PAPER TITLE: CIVIL SOCIETY AND POLITICS IN AFRICA: THE CASE OF KENYA*

CONFERENCE: FOURTH INTERNATIONAL CONFERENCE OF ISTR, TRINITY COLLEGE, DUBLIN, IRELAND, JULY 5-8, 2000

THEME   : THE THIRD SECTOR: FOR WHAT AND FOR WHOM?

PRESENTER : FRANK KHACHINA MATANGA
POLITICAL STUDIES DEPARTMENT
RHODES UNIVERSITY
P.O BOX 94
GRAHAMSTOWN 6140
SOUTH AFRICA.

*This paper is part of the author's on-going PhD research

ABSTRACT

The concept of civil society is experiencing a tremendous revival and upsurge in academic circles. The impetus has been tied to the political events in Eastern and Central Europe beginning in the late 1980s that saw the diminishing of communism and the collapse of the Soviet Union. This has largely influenced the conception of civil society as essentially anti-authoritarian and confrontational in its operations. However, it is this paper's contention that civil society is not always confrontational and anti-authoritarian. There are situations when it collaborates with the powers that be to further entrench and consolidate authoritarian and undemocratic regimes. Civil society can therefore be either a progressive or reactionary force. Civil society does not cease to exist just because it is collaborating with an authoritarian state.

The revolutionary forces that were sweeping Eastern and Central Europe, did not spare Africa. All over the continent, pressure was mounted on dictatorial regimes to democratise by opening up the political space. The many regimes either in the form of military or civilian one-party systems were cracking and responding to demands for political reform, albeit reluctantly. The New Development Agenda, crafted by the international donor institutions, was calling for the adoption of neo-liberal economics and liberal democracy that emphasised on the rolling back of the state while empowering market forces, of which civil society was tucked in somewhere.

This paper focuses on Kenya to demonstrate the role of the emergent civil society in African politics. Whereas fully aware of civil society's double role in society, that is, being either progressive or reactionary, this paper focuses on the progressive segment of civil society in confronting the entrenched authoritarian state in Kenya. It is argued that the absence of formal political organizations that could confront the state in the period between 1982 and 1991 left civil society as the only credible alternative. But even after a multi-party system was re-established in late 1991, the emergent opposition parties were riddled with schisms along ethnic and personal ambitions for power. This rendered them completely weak and therefore incapable of challenging the Moi regime. This ensured a continued role for civil society in oppositional politics.

The state has utilized several strategies in attempting to contain civil society. These have included legislation, propaganda, co-optation, appropriation, removal of anti-establishment civil society leaders, among others. It is the view of this paper that giving in to civil society pressure for change and thereby instituting reform ought to be considered as part of state response to civil society.

The oppositional segment of civil society in Kenya has contributed to the achievement of some striking political victories in the struggle against the state. These have included the scrapping of section 2A of the constitution that re-established a plural party system in Kenya. But the ability and capacity of civil society to sustain change through constant pressure on the state is in doubt. First, civil society, like the state and the opposition parties is also riddled with schisms along ethnic lines that serve to weaken and undermine its solidarity as a force for change. Secondly, the patrimonial state, however weak it may be, still has the potential to compromise and buy off some sections of the progressive civil society thereby diluting its overall strength. Thirdly, and probably most significant, the oppositional civil society in Kenya is a dependent civil society lacking autonomous existence from its external funders and donors. Thus, so far, civil society's political achievements may not be sustainable in the long-term. Indeed, the democracy being pursued by this segment of civil society may be argued to be little home-grown.

CIVIL SOCIETY AND POLITICS IN AFRICA: THE CASE OF KENYA

1.0 Introduction

The concept of civil society is not novel in academic debates. However, its recent strong resurgence in political circles has been tied to the tumultuous political events beginning in the late 1980s that witnessed the rise of political revolutions in Eastern Europe spreading to Africa and other regions of the Third World. This resurgence has in turn generated competing tensions in the usage of civil society as a concept. Bebbington and Riddell (1997:108-109) have therefore observed that, ACivil society is a notoriously slippery term...it is used in different ways by different people and those uses are not always consistent.@

The history of civil society concept has arguably undergone three fundamental phases. The first being the pre-18th century period when it was used by political philosophers such as Thomas Hobbes and John Locke to refer to the emergence of organized political society. In this context, civil society was contrasted not with the political order but with a condition of nature, the state of nature. The second phase, from the 18th century, dressed the concept with a different meaning reformulating it as middle-ground between private property and the state. This detached civil society from political society and the state (Tilly, 1984; Fine, 1997:8; Lively and Reeve, 1997:66-67). The third phase is derived from what was mentioned above as the momentous political events in Eastern and Central Europe in the late 1980s that led to the collapse of Communism and the Soviet Union. Fine (1997:9) has argued that this third phase of civil society is unique in that A..it privileges civil society over all other movements or spheres of social life on the grounds that civil society furnishes the fundamental conditions of liberty in the modern world....Its (contemporary civil society theory) mission is to defend civil from the aggressive powers which beset it: on one side, the political power of the state, and on the other, the economic power of money.@

Civil society has largely been used in referring to confrontational relations with the state. The assumption being that only those organizations and movements that confront and

challenge state power constitute civil society (see among others, the works of John Keane, 1988; Naomi Chazan,1988, 1994; Bayart, 1986). This treatment of civil society has major limitations. As aptly observed by Kasfir (1998:4), ADefining civil society as confrontational creates problems....One question is whether civil society disappears when its actors are engaged in non-confrontational activities.@It is precisely because of this salient handicap in the conception of civil society that this paper argues for a more inclusive definition that would include both collaborative and confrontational dimensions of civil society. 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. In this connection, Lewis= (1992:36) observation is quite representative: AWhile civil society intrinsically resists state encroachment, the various interests within civil society also seek to influence the state in the exercise of public policy and the allocation of valued resources. 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). This being the framework within which the analysis of state-civil society relations is placed, Stepan=s (cited in Bratton, 1989:417) definition of civil society as Aan arena where manifold social movements...and civic organizations from all classes...attempt to constitute themselves in an ensemble of arrangements so that they can express themselves and advance their interests@is fairly adequate.

In Africa, civil society traces its roots to the pre-colonial period. Forms of civil society organizations in pre-colonial Africa ranged from welfare associations, agricultural work parties, to credit associations. Hopkins (1973:50, 57, 70) provides empirical examples from pre-colonial West Africa of such associations which included craft production guilds exercising control over entry to a craft, methods of production, standards of workmanship and prices. In addition, he provides various examples of traders= organizations which exerted control over prices and market routes. The traders= organizations also played the role of negotiating with states over many issues including policies regarding weights and measures, laws governing debt, contract and agency.

Credit associations such as the Yoruba *enusu* existed to lend capital to its members for trade purposes, social functions among others. With the establishment of colonial rule, most of these organizations were repressed, some going underground. The colonial state saw in them the potential of acting as centres around which opposition to colonial rule could gravitate. However, the exploitative and oppressive colonial rule in virtually all the colonies in Africa served to politicise and radicalize some of these pre-colonial associations while leading to the creation of others. Some of these African civil society organizations later played a central part in toppling the colonial state.

The recent awakening wave of civil society in Africa, especially the confrontational and oppositional segment, has been in large measure a response to the declining economic capacity of the African state. But equally important has been the increasing tendency towards political decay on the continent. This was characterised by a decline in competitive party politics, the establishment of patrimonial regimes centred on personalization of power, suppression of civil liberties, among other political malpractices (Mugwenyi, 1987; Wanyande, 1987; Chazan et al, 1988; Agbese, 1992). Within the New Development Agenda (NDA) (see Hulme and Edwards, 1997:5; Dicklitch, 1998:14-16; Edwards and Hulme, 1998:12-14), civil society is being aggressively promoted by international donor organizations as the panacea to the long standing Africa=s political and economic problems. The NDA is centred on the twin poles of neo-liberalism and liberal democratic theory. In liberal democratic thinking, civil society is believed to be the cornerstone of democracy. It is argued that it is capable of providing a counterweight to state power by protecting human rights and expanding political participation. Civil society, therefore, becomes a challenger to the authoritarian African state. In the economic realm, neo-liberalism has argued that the African state is the root of the economic crisis. The solution, it is argued, is to roll back the state in favour of the more efficient, rational market forces of which civil society and NGOs in particular are seen as constituting a core element (Colclough, 1991:6; Toye, 1994:24-25; Edwards and Hulme in Dicklitch, 1998:2).

The role of civil society in Africa=s politics has therefore come to occupy a central place in current academic discourse. To illustrate this role and influence, this paper focuses

on Kenya. An attempt is made at establishing a chronological growth of civil society organizations. In the process, the paper explains the changing roles of civil society in Kenya as dictated by the international but mainly domestic political system. Whereas the author fully realizes the contradictory roles civil society can play, that is both as progressive and reactionary in relation to the state, this paper focuses on the segment of civil society that has concentrated on opposing the authoritarian state in Kenya.

2.0 Civil Society in Post-Colonial Kenya

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. But one thing that is also certain is the fact that civil society organizations have increasingly taken on important tasks in society, and have in their own different ways equally influenced the nature and character of the post-colonial state. Emerging from colonialism, the young state was bedevilled with many development problems which could not be matched by its scarce resources. It is partly for this reason that NGOs and the voluntary sector, with the encouragement of the state, took on largely a developmental role during the greater period of the Kenyatta era (1964-1978). 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.

The involvement of NGOs in direct political confrontation with the state seems to be predicated on certain variables. These include:
(a) The amount of resources an NGO can command in financial and material terms. The richer an NGO then the higher the chances of its mounting and sustaining a confrontation with the state. The assumption here is that such an NGO has an autonomous source of funding independent from state control. This is because

autonomy from state funding provides such an NGO the opportunity to escape the patron-client relationship network and therefore the possibilities of being compromised. In addition, well resourced NGOs have a greater option of diverting any extra funds to other areas that may not be core to their central functions, say for instance, development.

(b) The area of activity concentration, whether rural or urban. NGOs in urban areas are more exposed to sources of funding (mainly foreign) compared to those in rural areas. At the same time, urban NGOs tend to have a greater access to information via mainly the electronic media pertaining to daily state and government activities and therefore enabling them to keep pace with current affairs and develop a more politicised agenda in relation to the state.

(c) The nature of NGO leadership: NGOs led by anti-establishment leaders as opposed to those that are pro-establishment tend to be more radical and oppositional to the state. Furthermore, NGOs led by the educational elite are more likely to take an oppositional stand to the state due to their higher ability and capacity to comprehend complex agendas including state propaganda.

This characterization of NGOs in terms of their level of resources, area of operation, and nature of leadership is likely to give a clue as to why NGOs involved actively with state confrontation, and generally political activism, have been concentrated in urban areas, especially Nairobi. On the contrary, NGOs that tend to play a politics of collaboration and therefore pro-state and are more developmental are to be found largely in the rural areas. In the lead up to the 1997 General Elections, *The Weekly Review* (13th December, 1996), while commenting on NGOs=efforts to have a single opposition presidential candidate, made an interesting observation that would seem to support this study=s NGO typology:

> Most of the so-called organized civil society are no more than urban-based NGOs....They are organizations that have been created to tap donor funds and which are consultancies but in name. Often referred to as the >human rights community=, they are run by a small clique of individuals, most of whom are lawyers operating as a cartel and serving on nearly all the boards of the so-called civil rights advocacy organizations. Indeed, Nairobi is today littered with these type of institutions.

Although this depiction of NGOs is rather harsh in terms of how genuine they are in the process of change, for there are many examples in the analysis of NGOs genuinely involved in the political transformation of society, it still offers a useful characterization of NGOs.

2.1 The Kenyatta Era: A Period of Relative Expansion in the Voluntary Sector

As earlier stated, the 1960s and 1970s represented a unique phase in Kenya=s history, for like many other African states emerging from colonialism, she had to grapple with the contradictions of development generated by the colonial state. Some of the burning development questions revolved around political equality, social justice, freedom from want, and the provision of equal economic opportunities as laid out in *Sessional Paper No. 10 of 1965* (Republic of Kenya, 1965). Accepting the enormity of the development problem, the Government actively encouraged self-help efforts in the generation of development noting that, ≠In a country short of resources every method that increases the allocation of resources to development must be utilized. Self-help in Kenya has strong roots in African traditions and has therefore important potential for development@ (Republic of Kenya, 1965: 36). This was to mark an important beginning in the role of *harambee* (Swahili word for self-help) in Kenya=s development process. Being voluntary, *harambee* became part and parcel of the voluntary sector activities in Kenya.

Harambee literally implied the pulling together of resources such as cash, labour, and materials for community projects. Its significance can be gleaned from the fact that in the period 1970-74 peoples=*harambee* contributions in cash and kind amounted to K8.5 million pounds, rising to K28million pounds in the period 1979-83 (Republic of Kenya, in *Nairobi Law Monthly*, Jan 1991:29). Total nominal value of *harambee* projects 1965-84 was Ksh 160million, accounting for 11.8% of the gross fixed capital formation (*Daily Nation*, in, *Nairobi Law Monthly*, Jan. 1991:29).

As a development strategy, *harambee* has been given varying interpretations. Seen in the light of patron-client relations, it acted as a forum through which the peasants could extract resources from the centre in exchange for providing the elite patrons with

political support (Ng=ethe, 1979:344-345; Holmquist, 1984:174-179; Barkan and Holmquist, 1986:1; Barkan, 1992:177). However, there have also been those interpretations that cast *harambee* as a state attempt to tax the peasants to support their own development (Barkan & Holmquist, 1986:4). Both interpretations are credible. As for extracting resources from the centre, the peasants utilised the local elite in return for political support, for self-help gave the only viable opening for the local elite to compete and capture the scarce political positions. This, to some degree, explains why *harambee* activities were on the increase around general election periods. As for *harambee* being a form of tax on the peasants, this could be justified in the context of a newly independent state facing a scarcity of resources for development. As aptly put by Holmquist (1984:177), ATo this extent the government of Kenya saw self-help as development >on the cheap=@

Despite its seeming success, *harambee* experienced a number of bottlenecks. It has been argued that recurrent expenditure implications were ignored with communities concentrating on the construction of projects rather than their maintenance leading to the collapse of some of them (Wallis, 1982:13; Holmquist, 1984:182). There was also the problem of over concentration by communities on social projects at the expense of productive capital investment in areas such as agriculture (Holmquist, 1984:177-178). The harambee movement was also in some situations subjected to abuse by mainly the Provincial Administration when it was made into a compulsory contribution and thus contradicting the constitutional requirement safeguarding private property (*The Nairobi Law Monthly*, January, 1991:30). Furthermore, there were several incidents of recorded mismanagement and embezzlement of *harambee* funds by the political and bureaucratic elite and thus negatively affecting the credibility of the movement (*The Nairobi Law Monthly*, January, 1991:29).

In addition to the voluntary nature of self-help, many NGOs, both formal and community-based organizations, were rapidly expanding their activities and numbers in the country. By 1978, there were over 135 formal NGOs increasing to 287 by 1988, representing a 220% growth (KNCSS, in Kanyinga, 1990:109-110). Writing in 1994, Ndegwa showed the number had gone up further to approximately 400-600 (Ndegwa,

1994:23). By 1998, NGOs registered with the NGO Council were estimated to be over 1000 (*Daily Nation*, November 20th 1999). Community-based organizations have also been increasing rapidly and were estimated to number approximately 20,000 - 25,000 by 1991 (Ng₌ethe, 1991:14).

The Kenyatta era (1964-1978) is thus credited with creating a strong base for the voluntary sector in Kenya through the government₌s NGO open door policy (see among others, Barkan, 1992). However, it is important to note that most NGOs operating in Kenya were largely involved in development activities as opposed to political activism. Active criticism of the Kenyatta regime remained largely limited to University academics and the radical student body of the University of Nairobi (SONU). As earlier argued, the developmental role of NGOs and of the voluntary sector as a whole, could be attributed to the deliberate attempt by the Kenyatta regime of encouraging them to act as supplements to his government in the development process. However, more important was the fact that his regime made no deliberate consistent effort to emasculate NGOs and civil society.

2.2 The Moi Regime: A Turbulent Era in State-Civil Society Relations

The death of Kenyatta in 1978 opened the way for Moi to take over as the President of Kenya. 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.

The first major action of Moi₌s regime in entrenching itself was through the 1982 constitutional change that made the state a de jure one-party system and thus legally barring the formation of opposition political parties that could provide an alternative to KANU (Okumu, 1984:65; Adar, 1998: 79). This constitutional change passed rapidly through parliament in record time, for no MP could dare oppose it without risking expulsion from the party and consequent from parliament. Yet, it was to a large extent a reflection of the insecurity of the regime. In 1979, for instance, Oginga Odinga and George Anyona, having been expelled from KANU, had threatened to form an

opposition party, the Kenya National Socialist Alliance (KNSA) (Barkan, 1992:180; Adar, 1998:80). In August 1982, there was an attempted military coup by the Kenya Air force which shook the regime to its knees resulting in a major crackdown on dissidents.

The declaration of Kenya as a de jure one-party state was thus the initial step in the centralization of power by the Moi regime. Many acts of brutalization and abuse of power by the regime were soon to follow. The practice of detention without trial was perfected and utilized against those leaders seen as anti-Moi. No open criticism of the regime's policies was allowed. The critical press was harassed into self-censorship (Barkan, 1992:180). For all intents and purposes, Kenya had become virtually a police state. More constitutional changes were soon to follow with the implication of power consolidation in the hands of the regime. For instance, Act no.14 of 1986 had the effect of removing the security of tenure of the Attorney General and the Controller and Auditor General. This was to be followed by Act no.50 of 1988 that equally removed the security of tenure of judges and members of the Public Service Commission (*Nairobi Law Monthly*, April/May, 1991). Such tampering with the independence of the judiciary made nonsense of the constitutional requirement for the separation of the three branches of government of the executive, the judiciary, and the legislature.

The introduction of the queue-voting electoral system in 1988, marked a radical departure from the established secret-ballot system. In this new system, voters were expected to line behind their choice of candidates (Barkan, 1992:182). This system was widely criticized for encouraging rigging and fraud in favour of the president's candidates. As Adar (1998:80) notes, "The queue-voting system not only removed the independence and the rights of the electorates, but it also set the stage for greater interference in the elections by the presidency."This electoral system, was in a sense, the height of vulgarization of power by the Moi regime.

2.2.1 The response of NGOs and civil society to the regime's authoritarianism, 1978-1991

In view of the fact that the regime of Moi had become authoritarian and personalized,

and there being no formal political organizations to provide checks and balances, NGOs and civil society became the only alternative voice. These included organizations such as the Law Society of Kenya (a professional lawyers= body), the Students= Organization of Nairobi University (SONU), the University (of Nairobi) Staff Union, and the churches. However, equally harassed by the state, most of the NGOs ended up taking a low profile in the confrontation with the state. However, the most active of the NGOs in criticizing the state were the churches.

If most of the churches ended up becoming the harshest and most fearless critiques of the state during this period, it is because the regime found it difficult to crack down on them bearing in mind their large constituency and the fact that most of them had elaborate international and foreign links (Sabar-Friedman, 1997:29). Equally important in explaining the firm commitment of the churches to change was their strong belief in the social calling. As put by one cleric:

> The absence of other organizations of a political nature (eg. political parties) that can confront the excesses of the state means that the church is the only nationwide body which because of its institutional strength and its sense of obligation for public morals and social justice can speak and act in implicitly political ways. The social evils of our time (eg. corruption, political patronage in employment, interference of the state with basic human freedoms, electoral rigging, detention without trial, torture, gagging of the press etc.) are so great...that Christians with any compassion cannot be indifferent to or complacent about the effects of such evils upon human lives in Kenya (*The Nairobi Law Monthly*, cited in, Sabar-Friedman, 1997:30).

Among the leading church organizations which criticised the state were the National Council of Churches of Kenya (NCCK), an umbrella body of protestant churches in Kenya, the Anglican Church (Church of the Province of Kenya-CPK), the Presbyterian Church of East Africa (PCEA), and the Catholic Church. Through fora such as pulpit sermons, radio broadcasts, the daily national newspapers, newsletters and publications as well as national conferences, these churches confronted the state on wide-ranging issues including corruption, authoritarianism, state instigated violence and political assassinations of leading government critics. Salient examples where the church was in the forefront in challenging the state include its criticism of the 1986 queue-voting system. Teaming up, 1,200 Protestant and Catholic priests signed a press release

strongly objecting to the new electoral system pointing out that it would not only diminish confidence in the rectitude of the electoral system but also expose voters to violence from powerful politicians. To wrap up their protest, they threatened to boycott the 1988 elections in case the new system was not called off by the state (Sabar-Friedman, 1997:33-34). The churches also called for a national debate on the future of Kenya termed "The Kenya We Want" This was essentially in response to the many ills confronting the society but attributed to the state, and in particular, the draconian nature of KANU, the ruling party (Sabar-Friedman, 1997:35). The use of state violence on unarmed citizens was a key example of these ills. The eviction of slum dwellers in Nairobi and Mombasa in 1990 by the government was one incident which attracted the wrath of the church following the excessive use of brutality by the Government (Sabar-Friedman, 1997:37-38). These churches also played a pivotal role in criticizing and exposing the role of the state in what came to be known as ethnic clashes in the 1991/1992 period. Accusing the government of being the instigator of these politically-motivated clashes, the CPK, NCCK, the PCEA, and the Catholic churches called on the government to arrest and try the culprits responsible while threatening to resort to civil disobedience if the government failed to stop the massacres (Sabar-Friedman, 1997:39). Many analysts were convinced the clashes were a government ploy to derail the 1992 multi-party General Elections and ensure that KANU remains in power (Adar, 1998:83). This was especially so considering that the president, in opposing plural party politics, had initially argued multi-partyism would lead to ethnic wars. It is important to note that the leading churches that confronted the Government had very able leadership, not only highly educated in theology, but also very articulate on socio-economic affairs. They included Bishops Henry Okullu, Alexander Muge, David Gitari (all of the CPK), Rev. Timothy Njoya (Presbyterian) and Rt. Rev. Ndingi Mwana a Nzeki (Roman Catholic).

However, not all the churches were demanding change. A few of them retained very close ties with the regime and more often than not were used by the state to counter the critics of the Government. Examples of such churches included the African Inland Church and the Legio Maria (Sabar-Friedman, 1997:26). These pro-state churches, unlike the radical churches, were: small in size in terms of both following and level of

operations; mainly operational in rural areas as opposed to urban areas; and had a limited resource base as well as international connections.

In the late 1980s, as domestic and international pressure increased on Moi's regime to democratize and open up political space, other civil society organizations started joining the forces of change, and in the process solidifying the role of the church in confronting the state. Former vice-president Oginga Odinga, in a March 1991 solo move, while criticizing the state for authoritarianism, announced the formation of an opposition party, the National Democratic Party (NDP). This was in total disregard of the de jure one-party state status of Kenya. Its objectives, according to Odinga, included the repeal of section 2A of the constitution making Kenya a de jure one-party state and the restoration of democracy and justice in Kenya. Surprised at this unprecedented show of defiance, the state adamantly refused to register the NDP (*Nairobi Law Monthly*, March, 1991, December, 1991).

But this was just the beginning of open challenges to the state by NGOs and other civil society organizations in addition to the church. The election of Paul Muite as the chairman of the Law Society of Kenya (LSK) in 1991 pushed the organization into a confrontational stance with the state. Interpreting the functions of the organization to be both legal and political, Muite appealed to the Government to register Odinga's NDP: "Under my chairmanship, your society will endeavour to work with the Government and the judiciary but not, and I repeat not, at the expense of compromising on issues of principle....Let us not live in the shackles of the past inhibited by views that speaking out on important public issues is politics. If it is, so be it. It is squarely within the objects of the Law Society as spelt out in the fairly wide language employed in the Law Society of Kenya Act....Let me conclude by calling on the Kenya Government ...register Jaramogi Odinga's National Democratic Party"(*Nairobi Law Monthly*, March 1991). Previously, in the late 1980s, the LSK under the leadership of G.B.M. Kariuki had also harshly criticised the state for the removal of the security of tenure of judges as unconstitutional and a threat to democracy (*Nairobi Law Monthly*, October 1991).

The formation of the Forum for the Restoration of Democracy (FORD) in August 1991

was yet another effort by civil society to respond to Moi‑s authoritarianism. Spearheaded by Oginga and five other leading opposition politicians, FORD described itself as a pressure group rather than a political party. The catch was that at this time, the Government was unwilling to register any other party apart from KANU as had been in the case of the NDP. At the same time, not to risk the Government‑s requirement of registration of groups as societies before legally they could operate (which would have been denied in the case of FORD for being anti-government), FORD deliberately insisted on a six-man membership instead of the minimum ten as required under the Societies=Act for a group to be registered as a society. Thus FORD began to operate neither as a political party nor a society but as a lobby of six government critics and thus managed to escape the state‑s tentacles of control. Amongst its objectives, were the review of the constitution to: abolish detention without trial, restore multi-party politics in Kenya, and limit the presidential tenure to two terms of five years each (*Nairobi Law Monthly*, August 1991, December, 1991). FORD, essentially a populist lobby group which had relied largely on the radical press to market its ideas in confronting the state, converted itself into a political party on the repeal of section 2A of the constitution in December 1991 allowing for the formation of opposition political parties.

Even with the entry of other civil society organizations in the battle for democracy, the church continued to play a pivotal role. The Justice and Peace Convention - Kenya (JPC) came into existence in 1991 and was an alliance of the Justice and Peace Commission of the Church of the Province of Kenya, the Justice, Peace and Reconciliation Commission of the NCCK, and the LSK. The JPC, whose objective was to see to it that justice and peace is reestablished in a democratic Kenya, was led by a powerful steering committee consisting of Bishop Henry Okullu of the CPK and Muite, chairman of the LSK. Through sessions of prayers carried out nationally, the organization hoped to bring about change by enlightening people on their rights and responsibilities as free citizens. But these prayer sessions hardly took off with the state threatening severe consequences for those attending since in the government‑s perception, the JPC had been converted into a vehicle of organized opposition (*Nairobi Law Monthly*, December, 1991).

Yet another contribution of the church to Kenya's reform process was through the formation of the Moral Alliance for Peace (MAP). Launched in October 1991 by Rev. Njoya of the CPK, it was essentially a pressure group consisting of five members (once again an attempt to escape state requirement for registration as in the case of FORD) identified with opposition politics. The chief objective of MAP was, according to Rev. Njoya, to unite the various groups involved in change into an alliance so that they could forge democratic change together (*Nairobi Law Monthly*, November 1991, December, 1991).

Thus, as illustrated through the discussion in this section, the period up to 1991 constituted a major politicization of NGOs and civil society movements in response to the increased authoritarianism of the Moi regime. In the absence of opposition parties, civil society, and in particular religious organizations, started playing a leading role in the game of change. The increased pressure on the state eventually resulted in the Moi regime scrapping section 2A of the constitution in December 1991 and therefore allowing plural party politics. Did the new political climate allowing for plural party politics lead to fundamental democratic change in Kenya? With opposition parties free to form and operate, did this diminish the role of NGOs and civil society in the game of change?

2.2.2 A Weak Opposition and the Role of NGOs and Civil Society in the Post-1992 Period

Whereas the registration of FORD as a political party gave much hope that for the first time KANU's monopoly of power would be seriously challenged, this was soon to prove to have been just but a dream. The split in the opposition ranks in Kenya meant there were several opposition parties competing with KANU over the presidency and the parliamentary seats come the 1992 multi-party elections. The original FORD disintegrated into two parties, FORD Kenya led by Jaramogi Oginga Odinga, and FORD Asili led by Ken Matiba. The other parties, although relatively insignificant, still took a toll on the already fragile opposition unity. These included the Democratic Party led by Mwai Kibaki, the Kenya National Congress(KNC), Kenya Socialist Congress (KSC), Kenya National Democratic Alliance(KENDA), and the Party of Independent Candidates of Kenya(PICK). The results of the 1992 elections gave Moi a slim 36% victory in the

presidential election and a mere 26.6% for KANU with 93 seats. The opposition parties who had a combined 73.4% vote captured seats as follows: FORD-K (31), FORD-A (31), DP (23), and 2 for two minor parties (Southall and Wood, 1996:510).

The power of the opposition parties to challenge KANU was thus rendered extremely weak. Divisions based on tribal rather than ideological lines continued to afflict the parties preventing them in the end, from fielding a single presidential candidate against Moi of KANU. Indeed, the original FORD's split began over rivalry between Odinga and Matiba in relation to who would have been the party's presidential candidate. The splinter parties that emerged were very much based on ethnic lines, with FORD Kenya gaining its support mainly from the Luo and a faction of the Luhya, while FORD Asili had an overwhelming Kikuyu base and a minority Luhya support. The other key opposition party, the Democratic Party (DP), was essentially Kikuyu-based, thus splitting the Kikuyu vote even further (see, *Finance*, 6th September, 1996; *Weekly Review*, October 10th, 1997). In the run up to the 1997 General Elections, differences among the existing opposition parties became even worse, with Raila Odinga disembarking with the Luo from FORD Kenya to form a new splinter party, the National Development Party of Kenya (NDPK), while Ken Matiba quit FORD Asili, in the process giving birth to FORD People, following a protracted power struggle with Martin Shikuku (*Weekly Review*, 10th October, 1997).

Whereas protracted power struggles within the opposition parties largely based on ethnic and in some instances personality clashes could explain the opposition debacle in the 1992 elections, for they eventually failed to present one candidate for the presidency, lack of emphasis on the need to effect the relevant constitutional changes left the playing field much in favour of KANU. For instance, the Electoral Commission, charged with the responsibility for the organization and conduct of elections, remained essentially a KANU organ. In addition, there was a lot of violence aimed at disrupting campaign rallies of the opposition, and the public mass media was deliberately made to cover KANU more positively than the opposition parties=activities (Commonwealth Secretariat, 1993).

It was amidst this scenario of a much weakened opposition, riddled with ethnic divisions, that NGOs and civil society once again became very much involved in the politics of change in Kenya following the 1992 General Elections. In the absence of a united and agenda-driven formal opposition, the mainly urban-based NGOs and civil society, like in the pre-1992 period, were thus once again set to play the role of confronting the state in search of meaningful constitutional and overall political change.

Following the 1992 elections the opposition parties acknowledged the fact that their inability to unite was a major explanation for their poor showing in the elections. But in spite of this, they none the less failed to come up with a viable solution in time for the 1997 elections. Some of the earliest attempts to identify a single opposition candidate to vie for the presidency against Moi came in December 1995. Launching what was to be an Opposition Alliance, 73 opposition MPs converged in Nairobi to identify a single candidate to stand against Moi. However, nothing spectacular came out of the meeting to indicate that the opposition leaders were serious, and that this time around they had managed to bury their differences. As noted by the *Weekly Review* (8th December, 1995),

> By failing to name the single presidential candidate, the promoters of the initiative had cleverly avoided the acrimonies and controversies which would have inevitably followed. But in the process they also missed the political mileage that they would have achieved had they come out to announce that they had reached an agreement on the matter.

Whereas the opposition parties saw in their uniting the only avenue to power, civil society and NGOs argued differently. For them, unlike the opposition, the issue of constitutional change was fundamental, for without it, the 1992 defeat of the opposition by KANU would be repeated. The theme of constitutional review was later given much support by SAFINA, a newly formed political party but by then denied registration by the Government. It has been argued, and with much credibility, that the Government's reluctance to register SAFINA in time for the 1997 elections was based on the supposed national image it had(unlike the other opposition parties with typically ethnic constituencies) and access to a greater resource base due to its links with Richard Leakey, an internationally respected conservationist (*Weekly Review*, 10th October,

1997). SAFINA, unlike the older opposition parties, in participating in one of the Opposition Alliance meetings in January 1996, insisted on the creation of a mass democratic movement that would create the conditions for free elections. At the core of SAFINA's contribution was the issue of constitutional change that would involve many more players, that is NGOs and civil society (Inter-Press Third World News Agency, 2nd February, 1995).

But what later developed as an agreement between the Opposition Alliance and the NGO sector represented by an umbrella organization, the Citizens Coalition for Constitutional Change (CCCC), over the need for constitutional reform through the convening of a national constitutional conference, also experienced major obstacles. Whereas the CCCC was in favour of the idea that the conference should include all the political players including KANU, the Opposition Alliance wanted KANU excluded. Furthermore, the CCCC felt that the Opposition Alliance was not wholly representative of the entire opposition for it left out the other splinter opposition faction led by Ken Matiba. The fact that the CCCC had promised to fund the conference put the Opposition Alliance in a quandary. At the same time taking advantage of the CCCC position, the other opposition faction led by Matiba announced its declaration to lead the conference talks. The bottom line was the feeling that whatever faction of the opposition that led the talks would have made a major step in the power struggle (*Weekly Review*, 17th May, 1996; 24th May, 1996).

Beside the efforts of the CCCC, the church continued to participate in the process of political change. In March 1996, retired Bishop Okullu of the Anglican Church together with Njoya (PCEA) and Otiende (retired politician) formed a lobby group, the Forum of Democracy (FoD), whose main objective was the formation of a broad-based and reform-oriented government through the fielding of a single opposition presidential candidate against Moi. Asked why he opted to form FoD, Okullu (cited in, *Weekly Review*, 21st June, 1996) replied,

> Opposition unity has failed to take off; the Alliance's self-destructed talk of a constitutional convention raised hopes, but that, too, appears to have been still born. Attempts to democratise political parties have ended in acrimony, with factional leaders being reaffirmed as being just that,

19

leaders of cliques and special interests, falling into the trap of KANU-s philosophy of divide and rule. Attempts by NGOs to create a unified opposition voice have been thwarted, and suspicion and doubt characterise the responses to all current efforts to find common ground.

Okullu was right on his claims about opposition weaknesses. But it was not lost on observers that the founding of FoD at this time was very much the outcome of foreign funding, just like the many other civil society organizations involved in the politics of change in Kenya. Throughout 1995, a number of church leaders and members of the NGO sector, under the sponsorship of a German NGO, the Friedrich Naumman Foundation, met in Tanzania and Germany to brainstorm over the issue of fielding one presidential candidate against Moi. It was alleged that the idea of FoD was born and sponsored in these series of meetings (*Weekly Review*, 13th December, 1996).

However, the question of a convention to review the constitution never went away even though the opposition factions were seemingly irreconcilable. The National Convention Assembly, held in Limuru in April 1997, consisting of virtually all the parties interested in constitutional change (except KANU), led to the birth of the National Convention Executive Council (NCEC), an essentially umbrella body of NGOs and civil society organizations geared for constitutional reform (*Weekly Review*, 25th, July 1999). The NCEC, very much a radical body and ready to use mass action to force KANU to the discussion table (led by lawyer Kivutha Kibwana, Kamau Kuria, and Rev. Njoya of the PCEA), found itself in alliance with the equally radical opposition parties= wing spearheaded by Matiba (formerly of FORD Asili), Muite, Orengo (both of FORD Kenya), and Raila (chairman, NDPK), in opposition to the so-called moderate opposition consisting of Wamalwa (chairman of FORD Kenya), Shikuku (secretary general of FORD Asili), and Kibaki (chairman of DP). While the NCEC and the radical opposition wing favoured a wholesome review of the constitution through a meeting of all parties with KANU, the moderates agreed with KANU over a piecemeal=formulae involving meetings between KANU and individual opposition parties=leaders without involving civil society forces under NCEC. Argued the moderates in relation to NCEC, AWe can not expect KANU or the Government to negotiate with an unregistered and temporary lobby group instead of legitimate opposition political parties with the mandate to

represent the wishes of the people@(*Weekly Review*, 25th July, 1997).

In spite of these differences between the radical and moderate wings of the opposition movement, the very fact that they all shared in the need for constitutional reform, regardless of the means, was enough pressure to make the KANU establishment agree to enter into constitutional talks. But it also marked the beginning by the opposition parties, now in agreement with KANU, to isolate NCEC from the ultimate constitutional talks. Whereas NCEC had maintained that it was necessary for it to attend the constitutional talks for purposes of guarding against KANU=s manipulation of a weakened and squabbling opposition parties=movement, it now became more evident that most of the opposition parties were becoming increasingly jealous of the limelight being enjoyed by NCEC (*Weekly Review*, 5th September, 1997).

A couple of meetings between KANU and the opposition parties gave birth to the Inter-Parties Parliamentary Group phenomenon (IPPG), which in essence, boiled down to a negotiation between the contending parties over what to review in the constitution before the 1997 elections could take place. In opting for the Inter-Parties Parliamentary Group (IPPG) to discuss the changes, KANU had succeeded in locking out the radical segment of civil society from the ultimate process. The results of the IPPG talks only went some way in resolving the administrative and constitutional impasse while leaving unaddressed some crucial issues. For instance, the requirement for licences for public rallies and gatherings was abolished, thus widening the scope for political association; the Preservation of Public Security Act was amended, abolishing detention without trial; the Provincial Administration was required to be politically non-partisan; and it was agreed that all political parties would have equal coverage in the state owned media, among other changes. However, the IPPG failed to address major issues to do with the enormous Presidential powers and the imperfect electoral system (see among others, Adar, 1998: 87; *Executive*, Dec/Jan. 1998; Ndegwa, 1998:202-205). The NCEC, in particular, dismissed the IPPG administrative and political reforms as too mild and cosmetic to guarantee a level playing field for all the political parties and the aspiring presidential candidates (see *Weekly Review*, 19th September, 1997; Southall, 1999:101).

The results of the 1997 national elections probably confirmed the fears of NCEC. As a result of the many weaknesses resulting from the imperfect constitution, opposition divisions and their inability to field one presidential candidate against Moi, the latter reclaimed the presidency with 40% of the vote, and returned KANU to power scooping more than half of the parliamentary seats, that is 104 out of a total of 197 (Adar, 1998:88; Southall, 1999:98).

The post-1997 period has been characterised by further calls for constitutional review. NGOs and civil society organizations, like in the post-1992 period, began fuelling the process of change. In February 1998, for instance, the major churches issued a circular calling for the convening of a conference to reform the flawed constitution. The NCEC too, has been deeply involved in the constitutional reform calls. Threatening to resort to mass mobilization and civil disobedience to force the Government to adhere to the call for constitutional reforms, NCEC managed to convince the Government to go back to the issue of reforming the constitution. This may explain the Government's decision in 1999 to revive the Constitution of Kenya Review Commission Act of 1997, initially through a 25 member inter-party parliamentary committee (IPPC) (Southall, 1999:102).

The subsequent meetings of the IPPC held at Safari Park Hotel, following the Attorney General's assurance that the membership of the Review Commission would be expanded, saw the inclusion of among others, civil society organizations. Among these was the controversial NCEC. At the same time, the Safari Park meetings (1 and 2) resolved to replace the original IPPC with a constitution draft committee consisting of both members of parliament (from KANU and the opposition) and representatives of civil society for purposes of reviewing the 1997 Act. But more important, it was agreed that the review of the constitution would proceed via a Constitutional Review Commission and not a national convention as earlier demanded by NCEC (Southall, 1999:103). There were soon to follow other meetings, largely characterised by controversy and suspicion, of the draft committee in what came to be termed as Safari Park 3 and Safari Park 4. Safari Park 3 provided the basis for agreement that the Constitutional Review Commission should be composed of 25 members, all having at

least a university degree and chosen from both civil society and the political parties. Safari Park 3 and 4, in a sense, provided the final basis for a Constitution of Kenya Review Bill which passed through parliament in October 1998 (Southall, 1999:105). As observed by Southall (1999:105), the Act was important in one main way: KANU had been compelled, in a sense, to accept a process that would be society or people-driven rather than political elite propelled (also see Southall, 2000:5).

But later developments rendered ineffective all that seemed to have been achieved in relation to the constitutional review process. This concerned a fundamental disagreement over the composition (membership numbers) of the Review Commission with opposition parties and civil society battling amongst themselves on the one hand, and with KANU on the other hand. Eventually, taking advantage of the disagreement, the KANU hardliners contributed to the stalling of the process by insisting on handing back the entire review process to parliament. Stiff resistance from the opposition parties and civil society, in particular NCEC and the churches, made the Moi government change its attitude and instead advance the argument that only the Act would be returned to parliament for further deliberation (Southall, 2000:7).

Since then, the acrimony over the constitutional review process has revolved around the demand by civil society and opposition parties (except the NDPK which has since then entered into a defacto alliance with KANU) that it be people-driven, while the KANU hardliners including Moi have insisted it be parliament propelled. NGOs and civil society have thus come up with what they call the Ufungamano Initiative (meant to draw up their own version of the people-s constitution) in opposition to the Government process being worked out through Raila-s Parliamentary Constitution Select Committee (*Daily Nation*, 16th April, 2000). Raila is the chairman of the NDPK. In a tough response, civil society and NGOs, in particular NCEC, have threatened to form a parallel government using civil disobedience in case the Moi government refuses to accept a people-driven constitutional process (*Daily Nation*, 16th April, 2000).

2.2.3 State Response(s) to NGOs and Civil Society Growth in Kenya

The Moi regime, beginning from 1978, has had a fairly turbulent relationship with the

NGO sector and civil society in general. As captured in the foregoing discussion, NGOs and civil society were largely reacting to the increasing state authoritarianism and personalization of power by the Moi regime. In doing this, NGOs, particularly those in urban areas and with international connections, became highly politicised in addition to their traditional function of development. But the state in its confrontation with the NGO sector has not just sat back and watched the situation unfold. The Moi regime over time has responded by putting in place several measures in an attempt to control and rein in the NGO and civil society sector.

Fowler (1990:25-33) identifies three basic strategies that states in Africa have used to control NGO growth and activities: legislation; administrative co-optation; and political appropriation. Legislation has been applied in situations where NGOs abuse their status, pursue unco-ordinated development, or in some cases, when seen to pose a security risk to the regime. As for administrative co-optation, it has been effected to draw NGOs into bureaucratic control mechanisms in order to ensure their activities fit into the development path set out by government. Lastly, political appropriation has involved the co-optation of NGOs by the state mainly with the aim of limiting the autonomy of these organizations.

A more refined state response to the activities and growth of NGOs and civil society is provided by Mutahi Ngunyi and Kamau Gathiaka (cited in Ndegwa, 1996:26). Referring to Kenya, they have identified six modes of relationships which characterised the strained state-society relations at the height of the one-party state under Moi: deregistration or proscription; emasculation by forcing the removal of leaders or the withdrawal of resources and privileges; the reconstitution of organizations into new bodies by governmental fiat; diminishing contacts with the state to avoid antagonism; co-opting by the state; and open opposition to the single party.

The descriptions by Fowler and Ngunyi and Gathiaka, in many ways, reinforce each other. Both are adopted as a framework for analysing the Kenyan state response(s) to NGOs and civil society, not just during the one-party state, but also in the multi-party era. To this framework of state responses to NGOs, it should also be added the use of

propaganda by the state in an attempt to diminish the role of these organizations through defamation. Equally important, as a state strategy and therefore response in our consideration, has been the mellowing of the state amidst intense pressure from NGOs and civil society leading to the institution of the demanded reforms. However, the strategies of diminishing contacts with the state and open opposition to the state, as identified by Ngunyi and Gathiaka, are treated in this work as part of NGOs=and not the state=s response to given situations.

Legislation.

Under legislation as a state response to NGOs and civil society, the study examines the response to include actual deregistration or proscribing, the threat of deregistration, refusal to grant registration, and the drawing of new legislation to control further the growth and activities of these organizations.

Among the very first casualties of the Moi regime in terms of being deregistered or proscribed were the ethnic welfare associations which had operated freely under the Kenyatta regime. These included among many others, the Akamba Union, the Abaluhya Union, the Luo Union, and the Gikuyu Embu Meru Association (GEMA), which were all banned in 1980 (Barkan, 1992: 185; Matanga, 1995). It has been argued that GEMA was the actual target of this banning. As an organization of mainly the Kikuyu, GEMA had accumulated a lot of resources through the assistance of the Kenyatta government. By 1980, having acquired the status of a company, it is said to have had a capital base of approximately 70-90 million Kenya shillings (Ogot, 1995a:196). GEMA, was in reality then, a symbol of the power of the Kikuyu bourgeoisie in Kenya under the Kenyatta government (Himbara, 1994:26-27). What made GEMA more objectionable to the regime was the fact that by using its resources, it had played a central role in attempts to stop Moi from automatically succeeding Kenyatta as stipulated by the constitution. This was orchestrated through the so-called AChange the Constitution Group@consisting of Kenyatta=s inner circle of confidants such as Kihika Kimani, Njoroge Mungai, and Njenga Karume (Barkan, 1992:185; Matanga, 1995). As argued by Barkan (1992:185): ABecause these organizations tended to be vehicles of the bigs, the mobilized and the haves, their banning was intended to reduce

the power of those ethno-regional interests that were never part of the old KADU-Moi coalition.@

Other civil society organizations deregistered as the Moi regime became more autocratic and authoritarian included the University (of Nairobi) Staff Union, the Student Organization of Nairobi University (SONU), the Matatu Vehicle Owners Association (MVOA), and the Public Service Club (Ndegwa, 1996:27). All these were banned for being harsh critics of the Moi regime=s policies through their constant attack on the Government using public lectures (in the case of University organizations) and street demonstrations and riots (in the case of SONU and MVOA). Many other organizations may not have been deregistered but have on several occasions been threatened with such a measure. These include the many church organizations and NCEC which have directly confronted the state on democratic abuses. In some situations, the state has deliberately refused to register organizations deemed to be anti-establishment. In Kenya, examples include, FORD (in its initial stages of founding) and SAFINA (also in its early stages of founding).

However, the state=s most determined move to control the NGO sector as a whole through legislation, was evidenced in 1990 with the passing of the NGO Act in parliament. The Act established the NGO Board, which in essence was the NGO Government arm, whose main function was to monitor the registration and activities of NGOs in the country. In its brochure, the Board (1990) details its functions as thus: to register, co-ordinate and facilitate the work of all national and international NGOs operating in Kenya; to maintain a register of national and international NGOs operating in Kenya, with their precise sectors, affiliations and locations of their activities; to receive and discuss, analyse and evaluate the annual reports of NGOs; to advise the Government on the activities of NGOs and on their role in development within Kenya; to conduct a regular review of the register, and to determine its consistency with reports submitted by the NGOs and the Council of NGOs; to provide policy guidelines for the NGOs, for harmonizing their activities with the National Development Plan for the country, so that NGOs avoid activities which contradict national programmes; to receive, discuss and approve the regular reports of the Council, and to advise on strategies for

efficient planning and co-ordination of the activities of NGOs in Kenya; and to receive, discuss and approve the code of conduct prepared by the Council for the self-regulation of NGOs and their activities.

The 1990 NGO Act has been justifiably described as one of the most articulate and far reaching attempts by the state to control NGOs. It can be argued that the increased involvement of mostly urban NGOs (with a fairly substantial resource base and international connections) in the criticism of the Moi regime for its democratic abuses and their fervent agitation for political liberalization, did contribute to the 1990 legislation against the NGOs. Just around this time (1990), a number of NGOs=activities were extremely critical of the regime. For instance, in 1987, a number of NGOs, mainly the churches, had openly opposed the implementation of the new electoral system of queue-voting and thus directly challenged the authority of the regime. In another incident in 1989, the leader of the Green Belt Movement (an environmental organization), Professor Wangari Mathai, sought a court injunction to stop KANU, the ruling party, from building a sixty-storey building at Kenya=s famous Uhuru Park. Never before had an NGO challenged the state and the ruling party to the extent of suing it in a court of law (Ndegwa, 1994:24-25, 1996:28; *Weekly Review*, 11th April, 1997). No wonder that Moi, in the same year (1989), announced the intention of the Government to create a directorate to co-ordinate NGOs while making certain their activities were compatible with national interests.

Yet, in addition, it could be argued that the regime of Moi, used to employing the tactics of divide and rule as has been clearly evidenced in his relations with the opposition parties and his handling of the constitutional process, saw an opportunity of reining in NGOs through the 1990 Act, so as to cut them off from the by then other fast rising centres of political opposition such as radical politicians and their followers. This, if successful, would have had the effect of de-linking NGOs from politics and the other centres of opposition as well as pre-empting and forestalling the development of a mass opposition movement in the country under NGOs=leadership (for NGOs could at this time boast of having enormous development resources). The close linkages between the NGO sector and the anti-establishment politicians was expressed in many

ways, for example, many of the so-called dissidents were either directly employed by the NGOs or worked very closely with them (*Weekly Review*, 11th April, 1997).

The NGO sector response to the new NGO Act of 1990 was of deep alarm in terms of its implications for their autonomy. In a meeting of NGOs that followed in February 1991, the NGOs expressed their concerns to include the facts that (Ndegwa, 1993:18-21):

(a) The Government's intention was suspect in that, rather than facilitate coordination, the Act seemed to be aimed at controlling and constraining NGOs.

(b) The Act had bestowed enormous powers in the Minister in charge of NGO affairs in matters relating to registration and general operations.

(c) The Act demanded that NGOs renew their registration every five years, a matter that would negatively affect NGO stability in terms of planning and resource procurement.

(d) The Act recommended an NGO be suspended or de-registered for the actions of its officers. This was seen as too draconian.

(e) The Act provided for the establishment of the National Council of Voluntary Agencies which was in turn, to draft a code of conduct for the NGO community with an initial membership of 100 NGOs and report back to the Government. This was seen to be too limiting on the initial NGO membership to the Council and thus to be undemocratic.

(f) The Act was not clear on the relations between the Board and the Council.

(g) The Act was not clear on who would sponsor operations of the Bureau (the executive arm of the Board).

(h) The Act remained unclear on the previous privileges such as tax exemptions that had been enjoyed by the NGOs.

(i) The Act was vague on the status of organizations, such as whether churches and self-help groups constituted NGOs.

In pressurising the state to mellow its position on the NGO sector as per the NGO Act, the NGO network through several meetings with and petitions to the Government between 1991 and early 1993, gradually succeeded in securing certain amendments to

the Act. These included: the removal of the requirements that NGOs register every 5 years; the changing of the name National Council of Voluntary Agencies to the NGO Council and that the first 100 NGOs to be registered by the Council only form an interim council; the Board≤s powers of suspension were waived and only those of de-registration remained; grant of recourse to the High Court as the highest arbiter of conflicts between NGOs on the one hand and the Minister and the Board on the other; and increased membership of NGO representation on the Board from 5 to 7 (which represented one-third of the maximum number of members including senior government officials) (Ndegwa, 1993: 21-35). In a sense this was a fundamental victory by the NGO sector in pressurising the state to retract on its powers of control.

The objectives of the NGO Council are said to include: the empowering of NGOs to make the sector more democratic, efficient, effective and socially aware in the provision of services to the public; and making the NGO sector provide leadership in the creation of an enabling environment for development and relief activity that has a lasting impact (National Council of NGOs, 1994:1). To achieve these objectives, the Council defines its functions as including the provision of information and co-ordination around specific legal requirements arising from the NGO Act; establishing effective dialogue between the NGOs and the Government; providing support on fund-raising issues and establishing a base for local funding; and generally acting as spokesperson for the NGO community (National Council of NGOs, 1994:9).

Employment of state propaganda to defame
Over and over again the regime of Moi, in attempting to control its critics amongst the NGOs and civil society, has resorted to the use of state propaganda to tarnish the reputation and standing of these organizations with the hope of diminishing their influence in society. Accusations such as being tools of foreigners and therefore serving the interests of aliens rather than of the local citizens have been rampant, the aim of the state being to cut off the support of the local citizens for these organizations. For instance, in its criticism of the state for its excesses in the 1980s and beyond, the radical church has been attacked by the Government and its functionaries for interfering unnecessarily in politics, an area that otherwise ought to be the preserve of the state

(Sabar-Friedman, 1997:31). In the ensuing confrontation with the state, the church was accused of several things, such as serving foreign masters, by pro-establishment politicians (Sabar-Friedman, 1997:34). The LSK, following the election of Paul Muite as its chairman in the early 1990s, was also subject to name calling and severe state propaganda due to Muite=s confrontational stand in relation to the state (*Nairobi Law Monthly*, April/May, 1991). The former LSK Chairman (1986-1988), G. B .M. Kariuki, in criticising the Moi regime for removing the security of tenure of Judges and the Attorney General, had been accused by a senior government minister of not only being loyal to foreigners but also ignorant of history (*Nairobi Law Monthly*, October, 1991). FORD as a lobby group, in its initial years of formation was lambasted by government functionaries as >yet another clandestine movement started with the aim of destabilizing peace and causing chaos in the country=, as well as >agents of doom...propagating utopian and theoretical democracy which does not exist anywhere in the world= (*Nairobi Law Monthly*, August, 1991, October, 1991).

Emasculation by removal of leaders

Two outstanding examples are those involving the Friedrich Naumann Foundation (FNF), and the LSK. In the case of the FNF, a German organization, the Government expelled its director, Ms. Dorothee Von Brentano, from Kenya in July 1994 for allegedly involving herself in subversive activities including supporting the opposition. The Director had thus to relocate to Dar-es-Salaam where she continued providing financial support to the opposition and the clerics. The FNF, was indeed crucial to the founding of organizations such as Okullu=s FoD (*Weekly Review*, 13th December, 1996).

As for the LSK, the Government, alarmed by its then chairman=s (Muite) belief in the strong political role of the LSK, devised all means to frustrate the new leadership, and if possible, hound out of office in favour of a pro-establishment leadership. There was for instance, the use by the Government of pro-establishment lawyers within the LSK to file a suit of contempt against the Muite leadership. As put by one observer, AAlthough the Government gave the impression that it had no interest in the LSK wrangling it was unable to conceal the fact that it saw itself as the beneficiary of the court orders....The Government wanted the irksome council (of the LSK) behind bars or at least quiet.@

(*Nairobi Law Monthly*, October, 1991; December, 1991). Government interference in the leadership of NGOs with a view of either retaining loyal leaders or ejecting anti-establishment leadership has also been witnessed in the elections and affairs of the Central Organization of Trade Unions (COTU), and the Maendeleo Ya Wanawake (MYW).

Political appropriation

The use of political appropriation by the state with the objective of co-opting NGOs has been tried in Kenya with COTU and MYW providing vivid examples. Both were co-opted by the state in 1989 and officially became more or less branches of the ruling party. This ended up undermining the autonomy of these organizations in terms of their actions and activities. The significance of this co-option lay in the fact that it would translate in KANU wooing over their members to support it politically. This was particularly important given that both were umbrella organizations, with COTU representing the various worker=s unions, and MYW being the umbrella body for women=s groups nationally (see, Fowler, 1990:32). Equally important, it would give KANU and the regime a sure control over the activities of these organizations. As noted by Barkan (1992:187), AAlthough neither of these organizations ever challenged the president, the fact that most of their leaders and members are from the bigs, the mobilized and the haves made them too large to function on an independent basis.@ The use of political patronage to buy off the support of leaders and their organizations by the state could also be seen as another form of co-option. Sabar-Friedman (1997:26), gives examples of churches such as the African Inland Church and the Legio Maria which for a long time have been pro-state even when the rest of the mainstream churches were confronting the state on its negative democratic record.

Reconstitution into new bodies by the state

Whereas the reconstitution of organizations into new bodies by the state has not been a common occurrence in Kenya, the two cases of the Kenya Farmers=Association (KFA) and the Kenya Tea Development Authority (KTDA) serve as fairly good examples. In 1983, the KFA was forced to reorganize as the Kenya Grain Growers Co-operative Union. It has been argued that the intention of the Moi regime was to reduce the

influence of powerful Kikuyu landowners in the organization (see Barkan, 1992:187). The KTDA, an organization dealing with matters involving the growing and marketing of tea, was also much affected by state attempts to reorganize it through the establishment of the so-called Nyayo Tea Zones in Western Kenya. This reorganization of the KTDA, including the sacking of experienced staff for what was seen as ethnic politics, negatively affected the efficiency of the organization (*Finance*, 30th June, 1990; Barkan, 1992:187; Ndegwa, 1996:27).

The state and reforms

In as much as the state's responses to NGOs'and civil society's calls for political change have mainly taken the form of resistance and repression, there have been instances of acceptance of political reforms. Confronted with pressure for change, the state has therefore been forced to retreat in some situations rather than face the likelihood of a breakdown in the political system. The institution of the KANU Review Committee in 1990 by the Moi regime was a response to increased pressure for political reform. The findings of the Committee, based on interviews with individuals and organizations countrywide, later led to the state's scrapping the unpopular queue voting system and restoring of the security of tenure of the judges, the Attorney General and the Controller and Auditor General (*Finance*, 15th December, 1990, 1st February, 1991).

The removal of section 2A of the constitution in December 1991 that now allowed for a multi-party system was yet another state response to pressure to open up the political space. This change was fundamental since it ended KANU's monopoly of political power. Equally important were the administrative and political changes brought about by the IPPG which had the effect of further consolidating the democratic gains in the country (see Adar, 1998:87; *Executive*, Dec/Jan, 1998; Ndegwa, 1998:202-205). To this extent then, it can be argued that in as much as the state has been reluctant to liberalize and democratize, it has in certain situations responded by reforming the political system.

2.3 The Capacity of Civil Society to Sustain Political Pressure for Change

The future prospects for civil society's effective political action in challenging the Kenyan state will depend on several factors. In Africa, the state has been more often than not a victim of social cleavages. These have been both ethnic and religious. Ethnicity, in particular, has culminated in the near if not total destruction of states. The cases of Somalia, Rwanda, Burundi are just but a few telling examples. The Kenyan state has not been exempt from the destructive force of ethnicity as witnessed by the ferocious ethnic clashes of the early 1990s. Equally, civil society may not be spared the destructive consequences of ethnicity. Indeed, Kenya's civil society has on several occasions been riddled with schisms along ethnic lines. This has been clearly evident in the search for unity and common ground against the Moi regime and presidency in the multi-party era. This therefore, is a major threat to the solidarity of the oppositional civil society.

The autonomy of civil society from the state may be more apparent than real. The state, however weak, still retains some control over public resources. The extensive use of patron-client networks by the largely patrimonial Kenyan state gives it an edge over civil society. Many civil society organizations have chosen to remain reactionary rather than confront the authoritarian state in anticipation of sharing in the regime's largesse. But even those that had initially chosen the path of regime confrontation have kept on wavering. Many have been compromised by the regime, severely limiting their anti-state posture.

But probably most significant, is the fact that the oppositional segment of civil society in Kenya is a largely dependent one. Political liberalization, being at the top of the international donors' agenda, has translated into a fairly generous resource transfer to oppositional NGOs largely in the areas of political advocacy and human rights. This dependency carries with it negative implications in terms of civil society's sustainability and survival. Kasfir (1998:133-134) succinctly sums up this argument:

> They (oppositional civil society) exist because donors want them to and are willing to put finance and organizational training into them that could not possibly be found locally....In fact, for a time they may contribute to the appearance of a vigorous civil society. But donors rarely create autonomous organizations. Indeed, an aid-created independent civil

organization comes close to being an oxymoron. Furthermore, donors have no expectation of helping them forever. Unless the new externally funded African organizations can develop effective social roots and local resources of their own, they will die on the vine as soon as their foreign patrons depart or lose interest.

Conclusion

This paper was an attempt to analyse and assess the role of civil society in politics. It was anchored on the premise that civil society is not a homogenous movement rather it is a coalescing of organizations and movements that are characterised by competing interests in their relations with the state. The import of this statement is that, civil society therefore, may be either progressive in situations where it confronts an authoritarian state or reactionary when it collaborates to sustain and entrench an undemocratic state. Africa's post-1980s civil society, it was argued, is largely a product of the New Development Agenda that has promoted the values of neo-liberalism and liberal democracy. This has meant the rolling back of the state while sharpening the penetrative mechanisms of the market and civil society in the management of Africa's political economy.

The focus of the paper was on Kenya and the role of oppositional civil society in confronting the authoritarian state. It was argued that the post-colonial state has been characterised by politics of authoritarianism emanating from the long period of one-party state system. The Moi era beginning from 1978 was in the main an attempt to personalize political power which was accompanied by the declaration of Kenya as a de jure one-party state. In the absence of opposition parties, NGOs and other civil society movements became more or less the only channel through which the oppressive state could be challenged. These efforts, with international pressure, forced the regime to re-establish a multi-party political system in the country in late 1991. However, it is this paper's contention that in spite of returning Kenya to a multi-party state, opposition parties have continued to be riddled with schisms based on ethnicity and personal ambitions to the extent that this has weakened their ability and capacity to challenge the Moi regime. This has in turn meant the continued involvement of civil society in the

politics of change.

But as illustrated in the discussion, the state has developed many strategies to contain civil society activities. These have included the use of legislation, political appropriation, use of propaganda, removal of anti-establishment leaders, and reconstitution of NGOs into new organizations by governmental fiat. In some situations, the state has acceded to civil society pressure for change.

But the future survival of the oppositional civil society is largely in the balance. The threat of schisms based on ethnicity is real and serves to undermine the solidarity of civil society in confronting the state. Equally important is the observation that the state still possesses the muscle to compromise radical civil society elements through the patron-client networks. But most crucial, is the fact that this segment of civil society is a dependent one. This over-dependence on donor funds denies these organizations and movements the long-term autonomy and sustainability that they desperately must have.

BIBLIOGRAPHY

Agbese, P. O. AWith fingers on the trigger: the military as custodian of democracy in Nigeria@ in, *Journal of Third World Studies*, Vol. IX No. 2, 1992, pp.240-241.

Adar, G. Korwa. Æthnicity and ethnic kings: the enduring dual constraint in Kenya-s multi-ethnic democratic electoral experiment@ in, *Journal of the Third World Spectrum*, Vol.5 No.2, 1998, pp.71-98.

Barkan, J. D. and Holmquist, F. Politics and the peasantry in Kenya: The lessons of Harambee. *IDS WP* No.440, University of Nairobi, 1986.

Barkan, J. D. AThe rise and fall of a governance realm in Kenya@ in, Hyden, G. and Bratton, M. (Eds.). *Governance and politics in Africa* (Boulder: Lynne Rienner Publishers, 1992), pp.167-192.

Bayart, J. F. ACivil society in Africa@ in, Chabal, P. (Ed). *Political domination in Africa: Reflections on the limits of power* (Cambridge: Cambridge Univ. Press, 1986), pp.109-125.

Bebbington, A. and Riddell, R. AHeavy hands, hidden hands, holding hands? Donors, intermediary NGOs and civil society organizations@ in, Hulme, D. and Edwards, M. (Eds). *NGOs, states and donors: too close for comfort?* (London: Macmillan Press, 1997), pp.107-127.

Bratton, M. ABeyond the state: civil society and associational life in Africa@ in, *World Politics*, Vol. Xii No. 3, 1989, pp.407-430.

Chazan, N., Lewis, P., Mortimer, R., Rothchild, D. and Stedman, S. *Politics and society in contemporary Africa* (London: Lynne Rienner Publishers, 1988).

Chazan, N., Harbesion, J. and Rothchild, D. (eds). *Civil society and the state in Africa* (Boulder: Lynne Rienner, 1994).

Colclough, C. ΑStructuralism versus neo-liberalism: an introduction@ in, Colclough, C. and Manor, J. (Eds). *States or markets? Neo-liberalism and the development policy debate* (Oxford: Clarendon Press, 1991), pp.1-25.

Commonwealth Secretariat. *The presidential, parliamentary and civic elections in Kenya: The report of the Commonwealth Observers Group* (London: The Clarendon Press, 1993).

Daily Nation, 20th November, 1999 (Nairobi).

Daily Nation, 1st March, 2000 (Nairobi).

Daily Nation, 16th April, 2000 (Nairobi).

Dicklitch, S. *The elusive promise of NGOs in Africa: lessons from Uganda* (London: Macmillan Press Ltd, 1998).

Edwards, M. and Hulme, D. ΑNGO performance and accountability: introduction and overview@ in, Edwards, M. and Hulme, D. (Eds). *NGOs - performance and accountability: beyond the magic bullet* (London: Earthscan Publishers Ltd, 1998), pp.3-16.

Executive, December/January 1998 (Nairobi).

Finance, June, 1990 (Nairobi).

Finance, December, 1990 (Nairobi).

Finance, February, 1991 (Nairobi).

Finance, September, 1996 (Nairobi).

Finance, December, 1995 (Nairobi).

Fine, R. ACivil society theory, enlightenment and critique@ in, Fine, R. and Rai, S. (Eds). *Civil society: democratic perspectives* (London: Frank Cass Ltd, 1997), pp.7-28.

Fowler, A. Political dimensions of NGO expansion in Eastern and Southern Africa and the role of international aid. April, 1990, mimeo.

Himbara, D. *Kenyan capitalists, the state and development* (Nairobi: East African Educational Publishers, 1994).

Holmquist, F. AClass structure, peasant participation, and rural self-help@ in, Barkan, J. D. (Ed). *Politics and public policy in Kenya and Tanzania* (New York: Praeger Publishers, 1984), pp.171-197.

Hopkins, A. G. *An Economic History of West Africa* (London: Longman, 1973).

Hornsby, C. and Throup, D. ÆElections and political change in Kenya@ in, Journal of *Commonwealth and Comparative Politics*, Vol. xxx, No.2, July 1992, pp.172-200.

Hulme, D. and Edwards, M. ANGOs, states and donors: an overview@ in Hulme, D. and Edwards, M. (Eds). *NGOs, states and donors: too close for comfort?* (London: Macmillan Press, 1997), pp.3-22.

Kasfir, N. AThe conventional notion of civil society: a critique@ in, Kasfir, N. (Ed). *Civil society and democracy in Africa: critical perspectives* (London: Frank Cass Ltd, 1998), pp.1-19.

Kasfir, N. A Civil society, the state and democracy in Africa@ in, Kasfir, N. (Ed). *Civil society and democracy in Africa: critical perspectives* (London: Frank Cass Ltd, 1998), pp.123-149.

Keane, J. (Ed). *Civil society and the state: new European perspectives* (London: Verso, 1988).

Lewis, P. M. APolitical transition and the dilemma of civil society in Africa@ in, *Journal of International Affairs*, Vol. 46 No. 1, 1992, pp.31-54.

Leys, C. *Underdevelopment in Kenya: The political economy of neo-colonialism* (London: Heinman Education Books Ltd. 1976).

Matanga, F. K. ALeadership and politics in Kenya@ in Ogot, B.A (ed). *Kenya=s Centenary, 1895-1995: The making of a nation* (Forthcoming).

Mugwenyi, M. ADevelopment first, democracy second@ in, Oyugi and Gitonga, A. (Eds). *Democratic theory and practice in Africa* (Heinmann Kenya Ltd, 1987), pp.150-162.

Nairobi Law Monthly, January, 1991 (Nairobi).

Nairobi Law Monthly, March, 1991 (Nairobi).

Nairobi Law Monthly, April/ May, 1991 (Nairobi).

Nairobi Law Monthly, August, 1991 (Nairobi).

Nairobi Law Monthly, October, 1991 (Nairobi).

Nairobi Law Monthly, November, 1991 (Nairobi).

Nairobi Law Monthly, December, 1991 (Nairobi).

Ndegwa, S. NGOs as pluralizing agents in civil society in Kenya . *IDS W.P.* No.491, University of Nairobi, 1993.

Ndegwa, S. ACivil society and political change in Africa: The case of NGOs in Kenya@ in, *International Journal of Commonwealth Studies,* Vol.xxxv No. 1-2, 1994, pp.20-36.

Ndegwa, S. *The two faces of civil society: NGOs and politics in Africa* (Connecticut: Kumarian Press, 1996).

Ndegwa, S. AThe incomplete transition: The constitutional and electoral context in Kenya@ in, *Africa Today*, Vol.45, No.2, 1998, pp.193-212.

Ng=ethe, J. N. Harambee and development participation in Kenya: The politics of peasants and elites interactions with particular reference to Harambee projects in Kiambu District. *PhD. Thesis*, Carleton University, 1979.

Ng=ethe, N., Mitullah, W. and Ngunyi, M. AGovernment-NGO relationship in the context of alternative development strategies in Kenya@ in, Critical choices for the NGO community: African development in the 1990s. *Proceedings of a conference held in the centre of African Studies*, University of Edinburgh, 1990.

Ng=ethe, N. *In search of NGOs: towards a funding strategy to create NGO research capacity in Eastern and Southern Africa* (Nairobi: IDS, University of Nairobi, 1991).

NGO Coordination Board. *Fostering cooperation and partnership in development* (Nairobi, 1990).

NGO Council. *Strategic Plan, 1994-1999* (Nairobi, 1994).

Ogot, B. A. AThe politics of populism@ in, Ogot, B. A. and Ochieng= W. R.(eds.). *Decolonization and independence in Kenya, 1940-1993* (London: James Currey Ltd. 1995a), pp.187-213.

Okumu, J. J. and Holmquist, F. AParty and party-state relations@ in, Barkan, J. D. (Ed). *Politics and public policy in Kenya and Tanzania* (New York: Praeger Publishers, 1984),

pp.45-69.

Oyugi, W. O. AUneasy alliance: party-state relations in Kenya@ in, Oyugi, W. O. (Ed). *Politics and administration in East Africa* (Nairobi: East African Educational Publishers Ltd. 1994b), pp.153-191.

Reeve, A. and Lively, J. AThe emergence of the idea of civil society: the artificial political order and the natural social orders@ in, Fine, R. and Rai, S. (Eds). *Civil society: democratic perspectives* (London: Frank Cass Ltd, 1997), pp.63-75.

Republic of Kenya. *Sessional Paper no. 10 on African Socialism and its application to planning in Kenya* (Nairobi: Government Printer, 1965).

Rothchild and Chazan, N. (Eds). *The precarious balance: state and society in Africa* (Boulder: West View Press, 1988).

Sabar-Friedman, G. AChurch and state in Kenya, 1986-1992: The churches= involvement in the >game of change=@ in, *African Affairs*, Vol.96, 1997, pp.25-52.

Southall, R. and Wood, G. ALocal Government and the return to multi-partyism in Kenya@ in African Affairs, No.95, pp.501-527.

Southall, R. AMoi=s flawed mandate: the crisis continues in Kenya@ in, *Review of African Political Economy*, No.75, 1998, pp.101-152.

Southall, R. AReforming the state? Kleptocracy and the political transition in Kenya@ in, *Review of African Political Economy*, No.79, 1999, pp.93-108.

Southall, R. ADilemmas of the Kenyan succession@ in *Review of African Political Economy*, No.84, 2000, pp.203-219.

Steeves, J. S. AThe political evolution of Kenya: the 1997 elections and succession politics@ in, *Commonwealth and Comparative Politics,* Vol. 37, No.1, 1999, pp 71-95.

41

Tilly, C. ASocial movements and national politics@ in, Bright, C. and Hardings, S. (Eds). *State-making and social movements: essays in history and theory* (Michigan: University of Michigan Press, 1984).

Toye, J. AStructural adjustment: context, assumptions, origins and diversity@ in, Hoeven, R. V. D. and Kraij, F. V. D. *Structural adjustment and beyond in Sub-Saharan Africa* (London: James Currey Ltd, 1994), pp.18-35.

Wallis, M. A. H. *Bureaucrats, politicians, and rural communities in Kenya* (Manchester: University of Manchester, 1982).

Wanyande, P. ADemocracy and the one-party state: the African experience@ in, Oyugi, W. O. and Gitonga, A. (eds). *Democratic theory and practice in Africa* (Nairobi: Heinmann Kenya Ltd, 1987), pp.71-85.

Weekly Review, 8th December, 1995 (Nairobi).

Weekly Review, 10th May, 1996 (Nairobi).

Weekly Review, 17th May, 1996 (Nairobi).

Weekly Review, 24th May, 1996 (Nairobi).

Weekly Review, 21st June, 1996 (Nairobi).

Weekly Review, 13th December, 1996 (Nairobi).

Weekly Review, 11th April, 1997 (Nairobi).

Weekly Review, 25th July, 1997 (Nairobi).

Weekly Review, 5th September, 1997 (Nairobi).

Weekly Review, 10th October, 1997 (Nairobi).

Weekly Review, 14th November, 1997 (Nairobi).