

**ADDIS ABABA UNIVERSITY**

**COLLEGE OF SOCIAL SCIENCES**

**CENTER FOR AFRICAN STUDIES**

**THE CHALLENGES OF GOOD GOVERNANCE IN AFRICA:  
THE CASE OF KENYA**

**BY ADANE BEKELE**

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**ADDIS ABABA UNIVERSITY**

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**ON**

**THE CHALLENGES OF GOOD GOVERNANCE IN AFRICA: THE CASE OF  
KENYA**

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## **ABSTRACT**

*Good governance is more in action where it can overcome all discriminations; based on wealthy, ethnic group, sex, region or political views; and also where all citizens equally benefited from countries resources. Good governance thus depends on interaction between stakeholders – leaders, political parties, bureaucracy, parliament, judiciary, private sector, civil society, media – and their interests; on capacity – human, technical, financial – of stakeholders to perform their role. Good governance requires fair legal frame works that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. In a good governance the rules and regulations that is implied should be clear and friendly enough to general public and should also motivate the nation to follow the implied law's of the country.*

*This paper examines the challenges of good governance in Africa with special emphasis on Kenya. In order to assess the challenges of good governance, qualitative method was used. Data was collected from secondary and primary sources and analyzed in order to recommend possible solutions.*

*Over the years, African governments and their institutions lacked the courage and will to enforce the law, procedures, and policies to enhance good governance. As a result in Africa, governance is characterized by poor institutional performance, inadequate parliament, lack of the independence of the judiciary system, corrupt police force, political instability, abuse and misuse of political offices, insufficient budgetary accountability, lack of respect for the rule of law and human rights, and bureaucratic bottleneck and above all corruption.*

*The findings of this study revealed that there are manifold problems that contribute to lack of good governance in Kenya. In the history of Kenya, all the first three presidents since independence have been habitually surrounding themselves with individuals whom they consult as they make decisions affecting the nation. They relied on their ethnic groups and relatives to sustain their power rather than good policies and strategies which benefit the majority of the country. Good governance in Kenya is rare in practice because both the public and private officials are not accountable and decision-making process is not transparent. In Kenya, bad governance has, over the decades, been manifested, among other things, in inequitable distribution of national wealth, abuse of human rights, lack of constitutionalism, lack rule of law, lack of separation of power, centralization of power, lack of visionary leadership and other misde*

# Acronyms

ADB-Asian Development Bank

ADF-African Development Fund

APRM-African Peer Review Mechanism

AU- African Union

DP -Democratic Party of Kenya

DFID- Department For International Development

ECA- Economic Commission for Africa

FORD-Forum for Restoration of Democracy

GEMA-Gikuyu, Emeru, Meru Associations

GDP- Gross Domestic Product

GNP-Gross National Product

IDA-International Development Agencies

IPEP-Independent Panel of Eminent Persons

JPC- Justice and Peace Convention

KADU-Kenya African Democratic Union

KANU-Kenya African National Union

LDP-Liberal Democratic Party

LSK-Law Society of Kenya

MDG-Millennium Development Goals

MoU-Memorandum of Understanding

NAK-National Alliance Party of Kenya

NARC-National Rainbow Coalition

NCCCK- National Council of Churches of Kenya

NEPAD-New Partnership for African development

NGOs- Non-governmental Organizations

NPK-National Party of Kenya

OAU-Organization of Africa unity

ODA- Overseas Development Administration

OECD- Organization for Economic Co-operation and Development

OSIEA-Open Society Initiative for Eastern Africa

SONU-Students Organization of Nairobi University

UDHP - Universal Declaration of Human Rights

UNECA-United Nations Economic Commission for Africa

UNESCAP-United Nations Economic, Social Commission for Asian and Pacific

ECSGD- Empowering Communities for Self Governance and Development

CIPEV- Commission of Inquiry into the Post-Election Violence-

# CHAPTER ONE

## Introduction

### 1.1. BACKGROUND

Development depends on good governance, and that is the ingredient which has been missing in far too many countries ( US President Obama during Africa visit, The Age 13/07/09).

Good governance is a catchphrase in this era and has swept public attention for the last decade. It has become a common term that is repeatedly used in development and political literature since the end of the 1980s. Since then it has gained significant attention in the world, especially among international organizations as well as scholars in academic world. This term however, was given much importance during the Cold War. What was rather given priority was the Structural Adjustment Program. The introduction and implementation of the Structural Adjustment Programs since the 1980s has never changed the lives of the people in developing countries especially in Africa despite the optimism of international financial institutions and leaders of the developing countries who adopted it as a tool to end poverty and misery. The significance of good governance for poverty reduction and sustainable development is accepted by both development practitioners and scholars of various academic institutions alike. Therefore, most developing countries build up and promote it as a tool to escape from poverty and achieve prosperity. The same reality holds true for countries in Africa (Wohlmuth cited in Uddin, 2010:6).

The concept of good governance has received increasing attention in Africa at the end of the 1980s; the time coincided with the end of the cold war. Consequently, regional institutions as well as the respective countries have acknowledged its significance. The increasing relevance of the concept for overall development policies, for strategies to speed up development processes for measures to change development institutions and for quality enhancement at sectoral development intervention is accredited. In Africa, where there has been a historical records of bad governance, improving the governance environment of has been given a central place in the NEPAD – an initiative that represents the latest attempt by

African leaders to take the African continent on the path of sustainable development encompassing good governance and prosperity with a consolidation of peace, security, stability (African Development Bank, 1994). NEPAD has listed a number of prerequisite for African countries to move forward in their quest for development. Key among these is the proper adherence to good political, economic and corporate governance (Hope, 2003).

The historical condition of good governance in Kenya is not an exception to what was prevalent in other African countries even though Kenya is a relatively stable country than its neighbors. But the question here is whether Kenyans use the available opportunities to strengthen democratic institutions in order to promote good governance? Kenya has witnessed the widest and longest form of dictatorship equal to African leadership voracity. In Kenya, bad governance has, over the decades, been manifested, among other things, in inequitable distribution of national wealth, corruption, lack of constitutionalism and rule of law (Kwaka and Mumbo, 2011:57).

During the Moi's regime, human rights used to be a privilege and principally when one was perceived to be a threat to the administration, his rights failed under the question mark. Decisions were made to entice the president then, with patronage taking the centre stage in public offices. Basic rights were not respected by the government and at times any attempt to question the government spending and conduct of 'state affairs' was received with accusation of contempt if not treason. As Kenya was opening up to realities and as provision of basic needs and services by the government to the people became a challenge, Kenyans started to be dissatisfied by Moi regime. Also for Kenya the lack of good governance is seen as one of the major causes of the slow pace of human development or even its decline, as in the 1980s and 1990s (UNDP, 2003: XIII).

The Kenyan Human Development Index (HDI) - a composite of the indices of education attainment, life expectancy and standard of living - rose steady between 1975 and 1990 but then started to decline afterwards. The late 70s and early 80s saw not only a reasonable provision of basic services but also a quite good economic performance. The downward trend in the 1990s was due to the non-growing economy, decreasing access to basic services and corruption (UNDP, 2003: 9).

Corruption is named as the most prominent factor of the problem as it endangers the success of any economic reforms from the roots. Furthermore, authoritarian government is a decisive co-variable increasing the risks for development, as the political context already is a major obstacle for any project (Ake, 1996). This is valid not only for economical projects but also for those aiming at improving the human rights situation and strengthening democracy. This effect became also visible in Kenya in various electoral situations. Instead of strengthening the democratic climate the ruling factions relied on stirring up tribal rivalries, bringing about more division, hostility and intolerance to their nation instead of political progress. The corrupt and authoritarian rule also resulted in unfair distribution of the resources available inside the country as well as of those obtained from the international community. The ruling elites are mainly interested only to secure their positions by bringing their followers into the state-service and also foster their private wealth. So the bureaucracy is extending tremendously and also the funds are channeled outside the countries to private accounts. Additionally, many development projects are just designed to satisfy certain groups like tribes or regions, but are not really useful in the overall context of the country. This problem is more serious as the African economies in general are not growing and are also deeply in debt. However, this situation is changing in some African countries the economy show improvement, and there are a number of elections held (Kwaka and Mumbo 2011:59).

## **1.2 Statement of the Problem**

Good governance could be advanced and realized when it is well designed, practiced, and institutionalized. It also will be realized when multiparty politics is well anchored and enforced; the state is held accountable; free, fair and periodic election is conducted and human and political rights are respected. In addition, devolution of power, enforcement of rule of law, inclusion of civil societies and women in political sphere, transparent policy making, efficient and pro-poor services, and citizen participation on local politics, responsive institutions and economic liberalization are important attribute of good governance (Anwar, 2007).

In the absence of these aspects of governance no one can claim to enjoy the fruits that are derived from it. Therefore, every attempt to establish good governance is evaluated in line

with these qualities. Until now institutions, also the public ones has been a failure in Africa. Most of the institutions have been captured by elites and serve their interests. The resulting effect has been a lack of ability of the state to provide an institutional framework to support the development of good governance. As many African countries; Kenya has had a long history of bad governance; from the opposition of the British colonial government to the Kenyatta and Moi dictatorship and currently the Kibaki's ineffective, undisciplined and un-responsive administration. Bad governance in Kenya is caused by a number of factors, which include: constitutional limitations, failure to implement national policies, lethargy in the civil service, corruption, tribalism and impunity (ECSGD, 2011).

This study therefore, will made an attempt to address those and other related challenges faced and look into the state of situation of accountability, transparency and rule of law and the impact they have had on the performance of the development programs for people in the country. However, there are some studies which have conducted in region, but they concentrated on decentralization of power, civil societies role, the role of political parties (Maiyo, 2008), and public service delivery (Mbai, 2003). Since there is no comprehensive study carried out on the challenges of good governance in Kenya, the researcher therefore felt that conducting such a study might uncover some challenges.

### **1.3 Research Questions**

This study, therefore, is guided by the following leading questions:

- *What is the state of governance in Kenya?*
- *Do the components of good governance exist in Kenya?*
- *What are the main obstacles that impede promoting good governance?*
- *To what extent that the democratic institutions are effective in promoting good governance?*
- *What is the role of non-state actors in promoting good governance?*

## **1.4 Research Objective**

The general objective of this study is to identify and assess the major challenges of good governance encountered in Kenya. In the process of analyzing the relevant issues the study aims to achieve the following interrelated objectives.

- To assess and identify the status of governance and good governance in Kenya.
- To analyze the components of good governance that have sound effect on promoting good governance.
- To assess the performance of the relevant institutions that have impact on the nature of governance.
- To identify the major problems that impedes the process of building and consolidating good governance in Kenya.

## **1.5 Methodology**

The content is the method (King, Keohane, & Verba, 1994)

This section intended to show the methodological approach which guides this study. In addition, it discusses the choice of method, the advantages and disadvantages of the methods chosen and the goals.

In this thesis, qualitative method was employed to gather and analyze the data generated through various means. Qualitative analysis is useful for getting the real picture of the problems and it is better suited for detailed and complex analysis of given issue which cannot easily be quantified (Creswell, 2009). Nonetheless, a qualitative methodology has been selected to explore this research area to obtain a detailed understanding of the problem, because the qualitative study is a particularly suitable methodology for dealing with critical problems of practice and extending the knowledge base of various aspects. Hence in order to assess the real picture of the challenge of good governance, I have found quantitative methods to be insufficient on their own in explaining the phenomenon the research question seeks to answer. To be able to explore my research question rigorously, case study method present an appropriate and unique non-experimental way as it enables a

very close examination, scrutiny and collection of detailed material or information for the study that could be missed by quantitative research methods.

### **Data collection and analysis**

For the purpose of this study, both primary sources and secondary sources of data were used. The study was conducted by reviewing existing literature on good governance and its relevant issues. In conducting the library work, current literatures, such as books, journals, articles, official documents such as constitutions and other legal instruments, newspapers, working papers and research reports are reviewed.

In addition, the primary data was collected by using key informants from concerned bodies. The key informants were five Kenyans. They were purposefully selected from thirteen individuals from Kenya Embassy in Addis Ababa. An attempt was made to have knowledgeable informants.

The data was analyzed using qualitative techniques. The data gathered through unstructured interview was transcribed into themes and analyzed together with existing literature and documents to address the research questions. The data gained from differing sources was juxtaposed for the purpose of critical examination of the various claims.

### **1.6 Scope of the Study**

This study is limited itself to the political and the administrative aspects of good governance which is accepted as the most challenging in Africa's governance including Kenya. The researcher further limit himself to assess the challenges of good governance in Kenya by taking only certain attributes of good governance such as transparency, accountability, rule of law, and human rights and giving more emphasis on certain institutions which have believed to be more impact to ensure good governance in Kenya.

Kenya has been selected for this research principally for three reasons. Firstly, Kenya represents the salient features of a developing country. So it stands as a good example to study good governance among the developing countries which have accepted good governance as a core instrument for the development. Secondly, Kenya has been

attempting to introduce multi-partyism in order to assure good governance since the beginning of the 1990s. Thirdly, Kenya is one of the few countries, which relatively stable in East Africa where instability and lack of peace is common in other East African countries.

### **1.7 The Significance of the Study**

Good governance is the key for development and prosperity. It is the critical factor in poverty reduction as well as in achieving development objective. However, the currently challenges associated with good governance is unbearable due to factors such as corruption, nepotism, economic crisis, illiteracy, and poor service delivery among others. In developing countries like Kenya that struggle to reduce poverty and improve the living condition of their people, researches which will conduct on good governance have an imperative place. Hence this study will be significant in many ways. Firstly, it can provide policy suggestions for regional and national leaders and citizens at all levels to find means of alleviating challenges that face the process of promoting good governance. Secondly, the finding can be used to guide developed countries and donors to reexamine the unique challenges a particular nation faced instead of tagging aid to good governance. Thirdly, it will contribute to empirical literature on determinants of governance, hence serves as a point of reference to encourage further research on Kenya and other African countries.

### **1.8 Limitations of the Study**

As the concept of governance is multidimensional that includes social, economic and political aspects; it is difficult to draw inferences from political and administrative dimension, hence this study gives more emphasis to the political and institutional dimensions even though they are not mutually exclusive. In Africa most people do not freely talk about politics even though they talk, they are after considering left and right since the issue of governance is highly sensitive to politics; the researcher observed some informants reluctant to give information comfortably and declined to give information without good reasons. In addition to above mentioned limitations, financial and time constrains forbids the researcher to get much primary information from local Kenyan people to cross check the secondary data. Moreover, the number of key informants is small

because most the individuals are busy and some are not willing to participate or give any information. Therefore, further research is needed to assess current challenges of good governance in Kenya.

## **1.9. The Organization of the Study**

In addition to this introductory chapter, the thesis has four chapters. The second chapter presents the existing literature on good governance and followed by brief discussion on Africa's perspectives on good governance and the last part discusses the state of governance in Africa since independence. The third chapter examines the state of governance in Kenya. It examines political dynamic since independence, the decentralization of governance and the role of civil society in transitional process (politics) in Kenya. The next chapter four assesses the components good governance in Kenya. This part examines the situation of accountability, transparency, Judiciary bodies and human rights in Kenya. The last chapter five provides conclusion and recommendation of the study based on chapter three and four.

# CHAPTER TWO

## 2 Review of Literature

### Introduction

This chapter focuses on review of the relevant literature related to research questions. The chapter is divided into three sections. The first section focuses on the concepts, definitions, principles, elements, characteristics of good governance. The second section discusses African prospective on good governance. It emphasizes on the role OAU/AU and NEPAD to guarantee good governance in Africa. The third section tries to discuss the state of governance in Africa since independence.

### 2.1. Conceptual Framework: Governance, and Good Governance

#### 2.1.1 Governance

Governance is a complex system of interactions among structures, traditions, functions (responsibilities), and processes (practices) characterized by three key values of accountability, transparency and participation. (USAID, 2002: 2)

A cursory review of the literature on governance and good governance reveals a lack of consensus on its definition. Governance is a very broad concept, and operates at every level, such as household, village, municipality, nation, region or globe (Nzongola-Ntalaja, 2002). The present study reviews the literature on the concept of governance when it is applied to the nation-state. Governance has come to mean different things to different people. Some view it as ~~act~~ of governing others as empowering the civil society and yet others as the relationship between the state and civil society” (Balagon, 1998 cited in Anwar: 30).

Gardon (1996) conceptualizes governance as ~~the~~ conscious management of public realm.” Gardon presuppose the existence of civil society which cares how it is governed and civil competence among citizens. The concept of governance has also been discussed in the

context of global governance, particularly after the collapse of communism and the emergence of a new world order dominated by liberal philosophy and principles. In the international relations, global governance calls for commonly accepted norms and rules that facilitate international cooperation. Scholarly debate argues that the current system of global governance has to be reformed as it is dominated by private agendas, the main concern of which is the promotion of free movement of commodities and trade to the disadvantage of poor nations (Dervis and ozer, 2005 cited in Mukamunana, 2006).

Kaufmann also defines governance broadly \_as the traditions and institutions by which authority in a country is exercised. This includes (1) the process by which governments are selected, monitored and replaced, (2) the capacity of the government to effectively formulate and implement sound policies, and (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them‘ (Kaufmann (1999a: 1).

### **2.1.2 Good Governance**

–Good governance” has also been described elsewhere as the striving for rule of law, transparency, responsiveness, participation, equity, effectiveness and efficiency, accountability, and strategic vision in the exercise of political, economic, and administrative authority. (UNDP, 2002: 2)

Recently, the concept of good governance predominates contemporary national and global political discussions. It is not a concept that is easy to define, as it requires a value judgment, whether in socio-economic development or politico-administrative framework. It might entail structures and processes that support the creation of a participatory, responsive and an accountable polity embedded in a competitive, non-discriminatory, yet equitable economy (UNDP2002). Good governance requires prudent allocation of resources generated by the people to serve their basic human needs, which will in turn expand the opportunities open to them.

To Kofi Annan, the former UN Secretary-General, good governance is perhaps the single most important factor in eradicating poverty and promoting development; ensuring respect for human rights and the rule of law; strengthening democracy; promoting transparency and capacity in public administration (Kim 2005:647, Hope, 2008:121).

Good governance or simply governance has been considered as an enormous concept, derived from the word government. Though some studies have defined governance and good governance differently (UNESCAP 2008), most authors mention them as being synonymous. Whatever the debate might be over understanding of concepts; governance and good governance are seen as ‘partnership and social inclusion’ in politics and policies of concerned governments (Geddes 2005: 23).

Literally good governance means, what is not bad governance or what is good enough governance, or that the level of goodness is high in governing processes. In this way it is suggested that good governance should be characterized as reduced corruption, improved accountability, adequately decentralized, well managed public resources, introduced proper laws and equality, restructured civil services and so on (Grindle 2004). Similarly the World Bank researchers mentioned six indicators that define a government as good or bad (Kaufmann, Kraay & Lobaton 1999). They mentioned these indicators as follows:

- Voice and accountability: the extent to which citizens of a given country are able to participate in the selection of governments;
- Political stability/lack of violence: the likelihood that the government in power will be destabilized or overthrown by possibly unconstitutional and/or violent means;
- Government effectiveness: the quality of public service provision, the quality of the bureaucracy, the competence of civil servants, the independence of the civil service from political pressures and the credibility of the government's commitment to policies;
- Regulatory burden: the incidence of market-unfriendly policies such as price controls or inadequate bank supervision, and the burdens imposed by excessive regulation in areas such as foreign trade and business development; splice implant
- Rule of law: the extent to which agents have confidence in and abide by the rules of society and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence ;
- Graft: the extent to which public power is used for private gain (corruption), including both petty and grand forms of corruption, as well as “capture” of the state by elites and private interests.

Additionally, international development agencies (IDAs) such as the World Bank, the United Nations Development Programs (UNDP), and the Asian Development Bank (ADB) have identified a number of basic components for good governance. Four of these components are common and universally recognized which are: accountability, participation, predictability, and transparency. By accountability it is understood that the governing authority would be answerable for its delivering of services. By participation the understanding is that local people and private sectors would be engaged with decision making processes. By predictability it is understood that, governing authority would make a decision implementable by following local laws and regulations. And finally, by transparency the understanding is that all the information that affects people should be available to the people (ADB 2000; Gurung 2000). Indeed, participation, legitimacy, accountability and transparency are considered major factors to ensure good governance (ODA 1993). These four elements of good governance are considered as by ADB as ‘four pillars of governance’ which are universally applicable regardless of the economic orientation, strategic priorities or policy choices of the government (Aminuzzaman 2006:2).

As well as setting the criteria for good governance, development agencies also make the establishment of good governance a condition of aid and development assistance for the recipient countries (Santiso 2001). This approach was initiated in 1989 after the World Bank first recognized the crisis in Sub-Saharan Africa as a “crisis of governance”, and identified good public management as one of the major preconditions of the development assistance strategies for developing countries (Kaufmann, Kraay & Mastruzzi 2003). Since then, IDAs have also been helping, in various ways, the potential recipient countries to improve their governance condition. Participatory budgeting, that is, making local plans with the deliberations with local stakeholders, is one of the promising programs, which is led by the World Bank in different developing countries. Similarly, UNDP is helping different poor governments to achieve Millennium Development Goals (MDGs).

Governance can be good or bad. Governance is sound when rule of law is respected, democratic pluralism realized, free and fair election is conducted, human and property rights are granted, powers of three branches of government are separated, freedom of associations and press are enforced, legal frameworks properly worked (Anwar, 2007). It is

also a case in which competent, accountable and ethically upright customer oriented civil service is developed; inclusive, consultative and debatable policies are advanced; accountability and responsibility of public officials and politicians are enhanced; women's political participation, economic, educational and legal rights are advanced; public services or resources are fairly distributed, and finally the state is at the service of citizens and not the citizens at the service of the state ( Balagon, 1998; ECA, 2005; World Bank, 2002).

According to Leftwich (1993:611; 1994:371) the concept of “democratic good governance” has the three main aspects which can be classified into systemic, political and administrative. First, from a systematic angle, good governance is government that embraces the formed institutional structure location of authoritarian decision making in the modern state power. In this sense, good governance denotes the structures of political and crucially, economic relationships and rules by which the productive and distributive life of a society is governed. In short, good governance means a “democratic capitalist” regime presided over by a minimal state which forms part of the wider governance of the New World Order (World Bank, 1989 & 1992).

Second, from a political sense, good governance presupposes a regime or state which enjoys legitimacy and authority, derived from a democratic mandate and built on the traditional liberal notion of a clear separation of legislative, executive and judicial powers. Whether in a presidential or parliamentary system, this presupposes a pluralist polity with a freely and regularly elected representative legislature, with the capacity at least to influence and check executive power (Leftwich, 1993: Leftwich, 1994).

Third, from an administrative point of view, good governance means an efficient, independent, accountable and open audited public service which has the bureaucratic competence to help design and implement appropriate policies and manage whatever public sector there is. It also entails an independent judicial system to uphold the law and resolve disputes arising in a largely free market economy. The administrative aspect of good governance focuses on four main areas of public administration in general and public sector management in particular. These four areas are:

- Accountability, which in essence means holding officials responsible for their actions;
- A legal framework for development, which means a structure of rules and laws which provide clarity, predictability and stability for the private sector, which are impartially and fairly applied to all, and which provide the basis for conflict resolution through an independent judicial system;
- Information availability by which is meant that information about economic conditions, budgets, markets and government intentions is reliable and accessible to all.
- Insistence on transparency, which is basically a call for open government, to enhance accountability, limit corruption and stimulate consultative processes between government and private interests over policy development (World Bank, 1992; Leftwich, 1993; Leftwich, 1994).

Viewed from the foregoing connotations of good governance, it is no wonder that the concept is inseparable from the process of democratization. It should be noted that the different conceptions are neither exhaustive nor exclusive. Rather they simply show different aspects or differences of emphasis. Whatever is emphasized, consensus is emerging that good governance entails popular participation, equity, access to information, freedom of expression, moral governance, wider participation of civil society, inclusion of women and marginalized groups in political domain, legitimacy, rule of law, pluralist polity, free and fair elections, respect of human rights, accountability of executive, separation of power, elected legislative, independent judiciary and executive (UNDP, 1997; World Bank, 2000).

At the constitutional level good governance requires changes that will strengthen the accountability of the political leaders to the people, ensure respect for human rights, strengthen the rule of law, and decentralize political authority. At the level of political action and organization, three attributes of good governance are common to the governance agendas of most aid agencies: political pluralism, opportunities for extensive participation in politics and probity and incorruptibility in the use of public powers and offices by servants of the state. Administratively, good governance requires accountable and

transparent public administration; and effective public management, including the capacity to design good policies as well as to implement them (Simth, 2007).

Different organizations focus on different aspects of good governance. These are important attributes against which to analyze whether government is good or bad. All the above different aspects of good governance, according to United Nations, multilateral financial institutions and state whose governing apparatus has been captured by elites, are universal. It is these bodies who alternately decide on its form and substance.

### **2.1.3 The Aims of Good Governance**

At first glance it might seem that good governance is itself self-evidently an end in itself, or at least a direct means to an improvement in human well being. It must surely be better for people to have their civil and political rights respected rather than denied and abused, to receive entitlements without having to bribe officials, and to have those officials answerable to the law. However, standards of living have sometimes been dramatically improved without all of the components of good governance as in the case of Singapore for example. This is why it is necessary to reflect on the orthodoxy behind the advocacy of good governance---that it is compatible with economic and social development. Since it is clearly an assumption of aid donors that good governance will improve the chance of development taking place in countries less favorably placed than the industrialized democracies, it is important to know how ‘development’ is conceived in this context (Smith, 2007:11). Development in the economic sense refers to the growth of the countries as measured by indicators such as gross national product (GNP) and gross domestic product (GDP). Countries or regions can then be compared in terms of average annual rates and their relative levels of development assessed. However, it would be quite wrong to think that a growth-centered approach to development is unconcerned with social causes and effects of growth. Much is revealed about social wellbeing by the per capita levels of GNP in different countries and distribution of national income between households. The World Bank recognizes the importance of investing on social development, and of comparing countries in terms of the level of education, and health (Smith, 2007:12).

Comparisons of human or people centered development are usually made by reference to life expectancy, literacy level, gender inequality and human deprivation, human development has been defined as:

Creating an environment in which people can develop their full potential and lead productive lives in accords which their needs and interests.....expanding the choice people have to lead lives that they value...building human capabilities (UNDP, 2003b:1).

The concept of human development also recognizes that the economic achievements depend on social factors. Equally, economic growth is needed to achieve human development objectives such as poverty reduction, public investment in health and education. There is in effect a virtuous circle of human and economic development, each enhancing the other (Smith, 2007:13). Good governance here requires certain fundamental rules of political game to be in place. They may also may be accompanied by changes in political attitudes and behaviors which might not have occurred were reforms being enforced by the way aid conditionalities but may be necessary if political accountabilities, human rights, the rule of law and decentralization are to be built into the structure of governance and become effective. Whenever constitutional reform is needed to improve the quality of governance, it will have to be accommodated by often very difficult histories and contexts. There is also a high level of interdependence between all types of reforms. For example, political accountability depends on freedom to form political associations; freedom of association needs to be supported by respect for human rights. People then have to be mobilized to form and sustain political movements. Political accountability also depends upon the rule of law; the entrenchment of civil and political rights; a pluralistic articulation of political interests, and opportunities for high level of participation, especially voting. Accountability can be also supported by public policies which aim to empower marginalized sectors of society such as the poor, women or ethnic minorities (Smith, 2007:14-15).

## **2.2 African Perspectives on Good Governance**

### **2.2.1 OAU/ AU and NEPAD and Good Governance**

Democracy is not African, European or Asian . . . it is universal' (Walubiri quoted in Deegan 2009.)

Good governance, conceived here as a system of administration that is democratic, efficient and development oriented, has remained elusive in the African continent. Legitimacy has been determined not by democratic processes but largely by ascriptive and patron-client relation<sup>1</sup>. This has left damaging consequences for development and progress. In the early 1980s the World Bank attributed Sub-Saharan Africa's lack of development to the absence of good governance. This leads to a combined search by Africans and the dominant International Financial Institutions for the solutions to Africa's persistent crisis of governance (Akopari, 2004). Although the need for good governance on African continent is an issue that ultimately requires an African solution, a vast volume of western writing has dominated debates about governance in Africa. More generally, undemocratic practice has persisted in Africa notwithstanding the preponderance of multiparty elections, democratic institutions and the presence of the Organization of African Unity. The OAU was formed in 1963 at a time when a good number of African states were emerging from the shackles of colonial rule. Although its objectives included "the promotion of international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights" (OAU 1992: 4), its primary objectives were the speedy decolonization of Africa, the unity of the continent and the defense of the territorial integrity of states (OAU 1992). This was thought to be the tonic for the imperialist threats facing the continent. Thus the OAU was not designed as a human rights prevention or good governance promotion institution. The 1960s witnessed the emergence of an "ideology of development" which was associated with the thinking that economic development – the provision of social amenities and the building of infrastructure – should be the highest goal of government (Callaghy 1986: 47). This ideology gave prominence to collective welfare rather than human rights. Implicitly preferred by the OAU, the development ideology led to the proliferation of one-party systems, quasi- and full-scale dictatorships across Africa under which corruption, mismanagement and human rights violations flourished (Nyong'o 1992 cited in Akopari 2004:). Thus as the OAU focused primarily on the security and territorial integrity of states, it paid little or no attention to practices of bad governance. Equally sad, the OAU imparted deep contradictions in matters of good governance. Although the organization theoretically professed the respect of human rights, some governments remained unremittingly brutal in the suppression of human rights. The OAU

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<sup>1</sup> A mutually obligatory arrangement between individuals who has authority and some other personal resources (the patron) and another person who benefits from his or her support or influence.

did little about these regimes. The demise of the OAU and its replacement by the AU clearly showed that the former had failed to meet the continent's post-cold war aspirations. The failure of the OAU to promote good governance or prevent conflicts has raised popular expectations on the AU.

There are ample grounds for both optimism and pessimism about the capacity of the AU and NEPAD to promote good governance. The AU succeeded the OAU as the main continental organization in Africa. Its birth was rooted in the conviction among African leaders that the OAU had demonstrated an inability to promote peace and development in the continent. This fundamental weakness was reflected among other things, in the organization's failure to salvage Africa from its socio-economic doldrums or become a catalyst for good governance ( Akokpari, 2003). The inability of the OAU to meet the new challenges facing Africa was not accidental; it was formed at a time when the Cold War was gearing up. Four decades later, new issues have emerged for which the OAU institutions were unprepared. The abatement of the Cold War; the forces of globalization; the dominance of neo- liberalism; the related phenomena of rebel movements and collapsed states; the threats of national and international terrorism; and the deepening of Africa's economic crisis, along with its marginalization in the international economy are among the novel issues, which the largely anachronistic institutions of the OAU could not adequately address (Akokpari, 2003). The AU was modeled after the European Union (EU) and seeks to promote African unity; contain, terminate and prevent conflicts; create a larger African market; and to find innovative ways of addressing the continent's galaxy of intractable challenges, including debt, corruption, the scourge of HIV/AIDS, environmental decay, and good governance. One of the main factors behind the formation of the AU was the determination of its founders to promote and protect human rights, enhance democratic structures, and encourage good governance. They considered these issues, as well as others, such as constitutionalism and respect for the rule of law, to be crucial for the pursuit of security and development. The Constitutive Act of the AU adopted these ideals as some of its objectives and principles, in addition to popular participation, gender equality, and social justice (Makinda & Okumu, 2008).

The AU has made a number of commitments in the area of governance. This include among others: the Durban Declaration on Elections, Governance and Democracy; the

NEPAD Declaration on Democracy, Political, Economic and Corporate Governance; the Convention on the Prevention and Combating of Corruption; and the Protocol to the African Charter on Human and Peoples' Rights Relating to the Rights of Women, just to name but few. More importantly, the NEPAD has also adopted PRM that has core effect on the promotion of governance, through more efficient, more responsive and more accountable government, so as to hold African governments accountable for their actions, and for their declarations. Another remarkable change in the continent's governance agenda relates to the recognition that political power should be acquired through constitutional means and democratic processes. In this regard, unconstitutional changes of government are no longer condoned nor tolerated by the continent, and particularly by the AU (Shinkaiye, 2006:13).

The AU expects to achieve these objectives through NEPAD which is a partnership programme established between Africa and the G8 countries. It emphasizes three dimensions of governance; namely economic and corporate governance; political governance; and peace and security, among other things. NEPAD represents a form of moral contract between which African countries and the G8. While the former strive to improve governance and promote democracy by undertaking political reforms and market-friendly economic policies, the latter undertakes to assist those African countries committed to good governance, the promotion of human rights, poverty eradication, and economic growth. African governments through the African Union (AU) and its programme, the New Partnership for Africa's Development (NEPAD), have shown determined leadership by promoting good governance, underlining a stable, democratic and prosperous continent. According to NEPAD (2001:17), development is impossible in the absence of true democracy, respect for human rights, peace and good governance. Under NEPAD, African leaders commit themselves to respect the global standards of democracy, the main components of which include political pluralism in which people have the freedom to form political parties unions, to express their opinions and to vote for their leaders.

After the adoption of the document of NEPAD, African leaders agreed to establish a mechanism of peer assessment, called the African Peer Review Mechanism (APRM) in 2003. The principal purpose of the mechanism is to determine to what extent African

counties are complying with agreed codes and standards of good governance and sustainable development as endorsed in the NEPAD (NEPAD, 2001: 57).

The Peer Review Mechanism (PRM), commonly referred to as the African Peer Review (APR), is a remarkable component in the AU/NEPAD framework. It is a process by which African states with the assistance designated institutions periodically review the progress of states in matters of governance. This is achieved by assessing the adherents of states to certain principles of governance set out by both NEPAD and the AU. This review process is to be done under the auspices of the AU. The key purposes are to ensure the compliance of African states with certain standard practices of governance agreed upon by the AU summit in July 2002; as well as to assist states to review and improve their policies and policy-making and thereby maximizing the attainment of their commitment to acceptable codes of conduct. Designed to improve especially economic and corporate governance, these practices essentially include those conventionally known to foster good governance such as democracy, the respect for human rights and the adoption of sound economic policies (OECD, 2002b).

The APR is a new initiative in Africa, although it has been practiced among the OECD countries. For Africa, it presents fresh opportunities for empowering and strengthening institutions of democracy to ensure that the basis of governance transcends the narrow confines of personal rule, patron-client relations or ethno-religious politics. The agreement on the APR provides for the establishment of an Independent Panel of Eminent Persons (IPEP) to be responsible for the review and assessment process.

According to Mukamunana the APRM country self assessment is centered on four areas:

- Democracy and Good Political Governance
- Economic Governance and Management
- Corporate Governance and
- Socio-economic Development( Makamunana, 2006: 2)

For representivity and balance, the IPEP consists of between five and seven members with at least one member from the AU's major sub-regions – Central, Eastern, Northern,

Southern and western Africa. The members serve for a period of up to four to five years (APRM base document, 2003:2). The APR panel is composed of the following members : Ms Graca Machel, a Mozambican and wife of former president of South Africa, Nelson Mandela; Professor Adebayo Adedeji, a Nigerian; Ms Marie- Angeliqe Savane from Senegal; Mr. Bethuel Kiplagat, Kenyan; Ms. Dorothy Njeuma, a Cameroonian and Mr. Chris Stahls from South Africa (*Africa Recovery*, 17(2) July 2003: 4).

African governments have underscored good political government as an essential perquisite to development and poverty reduction. They have committed to electoral reform and to take collective action through continental and regional institutions to improve democratic process and human rights. In particular, the African union has adopted a zero tolerance policy to unconstitutional change of government. With the APRM, African governments have established a continental apparatus to monitor and promote good governance. A series of charters and protocols have been adopted to improve political governance , including African charter on democracy, elections and governance, and the declaration on democracy, political, economic, and corporal governance as well as measures to protect and promote human rights(UNECA-OECD,2010).

### **2.2.2 Political Conditionalities and Good Governance**

Political conditionality entails the linking, by a state or international organization, of perceived benefits to another states (such as aid, trade concessions, cooperation agreements, political contacts or international organizational membership), to the fulfillment of conditions relating to the protection of human rights, the advancement of democratic principles and good governance. Conditionality may be positive or negative. Positive conditionality can be loosely defined as promising the benefits to a state if it fulfills the conditions; while negative conditionality involves reducing, suspending, or terminating those benefits if the state in question violates the conditions (K. E. Smith, 1997; Smith, 2007:1)

Much official development assistance comes with the conditions attached, whether the aid be in the form of grants, soft loans, mixed credits or technical assistance, and whether the donors be bilateral or multinational. Conditionalities could take different forms such as:

requirements to target the aid at specified social groups (such as poor), the tying of aid to the purchases of goods and services from donor country, structural adjustment to the recipient economy (Smith, 2007:1-2).

Ever since the Second World War there have been the occasions when aid has been linked to political objectives, such as democratization or respect to human rights. Donors such as USA, the Netherland, and Sweden have linked their aid programmes to governance reforms. Such concerns have usually been far outweighed bilateral and multilateral support for states with bad records of government under authoritarian regimes because this has served the economic and security interests of Western governments (Leftwich, 2000: 109).

But from the end of the 1980s the quality of governance in recipient countries became an increasingly common and explicit aid objective as the first generation of aid conditionalities, related to structural adjustment, gave the way to the second generation of conditionalities related to democracy, human rights and good governance. In the second half of the twentieth century political developments encouraged the adoption of ‘political conditionalities’ to bring governance in to mainstream of international development assistance (Smith, 2007:15)

The fall of the Berlin wall in November 1989 and the collapse of the Soviet Union in 1991 removed one of the blockages to development in Africa. African leaders no longer had to pledge allegiance to either the soviet or the American axis—whether they had an ideological commitment or not. These events put African governments on notice that even they could not continue to deny democratic space to their citizens indefinitely ( Maathai, 2009)

According to Moore and Robinson the following political development of the world forced the donors to adopt ‘political conditionalities’ after cold war were:

First, the collapse of the soviet bloc made no longer necessary for the West to support authoritarian regimes in Africa because they were ant-communist. Second, democratization was already underway in other parts of the world by 1980s, and the indigenous pro-democracy movements provide the West with legitimacy for its pro-democratic aid

policies. Third, democratic political pressures in donor countries encourage a demand for good governances as a condition of aid giving.

Finally, in the 1990s as discussed earlier, the blame for the failure of SAP and economic liberalization to achieve the intended beneficial results was directed at poor- quality governance, notably weak governmental structures, administrative incompetence, corruption, lack of accountability and openness in policy-making, and the absence of the rule of law (Moore and Robinson cited in Smith, 2007:2-3).

The way in which donors attempt to bring about good governance in aid-dependent states can be distinguished as coercion and cooperation. They have frequently attempted to force good governance on aid dependent countries. Sometimes this has been through negative or punitive measures, suspending or terminating aid because of the denial of basic civil and political rights. Human rights have become part of conditionality in that good governance has been made a condition of membership of international organizations such as NATO, the commonwealth and the council of Europe. Other benefits (such as aid, trade concessions and loans) may be conditional upon the achievement of a satisfactory level of performance in the sphere of human rights (Smith, 2007:7-8). In Africa, the Western partners in the New Partnership for Africa Development, designed to secure foreign aid, investment and debt relief, have declared that the support is conditional upon governance reform, including human rights, in the African member states. However, a preferred option is to give positive support for measures specially designed to improve individual aspects of governance (such as civil service reform, decentralization, the funding and training of electoral commissions, election monitoring, or the reform of financial management in government) or the transition to democracy generally( Robinson, 1999:410-11; Burnell, 2000b: 26-29 cited in smith,2007). This move from coercive to cooperative conditionality is part of a wider recognition that the aid generally is likely to be more effective if done in the partnership and dialogue with recipient governments, NGOs and private sectors. Aid also may be induced by regional initiatives to improve the quality of governance, as when in 2001 the EU and other industrial nations promised support in the form of aid for infrastructure and education; increased foreign investment and lifting of trade barriers, to the NEPAD, launched by leaders of African states and designed to reduce conflicts, end human right abuses, and establish open and accountable government (Smith, 2007:8).

The adoption of good governance as a pre-condition factor by donors and the acceptance of African countries of this condition should suggest that countries with better or improving governance should receive more (or increased) aid than those that do not improve governance. This pattern of allocation is efficient because it allocates aid to where it is most productive; it also provides incentives for recipients to improve the quality of governance assuming that is one of the objectives of donors (Smith, 2007:8).

Governance assistance grew rapidly in scale during the first half of the 1990s, with most of the leading western donors initiating projects. All the dimensions of good governance have their associated aid projects: support for human rights activists, capacity-building in local authorities, training for the judiciary and so on. Government aid takes the form of grants, loans and technical assistance to provide policy adviser to ministries responsible for decentralization, consultants, equipments, supplies, information, researches, logistical supports and trainings. An intermediate position which donors adopt, between withdrawing or freezing aid disbursements and supporting good government policies, is to switch aid from government to civil society organization. Donors have often bypassed governments, especially when authoritarian, to support NGOs working in the fields of human rights, legal aid, advocacy, civic education, electoral monitoring and other spheres relating to good governance (Smith, 2007: 9).

### **2.3 The State of Governance in Africa since Independence**

Africa, as a continent emerging from the transatlantic slave trade and colonialism legacy, has been facing governance challenges since the early years of independence. Authoritarianism or dictatorship usually shows a clear severance of governance from accountability and leadership from responsibility. Even with the increasing trend of civil governance most of the state structures do not show a tendency of participatory decision-making in their internal affairs (Adejumobi, 2000).

Authoritarian rule in many African countries in post independence era resulted in weak institutional capacity building. Furthermore, military governments undermined institutions of good governance, namely the constitutions, political parties, the media, and the judiciaries those already weakened by colonial rulers. At independence, virtually all the

new states were characterized by a shortage of skilled professionals and a weak capitalist class, resulting in the weakening of the accumulation process. Post-colonial Africa inherited weak states and dysfunctional economies that were further aggravated by poor leadership, corruption and bad governance in many countries (NEPAD, 2001). Finally, the SAP of Bretton woods institutions in the 1980s undermined the capacity of public institutions in health, and education, as well as the civil service and public enterprise. Any review of Africa's governance track record since independence thus confronts the challenge of both describing general patterns and highlighting variations across countries. By definition, colonial rule tended to be unaccountable to Africans and overly reliant on the military to suppress dissent. Its departure was rapidly and anticipated by both colonizer and colonized. Part of the early caution about departure of colonialists was perhaps a response to the recognition that local skills were inadequate and the institutional foundations of incoming African governments were poor (ECA, 2005).

Overall, the political transition between the 1960s and the early 1990s can be divided in to three phases: (World Bank, 2004:51-54).

- Guarded experimentation—1960s to early 1970s.  
Former British colonies inherited variants of Westminster system, with competitive parties, independent judiciaries, and cabinet governments based on a merit-recruited, politically neutral civil service. In contrast, former French ruled states got a powerful presidential system wielding strong executive authority. Under this system the comparatively weak office of the prime minister headed the public service and was answerable to a chamber of the deputies elected on a run-off constituency-majority system.
- Military rule, dictatorships, and economic regress---mid-1970s to 1990s.  
By 1990 half of Africa's states had military or quasi-military governments. In parallel with authoritarian military governments came a trend towards single party rule under autocratic civilian leaders, largely pursuing interventionist economic policies, in some case under the banners of socialism or Marxism.
- Political and economic liberalization—late 1980s and 1990s.  
Recurrent balance of payments crises and economic regress, together with pressure from donors, led a number of African governments to adopt structural adjustment

policies in 1980s, opening up markets, encouraging deregulation and private initiative, and reducing state economic intervention.

The history of governance in African states in the last few decades has been characterized by dictatorship, corruption, and nepotism: a society where little was demanded of the state for provision of basic social services or respect of human rights. In the 1990s a new wave of social transformation (especially democratization) swept in the continent. Parliamentary elections have been held and other reforms of representative government instituted, especially at local level. Overall, then, Africa's governance landscape as of the first decade of the 21st century offers a mixed picture. In the decades immediately following independence, a majority of countries succumbed to a downward governance spiral, characterized by perverse incentives on the part of political and economic actors and the corresponding decay of political and bureaucratic institutions (Levy, 2004:11; Africa capacity indicators, 2011).

Despite of little improvement significant governance gaps remain for realization and sustaining of good governance principles in African countries. The principles of good governance which are incorporated in their constitutions did not respected by ruling elites. Limited respect for the rule of law and constitutionalism in many countries does not augur well for democratic consolidation. In some countries the ruling party has attempted to change the constitution to stay in office. Between 1990 and 2008, eight African countries amended their constitution to extend the president's term of office (ECA, 2005; ECA, 2009).

Weak and bad governance in Africa is characterized, by a combination of many factors, such as poor institutional performance, inadequate parliament, lack of the independence of the judiciary system, corrupt police force and press, political instability, abuse and misuse of political offices, insufficient budgetary accountability, lack of respect for the rule of law and human rights, and bureaucratic bottleneck and above all corruption, which has become a thorn in the flesh of most African leaders.

Good governance is a leadership issue, enshrine the effective, transparent, and accountable and discharge of responsibilities. The success and stability of any government depend on

the kind of leadership they cultivate. One of the major tragedies of postcolonial Africa is that the African peoples have trusted their leaders, but only a few of those leaders have honored that trust. Leadership is an expression of a set of values; its presence, or the lack of it, determines the direction of a society, and affects not only the actions but the motivations and visions of the individual and communities that make up that society. It is intimately influenced by culture and history, which determine how leadership perceives itself and allows itself to serve: whether it has self-respect, and how it shapes public policy (Maathai, 2009).

Effective leadership is the most critical element of good governance. In all human undertaking, leadership provides enlightenment, insight and visions. Many studies of African leadership since independence distinguish four types of leaders. But in few cases have African leaders been successful in promoting good governance and sustainable development in the countries.

According to World Bank (2000) these four categories were:

- Successful and conservative leaders. Recognizing the complex mix of peoples and cultures arbitrarily enclosed within boundaries, these leaders introduced ethically inclusive policies and informal power-sharing arrangements. Botswana's Sir Seretse Khama and his successors, Felix Houphouet-Boigny in Cote d'Ivoire between 1960 and the mid-1980s; and under Jomo Kenyatta in his early years in power.
- Radical and ideological leaders. These leaders sought an economic and social transformation of their society through state intervention and the leadership of a mass-based one party state. In some cases ( Kwame Nkrumah in Ghana, Julius Nyerere in Tanzania) there was success in molding national consciousness.
- Predatory leaders. National and state offices were treated as personal money-making positions example of these leaders include Zaire under Mobutu Sese Seko, and Nigeria under Sani Abacha.
- Tyrants. Beside the cost in lives, its economic legacy is the most catastrophic; Uganda under Idi Amin(1971-79) and Equatorial Guinea under Macias Nguema (1968-1979) are worst examples.

During the long years of that authoritarianism held sway in Africa, political exclusion was organizing principle of political life, as a narrow, elite dominated politics and controlled state institutions. The exclusion of various categories of people from citizenship continues to be a key problem in countries in Africa and is considered to be one of the root causes of human rights violations, instability and conflict on the continent (OSIEA, 2010; Odinkalu, 2008). A great majority of Africans particularly women, the young, the poor and ethnic minorities---were excluded from political representation. With women constituting more than half of the continent's population, democracy would be meaningless if they were not adequately represented and politically empowered. Most African countries seek to ensure that executive and legislative arms of the government to reflect the regional, ethnic, racial and religious profile of society. Virtually all national constitutions in Africa prohibit discrimination on the basis of ethnic, religious, racial, or geographical diversity. But in most countries low literacy and the rural-urban dichotomy appear to thwart political inclusion. The information required for effective participation does not get to the illiterate and rural dwellers as easily as it gets to the educated urban citizens. Extreme poverty also diminishes the ability of many Africans to get political information (ECA, 2005 & 2009).

In a democracy, citizens are the essential actors and have the right and even obligation to participate in the political institutions and process. The media and civil society are two principal channels for citizens to express critical and supportive opinions on public affairs. The freedom and the independence of media and civil society, a measure of liberalization of the public space, are essential indicators of the vigour of public voice in a given polity. Public opinion or voice is the definitive measure of emerging African democracies; where it exist in earnest, it reflects citizens valuation of government programs and the virtue of public officials (ECA, 2009).

It is common to blame African governments for the limited expression of the public voice in their countries. But the governments rarely constitute the only obstacle to effective public opinion. Many African countries contain heterogeneous nationalities that pose formidable languages, literacy and geographic barriers to developing an effective public voice. The majority of African countries were unable to enforce a common national language for all their citizens at independence. In its place, the ruling elites substituted the languages of the colonial powers in that had very low level of literacy. In another word

most of the ordinary Africans did not know the languages of the ruling elites. To the extent that the great majority uneducated Africans cannot communicate in the government languages of English, French, or Portuguese, or afford to buy or read newspapers, they are effectively excluded from expressing their opinions or having an effectual voice on public affairs (ECA, 2009). The new mass media in Africa are facilitating a national market place of ideas, where opinions on public affairs compete for acceptance. In the past, when government dominated the media news coverage focused mostly on positive activities. This unbalanced and biased news amounted to propaganda, leaving the general citizenry uniformed and unable to participate effectively in public affairs (ECA, 2009).

Multiparty politics, in which political parties freely organized themselves and contesting elections with a view of forming a government, is expanded but with limited political representation and operationalization. In many states, politics remained a zero-sum game: power was sought by all means and maintained by all means. The culture of political authoritarianism manifested in military dictatorships and one party system dominates in many African countries have in the last two decades gradually give way to competitive party democratic system in recent time ( Mukamunan, 2006; ECA, 2005).

Since the end of the Cold War, many countries in Africa have moved toward multi-party democracy, but the quality and character of electoral competition varies widely. The multi-party system is institutionalized only in a few countries, where peaceful transfer of power from incumbents to emerging leaders takes place. Elsewhere, elections have been characterized to varying degrees by vote buying and other violations of democratic norms (LaBas, 2010: 2, Naidoo, 2008).

Political parties in Africa have weak internal governance, although the parties have constitutions, internal procedures and rules that on the surface are democratic, they display authoritarian tendencies. Ethiopia, Kenya, Malawi, and Senegal, have serious problems with internal governance of political parties. In addition they have little capability to effectively articulate issues, engage in debate, promote their political principles and visions of society or defend the interests and rights of their supporters(ECA, 2005 & 2009). They are at times disorganized and disoriented because they do not have competent and committed leadership; have few professional personnel. The result is that political parties in

Africa are seldom different from one another. The rules and regulations they do have are rarely implemented—usually only to discipline or expel unwanted members. Thus they remain weak and incapable of promoting democratic values in society, as they hardly practice in their own parties. For instance, in Nigeria the people's Democratic Party, which prides itself on being the largest political party in Africa, has no clear development agenda or vision for Nigerian society (ECA, 2005: 211; Salih, 2007:22).

In a constitutional democracy, elections are central to the democratic process, but elections alone do not create functioning democracies and good governance, and many African states that have moved to free elections need to fortify basic democratic tenets (Adejumobi, 2000: 6). Several factors stand in the way, including the incongruence between Western electoral system and Africa's ethnic politics.

According to Abuya in his work "Can African states hold free and fair elections?" stated that although most African states recognize voting rights in theory, an examination of what states do in practice paints a different picture. It shows that the process faces several challenges as a result of human interference. The electoral process in many countries is 'vulnerable' to fraud. Although most countries "rarely change" their electoral system, this should not lead to complacency (Abuya, 2010). In many countries elections have been conducted on a winner-takes-all basis, excluding some groups from political power. In this regard the most economically successful and best educated minorities have sometimes been among those excluded (World Bank, 2000).

As good governance is not the sole responsibility of governments, a vibrant and diverse civil society is also needed to hold governments accountable. Civil society in Africa is still not fully developed, although regional differences exist in strength and organization. In most African countries, civil society remains relatively small and comprised of individuals and groups, not the mass people (World Bank, 2000; Maathai, 2009). Civil society organizations suffer from internal organizational weakness, lack of organizational and managerial skills and training, very limited financial resources and a constraining external environment in most African countries. These institutional gaps have affected the effectiveness and sustainability of their initiatives and operation, having an adverse impact on their service delivery capability (Maipose, 2009). In Benin, Burkina Faso, and Ethiopia,

as in most countries, many non-state actors lack a democratic culture, and especially tolerance and constructive dialogue among themselves and with the state. Furthermore, non-governmental organizations are concentrated in urban areas, limiting their outreach to rural areas and reducing their impact beneficiaries. Governments also at times constrain the efforts of civil society organization to be effective with burdensome registration and operational requirement. However, since the late 1980s, the situation has been slowly changing. While a few governments that restrict the propagation and vibrancy of civil society organizations are still in existence, political systems that encourage pluralism are now the norm rather than the exception. Alongside this changing scenario, civil society is growing stronger and applying constant pressure for better governance (ECA, 2005; Maipose, 2009:3).

In a democratic, participatory political system, all three branches of government—executive, legislature, and judiciary—have important roles to play. Each branch must function effectively, and a balance of power must be established among them. Few African countries have reached this point (World Bank, 2000). The separation of powers which is essentially a constitutional and legal provision, whether the principle is observed ultimately depends on the political realities of a country—the level of democratization and good governance, the political culture, social conventions and the political will of the leaders across the governance system (ECA,2009). In Africa the executive has historically been the most powerful institution of governance. The tendency of executive to monopolize the power and abuse discretionary authority has been universally observed throughout ages (ECA, 2005). Over past two decades many African countries have reviewed and rewritten their constitutions. The principle of separation of power is now entrenched in the constitutions of almost all African countries. These reforms created favorable environment for democracy and good governance. The one dominate civilian and military authoritarian regimes were obliged to embrace a multiparty system. Single-party systems such as those in Angola, Cameroon, Republic of Congo, Djibouti, Malawi, Mozambique, Ethiopia, Mali, Seychelles, Swaziland, etc—have also embarked on multiparty system and decentralization. Although the phenomenon of the “Big Man” in African governance may be fading, the tendency of executives to dominate continues in many African countries (ECA, 2009).

The capacity of the legislature to perform its functions well effectively and efficiently is a major concern in many African countries. The legislatures lack independence to perform their constitutional functions because they depend on the executive of their human and material resource and funding (ECA, 2009:124). In the absence of legislature capacity the struggle to attenuate executive dominance in Africa governance is likely to continue for a long time. Unless the legislative effectiveness is promoted or the powers of the executive are constrained, the democratic system of governance is likely to be undermined. People might lose confidence in legislature as the institution that articulate their interests, promotes and protects their rights and enacts policies for their welfare (ECA, 2009). Especially, in case of Africa, some legislature houses are seen as either rubber stamping all the executive does (particularly where a majority party or coalition overwhelming dominates) or as blindly opposing everything the executive does( especially in the case of the minority or opposing parties), (SIDA, 2002.)

In Africa judiciary is not immune to the influence of vested interests or dominance by the other organs of government. There has been considerable executive dominance over judiciary in the appointment and promotion of judges, creating the phenomenon of the executive-mined\_ meaning highly influenced by executives. Judiciary –judges who anticipate the wishes of the incumbent government or protects their leaders and supporters. The judiciary must not only be independent in fact; it must also be perceived as independent by the citizens. Following the disputed election results of December, 2007, opposition groups in Kenya refused to refer their electoral grievances to the judiciary for arbitration, as demanded by government, because they felt the court were not independent of incumbent government. However, Botswana is noted as a country where the judiciary is reasonably independent. In Nigeria the judiciary is considered exceptionally independent and fiercely non-partisan in a governance system where the executive is perceived to be extremely powerful and dominant (ECA, 2009).

The elements of transparency and accountability are core value in good governance. Transparency is about openness in the conduct of public affairs, the rights of citizens to access public documents and information, raise queries and institute administrative and legal actions in case of officials misconduct by public officials. Accountability, which is the flipside of transparency, is the obligation to answer for the fulfillment of assigned and

accepted duties and responsibilities within the framework of the authority and resources provided (ECA, 2005). But in most African countries there is little transparency in government business. Officials' information is often either not available or not easily accessible to the public. Under this system the government misses an advantage of active exchanges on its policies among others. The underdevelopment nature of some medias and the heavy handed government action against journalists and media establishment in many countries further erode transparency in government activities (ECA, 2005).

Protection of human rights and support for the rule of law are very essential of good governance. Good governance requires respect for human rights, compliance with accepted standard and norms such as reporting, establishment of requisite institutions (court and human rights institutions) and consistent enforcement. Disrespect for human rights and the rule of law undermine good governance and signify the possibility of conflict, disorder and anarchy in the society (ECA, 2005). African countries have overwhelmingly ratified or acceded to the primary international human rights instruments. And Africa has a strong regional human rights framework that in some instance far exceeds the international instruments in their scope and progressive positions. But these progressive developments also mask a wide gap between the rhetoric about human rights and their relation on the ground. Most countries have not fulfilled the obligations they have assumed in ratifying human rights treaties by incorporating those treaties in domestic laws, thereby leaving in place a discriminatory and sometimes repressive legal framework. They have not adopted laws and policies to redress discriminatory practice against women and have limited access to justice for their citizens. They have not done enough to support institutions that they themselves have created to protect human rights –in fact, all too frequently they have actually undermined the institutions. There is uncertainty and equivocation about human rights in Africa. Many countries have recently taken important steps toward democratization and the opening political space and have improved the overall human rights situation. But these governments are too few and are often overshadowed by very public setbacks (ECA, 2009).

Furthermore, corruption has been a cause for concern since independence because it diverts already limited funds, undermines economic progress and impedes policy changes required for development. Africa presents a typical case of the countries in the world whose

development has been undermined and retarded by the menace of corrupt practices. Officials required bribes before they reached favorable decisions; public resources were misappropriated for private use; and individuals were employed and promoted on the basis of clientelism rather than merit. In many cases, ordinary people who used public services came to recognize only a minimal difference between bribes, gifts and official fees (Thomson, 2000).

A series of reforms have been carried out in all the African countries so as to make the systems efficient and result oriented. However, the anticipated gains of such efforts or reforms are not visible due to series of factors which include that of corruption. The effects of corruption are felt in the political and social, as well as the economic spheres. Corruption often flourishes where institutions are weak, where the rule of law and formal rules are not rigorously observed, where political patronage is rife, where the independence and professionalism of the public sector have been eroded, and where civil society lacks the means to generate public pressure. Once entrenched, corruption hinders economic performance, increases the cost of public investment, lowers the quality of public infrastructure, decreases government revenue, and makes it burdensome and costly for citizens—particularly the poor---to access public services(World Bank, 2000:73)

Corruption is systemic in much of Africa today. It is another of Africa's vicious circles: corruption has a corrosive effect on efforts to improve governance, yet improved governance is essential to reduce the scope for corruption in the first place. The Africa's external debt burden since 1980s has largely been caused by massive corruption by the governing elites. Most of this debts and loans were never utilized for the benefits of peoples in those countries. Instead the loans provided a gold mine for government officials. The result has been a series of debt burden crisis that impoverished many African countries. Leadership in Africa, with few exceptions, is seen as an opportunity to get rich rather than serve the people (Thomson, 2000:193). To this end Lawal (2007) identifies top ten the most corrupted African head of the states.<sup>2</sup>

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<sup>2</sup> General Sani Abacha of Nigeria -- \$20billion; President H.Boigny of Ivory Coast -- \$6 billion; General Ibrahim Babangida of Nigeria --\$5billion.President Mobutu of Zaire -- \$4billion; President Mouza Traore of Mali -- \$2billion;President Henri Bedie of Ivory Coast - \$300million; President Denis N'gnesso of Congo --

Corruption in Africa is woven deep in to the fabric of everyday life. Though corruption is not unique to Africa, its constitutionalization and glorification in some countries of Africa (are phenomenal and serve as the force behind the gross mismanagement too often witnessed today. According to Transparency international's corruption perceptions index for 2007, corruption and lack of transparency were perceived to be rampant in 36 countries. Namibia, Seychelles, South Africa, and Swaziland were rated as having improved in their anti-corruption stance (Transparency International, 2007a).

In general, internal deficits, weak constitutions, and strong institutions that are captured by interest groups that undermine public interests all contribute to the problems of poor governance in Africa (Reno 1995, 1999). William Reno (2006) argued that state failure has been a characteristic feature of African politics since the dawn of the neoliberal global order. It is also the view in some circles in the west that weak and 'shadow' states that are characteristically bedeviled by internal conflicts 'can no longer deliver positive goods to their inhabitants' (Rotberg 2003: 1).

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\$200million; President Omar Bongo of Gabon -- \$80million; President Paul Biya of Cameroon -- \$70million; President Hissene Habre of Chad --\$3million. --

# CHAPTER THREE

## 3. The State of Governance in Post-Colonial Kenya

### Introduction

This chapter analyses the state of governance in Kenya since independence, the decentralization process and the role of non-state actors in transitional politics. This chapter is divided into 3 sections: first section discusses the state of governance during the reigns of the three successive regimes since independence. In this section the rise of autocratic rule at the foot step of British colonial rule and the struggle of Kenyans to reopen the multiparty system which was closed by personal rule of Jomo Kenyatta and Daniel Arapa Moi after few years of independence will be discussed. This is followed by analytical clarification of decentralization with a historical overview of related events that transpired during the above mentioned regimes. The point at issue is establishing a correlation that signifies the impact of a host of decentralization measures on the emerging shape consolidation of the governance realm in the country. Decentralization mechanisms are pursued to ensure the delivery of public services and to enhance citizens' participation in decision making. It is thus imperative that the citizens are well aware of their rights and responsibilities in decentralized system of government. More so in the new constitutional framework there will be need for citizens to engage through participation in elections, recommend on the style of the County governments, petitions and memorandums to their elected officials, attend on meetings where key decisions are made. The next section examines the role that is played by non state actors or civil societies in the democratization or restoration of multiparty system in Kenya.

### 3.1 The rise of autocratic rule in Kenya

In Kenya the Colonial rule which was established by the British caused fundamental changes in the philosophy and practice of governance of the country. The indigenous governance structures and system were replaced by those of the colonizer. In place of the decentralized and localized system of governance highly centralized political arrangements were introduced. All hitherto independently governing communities were henceforth

forced to direct their political loyalty to a central authority, the governor, in Nairobi. The colonial government also fundamentally altered the economic system by, among other things, introducing the money economy to replace barter trade<sup>3</sup>. In the run up to independence the matter of local government became a key bone of disagreement, partly because Kenya's pre-colonial inheritance was one of strong localism. It is from this strong tradition, reinforced by vibrant local authorities with responsibility for a range of services that the tradition of decentralized power grew<sup>4</sup>. After absorbing the upset, the Africans organized themselves to resist and overthrow the colonial government and its infrastructure. The attempt was made by the resistance movement called 'Mau Mau'-- Organized opposition to colonial rule in Kenya, especially among the Kikuyu; this resistance set the stage for political transition. When the level of violence rose sharply in 1952, a state of emergency was declared. Some 13,000 Africans and 1,000 Europeans died in this unrest that centered on land rights in the highlands. The Kikuyu wanted access to their land, and threatened to take this by force. Nationalist leaders were imprisoned (including future president Jomo Kenyatta), and British troop reinforcements deployed to quell the rebellion. Once this had been achieved, the colonial authorities sought to foster a political class with which it could build a collaborative partnership of government (Muluka, 2011:187-89).

A number of organizations and associations were formed to aid this process. Prominent among these were trade unions, political parties and various tribal associations. They called for a governance system that was democratic, inclusive, just and fair. They also advocated for an economic system that was inclusive and one that would improve the social and economic welfare of the people, the majority of whom had been economically marginalized and impoverished. The people in their individual and collective capacities were calling for a fundamental change in the governance system in its political economic and social dimensions. Eventually colonial rule was overthrown by a combined force of nationalists using political parties, civil society in the form of trade unions and ethnic associations (Wanyande, 2009:11-12; Thomson, 2000:24-26).

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<sup>3</sup> Exchange of commodities with other commodities in a place of money

<sup>4</sup> Kenya was highly decentralized state often stateless societies before arrival of colonizers, see for more detail, *Maina, B. 2005*.

At independence in December 1963, Kenya like most of the former British colonies adopted a parliamentary system of government. A new constitution was put in place that had the potential to make Kenya a liberal democratic state. Under the independence constitution, the executive powers were vested in the Queen. These powers were supposed to be exercised on her behalf by a resident Governor-General in Kenya (Gretzel, 1970:125). The head of government was, however, the Prime Minister. He was first and foremost a member of parliament representing a specific constituency. The prime minister was elected by the Members of Parliament (MPs) from among the members of the political party with the majority of seats in parliament. As a rule he was supposed to be the leader of the political party with the majority of seats in parliament. Both the prime minister and his cabinet were answerable to parliament. As such, they were expected to sit in parliament regularly and respond to the MPs' questions. Besides the above provisions, the independence constitution also devolved state power to the local levels by making Kenya a quasi-federal state.

The independence Constitution also created a bi-cameral parliament comprising the Senate and the House of Representatives. The Senate was supposed to provide for regional interests in national legislation while the House of Representatives handled national legislation. Finally, the constitution also provided for multiparty democracy. In short, Kenya's independence constitution laid the foundation for the establishment of a liberal democratic state and the practice of liberal democracy (Mbai, 2003:58).

The main democratic features of this independence constitution were a devolved state structure, a functioning local government system, separation of powers between the executive, legislature and the judiciary complete with checks and balances. It was expected that in line with the manifesto of the nationalist parties and especially Kenya African National Union (KANU), the new political dispensation would be responsive, responsible transparent and accountable to the citizens and therefore democratic. However, these expectations and hopes have quickly faded (Wanyande, 2009:12).

The Westminster constitutional model of politics soon broke down in post-colonial Kenya. There were two small parties that had contested the independence elections namely (Kenya African National Union (KANU) and Kenya African Democratic Union (KADU). KANU

won the elections which were held in 1963. KANU won majority seats and formed the first government. The Kenya African Democratic Union, merged with the victor, the ruling Kenya African National Union. KANU governed Kenya without an opposition from this point in 1964, right through until electoral reforms were forced upon the state in the early 1990s (Thomson, 2000:26). The main difference between KANU and KADU was not ideological, but rather political in that the former preferred a unitary system of government while the latter was strongly committed to ethnic-based majimboism<sup>5</sup> (Wanjohi, 2003:141). KANU was an ethnic coalition of the “big” and “haves” consisting of the Kikuyu and their cultural cousins, the Embu and the Meru, plus the Luo while KADU was a coalition of “small” and the “have nots”\_ Kenya’s poorer and fragmented tribes( Barkan,2011:5)

The independence constitution, which was good enough to guide the nation to good governance and prosperity, did not survive for long. In just one short year, the ruling elite had systematically and consistently started to undermine the liberal democratic constitution and the values it underpinned. Between 1964 and 1970 the ruling elites of Kenya were deliberately undertaken the following actions to erode liberal democratic values: first, systematic amendment of the constitution that transferred power from other arms of government to the executive; secondly, the weakening of party politics; Third, the usurpation of the power of local authorities by the executive; fourth, the ethnic and nepotistic approach to the *Africanisation* of the public service. All the actions were aimed at entrenching autocracy or personal rule in the country (Mbai, 2003:59).

After winning the first national election in 1963, KANU ruling elite began to systematically amend the constitution. The first constitutional amendment was the Constitution of Kenya (Amendment) Act No. 28 of 1964 (Gertzel 1970). This amendment transformed Kenya into a republic and severely altered the position of the chief executive. In this regard the constitution created the position of the President who now became both the Head of State and Head of Government. But although this amendment vested executive powers in the president, the constitution retained most of the provisions for a parliamentary system of government, including the principle of the supremacy of parliament.

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<sup>5</sup> Regionalism

The second action that the ruling elite undertook to erode the foundation of liberal democracy in Kenya was to weaken party politics. In all genuine democracies especially under parliamentary systems of government, political parties are the basis of competitive politics. Thus, the first post-independence general elections in the country were contested by two political parties—KANU and KADU. However, after the elections the ruling KANU elite began a systematic manoeuvre to have KADU dissolved in order to make Kenya a one party state. The methods used by the KANU ruling elite included aggravation of the opposition party, promises of cabinet positions to elected leaders of KADU and intimidation. Soon some of the KADU members in parliament began to cross the floor to join KANU in the government. This trend continued throughout 1964 and in November the same year, KADU decided to dissolve itself and join KANU. KADU's key leaders, namely, Daniel arap Moi, Ronald Ngala and Masinde Muliro, were soon appointed into the cabinet (Mbai, 2003:60-1). The third way through which the KANU ruling elite undermined the development of a liberal democratic state in Kenya was the usurpation of powers of local authorities. As mentioned earlier, Kenya gained independence as a quasi-federal state whereby regional governments and local authorities under them were entrusted with certain powers and responsibilities.

Once KANU won the elections, it discouraged the implementation of federalism by refusing to remit funds to regional governments throughout 1964. The final major action that the KANU ruling elite undertook to undermine liberal democracy in the country was the adoption of a poor *Africanisation* strategy. Soon after independence, the *Africanisation* of the key public positions that were occupied by white employees became critical. The KANU ruling elite resorted to ethnicity and nepotism as the main criteria for appointing those who were to fill the key positions that white public servants resign from. Thus, the majority of those appointed into key positions were drawn mainly from the president's own community—the Kikuyu (Anyang' Nyong'o, 1989: 241, Nyukuri, 1997:11).

By the end of 1970, KANU ruling elite had successfully managed to erode the foundation of liberal democracy in Kenya completely and to establish personal rule in the country. At its peak, in the mid-1970s, the powers of the government revolved exclusively around Kenyatta. Colin Leys describes the situation thus:

Kenyatta's court was based primarily at his country home at Gatundu about 25 miles from Nairobi in Kiambu district; but like the courts of old it moved with him, to State House in Nairobi, to his coastal lodge near Mombasa, and his lodge at Nakuru in Rift Valley. This corresponded to his actual roles of Kikuyu paramount chief and national leader of the com-prador alliance (Leys, 1975:246).

Leys continues:

To the court came delegations of all kinds; district, regional, tribal and also factional. Most of them came from particular districts often in huge numbers, accompanied by teams of traditional dancers and choirs of school children, organized and led by the MPs and local councilors and provincial and district officers from the area. They gave displays of dancing and singing; the leaders presented cheques for various causes sponsored by the president and expressed their sentiments of loyalty and respect; and would finally outline various needs and grievances. In return, the president would thank them, commend the dancers and songs, exhort them to unity and hard work and discuss their requests, explaining why some could not be met and undertaking to attend to others (Leys, 1975:246).

Hence, independence did not come with justice and good governance for Kenyans. In the words of a Kenyan politician, J.M. Kariuki (assassinated in 1975), 'Kenyatta created a nation of 10 millionaires and 10 million beggars' (New African, August 2009). After many years of confrontation, Kenya's brief experience of multiparty politics had eroded and the country once became a single party. This time, KANU was remained the sole political party for over 20 years. Theoretically, dissident politicians could form parties to challenge KANU's monopoly of power but in reality they were blocked to register their parties (Throup and Hornby, 1998:14).

Although Kenyatta's Kenya was undoubtedly an authoritarian single party state, political life remained relatively open and its press comparatively free by African standard, the single party state under Kenyatta remained relatively willing to incorporate dissents, responsible to criticism and capable of dealing with local discontent and the rise of new leaders. Kenya's political and economic stability has been attributed to the dynamic charismatic leadership of Kenyatta. Consequently, many observers and analysts predicted an era of doom following the death of Kenyatta (Ahluwalia, 1996). Academics at university of Nairobi enjoyed a false freedom to criticize the regime in lectures and in the national press, so long as they expressed their doubts in English rather than in one of Kenya's vernacular language (Throup, and Hornby, 1998:15).

Despite the low level of participation and the ban of the KPU<sup>6</sup> opposition, the 1969 election administrated a severe shock to the government and produced dramatic changes in the national Assembly. Five cabinet ministers and fourteen out of twenty-nine Assistance of Ministers were rejected by electorate. Five years later, in 1974, in the last elections of the Kenyatta era, the turn-over were almost severe. Four out of twenty cabinet ministers were defeated, while 18 out of 35 Administrative and 61 out of 102 backbenchers lost their seats (Throup and Hornby, 1998:15; Thomson, 2000:105).

### **3.1.1 The Moi Era to the Return of Competitive Politics**

With the death of Kenyatta, Vice President Daniel Arap Moi came to power in 1978. Moi's humility and populist touch as well as his relative youth endeared him to the broad majority of Kenyans. The presidential transition had an element of popular reform about it. At the time of Moi's power his greatest threat came from close associates of Kenyatta who were Gĩkuyũ from central Kenya and were dominated by individuals from Kenyatta's home district of Kiambu to block Moi automatic assumption of power according to Kenya's constitution ( Githinji and Holmquist, 2011:7)

However, Moi ascended to power in August 1978 in a smooth transition as per the Kenyan Constitution. Exploiting his experience as a long-term serving vice-president of Kenyatta, he was elected unopposed as the President in the 1979 one-party elections. From then onwards, Moi took all possible measures to entrench his regime, in the process transforming Kenya into a fully authoritarian state (Matanga, 2000:10).

The manner in which President Moi managed Kenya's autocratic state differed from Kenyatta's in three main ways. Firstly, unlike Kenyatta, Moi lacked sophistication in handling pertinent issues; his utterances were often crude and ordinary. Secondly, Moi was unable to appoint into key public positions those who combined the qualities of being directly loyal to him and at the same time had managerial abilities, as was the case with Kenyatta. This was mainly because, unlike Kenyatta, who hailed from the numerous Kikuyu community that was endowed with a huge reservoir of career civil servants to

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<sup>6</sup> Kenya people's union (KPU) an opposition party was formed in 1966 as a result of ideological differences, leadership struggles, and the repression of dissent within KANU and was banned in 1969.

select his team from, Moi hailed from a small Turgen, one of the smaller Kalenjin ethnic groups that was not similarly endowed. Therefore, whenever Moi attempted to recruit those who were directly loyal to him, such appointees often lacked sufficient qualifications and experience to manage public institutions efficiently. Although Moi had served as Kenyatta's vice president for twelve years he was considered a weak personality. This too cost him popular support. Indeed many politicians of his time saw his presidency as only temporary. One politician from the Kenyatta regime called it a "passing cloud" (Wanyande, 2009:13).

The consequences were the widespread mismanagement of public institutions and the inefficient delivery of public services that characterized Moi's rule for the most part of the twenty-four years of his power. Thirdly, during Moi's rule corruption which was usually an attribute of personal rule increased enormously. This is because it is through corrupt deals that the resources for rewarding clients are mobilized. Hence, this was already a major problem even during Kenyatta's reign (Throup and Hornby, 1998:27, Mbai, 2000:65).

In 2004 the Economist notes that Kenya remains one of the most corrupt countries in the world, and opines that following the example of former President Moi's cronies, too many of the new ruling elite are out to get rich, rather than govern. This clearly indicated that Moi and his government became awful example for the next leaders of Kenya (The Economist 18 December 2004).

The new president's room to maneuver was at first limited, but by the 1980s Moi became more entrenched and established his own political network and kikuyu leaders correspondingly become to oppose the regime. By 1981 the beginnings of the Moi dictatorship were in place. Both circumstances and structural conditions led to an ever centralizing presidency and eventually the attempted coup of 1982 (Githinji and Holmquist, 2011:8). Moi used Kikuyu Mwai kibaki, minister of finance and Attorney – General Charles Njonjo, creating a Rainbow collection of ethnic interests which latter enable him to undermined Kikuyu hegemony. This new clique helped him to legitimize his leadership in reaching certain non-receptive kikuyu strongholds. Moi also embarked on the gradual *Kalenjinization* of the public and private sectors from the 1980s to sustain his grip

on power. Many scholars have written about this, assessing the so called 'Nyayo Era'<sup>7</sup> providing the personal breakdown. Lucy Mulli writes,

Through a process of 'cronyism', Moi was able to retain power by using his ethnic groups as a support base. In exchange for their support, the Kalenjin have been rewarded with resources from public sector. These include senior positions in parastatal organizations and the administration, as well as benefits in the form of government loans. Thus, it comes as no surprise that the accession to power by Moi saw the simultaneous entry of Kalenjins into top positions, and the corresponding exit of Kikuyus (Lucy Mulli, cited in Amutabi, 2009:61).

He began to "*de-Kikuyunize*" the civil service and the state-owned enterprises previously dominated by the Kikuyu ethnic group during Kenyatta's regime. He appointed Kalenjins in key posts (Adar and Munyae, 2001; Barkan, 2011:6).

In 1982, tensions within Kenyan elites over future control of the state reached the height. In this year, a section of the armed forces staged a coup attempt against the government when Moi was attending OAU conference in Tripoli. The coup was quickly crushed by the loyal forces, but the government was left tremendously shaken. Following the coup attempt, the government rushed a constitution amendment through parliament that inserted the infamous section 2A into the Constitution. Section 2A, for the first time, prohibited the formation of an opposition political party in the country. Consolidating his own position of power after an attempted air force coup in 1982, Kenya became a formal one-party state. The last vestiges of liberal democracy were thus removed. Again this action did not deter the formation of clandestine groups against the government (Thoup and Hornby, 1998:35; Thomson, 2000: 26).

However, despite the concerted efforts by the various opposition groups such as civil societies, religious-based organizations etc. in the country to overthrow Moi's personal rule; Western countries and the donor community continued to finance the regime. This was because to the West and the donor community, a West-leaning Kenya was of great strategic importance to the West in its ideological struggle against the communist bloc during the 'Cold War'. The West would not, therefore, want the Kenyan regime

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<sup>7</sup> footstep

destabilized. Thus, the West was ready to turn a blind eye to repression and numerous abuses of human rights by the regime (Mbai, 2003:67).

The Moi regime reached its authoritarian apex in 1988, the year of the Mlolongo elections<sup>8</sup>. In a bid to further control the electoral process Moi decided that there was no need for secret ballots. Instead, supporters of a candidate would line up behind the candidate or his/her name card and the candidate with the longest line would be declared the winner. This was clearly an attempt to intimidate voters to ensure that they voted for the politically preferred candidate. But despite these efforts there were reports of the administration declaring a winner who did not have the longest lines (Githinji and Holmquist, 2011:10-11; Throup and Hornby, 1998:42).

In 1989, following the collapse of the Soviet Union and the end of the Cold War, the West and the donor community began to put pressure on the Moi regime to restore multiparty democracy. The much-needed support boosted the efforts of the domestic opposition forces now grouped under the umbrella of FORD. The Forum for Restoration of Democracy (FORD) and Democratic Party of Kenya (DP) were the major parties formed after the reintroduction of multi-party system. FORD was an offshore of a pressure group founded by experienced politicians, businessmen, lawyers and other professionals to lobby for political liberalization. DP's main founders were disengaged KANU politicians mainly from GEMA areas. FORD later split into two and registered under the names FORD-Kenya and FORD-Asili( Kanyinga,1995:82).

### **3.1.2 Political opening**

Those who had placed their faith in a quick-fix solution via the multi-party road can now digest at leisure the truisms that a multi-party system does not necessarily a democracy make (New African May 1993).

In December 1991, the government eventually gave in to the demands to restore multipartyism in the country. The suspension of more than US\$250 million in budgetary support by Kenya's international donors forced then President Daniel Arap Moi to amend the Constitution to permit the return of multiparty politics. Donors at this point in time were

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<sup>8</sup>Kiswahili word for Line or Queue of people behind the candidate he or she supports

not quite happy with the state and were keen to see democratic changes in Kenya. This Western interest in democracy could also be understood in the light of the end of cold war. (wanyande, 2009:13; M. Klopp, 2006: 62).

In December 1992, the first multiparty general elections were held in the country. The 1992 multiparty general elections resulted in victory for KANU amid claims of rigging. In this election Moi was elected to a fourth term as president of Kenya with 36.3% of the vote ahead of Kenneth Matiba (26.0%), Mwai Kibaki (19.5%) and Oginga Odinga (17.5%) (Amutabi, 2009:69, Barkan, 2011:7).

In December 1997, the second multi-party general elections were held in the country. Moi and KANU hard-liners devised a rigged strategy similar to the one they used in 1992, to take care of the kikuyu. The first scheme was to perpetuate the kikuyu division using maverick like Joseph Kamotho, Kuria Kanying, among others. Second, KANU deployed “zoning” where non-kikuyu areas were declared KANU zones, attached out oppositions and kikuyu politicians. The third mechanism was to create more constituencies in the areas dominated by KANU. Fourth, areas that were predominately sympathetic to the opposition in 1992 were denied new ID cards and voting cards (required for voting) especially kikuyu constituencies which affected their presidential vote. Fifth, during the election time, ballot papers from kikuyu and other opposition areas were intentionally sent to wrong constituencies hence voting in the process. Unable to unite behind a single presidential candidate due to the arrogance of Kibaki, Raila, and Wamalwa, the opposition stood no chance against the highly motivated KANU campaign mechanism. In 1997 election Moi gained 40.64% of the popular vote, Mwai Kibaki 31.49%, Raila Odinga and Wamalwa 11.06 and 8.40% respectively. Again KANU emerged victorious while the opposition parties refused to accept the results claiming that the elections had been rigged (Amutabi, 2009:68; Levy and Kpundeh, 2004:218).

Although the country had reverted to a multi-party system in December 1991, Moi continued to govern Kenya as an autocratic state. Most of the tendencies of personal rule remained the norm under Moi's regime. Despite the legal and political reforms that occurred from 1991 on, impunity reigned for the political class. Old and new laws were on

the books and formal institutions existed, but they were weak and quarantined (Githinji and Holmquist, 2011: 14).

Corruption continued unabated in public life; President Moi and key officials continued to manage public institutions in total disregard to the law; Moi continued to pronounce decrees even when such decrees were in total conflict with the country's constitution and laws; the executive and especially the presidency remained more powerful than the other branches of government. There are two main factors that contributed to the continued personal rule under a multiparty situation in Kenya. The first was the gross constitutional weaknesses. The second was the ineffectiveness of opposition political parties. Kenya's political parties exhibit functional weaknesses, compounded by patrimonialism, ethnic loyalties and political insecurity. The persistent weakness of opposition political parties in the country could be attributed to ideological bankruptcy and lack of adequate resources. The weaknesses can most effectively be addressed under an environment that permits the practice of liberal democracy. The ethnic nature of Kenyan politics became apparent in 1997 elections. The kikuyu had voted for Kibaki, the Luo for Raila (Daily Nations, 1998, Barkan, 2011:7).

After 1997 elections, three opposition leaders Mwai Kibaki, Wamalawa and Ngilu the "Big Three" as they became known between 1997 and 2001 worked out some sort of alliance. The opposition parties had realized that this was the only way they could defeat the ruling party at elections (Amutabi, 2009:69).

### **3.1.3 The Overthrow of Autocratic Government In Kenya**

In order to improve their chances of making an impact in the coming elections, opposition political parties began to negotiate an alliance among them more seriously. The negotiations eventually resulted in the creation of an opposition alliance known as the National Alliance Party of Kenya (NAK). NAK brought together three key personalities and political parties, namely, Mwai Kibaki of the Democratic Party (DP), Michael Wamalwa of FORD-Kenya and Charity Ngilu of National Party of Kenya (NPK). Additionally, thirteen obscure political parties joined NAK. The Rainbow Alliance

members<sup>9</sup> began to negotiate with for a possible super alliance to face the now depleted Moi's ruling party. On October 22, 2002, opposition groups in the country eventually resolved to unite under one umbrella political party. The umbrella political party is known as the National Rainbow Coalition (NARC). The members of this coalition signed the memorandum of understanding (MoU) to share power between them after they won the election. It is NARC that faced KANU in the December 27, 2002 general elections and overwhelmingly defeated the ruling party (Mbai, 2003:70). The alliance was built around elite consensus rather than democratic principles, a factor that would come back to haunt the alliance later. NARC endorsed Kibaki as its presidential candidate. At the end of the grueling campaigns, Kibaki led NARC to a historic election victory and immediately embark on implementing the election pledge (Asingo, 2003:37).

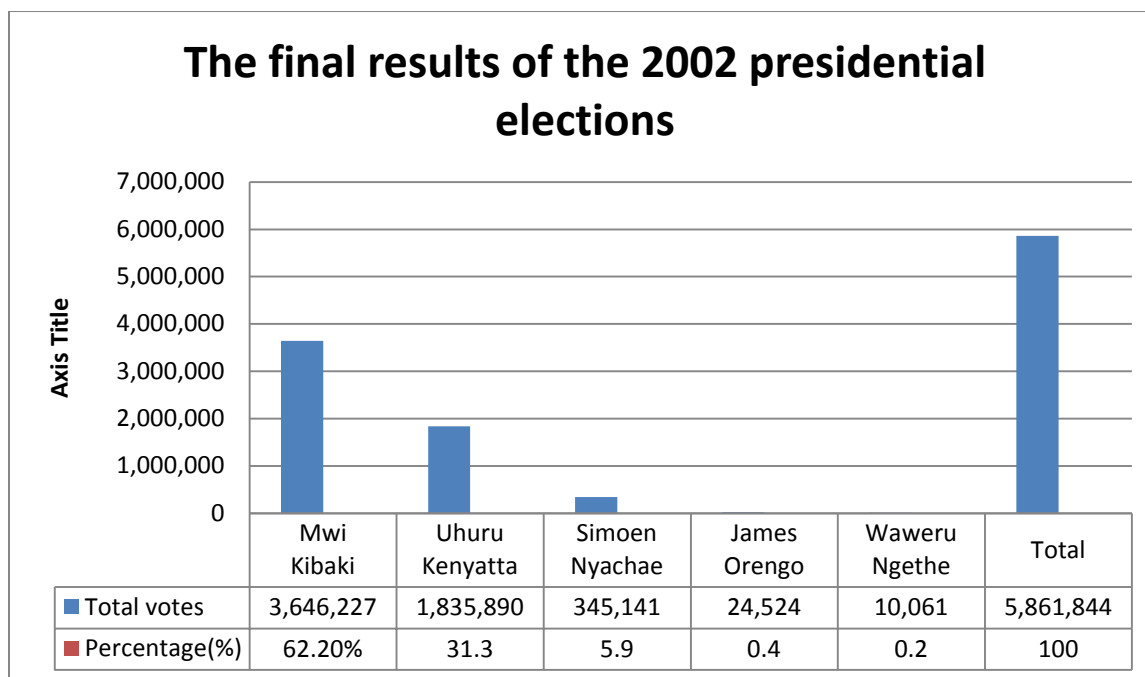
In 2002, Mai Kibaki was elected Kenya's third president. Many factors contributed Kibaki's election; first it was the amalgamation of hatred against the dictatorship of former president Daniel Moi by many politicians in Kenya, mainly because on the eve of election Moi attempts to impose his own appointed successor, Uhuru Kenyatta on the Party and the county<sup>10</sup>. The second factor was the political alliance of the "Big Three" of Kibaki, Wamalwa and Ngilu. The "Big Three" come together to form NAK just months before the 2002 general elections. It is widely acknowledged that compared to the other two previous multiparty general elections held in 1992 and 1997, the December 27, 2002 elections were generally more peaceful. They were also freer and fairer than the two previous elections. It was judged free and fair by local and international observers, marked a turning point in Kenya's democratic evolution. In the Parliamentary contest NARC had already won 103 out of the 210 contested seats. KANU was trailing with 40 seats (Mbai, 2003:52, Kanyinga, and 2003:122). The final results parliamentary and presidential elections of the 2002 general elections shown on table 1 and 2 blow.

### **Table.1 The final results of the December 27, 2002 presidential elections**

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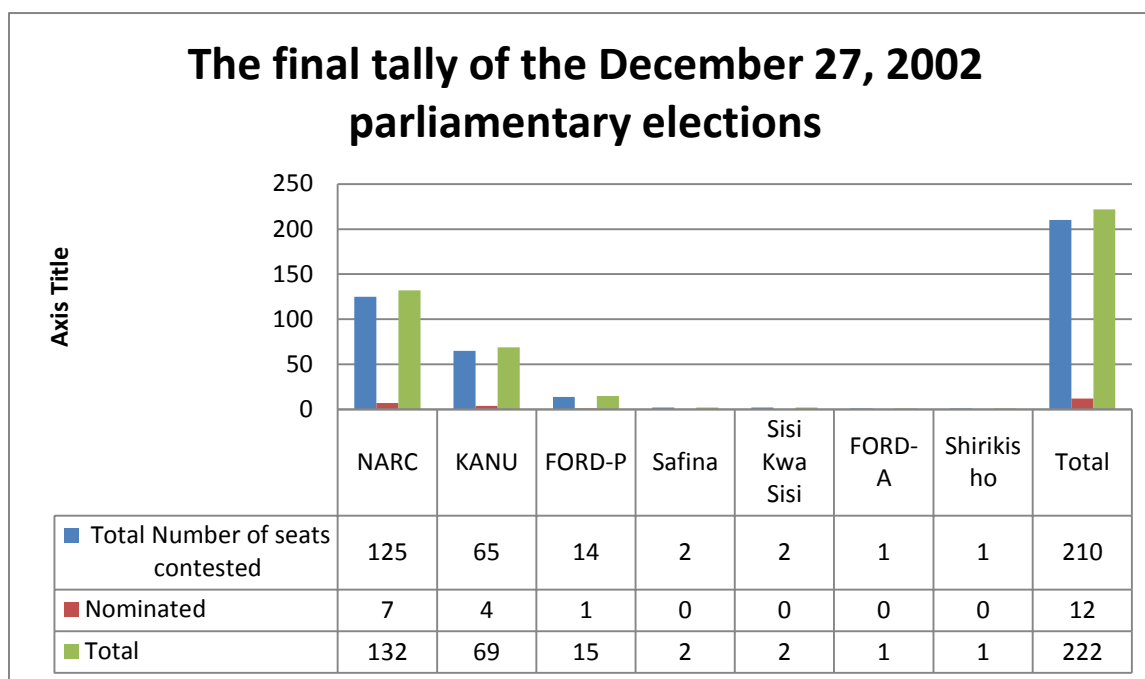
<sup>9</sup> The Rainbow Alliance created by KANU rebels such as Raila Odinga, Kalonzo Musyoka, George Saitoti among others and who had abandoned KANU because it was bent on nominating Uhuru Kenyatta for presidency.

<sup>10</sup> Many politicians against it because they regarded it as an attempt to introduce dynasties in Kenya see for more detail Asing,2003:35; and Mbai, 2003:75.



Source, Amutabi, 2009 Kenya studies review.

**Table.2 The final tally of the December 27, 2002 parliamentary elections tally**



Source, Amutabi, 2009 Kenya studies Review

The NARC government won the 2002 elections on the manifesto of zero tolerance on corruption, good governance and accountability. However, the early harmony was watered down by the non implementation of the Memorandum of Understanding signed by President Kibaki and Raila Odinga the then Leader of Liberal Democratic Party (LDP). The MOU was a symbol of broad based ethno regional representation and power sharing. Kibaki started by disregarding other members of the coalition that he had agreed to a pre-election pact with other parties in the national Alliance Rainbow coalition (NARC). The unfilled memorandum of understanding (MoU) remained a contentious aspect in the alliance and preoccupied the first term of the Kibaki's presidency. The refusal to honor the MoU literally spelt the end of coalition (Chemengich, 2009:26). After some months of governance "honeymoon" and optimism with the Kibaki administration, the signs of bad governance started developing again. Scandals of grand corruption began to pop up; press freedom was violated (culminating in a midnight raid on a leading media house and roughing up of journalists) and extra-judicial executions that were recorded and condemned by a UN rapporteur, to mention only a few miss-governance atrocities (Kwaka and Mumbo, 2011:60). As Kenyans quickly moved towards 2007 elections, new alliances emerged to replace the dishonest National Alliance Rainbow Coalition (NARC) that was created just before the 2002 elections. NARC was all but dead by 2005. Politicians from all

ends of the ethnic spectrum started to create possible winning coalitions from their ethnic bulwark, in which members of the Kikuyu ethnic group are increasingly getting isolated. What isolated Kibaki's regime was the fact that almost half of cabinet slot in the first NARC government went to Gikuyu, Embu and Meru Association<sup>11</sup> (GEMA) areas. Kenyans were also not surprised to see the strong re-emergence of the Kiambu connection in the Kibaki government in the reconstituted so-called government of National Unity that embraced the GEMA grouping even more enthusiastically; especially after non-GEMA members of parliament (MPs) rejected some cabinet positions, especially those who were made assistant ministers (Amutabi,2009:73).

Kibaki did not do well on the ethnic question. In 2006, there were 19 permanent secretaries from GEMA-related ethnic groups out of 34 in the country. In 2002, there had been 14 permanent secretaries from the Kalenjin, and related ethnic groups out of 26. In 2006, members of the GEMA group headed 23 of the 34 public corporations (Amutabi, 2007:73).

From the events of the NARC coalition and how President Mwai Kibaki mishandled his colleagues in the alliance, there was a sense in which the Kikuyu were held in deep suspicion by other ethnic groups, and this was tested in the 2007 elections. The defeat of the Kibaki government (Banana Team) during the 2005 referendum on the watered down Draft Constitution by the Orange Team was significant in determining events for 2007 elections. Like Moi that replaced kikuyu with his ethnic groups kalinjin, kibaki also started, replacing kilanjin with kikuyu from the GEMA members in civil service, military and other higher positions (Daily Nations<sup>12</sup>, July 10, 2006).

Moreover, Younger and more talented Kenyans could not serve their country in these important positions because some old persons were being recycled again and again simply because they belonged to the President's ethnic group. By 2007, observers of the political

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<sup>11</sup> GEMA stands for the Kikuyu, Embu and Meru alliance that was associated with the Kenyatta era. It was formed for socio-economic and political reasons and was aimed at articulating the interests of the collaborating ethnic communities in the face of other Kenyan citizens.

<sup>12</sup>DailyNations,2006.[http://www.nationmedia.com/dailynation/nmgcontententry.asp?category\\_id=64&newsid=76934](http://www.nationmedia.com/dailynation/nmgcontententry.asp?category_id=64&newsid=76934)

scene believed that Kibaki had failed to offer bold and visionary leadership. Unfortunately for Kenya, many of these associates did not have what it takes to deliver development, as they were entrenched in ethnic encircles and old classmate relation and were lacking in insightfulness in dealing with people from outside their own ethnic group and class. There was not trust in the coalition, and a new constitution was not possible under these situations. The ruling coalition of NAK and LDP did not agree on how to divide the power of executive between the position of prime minister and president. Kenyans knew that Moi and KANU were opposed to a new democratic constitution due to selfishness and lack of democratic will. But little did they know that once in power, NARC and Kibaki would turn out to be an exact reproduction of KANU (Amutabi, 2009:75).

By 2006, the NARC record at national unity and at pursuit of democratic principles was gloomy. Like in Kenyatta and Moi regimes, Kibaki's regime has seen everything through ethnic mirror and this greatly affects Kenyan politics. Since ascending to power, the NARC government was engulfed in factional warfare that was structured around ethnic calculations. The pre-election reformist promise never materialized due to the ethnic polarizations that President Kibaki had failed to stop. The Kibaki regime had moved very fast into the Moi mode - of wheeling and dealing- as well as divide and rule and self destruction. By 2007 it was becoming difficult for Kibaki to forge an alliance with leaders from other ethnic groups. The NARC administration experienced the same opposition that the KANU government faced at the height of its dictatorship from the early 1990s to 2002 when it was bundled out of power (Amutabi, 2009:74).

In February 2004, when the APRM<sup>13</sup> process was launched at a meeting of participating states, Kenya was one of the first four countries to be chosen to undertake a review (Akoth, 2007:14). The APRM eminent persons' country review report described Kenya as a bastion of stability, though it noted that ethnic strife remained a real possibility given prevailing patterns of ethnic politics and regional inequalities. The report expressed particular concern over neglect of the North Eastern Province, a policy inherited from colonial times and observed by successive post-independence governments (APRM, 2006)

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<sup>13</sup> NEPAD's APRM—African peer review mechanism

While crediting the former KANU rule ‘for keeping Kenya together as one entity when some of its neighbors in the region were facing internal fragmentation’, the APRM report noted the deeply divisive governance of the KANU period and the consequent ‘deep-seated disillusionment among the public, and hence a very high price tag in terms of expectations put on the new government’. The report noted with great concern the lack of adequate measures to protect economic, social, and cultural rights, which resulted in over 56 per cent of the population living in poverty. It stressed that poverty-reduction efforts continue to be frustrated by persistent corruption. It deplored the fact that efforts by the government to combat corruption had hardly gone beyond putting in place ‘legal instruments, investigative and enforcement machinery’. Kenya was, however, commended for accepting its shortcomings, in what was reported as a broadly positive review, and the government stated that it was committed to addressing all the issues raised (*The Nation*, 10 July 2006). Kenya’s country review report identifies nine overarching issues: managing diversity in nation building; implementation of gaps; poverty and wealth distribution; land; corruption; gender inequality; youth unemployment; and transformative leadership. The report noted that ethnic diversity was pronounced in Kenya and aggravated political differences. Thus especial efforts needed to be made draw all groups in to mainstream. While Kenya had some good policies and institutions, there were severe problems with implementation. The projects were often not completed and capital budgets were not always spent. Poverty and inequality of wealth distribution were also seen as serious problems. Kenya has a long standing problem relating to people’s access to and distribution of land. In addition, gender inequality and youth unemployment was very high. The social instability that could arise from the existence of a class of unsatisfied youth people—was identified as overarching issue (Herbert and Gruzd, 2008:205)

### **3.1.4 End of high road for Kibaki: Repression and Corruption**

The excess of corruption, financial and political scandals that have bedeviled Kenya in the recent past under President Mwai Kibaki and his National Rainbow Coalition (NARC) and Party of National Unity (PNU) is appalling. Corruption in Kenya is blamed on a group of elite and other minor functionaries surrounding the president, and the predominantly Kikuyu regime.

The anti-corruption and ethics commissioner in the NARC regime John Githongo ran into exile fearing for his life, after several of his attempts to bring the many corruption scandals to a halt were frustrated by Kibaki confidants and insiders (Holman, 2007). The social cohesiveness, and the sharing of the national wealth through ethnic quotas which was instituted by KANU under Moi has been replaced by an out rightly regional agenda. Just like the dictatorial Moi regime, the NARC government recruited a group of intellectuals as advisors and think tanks as well as creating a propaganda office known as Government Spokesman. Moi was a dictator and his regime corrupt, but Kibaki has turned out to be more dictatorial and his regime more corrupt. He has filled important positions in his government with his cronies. The more detail about Kenya's corruption discussed on chapter 4 later in this thesis. In this type of situation Kenya engaged in the fourth general elections.

The 2007 elections did not turn off the pattern of previous elections. Like the multiparty elections of 1992, 1997, 2002, the 2007 results revealed the presence of political ethnicity where Kenyans overwhelmingly voted for individuals and political parties along the dictates of their own ethnic groups. It seems like other ethnic groups in Kenya isolated the Mount Kenya or GEMA groups, due what was seen as Kikuyu dominance and suspicion. This became apparent in the post election violence following the 2007 elections in which the ethnic clashes that followed seemed to target the Kikuyu (Amutabi, 2009:78-79).

Until the end of December 2007, Kenya had been looked at as a politically and economically success story. As Kenya approached the 2007 general elections, it was increasingly clear that the many significant promises that were left unaddressed over the previous five years had merged into social tension, political polarization and democratic reversals.

The constitution review process had been discouraged largely by the machinations of Kibaki's NAK, the anti-corruption agenda had collapsed, the push to form the Truth and Justice Commission to address historical injustices had been hindered, nationalistic politics and leadership had collapsed, as tribalism dominated appointments in the public sector<sup>14</sup>. One faction of the ruling coalition, President Mwai Kibaki's National Alliance Party of

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<sup>14</sup> Gikuyu/GEMA community dominated the security, finance, and justice and law institutions

Kenya (NAK), sought to consolidate power and fenced off its coalition partner, Raila Odinga's Liberal Democratic Party (LDP). Powerful groups in the government isolated the Liberal Democratic Party (LDP) faction of NARC and began to accumulate power and wealth for the purpose of effectively outcompete its critics in LDP. The government abandoned political reforms because of internal conflicts in the ruling party generated by general disagreement on sharing of political power among the various groups comprising NARC ( Kanyinga and Okello ,2010:9-11).

Furthermore, the defeat of the government on an important matter such as a constitutional referendum; created dangerous feeling and greatly weakened the legitimacy of the Kibaki regime from 2006 onwards. Its legitimacy having been weakened by the referendum result and its popularity declining in most of the country, the Kibaki government experienced regime insecurity as it faced the 2007 elections. This had several consequences, culminating eventually into the controversial general elections. First, Kibaki dismissed all the LDP ministers that had campaigned against the draft. Second, an attack on unfriendly media emerged as the state mounted an operation against the Standard Media Group<sup>15</sup>. Third, it tightened its grip on the security forces and slowly built the capacity of the Administration Police (AP). All these were tell-tale signs of a troubled and insecure regime, and helped put the events of 2007/08 in perspective (Kanyinga and Okello 2010:13-15).

The most disturbing development in this range of activities was in 2007 when Kibaki decided to unilaterally appoint members of the Electoral Commission of Kenya. The toxic context that informed the conditions for the December 2007 general elections was thus caused by deeply divided political elites, caused by the failure of the Kibaki faction to respect the oath that created the NARC; sharp ethnic cleavages, deepened by the uncovered ethnic monopolization of state power and the public sector and stirred by the highly ethicized referendum campaigns; disillusionment with the government's reform agenda, and, a government with a significant legitimacy deficit, electorally expressed through a constitutional memo referendum two years prior. A confident and organized opposition that had mobilized its base very well both numerically and aspiration ally was

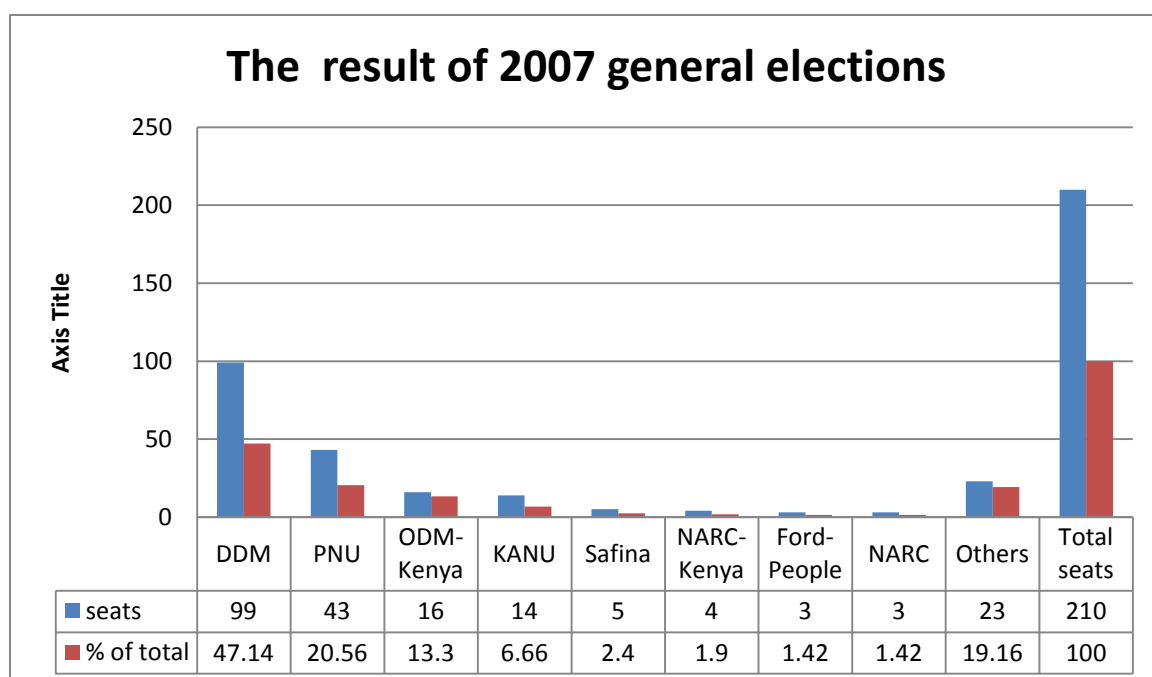
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<sup>15</sup> The Standard Newspapers printing plant located at Industrial Area in Nairobi was disabled and tens of thousands of newspapers burnt by government agencies.

facing off with a comparatively politically less organized, insecure, and wounded but nonetheless determined regime, which had also carefully mobilized the instruments of state power to defend its position (Murunga, cited in Kanyinga, 2010:14).

The process leading to the December 2007 general elections was generally peaceful. Problems arose during vote count. Notwithstanding the hotly disputed presidential vote tallying, the opposition reportedly made significant gains in the parliamentary elections and early election results showed Odinga ahead of Kibaki. The Electoral Commission of Kenya, however, hastily declared President Kibaki as the winner of the elections. 2007 general elections was generally peaceful. Problems arose during vote count. Notwithstanding the hotly disputed presidential vote tallying, the opposition reportedly made significant gains in the parliamentary elections and early election results showed Odinga ahead of Kibaki About half a million members of the Gikuyu (Kikuyu) ethnic community were displaced from their homes in Rift Valley, Western and Nyanza provinces. Displacement of thousands of other ethnic groups in Gikuyu dominated areas also followed as the conflict escalated. By the end of it, no less than 350,000 Kenyans had been internally displaced. Over 1,100 had died, many women raped, and about 3,560 suffered serious injuries (CIPEV, 2008); Ogutu 2012:6 Nyanjom, 2011:8).

**Table 3 the results of 2007 general elections**



Source, Amutabi Kenya studies, 2009.

The African Union and the international community constituted a Panel of Eminent African Personalities led by former UN Secretary General, Kofi Annan, to lead the mediation. A ceasefire arrangement was established. Since the signing of the agreement, Kenya has been ruled by a power-sharing arrangement that kept President Kibaki in office and created the position of Prime Minister for Odinga, with their respective parties joining a Grand Coalition. Fraud and post-election violence produced the most concentrated threat to stability in

Kenya's post-colonial history and severely eroded the democratic gains of the previous two decades (Kanyinga and Okello, 2010:16).

### **3.2 Decentralization for Good Governance**

Different scholars define decentralization in different ways. According to Mawhood (1998, cited in Kassahun, 2009), decentralization takes place when a national government shares some of its powers and functions with lower level sub-national actors and agencies. Decentralization measures can be prompted by a wide array of factors, that includes the quest for effectiveness, participation, stability, efficient planning and generating resources; sharing the burden of carrying out activities and shouldering responsibilities; and acquisition of more accurate information with regard to the prevalent state of affairs in peripheral localities (Kassahun, 2009:113-114).

Effective decentralization can provide exciting opportunities for democratic change at the local level and can help improve national democracy as well and it improves the efficiency and responsiveness of public sector while accommodating potentially explosive political forces. Decentralization becomes a source of democratic vitality when it gives people experience of democracy. It can serve democratic consolidation by removing barriers to participation, strengthening the responsiveness and accountability of government. Legitimacy can also be served by democratic decentralization under conditions of ethnic pluralism. Political decentralization can help by giving ethnic groups a degree of autonomy. Aid donors emphasize three major benefits, which is derived from

decentralization to local government institutions: first democratic decentralization should be more effective way of meeting local needs than centralized planning. The second major aim of decentralization is to maintain political stability and thirdly it helps the poor by positioning power at the local level where they have a chance of capturing it (Smith, 2007:102-3).

Decentralization takes various forms to facilitate the transfer and dispersal of authority in planning, management, and decision making from national to sub national levels. According to Rondinelli, decentralization classified as: deconcentration, delegation and devolution. He distinguished them based on two criteria namely: their legal status and degrees of autonomy; they speak to different forms of power relationships between the central and periphery. Under deconcentration, central governments disperse some administrative responsibilities to the lower levels of government to rationalize services without a real transfer of authority to either local officials or the people. The local administrators still depend on the central government for their appointments, assignments and salaries (H. Boko, 2002:2, Kassahun, 2009:15). In delegation, central government transfer responsibilities for decision making and administration of public functions to local governments or semi-autonomous organizations that are not wholly controlled by the center but are ultimately accountable to it. Devolution occurs where central governments transfer some authority for decision making, finance and management to quasi-autonomous units of government through a statutory provision (Khdiagala and Mitullah, 2004:191). Devolution strengthens sub national levels that are substantially independent of the national level with regard to defined functions (Rondinelli, 1981:133-40; D. H. Boko, 2002:2).

Decentralization processes are sustainable when some amounts of democratic rule exist. It needs power sharing with local authorities. Decentralization provides more opportunities for civic space and citizen participation, public policies to become more responsive, democratic stability, poverty alleviation and, consequently, for independent groups to emerge, for political opposition to develop and for individuals to practice and experience the exercise of free choice in democratic governance. For all these reasons, decentralization does represent a significant strategy in efforts to democratize societies. Decentralization is widely thought to improve democratic or good governance by bringing government closer to the people and thereby increasing state responsiveness and accountability. On the other

hand, when decentralization does not lead to power sharing between the central and localities in decision-making, it regarded as unsuccessful the context within which this power-sharing takes place is participation (Oyugi, 2000:5)

### **3.2.1 Dimensions of Decentralization**

Contemporary, writers explain decentralization in its four dimensions; political, administrative, fiscal and economic (H. Boko, 2002:1-5; Mulugeta, 2012:42).

- Political decentralization aims to give citizens or their elected representatives more power in public decision-making. It is especially critical for democratic decentralization because it reconstitutes the state in a democratic way. It also provides a process at the local level through which diverse interests can be heard and negotiated and resource allocation decisions can be made based on public discussions. It can be realized only in a truly pluralistic politics and representative government.
- Fiscal decentralization, which is known as a core component of decentralization is the transfer of or control over resources from federal to regional states or sectors. Generally it comprises of public revenue, expenditure, intergovernmental transfers, and domestic borrowings.
- Administrative decentralization is the redistribution of authority and responsibility of administering the human, material and financial resources for providing public services at different government levels. While the central task of this dimension is service delivery, the role of administering the whole sectors falls under this dimension. If officials are elected and authority and power to administer are not transferred in whatever form, then the political decentralization will be meaningless.
- Economic/Market decentralization where the national or sub-national government assigns responsibilities to private entities. It deals with the most complete forms of decentralization- privatization and deregulation from a government's control. This form of decentralization shifts responsibility of functions from the public to the private sector, which usually is accompanied by economic liberalization and market development latter at a higher stage.

The sequence of implementation, balances and demarcations among these forms of decentralization vary from country to country and from sector to sector based on the core interest of the central government, commitment to democratization, nature of the ruling party and the existing objective conditions. These sequences, balances and demarcations among these dimensions reflect the extent of autonomy released by the central government on one hand and the maturity of the decentralization practice and the implementation capacity of local bodies on the other hand. The balances outweigh each other and their sequence and pace is determined based on what also derived the decentralization initiative: politics, economy or service delivery. It also goes with overall development stage of a given country (Mulugeta, 2012).

### **3.2.2 Decentralization in Kenya**

Kenya like many other African countries is struggling with the legacy of centralization amidst pressures to embark on decentralization programs that would improve economic efficiency and restore a semblance of accountability and transparency in the management of public affairs. Although the economic pressures have whittled the central government's capacity to provide effective public services, there has been atypical and unexcited commitment to decentralization. The Kenyan case reveals that the meaningful decentralization cannot occur without the first creating broad-based participatory strategies for national governance. For this reason, decentralization in Kenya for most of the post independence era has remained hostage to fundamental issues of political and constitutional change. Functioning local participatory self-governance institutions are unthinkable outside similar institutions at the national level (Khdiagala and Mitullah, 2004:190).

On the eve of independence, minority ethnic communities, apprehensive of the post independence political dominance of the two major ethnic groups, the kikuyu and the Luo, coalesced around the federal and decentralization constitutional order. The British settler community established common cause with these minorities in the political alliance, the Kenya Democratic African Union (KADU) against the Kenya African National Union (KANU) dominated by the kikuyu<sup>16</sup>. While KADU felt compelled to press for federalism

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<sup>16</sup>See Collin Leys (1975), underdevelopment in Kenya: The political economy of neoliberalism, 1961-671 for more detail analyses of post independence ethnic bargaining.

and decentralization, KANU favored a strong centralized government and opposed federalism. KANU critics charged the federalism and decentralization was too complex for the young nation and accentuates ethnic differences. Furthermore, for KANU, decentralization would limit the ability of the central government to control the population in the manner that the colonial government had controlled (Khdiagala and Mitullah, 2004:193). In addition the logic of centralization was inherited and enforced precisely because it supports the ideology of unity, which informed the quest for the nation building in culturally pluralist societies. KANU saw decentralized government as a means toward creating disunity in a country where its slogan *uhuru na umoja*<sup>17</sup> made much sense after many years of the British “divide and rule” strategy. Centralization of the powers was justified everywhere in the third world immediately after independence on the grounds that the quest for nation building and development required territorial unity and central guidance that associated with it (Oloo, 2008). Without an undivided vision of all political interests about decentralization, its future was destined to be very bleak. At the end of 1964, the regional system was abolished and Kenya became a unitary state. The abolition of federalism did not, however, lead to the scrapping and/or withdrawal of the powers of local authorities. Local authorities were retained and they were still entrusted with the responsibility to provide various services such as health, education, community development and local infrastructure. However, from 1969, the government began to transfer certain responsibilities that had been entrusted to local authorities to the central government. By January 1971, the remaining major responsibilities such as primary schools, roads, and health services that were still entrusted to the local authorities were transferred to the central ministries. Moreover, the powers of the local authorities to levy taxes at the local level were also withdrawn by the central government (Leys, 1975: 246; Nyanjom, 2011:8).

### **3.2.3 Decline of Decentralization and Democracy, 1963-1991**

The 1963-1991 periods is significant in the history of decentralization because it witnessed not only rapid and systematic dismantling of the decentralization structure of regionalism and local government enshrined in the independence constitution, but also weakening of democratization process. Within three years of independence, the Kenyatta administration

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<sup>17</sup> Kiswahili for freedom and unity

dismantled the national and regional structures of federalism. Regions reverted to provinces under the tight control of central government. Each province had several districts, divisions, locations and sub locations, all equally controlled by the center. The reversals in federalism also mirror the weakening of local government. Although KANU was not against the idea of local government as much as it was against majimboyism (regionalism), centralization of power in Nairobi affected the role of local governments. At the beginning of the 1990s, Kenya's record of deconcentration<sup>18</sup> was one of failure. Halfhearted government commitment to decentralization coupled with bureaucratic mistrust of local initiatives had helped to create a situation where local structures existed without meaningful roles, responsibilities, or resources. As the economy further deteriorated, the government consolidated central powers as a way to manage the centrifugal forces at the local level (Khdiagala and Mitullah, 2004:198). Wallis summarizes the gloomy picture of Kenya's decentralization as follows:

There is a sense in which central government policy toward local authorities has been a consistent one over the past twenty years. Two key points stand out; one is incremental emphasis on centralized power, requiring increasing integration of local government in to the general machinery of the state; the other has been the clear desire to ensure that local councils survive. Thus, the approach has combined gradual erosion of powers, functions, and resources with occasional radical change. Greater central government control has also been exerted through the district focus approach which has brought about the integration of the local government in to the district Development Committee machinery in a way which, in effect, subordinates councils to the field administrators, notably the district commissioners.... All indications point to less autonomy, not more, whilst the resource base is very unlikely to improve other than marginally (Wallis cited in Khdiagala and Mitullah, 2004:199).

This diminishes the role of local authorities as institutions of popular local participation. Councils are not autonomous. Proposals for more autonomous local government and devolution in Kenya reflect concerns and frustrations brought about by weak structures of "local accountability". It also reveals local frustration with decentralized development management as represented by the District Focus for Rural Development strategy, which emphasizes de-concentration of central government service delivery (Maina B, 2005:).

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<sup>18</sup> Central government give some administrative responsibilities to the lower levels of government to rationalize services without a real transfer of authority to either local officials or the people.

As democratization movements of 1990s generate new competitive forces that challenged the centralized state, elite attempt to remark the sluggish institutional structures of weak state overshadowed debates about decentralization. Thus, just like the previous years, decentralization remained doubly difficult, hostage to the national dialogue about the nature of democratization and ethnic management and the imperatives of national transformation. In 1991, Kenya repealed the single party legislation, setting in motion constitutional changes from an authoritarian unitary state to a democratic society from the outset, the democratization process focused mostly on reforming the structure, institutions, and political process of central government---the presidency, parliament, electoral rules and the civil service. Very little attention was paid to reforming the structure, institutions and processes of governance at the local level, notably at the local government (Khadiagala and Mitullaha, 2004:199-200).

### **3.2.4 Decentralization in the New Constitution**

The new Constitution endeavors to decentralize governance. One of the consequences of the centralization of power in the presidency has been a widespread perception of alienation among citizens, many of whom have felt marginalized, neglected, and discriminated against on the basis of their ethnicity. Accordingly, they have asked for the devolution of governance so that they can participate meaningfully in governmental decision- making at the local level (Akech, 2010:23).

Kenya's long and determined search for a new Constitution came to fruition with the promulgation of the Constitution in 2010. The new Constitution fundamentally changes the system of governance; it devolves and limits governmental power and authority. It is a binding agreement between the people of Kenya, their leaders and the governing institutions. It presents a unique opportunity for social, legal and institutional reform and it recognizes the importance of public participation in governance. In addition, Constitution identifies devolution and sharing of power as one value and principle that should guide governance system in order to address the inequitable distribution of resources that stemmed from centralization in the past ( article 10). (Human rights watch, 2013:14)

The Constitution remains an important pathway to addressing Kenya's governance problems as it anchors a wide array of institutional, legal and normative reforms ( kabira, 2012:2). The people endorsed the new Constitution at a referendum on August 4, 2010, thus bringing to a close a 20-year quest for a new constitution. Several of provisions within it are devoted to the principles of good governance, whose implementation would provide a context within which to implement the devolution provided in Chapter Eleven of Kenya's constitution of 2010 (USAID,2011; Nyanjom, 2011:1 ).

Part 5 of Chapter 11 addresses the functional relationship between the national and county governments, while the Fourth Schedule elaborates on the distribution of service delivery responsibilities. The new Constitution establishes a system of devolved government that may begin to address these concerns. Article 174 requires this system to achieve a number of objectives, including promoting participation and accountability in the exercise of governmental power, fostering national unity by recognizing diversity, giving powers of self-governance to the people, ensuring equitable sharing of national and local resources, protecting the rights of minorities and marginalized communities, and promoting social and economic development and access to public services throughout Kenya (Akech , 2010:12; Nyanjom, 2011:9).

The new Constitution establishes three main institutions to facilitate the realization of these objectives: county governments, a Senate, and a Commission on Revenue Allocation. Article 176 establishes a county government for each of the 47 counties that consist of a County Assembly and a County Executive. To represent and protect the interest of the counties and their governments, the Senate is established by Article 93 as one of the two houses of Parliament, the other house being the National Assembly. It also initiates, debates, and approves legislative proposals (or bills) concerning counties (Article 96). Another critical Senate function established by article 145 is to determine the allocation of national revenue among the counties and maintain oversight over such revenue. It also plays a role in governmental accountability: the Senate participates in the consideration and determination of resolutions to remove the president or deputy president from office. Alongside the division of roles between the national and county governments, under Article 201 and 202 the 2010 Constitution also addresses the financing of the activities of the two

levels of government towards an equitable society based on openness, accountability and public participation in public finance management (Nyanjom, 2011:11)

However, the Constitution describes the government at the two levels as being distinct and inter-dependent and which are required to conduct their mutual relations on the basis of consultation and cooperation. Kenya's system of devolution is therefore not one of absolute autonomy but rather, one based on inter-dependence and cooperation (article 6(2)). The end result of this combination is what may be called a Cooperative System of Devolved Government founded upon three relational principles namely: the principle of distinctness; the principle of inter-dependence and the principle of oversight (New constitution of Kenya 2010)

In general, the new Constitution provides a more secure framework for county government, unlike its counterpart in the Independence (or *majimbo*<sup>19</sup>) Constitution, which was quickly subverted following the attainment of independence. The then party in power, the Kenya African National Union, which held the view that the Independence Constitution unduly curtailed majority power, undermined the regional governments by withholding funds and enacting legislation to circumvent the powers of the regional governments (Ndegwa, 1997:599)

### **3.3 The Role of Non- State Actors on Governance**

The Partnership Agreement between the European Union (EU) and the African, Caribbean and Pacific Rim (ACP) countries signed in Cotonou, Benin in June 2000 defined non-state actors (NSAs) as: the private sector, the social and economic partners including trade union organizations, and the civil society in all its diversity.

Non-state actors can include a wide range of actors such as non-governmental organizations (NGOs), trade unions, employers' organizations, private businesses, consumer organizations, academic and research institutions, citizens' groups, cooperatives, women's and youth organizations, church and religious associations and communities, independent foundations, organizations representing indigenous peoples, organizations

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<sup>19</sup> Kswahili for regions

representing national and/or ethnic minorities, organizations representing economic and social interests, organizations fighting corruption and fraud and promoting good governance, civil rights organizations and organizations fighting discrimination, local organization involved in decentralized regional co-operation and integration, cultural, research and scientific organizations, the media and others ( Kironde, 2007:2; M'boye and Gbaydee Doe, 2004:5).

Civil society after all, is not a homogenous grouping but constitutes organizations and movements with conflicting interests, all struggling to influence the state to serve their own peculiar interests. This engagement may be either cordial or antagonistic, but it does reflect a common recognition of state sovereignty. To this extent, civil society can either be a progressive force (when it confronts and opposes an authoritarian state) or a retrogressive one (when it helps entrench an authoritarian regime through its moral, political and economic support) (Matanga, 2000).

### **3.3.1 Civil Society in Post-Colonial Kenya**

A number of civil society organizations in Kenya work in the areas of human rights, democratic development, gender and social awareness among others. The Kenyan CSOs that deal with issues of democratization sprung up after 1992 following the opening up of democratic space that also led to the birth of multi party politics. This was made possible by the repeal of section 2(A) of the constitution that had hitherto outlawed the formation, registration and operation of more than one political party. Some of the civil society agencies championing democratization include the Law Society of Kenya, Women in democracy, Release Political Prisoners group, Institute of Education in Democracy, the Students Organization of Nairobi University (SONU), and the Justice and Peace Convention - Kenya (JPC) among others (Chemengich, 2009:21).

Civil society, and in particular the NGO sector, has undergone fundamental changes in Post-colonial Kenya. As in the period of colonialism, the state has played a central role in defining the direction of the voluntary sector especially as relates to its vibrancy. The Kenyatta regime was no different from the colonial state with respect to civil society participation in public matters. Under Kenyatta, the government ensured that civil society

engaged only in social and economic activities and not in things political including governance (Chemengich, 2009:24). However, during the Moi regime, beginning from 1978, many NGOs and civil society movements have taken on an added role of political activism and advocacy. It can be argued that the excessive authoritarianism and personalization of power by the Moi regime partly explains the engagement of these organizations in oppositional politics and overall political advocacy. However, it is also significant to acknowledge the role of the international community in empowering civil society, through increased funding, to confront the Kenyan state on matters of political space (Matanga, 2000:7, M'boye and Gbaydee Doe, 2004:16).

The end of the Cold War had far reaching effects globally on the socio-economic and political life of many societies. In Kenya, as in many African countries, the immediate impact was felt in the political arena, with the ascendancy of a new ideological dispensation among Western donor countries that increasingly linked aid disbursement to good governance and economic and political liberalization. Civic associations and other agents of social change dramatically mushroomed and gained prominence as catalytic social actors, responding to the challenge of undemocratic governance, political instability, poverty, and social fragmentation, which had remained major features of African political and socio-economic conditions for most of the post-colonial era. The persistence of these challenging problems and the failure of African governments and the private sectors to find solutions to them gave impetus and justification to the need for continuous search for catalytic social actors, of which civil societies became prominent agents, playing the roles of human rights pressure groups, lobbyists, civic educators and socio-economic service providers to the poor and marginalized groups of their respective countries (Nzoma, 2003:189-190).

Kenya went through one political transition in 1991 when the *de jure* single party political system was replaced with a multiparty political system that allowed greater freedom of association, assembly and expression, although at the same time it continued to provide a strong legal basis for the regime of President Daniel Moi to harass and constrain activities of the political opposition, CSOs, and other pressure groups and almost completely derail democratic development in Kenya. This, and the socio-economic crisis that has been on the upsurge for many years, provided the catalyst for a growing social movement organized

primarily around the following agenda: (a) constitutional reform; (b) upholding of human and women's rights; (c) civic education; (d) and the holding of free and fair multiparty elections as a first step towards the restoration of democratic governance in Kenya. Towards this end Kenyan CSOs have employed different strategies, including: (a) civic rights awareness education; (b) gender rights awareness education and women's empowerment programmes; and (c) pushing for comprehensive constitutional and governance reforms (Nzoma, 2003: 191).

In 1990s several factors contribute for the growth of different civil society or NGOs in Kenya. First, there were numerous economic ills in Kenya. It was apparent that the government had failed to deliver the much-needed economic leadership. Second, the new wave of people's organizations was in search for a new basis for facilitating their struggle for participation in decision-making process. Third, NGOs were formed as development agents. Kenya is endowed with enormous amounts of resources. Unfortunately, there has been uneven allocation of those resources for development. Fourth, some NGOs were formed partly to take responsibility and push for socio-political change. This political role is mainly evident in policy advocacy activities and often viewed by civil society as in keeping the people in the government on their toes' (Kameri-Mbote, 2002:3).

Immediately after the end of the Cold War at the end of 1989, Kenyan CSOs led by the Law Society of Kenya (LSK) and the National Council of Churches of Kenya (NCCCK), felt emboldened enough to begin the cry for governance reforms and expanded political space. They have been very instrumental in providing civic education. In this regard, since 1992, numerous Kenyan NGOs and grass root organizations countrywide have been engaged in work aimed at raising public awareness of their rights, entitlements and obligations, as well as on the methods of gaining access to and exercising such rights. Civic education has thus raised the capacity of the public to understand the manner and process of governance (Nzoma, 2003:196). Civil society also undertook a spirited campaign to expose electoral fraud and malpractices that characterized elections during Moi's presidency. The sector also lobbied the international community to put pressure on the government to respect democracy and the voices of the people. The participation of civil society organization in politics has broadened the scope of political players. This development has led to the demystification of politics and given citizens confidence that they too can contribute to

political change and that politics is not the preserve of elites. (Wanyande, 2009: 15; M'boge and Doe, 2004:30).

Civil society organizations and especially the faith based organizations gave sanctuary to victims of state terror during the struggle for the reintroduction of multiparty politics. The reorganizations were also very vocal against injustices and autocratic tendencies of the Moi government. Bishops such as Henry Okulu and Alexander Muge of the Anglican Church are known for their unrelenting criticism of the atrocities of the Moi government. They gave courage and hope to those who were being persecuted by the state (Wanyande, 2009:14). Also the church, as many in many nations worldwide, has always regard itself as a legitimate watchdog of the state, along with critical lawyers, it is also known as the unofficial opposition party, and as a truly popular body, its power to influence organize presents a formidable treat to the government. The church has a unique status and mandate in Kenya society which allows it to criticize the government on moral rather than political grounds (African watch, 1991; Nairobi law monthly, 1997). According to Okukut the church contributed to establishment of pluralism in a number of ways. First, it was central in generating and sustaining a public discourse on democracy and change in Kenya. It criticized excesses in the exercise of state power. It protested against change in electoral law, which removed the secret ballot replacing it with a queuing system, denounced brutal evictions of squatters in Nairobi and the state-engineered ethnic clashes in the Rift valley, which had turned it into the 'unhappy valley' (Okuku,2002: 86).

According to the church, active monitoring of the government is an intrinsic duty in preaching the bible. Rev. Bernard Njoroge Kariuki of CPK (church of the province of Kenya) states:

Since human rights are God given, their promotion and protection are essential for freedom, justice and peace. The church has three important responsibilities in its relationship with the state. First, the church must make sure that the state acts responsibility, secondly, the church has a duty towards those who suffer from the actions of the state, since it is the duty of the church has to be on side of the victims. Thirdly, the church has a duty beyond the rescue of the victims of oppression. The church had the special duty to give voice for voiceless' (Throup, 1995: 151). It must try to destroy cause of oppression. The church would have to enter the political arena to do this (Kariuki, 1991).

The willingness of some church leaders to speak out on sensitive political and social issues has brought the church into confrontation with Moi government. Compared to other critical groups, the church has often greater impact on the government because it is not confined to the elite and the literate; its constituency is nationwide one of the important from which is its ability to educate their constituencies about their rights (African watch, 1991:217).

The media was particularly instrumental in exposing the weaknesses of the government and giving the pro democracy forces a channel through which they engaged the government and the conservative forces that supported the status quo. The media also provided citizens with an opportunity to express their misgivings about the government. This was done through letters to the editor and other newspaper articles. Some civil society organization's provided citizens with the much needed services that the state had failed to provide. This served to erode peoples' confidence in the state and thereby hardening the peoples' resolve to demand real change in the governance realm (Wanyande, 2009: 1).

### **3.3.2 Challenges to Effective Civil Society Participation in Transition Politics**

It is generally accepted in Kenyan discourse on civil society that the sector is in a flux. Having contributed to the removal of KANU from power with the hope that a new and more democratic system of governance would be put in place, a number of developments that have had great implications for the role and relevance of civil society took place. While some of these potential challenges are historical others are related to social structure of the Kenyan society. Some are also of a contemporary nature.

According to Wanyande Kenya's civil society faced the following challenges: Firstly, civil society in Kenya has had to deal with a hostile political environment. As already indicated, right from the colonial period, successive governments have not been very receptive to civil society activities. The media has been a target especially for exposing scandals involving government and powerful state officials. It is imperative to note that even when the space was finally opened and it appeared that civil society organization would freely play their watchdog role the hopes were quickly dashed. Second was the temptation by civil society leaders to join government. Following the 2007 elections, the government took

a deliberate move to incorporate some of the most vocal and committed civil society leaders into government. This was the case for example with Njoki Ndungu who was nominated to parliament and John Githongo of Transparency International - Kenya Chapter - who was appointed Permanent Secretary and presidential advisor on matters of governance and corruption. The effect of this is that it robbed civil society of leadership (Wanayande, 2009). Many civil society activists felt that since this was a government established with their support they had to support the regime at whatever cost. They forgot that the two actors have different roles and that civil society has to constantly monitor activities and performance of government with a view to stopping government from engaging in excesses.

Third is that their tendency to take ethnic positions on major national issues. In this sense one can argue that Kenyan civil society is a mirror of the broader society. Adopting ethnic inspired positions on major issues such as elections can also threaten the solidarity of oppositional civil society (A.Mahmoud, 2011:161). Fourth, Civil societies currently exhibit extraordinary dependence on donor funding. This makes civil society accountable to those who fund them and not the people they intend to serve and benefit. Fifth, since 1990s, present day civil society has relatively weaker links with the academia and with their counterparts in the rest of the region to sharing of knowledge and experiences and other support (Wanyande, 2009: 16-18; Kameri-Mbote, 2002: 14). Among other weakness social fragmentation, poor co-operation, weak financial base, inadequate flow of information, weak organizational skill and lack of democratic culture further declined the activities of civil society in Kenya (Nzomo, 2000).

## **Conclusion**

Kenya is a country in democratic transition. Over the past two decades its political system has gradually progressed from authoritarianism to democracy. In political transition to democracy, elites have been busy manipulating ethnic groups to ascend to power. Kenyatta, Moi and Kibaki have all subtly adopted the colonial framework of perpetuating their own egocentric interests. The ethnic favoritism, corruption, unlawful killings and repression of any one who oppose his government reach its peak during Moi regime. They have divided the country into ethnic blocs to provide privilege to few and marginalized, vast majority of the country's population. Consequently, this gradually led to ethnic conflicts in Kenya. Following the last national elections in December 2007, this nation virtually collapsed when rival political camps started a near-civil war over a disputed election result. Poor governance in Kenya is a direct result of the nature of the country's politics. Kenya's politicians are greedy beyond measure, ethnically chauvinistic and corrupt. They have divided Kenya's citizens along ethnic lines and made Kenyans to perceive one another as ethnically different rather than belonging to one country with the same resources and destiny. The politicians have always placed their own personal interests before the national good and carved out for themselves personal territories which they are ready to defend at whatever cost. Moreover, ruling elite centralized state power at the hands of executive power especially president undermining the check and balance principle of democratic system. Local governments which were near for local people have no meaningful power. Although not state organizations in Kenya struggle to ensure democratic or good governance the powerful authoritarian governments resist and weakened the activities. But civil societies and political parties of Kenya made great efforts in removing Moi personal rule and they able to restore multiparty system that Moi and his predecessor take apart even though Kenyan poor people did not benefited much from this multiparty system.

# CHAPTER FOUR

## 4. Components of Good Governance in Kenya

### Introduction

This chapter has three sections. The first section attempts to analyze the transparency and accountability in the government institutions with emphasis given to public services in Kenya and how its flaws hinder the advancement of good governance in the country. The next section discusses the nature of Judiciary branch given more focus on the important role this sector is expected to play in the democratization process in order to reinforce rule of law and regulation which is the solution for political drawback. The last section examines the record of human right and the rule of law in Kenya since independence.

### 4.1 Transparency and Accountability

Transparency is regarded as a key feature of good governance, and an essential prerequisite for accountability between states and citizens. Transparent governance signifies an openness of the governance system through clear processes, procedures and easy access to public information for citizens promoting ethical awareness in public service which ultimately ensures accountability for the performance of the individuals and organizations handling resources or holding public office (Suk Kim *et al* 2005: 649). According to Transparency International, transparency is a ‘characteristic of governments, companies, organizations and individuals of being open in the clear disclosure of information rules, plans, processes and actions’ (Transparency International 2009: 44). An underlying assumption is that transparency produces accountability. However, how information accessibility affects accountability and improves the quality of governance is still poorly understood (Bellver and Kaufmann 2005).

Accountability refers to the process of holding actors responsible for their actions and executing their powers according to certain standards (Tisne, 2010:2). Thus accountability is a key requirement and cornerstone of good governance; not only for governmental institutions but also for the private sector and civil society organizations which must be

accountable to the public and to their institutional stakeholders. Unless public officials can be held accountable, critical benefits associated with good governance such as social justice, poverty reduction and development remain elusive. Lack of accountability not only result in corruption and waste of precious development resources but also seriously compromised the quality and effectiveness of public policy making, planning and the provision of services to meet basic needs. It also denies citizens their inherent rights to influence decisions that directly affect their lives and to hold state officials accountable for the public resources with which they are entrusted. By general consensus, accountability ideally involves both answerability – the responsibility of duty-bearers to provide information and justification about their actions – and enforceability – the possibility of penalties or consequences for failing to answer accountability claims (Goetz & Jenkins 2005:14).

Accordingly, without accountability ‘the rule of the people’ is emptied of all meaning for it is through this process that citizens ensure that all those who make decision for the whole community are able to justify those decisions as being in the interests of the community (Baker,2000:6 cited in Butler).

In Kenya, the level of accountability among public officials in the management of public affairs has consistently declined since independence. The decline of annual economic growth rate and the continuous deteriorated of efficient and effective delivery of public services to the ordinary citizens latter resulted in widespread unemployment and poverty in the country. Since independence, Kenya has formulated various legal instruments and established a number of watchdog institutions for regulating and monitoring the ethical behavior of its public officials. Besides, in the early 1990s, domestic opposition groups assisted by the international community demanded and eventually achieved the restoration of competitive party politics or multi-party in the country. The reason the majority of Kenyans demanded Liberal democracy was due to the belief that good governance could only be guaranteed through the system (Mbai, 2003:113-4). As a number of scholars noted (Jabbara and Dwivedi 1989; Polidano and Hulme 1997), the international donor community, and even the domestic opposition groups in sub-Saharan African countries began to assume that multi-party is equal to accountability, and accountability equals good governance, which in turn equals development. Although there is a lot of merit in these assumptions, the

truth is that democratization and accountability are not necessarily equivalent the same applies to accountability and good governance. Indeed, if this were the case then the situation is sub-Saharan African after over ten years since the restoration of multipartism raises a serious problem. Since the re-introduction of multi-party system in the region, the evidence on the ground indicated that widespread abuse of public office by public officials is still largely the norm. (Mbai: 2003:117).

The immediate post-colonial public service that the first Kenyan independent government inherited from the British was modeled according to the Westminster System. This was a public service that was guided by the professional ethics of impartiality, effectiveness and discipline in the management of public affairs. Its primary function was to implement government policies efficiently and effectively. And in order to undertake this function, it was expected to be non-partisan. The continued deterioration of the level of accountability among public officials in the country shows that the adoption of multipartism has not contributed to good governance (Mbai, 2003:115). This state of odd affairs raises the following pertinent questions: What have been the major causes of the lack of, or poor accountability among public officials in the country? To answer this question one must examine the public service environment in the country after few years of independence.

Despite its impressive ethical standards, the immediate postcolonial public service suffered from three major weaknesses. First, it was racially constituted; its top echelon was reserved almost exclusively for the white colonizers; the middle management were predominately occupied by the Asian community while the lower and subordinate positions were left for Africans. Secondly, salaries and other benefits were similarly discriminatory; the white employees earned abnormally higher salaries and enjoyed better benefits followed by the Asians, while Africans earned much lower salaries and were accorded generally poor benefits. Thirdly, due to its background as colonial machinery, the public service still emphasized the maintenance of law and order as its primary role even on the eve of independence. The independent government instead preferred a public service that would be more development oriented. In an attempt to address the above mentioned anomalies in the public service and economy, the first independent government simply adopted the strategy of *Africanisation* or *Kenyanisation*. However, the way in which the strategy was implemented eventually undermined accountability in the public service (Mbai, 2003:119).

When the Africanisation of the public service began immediately after independence, it assumed an ethnic, nepotic and patrimonial dimensions. Indeed the first Africans that were appointed into the key position that were vacated by the departing senior white colonial public servants were predominantly drawn from the members of the Kikuyu community (Anyang Nyong'o, 1989 ;cited in Mbai, 2003:124).

As we have seen earlier the constitutional amendments which were aimed at strengthening the power of president and executives, resulted in the inability of any of the other state institutions or social forces to effectively challenge and led to further to weaken their role. Most of the state powers concentrated in the executive were to be exercised by the senior officials of the central civil service. The consequence is that the senior members of the central civil service soon became more powerful than the members of the legislature and the judiciary. As such, from then onwards it became difficult for the legislature and the judiciary to control the civil service (Mbai, 2003:121; Githinji and Holmquist, 2011:6).

After the death of Kenyatta in August 1978, Moi inherited this kind of civil service from his predecessor. Initially, president Moi promised to eradicate corruption and abuse of office in the public service. However, in order to consolidate his power, Moi resorted to the same patron-client relations strategy that his predecessor, Jomo Kenyatta, had successfully used in the 1960s. As we have seen the strategy involved awarding the key positions in the public service to those who were either closely related to him personally or to his close confidants and turning a blind eye as they enrich themselves by abusing their public offices (Kibwana et el,1996 cited in Mbai 122).

He also turned a blind eye to the widespread culture whereby public officials found it quite normal to use their public positions to allocate themselves government land, commercial plots and houses, and to acquire easy loans from government controlled financial institutions without appropriate collateral. These practices undermined accountability in governance in the country. In the late 1980s, tired of bad governance and lack of accountability, the domestic opposition groups and the international community demanded multipartysm due to the belief that the restoration of that system was the surest way of democratizing the state. By democratizing the state it was possible to restore accountability

in the management of public affairs. And by restoring accountability, good governance was bound to be achieved (Mbai, 2003:123).

Even though Moi government restored multiparty system at the beginning of 1990s, it cannot be claimed that the levels of accountability in the management of public affairs have improved in the country. Even as the political opening of the early 1990s brought important changes in the form of transparency – here defined as freedoms to voice and organize opposition parties. But accountability was another thing. Accountability has made little progress under the multi-party electoral frame of rule. Multiparty elections bore high expectations. Transparency and accountability were expected to arrive more or less in tandem in the train of democratic electoral practice (Githinji, and Holmquist, 2011:2), Widespread corruption and abuse of public office are still common. The failure of Kenya to restore the high level of accountability similar to the one it boasted of immediately after independence despite the restoration of multipartism more than a decade ago, shows that either the kind of multipartism adopted has failed to democratize the country, or that democratization is conspire for accountability in governance. It is quite apparent that the former is the case, meaning that adapting multi-party system. Thus, there is really no debate as to whether Kenya suffers from the lack of/ or low level of accountability in the management of public affairs (Githinji and Holmquist, 2011).

According to Mbai (2003:123) the following factors contributed for Kenya's deterioration of public service accountability: - (a) The autocratic or patron-client relations in the political process (b) the involvement of public servants in private business (c) Poor terms and conditions of service, (d) Deterioration of professionalism in the public service (e) Ethnicity and nepotism.

After winning of 2002 general elections NARC ran as the modernizing party, critical of the corruption that Moi permitted and promised to create a new constitution that would reduce the power of the president, increase the powers of parliament and sub-national governments, and improve government accountability. Kibaki significantly improved macroeconomic performance and discipline (especially tax collections), privatized a number of failing state-owned enterprises, and began to regulate the private sector more effectively. The IMF's 2008 report on fiscal transparency in Kenya lauded these changes,

stating, “Kenya has made significant progress since 2003 in improving transparency and accountability” (IMF 2008: 1; Hoffman, 2011:9).

During Kibaki’s first term, parliament passed and Kibaki signed a number of new laws in this area, such as the Government Financial Management Act, the Public Audit Act and the Public Procurement and Disposal of Public Assets Act<sup>20</sup>. Kibaki’s reform rhetoric also allowed civil society and the media to operate in a more open manner than existed under Moi, and civil society and the media seized the space this created to investigate the actions of politicians and raise pressure on holding them accountable for their actions. Somewhat unexpectedly, given the chaos and violence that accompanied Kenya’s 2007 elections, the 2010 Constitution creates institutions designed to facilitate transparency and accountability. The new Constitution seeks to end presidential hegemony through the following mechanisms. First, Article 143(4) limits presidential immunity in criminal cases; the protection of the president from criminal proceedings does not extend to crimes for which he or she may be prosecuted under a treaty that prohibits such immunity. Second, the president’s powers to appoint and dismiss public officers (including judicial officers) require the approval of the legislature. Third, Article 152 requires the president to dismiss a cabinet secretary when a majority of National Assembly members adopts a resolution—based on the recommendations of a select committee—that requires the president to do so. Fourth, Article 135 seeks to facilitate accountability by requiring that all the president’s decisions “shall be in writing and shall bear the seal and signature of the President.” Finally, Article 145 provides that the president can be impeached for a “gross violation” of the Constitution or other law, or committing a crime under national or international law, or “gross misconduct” as determined by the National Assembly. The foregoing provisions therefore promise to end presidential supremacy. In addition, Article 236 of the new Constitution provides that public officers will not be victimized or discriminated against for carrying out their duties in accordance with the law, or “dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.” Accordingly, the new Constitution may enable public officers to resist the illegal instructions of their seniors, ministers, or the president. Further, the new Constitution provides that the decisions of the cabinet and the president must be in writing (Articles 135 and 153). Among other sweeping changes, the new Constitution has the capacity to bring

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<sup>20</sup> See IMF, 2008 about these laws for detail

greatly enhanced transparency and accountability to the Kenyan Government. The positive democratic changes that have occurred over the past twenty years in Kenya came in the context of reform-minded and annoyed politicians, supported by an active civil society and media, in a weak institutional and politically unstable environment. These pressures will need to remain for some time in order to consolidate the reforms Kenya's new Constitution anticipates (Akech, 2010, Kirira, 2010).

## **4.2 Independence of the Judiciary**

“If it were left for me to decide whether we have a democracy without fair and independent courts- or fair and independent courts without a democracy- I would not hesitate to choose the latter” (Judge Sidney Brooks, 2007).

The first principles of the Independence of the Judiciary flow directly from the Judiciary's constitutional mandate. Constitutional democracy depends upon the limitation on government imposed by the Constitution through separation of powers between governmental institutions.

The Constitutional doctrine of Separation of Powers calls for a separation of the functions of government under the three institutions of the executive, the legislature, and the judiciary. The Rule of Law upon which the principle of constitutionality is founded depends on an independent judiciary to authoritatively interpret and enforce the law. The principle of rule of law means: that disputes as to the legality of acts of government are to be decided by judges who are wholly independent of the executive (Gicheru, 2007:2).

The maintenance of an independent and accountable judiciary is fundamental to ensuring accountability for human rights violations, the rule of law, constitutionalism and the protection of human rights and the constitution. Judicial independence is recognized in many international and regional human rights instruments as constituting one of the cornerstones of the rule of law and good governance. The courts are charged with the task of reviewing government's acts for performance with the bill of rights and the constitution in democratic states. Only an independent judiciary can effectively review governmental acts and ensure the rule of law and the constitutional guarantee of human rights. Review of governmental acts by an independent body in the interests of maintaining the effectiveness

of the constitutional guarantee of individual rights is an essential and important mechanism of good and democratic governance (Ndulo, 2009:16).

The main pillars of judicial independence are institutional and financial autonomy. These encompass the need for an appropriate appointment procedure, security of tenure, satisfactory conditions of service which the executive cannot adversely affect, the provision of adequate financial resources and appropriate terms and conditions for all those involved in the administration of justice (Ndulo, 2009:16-17; Mzikamanda, 2007:28 ).

Thus the role of an independent judiciary is extremely important for democratization, because without the independence of the judiciary there cannot be impartial justice and constitutional democracy would become meaningless. Justice is rooted in public confidence and once that confidence is destroyed, justice, the rule of law and indeed democracy suffer. Democracy without an independent judiciary would fail and turn into tyranny, as in Kenya; whereas tyranny would inevitably collapse in the face of an independent judiciary. Even political competitors must be able to achieve mutual respect for the independence of the judiciary, rather than get stuck with mutual violations of the independence of the judiciary (Mzikamanda, 2007:4).

Throughout Kenya's history, the Judiciary has not been perceived as the faultless servant of justice and protector of human rights that it ought to be. The public has generally been lost confidence of the Judiciary. In the colonial era, the system of justice was segregated, and it marginalized the indigenous people. More significantly, at independence the Judiciary was purposely designed to serve the interests of the government of the day. This assignment of a narrow role to the Judiciary was achieved through the establishment of constitutional rules that enabled the Executive to control the Judiciary, rules which remained in place until the promulgation of a radically different Constitution in August 2010. Kenya has had long running problems with the independence of the judiciary since independence. Sometimes ministers openly disobey court orders and no one would be there to stop them (Cocks, quoted in Mzikamanda: 2007:10). The constitution declares Kenya a multiparty and provides for the principles of separation of powers between the executive, legislative and judiciary, supposed by a system of checks and balances. This system worked fully well in the first few years it was adopted after independence, but over time, the presidency has

evolved to become the most dominant arm of the government, and the formal grants of independence were removed through constitutional amendments which led the parliament to be subordinate to the executive. As a result, the Judiciary lost institutional autonomy and became a handmaiden of Executives (APRM report, 2006:44; Mutunga, 2012:9). The judiciary is not deemed free from the interference and control by the Executive. To ensure his grip on power, Moi systematically usurped the functions of the other institutions of governance to the extent that the principle of the separation of powers was rendered ineffectual. He dismantled the democratic and accountability mechanisms and ruled by decree and law. In addition, Moi abolished the security of tenure of the key constitutional offices of the Auditor General, Attorney-General and judges, so that the President could dismiss them at will (Kwaka and Mutunga, 2011:8). In 1986 parliament enacted Act No. 14 followed in 1988 by Act No.4, imposing limitations on the independence of the judiciary, with far reaching human rights violations. Sections 61(1) and (2) of the Constitution empower the president to appoint the chief justice and judges respectively upon the recommendations of the Judicial Services Commission (JSC) which is also appointed by the president (Adar and Munyae, 2001:4).

The CSAR (County Self-Assessment Review) in 2006 assert that the Executive has abused powers of appointments and appointed Judges based on political, tribal or sectarian reasons, hence transforming it into an instrument at the service of the executive. The Judiciary has not been free from corruption or Executive pressure, and incidents are cited of ministers ignoring court orders in the Goldenberg inquiry; for instance also alleged is the practice where serious crimes have been committed against Kenyans but nothing is done against presumed culprits, even where these latter are known (APRM report, 2006:45). Furthermore, courts are used to dispose of political opponents and critics. On broader basis, the courts also become a weapon for the powerful and wealthy individuals for personal benefits (Africa Watch, 1991:145).

The new Constitution of Kenya, 2010 provides for strengthened, independent and functional institutions, including the Police, the Judiciary and the Legislature. These critical institutions are no longer susceptible to executive manipulation. Further, the Constitution expressly safeguards judicial independence and provides a more reformed judiciary to foster independent, impartial and expeditious access to justice and rule of law for all. The

Constitution also provides for two pronged approach to the concept of separation of powers where State power has been separated and dispersed both vertically and horizontally thereby creating a double security to the rights of the people in which the different governments control each other, at the same time that each is controlled by itself (constitution of Kenya 2010; Roschmann, 2012:). When the researcher interview, one of the informant said that the new constitution of Kenya and the 2030 vision of Kenya makes many of us to look forward and there are some signs of improvements in different public sectors (synonyms informant, 2013).

### **4.3 The rule of law and human rights in Kenya**

According to United Nation Human rights Council (UNHRC), Human Rights are “basic rights and freedoms” that all people are entitled to regardless of nationality or ethnic origin, race, religion, language or other status. These rights are conceived as universal and may exist as natural rights or as legal rights in both municipal and International law. Governments everywhere have a moral, legal and political responsibility to protect the rights of their citizens by ensuring that their legal, administrative, policy and programmatic frameworks serve this ideal. Kenya is signatory to various international human rights instruments which further obligates it to take specific measures to enhance the realization of human rights. In the last couple of decades, Kenya's human rights agenda has benefited from sustained civil society action, even though reaching the tipping point in terms of achieving sustainable structural change has been slow (KNCHR, 2011:6).

The Constitution of Kenya under Article 19 sub article 2 and 3 provide for: the protection of human rights and fundamental freedom, preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings and further provides for the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights (constitution of Kenya, 2010).

The Daniel Arap Moi administration rates the highest so far in human rights violation and which consistently received international criticism of its poor records on human rights. Detentions and political trials, torture, arbitrary arrests and police brutality reminiscent of

the colonial era have become common during Moi's tenure. He perceives human rights generally as alien and Euro centric conceptions inconsistent with African values and culture. He views the pro-democracy and human rights advocates in Kenya as unpatriotic, disloyal, and ungrateful individuals influenced by what he calls foreign masters (Adar and Munyae, 2001:6).

Moi has taken up the reins by enfeebling the judiciary, co-opting and corrupting legal community, and attacking independence of human right lawyers. The extent of his success has been to effectively politicize and criminalize the legal profession itself: Judges, Magistrates and lawyers are perceived as either loyal to the party and the president or opposed to them. Consequently, the vital notion of independence and professionalism has all but destroyed. Independent and human right lawyers are undermined by sub judicial public attacks by the president (Africa watch, 1991:157).

Despite the fact that human rights are prerequisite for good governance, the Kenya government's human rights record remained poor. It continued to commit numerous abuses. Security forces consign a large number of extra judicial killings. Arrests and detentions in fact followed every one of Moi's warning against his critics. Between 1989 and 1991 Kenya saw one of the worst human rights violations in its history. Moi accused advocates of multiparty politics of subversion, and thereby got a fresh excuse for detaining a new generation of his critics. A number of the champions of multiparty politics-- John Khaminwa, Raila Odinga, Mohammed Ibrahim, Gitobu Imanyara, Kenneth Matiba and Charles Rubia--among others, were detained under inhuman conditions and without trial. Human rights lawyers, Gibson Kamau Kuria and Kiraitu Murungi, fled to the United States to avoid being jailed. As has been the practice throughout his leadership, the police moved quickly and arrested those in the forefront for democracy, with the judiciary merely sanctioning what is commonly known in Kenya as political cases. Even though Moi's Kenya entered the second multi-party era which allows opposition parties to exist, human right violations by police, government supported armed militia and hired thugs continued throughout 1990s (Adar and Munayae, 2001:7)

All branches of security forces have been used to undermine and abuse human rights. Power and policy are controlled by those who control the files –especially those in the

office of the president. According to African watch sources lack of accountability and violation of human rights was encouraged because their bosses that is the president's own cabinets do not have respect to the rule of law and human rights, so that the police men will not respect the law as no one expect „angel among sinners“ (Africa watch,1991: 147).

Human right watch in 2005 reported that the record of the Mwai Kibaki government has been a source of hope and disappointment. As discussed earlier, the hope was easily gone down soon the remained was the dissatisfaction for many Kenyans. Change at the highest levels of power is not being institutionalized and high-ranking kibaki's officials are not being held accountable for the abuses of rights citizens in the same manner that the former Moi government officials did. The government's commitment to the rule of law was under question, along with a backdrop of internal power-brokering and punished corruption disgrace within the ruling party. Since the election, the political divisions among NARC coalition members have deepened along ethnic line. Increased political jockeying is rapidly emerging as factions seek to entrench power before the next elections in 2007, its result latter claimed the life of many Kenyans (Human right watch, 2005:132).

Immediately after the 2007 disputed general election which lead loss to more than 1,300 lives and internally displacement of more than 300,000 Kenyans, the police force is widely accused of being used by the government to quell riots in areas seen as anti-Kibaki's regime arbitrarily. A lot of innocent Kenyans died from bullet wounds in what reports acclaim to as —shoot to kill” orders (Ottichilo, 2011:11).

In Kenya a new constitution was passed providing a more comprehensive basis for the protection and fulfillment of human rights. The contribution also offered a frame work for addressing much needed political, judicial and other reforms. The government introduced a number of laws aimed at giving effect to the provisions of the new constitution. However, impunity of past current human rights violations continued to prevail, including for crimes committed during the post-elections violence of 2007/8 and for endemic violations against women (Amnesty international, 2011:194). No measures were implemented to insure accountability for human rights violation, including possible crimes against humanity, committed in the post-election violence. There was no progress in the investigations in the killings of Kingara and Paul Oulo, two human rights activists killed in 2009. Also there

were cases of unlawful killings and other human right violations by police and other security personnel. No individual police officers or security personnel were brought to justice for unlawful killings and the human rights violations. Accordingly, sexual and other forms of gender based violence remained rampant throughout the country. The social stigma attached to victims of sexual violence means that most incidents of sexual and gender based violence are never reported. Furthermore marital rape is not criminalized under Kenyan law (Amnesty international, 2011:195). The absence of public accountability in the exercise of power also creates an environment in which human rights violations, corruption, and impunity thrive (Akech, 2009:89) In the past, presidential control of the criminal justice system has meant that institutions like the police, the attorney general, and the judiciary have not worked independently. Therefore state officials and politicians who disobeyed the law, committed human rights violations, or engaged in corruption were never punished so long as the president shielded them from facing the law. Politicians implicated by reports of inquiries into the land clashes of the 1990s were not punished for their crimes because the president did not support their prosecution. The lack of political will to punish the perpetrators of violence or to address the plight of their victims has contributed to the growth of a culture of impunity (Akech, 2010:18).

## **Concluding Remarks**

The widespread lack of public accountability and transparency in governance in Kenya certainly undermines provision of public services and economic development. The origins of this serious anomaly in the governance can be traced to the rise of the autocratic regime in the country in the early 1960s. The public service became the tool that the ruler rewarded their own ethnic groups and relatives even without considering their qualification to the positions they assigned. During his dictatorial rule Moi eliminated the system of checks and balances system by removing the power of judiciary. The judiciary bodies who were appointed by the president become the servant of the interest of incumbent president rather than the people. Moi;s rule witnessed a number of repressions and human right violations. The anomaly is still fuelled by the autocratic tendencies that have persisted in the country even after the restoration of multi-partysm. It is only through a dynamic democratization process that public accountability in governance can be restored in the country. Thus, it is

upon Kenyans to constantly demand accountability and transparency from their governments through different mechanisms that their time allowed.

# CHAPTER FIVE

## 5. Conclusions and Recommendations

### 5.1 Conclusion

The main theme of this study is to examine the major challenges of good governance in Kenya. It attempted to examine and assess the historical bases and political dynamics that the country experienced since independence. Besides, it highlighted the effort made by stakeholders to restore open political system. The study eventually revealed the following findings and conclusions from the analysis.

For a long period of time since independence there are several challenges that militate against the entrenchment of good governance in Kenya. Among others the democratization process is delayed by historical, socio-cultural, political and economic conditions that prevent the development of ensuring good governance citizens strive for many decades. The ruling elites who took the colonizers office at independence continuously started to undermine democratic constitution and amended it a number of times in a manner that entrenched their personal and autocratic rule. The single party system which was established by personal rulers dismissed the multiparty system that the county inherited at independence. It removed the power of local authorities and led to the centralization of the state power. Single party system in Kenya, weakened political competitions, and started ethnic criteria to assign high government official positions to fill the vacuums of positions of public services when the colonizers left the country. This kind of operation became the traditions of political system in Kenya more than two decades.

In the same view, the history of ethnicity based politics in Kenya can be dated back since the independence. Ethnic groups have become vital building blocks for Kenya's political life. Indeed, leadership (i.e. ruling elites) in post colonial Kenya has often relied heavily on ethnicity to remain in leadership positions or settle a dispute with their perceived enemies. The origin of trample democracy afoot in Kenya and the onset of dictatorship stemmed from Kenyatta consolidating power in the executive and turning the country into a *de facto* one-party state and eliminating the devolved system.

When Jomo Kenyatta became the president, he embraced extreme tribalistic politics that led to the concentration of wealth and power in a small section of the society. Most of the high positions of public sectors were occupied by Kikuyu ethnic groups. This political patronage on public spending through time leads to the economic and regional inequalities and continued to exacerbate. Poor governance in Kenya is a direct result of the nature of the country's politics.

The death of Kenyatta led to handing over the state power to Moi from the tribe of Kalenjin community. Moi ruled Kenya under a single party state for a long time. He retained power unopposed in the elections held in 1979, 1983 and 1988. As his predecessor the regime of Moi was characterized by ethnic sponsorship, widespread mismanagement of public institutions and the inefficient delivery of public services. Moi replaced Kikuyu with his Kalenjin ethnic groups in high key positions of government and public service even without considering the qualification and experience of public servants.

Before the end of cold war, Moi did not face any opposition from the West and international donor communities. Due to Kenya's strategically important position the donors were not interested with the Moi government. However, at the end of cold war pressures came from donors to force Moi to restore multiparty democracy.

The global situation and strong violent demonstrations, riots by Kenyans, combined with pressure by international donors forced Moi to allow multiparty. The introduction of a multi party system allowed the existence of many political parties throughout the country. While in the minds of many, the movement from single party statehood to multi-party statehood was in many ways a migration from "Egypt" to the "Promised Land", Kenyans did not enjoy much from this multiparty as many Hebrews did not enter into the Promised Land with plenty of milk and honey.

In multiparty general elections which were held in 1992 and 1997 Moi was elected without strong opposition; this was due to weakness of opposition political parties and the strategies that Moi planned to win the election through an unlevelled playing field and rigged election.

Furthermore, the opposition political parties in its conception organized themselves through the ethnic line not in most cases based on ideology. Lack of unity and inability to unite

behind a single presidential candidate resulted the opposition parties to lost the 1997 general elections.

Under multiparty situation in Kenya, the gross constitutional weakness and ineffectiveness of opposition political party that compounded by patrimonialism, ethnic loyalties and political insecurity contributed to the continued personal rule.

The 2002 general elections come with the hope for Kenyans who strived for democracy; development, well governing institutions and good governance. The new government of Kibaki promised to end decades of evils like poverty, corruption and lack of good governance that deep-rooted in the country. The 2002 elections were considered a crucial step towards democratic maturity since in an otherwise conflict-ridden continent the transfer of power from the party that has ruled the state since independence to another was not smooth.

The NARC government under Kibaki which held power in democratic election not only failed to keep the promise that made before election for Kenyans but also for parties those formed the NARC coalition to share power. After some months of governance the sign of bad governance started developing again. Corruptions, replacement of high key positions like military, civil service etc. with his ethnic groups, human right repressions to mention few were recorded. More importantly the delay of the constitution review process by Kibaki made Kenyans to lose confidence on the government. This and other miss-governance led the country to the conflict after 2007 general elections.

Since independence, Kenya civil society works in the areas of human rights, democratic development, gender and social awareness among others. In 1990s numerous economic ills and the failure of government to deliver the much-needed economic leadership, the need to participate in decision making process, uneven allocation of resources for development and the desire to take responsibility for socio-political change, contributed for the growth of different civil society in Kenya. Civil societies other agents of social change dramatically spread out and gained prominence as catalytic social actors, responding to the challenge of undemocratic governance, political instability, poverty, and social fragmentation.

The participation of civil society organization in politics has broadened the scope of political players in Kenya. Civic education has thus raised the capacity of the public to understand the manner and process of governance this enable the people of Kenya to made great effort for reintroduction and democratic transitional politics. Citizens developed the confidence that they too can contribute to the political change and that politics is not the preserve of elites.

Civil society contributed a lot to the removal of KANU from power with the hope that a new and more democratic system of governance would be put in place, a number of developments that have had great implications for the role and relevance of civil society took place.

However, CSOs in Kenya faced some potential challenges which were historical evolution and social structure of the Kenyan Society. These include the hostile political environment with government, the need to join government, tend to take ethnic positions on major national issues and the dependence on donor funding were the challenges that weaken the quality of civil society in Kenya.

Accountability is key requirement and cornerstone of good governance. In Kenya the level of accountability among public officials in the management of public affairs has declined since independence. The autocratic or patron-client relations in political process, the involvement of public servants in private business, poor service conditions, decline of professionalism and ethnicity contributed for the deterioration of the accountability of Kenya's public service. This was because the immediate postcolonial public service.

Independent role of judiciary is extremely important for the democratization process and to assure good governance. The judiciary has not been perceived as the faultless servant of justice and protector of human rights. The executive bodies controlled the legislative and the judiciary arms of government. This led the parliament to be subordinate to the executives and the principles separation of power become ineffectual. Furthermore, president appointed the judges based on political, tribal or sectarian reasons, this latter transformed the judiciary an instrument to serve the executive or president. However, the

2010 new constitution of Kenya safeguards and provides a more reformed judiciary to foster independent, impartial and expeditious access to the justice and rule of law for all.

Kenya received international criticism for its poor records on human rights. During his reign Moi perceived human rights as generally as alien and Euro centric conceptions inconsistent with African values and culture. Between 1989 and 1991 Kenya saw one of the worst human rights violations in its history. The human right record of Kibaki's government was not different from former governments, unlawful killings and other human right violations by police and other security personnel.

## **5.2 Recommendations**

Today, there is a clear consensus that good governance is indispensable for socio-economic development. It implies efficient and accountable institutions -- political, judicial, administrative, economic, and corporate – and entrenches rules that promote development, protection of human rights, respect of the rule of law, and ensure that people are free to participate in those issues that affect their lives. Obviously good governance is essential pre-requisite for any country's development and to make the state and the political system workable and suitable for the people. The problem in Kenya as well as other African countries may not be the ignorance of this fact but it is lack of political willingness and often lack of ability to make practical at grassroots what they talk and write on their own country's law. Working to reduce the challenges that the country faced is the responsibility of all concerned bodies. Thus, to maintain good governance in Kenya, the following recommendations may be worth mentioned based on the findings of the study:

For AU

- As AU have been continental organization established for the wellbeing of the countries in the continent should criticize openly when the member countries performed badly in governance and recognize or reward when the member countries assured good governance for their citizens.

For Government of Kenya

- Government of Kenya should avoid relying on their own ethnic groups to hold political power and to consolidate their power. The government must develop the culture that the political power seized by the will of people in a democratic systems.
- Government of Kenya should respect the constitution of the land without any preconditions. In addition the people of Kenya should not be silent when the rulers not only dismantle but also ignore to practice the constitution. Because gradually amendment of constitution by political elites suffer much in the past regimes.
- Government should have clear criteria to appoint personnel in key position of civil service. And consider all regions. This could avoid the domination of one ethnic group over the other.
- Government of Kenya should allocate the country's resources in a fair and reasonable way to all regions without discrimination based on ethnic and political view.
- Government should have to establish mechanisms for inclusive governments and representation of all voices—minority and majority—is critical for the stability and survival of Kenya as a nation-state, as is the creation of strong but accountable institutions. Politicians avoided the winner-take-all; and the losers have no other ways of being represented or accessing state power.
- Central government should transfer some power of its decision making and programming functions to the local authorities, which presumably, are better informed about local needs and can provide responses that are more appropriate.

#### For political parties

- Political parties should democratize their candidate selection processes by adhering to party regulations and electoral procedures, widening participation among the electorate and limiting central leadership interference.
- Opposition political parties of Kenya on their part should organize themselves not through ethnic lines but by providing better ideology, policies and strategies to compete with ruling party and the ruling party also do the same in election campaign.
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For non state actors

- Non-state actors should not change their roles after the government elected by their support in a democratic way; they must follow the activities of rulers, train and educate the new elected government as well as people to intensify the democratic culture.
- Civil societies should work with the academia and their counterparts of the region to share knowledge and experience.
- Kenyan democracy is at a youthful and fragile stage so that it needs visionary political leaders as it is in a transitional step.

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# Declaration

The thesis is my original work, has not been presented for a degree in any other university and that all sources of material used for the thesis have been duly acknowledged.

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_