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Commentary: A Last Chance for Peaceful Change in Kenya?



Maina Kiai

In May 1997, most observers of the Kenyan political scene expected that the national elections scheduled to occur later that year would be won by the ruling Kenya African National Union (KANU). They assumed that the contest would not be conducted on a level playing field, and there was little chance that important reform issues would be seriously addressed before the elections. Most observers also agreed that even if the playing field were level, the opposition was so fragmented that there was little possibility of ending President Daniel arap Moi's twenty-year reign. As a result, political apathy and a sense of hopelessness were pervasive in Kenya.

Political tensions increased dramatically, however, in June 1997. The National Convention Executive Council (NCEC), composed of civil society and opposition political parties, called for a mass-action campaign that attracted significant support. The Moi government's violent reaction to the NCEC's campaign prompted serious civil unrest and instability. On 7 July, the violence reached new levels when security forces killed at least a dozen people throughout the country and desecrated Nairobi's main Anglican cathedral. Dozens more were seriously injured as police forces attacked people in their homes and in the streets.

The police violence, amply recorded and broadcast around the world, evoked fears that Kenya might slide into a cycle of chaos all too familiar to Africa. The Kenya political bubble seemed to have burst.

What happened to Kenya, once described as an island of peace in an ocean of chaos? Was there a new "big man" pulling the rug out from under President Moi's feet? How could one explain this new motivation of the Kenyan people, who proved to be well organized and clear in their demands for constitutional change?

The groundwork for the reform effort had been laid by civil society's growth and strengthening, which were the most significant consequences of the 1991 reintroduction of multipartyism. Civil society had come of age in Kenya. Multiparty politics initially brought high expectations that Kenya was on the verge of democratic changes that would hasten economic development; these expectations, however, were quickly dampened when it

became clear that the KANU government had no intention of democratizing. Bowing to political and economic pressure from the international community, Moi tolerated opposition parties in order to create an appearance of multipartyism while maintaining autocratic rule. Nonetheless, the political space created by the reintroduction of multipartyism provided an opening for the emergence of a strong and well-organized civil society dedicated to civil rights, poverty alleviation, and gender equality. By 1998, elements of civil society provided the leadership, organization, and determination to force the issue of constitutional reform.

During the initial struggle for multipartyism in 1991, fronted by the then-united Forum for the Restoration of Democracy (FORD), constitutional reform was a major issue. At that time, FORD was a nonpartisan group that brought together churches, politicians, and lawyers to insist that the government legalize opposition parties and restructure Kenyan governance. After bilateral donors agreed to suspend aid in November 1991, the government suddenly and unexpectedly bowed to some demands for reform, catching FORD flat-footed. FORD reacted to its unanticipated victory by transforming itself from a nonpartisan group into a political party to contest the 1991 elections.

FORD's evolution into a political party exposed internal personal rivalries and ethnic tensions that previously had been less pronounced. The leaders of FORD genuinely feared that any new president would follow the precedent established by Jomo Kenyatta and Moi and employ government power to punish political enemies while rewarding political allies. In Kenya, presidential power has routinely been used, particularly by Moi, to enhance tribalism and to permit corruption and political sycophancy. Consequently, opposition politicians calculated that their best protection against being targets of such abuse was to gain and hold power themselves or to promote friends and associates for positions of authority. Thus infighting broke out over who was to be FORD's presidential candidate. Power politics, even within the opposition, thereby undermined the campaign for real reform in Kenya.

Because FORD rallies were heavily attended, many believed in 1991 that winning the presidency was actually within the opposition's reach. Meanwhile, personal rivalries and power struggles took center stage, and the discourse on reform was deferred until after the elections. It was left to U.S. ambassador Smith Hempstone, whom many Kenyan opposition leaders greatly esteemed, to spearhead the demand that at least minimal constitutional reform take place prior to the elections.

By May 1992, debate raged over whether Kenyans should participate in what were expected to be egregiously flawed elections organized by an Electoral Commission whose members had been appointed by, and were loyal to, President Moi. Indeed, the chair of the Electoral Commission, who

was required to organize multiparty elections, had previously spoken out publicly against multipartyism. Furthermore, radio broadcasts were massively biased in favor of KANU. Reaching over 90 percent of the population, in a nation with only a 50 percent literacy rate, the broadcasts were highly influential. Moreover, politicians seeking to campaign around the country faced major obstacles when the government invoked a set of restrictive laws dating back to the era of British colonial rule (see Stephen Ndegwa's article in this volume). As a result of these disadvantages, most civil society actors (including churches, lawyers, and youth groups) favored nonparticipation pending fundamental constitutional and legal reforms. Only then, they felt, could elections be conducted on a fair and level political playing field. But in one of his few public statements that pleased Moi, Ambassador Hempstone came down vigorously on the side of participation in the 1992 elections—whatever the status of reforms.

KANU read the 1992 election results as a mandate to continue to rule as it had during the one-party era—namely, with neither transparency nor accountability but with widespread corruption and abuses of human rights. One of the regime's few concessions was to implement the fiscal discipline demanded by the World Bank and International Monetary Fund structural adjustment programs. This fiscal discipline diminished government resources available for patronage purposes, while other structural adjustment requirements forced the government to either auction off inefficient parastatals to the private sector or allow them to lapse into bankruptcy. Among the parastatals that collapsed was the Kenya National Assurance Company, which had insured all state property as well as the property of many individuals and firms seeking official favors. During the 1980s it was by far the largest and most profitable insurance company in the country. In 1994 it went bankrupt after being headed by a succession of politically active chief executives, including Henry Kosgey, minister of transport at the time. Printing currency to increase the money supply also was forbidden as part of the new fiscal and monetary discipline. In turn, this constraint limited the government's ability to finance defections to KANU by opposition parliamentarians.

The closing of these opportunities spurred a new phenomenon known as "land grabbing," in which politically connected individuals were granted "free" public land that they later sold to developers for handsome fees. Among the lands distributed were forests with rare indigenous trees and parcels reserved for playgrounds, markets, hospitals, demonstration farms, and research institutions. Even cemeteries and public toilets were part of the land grab.

Another form of corruption that increased sharply after the 1992 elections was to exempt some well-connected individuals from paying import and customs duties on goods, most notably sugar, that were then dumped

on local markets. Kenya's nascent sugar industry was unable to compete with these cheap imports; consequently, many refineries shut down—this in a country that had been a net exporter of sugar in the 1980s.

Corruption reached such abysmal depths in the 1990s that Transparency International ranked Kenya the third most corrupt country in the world after Nigeria and Pakistan.¹ Interestingly, the Kenyan government, which often lashes out at such external public criticism, remained silent in this instance.

At the same time living standards for the vast majority of Kenyans fell. Worsening this problem, the government responded to fiscal constraints by imposing prohibitive fees for education and health services. While per capita income is approximately U.S.\$280 per year, enrollment in a typical non-residential secondary school now costs U.S.\$400–\$500 per year. Missionary boarding schools, which have produced many of Kenya's leaders, are also beyond the reach of most. Furthermore, mismanagement also has taken its toll on Kenya's infrastructure: the railroad system has all but collapsed, and roads are so dangerously mottled with potholes that more Kenyans die from road accidents each year than from AIDS or malaria. Moreover, the most recent United Nations Development Programme survey of income disparity found Kenya to rank among the five most economically inegalitarian countries in the world.²

Meanwhile, the Moi regime spent significant sums of money on the military, the presidential press service, official trips abroad, and internal security. In 1995, the government began construction of an international airport (at a cost estimated to be over U.S.\$90 million) in the president's hometown of Eldoret; it also purchased a presidential jet at a price of more than U.S.\$50 million. The government continued construction of a hitherto secret ammunition factory in Eldoret at a cost reported in excess of U.S.\$25 million.

As corruption continued, KANU'S 1992 election victory, rather than bringing an end to government repression, also reduced the political space that the government had relinquished in 1991 for multipartyism. Journalists were arrested and charged with sedition for "publishing false reports"; meetings organized by civil society groups and opposition politicians were violently dispersed; police torture continued unchecked; and registration was denied to Safina—a new political party. Additionally, Safina officials were beaten on two occasions by police and by members of KANU's youth wing while traveling throughout the country.

Average Kenyans were also targets of government repression. Attempts by university lecturers, government doctors, and civil servants to form trade unions were suppressed as the government clamped down on the leaders of these movements, charging many of them with disrupting public order. Today, virtually all of the trade union movements' leaders live outside Kenya because they find it politically and financially impossible to

survive in the country. Moreover, many of the more than 400 Kenyan doctors who now work in South African hospitals emigrated there after the government declined to register their union. Entrepreneurs who were engaged in economic activity in the informal sector (the fastest growing employment sector in Kenya) faced constant harassment and confiscation of their property on flimsy, trumped-up charges. Members of KANU's youth wing who controlled bus parks extorted illegal "dues" from private bus owners, and slum dwellers and squatters encountered violent eviction without prior notice.

The degree of political decay in Kenya is so high that, with one significant exception, Kenya's government is now similar to that of the duly maligned military dictatorship in Nigeria. Even though Kenya has conducted national elections every five years, and Nigeria's military government has relied explicitly upon force to sustain its power, the similarities otherwise are striking. Both presidents may hire and fire all public servants at will, and both presidents' directives have the force of law, though Moi has occasionally sought parliamentary support for his initiatives. The presidents have also controlled large portions of their countries' economies, using that power to dispense economic favors to allies and cronies as well as to punish opponents.

Upon concluding that constitutional reform was a crucial first step in transforming the country from autocratic to democratic rule, civil society spearheaded the quest for change in Kenya. From 1993 onward people and organizations exerted determined and effective efforts to spread the message of constitutional change. For example, they held lengthy discussions on the topic in churches, where they were guarded by the institution's relative sanctity. Additionally, theater and cartoons were creatively employed to spread the message.

Civil society groups researched and documented official human rights abuses and kept accurate, reliable records that could withstand official challenge. Thus, by demonstrating that one need not be an elected politician to speak out on fundamental issues affecting the country, civil society was able to empower itself. The high point in the reform movement occurred in November 1994, when the Kenya Human Rights Commission, the Law Society of Kenya, and the Kenya section of the International Commission of Jurists collaborated to produce a "Proposal for a Model Constitution" to stimulate widespread discussion about constructing a vision for a democratic Kenyan society. This initiative lent new energy to the debate on constitutional reform. The collaborators launched large-scale civic education campaigns via the Citizens Coalition for Constitutional Change (CCCC) to explain the model to the public and to compare it with the existing constitution. Today the CCCC incorporates more than fifty civil society groups and has an estimated 4 million members.

After many months of discussion, the CCCC finally convinced the

opposition political parties that they would be unable to defeat Moi in the 1997 national elections under the existing constitution (see articles by Ndegwa and Joel Barkan in this issue). No doubt the parties' inability to unite behind a single presidential candidate, coupled with the climate of fear and mistrust engendered by Moi's abuse of presidential powers, helped them come to this realization.

As the 1997 elections approached, the debate on constitutional reform took on new urgency. The CCCC organized a National Convention Assembly (NCA) led by the NCEC. As many as 5,000 people participated in the initial meeting of the NCA at which delegates agreed upon a two-pronged strategy: a minimum agenda of reforms, to be implemented before the 1997 elections in efforts to ensure that the results were free and fair; and a maximum agenda for a comprehensive transformation of Kenya from a dictatorship to a democracy. Implementation of the maximum strategy began before the elections and will continue for at least three years to ensure that as many Kenyans as possible can become involved in creating a more democratized Kenya.

The minimum reform agenda included (1) ensuring that the Electoral Commission, rather than being appointed solely by the president, would become independent and impartial; (2) making publicly funded electronic media accessible to all parties; (3) registering all political parties; (4) abandoning licensing requirements that inhibited opposition politicians from holding political meetings; (5) allowing independent candidates to run in elections; and (6) scrapping various colonial-era laws that provided the basis for outlawing antiregime political activity. The minimum agenda also called for the possibility of a coalition government and for the formation of a government of national unity to oversee implementation of the maximum agenda.

The NCEC, in the absence of established channels for political communication, organized mass-action activities and rallies across the country to educate and mobilize Kenyans who had not attended the NCA meeting and to generate broader grassroots support for a larger, more representative second meeting. The government responded immediately and furiously, with officials such as Vice-President George Saitoti terming the NCA an illegal lobby group that had the "evil mission of changing the government of Kenya by revolution."³ Such statements implied that the government would be justified in responding with force to any NCA meetings or rallies. But these ominous threats failed to deter the NCEC from planning and organizing rallies, and it announced publicly that it would not be swayed from pursuing its agenda.

Each side kept its promise. The prodemocracy movement attempted to hold rallies, attracting crowds of 3,000 or more supporters who were prepared to face bullets, tear-gas, and clubs; the government responded with excessive force, beating anyone within the vicinity of the rallies on the

pretext that such gatherings were illegal. Curiously, the government made no attempt to arrest the prodemocracy movement's leaders, preferring instead to concentrate on brutalizing its followers.

The climax of the confrontations occurred on 7 July 1997 (*Saba Saba Day*; seven seven in Kiswahili, in this instance meaning the seventh day of the seventh month), when at least a dozen people were killed. The government, pretending to be shocked by these deaths, promptly adopted a more moderate line, embracing "controlled" dialogue in which willing KANU and opposition party parliamentarians would discuss a set of reforms that were to be effected prior to the 1997 elections. The government even agreed to form a postelection constitutional commission to further the reform process.

Despite appearances to the contrary, the Moi regime had not genuinely changed course and continued to drag its feet on reform promises. Indeed, many believed that the government was merely buying time to derail the prodemocracy movement. From this perspective, Moi resembled the wily former Zairian president, Mobutu, who repeatedly tricked the prodemocracy movement in his country and ultimately precluded alternatives to violence—with all its attendant costs.

The shadow of Laurent Kabila hung over the struggle to achieve productive dialogue on constitutional issues. The surest way to garner applause in the NCEC rallies was to invoke the "Kabila option" as the next stage in the struggle, should the negotiations fail. The constant reminders that a resort to violence lay in the wings helped foment a growing sentiment that attempts at peaceful change would soon yield to this more painful course (though violent confrontation would be no more likely to bring about democratization and constitutional reform).

Principal responsibility for ensuring that Kenyans do not descend into violence and bloodshed lies with President Moi, who must resist the inclination to cling to power at all costs. Rather, he should conscientiously facilitate a dialogue on constitutional reform with opposition parties and implement, in good faith, the agreements reached in order to ensure a democratic transition. But opposition leaders also bear an important responsibility for steering Kenya away from chaos and toward real democracy. In particular, the opposition must reestablish and maintain its unity while negotiating with the Moi regime.

Unfortunately, the "official" opposition leaders, led by Michael Wamalwa, Kenneth Matiba, and Martin Shikuku, immediately sought to push aside "unofficial" opposition leaders in civil society, who had planned, initiated, and given life to the constitutional reform movement. Although the "official" leaders' rationale was that negotiations should be led by politicians, it was clear that their primary motivation was to enhance their political stature.

At the same time, less influential political leaders (such as James

Orengo, Paul Muite, and Raila Odinga) favored civil society leadership of these government negotiations. They felt that opposition party leaders would never be able to overcome their differences to the degree required to effectively engage the government. Moreover, they reasoned that since the movement for democratic reform had been spearheaded by the leaders of civil society groups, the latter were better positioned to negotiate with the government. Significantly, opposition leaders who had previously served in senior posts in the Moi regime tended to favor party leadership of the negotiations, whereas those who favored continued civil society leadership generally had not held such positions.

Finally, there remains a role for the international community in fostering democratization efforts, if only to serve economic interests (by protecting external private investments and diminishing the need for humanitarian relief that would predictably follow any descent into violence). Pressure from the United Nations for peaceful reform, including the threat of sanctions, would be appropriate. Donor nations might consider suspension of aid once again as they did in 1991.

The current crisis in Kenya is much more volatile than the one that gripped the country in 1991–1992. The people of Kenya have tasted freedom and no longer will be content without it. Indeed, the opportunity for change that emerged in 1997 may be Kenya's last and best chance to achieve constitutional reform by peaceful means. Kenyans, the region, and the world cannot afford to lose this opportunity.

Notes

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1. Transparency International, *Sharpening the Response Against Global Corruption: Transparency International Global Report, 1996* (Berlin: Transparency International, 1996), p. 101.

2. International Bank for Reconstruction and Development (IBRD), *World Development Report 1997: The State in a Changing World* (Washington, D.C.: IBRD, 1997); United Nations Development Programme, *Human Development Report, 1997* (New York: Oxford University Press, 1997).

3. James Roberts, "Chaos Looms as Kenya Clings to Democracy," *The Independent* (London) (27 August 1997): 8.