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## **AUTHORITARIANISM WITH AN ELECTORAL FACE IN AFRICA**

### **■ Introduction: Colonial and Nationalist Origins of Authoritarian Rule in Africa**

Following my Keynote Address at the International Political Science Association (IPSA) 25<sup>th</sup> Congress held in the city of Poznan, Poland, on July 23–28, 2016, entitled “When Democracy Fails to Deliver, Can the ‘Losers’ accept ‘Victory’ as Legitimate?” my academic Grandfather, Jerzy Wiatr, requested me to prepare this paper for the Polish academic journal, *Sociological-Political Studies*. Jerzy Wiatr was professor to my former professor, Adam Przeworski, at the University of Chicago in the mid 1970s when I was doing graduate studies in Political Science there. Hence the academic genealogical relationship. But there is more to it than that. From Adam I learnt plenty of political economy, and the relationship between political power and social relations, between state and society throughout many historical epochs or modes of production. The writings of Karl Marx and Friedrich Engels came in handy, and so were many other social and political science treatises which were skeptical about the Euro-Christian notion that “we should always render unto Caesar what is Caesar’s”. In other words, that political domination and economic exploitation are both somehow God-given and immutable.

I learnt further that political power is imposed on people and not given by God from above although quite often rationalized as such through the ages. Further, again throughout the ages, people living under different forms of political order have always sought to control their governors. George Bernard Shaw’s observation in *The Apple Cart* (1930) that “we need to be governed

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and yet to control our governors” is not unique to democratic struggles; many verses in both the Old and the New Testaments of the *Bible* depict this preoccupation among the ruled even in pre-capitalist societies. Likewise, every form of economic exploitation is always reinforced and reproduced through a certain form of state. Different forms of state have appeared and disappeared through history, not through the will of those who wield political power, but through some struggle waged between the beneficiaries and the losers in society, between and among various social classes.

Following three years of this study on “state and social processes,” or “state and class struggles” through history, I was curious to find out how the transition from colonial rule to independence had been achieved, and what explained the similarities and differences in forms of government in Africa after independence. The nationalist movements had been so popular in Africa, receiving almost unanimous endorsement by the people except where they differed on how different ethnic groups and social classes would benefit from the post-colonial dispensation of the new African-ruled state. Tom Mboya, the Kenyan nationalist, put it very well in his autobiography written very early in his life. He observed that *uhuru*, or “freedom”, was in the interest of all Africans discriminated against by the “colonial system” in various ways. After *uhuru*, prostitutes who had been discriminated against by racism would be free to enjoy the male market without any let or hindrance. Clergymen not promoted by their racist bishops would be freed to do so by the new non-racial political order. Africans made landless by white land owners would get their land back, and so on (Mboya 1963). Hence it was only logical that all African people needed to join hands into one formidable nationalist political party or movement called The Kenya African National Union (KANU) whose president was Jomo Kenyatta, Deputy President Jaramogi Oginga Odinga and Secretary General Thomas Joseph Mboya.

But the unanimity Mboya expected proved more of an ideology for KANU hegemony rather than an accepted fact by all in the nationalist movement. A rival party, called the Kenya African Democratic Union (KADU), grouped together the elite from so-called “small tribes” allied to the settlers in the Rift Valley who were suspicious of KANU’s hegemony and the tensions in that party over land issues. That political independence from British rule although accepted as desirable by the nationalists in both KANU and KADU did not necessarily mean that there was unanimity regarding the outcome of doing away with British rule. That it would be realized under a unitary state was the bone of contention. The white settlers wanted their interests, particularly in the Kalenjin dominated Rift Valley region, where they owned large chunks of land, to be protected by a decentralized system of government, dividing

Kenya into regions, and giving each region some substantial “home rule”. They persuaded the African nationalists in KADU that this interest was mutual: it was a political insurance against KANU domination after independence as well as a guarantee for protecting their land against “external” interests.

The nationalists in KANU regarded a highly decentralized system of government as balkanizing Kenya but they accepted it at the Lancaster House Constitutional negotiations knowing very well that they would break it after achieving political power at independence. And so they did, eventually turning Kenya into a *de facto* one-party state by 1969 as we shall later see. Inherent in this belief in “unity” and unanimity of purpose was the germ of the one-party state as the political shell within which political stability would be guaranteed and development delivered.<sup>2</sup>

Except for the Congo where the Belgian colonialists left in a hurry (and in a huff), destroying the infrastructure and leaving the Congolese in near total chaos, elsewhere the “transition” from colonial rule to independence was well orchestrated and “smooth”. Southern Africa and the Portuguese colonies were, however, another exception. In South Africa, a domestic white racist ruling class, forming a minority in society, was determined to use state power to deny Africans political, social and economic rights, and use the state almost exclusively to serve white economic, social and political interests. This was called *apartheid*, an Afrikaners<sup>3</sup> form of fascism. The struggles for independence in both South Africa and the Portuguese colonies were protracted and only finally resolved by decades of guerilla warfare and armed struggle by the African nationalists, very much like the Vietcong history in Viet Nam. These struggles have been well analyzed and documented by the nationalists themselves. In the case of South Africa, Nelson Mandela’s autobiography, *Long Walk to Freedom* (1994)<sup>4</sup>, is the best read. For all intents and purposes, the apartheid state in South Africa was a one-party authoritarian state.

Contrary to Mwalimu Julius Nyerere’s (1965) belief that the one-party state was necessary since there were no fundamental differences to warrant competitive party politics in Africa, historical evidence shows that the struggle for independence, and independence itself, was a contested matter. Beneath the

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<sup>2</sup> See Ary Zolberg (1967).

<sup>3</sup> “Afrikaners”, or Boers, are the descendants of the Dutch-speaking settlers of the eastern Cape frontier in Southern Africa where they settled since the 1890s. They championed the segregated system of government in South Africa where “whites” were the ruling race and black Africans the dominated and subordinate race.

<sup>4</sup> In the case of the Portuguese colonies, although Amílcar Cabral, the Cape Verde and Guinea Bissau liberation leader, documented most of his experience confined to this specific region. See Amílcar Cabral (1979).

vener of unity and excitement of being “free at last”, there was the lingering fear that the political and economic deals made between the nationalist leaders and the colonial masters were not in the long term interest of everybody. Broad-based *nationalist coalitions* had come together to make their people be “free at last”. There was a sneaky feeling that the hegemonic forces behind these coalitions would sooner, rather than later, emerge dominant, and even embark on programs of political exclusion in favor of certain social classes. In my doctoral study of *the political economy of coffee production in Kenya and the Ivory Coast (Cote d’Ivoire)* I confirmed this fear, and documented it in two articles published in *Africa Affairs*,<sup>5</sup> covering the Kenyan experience, and in Paul Lubeck’s book, covering La Cote d’Ivoire experience (Nyong’o 1987a).

The arguments in these two articles were very similar. Both Kenya and Ivory Coast had been plantation settler colonies. Kenya, colonized by the British who brought in white coffee settlers and tea farmers, as well as cattle ranchers, to provide economic development that British imperialism would exploit by making “the colony service itself” while transmitting some surplus to the British economy. Ivory Coast (Cote d’Ivoire), likewise colonized by the French, saw white French farmers acquire large pieces of land to grow coffee, cocoa, bananas and pineapples while lumbering forests to achieve the same objectives as their British counterparts in Kenya. In Cote d’Ivoire the French had to depend on forced labor given plenty of land and reluctance of the peasants to work for wages. They subsidized this by importing cheap labor from the drier northern colony of Upper Volta (now Burkina Faso). In Kenya, the British deprived the Africans of their land and then forced them to work for slave wages in the plantations for a living. The result in both cases was the same: an alliance between the British and French landed gentry with a small African landowners’ elite and “Uncle Tom’s” both of whom were deeply resented by the peasants who were transformed into either forced laborers or very poorly remunerated semi-proletariat. After the Second World War, with grievances of the returned African soldiers who had served in the war to defend “European democracy and free society” against fascism, the contradictions became more obvious at home. The African elite in both countries mobilized all disgruntled social forces among the African masses to demand for democracy and freedom that the European masters had made them defend everywhere in Europe’s interest, but at the expense of their lives. Colonialism in Africa became an anachronism after the war. This has been documented in many studies, the best of which are writings by Basil Davidson (1969), Thomas Hodgkin (1956) and Walter Rodney (1972). No sooner had they ascended to state power did these

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<sup>5</sup> See P. Anyang’ Nyong’o (1989), but see also my other earlier article from 1981.

nationalist elites transform political power, won through mass mobilization and democratic elections, into one-party presidential authoritarian rule at best, or military dictatorship at worst.

In this essay, we shall give Kenya as an example of authoritarianism coexisting with some form of electoral democracy arising as a result of popular resistance against political repression and illegitimate government after independence, with the governments “adjusting” to pressures for democratization in various ways from one country to the other (Nyong’o 1995).

### ■ **Tribe, Class and Political Hegemony: The Disintegration of the Nationalist Coalition in Kenya**

In Kenya, the first crisis that led to the disintegration of the nationalist coalition was over the land policy and practice of the post-colonial state. A more entrenched elite regarded their economic upward mobility after independence as inheritance of the large scale farms owned by the departing white settlers in disregard to the interests of the landless peasants. This was mainly in Central Kenya where the division between a landed elite and a landless peasantry preceded colonialism and intensified during colonial times as the colonial regime rewarded this landed “native” Kikuyu elite with more land, as well as political power as chiefs and civil servants, so as “to keep the natives in check as home guards”. The peasants, turned into squatters cultivating and grazing on land which did not belong to them, “bought this privilege” by providing the land owner with very cheap labor. The power to bargain over wages was absent. Grievances among the peasants simply waited for an appropriate opportunity to fight back.

The Mau Mau outbreak in the early 1950s saw the landless peasantry join hands with the returned soldiers into a Kenya Land Freedom Army which the settlers derogatorily called “the Mau Mau”. But the Freedom Army was opposed by the Kikuyu privileged landed elite who believed that no land could be given free since it was a rare commodity and giving it free would spoil “the market for land”. Nonetheless, the returned soldiers and the landless peasantry insisted that land had to be given to the landless without any condition. After all, the soldiers themselves did not have land and needed it for their own subsistence<sup>6</sup>. The interests of the soldiers and the peasants coincided, and their common enemy was the white settler, the Kikuyu landed elite and the colonial state. The colonial state, the British government and the Kikuyu home guards

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<sup>6</sup> It is to be noted that the British government decided to reward some white soldiers returning from the war by giving them free land in the White Highlands to grow tea.

held their ground and struck back ferociously, detaining the Land Freedom Army leaders and confining the rebellious peasants into concentration camps and hamlets. Any land belonging to members of the rebellion was confiscated and generally given to the home guards and their allies. By the end of 1953, the Mau Mau had virtually been defeated, and plans were now underway by the British government and settlers to find a more lasting solution to the land issue without jeopardizing the interests of the white settler community and the Kikuyu home guard loyalists. A generous package was arranged to buy out the white settlers and give the land back to the emerging independent state under the domination of an acceptable African elite. The home guards fitted this bill perfectly (Wasserman 1970).

Since the arable land, in the case of Kenya, was limited and mainly confined to the white settler areas in Central Kenya, predominantly the Kikuyu countryside, it was this land that needed to be subdivided and dished out to the landless peasants. The conflicts between Jomo Kenyatta, the president, and his deputy Jaramogi Oginga Odinga – whose chief ally was Bildad Kaggia, a Kikuyu Assistant Minister for land in the independence government, was based on this land issue. Odinga and his allies believed that the landless peasants deserved free land while Kenyatta and his allies were committed to a policy of “willing buyer willing seller”. In the event that the poor peasants were to be given land, a cheap loan arrangement, made possible through concessional terms from the Commonwealth Development Corporation and the World Bank to the state owned Agricultural Finance Corporation (AFC) and the Agriculture Development Corporation (ADC), would be used. Oginga Odinga documented this in his autobiography, *Not Yet Uhuru* (1967). But even this arrangement still left the landed political elites, now in charge of state power, to benefit inordinately from the settlement schemes, capitalizing on their access to other public resources, exploiting political power for primitive accumulation and hence emerging as a rural bourgeoisie among a largely land starved peasantry. This peasantry subsidized their poor agricultural earnings by doing extra labor in the larger farms belonging to this emerging landed aristocracy. Thus inequality between the rich and the poor grew bigger and bigger by the day, drawing in the urban poor who fared no better<sup>7</sup>. This “constituency of the deprived” provided Odinga and his radical political faction within KANU a ready-made political base. The rivalry between the two factions within the ruling party intensified.

Jomo Kenyatta reacted to this by seeking to isolate and ethnically profile both Odinga and Kaggia. He likened Odinga to a jealous rival for political

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<sup>7</sup> See the ILO report on Kenya on *Employment, Incomes and Equality...* (1972).

power from “another Community”, the Luo. He saw Kaggia as a lazy Kikuyu who had failed to take advantage of having state power to organize his own self-advancement. He portrayed Kaggia as a betrayer to the Kikuyu unity for retaining state power for the eventual benefit of all Kikuyus, rich or poor. Peasant delegations were organized to his rural home in Gatundu in central Kenya to “pledge loyalty to his presidency and to denounce all traitors”. Obviously the post-colonial state extended plenty of largesse to these poor peasants, and quite a good number of them were rewarded by being settled in small holding farms in the Rift Valley, the land of the Kalenjin ethnic community, away from Central Kenya where the rising landed Kikuyu state bourgeoisie was now asserting its hegemony. This, argues Colin Leys, is where the ideology of tribalism – or the politics of ethnic exclusion – began to cement the hegemonic rule by the bourgeoisie in Central Kenya as the nationalist independence coalition started to disintegrate.

With this clear ideological disagreement over the land policy, the Odinga group decided to leave KANU and form an opposition party in 1966 called The Kenya People’s Union (KPU) whose ideological line was substantially socialist, emphasizing state control of “the commanding heights of the economy” while providing free land to the landless peasants. It did not take Kenyatta and his allies long to brand KPU as a communist party being propped up by the Kremlin and Red China. They demonized the KPU leaders as dispensers of “free things”, including private property and personal possessions, obviously aware that even the small peasantry was dearly attached to their property and possessions. This ideological demagoguery was extended to songs in the only state-owned radio and television stations which continuously broadcast damaging propaganda against the opposition and praised the KANU government’s outstanding achievements and promises to the skies. In a Machiavellian move, KANU brought a constitutional amendment to Parliament making it necessary for those changing political party allegiance “to seek fresh mandate from the people in an election”. KANU knew that in the “Little General Election” that was to follow, state machinery would be let loose on KPU candidates, especially outside Odinga’s ethnic area, the Nyanza Province, so as to portray the party as a purely ethnic and exclusivist outfit. And this is exactly what happened (Mueller 1972). Only nine out of 31 KPU Members of Parliament survived the polls, seven from Luo and two from Luhya constituencies, the Luo neighbors. From then on, state machinery was systematically used to harass the KPU, culminating in passing of several repressive laws by the KANU dominated parliament. These laws gave more and more power to the executive, making other organs of the state supplicant to the presidency. With this came even more intense struggles within the executive on who controlled the presidency,

or who was near enough to this increasingly personalized presidential regime to share this power.

In 1968, Kenyatta got a stroke, and possibilities of his passing on intensified the highly Kikuyunized state bureaucracy to determine the succession trajectory. Tom Mboya, the Luo Secretary General of KANU, was regarded by the Kikuyu establishment as “an outsider” who could not be trusted to safeguard the hegemony of this elite should he ascend to the presidency. On July 5<sup>th</sup>, 1969, he was assassinated by a Kikuyu gunman in a Nairobi street under very suspicious circumstances. Ethnic tensions followed. Kenyatta was pelted with stones at Mboya’s requiem mass at the Holy Family Basilica in Nairobi. Kikuyu government ministers and senior personnel were not allowed to attend his funeral in Rusinga Island in Lake Victoria except for Jeremiah Nyagah from Embu, Mwai Kibaki from Nyeri and Josiah Mwangi Kariuki from Murang’a. The Kikuyu elite reacted by initiating a massive oath-taking of their people at Kenyatta’s farm in Gatundu, binding them to defend the Kikuyu political and economic hegemony “for ever”. Political coercion had started in earnest, disrespecting all constitutional safeguards, the rule of law and checks and balances in government.<sup>8</sup> An authoritarian presidential system, command-driven in nature, was to be imposed on people under the guise of a tribal ideology by a section of the Kenyan citizenry. But as Ruth First (1970) has observed, when politicians begin to command, who is more qualified to rule by command than the army?<sup>9</sup>

Tom Mboya had been a close friend of Kitili Mwendwa, then Kenya’s Chief Justice and hailing from the Akamba community. Mboya had grown up in a sisal plantation in Ukambani as a young boy and spoke Kikamba, hence the many friends he had who were service men in the armed forces. His death created discontent among a section of the army who, in conjunction with certain parliamentarians, started to plot a coup d’état, their reason being the increasing ethnic exclusion by the Kikuyu in government departments as well as in business. A conversation between Gideon Mutiso, a Member of Parliament from Ukambani, and General Ndolo, the Mkamba head of the army, solicited the following comment from the General:

Let me tell you things have got to a stage when I think action must be taken. I have always hesitated to do anything while Mzee (Kenyatta) is in power, but I think I cannot let things go the way they are going. I would like

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<sup>8</sup> For a personal rendition of this oath-taking saga and how the Christian community reacted to it in the Kikuyu country, see Rev. John Gatu (2016).

<sup>9</sup> See also Nyong’o (1986).

you to do one thing for me... go and draft a statement listing all the things you know one can read as reasons why one has taken over the Government (Leys 1974: 242).

This confession came from the trial of the coup plotters, and there is no certainty to its truth since the coup was thwarted by state authorities before it took off. What followed the attempts in terms of increased repression and purges in the army was much more important. Following Kenyatta's visit to Kisumu to open the Russian built hospital in Odinga's home turf, a heated exchange between Odinga and Kenyatta led the latter to quit Kisumu in a huff as his body guards shot wantonly at the crowds who had responded positively to Odinga's public appeal to Kenyatta to have a much fairer and socially just government. The following day all the KPU leaders were detained without trial indefinitely, and the government ordered a crackdown on anybody believed to be sympathetic to the KPU and the coup plotters. Purges followed in both the armed forces as well as in government bureaucracy, taking largely ethnic lines. Hostility to Kenyatta's government simply hardened among the ethnic communities that felt increasingly alienated from this authoritarian regime. With Kenya as a *de facto* one-party state after the banning of the KPU, Kenyatta quickly dissolved Parliament and called for a General Election in December 1969. It was a one-party affair, with almost all candidates swearing allegiance to the President. The party showered favors on individuals it wanted to win the election. Those regarded as unreliable, even when they were popular with the electorate, could find their entry into Parliament complicated by state-induced problems they never envisaged. The nationalist coalition was virtually gone; it would be generally wound up with the passing of even more repressive laws giving the President more authoritarian power. I prefer to call this *presidential authoritarianism* (Nyong'o 1989).

### ■ What is Authoritarianism and why does a Presidential Authoritarian System need Elections?

While "authority" refers to legitimate power, in other words power exercised by those appointed or elected to do so by approved and agreed norms and procedures by the ruled, "authoritarianism" is associated with "arbitrary" illegitimate authority, at least according to liberal democratic values. Non-democratic regimes have one thing in common: those who wield power quite often do so through little, limited, controlled or no choice by the people – the governed. Such regimes in most cases do not worry too much about what the people think about the way they rule or make choices to use and dispose of public resources. But very often they are "approval seeking": they will put up

shows of being approved by the public in all kinds of ceremonies: parades, birthday parties, funerals – of both the dead and the “living dead” – and state organized festivals.

Where they allow the people some choice of their leaders through elections, such elections are quite often controlled and determined from the center of power, and choices may be annulled by this center should it feel such choices may compromise its power or interests. The so-called elected representatives very often need to pass “the loyalty test”, loyalty to the president to be precise, with little room to speak or act freely. When Daniel arap Moi succeeded Jomo Kenyatta at the latter's demise in August 1978, he promised he would follow Kenyatta's footsteps in ruling Kenya. He did exactly that, and his regime became even more authoritarian than that of Kenyatta. He often advised leaders to cough when he coughed and lough when he did the same, “mimicking all my ways like parrots”, as he put it. All this was meant to protect the economic and social privileges of the small elite that had come to dominate Kenya politically and economically, constituting what J.M. Kariuki, the populist politician from Murang'a, called “a nation of 10 millionaires and ten million beggars” (Githinji 2000: xvii–197). J.M., as he was fondly referred to, was protesting against the rapidly growing urban and rural poverty in Kenya with a few state elites amassing more and more wealth and property.

KANU'S blue print for development published in 1965 under the title *African Socialism and Its Application to Planning in Kenya* had advocated for state investment in the high potential areas which could give maximum returns, thereby creating the wealth that the country as a whole needed for development. This scenario assumed that those who benefited would of necessity be philanthropic enough to plough back their benefits to the rest of society. Things never worked out this way: the more the government invested in these high potential agricultural areas, the more wealth was increasingly concentrated in the hands of the few who owned agricultural assets here while also having monopoly access to state power. This high income elite superimposed on a base of limited mass consumption due to lack of incomes and poverty, simply made more grave the gap between the rich and the poor (*Employment, Incomes and Equality...* 1972: 97). The ILO mission of 1972 that focused on how to remedy the growing gap between the rich and the poor went a long way to make proposals to bridge this gap, chief among which were: wide scale land redistribution for the benefit of the landless, cutting of wages among the well paid state elites and bringing up the wages of the lower classes, supporting the “informal sector” with affordable factor inputs while providing them with market access for their goods and services and creating import substitution industries that would rely on local raw materials and produce for the domestic

market, thereby providing jobs for the jobless and creating increasing demands for domestic raw materials.

The privileged state elite picked carefully from the Report and issued a new sessional paper in 1973 aimed at what it called “redistribution with growth”. But with the oil crisis that year, economic growth started to enter hard times and hardly any redistribution took place, neither of land, nor of wages nor of state privileges. J.M. Kariuki’s dictum gained more currency among the masses, posing a threat to Kenyatta’s hegemony. On March 2, 1975, J.M. was murdered and his body dumped somewhere in Ngong’ hills, thereby closing a chapter on one of the regime’s most erudite critics. The murder of J.M. ushered in a chapter of new forms of resistance to the regime, generally located outside Parliament, and especially at the University of Nairobi.

Presidential authoritarian regimes rarely tolerate criticism, more so when they feel that there is growing discontent in society. After the oath taking, Kenyatta assumed that no member of the Kikuyu elite would dare challenge his rule, hence the ruthless murder of J.M. Kariuki, a fellow tribesman. When resistance spread to the University and Kenyatta’s leading critics were once again from the Kikuyu community led by Ngugi wa Thiong’o, Kenya’s leading novelist, Kenyatta did not waste time and detained him in 1978 for writing and producing a play which was critical of the regime. The previous year George Anyona, a parliamentarian who had become critical of corruption in government, was also picked up within the precinct of Parliament and detained. The government then created torture chambers at the basement of a 27 floor government building in Nairobi called Nyayo House. Here critics would be kept in water for a whole day, occasionally being taken to the 24<sup>th</sup> floor for questioning and physical abuse. Many university dons critical of the government’s authoritarian rule and political repression, including myself, ended here for weeks and months, suffering some of the most degrading and inhuman treatment.

When Moi took over from Kenyatta in August 1978, for a brief period of time people thought that he would be more accommodative and tolerant. Moi actually became worse than Kenyatta since he particularly felt insecure within a ruling class that was predominantly Kikuyu and very much steeped in wealth, property and access to state power. To feel more secure, Moi embarked on a two-pronged approach to consolidating authoritarian rule. On the one hand he started cutting down the economic power of the Kikuyu entrenched elite in an attempt to build his own elite completely dependent on him for wealth, possessions and access to state power. On the other hand, he unleashed unbridled terror against actual or imagined opponents inside and outside parliament.

Colin Leys has argued that, by 1978 when Moi took over power, most opportunities for “Kenyanising” the economy had more or less been exhausted. And with an economy that was no longer growing or expanding, Moi felt like a general without an army. In order to create this army of rich, landed and loyal elite, he had to cut down Kikuyu capital and transfer it to his own elite which he had to create very rapidly. This elite would owe their upward mobility to him, and hence become a political army he could rely on. But this policy alienated the Kikuyu bourgeoisie further, and Moi tried the divide and rule tactics of coopting some and alienating the others, a game of political chess he was continuously engaged in much to the detriment of finding sufficient time to pay closer attention to reforming the economy and creating more opportunities for the unemployed youth who were fast flocking into towns from the poor rural areas. When this growing discontent attracted yet another attempt at a coup d'état, Moi reacted ruthlessly on the failed attempt. He disbanded the air force, imprisoned many servicemen as well as civilians suspected to have been involved in the coup attempt and killed many more on the day of the coup itself. The subsequent political outcome of the failed attempted coup was a massive detention without trial of many of Moi's critics, including journalists and university dons. A number of journalists and dons fled the country, seeking teaching jobs abroad or working for NGOs. To gain total control of the party and the political process, a bill was rushed to parliament and passed in a record one day making Kenya a one-party state by law. This was an addition Section 2A of the Constitution which became a major bone of contention between the presidential authoritarian state and its democratic critics in the reform movement.

### ■ Democratization, the Politics of Reform and “Controlled” Democracy

The 1980s have generally been regarded as perhaps the darkest days in Kenyan politics. Overtly there was a veneer of political peace and tranquility due to severe political repression, but covertly there were underground resistance movements which were quietly suppressed by the state through physical eliminations, detention without trials and state cooptation. In the meantime, “peaceful” regular elections were held every four years in the eighties: 1983, following the attempted coup in 1982, and 1988 as a normal sequel to demonstrate the regime's respect for the constitution. The unusual feature of the 1988 election was that the sole ruling party, KANU, decided to nominate its candidates for the general elections having voters line up behind their favorite candidate and being counted in open daylight. After voting people dispersed

and there were no ways grievances of any miscount could be addressed. Very often the longest line was announced as having had the least numbers and the shortest the most. The winner was thereby pronounced depending on what type of results the party big bosses – read the President – wanted. And since Kenya was now a one-party state by law, the party nominations were, *ipso facto*, the general elections.

Following that “election” Parliament became virtually a house of “loyalists”; i.e. those who were ready to “sing like parrots” in near-total obedience to the president. Very senior and able KANU politicians, some of whom had been Cabinet Ministers, were unwittingly driven into the opposition as quiet allies of the reform movement in the religious sector, civil society, academia and the media. Underground movements proliferated. As the late historian, Mukaru Ng’ang’a, put it in one of his public lectures at the University of Nairobi before he died, “when you legislate against democratic pluralism in politics, you will simply drive the opposition underground”.<sup>10</sup>

In 1989 we started plotting underground to launch a new opposition party. We involved three veteran politicians who were present at the foundation of KANU. Three of them, Jaramogi Oginga Odinga and his protégés Luke Obok Rarieya and Ramogi Achieng’ Oneko, had been KPU Members of Parliament and had been detained for several years after the banning of the party towards the end of 1969. The other, Dr. Munyua Waiyaki, was a long serving Cabinet Minister in both the Kenyatta and the Moi governments but had fallen out with Moi because he was regarded as too sympathetic to reformists. He had also been one of Odinga’s confidante during their days in KANU. On our side as younger reformists were Joe Ager, a businessman, Paul Muite, a lawyer, Dr. John Henry Okullu, the Anglican Bishop of the Maseno South Diocese and myself.

We used to meet clandestinely from five to eight in the morning every Sunday in Dr. Waiyaki’s farm in the outskirts of Nairobi to avoid the dragnet of the dreaded secret police then called the Special Branch since we knew we were “marked people”. We avoided including Oginga Odinga in these meetings since he was under the watch of the secret police almost around the clock. So we used just one of us to brief him at home in what could appear as an innocent social visit. Henry Okullu, on the other hand, used the safety of the pulpit effectively to preach vitriolic sermons against political oppression and injustices in society.

<sup>10</sup> It was after giving this public lecture at the University of Nairobi in March 1982 that Mukaru Ng’ang’a was arrested and detained without trial in March 1982. I had escaped to Mexico in October 1981 to El Colegio de Mexico with the initial financial support by UNESCO. Between 1982 and 1991 many people were detained without trial. For a systematic account of all this see Raila Amolo Odinga’s autobiography, *The Flame of Freedom*.

Quite often we wrote the substance of these sermons before he translated them into the biblical and evangelical contexts.<sup>11</sup> Roy Gachuhi (2010) recently reminded us of the significance of these sermons at the time they were written when he wrote as follows:

Twenty years ago today, Bishop Henry Okullu called for constitutional change to discard the one-party state and specifically demanded a two-term limit to the tenure of any future president. Said the bishop: it was a mistake to make Kenya a de jure one-party state and this decision should be reversed. Power corrupts even a person with the best intentions in the world. Therefore, power must be limited by fairly acceptable checks and balances.

Rou Gachuhi then went further to add:

In today's environment of unbridled freedom of expression, these words sound innocuous. But in April 1990, they were patently treasonous. Bishop Okullu attracted a lot of flak, with some of the more rabid KANU hawks calling for his detention – the party's most potent weapon against its critics. When the chorus of condemnation seemed overwhelming, he loudly reminded himself of his personal motto: One man with God is a majority”.

When Okullu went to Nairobi soon after that Easter sermon, three senior KANU politicians were looking for him. These were Charles Rubia, Kenneth Matiba and Joab Omino. They had been contemplating coming out in public and denouncing the intolerable political repression that had followed the queue voting, otherwise called by its Kiswahili name *mlolongo*. It is this voting that had left the three of them out of Parliament. To add insult to injury, the popular foreign affairs minister, John Robert Ouko, had also been assassinated under dubious circumstances on February 12, 1990. It was strongly suspected that struggles for the Moi succession within the cabinet had led to his mysterious murder. A Commission of Enquiry to look into the murder, notwithstanding the assistance of a Scotland Yard detective John Troon, was disbanded by Moi before it submitted its final report.

The murder of Ouko and Okullu's courageous sermon encouraged the three KANU politicians to strike while the iron was hot. They therefore consulted with Okullu and agreed that they too would issue a public statement supporting the Bishop's stand. They soon announced, on July 7, 1990, that

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<sup>11</sup> See, for example, his April 1990 Easter Sermon at the St. Stephen's Cathedral in Kisumu referred to in his autobiography, *The Quest for Justice: An Autobiography* (1997), Kisumu: Shalom Publishers.

they would hold the first public rally calling for political pluralism in Kenya. Before the rally could take off, they were quickly arrested and detained without trial. Riots and demonstrations rocked Nairobi and its environs as the people openly demanded multiparty politics. Severe police brutality and repression managed to temporarily contain the situation. But a clear lesson had been sent to the Moi regime.

In the meantime, one of Kenya's longest serving political detainees, having been released in mid 1988 following his first 6 year stint in detention, was rearrested again in September 1988. On June 12, 1989, he was released but a year later, suspected of being involved in the organization of the Matiba-Rubia rally, he was arrested and detained once more.

We therefore decided that these harassments could only be brought to an end if more and more people came out to demand for multi-party politics openly. Our secret discussions at the Munyua Waiyaki farm intensified, and we decided to launch an opposition political party called the National Democratic Party as soon as possible. Its leader would be the veteran opposition politician, Jaramogi Oginga Odinga, the father of Raila. Very little has been written about the National Democratic Party (NDP) of 1990. Indeed, only one sentence appears on it in *Wikipedia's* coverage on "Jaramogi Oginga Odinga". And this sentence says: "In 1990, he tried in vain with others to register an opposition party, the National Democratic Party". The attempt to register the NDP as an opposition political party, though thwarted by the courts under the excuse that it was unconstitutional, was definitely "not in vain". It led to more and more people, aware of what had happened in the West following the fall of the Berlin Wall in 1989, to come out more openly to demand political pluralism. Moi could not afford detaining all of them: he caved in to the demand and appointed a Review Committee to look into "the possibilities of creating more room for critical voices within the party as well as removing Section 2A of the Constitution that prohibited multi-party politics".<sup>12</sup>

In our book, written and published well before the fall of the Berlin Wall, we had already pointed out that popular pressures for democratization and democracy were so deep and so widespread in Africa that sooner rather than later, the diverse *ancien regimes*, masquerading as presidential authoritarian states, would soon not be able to keep down these forces. Given, in particular, the dwindling material basis for the reproduction of these regimes, and the growing changes in the international political environment, the sunset of unbridled authoritarianism was progressively growing closer (Nyong'o 1987b).

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<sup>12</sup> For a fuller account of this process, see D. Throup, C. Hornsby (1998), *Multi-Party Politics in Kenya*, Nairobi: East African Educational Books.

In 1989, for example, the United States of America Republican government appointed a conservative journalist, Smith Hempstone, as ambassador to Kenya. Contrary to expectations, this conservative journalist became a very outspoken supporter of the reform movement and a vocal proponent of democracy, much to Moi's utter disgust.<sup>13</sup> There is no doubt that Hempstone had a strong brief from Washington to support the reform movement, and he did it with confidence and braggadocio, obviously making it clear to Moi that the days of defending "oppressive friendly regimes abroad to buttress communism" were over as far as the US government was concerned.

Following the refusal to register the NDP, the increasing pressure for democracy internally and externally and the final caving in of the Moi regime to remove Section 2A of the constitution, the opposition finally launched, in November 1991, the Forum for the Restoration of Democracy (FORD) as a broad national democratic front to remove the Moi regime from power. FORD's mobilization anthem, *yote yawezekana bila Moi* (all is possible without Moi) reminded one of the late Tom Mboya's dictum on *uhuru* (freedom) at the time of independence. So broad based were both the Freedom and the FORD movements that they easily grouped together uneasy bed fellows whose interest would obviously diverge when it came to access to state power. And FORD started unravelling no sooner had it set on its journey to remove the Moi regime.

Two clear tendencies soon emerged. One led by the KANU diehards who had left the ruling party after being excluded from power on ethnic and business related fights and conflicts. The second led by Jaramogi Oginga Odinga and the "Young Turks"<sup>14</sup> who saw removal of Moi from power as only a means to an end. The end to this second group were much more far reaching economic and political reforms that would require a fundamental overhaul of the constitution, indeed a new "social contract" between the people and the state ushering in what Thandika Mkandawire (2010) eventually called *a national democratic and developmental state*.

Eventually, well before the first multi-party elections were held in December 1991 after thirty years of independence, FORD had broken up into two major factions: FORD-Kenya led by Jaramogi Oginga Odinga and the Young Turks and FORD-Asili led by Matiba and the old KANU breakaway

<sup>13</sup> See Smith Hempstone (1997).

<sup>14</sup> The "Young Turks" were the 6 young professionals who had been involved in the reform movement from the seventies and were the prime movers of FORD together with Jaramogi. They represented the more social democratic wing of the movement while the old KANU politicians were steeped in the wheeler-dealer nationalist politics. These "Young Turks" were Raila Amolo Odinga, Paul Muite, Gitobu Imanyara, Joe Ager, Anyang' Nyong'o and Mukhisa Kituyi.

establishment politicians. The two FORDs played into Moi's hands by one being led by a Luo (Jaramogi) and the other by Matiba (a Kikuyu). State propaganda, like in colonial times, branded these two reform parties as mere tribal outfits against KANU's "more nationalist outlook". And given that Moi's former Vice President, Mwai Kibaki, a Kikuyu, had also broken off to form the Democratic Party of Kenya, Moi's appeal to his age-old "small tribes" to stay put in KANU to safeguard their interests won him a wide constituency of political adherents from the other ethnic groups. In the election of December 1991, though conducted under the veneer of multi-party politics, KANU still had the upper hand as the party with the presidency. State institutions were blatantly used to limit the organizational outreach of the opposition parties. There were areas which were largely closed to the opposition. The Electoral Commission of Kenya (ECK) operated under rules which favored the ruling party.

Though Moi did not, as president, win the majority of votes (36.4%), the other opposition presidential candidates split the rest of the votes giving Moi a simple majority win. What is even more amazing is that KANU ended up with more Members of Parliament than the opposition political parties due to the obvious gerrymandering of constituency boundaries. The electoral process was replete with fraud and malpractices, inter-ethnic violence, police harassment, blatant bribery of voters etc.; but the courts would not give a fair hearing to a petition filed by Kenneth Matiba seeking redress in the presidential poll.<sup>15</sup> The opposition became increasingly aware that without fundamental constitutional reforms, creating laws and "rules of the political game" – as well as institutions – for managing democratic elections, the opposition political parties were unlikely to win an election against the authoritarian regime.

The 1990s saw years of dedication to constitutional reform by the reformists. The prelude to the 1997 elections was a stand by the opposition which insisted on "no reforms no elections" (Mutunga 2002). Once more a broad section of the progressive lawyers, academics, clerics and even businessmen joined or supported this movement of "no reforms no elections". To avoid an embarrassing stand-off, Moi caved in and persuaded the opposition to agree to inter-party negotiations in Parliament for certain reforms in the constitution and the laws that would allow for holding reasonably free and fair elections. The Inter-Parties Parliamentary Group (IPPG) accords established an electoral commission in which both the opposition and the ruling party were represented. The IPPG reforms also removed state restrictions on public

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<sup>15</sup> See for example, The Report of the International Republican Institute, *Kenya: The December 29, 1992 Elections* (1993), Washington: IRI.

gatherings, abolished the “Chiefs Act” which gave inordinate powers to local chiefs to control public assemblies and associations. The National Convention Executive Council (NCEC), the body that advocated that a National Convention be formed to discuss constitutional reforms rather than confining such debates to parliament, vigorously objected to the IPPG approach (Katumanga 2011). In many ways the NCEC was right; but the opposition was not united on the NCEC demands, nor would the parliamentary political parties boycott the pending elections. Some reforms were however, needed, to make the elections freer and fairer. In this regard, Moi found less room for manipulating these elections; but he still won. The game of numbers favored him.

Without a radical change in the constitution, and with the disunity in the opposition, it was unlikely that the latter would win any election. In the 1997 elections, several major parties were in the context apart from the ruling party KANU. FORD-Kenya, which had disintegrated and out of it came The National Development Party (NDP) and the Social Democratic Party (SDP); FORD-Asili which had become relatively weaker over the four years; FORD-People which was regionally confined among the Kisii people where its leader, Simon Nyachae, came from and the Democratic Party, led by Mwai Kibaki. After the elections, the opposition party leaders realized that without forming a broad coalition they could not win any election even with the limited IPPG reforms. Negotiations therefore started among these parties for coming together in a common electoral front. NDP decided to join KANU and fight from within. After all, under the new IPPG reforms, Moi would be serving his last term and would not be a factor in the 2002 elections. The argument of the NDP was that it was easier to reform KANU from within than fight it from outside. The other parties: DP, SDP and FORD-Kenya – and other minor non-parliamentary parties – started to negotiate for a common front. By 2001 a new coalition had merged, the National Party of Kenya (NPK). Quiet negotiations started between NPK and the now defunct NDP. In the meantime the Moi succession struggle had started in earnest in KANU. NDP felt that its leader may not, in the end, become Moi's preference for a successor. Other senior Moi cabinet members also became jittery. Increasingly Moi showed signs of favoring the young Uhuru Kenyatta, son of his predecessor Jomo Kenyatta, as his preferred successor. This finally became a reality at the KANU delegates conference in Nairobi in September 2002. Top KANU officials and politicians, disgruntled by the choice, broke away to form the Liberal Democratic Party (LDP). An alliance was quickly forged between the LDP brigade and NPK to produce yet another broad-based national democratic front called the National Rainbow Coalition (NARC), now to be led by Mwai Kibaki, the then octogenarian politician. Once more yet another broad nationalist movement, united

by a single factor of removing Moi, mimicked KANU of the independence (*Uhuru*) days. Like KANU and FORD before it, it would soon disintegrate into its various contradictory parts three years after initiating major reforms in Kenya.

### ■ When the People Speak and Democracy is Let Loose

There was one major outcome of the NARC triumph in the 2002 general elections: finally, a “people power” was tasted by the public. Circumstances had conspired, internally and externally, to make it possible for a broadly based national democratic movement to remove the authoritarian president from power. Internally, it was the breakdown of KANU occasioned by the opportunistic “swallowing” of the NDP as a way of increasing the parliamentary base of KANU not realizing that Moi would not dictate his succession. Externally, it was the fall of the Berlin Wall and the opening up of the world stage to pluralist politics devoid of the protection of non-democratic regimes in the Third World by the US simply because they were a shield against the communist expansion. The post-1989 world would be a different world. Democracy would be let loose!

Immediately after the December 2002 elections that swept NARC to power armed with a Manifesto entitled “Democracy and Popular Empowerment”, the people went into the streets of Nairobi waiting to see the first policeman who dared take a bribe against a motorist accusing him or her of a traffic offence. The people arrested such policemen and took them, not to the nearest police station, but straight to the courts asking magistrates and judges to open “charge stations” and anti-corruption courts. To create order out of the enthusiasm of the people, Parliament passed an ethics and anti-corruption law, the Ethics and Public Officers Act and other drafts of legislation meant to tame corruption. A special office, complete with a Permanent Secretary in charge of corruption, was established in the President’s Office. A process cleaning up the corrupt judiciary started under a commission that vetted all members of the judiciary and dismissed the corrupt and inept and appointed new supposedly “clean” judges and magistrates.

The Cabinet that the President appointed represented “the face of Kenya”, both in terms of regional as well as ethnic terms. It had the highest number of women since independence. But it had one major shortcoming: it did not respect the Memorandum of Understanding (MOU) between the Liberal Democratic Party (LDP) – or the Rainbow Alliance, the breakaway group from KANU led by Raila Amolo Odinga – and the National Party of Kenya (NPK), the president’s own pre-election alliance. These two formed NARC under

an MOU that stipulated how the cabinet would be formed and government positions shared. To add insult to injury, the structure of consultations among the two coalition partners once the government was formed also started to wane, with the president relying more and more on state power to rule and less and less on popular politics and people's power to keep his legitimacy as a *raison d'être* of being where he was. As Adam Przeworski (1975: 49–67) once asked: is mobilization the source of political decay? In the Kenyan context of the post-NARC election and the resultant political exuberance of the people we are justified to ask: was political institutionalization the harbinger of the restoration of authoritarianism.

The unfortunate thing was that as a new clique emerged in State House determined to roll back the clock to the Moi years under the cloak of undertaking reforms. What more, Kibaki suffered a stroke and for a couple of months was not well enough to run the affairs of the state. This clique, composed essentially of politicians from the Agikuyu community from the Mount Kenya region, was referred to as “the Mount Kenya Mafia”. They started to wind back the clock to the old authoritarian ways of giving state contracts to themselves and their colleagues, appointing people from their own community to state jobs and even beginning to use state apparatuses to oppress their political “enemies”. All this did not happen overnight; but the more signs were observed of “political decay”, the more coalition partners from other political persuasions realized that *plus ça change, plus c'est la même chose!*

There was, however, an alternative: a new constitution. NARC had promised that it would give Kenyans a new constitution within the first 100 days of coming into power. The LDP wing of NARC was determined to honor this pledge; the NPK started to drag its feet. This became a major bone of contention. A people's convention convened at the Bomas of Kenya convention center passed a draft constitution which the NPK brigade regarded as “too radical”. It completely wiped out the presidential system of power by bringing in a parliamentary system with the parliamentary democracy. This, the NPK thought, would pull the rag from under their feet and deny them the chance to use the presidency as a source of primitive accumulation. They decided to fight the now named “Bomas Draft Constitution”. Another radical quality of this draft was its emphasis on devolution and the use of the plebiscite in limiting central power, either at the national or devolved levels of government. This, too, the NPK brigade opposed. The latter decided to draft its own version of a constitution by a limited number of state officials and ministers assembled at the coastal city of Kilifi not trusting the people's power from Bomas. This latter draft became popularly known as the “Kilifi Draft”. It was this Kilifi Draft that was finally taken to a national referendum in October 2005. As would be

expected, the LDP wing of the NARC government opposed it while the NPK wing supported it. The cabinet was divided almost in half. The referendum was won by those who said a loud “NO” to the Kilifi Draft with the “orange” as their symbol in the referendum. The Kibaki wing in the NARC government, the NPK, suffered an ugly defeat while the “orange” LDP group, now joined by other social forces from civil society and minor opposition parties from diverse ideological persuasions, emerged triumphant. Kibaki immediately dissolved his cabinet and kicked out all ministers who had championed the “NO” or orange campaign in the referendum. The LDP was out of the government. It decided to institutionalize a broader based coalition composed of the “NO” referendum partners. This coalition was named the Orange Democratic Movement (ODM) where I became the Secretary General. NARC became an empty shell. Kibaki brought in leaders of minor political parties and once again, like his predecessor, started to rely more and more on state power, not popular power, to rule.

### ■ **The Birth of the New Constitution and the Emergence of a new Authoritarianism with an Electoral Face**

The experience of the 2005 referendum, the subsequent dissolution of the cabinet and the near restoration of the *ancien régime* by Kibaki consequent to that, taught the ODM brigade one important lesson. That is: democratic changes are not made or institutionalized by the good will or good nature of human beings but by institutional changes and institutional prerequisites that dictate certain forms of political behavior. The ODM therefore decided to focus on constitutional reform as its major mission with a devolved government as well as a parliamentary democracy as key pillars of the new constitution. A presidential system of government, in whatever form, would always be prone to authoritarian behavior.

The elections of December 2007, however, were held under the unreformed constitution inherited from the Moi era. Although certain progressive laws had been passed by the NARC government, the electoral laws remained essentially the same with members of the Electoral Commission appointed entirely by the President. As the results started flowing in on the night of December 27<sup>th</sup> 2007 showing that the ODM presidential candidate, Raila Amolo Odinga, was winning the elections, the state started tampering the procedure with Returning Officers suddenly disappearing and the national tallying center at the Kenyatta International Conference Center (KICC) suddenly being surrounded by the military (the first time this happened in Kenya’s history). From then on, a crisis would follow when the chairman of the Commission, Samuel Kivuitu,

confessed on television that “I don’t know what is happening; the Returning Officers may be busy cooking up the figures somewhere!”<sup>16</sup>

Subsequently, notwithstanding the public outcry, the Chairman of the Electoral Commission was driven to State House at dusk and declared Mwai Kibaki the elected president. Spontaneous public protest and resistance broke out almost everywhere, especially in the major urban centers. Inter-ethnic conflicts followed. Neighbor slaughtered neighbor depending on which side of the political divide they found themselves. Kenya suddenly descended into a Hobbesian state of nature. For weeks, state security agents, under the guise of trying to maintain order and restore peace and security, slaughtered citizens demonstrating and protesting against the rigged elections. It became necessary for the pan-African and international community to come in and try to mediate between the two major conflicting forces: the ODM and PNU (Party of National Unity, the new political outfit of Mwai Kibaki).

Kenya’s Post-Election Violence of 2007/2008 has been extensively studied and written about, by scholars as well as diplomats, a good number focusing on the achievements of the Chief Mediator, the former Ghanaian Secretary General of the UN, Kofi Annan.<sup>17</sup> The narratives apart, the scholarly articles ask the questions *Why did the violence occur? What went wrong with the elections? Could the violence in which 1,300 people died, 5000 people were rendered homeless and property worth billions of shillings was destroyed had been avoided?* Much more interesting are those studies which zero in on one key issue: to what extent is an authoritarian regime prepared to resist the results of a democratic election when it loses it?<sup>18</sup>

The mediation process looked at three issues. First, the electoral process: how strong were the laws and regulations regarding the elections, what were the constitutional provisions, how well prepared was the Electoral Commission in running the elections impartially in terms of its composition, mode of operation and technical capacity? The South African Judge, Justice Johann Sandy Kriegler, who headed the Commission on the electoral process, found many flaws in this process and recommended extensive reforms to avoid another flawed election. Under the circumstances in which the December 2007 elections were held, it was difficult to tell who won the election since figures were messed up, documents deliberately destroyed, the Commission itself

<sup>16</sup> See, for example, Stan Oyunga, *Exclusive: Kenya Presidential Elections that May Have Been Rigged*, The Kenya Election Database, December, 2015, (@ 2015 Stan Oyunga).

<sup>17</sup> See, for example, Elisabeth Linden Mayer and Josie Lianna Kaye (2009), *A Choice for Peace? The Story of Forty-One Days of Mediation in Kenya*, New York: International Peace Institute.

<sup>18</sup> See, for example, Mwangi wa Githinji and Frank Holmquist (2012), *Reform and Political Impunity in Kenya: Transparency Without Accountability*, „African Studies Review”, Vol. 55, Issue 1.

was compromised and government agencies not always willing to co-operate (Kriegler 2008).

The Kenyan judge, Justice Philip Waki, who headed *The Commission of Inquiry on Post-Election Violence*, focused on the violence itself: how it occurred, its perpetrators, the motives of their actions and who bore the greatest political responsibility for the violence. It concluded by pinpointing 10 key political personalities on both sides of the political divide, ODM and PNU, and within the state apparatus. These names were then handed over in an envelope to the Chief Mediator, Kofi Annan, who was expected to keep them while the Kenyan government was given time to put in place a domestic legal process to deal with the culprits. Failure to do this would mean handing over these names to the International Criminal Court (ICC) at the Hague for the concerned persons to be tried for committing crimes against humanity.<sup>19</sup>

The Kenyan government did not take action on the Waki Report. Following the time lines that the report stipulated on actions to be taken, the ten names were finally submitted to the ICC, charges preferred and trials undertaken. In the end 7 were acquitted but 3 committed for trial, but finally discharged for lack of sufficient evidence due to witness disappearance, bribery and intimidation, non-cooperation by the Kenyan government and hence insufficient grounds to convict. The two leading culprits, Uhuru Kenyatta and William Ruto, finally teamed together in the 2013 Presidential Elections and rode over the sympathy of their ethnic communities to win that election as President and Deputy President of the Jubilee Coalition.<sup>20</sup>

One important outcome of the crisis following the disputed presidential elections of December 2007 was the formation of the coalition government as a political settlement of the crisis with the task, with a strict timetable, to undertake far reaching reforms that would create a more viable environment for democratic governance and free and fair elections. These were all enshrined in *the National Accord and Reconciliation Act of 2008*. A key element of these reforms was constitutional overhaul and reform. A new Constitution was finally passed in a national referendum in October 2010 which radically changed the architecture of governance in Kenya. A new bi-cameral legislature was introduced, two systems of government were established – national and county governments substantially devolving power to the latter – and a very progressive Bill of Rights institutionalized. But one factor from the old constitution was

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<sup>19</sup> See, for example, The Kenya National Commission on Human Rights, *The Waki Report* (Nairobi: mimeo, 2008).

<sup>20</sup> See, for example, *Kenya and the International Criminal Court (ICC): politics, the election and the law* (2014), "Journal of Eastern Africa Studies", Vol. 8, No. 1.

preserved, though with subdued powers: the presidency. This proved to be the weakest part of the chain of democratic reforms in Kenya.

I have always argued, very much in tandem with other scholars, that presidential systems of government are highly unsuitable for multi-ethnic and culturally diverse developing societies. They are very prone to presidential authoritarianism and authoritarianism “with an electoral face” (Norris 1989).<sup>21</sup> Thus the 2013 presidential elections, the first to be held after the reformed constitution of 2010, ran into more or less the same problems as the elections of 2007. The difference this time was that, due to strict legal measures to be followed in electoral disputes, the “losing” party was compelled to seek redress in the Supreme Court where the process and outcome could not be fully accepted as properly discharged. The Supreme Court decision remained controversial.<sup>22</sup> It was not so much a test to decide who between two presidential candidates, Raila Amolo Odinga of the Coalition of Reform and Democracy (CORD) and Uhuru Kenyatta of the Jubilee Alliance, genuinely won or lost the elections, but whether under a highly ethnically polarized electoral contest electoral malpractices can be genuinely settled in a court of law. The electoral system requiring that contests be held to elect one person to a very powerful position of the presidency is itself the *casus belli*.

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<sup>21</sup> See also my article, *State and Society in Kenya...* (1989).

<sup>22</sup> See, for example, *Verdict on Kenya's presidential election petition: Five reasons the judgment fails the legal test*, “The EastAfrican”, April 20, 2013.

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#### AUTHORITARIANISM WITH AN ELECTORAL FACE IN AFRICA

This essay is about how authoritarian regimes in Africa use so-called democratic elections to stay in power or to avoid being removed from power. Some of these elections are blatantly rigged; some are semi-competitive and occasionally lend legitimacy to such regimes as being somehow approved by the people or based on the consent of the people. Since Africa is such a big continent with nation-states which have had different histories since independence, we cannot make watertight generalizations, though “typologies” very often prove useful in making comparative studies. In this case, we shall use Kenya as a typical case of former plantation colonies which political economies are comparable and the fortunes of democratic governance quite similar. We conclude that the struggle for democratic governance will always be rooted in people's need to be governed and yet to control their governors.

**Key words:** Kenya, Africa, authoritarian regime, elections, nationalist movement, political oppression, opposition, presidential authoritarianism, democracy, constitution