had been formalised in 1995.¹²⁶ NRM went ahead to register itself as a political "Organisation." Before long Kiiza Besigye's erstwhile Reform Agenda allied with the Parliamentary Advocacy Forum (PAFO) and others to form the Forum for Democratic Change (FDC) which was also registered, together with tens of other "one-man" parties which emerged out of no-where and most of which had no known membership, objectives or plans of action.

Then when the process of formation and registration of political parties was in advanced stages, the Government tabled before Parliament a motion for a resolution directing the Electoral Commission (EC) to hold a referendum to determine whether or not the no-party or movement system should give way to a multiparty system effectively putting the horse squarely behind the cart in typical Ugandan fashion.

The opposition pointed out that the exercise which was budgeted to cost over 30 billion shillings was unnecessary, considering that now that the government side, like the opposition, agreed that the political space should be opened up, there was no longer any disagreement to be put before the people. Besides, the opposition argued, Article 74 which provided for a referendum for change of the political systems, also provided for a cheaper alternative – a vote of Parliament endorsed by two-thirds majority of the members of at least one half of the district councils.¹²⁷ NRM, however, would have none of this. It invoked the "power of the people". President Museveni indeed went so far as to maintain that Parliament had no right to decide "critical national issues like whether the country should go multi-party or not."¹²⁸

The motion was put before Parliament for a vote and was defeated. The rules of parliament were then bent and the motion was reintroduced days later.¹²⁹ This time the government ensured that its supporters all attended. Parliament was bullied into rescinding its earlier decision and then voting this time to have the referendum.¹³⁰

The opposition decided to boycott the referendum¹³¹ and the boycott clearly succeeded. In the referendum which was held at the end of July 2005, only 47% of the registered voters turned up to vote and overwhelmingly voted in favour of "opening political space,"¹³² months after major parties had set up shop without waiting for the law.

¹²⁶Article 69-73 and 269 of the 1995 Constitution, The Political Parties and Organisations Act, 2002 and the Movement Act, Cap. 261.

¹²⁷See Beti Kanya Turwomwe, "The Movement has lost a moral battle", *Sunday Vision*, May 8, 2005, p. 10. See also "Referendum a hoax - Muntu" *Sunday Vision*, May 1, 2005, p. 1.

¹²⁸*The Sunday Vision*, May 1, 2005, p. 1.

¹²⁹*The Sunday Vision*, May 1, 2005, p. 10.

¹³⁰*The New Vision* (Kampala), 4th May, 2005, p. 3.

¹³¹"Parties vow to boycott the referendum" *The New Vision* (Kampala) 6th May, 2005, p. 1.

¹³²*Daily Monitor* (Kampala), 31st July, 2005, p. 1.



The interesting thing about the change to the multi-party system is not that it was introduced by the very prayers who had, for nearly twenty years, preached about the evils of the multi-party system in “backward” Africa. Their real genius lies in the way the “third-term” project came riding piggy-back on the opening of political space. The momentum and numbers which drove the former were immediately employed to deliver the latter. When the merits of holding a referendum were being debated in May 2005, the Minister of State for Justice and Constitutional Affairs had disclosed that the plan was to amend the Constitution by July.¹³³ It will be recalled that at the peak of the 2001 presidential campaigns, Museveni had forestalled Kiiza Besigye’s promise to review the Constitution, if elected, by himself immediately appointing a Constitutional Review Commission.¹³⁴ In its report, the Commission proposed far-reaching proposals. On the vexed question of presidential term limits, the Commission recommended that the issue should be put before the electorate in a referendum.

All the numerous proposed amendments¹³⁵ were initially presented in one (omnibus) bill. Academics, lawyers and the opposition pointed out that this was not acceptable because the Constitution provided different procedures for amending its different Articles. Eventually, the omnibus bill was split. The Constitution (Amendment) (No. 1) Bill 2005, which dealt with the term limits issue was presented first. The Government mobilised as never before and no expense was spared. The debate kicked off on 29th June.¹³⁶ On 28th June, the bill passed through the first reading with a vote of 232 members for and only 50 against.¹³⁷ Then on 12th July, the bill sailed through the third reading with a vote of 230 members in favour and 53 against.

It now remained for Museveni, the only possible beneficiary of the amendment, to take the obvious step, of offering himself for candidature. As already indicated, Museveni had earlier advised that the third term project should be presented as a matter of principle - to make a flexible constitution - instead of it being personalised. It had all along been clear, however, that he intended to break the promise he made in his 2001 manifesto that he was (then) seeking his last term. Over the last several years, all indications had been that he was personally and actively interested in another term. He has consigned to political oblivion

¹³³See *The New Vision*, (Kampala) 6th May, 2005, p. 3.

¹³⁴Chaired by Prof. Frederick Sempebwa, the Commission systematically gathered views for proposed changes in the Constitution and submitted its report in December, 2003. Strangely, the Cabinet, to which the Commission was to submit its report, insisted on presenting its own detailed proposals to the Commission, in effect pre-empting and compromising the commission’s work.

¹³⁵Over 126 of them, which amounted to writing a new constitution?

¹³⁶*Daily Monitor* (Kampala) 21st June, 2005, p. 1.

¹³⁷Under the 1995 Constitution, it required the support of at least two-thirds of all the members of parliament i.e. 196 members, on the first and third reading.

those of his colleagues and childhood friends who had voiced opposition to the “third-term” project. At an East African Law Society Conference at Entebbe, he openly declared that there was nobody else with a vision to lead the country. At the Kyankwanzi NEC meeting, he had found no difficulty in overriding the agenda to introduce the debate that launched the project. Throughout 2003 and 2004, there was a hardly disguised centrally orchestrated campaign to work the population to frenzied support for a third term. Every effort was made to ensure that the Ssempebwa Commission did not recommend retention of presidential term limits. Demonstrators who peacefully opposed the project were brutally dispersed with tear gas and water cannons on 28th June, 2005. More importantly, the Government and the Movement structures openly worked on parliamentarians to overwhelmingly approve the lifting of term limits. Just before the bill was introduced, pro-movement MPs were paid Ushs. 5,000,000/= each and, in return, the Bill sailed through its first reading. To ensure that those who received the payment would not “betray” the paymaster, the rules of parliament were amended to require that in voting on constitutional amendments, parliament would use “open voting” or a roll-call method.¹³⁸

Less than a week before the third reading (and final vote), Parliament passed a motion granting the MPs a fat gratuity.¹³⁹ The day after passage of the Bill, the MPs tabled a motion to increase their pay.¹⁴⁰ Then at the eve of the referendum on political systems, again pro-movement MPs were each paid up to 1,000,000/= supposedly to push for a “yes” vote, less than a week before the referendum!¹⁴¹ There is no doubt that this was the most obscenely procured piece of legislation in the history of the country.

The president has since convened the delegates conference of NRM party whereat he has been “pressurised” to stand as a presidential candidate and has “reluctantly” succumbed to the pressure and offered himself for re-election, saying that he has agreed to stand because he wants to ensure that the proposed East African Federation becomes a reality - never mind that all the other East African presidents with whom he started the federation scheme have found no difficulty in giving way.

With the foregoing, the only remaining forces that stood any chance of preventing another term of office for Museveni are the opposition parties and the

¹³⁸Incidentally the Movement, who pushed for the roll-call method as being transparent, opted not to use the same method in its primaries, a few months down the road, citing the very weaknesses those who had opposed it in parliament had pointed out.

¹³⁹*Daily Monitor* (Kampala) 9th July, 2005, p. 1.

¹⁴⁰*Daily Monitor* (Kampala) 14th July, 2005, p. 1.

¹⁴¹*Daily Monitor* (Kampala) 21st July, 2005, p. 1.



donor community. As for the former, the old parties are hopelessly in disarray, living the FDC as the only viable one.

The return of Kiiza Besigye from his South African exile in October 2005 shook President Museveni's carefully laid plans to the core. Not only was Besigye given a hero's welcome by hundreds of thousands of his supporters, but his subsequent tour of the country quickly resembled a triumphant march. Before long, the retired Colonel was hogging the headlines, and that is when the Government swung into action.

Allegations were renewed of Besigye's links with the Population Resistance Army (PRA) a shadowy rebel group supposedly operating in the Congo but whose existence is denied by its supposed commanders. It was also suggested that he was sympathetic to Joseph Kony's Lord's Resistance Army (LRA). These allegations were calculated to find favour with the West, especially USA.

So it was that in mid-November, Besigye was arrested and arraigned for treason and concealment of treason. To spice up the whole drama and possibly finish him off characterwise, a further charge of rape, allegedly committed in 1997 and reported in 2001 but carefully concealed since then, was added! The arrest of Besigye ignited riots which reduced Kampala to a war zone for two days. The riots were finally suppressed by sheer brute force. When Besigye, and others accused along with him applied for bail and it became clear that the High Court was set to grant the same, members of a hitherto unknown unit going by the chilling name of Black Mamba Urban Hit Squad stormed the High Court armed to the teeth and made to re-arrest the accused persons who instead chose to forego their bail. In the meantime, Besigye was additionally indicted before the General Military Court Martial on charges of terrorism and illegal possession of firearm, charges founded on the same facts as those in the High Court in blatant breach of basic criminal law and procedure. On the basis of these charges, he remains in jail, although he was granted "temporary bail" by the High Court.

A plethora of applications have been filed before the High Court and the Constitutional Court contesting the legality of the arrest, "double trial" and denial of liberty. It is in such an extremely tense situation that Uganda is heading for the 2006 Presidential elections.

The strong-arm of the State has left no-one in doubt that Museveni is prepared to do whatever it takes to remain in power, rendering the entire talk of transition meaningless. Indeed, little has been done to change the content and character



of the applicable laws, to assure the citizenry that any meaningful transition is afoot.

The donors, having uncritically supported the Museveni Government since the late 1980's, are at a dilemma. They cannot just cut and run, yet it is obvious that referring to Museveni as "a new breed of leader" was a bit ill-advised. The signs, however, are that the donors have come to realise that something must be done.

In July, 2005, Norway cut its aid to Uganda by about 30% (25 million NK) citing problems with political transition, human rights and the fight against corruption. Ireland and Denmark have followed suit, especially following Besigye's arrest. These measures, however, do not make a visible impact and the Museveni government has indicated that it is determined not to be swayed by these token aid cuts and unless more effective pressure is exerted, it is not likely that anything will change. As Zimbabwe's Mugabe has demonstrated, some leaders have no qualms about going down with the whole country.

In July 2003, the prediction that the successful lifting of presidential term limits would spell the demise of constitutionalism was dismissed as alarmist and unfounded. The events since the arrest of Dr. Kiiza Besigye have demonstrated that the writer was not off the mark. All indications are that the prevailing atmosphere can never enable a free and fair election. The undisguised suppression of dissenting voices, the emasculation of FDC – the only viable opposition grouping, the reckless disregard of all known rules of criminal procedure in the arrest, detention and prosecution of Dr. Besigye all paint a picture of a nation that has once again abandoned constitutionalism and the rule of law. Yet the painful lessons of history demonstrate that once such situations happen, they cannot be easily reversed. All the signs are that after the 2006 elections, things can only get worse.¹⁴² How I desperately wish my predictions and conclusions were wrong!


¹⁴²Indeed Elections were held on 23rd February, 2006 and two days later the Electoral Commission declared Yoweri Kaguta Museveni the winner with 59.28% against Besigye's 37.36%. Besigye went to court and the Supreme Court of Uganda in Rtd. Col. Dr. Kiiza Besigye v. Electoral Commission and Yoweri Kaguta Museveni (Supreme Court of Uganda, Presidential Petition No. 01 of 2006) declared Museveni to have duly elected. Interestingly, this was after all the 7 judges had conceded that the Electoral Commission had not complied with the electoral law and that the election was not free and fair. See "Besigye Rejects Verdict," *Daily Monitor* (Kampala), 7th April, 2006, p. 1; "Besigye Rules Out War," *Daily Monitor* (Kampala), 8th April, 2006, p. 1; and "FDC Reaction to Petition Dismissal," *The New Vision* (Kampala), 8th April, 2006, p. 5. See also KALINAKI, Daniel, "Besigye vs Museveni: Uganda Awaits Verdict – At Stake for Museveni it is Important that the Court Upholds his Narrow Victory," *The East African* (Nairobi) 3rd – 9th April, 2006, p. 1; "Resign, FDC Tells EC," *The New Vision* (Kampala), 11th April, 2006, p. 5; and ROSS, Will, "Hammering Home: Museveni's Victory in Uganda's Election," Volume 17 No. 2 *BBC Focus on Africa*, April – June, 2006, p. 26..



CHAPTER FIVE

Political Parties in Transitions: The Kenyan Experience

Prof. Dr. Makau Mutua



... political parties, as the sole organs that rule the State, must understand, advance, and defend the country's national interests. Although political parties will differ in ideology and philosophy, they nevertheless must espouse and abide by core national interests. It is important to note that the national interests of many States are permanent. As a result, political parties in many States have a certain non-negotiable minimum core of values to which they adhere.

Makau Mutua

5.1 Democracy and the Liberal State

I know that there are still competing visions of the type of political State that East Africans seek, and want to realize. There was a time, in my youth, when we modelled various State forms, and the possibilities seemed endless. As I recall, there were even serious political discourses about the viability of the Marxist State in East Africa. Well, I am afraid those discourses are now a faint echo in the historical distance. I am not here to pronounce the death of a more radical East African State, but I want to underscore the political realities of our time. Excavations of the political histories of the key three East African States – and others beyond the region – demonstrate beyond the shadow of a doubt an emerging consensus among political elites. Not surprisingly, that consensus concentrates on the possibilities of constructing a liberal democratic State.



Political democracy, as understood in its rudimentary forms, calls for a State bounded by law and the ethos of constitutionalism.¹⁴³ In its bare bones, constitutionalism refers to the typology of State that broadly carries the following features, to a greater or lesser degree. The first of these is the notion of popular sovereignty in which the Constitution guarantees the accountability of the State to the populace through a series of techniques and institutions, the key and most important one being the requirement of open, contested, periodic, and genuine elections in a multi-party system. This is the fundamental facet of a liberal State. Secondly, the notion of constitutionalism, consistent with the liberal tradition, requires that the Constitution control and limit the powers of the government in a number of ways, including the system of checks and balances through the separation of powers doctrine that must include an independent judiciary.¹⁴⁴

In the liberal State, therefore, the judiciary becomes the guardian of the rule of law, and makes sure that the State, the government operates within the confines of the established legal frameworks, and according to agreed processes. This is only made possible through the principle of judicial review in which the judiciary enjoys virtually unfettered power to pronounce on the legality and constitutionality of government action. In return, the judiciary itself cultivates among its officers a culture of judicial restraint so that it does not overstep its authority and invite debilitating conflict with either the legislature or the executive. Underlying these structures and norms are several essential characteristics of the liberal tradition. Liberalism is distinguished from other traditions by its commitment to formal autonomy and abstract equality.

In its contemporary expression, liberalism requires a constitutional State with limited powers, a State that is moreover accountable to the broad public. These aspirations are the basis for the development and elaboration of liberal democracy and, as I have contended elsewhere, the construction and universalisation of the jurisprudence of human rights. In the historical continuum, therefore, liberalism gave birth to democracy, which, in turn, now seeks to present itself internationally as the ideology of human rights. It is therefore useful to briefly explore the relationships that exist between and among these concepts of liberalism, political democracy, and human rights.

¹⁴³HUNTINGTON, Samuel, *The Third Wave: Democratization in the Late Twentieth Century*, Norman: OK: University of Oklahoma Press, 1991, pp. 6-8.

¹⁴⁴STEINER, Henry J. and Philip Alston, *International Human Rights in Context: Law, Politics, Morals*, Oxford: Oxford University Press, 1996, pp. 710-725.

While many definitions of Western liberal democracy abound, the most dominant casts it in other than substantive terms. Samuel Huntington, for example, emphasizes the Schumpeterian tradition,¹⁴⁵ defining democracy in purely procedural language.¹⁴⁶ For Huntington, the democratic method involves two basic dimensions: contestation and participation, where the “most powerful collective decision-makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote.”¹⁴⁷ Participation and contestation, according to Huntington, also imply certain civil and political freedoms that are necessary to free and fair elections, namely, the right to speak, publish, assemble, and organise.¹⁴⁸

Significantly, Huntington does not believe that a system is democratic to the extent that it denies “voting participation” to segments of its population on the basis, for instance, of race or gender.¹⁴⁹ By this logic, the United States of America was not a democracy until it allowed its population of African ancestry the right to vote.¹⁵⁰ Likewise, South Africa was undemocratic until it granted its black African majority the right to vote in 1994. Many European countries, such as Switzerland, were undemocratic until they granted women the right to vote, and the same was true for the United States until 1920. The norm of non-discrimination is here extended to political participation. The formal right to vote is clearly in itself an insufficient measure of democracy because quite often it has masked other hindrances to political participation such as institutional biases and barriers based on race, gender, religion, social status, and wealth. Nevertheless, the political scientist Robert Dahl has argued that elections are the critical element in the definition of democracy and the central device for ordinary citizens to exert a high degree of control over their leaders.¹⁵¹

The minimalist definition of democracy does not betray traditional or conventional conceptions of liberalism; rather, it responds to liberalism’s basic commitment to guarantee citizens their formal autonomy and political and legal equality. Thus, as Henry Steiner puts it, the traditional liberal understanding of the State requires that it “protects citizens in their political organisations and

¹⁴⁵See SCHUMPETER, J., *Capitalism, Socialism and Democracy* (3rd ed.), New York: Harper, 1950.

¹⁴⁶HUNTINGTON, *The Third Wave: Democratisation in the Late Twentieth Century*, op. cit. at p. 6.

¹⁴⁷*Id.*, at 7.

¹⁴⁸*Id.*

¹⁴⁹*Id.*

¹⁵⁰The Fifteenth Amendment to the US Constitution prohibited the denial of the right to vote on the basis of race, but many States in the South enacted laws to subvert it. See GUNTHER, G., *Individual Rights in Constitutional Law*, Mineola, NY: Foundation Press, 1992, at pp. 625-631.

¹⁵¹DAHL, Robert R., *A Preface to Democratic Theory*, Chicago: University of Chicago Press, 1956, at 125.



activities" guaranteeing autonomy and legal equality, but does not require that it remove impediments to actual equality which may result from lack of resources and status.¹⁵²

In reality, of course, participation in the political process requires more than the State's permission and protection. Increasingly, States not only provide these two services but also expend enormous resources constructing the electoral machinery for participation; legislative reforms in many democracies now attempt to address not only the historical, socioeconomic, but the ethnic, racial, and gender-related barriers to participation as well. Such interpretations of political democracy have attempted to build into their frameworks notions of social or economic democracy. In human rights law, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 most closely resembles this aspiration. The main focus of human rights law, however, has been on those rights and programs that seek to strengthen, legitimise, and export political or liberal democracy.¹⁵³

A review of the political histories of the three East African States indicates that the more progressive elites are inspired by the ideals of political democracy, even if they have not been able to successfully realise those ideals. But the weight of the evidence suggests that by and large East African elites are rhetorically committed to the construction of States where political parties openly contest for power within the rubric of the liberal State. This is so even if political parties Africa, and in Kenya and Uganda in particular, do not seem to be driven by political ideologies and economic and social philosophies. Tanzanian political parties seem more mature in this respect – *Chama Cha Mapinduzi* (CCM) has long been an ideologically driven political party. Opposition parties, including the Civic United Front (CUF) in Zanzibar, as well other opposition parties on the Mainland, appear to be grounded in ideas, and not personalities, unlike their Kenyan and Ugandan counterparts. Nevertheless, political parties in East Africa are seen as a vanguard for political reform in the process of the reclamation of the illiberal, one-party, authoritarian, or opaque State that for long has dominated the landscape in East Africa.

¹⁵²STEINER, Henry J., "Political Participation as a Human Right," Volume I *Harvard Human Rights Yearbook*, 1988, p. 77 at 109.

¹⁵³International Covenant on Economic, Social and Cultural Rights, United Nations General Assembly Resolution 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), entered into force 3rd January, 1976.



5.2 Political Parties in the Kenyan Transition

Political parties are the central formations in the governance of any modern democratic State. Democracy in any modern State is, in fact, inconceivable without open electoral competition for power by a multiplicity of political parties. But the phenomenon of political parties cannot be treated as a matter of *laissez faire* in which every factional interest or individual is permitted by law to found a political party. The political landscape of a country is not a garbage yard, an empty receptacle that by law must accept every political party that seeks to capture State power. Many East African States, including Kenya, lack a progressive – or even a clear and unambiguous – political party's law that would set strict and fair criteria to govern political parties.

The culture of political parties in any country is directly related to the purposes for the existence of the State. But the State exists for reasons that should be determined by the national interests of that State. Unfortunately, public discourse in Kenya has been rather unimaginative on this vital question. Instead, the public mind was for a long time consumed by whether Kenya African National Union (KANU) would even allow other political parties to be recognised by law. Or, rather, whether KANU itself would brook any *de jure* political competition. Predictably, once the floodgates of multipartyism were flung open in 1992, Kenyans hungrily registered every political party they could fathom. It is now more than a decade later, and the thirst for multipartyism has been quenched. The climate is now right, I believe, for Kenyans to openly debate the role of political parties, and what standards ought to govern them.

The national interests of Kenya must inform any debate on political parties. But what are Kenya's national interests? One of the unforgivable failures of the vanquished Moi-KANU regime was its inability to forge a common Kenyan national psyche, an irreversible identity; the anvil on which national interests could have been defined. Instead, KANU spent most of its forty years in power plundering the State and perfecting the Republic of Fear.¹⁵⁴ Power, and retaining it, seemed to be the only reason for the existence of the Moi Kenyan State. This is a calculus that the currently ruling National Rainbow Coalition (NARC) claims that it wants to change.¹⁵⁵ However, NARC's performance on this score has been equally dismal. To the dismay not only of Kenyans – but the region and the world – NARC has blatantly squandered virtually every opportunity at reform.

¹⁵⁴WIDNER, Jennifer, *The Rise of the Party State in Kenya: From Harambee to Nyayo*, 1992.

¹⁵⁵The National Rainbow Coalition, Kenya's ruling party, is not a party in the traditional sense of the word. Rather, it is a coalition political parties that formed a single legal entity to oppose KANU in 2002.



Kenya's national interests are both internal and external, with a clear link between the two dimensions. Internally, the Kenyan State must constitute itself to cultivate democracy, the rule of law, respect for human rights, and economic development. Externally, Kenya must pursue these same principles in its relations with other powers. Thus Kenya's national interests ought to be the creation of a free, democratic, and prosperous State, a country that supports the same endeavours in other States and regional and international organisations.

This means that Kenyan political parties, as the sole organs that rule the State, must understand, advance, and defend the country's national interests. Although political parties will differ in ideology and philosophy, they nevertheless must espouse and abide by these core national interests. It is important to note that the national interests of many States are permanent. As a result, political parties in many States have a certain non-negotiable minimum core of values to which they adhere. In the United States, for example, both the Republican and Democratic Parties share an ironclad commitment to the military and economic supremacy of America in the world. Similarly, political parties in Kenya ought to be guided by an irreducible, incontestable core of national values and interests.

Kenyans are now debating the process of deciding whether to adopt the Proposed New Constitution, a draft constitution that was agreed upon by the Parliament by revising the Bomas Draft, the document that was adopted by the National Constitutional Conference in March 2004.¹⁵⁶ Although the Proposed Constitution is deeply contested, both camps in the debate have argued that they are driven by the need to give the country a modern, democratic, and long-lasting document. The Fate of the Proposed Constitution will be known on November 21, 2005 when the national referendum will decide its fate. If passed by a simple majority, President Mwai Kibaki will be promulgate it; otherwise its defeat will keep alive the current constitution. Whatever the case, the final document that Kenyans agree upon should clearly define, articulate, and encode the country's national interests. This is a unique and lifetime opportunity for the nation to identify the principles on which it must stand, and the national interests that it must advance and protect. Everything in the Constitution – from the Bill of Rights to the demarcation of powers among the three arms of government – should be geared towards creating the national consensus on what Kenya ought to be. The constitution-making process should be the forum where Kenya clarifies its national interests.

¹⁵⁶On 15th March, 2004, the National Constitutional Conference adopted the Draft Constitution of Kenya 2004. See *Daily Nation* (Nairobi), 16th March, 2004.



I concede that the regulation and vetting of political parties is a loaded dice. A dictatorial government could obviously abuse such powers to deny political space to its opponents. But then a dictatorial government could use any pretext to stifle opponents and hold on to power. So the risk of abuse should not dictate whether or not political parties ought to be regulated. In any case, current laws do just that. The question is not whether political parties will be regulated, but how it should be done. The current regulatory framework assumes that political parties exist in a void, a vacuous space in which only the most expedient State intrusions are permitted. That ought not be the case. Political parties are national vehicles with which the nation entrusts State power. They ought to be placed under rational and fair scrutiny to make sure that they are accountable, transparent, democratic, inclusive, and broad-based.

Sections of both the Bomas Draft Constitution and the Proposed New Constitution attempt to rise to this challenge.¹⁵⁷ These sections are meant to provide a legal framework in which political parties do not simply orbit in space, answerable only to the whims of their masters and apparatchiks. Kenya's political parties have hitherto been individual driven, and the domain of wealthy or politically powerful individuals. KANU set the pace for the rogue party leader, the singular individual around whom the minions danced themselves into an irrational and sycophantic frenzy. As such, political parties were turned into havens for personal, and not national, interests. Whether it was the late Jomo Kenyatta or Daniel arap Moi in KANU, Kenneth Matiba in Ford Asili, or Charity Ngilu in NPK, Simeon Nyachae in Ford-People, or Raila Odinga in the Liberal Democratic Party (LDP), the party leader wielded absolute power. Until NARC, all political parties in Kenya were the exclusive preserve of the party leader.

Among other things, the Bomas Draft Constitution and the Proposed Constitution provide for the public funding of political parties and in turn requires them to adopt particular ideological and structural forms.¹⁵⁸ But we need to go further. Political parties must be required to be internally democratic and fully transparent. They must hold regular, periodic, and supervised elections. They must be inclusive, national, and gender sensitive. One third of candidates for each party in general, parliamentary, and civic elections must, for example, be women. At least one third of all party positions must be held by women. The party

¹⁵⁷Chapter 10, Part III, Bomas Draft Constitution of 2004; Chapter 10, Part III, Proposed New Constitution.

¹⁵⁸Section 113, Bomas Draft Constitution; Sections 112-113, Proposed New Constitution.



manifesto – and its practice - must without equivocation support democracy, the rule of law, human rights, and equal opportunity for all. No regional or ethnic political parties should be registered. Under such rules, for example, it is highly unlikely that Simeon Nyachae's Ford-People or even Musikari Kombo's Ford-Kenya, parties that have their respective bases among the Kisii and Luhya peoples, would be granted registration. Both are regional and tribal. But the same applies to Kibaki's Democratic Party or Charity Ngilu's National Party of Kenya.

The defeat of KANU in the December 2002 elections gave Kenyans the first genuine opportunity in forty years to create a democratic State. But the transition to democracy has virtually come to naught partly because Kenya has not set high standards for its political parties. As matters stand now, not even NARC could meet the criteria for democracy, gender sensitivity, and a clear adherence to Kenya's national interests. But NARC had a great opportunity to lead by example. Regrettably, it failed to get its house in order by holding free, open, and fair elections. Such an election would have settled the squabbles within NARC and made the self-picked Summit, or the courtiers around President Kibaki, the irrelevances they ought to have been.

In defining its national interests, Kenyans must require all political parties to believe in Kenya as an idea, and all Kenyans as one people. No party can be allowed to peddle hateful, tribal, or regional exclusivism and ethnic exceptionalism. All political parties must preach that Kenya and all parts of it belong to all those who live in Kenya. Nor can political parties be allowed to protect perpetrators of gross human rights abuses and abominable economic crimes. I make this point in earnest because KANU, the largest opposition political party, is only interested in stopping the anti-corruption campaign, an investigation of past atrocities, and the quest for democracy. As a party, KANU has never met a perpetrator of past abuses it did not like, or a former despot it did not seek to protect. Unfortunately, both wings of NARC – the LDP and the National Party of Kenya (NAK) – have lost its distinction from KANU on this score.

That is why Kenya needs a political party's law to elaborate on the provisions of any future democratic constitution, and to bring political parties in line with the country's national interests. Kenya can only emerge from the backwaters of the community of nations if redefines and recreates itself as a modern, democratic State. Cleaning up its political parties and banning those that do not reflect its national interests is the first step in this process.



5.3 NARC and the Politics of Reform

As is well known, NARC came to power in a wave of unprecedented popularity and goodwill. Its reformist platform sought to clean up government, fight corruption, correct past abuses through devices such as the Truth Commission, and reform the bureaucracy. Almost three years later, however, NARC's popularity has plummeted and the government once again disillusioned Kenyans. Clearly, internal squabbles within NARC have squandered the public goodwill, as have the reorganisation of the KANU networks of looters, thieves, and perpetrators of human rights abuses.

It is abundantly clear that NARC's reform agenda has tanked. First, yesteryear's thieves and murderers have regrouped and reorganised. They succeeded in painting NARC's anti-corruption campaign, the quest for a Truth Commission, and the reform of the country's institutions as a witch-hunt against KANU and its officials in the fallen regime. They play the victim and turn the concept on its head. No one in the former regime, from Daniel arap Moi, the former Head of State, to the corrupt underlings of the KANU regime can be investigated without KANU, crying murder.¹⁵⁹ Shockingly, NARC now agrees with KANU that past atrocities should not be investigated. This is the logical outcome because NARC itself is embroiled in its own scandals, such as the Anglo-Leasing scams that involved the looting of the treasury by NARC through fictitious deals. If there was any doubt, NARC hounded John Githongo, its anti-corruption czar from office in February 2005 when it became clear that he knew too much about its corrupt deals. Mr. Githongo fled to the United Kingdom, fearing for his life.

Secondly, NARC suffered from a deadly, if not incurable, infection. It was a coalition of one-time democratic reformers, most of them from NAK, and former KANU diehards, many of them from the breakaway Rainbow Alliance. Although the heart and soul of the LDP is the NDP, virtually all of its significant leaders, save for Raila Odinga, are bona fide KANU refugees within NARC. These include Kalonzo Musyoka, George Saitoti, and Joseph Kamotho. Moody Awori, the Vice-President, was never a rabid KANU stalwart, even though he, too, dialled NARC's number from the Rainbow Alliance.

It is my argument that NARC, the coalition, is a diseased body that cannot be salvaged. Once a Janus-faced creature, part monster and part human, it is now

¹⁵⁹An example is the Commission of Inquiry into the *Goldenberg Affair* in which suspected perpetrators in the Moi regime claim a witch-hunt.



all monster. Its monster, conservative face that resided in its KANU membership has swamped its once upon a time human, progressive face that was composed of democratic reformers, many of them from NAK. The monster face of NARC found allies in NAK, and terminated the reform of the Kenyan State. Kenyans will never understand the metamorphosis of NARC and the failure of the reform agenda unless they grasp this fundamental contradiction.

For all practical purposes, NARC has imploded – it is time to write its eulogy. But what is NARC's genetic fingerprint? The corrupt, inept, business-as-usual culture of KANU, and not the reformist, democratic, now define it and progressive ethos for which Kenyans voted. The conservatives won and took over NARC. President Mwai Kibaki openly aligned himself with the looters and rejected the advice of reformers. Ironically, KANU has been reborn as NARC.

Thirdly, reforms have run into heavy weather because of the troubled marriage between NAK and LDP. As the country's knows, the standoff comes from Odinga's insistence that he is entitled to a share of executive power because of that infamous Memorandum of Understanding (MOU). But NAK, like a Russian, has said nyet! Political analysts agree that whatever the merits or demerits of Odinga's claims, President Kibaki will not relinquish executive power to a competing individual. But he is not opposed to devolving executive authority to, or sharing it with, Parliament.

In the event, Odinga became restless and entered to a marriage with KANU in which he essentially brought New KANU back together again. In the referendum campaign over the Proposed Constitution – which provides for a presidential system with a weak Prime Minister – Odinga heads the No campaign. The No or Orange campaign brings together KANU and LDP, the two factions that formed New KANU before Odinga ditched it prior to the 2002 elections. As is well known, Odinga scored a victory at Bomas when the delegates passed the Draft Constitution that he favoured. But this brinkmanship did not work. The Kibaki NAK faction stifled the Bomas and then amended it to provide for a ceremonial Prime Minister. Kibaki now heads the Yes faction in the referendum campaigns on the Proposed Constitution. Odinga, whose life has been a struggle against State despotism, and for which he has been horribly persecuted, should not have repudiated his history by getting into bed with KANU to stop NARC's reform agenda. Nor should he have permitted his quest for power to squander the transition to democracy.



I have some advice for Raila Odinga. He may have been betrayed by NAK but that, as they say, is water under the bridge. Great leaders rise at times of severe difficulty in the life of a nation. This is one such moment in the life of the Kenyan nation. The struggle for power within NARC – defined by the bitter campaigns over the referendum on the Proposed Constitution -- could very easily plunge Kenya into chaos and bloodletting. This is a probability that all protagonists within NARC must avoid at all cost. Rather than force an agreement that will not be accepted, and possibly tear the country apart in the process, both Kibaki and Odinga should abandon their narrow interests and allow the drafting of a democratic constitution for the country.

I do not think that Kenyans should take sides for or against the Proposed Constitution. It is a divisive document and no one will really win no matter the outcome. The proper course would have been for Kenyans to boycott the vote and force the political actors back to their senses. Perhaps only international mediators can save the country. I say this because the success of the constitutional review process depends on an inclusive, consultative approach, not a divisive zero-sum strategy that the referendum requires. What Odinga, President Kibaki, and others in this conflict must realise is that the country is larger than any one of them. Kenya will outlive all of them. This realisation ought to humble and bring them together to work for the common good of all Kenyans.

Alternatively, Odinga could formally sever LDP from NARC if he is so piqued that he cannot work with President Kibaki and NAK. This may save the country from possible chaos. It may even be a blessing in disguise for Kenya's experiment with democracy. Kenya would then have three large political parties – LDP, NAK, and KANU – and one small party, Ford-People. History shows that successful democracies usually have several strong, coherent, and ideologically different political parties. That is one option I would seriously consider if I were Odinga. I could leave NARC with my crew in tow.

But assuming that NARC remains one, I urge it to read the signs of the times. Kenyans are no longer afraid of the State, and will not be intimidated. Nor will the Kenyan press be returned to the evil KANU days of the past when reporters were arrested, beaten, and persecuted for doing their job. There is no room for such despotic tactics in a post-dictator State like Kenya. Divorce and disconnection of a State from the citizenry is the perfect recipe for dictatorship. Americans like to awaken their politicians with the phrase, "it's the economy, stupid." I have a feeling that for Kenyans, "it's reforms, stupid." Political power must be used for



political purposes. NARC must learn to lead, and to do so from the front. It must lead in the reform and the recreation of the State or get out of the way

5.4 Whither Political Parties: Transitions in East Africa

Political parties in East Africa have a chequered, if uneven, history. For Kenya, KANU crowded all political space for the last 40 years in which it had been in power. Although multiparty was re-introduced in 1992, in practice the Kenyan State continued, until 2002, to be ruled as a one-party State. But since 2002, the culture of political parties in Kenya has received shock treatment. Of the major political parties – NARC, KANU, and Ford-People – only the Ford-People are still in the grip of an individual leader. The other two are in the process of internal transformation. What is happening to the political parties is closely related to the transition of the country from an undemocratic and abusive past to a more open society. NARC will probably formally split after the referendum on the Proposed Constitution.

Uganda is in a slightly different position because of the ban on independent political party activity by President Yoweri Museveni. Of the three East African States, Uganda's political parties are the least prepared to participate in transition politics because of the long imposed suspension. But the Uganda Peoples Congress (UPC) and the Democratic Party (DP) wait in the wings to actively re-enter politics once the ban is lifted. There is little doubt that these parties in a post-Museveni State will determine the future of Uganda. Only time will tell whether the sectarian and ethnic divisions that have dogged them since independence will again hamstring Uganda.

In Tanzania, where political party activity has for more than a decade been open, opposition political parties have failed to cut into the dominance of CCM, the only party that has ruled Tanzania. Emergent parties have not replicated the strong structures and ideological cohesion of CCM, and as such grassroots support for them has been difficult to cultivate. But a strong democratic culture is in the making, and Tanzania seems to be creating a solid balance between the open society and the interests of opposition parties. The one exception continues to be in Zanzibar where free political activity has been restricted by CCM.¹⁶⁰

¹⁶⁰For a discussion on human and political rights in Tanzania, see PETER, Chris Maina, *Human Rights in Tanzania: Selected Cases and Materials*, Cologne, Germany: Rüdiger Köppe Verlag, 1997.



The lessons to be drawn from the Kenyan experience are several and include the observation that political parties in East Africa are generally fragile, lack a national outlook, are not driven by clearly differing ideologies in the context of the same State, and woefully lack a viable resource base. But in general, even with these debilitating factors, political parties seem to be committed, at least rhetorically, to the creation of liberal democratic, open market States. This orientation represents the consensus of elites in the region. The problem has been the inability of the elites to translate these aspirations into reality because of the countervailing interests entrenched in corruption, ethnic politics, narrow personal agendas, and underdeveloped economies.



CHAPTER SIX



Political Succession in Zanzibar¹⁶¹

Prof. Haroub Othman

Zanzibar has no common pattern of political succession. Each President presents a unique example ... Jumbe became a President because of an intervention of an individual who happened to command great influence throughout the United Republic; Mwinyi was considered as an 'accident of circumstances'; Wakil was a 'stop gap' measure; and Karume Junior is perceived as an 'imposition' from the Mainland. It is only Salmin's succession which resembles a pattern that is found in some other countries.

Prof. Haroub Othman

6.1 Introduction

Zanzibaris will go to the polls in 2005 to elect a President, members of the House of Representatives and councillors in district and municipal councils. These will not be the first elections in the islands. In fact Zanzibaris were the first ones in East, Central and Southern Africa to have had Common Roll elections, in 1957. But the coming elections are likely to affect the political landscape more radically than any other elections of the past.

6.2 The Road to Independence

Zanzibar's road to independence was a bumpy one. The two pre-revolution major political parties in Zanzibar, namely the *Afro-Shirazi Party* (ASP) and the *Zanzibar Nationalist Party* (ZNP) had almost even support. In the 1957 elections,

¹⁶¹This paper was prepared for Research and Education for Democracy in Tanzania (REDET) Programme of the Department of Political Science and Public Administration of the University of Dar es Salaam. It was presented at the 14th Meeting of the Review and Monitoring Committee (RMC) held at the University of Dar es Salaam's Council Chamber on 5th December, 2003.



ASP stormed through, winning five out of six seats in the Legislative Council; but in the subsequent elections of January and June 1961 and July 1963, the party maintained the lead in the number of votes it captured, but was unable to translate that into a majority of seats in the Legislative Council.

After the 1957 elections, Zanzibar was never the same again. Passions ran high, and politics infected every family. The Report of the Senior Commissioner in 1958 stated:

Funerals and religious ceremonies were boycotted by rival political parties! Women even pawned their clothing in order to raise the bus fare to political meetings. Such was the immediate result of the first common roll elections for these formerly peaceful islands.... By this time the two rival parties had inculcated among their supporters an astonishing degree of bitterness towards each other.

A Constitutional Commissioner was appointed in 1960 that made far-reaching constitutional proposals. These included the introduction of a Ministerial system in which the leader with a majority of elected seats in the legislature was to become the Chief Minister; the legislature to have an elected majority of twenty-two seats; the demarcation of constituencies; and, not only the enfranchisement of women but also the relaxation of the property and educational conditions for men.

Elections were held in January 1961. ASP wanted to ensure a repeat of the victory it had scored in 1957, and to show that despite the breakaway of Mohamed Shamte, Ameer Tajo and Ali Shariff Mussa in 1959, and the formation of the *Zanzibar and Pemba People's Party* (ZPPP), it still retained massive support in the islands. ZNP, on the other hand, wanted to recover the ground it had lost, and to convince everybody that it was truly the non-racial organisation it claimed to be.

The islands were divided into 22 constituencies, 13 in Zanzibar's main island, Unguja, and 9 in Pemba. Almost all those eligible voted. ASP won 10 seats, ZNP 9 and ZPPP 3. It was obvious that the ZPPP was in a quite enviable position, with each of the other parties courting it as a coalition partner. But the ZPPP itself became divided, with one of its members, namely Ali Sharif Mussa, joining the ASP, and the other two allying with the ZNP. Thus a stalemate ensued, and new elections had to be called.

There was criticism at the time over the way the British local authorities handled the election results. ASP had not only the majority of seats, but of votes too. ASP felt that the British Resident should have called on its leader, Abeid Karume, to form a government and have him appointed Chief Minister. That government



would have had the necessary working majority since three *ex-officio* members (the Civil Secretary, the Attorney-General and the Financial Secretary) sitting in the Legislative Council were supposed to always vote with the government. But the argument made by the British authorities at the time was that a party had to have a working majority of its own without depending on the *ex-officio* members. Instead, new elections were planned for June 1961, and the Chief Secretary acted as Chief Minister for the next six months.

The January 1961 elections were a turning point in Zanzibar's political and constitutional history. They convinced the ASP and many others that the British were determined not to see the ASP in power. Before the new elections were held in June, a new constituency was created in Pemba, the idea being to prevent another stalemate. But the ASP had not enjoyed much support in Pemba, and therefore the addition of a new constituency there could only work against its favour. The ZNP and ZPPP contested the elections as coalition partners. The result was that the ASP not only retained its 10 seats but increased its majority by almost 10,000 votes; the ZNP won 10 seats as well, one seat more than in the January elections, though its total vote was reduced by almost 1000 votes; and the ZPPP retained its 3 seats with its total vote reduced by almost 3000. Thus the ASP failed to translate its majority of votes into a majority of seats.

The elections were disrupted by explosive riots which resulted in 68 deaths, 400 injured and 1000 arrests. These were not the first riots in Zanzibar: the islands had previously experienced riots in 1928, 1936 and 1951. Certainly the June riots were an indication of what was to come: the 1964 Zanzibar Revolution. Violence was being accepted as a way of solving political conflict.

A constitutional conference was held in London between 19th March and 6th April, 1962, attended by all political parties with representation in the Legislative Council, and chaired by the Colonial Secretary. While all the parties "reaffirmed their loyalty to the Sultan and the throne and their desire that the dynasty should continue", they had divergent views on the programme of taking Zanzibar into internal self-government and independence. On 24th January 1963 Zanzibar became an internally self-governing territory, and in July 1963 new elections were held. It was clearly understood that these were to be the last elections before independence, and that the government that was to be formed would lead the country to independence.

The elections were for a legislature of 31 members. The ZNP/ZPPP Alliance won 18 seats, and the ASP 13. As in previous elections, the ASP won the majority of



votes cast but not the majority of seats. While the ZNP had a fall in the percentage of votes cast from 35% in 1961 to 29.8% in 1963, the ASP increased its share of votes from 49.9% in 1961 to 54.3% in 1963. The ZPPP also gained an increase from 13.7% in 1961 to 15.9% in 1963.

6.3 Succession in the Sultanate

Zanzibar was made a British protectorate on 14th June, 1890, and thus started the British colonisation of the islands which ended seventy-three years later, on 10th December, 1963. There has been debate in the literature as to whether between 1890, when Zanzibar became a British protectorate, and 1963, the year of independence from Britain; there was dual power in the islands. But it is obvious that the British dismantled the Sultan's state and imposed their own. By the 1930's there were no traits of the Sultan's State.

One of the manifestations of British power was their mandate of deciding who would succeed to the throne in Zanzibar. Since Seyyid Said ascended to the throne in 1832, succession had been through his brothers. When this line of succession ended in 1893, and Seyyid Khalid wanted to get to the throne, the British stopped him and instead put forward their own nominee. In 1896 another opportunity arose, and Seyyid Khalid tried again, this time by force. The British gave him an ultimatum to step down or else they would bombard the palace. He refused, and *Beit el Ajaib* (the House of Wonders) was bombarded. The 'Pretender to the Throne' was captured and exiled to the Seychelles. Only Seyyid Khalifa bin Haroub, who ascended to the throne in 1911, was succeeded by his son; and when the latter died, by his grandson.

The Independence Constitution of 1963 made the Sultan a constitutional monarch and Head of State and gave him certain powers, including the power to nominate his successor. But barely a month into independence, the country experienced a revolution which not only overthrew the ZNP/ZPPP Alliance government, but immediately abolished the monarchy. With the establishment of a republic and a new coalition of classes in power, a radical change of circumstances occurred. A Revolutionary Council of 30 members was instituted with Sheikh Abeid Karume as its chairman and President of the new republic.



6.4 The Revolutionary Succession

The first action of the revolutionary government was to abrogate the Independence Constitution of 1963 and proclaim a 'Constitutional Decree' that provided for "constitutional government and the rule of law". Section 2 of the Decree stated:

The People's Republic of Zanzibar is a democratic state dedicated to the rule of law. The President, as the Head of State, validates legislation by his assent. As an interim measure, legislative power resides in the Revolutionary Council and is exercised on its own behalf and in accordance with its laws by the President. The principal executive power is exercised on behalf of the Revolutionary Council and with its advice by the Cabinet of Ministers individually and collectively; the principal judicial power is exercised on behalf of the Revolutionary Council by the courts, which shall be with law and public policy.¹⁶²

The Revolution set as its objective:

... to transform Zanzibar into a wholly egalitarian society ... (and) undertook measures to bring about a fairer distribution of the arable land. (It) also sought to eliminate from Zanzibar all symbolic vestiges of racial clubs and organisations and sought to infuse the society with radical socialist ethos stressing class and national solidarity rather than race.¹⁶³

Zanzibar at the time of its revolution was an evenly divided society. If the revolution had pursued in earnest the objectives set in the '*Zanzibar Declaration*' of 8th March, 1964, the country would have been quickly united. But within a short period the revolution had exhausted its potential, and after eliminating its 'opponents' started to devour its own sons. The crimes that have been committed in the name of the revolution are legion.

Zanzibaris differ in their opinions of the reasons for the assassination on 7th April, 1972 of the first President, Sheikh Abeid Karume. The government believed that it was an attempt at overthrowing the regime; but many felt that it was a revenge killing - an Army officer whose father was killed by the Karume government, revenged by assassinating Karume himself. Karume's death created a vacuum, and since the country had no constitution setting out how succession would take place in case of the death of a President, the doors were open to any idea.

¹⁶²REVOLUTIONARY GOVERNMENT OF ZANZIBAR, *Constitutional Decree*, Decree No. 5 of 1964.

¹⁶³LOFCHIE, Michael F., *Zanzibar: Background to the Revolution*, Princeton: Princeton University Press, 1965.



The most powerful person in the Revolutionary Council after Abeid Karume was Col. Seif Bakari. He was an army officer and chief of the security services in Zanzibar. In fact he was considered by many to be the 'heir apparent'. Within the Revolutionary Council there was a 'Committee of 14' consisting of people who were said to have planned and executed the Revolution. Col. Bakari was the recognised head of the 'Committee of 14'. Thus, if it were left to the Revolutionary Council to decide who was to succeed Karume as Chairman of the Revolutionary Council and President of Zanzibar, Col. Seif Bakari would have been the obvious choice. But the Zanzibar President was also the Vice-President of Tanzania. Here Tanzania's President, Julius Nyerere, is said to have intervened, and proposed Aboud Jumbe, arguing that since the person who killed Karume was an army officer, if another army officer succeeded to the Presidency it might have been construed as a military coup.

Aboud Jumbe became the second President of Zanzibar and ruled the islands for 14 years. During his reign, major political and constitutional changes took place. He gave Zanzibar a Constitution, established a legislature and merged the *Afro-Shirazi Party* with Mainland Tanzania's ruling party, *Tanganyika African National Union*, into *Chama cha Mapinduzi*. He also transformed the Revolutionary Council, and made its members his appointees. It was also during Jumbe's reign that several new matters came under the Union, thus increasing the list of Union affairs from the original 11 items.

6.5 Exits Jumbe - Enters Mwinyi

But Jumbe had also political ambitions over the whole United Republic. In the beginning of the 1980's Julius Nyerere was mooting the idea of retiring as President. At the time the only people who were nationally prominent and could be considered as potential successors were Aboud Jumbe; the late Edward Sokoine, then the country's Prime Minister; and Rashidi Kawawa, who was the Secretary-General of the ruling party. But Nyerere is said to have had Sokoine in mind; and the country, in any case, seemed to have favoured the Prime Minister. It is believed that the feeling that he might not have been able to succeed Nyerere is what led Jumbe to stir up 'nationalistic' sentiments in Zanzibar which eventually led to his forced resignation in January 1984 from all party and state posts.¹⁶⁴

¹⁶⁴Interestingly, Aboud Jumbe does not discuss this important incidence in his political life in his subsequent works. See for instance, JUMBE, Aboud, *The Partner-ship: Tanganyika Zanzibar Union - 30 Turbulent Years*, Dar es Salaam: Amana Publishers, 1994. See also his latest book *Tuishi Bila Kubagwana Kidini*, Dar es Salaam: Dar es Salaam University Muslims Trusteeship (DUMT), 2003.



The long-term effect of the parties' merger was to have matters that were entirely within Zanzibar's jurisdiction, and that were not Union matters, decided by a pan-territorial political party where Zanzibari representation was not decisive. This became clear in 1984 when Jumbe was forced to resign as Zanzibar President: it was the party's National Executive Committee which appointed Ali Hassan Mwinyi as an Interim President and later nominated him for election as the President of Zanzibar. Since NEC's Zanzibari membership is no more than a third of the total, this meant that a Zanzibari President can be chosen by a forum which is predominantly non-Zanzibari.

Ali Hassan Mwinyi ruled Zanzibar for only 18 months, but during that time hopes for a better future were raised for many Zanzibaris; it was a time when Zanzibar's potential became more manifest. Mwinyi was a short-lived President of Zanzibar but during that time he gave Zanzibar a new Constitution, liberalised the economy and allowed Zanzibaris to travel freely wherever they wanted. Two months after Mwinyi came into power, Tanzania's Prime Minister, Edward Sokoine, died in a car crash, and his place was taken over by a long time diplomat, Salim Ahmed Salim. Thus the question of succession to Nyerere became an open one.

As Zanzibaris were clamouring that it was their turn to provide a Union President, the minds of the ruling party had to concentrate on Mwinyi and Salim. At the same time different political forces on the Mainland could not agree on a single candidate. There were so many with Presidential ambitions, but none had a national standing. Naturally, realising this situation, these different forces continued discreetly to campaign for one or the other of the Zanzibaris. By the time the Central Committee was meeting to discuss the issue, the lines had already been drawn. Thus Mwinyi emerged as successor to Nyerere.

6.6 Cracks in the Zanzibar Leadership

With Mwinyi appointed to contest the Union Presidential seat, there was a need to find him a successor in Zanzibar. Two names were submitted to the National Executive Committee of the ruling party, that of Idris Abdul-wakil, the Speaker of the House of Representatives, and Seif Shariff Hamad, Zanzibar's Chief Minister. The bickering, political rivalry and hatred that accompanied the contest exposed the animosity existing in the Zanzibar leadership and created cracks within it. Even though Idris Abdul-Wakil won the nomination, and subsequently the



election, the rivalry continued; and this led to the expulsion of Seif Shariff Hamad and his colleagues from the ruling party. But all this cost the party heavily in Zanzibar.

Idris Abdul-Wakil was literally brought in from retirement. One would have expected that given his age and experience, his reign would have been a non-controversial one. But the opposite happened. He was quite confrontational; and his Chief Minister, the late Dr Omar Ali Juma, was always on the offensive against dissidents. This might seem surprising, but the ruling party in Zanzibar, by its actions, attracted the opposition to itself. It was not surprising then that when the Nyalali Commission went around the country in 1991 asking the people's views on the political system they wanted, 46% of the Zanzibaris interviewed preferred a multi-party system.

6.7 The 'Komando' Presidency

Idris Abdul-Wakil was the last of the generation of leaders of the Revolution to have occupied the presidential seat. He was one of the original 30 members of the first Revolutionary Council, and a Minister in the first phase government. It was obvious when he was elected that he would only serve for one-term of five years in the Presidency; the idea of drafting him was to stop Seif Shariff Hamad from being chosen to succeed Mwinyi. It came as no surprise therefore when he announced that he was not going to ask for the renewal of another term of five years. Salmin Amour succeeded him then.

While there are no indications that previous Presidents were groomed for the position, in the case of Salmin Amour one gets an impression that he was long and carefully prepared. Salmin Amour worked for many years on the Mainland: he served in the party headquarters as Assistant Executive Secretary, Head of Department and member of the Central Committee, and served as a Minister of Home Affairs in the Union Government and a member of the Union Parliament representing a Northern Unguja constituency. In the 1985 General Elections he contested and won a seat in the same constituency, but for the House of Representatives, although he knew too well that he could not have been appointed a Union Minister, since Ministers in the Union Cabinet have to come from within the Union Parliament. Instead he was appointed by Wakil as a Minister of Trade and Industries. When the time came in 1990 to choose a successor to Wakil, Salmin was the uncontested choice.

His first term in office saw some significant constitutional and political changes, the most important being the reintroduction of a multiparty system in 1992. He further enhanced the trade liberalisation policies introduced by Mwinyi; and there was a degree of political tolerance. Things started to change after the first multiparty elections of 1995. In those elections the opposition *Civic United Front* (CUF) claimed victory; and when the Zanzibar Electoral Commission declared Salmin Amour as President, CUF felt cheated. There started the politics of confrontation and hatred between the government and the opposition. CUF withdrew its members from the House of Representatives and announced non-recognition of the Zanzibar President. The government retaliated by dismissing from their jobs a number of people suspected of being sympathetic to the opposition.¹⁶⁵ Several democratic gains attained before 1995 started to erode. The Security Forces, especially the Police and *Kikosi Maalumu cha Kuzuia Magendo* (KMKM - Zanzibar Coastal Guards), had a field day. The belligerency of the government deepened when the donor countries and agencies withdrew their aid to Zanzibar, accusing it of violations of human rights and bad governance.

The Commonwealth Secretariat sent in their Secretary-General to find a solution. After many months of protracted negotiations a 'Muafaka' (Accord) was signed by the two parties. But this was a short-lived respite. After few months of the signing of the 'Accord', the confrontational politics returned to the islands. Thus Zanzibaris went into the year 2000 elections in a worse situation than in 1995.

6.8 Karume the Son – The Resurrection of a Dynasty?

There were attempts within the Zanzibar section of the ruling party to change the Zanzibar Constitution to allow Salmin Amour to contest the elections for the third term. This attempt failed, and therefore a number of people emerged seeking CCM nomination to contest the Presidential Elections. Unlike in the past when only two names were submitted by the special committee on Zanzibar to the National Executive Committee of the ruling party, this time around five names were submitted. If the established tradition of submitting only two names had been followed, then the name of the present President, Amani Karume, would not

¹⁶⁵See for instance the case of Rukia M. Utope, a civil servant who was dismissed from her work without even being given the right to be heard as required by the rules of natural justice. She was alleged to have been seen celebrating the electoral victory of Mr. Juma Duni Haji in the then Mkunazini Constituency By-Election for the member of the House of Representatives. The High Court of Zanzibar ordered her immediate reinstatement with full benefits. See *Rukia M. Utope v. Principal Secretary, Ministry of State, women and Children*, High Court of Zanzibar at Zanzibar, Miscellaneous Civil Application No. 15 of 1999.



have been one of them, because he came fourth in the preferential votes. But the National Executive Committee chose Amani Karume and left out Dr Mohamed Gharib Bilal, the Chief Minister under Salmin. The unofficial interpretation was that Bilal was perceived to be Salmin's protégé.

When the elections took place in the year 2000 they were so marred with incompetence and deliberate sabotage that neither the internal monitors nor the outside observers recognised them. In fact the Commonwealth Observer Group termed them as a sham and a travesty of democracy. CUF refused to recognise them, and as in 1995, they boycotted the House of Representatives and the Union Parliament. In January 2001 the opposition party organised demonstrations to press their demands for fresh elections. These were answered with police brutality, tens of people were killed, many more were arrested and over a thousand ran to seek refuge in Kenya. For the first time Tanzania, which has been receiving refugees since the 1960's, produced its own refugees. The country's image as an 'island of peace' in a region marred with violence was badly tarnished.¹⁶⁶

The killings were a big shock to the nation. The two main political parties, namely CCM and CUF, had to sit down to find a solution. Hence the '*Muafaka 2*', which basically required the implementation of '*Muafaka 1*'. It was really a compromise between the two political parties.¹⁶⁷ The political stalemate in the islands from 1995 to then was helping no one. The Zanzibar government had hoped that it would be able to 'tame', if not entirely wipe out, the opposition after CCM's controversial victory of 1995, but instead the opposition got stronger and more entrenched. The failure on the part of CCM and the Zanzibar government to implement the 1999 Commonwealth-brokered Agreement aggravated the situation; and the January 2001 killings constituted the last straw.

The only remaining hope now is the full implementation of *Muafaka 2*. That will determine whether the country develops into a democracy or whether it would continue to be haunted with its past.

6.9 Conclusion

It can be seen that Zanzibar has no common pattern of political succession. Each President presents a unique example. The 1984 Zanzibar Constitution stipulates

¹⁶⁶See INTERNATIONAL FEDERATION FOR HUMAN RIGHTS and LEGAL AND HUMAN RIGHTS CENTRE, *Zanzibar – Wave of Violence: A Fact Finding Report on Police Brutality and Election Mismanagement in Zanzibar*, Paris and Dar es Salaam: FIDH and LHRC, 2001; and AFRICAN WATCH, *Tanzania: The Bullets Were Raining – The January 2001 Attacks on Peaceful Demonstrators in Zanzibar*, New York: African Watch, 2002.

¹⁶⁷On '*Muafaka 2*' see JOINT PRESIDENTIAL SUPERVISORY COMMISSION, *Political Accord between Chama Cha Mapinduzi (CCM) and Chama Cha Wananchi (CUF) on Resolving the Political Crisis in Zanzibar*, Zanzibar: Multi – Colour Printers Ltd., October, 2001.



only on how the President can be succeeded in case of death, incapacity to perform his/her responsibilities or impeachment. But the Constitution does not stipulate on the internal processes that a political party has to undergo before fielding a Presidential candidate. Jumbe became a President because of an intervention of an individual who happened to command great influence throughout the United Republic; Mwinyi was considered as an 'accident of circumstances'; Wakil was a 'stop gap' measure; and Karume Junior is perceived as an 'imposition' from the Mainland. It is only Salmin's succession which resembles a pattern that is found in some other countries. One hopes over time a pattern will emerge whereby the society would know from where to expect its leaders and not taken by surprise when one appears on the scene.

But for that to evolve there is a need for stability, peace and reconciliation. The country needs a constitutional and political set-up that will make everyone have a sense of belonging and involvement. But that needs a dynamic, progressive and forward-looking political leadership. Both CUF and CCM in Zanzibar would need to commit 'political suicide' for such a leadership to emerge.



ANNEXTURE

East African Conference on Political Succession

Held from 10th to 11th July 2003 at the International Conference Centre in Kampala, Uganda

Resolutions adopted by the Conference

1. Political succession is a key component in the maintenance and deepening of democracy. It is a right inherent to the people and not a favour granted by governments. Mechanisms and institutions at all relevant levels (for example, at the head of the executive and the heads of political parties) should be put in place in order to ensure peaceful transition from one regime to another. Such mechanisms and institutions are more important than individual leaders. The type and characteristics of the democratic system (for example, the presidential system, the parliamentary system or a hybrid system) are key provisions in this context.
2. Political succession is a much larger matter than the issue of term limits. But the imposition and the enforcement of term limits, especially at the head of the executive level, are an absolutely essential element to ensure the development of democratic societies in East Africa. Provision should be made for outgoing leaders to be able to continue a decent and meaningful existence and to contribute further to national, regional and international development.
3. In order to ensure positive political succession, the political entities that are vying for power, must be democratically constituted. These organisations must be well rooted within their constituents and evolve around the practiced principles of participation and representation. Their

leaders must be accountable, and their members have a duty to demand such accountability. These qualities are necessary prerequisites for such organisations and individuals to assume responsibilities at the national level.

4. Civil society organisations, religious organisations, intellectuals and the media have key roles to play in building democratic societies. They must provide substantial input, to advocate on behalf of their constituents, and to set the parameters for debate and thus to ensure a system of necessary checks and balances for the political class.
5. Constitutionalism should not be approached legalistically. A constitutional order must be based on legitimacy and be practiced and implemented for the benefit of the whole of society. Government has a special responsibility to uphold and promote the national spirit and ethos of the Constitution. The emphasis of the separation of powers is essential for the democratic process and should not be tampered with under any circumstances.
6. The most powerful tool to ensure political succession is the conduct of free and fair elections. In this context, the independence of the electoral commission (including representation of the respective political competitors) as well as the passing and the implementation of adequate electoral laws are of prime importance. Armed forces should not play any role in elections. Members of these forces, as well as members of the public service and public institutions, should participate in elections as private individuals.
7. For the sake of peace, stability and regional integration in East Africa, which are vital in today's globalised world, mechanisms to promote a democratic culture, including peaceful political succession and free and fair elections, should be established at the regional level. Instruments, such as an East African peer review mechanism, East African security forces and closer interaction on socio-political issues among the people of Tanzania, Kenya and Uganda, are suggested.
8. The ultimate vision for East Africa is an economic and political union. In such a Union political succession would be a regional endeavour in which Parliament and civil society organisations have key roles to play.



Readings on Politics and Constitutionalism in East Africa

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