

Review of Political Party Democracy in Kenya

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Abstract

Kenya's independence elections of 1963 were contested on multi-party democracy. Over fifty years later, political parties still revolve around personalities. It is difficult to distinguish the leading political parties by clear ideology. Consequently, consolidation of political party democracy in Kenya has been derailed. The purpose of this study was to establish the institutional deficiencies that have undermined political party democracy in pre and post independent Kenya. The researcher studied the country's political history from various authoritative sources and noted in narrative form the events that influenced political party democracy in Kenya. The study found out that political party democracy in Kenya pre independence to 2010 when a new constitution was promulgated has been undermined by executive power excesses, negative ethnicity, and political corruption. The study recommended faithful and full implementation of the Constitution of Kenya 2010. Short of this, consolidation of political party democracy will remain elusive in Kenya.

Key Words: Multi-Party Democracy, Political Party Democracy, Institutional Deficiencies Executive Power Excesses, Negative Ethnicity, Political Corruption.

Introduction

In pre and post independent Kenya, the executive arm of government has tended to consolidate political power. It has been exercising excessive executive powers, negative ethnicity, and political corruption over the institutions of governance. Political parties have been fashioned into personal instruments for mobilizing political support. They have been defined more by 'personality cultism' than ideology. Ethnicity, not ideology, has been the basis of party membership and affiliation. So has been partisan allocation of State resources and service positions. This politics of exclusion could be attributed to failure to distinguish party (affairs) from the State (affairs). Nationalism (rising above party or partisan interests) has rarely been demonstrated by the political leadership. Sometimes political exclusion has been ensured by detention or assassination of opponents; violent physical attacks on opponents; disruption of political activities; unfair laws; faulty elections; bribery of opponents; misinformation of the public; and lopsided socio-economic development. However, it is the executive's control over the legislative and judicial functions that could stand out for blame for the opportunities for democratization missed by Kenya. However, the new Constitution of Kenya 2010 offers the country fresh hope that democracy may at last be consolidated.

Political Party Democracy in Colonial Kenya

Party politics in Kenya started along ethnic mobilization. Reasons for this are varied but two historical facts could stand out. Communities that form Kenya migrated in as distinct tribes. They settled in separately at different times. Their African origins being different, they brought in different cultures and adopted different lifestyles. These included means of livelihood, socialization, relations with neighbouring communities, and leadership. Each tribe had its own

leadership in place, mostly cultural or religious than political. For Example the Nandi people were led by Samoi Koitalel; Kisii by Sakawa; and the Mumia by Nabongo. This was around mid-18th century. Thus, in pre-colonial Kenya, ethnicity was the basis of association, socialization, and leadership.

By late 18th century, industrial revolution had taken root in Europe. European nations led by Britain, France, Germany, and Belgium ‘scrambled’ for Africa. They needed Africa’s natural resources to input their industries. The industrial output also needed the big market that is Africa (Gates & Appiah, 2010, pp.1). Each country desired to control a larger part of Africa. They employed a combination of military, religious, and diplomatic (treaty) tactics to ‘conquer’ Africa. During the Berlin conference (1884 to 1885) they agreed to share Africa. This 1885 agreement ‘legitimized’ Britain’s claim over Kenya territory in the ‘eyes of Europe’. Britain ‘won legitimacy’ to control Kenya. In 1888 the British Crown chartered a commercial company, the Imperial British East Africa Company, to control and develop Kenya. This was a political function assigned to a commercial company. This intertwining of public service and private business, it may be argued, may have introduced ‘commercialization and corruption of politics’ in pre and post-colonial Kenya. Kenya became a British colony in 1920 under a Governor acting for the British Crown. By then, the indigenous people had escalated protest against European occupation of their prime lands. No compensation had been paid for the land. The protests had started upon British occupation but got organized between 1904 and 1920.

Ethnicity was the first unit of organization against the British rule. For instance, in 1921 the ‘*Young Kikuyu Association (YKA)*’ was formed to ‘recover Kikuyu land.’ Subsequently, similar ethnic/region based political-cultural associations were formed across Kenya. Intending to apply the ‘divide and rule’ tactic, and to ensure that political activities remain weak and less coordinated, “The British colonial policy in Kenya restricted the earliest African political associations within the borders of ethnically defined administrative districts. Thus, ethnicity marked the earliest political activism” (Orvis, 2001, pp.8).

Around this time, certain personalities started attracting admiration nationally for their courage in opposing the colonial rule. Thus when Harry Thuku was arrested in 1922, thousands of people demonstrated demanding his release. Some were killed by police. This aggrieved the country. So did the exclusion of African parties from the legislative Council elections of 1924. In 1925 the colonialists cracked down on YKA. Its members converted to the ‘*Kikuyu Central Association*’ (KCA). In 1928, Jomo Kenyatta became KCA general secretary. He also edited the party newspaper and campaigned for Africans’ inclusion in the legislative council. But the politics of exclusion was repeated in the elections of 1927, 1931, 1934, and 1938.

In 1939 the Second World War started. The first had lasted 1914 to 1918. These wars had stretched Britain’s resilience to the core. The cost of the war in terms of human life, money, equipment, and time, was becoming a heavy burden. Sooner or later, a change of strategy for administering colonial Kenya would be inevitable. Meanwhile, the Africans had become more determined to fight on. In 1944, James Gichuru and Harry Thuku formed the *Kenya African Union (KAU)*. The same year, Eliud Mathu, an African, was nominated into the legislative council by the government to represent Africans. In 1945 the Second World War ended and on 24th October that year the *United Nations (UN)* was formed to help avoid repeat of such conflicts.

The first and second world wars had caused atrocities and violations against peoples' lives and dignities. The UN would change that by promoting international cooperation among the nations of the world. The 'world embraced' concepts of international cooperation, international law, human rights, rule of law, and democracy. In 1946, one more African was nominated to the legislative council. In 1947 Jomo Kenyatta won KAU's presidency in elections. As Kenyatta became influential, his character defined any political party he joined or left. In time, political parties would revolve around strong personalities. It became difficult to transform the parties to sound institutions of governance.

On 10th December 1948 the UN General Assembly adopted *The Universal Declaration of Human Rights*. Its preamble described it "as a common standard of achievement for all peoples and all nations." Its provisions included: "No one shall be subjected to arbitrary arrest, detention or exile" (Article 9); "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5); "Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association" (Article 20); "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures" (Article 21). Perhaps in response, the same year, 1948, the number of Africans nominated to the Kenya's legislative council was increased to four. They became six in 1952.

In 1952, militancy was started by the 'Mau Mau' under Dedan Kimanthi. The armed Mau Mau employed guerilla tactics to attack the British, their commercial interests, and local collaborators. The colonialists declared 'a state-of-emergency' in Kenya on 21st October 1952. Six Kenyan nationalists of different ethnicities, distinguished for the liberation struggle, were arrested, tried for trumped up charges, and jailed. These included Jomo Kenyatta, Achieng' Oneko, Bildad Kaggia, Paul Ngei, Kung'u Karumba, and Fred Kubai. Many Mau Mau militants were executed or detained without trial. In 1956, African representatives were again excluded from the legislative council elections. In 1957 Dedan Kimanthi was executed. These arbitrary executions, detentions, and political exclusion, of opponents were a direct contravention of *The Universal Declaration of Human Rights* to which Britain was a signatory. Such blatant disregard for the law by the State was common but undemocratic. Nevertheless, colonial rule in Kenya and Africa had become increasingly untenable. In 1957, for the first time, the colonial government allowed Africans to *elect* representatives to the legislative council. Previously, representatives were nominated by the colonial government. Each region (province) elected one representative. These were: Daniel Moi (Rift Valley), Ronald Ngala (Coast), Oginga Odinga (Central Nyanza), Tom Mboya (Nairobi), Masinde Muliro (North Nyanza), Lawrence Ogunda (South Nyanza), James Muimi (Ukambani), and Bernand Mate (Central) (Ogot & Ochieng, 1995, pp.54). Notably, no woman was elected. Neither had any woman been nominated by the colonial government. Politics, political parties, and governance were male dominated. This unjustified exclusion of women from politics and governance would persist until 2010 when Kenya repealed the independence constitution of 1963.

Aware of the impending independence, influential politicians started positioning themselves to take over power. Two opposing positions emerged. The first group comprised of, among others, Kenyatta and Odinga from the Kikuyu and Luo ethnicities respectively. This group being dominant by population, victory at the independence elections would be certain. This group would become the *Kenyan African National Union* (KANU). Fearing domination by the large ethnicities, the smaller ethnicities grouped as the *Kenya Africa Democratic Union* (KADU). KADU's leaders included Daniel Moi and Ronald Ngala. KADU favoured majimboism (federalism) over KANU's centralism (unitary State) (Orvis, 2001, pp.8). These parties were promptly registered in June 1960 by the colonial government. It would turn out to be that these political groupings had not resulted from 'bonding of the ethnicities' into an ideology. Rather, it was based on concessions among the various ethnic leaders. The political party formations revolved around the influential politicians. Their loyal ethnicities almost automatically filled the political party membership. If their leader changed political parties or alliances, they followed suit.

Same year, 1960, the Lancaster House Conference was convened in London. The participants included KANU, KADU, and the British government. The conference was reconvened in 1962 and finally in 1963. This is indicative of how tough the negotiations were between KANU, KADU, and the British government. Its purpose was to fuse political goodwill with legal instruments towards Kenya's independence. Specifically, to finalize Kenya's first constitution and independence time-table. As the Lancaster negotiations continued, KANU won the legislative council in 1961. KADU attained a distant but significant second. Same year, Kenyatta was released from prison. Being a respected nationalist, he was expected to unite KANU and KADU into a mass political movement. He tried unsuccessfully then opted to accept the KANU presidency. To his credit, he preferred operating above party politics. He disliked dominating KANU the way Nyerere controlled his CCM Party in Tanzania (Ogot & Ochieng, 1995, pp.66). In 1962, the Lancaster conference reconvened, and a constitution and time-table for Kenya's independence were realized in 1963. The *Kenya Independence Act of 1963* and the *Constitution of Kenya of 1963* were enacted by the British government to legitimize Kenya's independence. The constitution provided for 'multi-party democracy' and some form of 'federalism.'

Political Party Democracy in Independent Kenya

In 1963, KANU won the legislative elections. Again KADU was a distant but significant second. On 1st June 1963 Prime Minister Kenyatta formed a KANU led government. The Governor-General, acting for Her Majesty the Queen, was the Head of State and Commander-in Chief (*The Constitution of Kenya, 1963*, article 31). On 12th December, Kenya became an independent State. President Kenyatta appointed Odinga Vice-President. On 1st June 1964, Kenya became a Republic. Kenyatta and Odinga were also the President and Vice-president of KANU respectively. In time, the ruling party and the government became indistinguishable. Public resources were used to further partisan political activities. The *Kenyatta International Conference Centre (KICC)*, a landmark piece of architecture and distinguishing feature of Nairobi, was converted into KANU property. KANU used it as party headquarters and collected millions in rental income for decades. In 2003, the new government returned KICC to the public by an executive order after KANU's electoral defeat in December 2002.

After independence, KADU experienced mass defections of its elected leaders. Some defected to foster national unity, others to get a share of the 'national cake' (Orvis, 2001, pp.8). In 1964, KADU officially dissolved itself voluntarily into KANU. Paul Ngei's *Akamba Peoples Party* (APP) had already dissolved into KANU. This practice of frequent switching of political parties and allegiances would become very established in Kenya to the detriment of political party democracy. In 1965 Gama Pinto, an independence hero and friend to Odinga, was assassinated. The country was distraught. In March 1966 Odinga, socialist leaning, formed an opposition political party; *Kenya Peoples' Union* (KPU). The KANU dominated parliament changed the law to require defectors to seek fresh election. This was a double standard. The defectors into KANU had continued to serve as members of parliament without facing fresh elections. In the by-election, the only seats won by Odinga's KPU were in constituencies dominantly occupied by his Luo community. His ethnic community moved with him to the opposition party.

President Kenyatta replaced Odinga as Vice-president. Joseph Murumbi became the new Vice-president. Murumbi would resign into private life within a year. This, the opposition claimed, was an indictment of the KANU government for dictatorship, tribalism, nepotism, corruption, and land grabbing. Indeed the Kenyatta administration was accused of 'grabbing' huge tracts of land especially in the provinces of Rift-Valley, Central, and Coast. Part of this land was recovered from the colonial settlers. Opposition politicians accused Kenyatta of keeping the land to himself and distributing some to members of his ethnic Kikuyu community and political supporters. Other beneficiaries included squatters and the ex-Mau Mau fighters. Kenyatta's supporters refuted this claim on land. In 1967, Daniel Moi became the Vice-president. This appointment by President Kenyatta, critics argued, was designed to appease Moi's Rift-Valley over the land question. Others argued that Moi had been rewarded for political loyalty having dissolved KADU and joined KANU. With Moi as Vice-president to Kenyatta, KANU became "a coalition of the dominant Kikuyu with small ethnic groups formerly of KADU, with the Luo largely in the political wilderness" (Orvis, 2001, pp.8).

In 1969 Tom Mboya, Justice and Constitutional Affairs minister, independence hero, and nationalist of Luo ethnicity, was shot dead in Nairobi. His death shook the nation. Protests broke out in Kisumu, Odinga's political stronghold, as President Kenyatta opened the New Nyanza General Hospital later that year. Odinga and some KPU officials were arrested and the party was banned. By this obvious unconstitutional ban (the Constitution of Kenya 1963 allowed Multi-party politics until 1982 when the relevant clause was amended), KANU 'eliminated' political competition in the 1970s. In 1972 Minister Ronald Ngala died in a motor car accident. In 1974 independence hero Kungu Karumba mysteriously disappeared never to be found allegedly while transacting some business in Uganda. In 1975 parliamentarian J.M. Kariuki, a nationalist of Kikuyu ethnicity, was found murdered. Contrast with Mboya, J.M had been critical of the KANU government for dictatorship and corruption. His famous quote was one accusing the government of 'creating 10 million beggars and 10 billionaires' through unfair policies. In 1978, Minister Bruce Mackenzie was killed in a plane crash at Ngong Hills Nairobi on his way from Entebbe Uganda. Foul play was alleged in these deaths. Formal investigations never settled the matters satisfactorily or conclusively. Some aspiring politicians, especially women, felt intimidated and discouraged to participate in competitive politics. Until 1990s, women parliamentarians were at most about three. No woman ever got appointed full cabinet minister before 2000s. Only one or two had been appointed assistant ministers. This exclusion of women

from political leadership undermined consolidation of democracy in Kenya. The President appointed Ministers and their assistants from members of parliament. These many Ministers had voting rights in parliament which enabled the presidency to control the legislative processes. The presidency also influenced the judiciary through control of budget and appointment and removal of judicial officers. *The Constitutional (Amendment) Act of 1988* was passed by parliament in a record three hours, removing security of tenure for Court of Appeal and the High Court Judges (Ogot & Ochieng, 1995, pp.211-212).

In 1978, President Kenyatta died of old age and was succeeded by Moi. President Moi immediately appointed Mwai Kibaki Vice-President. On his inauguration speech, Moi promised to follow Kenyatta's footsteps. He declared in Kiswahili language, "*Nitafuata Nyayo*". *Nitafuata* means 'I will follow.' *Nyayo* means 'footstep or footsteps.' He meant he would follow Kenyatta's leadership style. Moi would brand his leadership '*Nyayo philosophy*,' which in Kiswahili was '*filosofia ya Nyayo*.' Throughout his long tenure of office, Moi would emphasize his *Nyayo philosophy* insisting it was of '*peace, love, and unity*,' which in Kiswahili was '*amani, upendo na umoja*.' *Nyayo* would become one of Moi's politically descriptive names. By the time Moi succeeded Kenyatta as president, public servants, civil servants, and politicians had been so entrenched in private business enterprises. They influenced government tendering processes and inflated prices to favour themselves. Levels of political corruption would become phenomenal under Moi's tenure. The *Goldenberg scandal* of the 1990s involving loss of over 158 Billion Kenya Shillings from public coffers through fictitious gold export compensation scheme is alleged to have been partly used for 1992 elections campaigns. While the scandal was confirmed by the *Commission of inquiry into the Goldenberg Affair of 2003 (Bosire Commission)*, the link to the 1992 elections financing was only alleged circumstantially, the scandal having happened just before the elections. Similarly, the *Anglo leasing scandal* was linked to the 2002 election financing. The *Commission of Inquiry into the Illegal/Irregular Allocation of Public Land of 2003 (Ndun'gu Commission)* concluded that illegal public land allocation were systematically done by officials who saw nothing morally wrong. It is estimated that the amounts the public lost through land scandals exceeded Goldenberg and Anglo leasing beyond comparison. Part of the money and land corruptly acquired would be used to buy political support and undermine opponents. Money was given out through countless public donations (*Harambee* in Kiswahili). The '*Harambee spirit*' was popularized by President Kenyatta and perfected by President Moi. The true spirit of *Harambee* was mobilization of resources from the public voluntarily to compliment government efforts in funding public projects (for example schools, health facilities, churches) and in aid of the less privileged people in the society (for example to educate their children or get medical treatment). But the *Harambee spirit* was largely undermined by Political corruption.

In June 1982, the KANU dominated parliament made Kenya a de jure one-party State. Only loyal politicians were cleared to contest elective positions. To vie for elective seat, one needed clearance by a political party. KANU was the only party recognized in law. Therefore, those cleared by KANU automatically became elected. Independent candidates were barred by law to contest. So were all the other political parties except KANU. No competitive elections were ever held until 1992. In August 1982, there was a failed military coup against President Moi's government. The government reacted by 'crashing' political opponents zealously. Political opponents were detained without trial, others 'convicted' for 'tramped up' charges. In 1983

Charles Njonjo was forced to resign as Justice and Constitutional Affairs Minister, after *the Justice Miller led Judicial Commission of Inquiry* appointed by President Moi to look into his conduct reported that he had engaged in subversive activities aimed at unconstitutionally removing Moi as president and taking over. Ironically, Njonjo had in the 1970s successfully fought off attempts by some politicians to change the constitution to bar Vice-President Moi from automatically succeeding President Kenyatta upon his imminent death. Now in 1983 he was allegedly a 'traitor.'

In the 1988 elections, the government used the queue voting system. This would turn out to be the most corrupt elections in Kenya's history. Instead of secret balloting, voters were required to physically queue behind preferred candidates or their agents. Apart from intimidating, confusing and tiring voters, this system made it impossible for a 'loser' to petition the results in court for lack of documentary evidence. It would be virtually impossible for a 'loser' to prove that his queue had been the longest but the electoral officials recorded otherwise. There were many public complaints that real losers had been declared winners. Same year Moi appointed Dr. Josephat Karanja to replace Kibaki as Vice-President. In 1989 Karanja resigned following a parliamentary no-confidence vote, allegedly for plotting to overthrow President Moi. Moi replaced him with Professor George Saitoti. In 1990 Foreign Affairs Minister, Dr. Robert Ouko, was assassinated. The government initially admitted he had been murdered in circumstances that suggested foul play. Later, the government advanced a suicide theory. The government, with assistance from the British government, brought in Scotland Yard detectives led by John Troon (now deceased) to assist in uncovering Ouko's death. In their final report, the detectives complained of government's non co-operation, ruled out the suicide theory, and concluded it was a political assassination. Public opposition to the KANU government's misrule intensified. The international community, mostly Western countries, withheld aid to the government in support of change. The opposition piled up pressure consistently. So did the civil society, religious groups, the media, and professional bodies including the Law Society of Kenya (LSK). Finally, in 1992, section 2(a) of the Constitution was repealed to allow multi-party politics. President Moi and KANU 'won' the multi-party elections of 1992. Although the elections were not free and fair, they were the most competitive in Kenya's history (Patel, 2001, pp 158). The campaign periods were characterized with ethnic violence in areas considered 'opposition zones.' This disenfranchised voters. The opposition cried foul play and alleged electoral malpractices had cost them victory. The opposition parties themselves were fragmented into FORD Asili of Matiba, Oginga Odinga's FORD Kenya and Kibaki's Democratic Party (DP) among many others (Patel, 2001, pp 161). Thus opposition votes had been split among the many contenders. But the electoral commission itself was not independent. The chairman and commissioners of the commission were the president's appointees. The same electoral scenario and outcome was repeated in the 1997 elections, except for the minimal electoral reforms implemented under the *Intra-Parties Parliamentary Group (IPPG)*. These reforms included allowing the opposition to hold political rallies by simply notifying police (previously they needed police licensing which was mostly denied on flimsy grounds), and to nominate some commissioners to the electoral commission alongside the President's. Moi and KANU won again in 1997. The presidential results for 1992 and 1997 were unsuccessfully petitioned in court by Kenneth Matiba and Mwai Kibaki respectively. They failed for having not effected personal service of the petition to Moi. The court knew the president could not be reached in person unless he consented. Instead of

ordering alternative means of service such as notice in newspapers, the court struck out the petitions on the technicalities.

In 1998 claims emerged in parliament that the KANU government had been ‘paying’ some influential journalists ‘to do consultancies for it.’ Kwendo Opanga was specifically named in respect to the 1992 elections. He was accused of having collected money from KANU to dig out opponents’ dark past from media reports, publish some in his popular Sunday newspaper articles and pass on others to KANU politicians to spew out during political rallies. Consequently Opanga was forced to resign from the Nation Group media on 23rd June 1998. The following day, the Nation group published a statement condemning and disassociating itself from that unprofessional conduct. Same day, the matter formed part of the parliamentary debate (Kenya National Assembly Official Record (Hansard), 24th June 1998, pp 831-832). Years later, Opanga rejoined the Nation Media Group as a Sunday Nation columnist. The government had for a long time since independence had absolute control over the media. There was only one television and radio stations in the country (VOK now KBC). These were government owned, so the government used them exclusive of the opposition to influence the public views. Private television and radio stations surfaced late 1990s but had limited coverage. Leading Newspapers were out of reach for most of the public for price. This government interference with the media greatly undermined democracy because ‘alternative voices were unheard.’ This made it difficult for the opposition to mobilize political support.

In 2001, Raila Odinga’s National Development Party (NDP) joined the KANU government after cooperating for a year or two. About three NDP members joined the cabinet. Early 2002, NDP dissolved and became part of ‘New KANU.’ This arrangement was more between Moi and Raila the individuals than between their parties. It would emerge that even Saitoti, the country’s and KANU’s Vice-president, was not privy to the crucial details about the merger. So was KANU Secretary General, cabinet minister Joseph Kamotho. The two top leaders of KANU turned up at Kasarani grounds to defend their seats, only to find that no party elections would be held after all. A list of ‘New KANU’ officials agreed between Moi and Raila had been circulated and would ‘be endorsed by the delegates by acclamation.’ It was claimed that some of the party ‘delegates’ were fake. Live television broadcasts showed Saitoti trying in vain to consult Moi. Moi simply ignored him. Finally, Saitoti offered to publicly withdraw his candidature for the party Vice-president. Moi allowed him to address the meeting. Saitoti said, *“There comes a time when the interest of the nation is bigger than that of the individual....”* This would become his most memorable remark, quoted by many again and again. In the end, Moi remained the party chairman, Raila became secretary general, and the vice-chairman position was split into four. Ironically, Raila’s father’s post of KANU Vice-President had also been split into eight in the 1960s to ‘dilute his powers’ in the party. A disappointed Odinga joined KPU.

The union between Moi and Raila would be short lived. Late 2002, Moi personally announced that Uhuru Kenyatta (Jomo Kenyatta’s son) would be KANU’s sole presidential candidate in that year’s election. Uhuru was hardly two years old in politics. Moi overlooked Saitoti, his Vice-President of about 13 years. He would later say that although Saitoti was his friend, leadership was a different matter. Taken literally, Moi had retained Saitoti as Vice-President that long for their friendship, not leadership abilities. Notably, an institutional plan for mentoring and choosing national leadership was lacking. A disgruntled Raila, Saitoti, Kalonzo Musyoka, Joseph

Kamotho, Musalia Mudavadi and others left KANU for the Liberal Democratic Party (LDP). Mudavadi returned to KANU, replaced Saitoti as Vice-President, and became Uhuru's running mate in the presidential contest. The LDP quickly formed a coalition with the National Alliance Party of Kenya (NAK). NAK was a coalition of Kibaki's DP, Ngilu's Social Democratic Party (SPD), and Wamalwa Kijana's FORD Kenya. NAK and LDP conglomerated as NARC. Simeon Nyachae of FORD People also contested the presidency on 27th December 2002. NARC won the elections by landslide with Kibaki as President and Kijana Wamalwa Vice-president. Uhuru became the official leader of the opposition in parliament.

Wamalwa died of illness in August 2003. By then, ethnic divisions had emerged. Raila's LDP wing claimed Kibaki had shortchanged them in public appointments. Unknown to the public, LDP and NAK had a memorandum of understanding (MOU) prior to the 2002 elections. The MOU was not legally binding as its basis was 'Gentlemen Understanding.' Under the MOU a new constitution was to be finalized within 100 days of being in power. The position of Executive Prime Minister would be created and Raila would be its first occupant. This was never to be. Kibaki's NAK disowned the MOU as nonexistent. This MOU dispute brought wrangles within the NARC government dividing it down the Middle. The two groups would disagree on virtually everything. The main dispute was on the structure of the proposed New Constitution. Specifically, Raila wanted a parliamentary system of government with an executive Prime Minister. But Kibaki preferred a presidential system of government with a non executive Prime Minister. In 2005, a national referendum was held on the proposed constitution. Kibaki supported it, Raila opposed. Raila's NO group won. Kibaki sacked Raila and group from the cabinet, and co-opted opposition members into the cabinet. These included Nyachae (FORD People) and Njenga Karume (KANU). The justification was that even Raila had worked with a section of KANU to defeat the government at the referendum. A disgruntled Raila formed an opposition coalition, Orange Democratic Movement (ODM).

In 2007 ODM's Raila and ODM-Kenya's Musyoka challenged Kibaki's re-election. Kibaki was narrowly re-elected. The opposition disputed the results and claimed victory. Post election violence ensued. President Kibaki promptly appointed Musyoka Vice-President to consolidate political support through a coalition arrangement with ODM-Kenya. Although violence had occurred at every election, the 2007/2008 one was of shocking proportions to the international community. Over 1,300 people had been killed, and the destruction of properties had been massive. The international community stepped in and mediated a peace-pact between the two rival parties, Kibaki's Party of National Unity (PNU) and Raila's ODM. Kibaki retained the Presidency and Raila became Prime Minister with some executive powers in a coalition government. As part of the reforms agreed upon, two separate commissions were set up to investigate the disputed elections and the post-election violence. The *Independent Review Commission (IREC) of 2008* (Known as *Kriegler Report*), an International Commission appointed by President Kibaki following agreement with Africa Union -Panel of Eminent Person (who negotiated the National Accord that ended the post elections violence and formed the government of national unity) concluded in its report of September 2008 that "*the conduct of the 2007 elections was so materially defective that it is impossible-for the IREC or anyone else-to establish true or reliable results for the presidential and parliamentary elections.*" Ruling out top level fraud by the electoral commission, IREC blamed the situation on institutional deficiencies of the electoral commission. It also concluded that both ODM and PNU parties were

formed on ethnic basis, leading to inter-ethnic rivalry for power as opposed to political party democracy.

The post election violence was investigated by an internationally formed commission chaired by Justice Waki. Six of the suspects identified by the Waki Commission were later charged at the International Criminal Court (ICC) for crimes against humanity. Among them were Uhuru Kenyatta (cleared by the ICC in December 2014-the 4th suspect to be so cleared), and William Ruto (who alongside journalist Joshua Sang's were the last two cleared by the ICC in April 2016). However, the hallmark of the reforms agreed under the National Accord that ended the post-election violence was the enactment of the new constitution of Kenya 2010 on 27th August 2010. Both PNU and ODM supported it. These political parties' formation and functioning revolved around the personalities, ethnic affiliations, and fund raising abilities of Kibaki and Raila. Now political parties must have: registration status; national character; democratically elected governing council; subscribe to a code of conduct for political parties; funding from the State; and audited accounts, among other institutional attributes. Political parties have been made public institutions, funded by the public, therefore audited by the Auditor-General. So they must have clear management structures, operational procedures, and dispute resolution mechanisms. Procedures for nominating its officials and candidates to contest elections must be publicly known, clear, consistent, and fair (Constitution of Kenya, 2010, article 91-92). So should its constitution and office be (The Political Parties Act, 2011). They can no longer be personal instruments, secretly funded, nominating friends to positions, without due process, at the exclusion of other members. Previously, it was difficult to distinguish parties from other societies. Both were registered under the same law, *The Societies Act, Cap 108 Laws of Kenya*. Now political parties have their own law, *The Political Parties Act of 2011*.

The Future of Political Party Democracy in Kenya

The Constitution of Kenya 2010 has created new institutions of governance with sufficient checks and balances between the executive, parliament, and the judiciary. It has also provided for the Bill of Rights which cannot be changed except by a national referendum (the Constitution of Kenya, 2010, article 255). The Bill of Rights has provisions that enhance democratic ideals. The court has powers to develop (make) the law to the extent necessary to give effect to a right or fundamental freedom and to adopt the interpretation that most favours the enforcement of a right (the Constitution of Kenya, 2010, article 20). This means that legal loopholes can no longer be used by the State to deny a person democratic rights and fundamental freedoms.

Furthermore, the public is entitled to access information from the State, or any other person, necessary to exercise of rights and fundamental freedoms including political rights (the Constitution of Kenya, 2010, article 35). The State can no longer interfere with media freedom. The State is prohibited from controlling or interfering with any person engaged in broadcasting, production, or circulation of any publication or dissemination of information by any means (the Constitution of Kenya, 2010, article 34(2) a). Media outlets being diverse, the State can no longer shape public opinion by monopolizing ideas. State-owned media such as KBC are legally obligated to give all political parties' equitable coverage especially when campaigning for elections (the Constitution of Kenya, 2010, article 92 (a)). Now alternative views are being heard consistently. It is left to the public to evaluate alternative political persuasions, make choices,

form belief or opinion, and express them through voting, speech, publication, broadcasting, dissemination, or association with others politically, professionally, culturally, and whichever other way (the Constitution of Kenya, 2010, article 32).

Now there is freedom for individuals to associate politically and otherwise (the Constitution of Kenya, 2010, article 36). The State is restricted from interfering with political associations. The right to make political choices, to be a candidate for public office, or to hold a political party office are guaranteed (the Constitution of Kenya, 2010, article 38). A person denied political rights is entitled to fair administrative action and can re-claim the same through judicial review (the Constitution of Kenya, 2010, article 47). Thus a person cannot be excluded from participating in elections by executive decrees or malicious legislation. Arbitrary arrests and detention of persons is expressly outlawed (the Constitution of Kenya, 2010, article 49). Thus the State cannot eliminate political competition through arrests and detentions. Furthermore, every person is entitled to fair hearing in a court of law (the Constitution of Kenya, 2010, article 50). Thus, political opponents can no longer be jailed on the basis of 'trumped up charges.' Neither can they be harassed through searches in their homes or offices. Now every person has a right to privacy (the Constitution of Kenya, 2010, article 31).

Politics of exclusion has been made difficult by the constitution. Women, youths, minorities, and marginalized groups can no longer be excluded from holding political and public service offices. This includes persons with disabilities. Their right to participate and be represented in governance and other spheres of life is guaranteed (the Constitution of Kenya, 2010, article 55-56). In principle, at least one third of legislative, executive, and judicial positions must consist of the either gender (the Constitution of Kenya, 2010, article 81(b). This provision is intended to protect women from male domination over institutions of governance. For instance, it has been very difficult for a woman to be nominated as political party's candidate for elections. This is because political party politics have historically been male dominated. Since 2010 political party nominations are no longer the only means of contesting elections. A person can contest as an independent candidate (the Constitution of Kenya, 2010, article 85). This means that a person does not need to belong to a political party whose ideals he does not identify with, merely to be nominated to contest elections. Now women, youth, disabled persons, minorities and other marginalized groups, and independent minded but qualified persons sidelined by political parties can contest elections as independent candidates. This could make the political discourse more inclusive. Political inclusivity is important in consolidating a democratic culture in the country.

The principle of fair representation has been enhanced in the constitution in terms of defining sizes of electoral units (constituencies, wards) and the composition of nominated members of legislative bodies. Before 2010, nomination of members to legislative and civic bodies was done arbitrarily by the presidency mostly to reward political loyalists. Women, youth and disabled persons were rarely chosen. They had little money and (physical confrontations being common) masculinity to contribute to the political party. Since 2010, the nomination of women, youth, and disabled persons to legislative bodies is defined and guaranteed by law. Nominations to the Senate shall include 16 women nominated by political parties proportionate to the seats won, 2 representatives of youth (man and woman), and representatives of disabled persons (man and woman) (the Constitution of Kenya, 2010, article 98). Women representation is further enhanced by reservation of special electoral seats in the National Assembly for women. A woman is

elected from each of the 47 counties to the National Assembly membership, in total 47 electoral seats reserved for women (the Constitution of Kenya, 2010, article 97(1) b). Twelve persons are nominated to the National Assembly to represent special interest groups (youth, workers, persons with disabilities). These are special seats besides those contested and won in the 290 constituencies of the National Assembly and the 47 counties of the Senate (the Constitution of Kenya, 2010, article 97(1) c).

Fair representation has also been ensured in terms of electoral units' equity. Before 2010, administrative units were decided arbitrarily by the presidency. Regions politically loyal to the president and his ruling party were rewarded with more administrative units compared to opposition leaning zones. Consequently, the ruling party got more representatives, resources, and voting rights in the legislature. Since 2010, delimitation of electoral units is the preserve of an independent constitutional commission; the Independent Electoral and Boundaries Commission (IEBC) (the Constitution of Kenya, 2010, article 88(4) c). The IEBC is required to ensure that the number of inhabitants of a constituency or ward is as nearly as possible equal to the population quota (the Constitution of Kenya, 2010, article 89(5). No over-representation or under-representation of some populations or regions. This fairness in electoral boundaries is important because counties, constituencies, and wards are the units for allocating resources and services (the Constitution of Kenya, 2010, article 217).

Following the 4th March 2013 elections, the Kenyan legislature was reconstructed to enhance political party democracy. Now Parliament consists of the National Assembly and the Senate (the Constitution of Kenya, 2010, article 93). The independence Senate had been abolished in 1966 as part of the government's policy of centralizing and consolidating political power in the Presidency. This undermined regional representation in the legislative and government resource sharing functions. Now Senate is representing the interests of the 47 counties through: representation; approval of bills concerning counties; equitable sharing of national revenues between the national and county governments and among the counties by approving the formula developed by a constitutional commission (Commission on Revenue Allocation, CRA); and supervising performance of State officers through the power of impeachment (the Constitution of Kenya, 2010, article 96). By ensuring equitable allocation of resources to each county regardless of political party or voting affiliations, the Senate empowers citizens to exercise political choices freely without fear of deprived development. Previously, development priorities were determined by the Presidency and this prerogative was used to reward/punish political loyalty/disloyalty. By the power of impeachment, Senate can now remove elected leaders including the President, Deputy President, and Governors for disservice to the electorate. In 2014 the Senate impeached Embu governor on grounds of procurement related irregularities. Early 2015 the High Court upheld Senate's resolution. This decision was subsequently reversed by a higher court (*Martin Nyaga Wambora & Others V. County Assembly of Embu & Others*, 2014) and the Governor continued in office. No such fair impeachment process of public and State officers existed previously. Only leaders considered disloyal to the President and the ruling party were removed by the party through politically instigated: vote of no confidence in parliament; presidential sacking; arrests; detentions; expulsion from the party; and (in extreme cases) assassinations (Ogot & Ochieng, 1995, pp.166-167). To mention a few, Robert Ouko was assassinated in 1990 while serving as Minister for Foreign Affairs & International Co-operation; Tom Mboya in 1969 while serving as Minister for Justice & Constitutional Affairs; JM Kariuki in 1975 while serving

as parliamentarian. KANU had a disciplinary committee chaired by the party chairman. During the chairmanships of David Okiki Amayo and Peter Oloo Aringo in the 1980s and 1990s respectively, many politicians including Ministers lost their positions through expulsion. Kenya was a single-party State then and one had to be its member to qualify for political elections and appointments. These undermined political party democracy. What was previously the official opposition party (the party or coalition that got the second largest number of elected legislators) is now described as the minority party and is part of the legislature's leadership. The minority party leader is third to the Speaker and second to the majority party leader (the Constitution of Kenya, 2010, article 108). This order applies at the National Assembly, Senate, and County Assemblies. The opposition also chairs important committees including the Parliamentary Accounts Committee (PAC) and Parliamentary Investment Committee (PIC), which oversight executive spending and investments respectively. Parliamentary sovereignty has also been enhanced. Now members of parliament are excluded from appointment as Cabinet Secretaries (formerly Ministers), and members of the Executive from membership in the Legislature (the Constitution of Kenya, 2010, article 152(2)). This denies the executive the many voting rights previously exercised through the Ministers and their Assistants. Thus it is difficult for the Executive to dominate legislative processes. More so because parliament now hires its own staff and controls its budget through the Parliamentary Service Commission (PSC) (the Constitution of Kenya, 2010, article 127-128). Now Parliament has a term defined by the constitution, and controls its own calendar and business (the Constitution of Kenya, 2010, article 102). Previously the President could dissolve parliament at will and the election date was his '*secret weapon*.' Prior to the 1992 elections, media reports quoted President Moi saying the election date was his secret weapon. This was interpreted to mean he would fix a date favourable to his party against the opposition. Now the election dates are fixed by the constitution (the Constitution of Kenya, 2010, article 136(2) a). Therefore, political parties can plan for elections and not be ambushed. Neither can Parliament be 'blackmailed' by the Executive anymore to take a certain position or be dissolved. However, non-performing or corrupt members of Parliament can be recalled by the electorate before the end of their term (the Constitution of Kenya, 2010, article 104). This level of political accountability was lacking previously. Now there is more accountability, openness, and inclusivity even in the conduct of the legislative business itself. Parliament compulsorily conducts its business in the plenary and at committee settings in forums open to the public (the Constitution of Kenya, 2010, article 118(1) a). The public is able to attend in person and by live television/radio broadcast. The public and media (print and electronic) have almost unlimited access except when sensitive matters are under investigation and witnesses need protection. Parliament itself has a working live broadcasting unit. This enables the public to evaluate the performance of their representatives and political parties in advancing public good. They can then be able to make better electoral choices in the future. Similarly, individual representatives and political parties are also enabled to 'showcase' their work to the public. They could win public support, crucial for competitive politics. Previously, legislative business was a 'closed shop.' Live broadcasts were on rare State functions, and only the State owned broadcaster, KBC, released parliamentary reports to the public. These were 'highly edited' to suit the government position. The Speaker could lock out the public and media almost at will, if unhappy with their attendance or reporting. Now parliament is prohibited from excluding the public or media except in justifiable circumstances (the Constitution of Kenya, 2010, article 118(2)). Instead, parliament is required to facilitate public participation in its legislative and other businesses such as vetting of State officials (the Constitution of Kenya, 2010, article 118(1) b). Public

participation includes proposing legislation or changes to it, and petitioning parliament to consider any matter of public interest (the Constitution of Kenya, 2010, article 119(a). All these are intended to protect public good and democracy. Parliament can no longer 'rush legislation through' without involving the public as happened in 1988 when in a record three hours Court of Appeal and High Court Judges lost security of tenure (Ogot & Ochieng, 1995, pp.211-212). Early 2015, the Security Law (amendment Act) of 2014 was challenged in court in the case of *Coalition for Reforms and Democracy & Others V. Republic of Kenya & Others, 2014* on grounds that: public participation was insufficient; its enactment in parliament was chaotic; and it violated fundamental rights and freedoms guaranteed by the constitution. While the High Court nullified eight clauses, it declined to declare the entire Act unconstitutional. The court took the view that *standing orders* (the rules set by parliament to guide the conduct of its business) not having been flouted, parliament's disorderly conduct amounted to '*moments of loud consultations.*' Considering the time available, 46 institutions having presented views, the court found that to be sufficient public participation in the circumstances. Had public participation been insufficient, the Act would have been nullified in its entirety.

On electoral management, rigging of elections has been made more difficult. Free and fair elections are guaranteed by secret balloting; elimination of violence, intimidation, improper influence and corruption in the electoral processes; conduct of election by an independent electoral body; transparency in voting; and impartial, neutral, efficient, accurate and accountable administration of elections (the Constitution of Kenya, 2010, article 81(2). In principle, the presidency no longer appoints nor controls the electoral commission as was the case before 2010. Neither are the electoral commissioners political parties' nominees as happened in 1997 under the Intra-Parties Parliamentary Group (IPPG) agreement. Since 2010 the electoral body, the IEBC, became a constitutional commission (the Constitution of Kenya, 2010, article 248(2) c). Its chairperson's and commissioners' position are publicly advertised, interviewed, and vetted by parliament before formal appointment by the president. It also has a fulltime secretariat and staff headed by a chief executive officer competitively recruited. This makes it more professional, experienced, reliable, accountable, and effective. In the past, the electoral body recruited part-time staff around elections time to conduct elections. They were discharged after elections. It was difficult to vouch for the competence, reliability, and loyalty of such staff. This impacted on the quality of the conduct of elections.

The mechanisms for settling electoral disputes are now well set out. Notably, service of petition may be direct or in a newspaper with national circulation (the Constitution of Kenya, 2010, article 87). This means that the President or other influential person can no longer escape electoral petition on technicalities. Recall that Matiba's and Kibaki's petitions against Moi failed because they could not serve President Moi personally. Now, justice shall be administered without undue regard to procedural technicalities (the Constitution of Kenya, 2010, article 159(2) d). At the 4th March 2013 elections the main presidential candidates were Uhuru Kenyatta (The National Alliance (TNA); Jubilee Coalition) and Raila Odinga (ODM; CORD Alliance). These are sons to the first President and Vice-president of Kenya respectively. Raila refused to petition the 2007 re-election of President Kibaki in court claiming it was biased. But he did petition the Supreme Court of Kenya against the 2013 election of Uhuru as President in *Raila Odinga & Others V. the Independent Electoral & Boundaries Commission & Others, 2013*. The petitioner claimed that the President and his Deputy had not been validly elected; the elections having not

been conducted freely, fairly, transparently, and credibly contrary to the constitution and all relevant laws. The Supreme Court found no merit in these claims and upheld Uhuru's victory. Unsatisfied, Raila argued that his crucial piece of evidence had been excluded for late filing. Justice, he claimed, had been denied on procedural technicalities contrary to the law. His opponents disagreed and argued that if he had a case in the first place he could have filed it within the time allowed, which is 7 days of the declaration of the results (the Constitution of Kenya, 2010, article 140 (1)). In any event, the Supreme Court itself had only 14 days to determine the petition (the Constitution of Kenya, 2010, article 140 (2)). The Supreme Court's decision being final, Raila respected it. This calmed the country as opposed to the violent protests suffered in 2007/2008. This was the first time in the country's history the opposition had opportunity to petition the presidential elections results with possibility for success. Until the Supreme Court declared its verdict, the country was unsure what its decision would be. This acceptance of the court as the final arbiter of political disputes is a sign of a maturing political party democracy. So has the transformative nature of certain judicial decisions. In *Diana Kethi Kilonzo & Wiper Democratic Movement Party V. IEBC & Others, 2013*, the court allowed a political party to replace a Senatorial candidate who turned out to be unqualified after the IEBC deadline for clearing contestants. The court held that the political party and its supporters, being innocent of the electoral fraud alleged of their candidate, had a legitimate expectation to field and vote for its candidate at the elections. This was not possible before the constitution of Kenya 2010 took effect. Now it is very difficult to exclude a political party or candidate from contesting elections. Judicial interventions have been effective in protecting political rights.

The renewed confidence in the Judiciary has largely resulted from the constitutional provisions guaranteeing its independence. Now appointments of judicial officers are through public interviews by an independent Constitutional Commission, the Judicial Service Commission (JSC) (the Constitution of Kenya, 2010, article 248 (2) e). Persons recommended by the JSC as Chief Justice, and Deputy Chief Justice, are vetted by the National Assembly before formal appointment by the President. The other Judges are appointed by the President on the recommendation by the JSC without reference to the National Assembly (the Constitution of Kenya, 2010, article 166 (1)). Early 2011 the High Court of Kenya annulled President Kibaki's nomination of Justice Alnashir Visram as Chief Justice for want of procedure. Subsequently the constitutional procedure was followed and Willy Mutunga became the Chief Justice. Further, the establishment of the Judiciary Fund, charged to the Consolidated Fund and administered by the Chief Registrar of the judiciary, has given the judiciary financial autonomy. Furthermore, the mechanism for filing complaints against judicial officers and disciplining them is now more open, objective, and efficient. Hardly a year into her appointment, Deputy Chief Justice Nancy Baraza was forced out of office in June 2012. This was after a tribunal appointed by the President on recommendation of the JSC found her guilty of pinching a female guard's nose, and drawing a gun on her with threats to kill. This happened on 31st December 2011 at a famous Nairobi shopping mall called 'Village Market'. In *Nancy Makokha Baraza V. the Judicial Service Commission & Others, 2012*, Baraza unsuccessfully sought to overturn the tribunal's report through judicial review. This forced her to resign. Similarly in 2013, the Chief Registrar of the Judiciary, Gladys Boss Shollei was suspended, investigated, and ultimately sacked by the JSC for financial mismanagement and improper governance. In *Gladys Boss Shollei V. Judicial Service Commission, 2013*, the Industrial Court (now the Employment & Labour Relations Court) overturned the JSC decision. The JSC successfully appealed in *Judicial Service*

Commission V. Gladys Boss Shollei & Commission on Administrative Justice, 2014. The Court of Appeal held that the JSC had acted well to sack her for insubordination, misconduct, and financial impropriety.

The President's executive powers have also been reduced significantly. Now opposition parties are part of the executive through governorships of the counties won at elections (the Constitution of Kenya, 2010, article 179-180). This is a landmark. Previously, opposition parties were only part of the legislature, not of the executive. Now, as part of devolution of power, the executive functions assigned to county governments are performed by the Governors and their Executive Committees exclusive of the President. The President's executive powers are limited to those functions assigned to the national government by the constitution (the Constitution of Kenya, 2010, article 186-187). This arrangement allows opposition parties to 'implement their manifestos through their governors and showcase their governance abilities to the public'. This promotes political inclusivity, diversity of ideas, and nationalism. The opposition supporters can feel they are an important part of the government. This can reduce political conflicts in the country and foster national unity in a competitive political party democracy. The executive authority of both the President and Governors is checked further through vetting of their key appointees by the National Assembly and County Assemblies respectively. The presidential appointees that must be vetted before formal appointment include Cabinet Secretaries (the Constitution of Kenya, 2010, article 152 (2), Secretary to the Cabinet (the Constitution of Kenya, 2010, article 154 (2), Attorney General (the Constitution of Kenya, 2010, article 156 (2), and Ambassadors. Vetting is meant to ensure that appointments are not merely used to reward political loyalists but merit and inclusivity of genders, ethnicities, regions, disabled persons, and other deserving persons. The President's power over control of State resources has similarly been limited. Management of land is now under an independent constitutional office, the *National Land Commission* (the Constitution of Kenya, 2010, article 67). It has been made difficult for the Executive to use public appointments, finances, or land to reward loyalists at the exclusion of others in return for continued political support. Now political parties and politicians are expected to compete for political support on the basis of ideas, not political corruption. In sum, the constitution has reformed the key institutions of governance including the judiciary, the executive, legislature, and political parties in a manner that will hopefully consolidate political party democracy in Kenya. Practically, there is evidence of change towards democracy and rule of law. But political corruption remains a threat to the new institutions of democratic governance. Thus, political goodwill is required to carry on with the institutional reforms towards a culture of democracy and the rule of law in Kenya.

Conclusion

This study has shown that political party democracy in pre and post independent Kenya has been undermined by institutional deficiencies in the institutions of governance. These institutions include the executive (presidency), legislature, judiciary, public service, and political parties. These were weakened and fashioned into instruments of serving partisan interests by executive power excesses, negative ethnicity, and political corruption. Executive power excesses have been most manifested in the manner the presidency controlled the legislative, judicial, public service, and political party functions as personal instruments. The executive took control of these institutions by filling them with 'loyal' members, officials, and staff, through flawed electoral

processes and uncompetitive/unvetted appointments. Negative ethnicity has been evident in ethnic political mobilization in political parties and alliances, ethnic violence especially around election times, ethnic appointments to key offices, and partisan allocation of public resources against ethnicities considered disloyal. Political corruption has been in the form of election rigging, arrests and detention of opponents without trial or with unfair trials, assassinations of opponents, theft of public resources, bribery for support, selective application of the law, blatant disregard for the law, malicious legislation, violent attacks on opponents and destruction of their properties, political exclusion, inequitable development, personalization of public institutions, unpredictability of governance processes, frequent changes to political party affiliations to hide past identities and confuse voters, failure to institutionalize political parties and define them ideologically, misinforming the public, and interference with media freedom.

The study has also shown that since 27th August 2010 when the Constitution of Kenya 2010 was promulgated, Kenya has made progress towards consolidating political party democracy. Some of the progress and transformation it has brought include: prudent electoral management processes making election rigging difficult; opportunity to petition presidential results before the President-elect is sworn in; equitable electoral units/representation; compulsory political inclusion of women, youth, disabled persons and other marginalized groups by reserving special seats for them; guaranteed political rights including the right to campaign, contest, or vote; compulsory public participation in the legislative processes; institutionalization of political parties; allowing independent candidates to contest elections; definite criteria for equitable allocation of resources to all counties each year; inclusion of opposition members in the executive functions through governorship seats won; guaranteed freedom of media and access to information; vetting of key presidential and gubernatorial appointees; opportunity to recall or impeach elected leaders for accountability; power of court to develop/interpret the law in a manner that realizes rights and fundamental freedom; right to fair administrative actions and to seek judicial review; outlawing of detention and arbitrary arrests; right to life; right to fair trial; safeguarding of public resources; accountability for State and public officials and staff; exclusion of cabinet secretaries from parliament; clear separation of powers between the arms of government; and checks and balances between the executive, judiciary and, legislature. Since 2010, the executive, judiciary, and legislature have practically demonstrated progress towards democracy and rule of law. Therefore, the new constitution represents the country's fresh hope that political party democracy will at last be consolidated in Kenya. However, executive power excesses, negative ethnicity, and political corruption still pose some threat to the full actualization of the reforms. Therefore, there is need for all the organs and persons charged with the implementation of the constitution to do so faithfully and fully. The public should also remain watchful of the process towards Kenya's democratization to avoid a relapse to the past.

References

- Coalition for Reforms and Democracy & Others V. Republic of Kenya & Others, Petition No. 628 & 630 of 2014, Kenya Law Reports.
- Diana Kethi Kilonzo & Wiper Democratic Movement Party V. IEBC & Others, Petition no. 359 of 2013, Kenya Law Reports.
- Gates, H.L. & Appiah, K. A. (2010). *Encyclopedia of Africa*. New York: Oxford University

- Gladys Boss Shollei V. Judicial Service Commission, Petition no. 39 of 2013, Kenya Law Reports.
- Judicial Service Commission V. Gladys Boss Shollei & Commission on Administrative Justice, Civil Appeal No.50 of 2014, Kenya Law Reports.
- Kenya National Assembly Official Record (Hansard), June 24, 1998, 831-832
- Martin Nyaga Wambora & Others V. County Assembly of Embu & Others, Petition Nos. 7 & 8 of 2014, Kenya Law Reports.
- Nancy Makokha Baraza V. The Judicial Service Commission & Others, Petition no. 23 of 2012, Kenya Law Reports.
- Ogot, B.A. & Ochieng, W.R. (1995). *Decolonization & Independence in Kenya, 1940-93*. Nairobi: East African Educational Publishers.
- Orvis, S. (2001). Moral Ethnicity and Political Tribalism in Kenya's Virtual Democracy. *Jstor: African Issues*, Vol. 29, 8.
- Patel, P. (2001). Multiparty Politics in Kenya. *Revista Ciencia Politica*, XXI, 1,154
- Raila Odinga & Others V. The Independent Electoral & Boundaries Commission & Others. Presidential Election Petition No.5 of 2013, Kenya Law Reports.
- Report of the Commission of inquiry into the Goldenberg Affair of 2003 (Bosire Commission), Kenya Law Reports.
- Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land of 2003 (Ndun'gu Commission), Kenya Law Reports.
- Report of the Commission of Inquiry on Post Election Violence of 2008 (Waki Report), Kenya Law Reports.
- Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007, Kenya Law Reports.
- The Constitution of Kenya of 1963, Kenya Law Reports.
- The Constitution of Kenya of 2010, Kenya Law Reports.
- The Constitutional (Amendment) Act of 1988, Kenya Law Reports.
- The Intra-Parties Parliamentary Group Act of 1997, Kenya Law Reports.
- The Kenya Independence Act of 1963, London, British Crown.
- The Political Parties Act of 2011, Kenya Law Reports.
- The Security Law (Amendment Act) of 2014, Kenya Law Reports.
- The Societies Act, Cap 108 Laws of Kenya, Kenya Law Reports.
- The Universal Declaration of Human Rights of 1948, United Nations.