

BACKGROUND TO THE CONTEMPORARY KENYAN DEMOCRACY: FROM COLONIAL TO 1991

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Abstract

Kenya has been described as one the growing democracies in Africa. Beginning the 1992 with the establishment of Multi party politics, the country has realized some notable democratic developments including regular and competitive elections, working institutions, rule of law, working civil society, respect of human rights among others. These present achievement, however, are anchored on experiences which provided the impetus and acted as a fertile ground for the establishment of democracy in the country. This paper examines experiences in Kenya from the colonial period up to 1991 when the country become a multi party state, and subsequently a democracy. The paper examines the four regimes, pre-colonial, the colonial regime, Kenyatta regime and the first phase of Moi regime.

Introduction

Kenya's democratic development can be studied in three successive periods; the pre-colonial period, the colonial period and the post colonial period. Each period had its unique practices which contributed to the present situation. The paper examines each regime with the aim to discovering is role the present democratic development.

Pre-colonial Kenya

The pre-colonial period in Africa refers to the period before the continent was colonized and subsequently fell colonial rule. This was the period before the scramble and partition of African continent into the present states. Whereas states existed, their boundaries differed from the present as defined by the sphere of influence by the colonialists. According to Elizabeth Eldredge (Oloruntoba & Falola 2018), this period denotes the era of independent political rule of Africans by Africans prior to the imposition of formal European colonial rule in Africa.

In terms of social and political organization, Thomson (2016) notes that pre-colonial Africa was as varied as the continent itself. Different circumstances produced different societies with different traditions, customs and politics, and these societies rose, fell and adapted as the centuries passed. Despite this variety, it is possible to divide political organization among these communities into two broad categories: states and stateless societies. State societies were organized into empires and kingdoms and had organized governments with pronounced hierarchies and administrative structures. Such societies were governed by Kings or Chiefs, whom Quashigah (1999) describes as ruling not for their own pleasure, but at the pleasure of people, that for a King (or Queen) without subjects is no King (or Queen).

Unlike in the state societies, stateless societies lacked state institution and pronounced political organization. Political systems, that developed in these societies were well adapted to the environment they served (Thomson, *ibid*). Such societies could be equated to Rousseau's state of nature that was pre-political where everyone enjoyed a balance between needs, and the resources and powers to satisfy them; and that everyone possessed the power to restore this balance when it had been upset (Gourevitch, 1997). Thus, people were held together by community ties and each was responsible for the other.

Pre-colonial society, whether state or stateless, did not exhibit the complexities found in the contemporary societies. Even some of the concepts that define the present social, economic and political organizations were nonexistent, and if they did, then could not be discussed as we today. Hence, concepts such as law, human rights, constitution, exclusion and inclusion, representation, among others, as they define democracy today, took different dimensions and were not big issues or were assumed. For example, in relation to existence of law, Nmehielle (2001) notes that the existence of law in pre-colonial Africa is assumed due to the fact that African societies in the pre-colonial era were very traditional in nature, governed by customs rather than law. These traditions and customs can be seen in today's language as law, and they controlled human actions in the society. By extension, they guaranteed each person's rights in the society and their violation was seen as a violation against the individual the society as a whole. Since these customs were rigid and the attached repercussions in case of violation severe, they controlled people a great deal. There were no excesses either on the side of the ruler or the ruled. Much of what was done, was on the benefit of the society. Eldredge (Oloruntoba and Falola, *ibid*)

summarizes the function of the government thus; within the geographic boundaries of a polity, the primary functions of government were to exercise control over access to natural resources, especially land and water, and provide for the allocation of land rights and resource rights equitably...government officials adjudicated disputes, made judicial determinations, and executed punishment for the violation of laws.

Following the above situation, apologists of the pre-colonial Africa, hold that before colonialism, there existed in Africa a democratic system, which they believe was more natural to African culture (Fayemi 2009), and by implication, that the pre-colonial Kenya. That this democratic import of the various traditional African mode of social organization and governance was discernible from the fact that there were rules set for the choice of leaders, and governance was based on the rules and laws of the community. It is therefore right to conclude that such communities were democratic to the extent that the rules were strictly followed, which made it difficult for anyone to impose himself on the society or misappropriate community resources (ibid). This is a system in which consensus, rather than individual participation was used to reach a decision. In the pre-colonial period, consensus was more applicable than any other system.

The colonial period

Kenya as a state did not always exist, but colonialists are credited with creation and establishment of the state-Kenya. Ogot & Ochieng' (1995) clarify that in the ten years between 1895 and 1905 the land we today call Kenya was transformed from a footpath 600 miles long (between Mombasa and Kisumu) into a harshly politicized colonial state. This means that it is not in order to talk of Kenyan democracy beyond the colonial period.

The years of late 1800 and early 1900 saw the invasion of African continent by the colonialist, and hence marked the end of African *communocracy* and ushered in colonial rule. Critics of this leadership blame it for the destruction of African social fabric and the cause of all undemocratic practices. With the invasion of colonialism, the social fabric was completely devastated and a new culture of violence was implanted. Traditional African systems of conflict resolution were destroyed and, in their places, nothing was given. The democratic process, rudimentary though it was, but with great potential as accompanies every human institution, was brutally uprooted and replaced by the authoritarianism of colonialism. A new crop of elites was created, nurtured, and weaned on the altar of violence and colonialism armed with the structures of the modern state to

continue to carry out the art and act of subjugation of the mass of the people in the service of colonialism.

Ahluwalia (1996) highlights three things that characterized colonial government in relation to systems of leadership. First, he indicates that the colonial system was based on executive dominance with extensive powers. In most democracies, power is evenly distributed between the three arms of the government; legislature, executive and judiciary. Nonetheless, John Locke (1821), the father of modern democracy recommends that though power be distributed among the three, the legislative power should have a right to direct how the force of the commonwealth shall be employed for preserving the community and members of it. For him, therefore, the executive is subjected to the law and in case where it is not, then that is not a democracy.

Secondly, the colonial system was oppressive and non participatory, especially towards the indigenous people. The instruments of control had been honed carefully overtime to maintain an “oppressive” system of law and order, to protect imperial interests and to restrain indigenous political activities. That the striking features of the colonial political world were its non-participatory character and its untrammled executive authority (ibid). A system where the executive is more powerful than the legislature and judiciary lacks checks and balances and at long last becomes authoritarian. This is usually coupled with non inclusion of the majority of the citizens. In the colonial period, the Europeans were few compared to the natives who were the majority, and thus by not allowing Africans to participate in the matters of government pointed to authoritarian form of government.

Lastly, colonial Kenya had the characteristics of a class society with the Europeans on top, the Asians in the middle and the Africans on the bottom (ibid). Class arrangement, in society implies that members are not the same and do not enjoy the same rights. The colonial government thus sidelines Africans from leadership and participation in decision making on the premise that they were inferior.

Going by this, we can deduce that the colonial period did not uphold democratic practices. The colonial regime advanced authoritarianism and excluded Africans from leadership. It is thus argued that if the colonial governments had been more willing to allow Africans to express their

grievances through legitimate political manners, the concept of mass politics would not have been so alien, and the workings of democracy would have been better practiced and understood. This alienation thus might have probably formed the basis of the struggle for independence, and the democratic woes facing most African countries and Kenya in particular.

The Kenyatta Era and Kenyan Democracy 1963-1978

Kenya got its independence in 1963. After being under colonial rule for many years, self rule was seen as a relief and an avenue to self determination. There were high expectations from the citizens especially in regard to the achievement of independence objectives. Ogot & Ochieng (1995) succinctly puts, that Kenya gained independence through her nationalist initiatives is not in doubt. What is debatable is whether the long-term goals of the nationalists have been recognized. He concludes that the original dreams of the nationalists have not been achieved in the economic, cultural and political field. Osolo (2014) clarifies that Kenya became independent with one fundamental aim namely to remove a dictatorial and undemocratic foreign regime and then replace it with an indigenous regime that would be sensitive to the people's democratic rights and needs. This shows that there a connection between the kind of leadership and the realization of the national objectives. According to Osolo (ibid) this cardinal goal has been a perpetual night mare.

The period between 1963 and 1978 in Kenyan history refers to the first regime after Independence commonly known as the Kenyatta regime. This was a regime expected to set the pace for the subsequent regimes in terms of social, political, economic and cultural practices. It is, however, clear that Kenyatta government did little to enhance the lives of Kenyans, and instead followed closely in the footsteps of colonialist. It is recorded that this regime was responsible for setting the pace for some practices, which to extend, affected democratic development in the present Kenya.

Question of Political assassinations

In *The Prince*, Machiavelli (2003) discusses the question whether a Prince should be feared or loved. He suggests that a leader should exhibit both, but because it is hard to be both at the same time, then it is much safer to be feared than loved. This Machiavellian advice seems to have been adopted by many authoritarian and dictatorial leaders especially in Africa. Its application takes different dimensions, but the most notorious one is assassination of political rivals and critics.

According to Schatz (2011), political assassinations are calculated strategies of action aimed at eliminating political rivals caused by multiple, interacting factors that involve the political, legal, and criminal justice systems. Assassination is basically used as a tool to scare off one's political critics or simply do away with them. Jomo Kenyatta is known to have effectively used this approach in order to protect his government and leadership. Osolo (2014) asserts that immediately Kenyatta sensed that Tom Mboya, a trade unionist and a cabinet minister, was secretly trying to cunningly encroach on his Leadership seat, Kenyatta swiftly brought him down using a third party, immediately Mboya returned to Kenya from his USA trip. He further notes that in addition to Mboya, Pio Pinto and J.M Kariuki were also gunned down in 1965 and 1975 respectively as a function of Kenyatta leadership paranoia.

It was in the public domain that the assassinated leaders had political and ideological differences with the Kenyatta government. It is indicated that whereas Kenyatta leaned towards the Capitalist west, Pinto with others had leftist orientation and considered Kenyatta policies as neo-colonialist and exploitative. This was a clear indication of struggle for political supremacy which Kenyatta did not entertain, hence assassination.

Kaarthikeyan and Raju (2004) notes that political assassinations profoundly influence the course and political developments in a country and even alter the course of history. In line with this, we can argue that political assassinations of Mboya, Pinto and J.M Kariuki altered the course of democratic development in Kenya. According to Umoren (2005), assassinations became the surest way to eliminate political opponents; hence it is a way of eliminating opposition and ensures conformity and loyalty. Assassinations of one individual serve as warning to others who have dissenting voices, and with time, political opposition, which is key indicator of a democratic society disappears. Schatz (ibid) affirms that political killings represent a very specific form of political repression.

Detention without trial

Another attribute of Kenyatta's regime was detention of his political rivals without trial. The detention powers were enshrined in the constitution as the Preventive Detention Act. This particular law was a remnant of the colonial legacy which in Britain was only resorted to in times of war. Major critics of Kenyatta's leadership who were not eliminated through assassination, were detained without trial at the pleasure of the president. Osolo (2013) explains that like the

British colonial leadership which loved detention of its critics such as Kenyatta, Achieng Oneko, Paul Ngei, Bildad Kaggia, and others, Kenyatta's rule loved the same detention policy by which he rounded up all his arch-critics. Among those who became victims were politicians, intellectuals, rare bureaucrats and academics (Bakari, 2002).

In any functional democracy, a person is only detained after going through a fair trial and found guilty. The period of detention is proportional to the wrong committed and it is stipulated during the judgment. Thus by Kenyatta resorting to this approach, it implied that he did not operate in respect to the democratic ideals, one of which is to allow for criticism.

Democratic Experiences during the one party politics 1978 – 1992

Moi ascended to power as the president of the republic of Kenya after the death of Jomo Kenyatta in 1978. This succession was in line with the constitution which allowed the vice president to assume power if the president died while still in office. As a vice president, Moi had cut the image of a humble and harmless person as compared to Kenyatta, hence many looked at his presidency as a break away from the dictatorial Kenyatta regime, and a sign of good leadership ahead. As Osolo (2013) observes, the overwhelming majority looked at the succession as a good omen in the sense that it was going to be a source of an overdue sigh of relief to the country from Kenyatta-phobia generated by Kenyatta leadership megalomania and paranoia (Osolo 2013). These expectations were short lived. Moi took a very short time to realize the need to consolidate his leadership and safeguard it from his opponents. To achieve this, he resorted to undemocratic means which came to characterize his government of twenty four years.

Continuity of Political Assassinations and the characteristic Nyayo House Chambers

Political assassinations and detentions did not end with Kenyatta. Nichols (2015) points out that the political assassinations that were a feature of Kenyatta's regime continued under Moi. Among the documented deaths between 1978 and 2002 explained as political assassinations include that of Julie Ann Ward, a British tourist and photo journalist (1988); the then Minister of Foreign Affairs in Moi's government Dr. Robert Ouko (1990); bishop Alexander Muge of the Church Province of Kenya, presently Anglican Church of Kenya. According to Musila (2012) Ouko, Muge and Fr. Kaiser were seen as potential threats to political order in the country, hence their elimination. Among the existing theories, Julie Ward was suspected to be a British secret

agent on a mission in Kenya and must have possessed information which would have exposed the powerful government agents involved in corruption in Kenya (Musila, 2010).

Within this period, detention without trial blended very well with assassinations. Those who became victims of Moi's detention included; Oginga Odinga, a former vice president, and his son, Raila Odinga, the famous novelist and academic Ngugi Wa Thiong'o, Dr. Willy Mutunga, Gibson Kamau, Dr. George Katama Mkangi, Koigi Wa Wamwere, Dr. Alamin M. Mazrui and Kenneth Matiba (Bakari, op.cit). Politically, these were people who held dissenting views from those of Moi by favouring multi party over the one party politics.

Like his predecessor, Moi found these two to be effective tools to deal with his opponents, and thus utilized them when needed. Political assassinations, according to Ben-Yehuda (2012) exhibit almost all the traits of what we have come to know as general deviance, and of politics particularly. He asserts that political assassinations form the moral and political boundary between the legitimate and illegitimate, the powerful and the powerless. Political assassinations may become not only important boundary marker, but a conflict resolution technique. Unpopular and powerless governments in need to legitimize their rule may resort to these practices to force citizens to accept them or their decisions. Moi's was a reaction to the challenges his regimes faced, as Mustapha & Whitfield (2009) explains. In part, Moi's greater willingness to centralize authority, repress dissent violently, and manipulate ethnic cleavages to play divide-and-rule politics was a response to the greater challenges he faced.

To be specific, Moi's detentions and subsequent assassinations started after the attempted coup on his government in 1982. Initially, he had portrayed a picture of a timid politician who could not marshal the necessary support to remain in power; Immediately after this, Moi's real political personality emerged and became associated with the famous Nyayo House Chambers where critics of his government were detained.

Hobbesian and Machiavellian political philosophies praise political assassinations and detentions as among the necessary tools available to a prince in attempt to assert his authority. They hold that deceit, subterfuge, covert operations, and even political assassinations are part of the arsenal that a ruler may have to employ (Klehr, 2004). Nonetheless, Jarstad and Sisk (2008) note that democracy only thrives where diverse interests and negotiations are accommodated. That

democracy is consolidated when peaceful means of conflict management are accepted. Hobbes' and Machiavelli's philosophies are necessary only in an undemocratic society. As a matter of fact, Hobbes ideas are developed around the primitive society referred to as society in a state of nature. That Kenya was on its way to establishing democracy, both detentions and assassinations were undoubtedly an affront to the achievements.

Nepotism and degenerating democracy

According to the Oxford Dictionary, Nepotism is the practice among people with power or influence of favouring their own relatives, especially with jobs. Like both ex-British colonial rule and Kenyatta's rule, Moi's rule also embarked on nepotism of "Kalenjinization" in which he also made sure that all key positions in the Kenyan Civil Service is manned by Kalenjins who are of his own ethnicity (Osolo, 2013). Nepotism in many cases undermines meritocracy in which people are employed on the basis of their qualifications. Nepotism does not take into consideration individual qualifications, hence those employed, in many cases are incompetent people whose survival is begged on the protection of those in high positions. By filling the civil service with his own people, Moi wanted to economically empower them and dominate others. It is, however, worthy to note that in the Kenyan politics, money has always been very influential. Those going for political posts are only the economically empowered ones, and not the competent. Therefore, any group that dominate economically, also dominate politically. In such a system, less economically endowed cannot have a chance to express themselves.

Falk (2017) notes that nepotism is an affront to the very spirit of democracy defined as government of the people, for the people and by the people. That it turns a state into an oligarchy or a government of the ruling class.

One party state

Existence of more than one political party is one of the defining characteristics of democracy. Multipartyism encourages competition and brings out the best leadership. It ensures checks and balances in that the ruling party will be checked by the opposition. It is however noted that at independence, the Kenyan constitution constitution allowed for multipartyism, though, in practice, it was not so. In 1982, under the influence of Moi, the parliament amended the constitution and created Kenya as a de-jure one party state. With this amendment, all other parties, apart from

the ruling Kenya African National Union (KANU), were abolished. The party leader of the ruling KANU was the president himself, and thus a show of loyalty was paramount.

Those who argued in favour of one party system claimed that it stressed the need for stability and nation building. Those who argue on contrary, however, assert that this was a way of suppressing dissent. Sayer (1998) points out that any expression of dissent by trade unions, or students or women's groups was seen as treachery. The argument for stability is not founded. History shows that since independence, all the eleven elections in Kenya have been characterized by violence, even under one party rule. The main object of one party system of leadership was to suppress the opposition. During this the Moi, it was mandatory for all adult citizens to be party of KANU.

Frustration of Opposition

Although Moi formally legalized opposition parties in 1991, oppositional views and individuals had been in existence from independence. This warranted people to term Kenya as one party democracy, to mean that there existed varying opinions within the ruling one party. The functioning of this opposition, both within one party and multi party systems, however, was not as smooth as expected. Osolo (ibid) observes that like the two leadership again, which was totally opposed to Democracy in the truest sense of its meaning, by physically and practically keeping out all oppositions from direct participation in the electoral processes, and also by making sure that elections do not take place in a genuine manner, the Moi leadership also ensured that this policy prevailed at all costs.

Throughout Moi regime, Kenya experienced frequent harassment and arrests of opposition members, the banning of important components of civil society, and repression (1997). There were also appointment of oppositions members to positions of influence, such as ministerial or cabinet secretary. In addition, during the one party-system, the presidential seat was reserved for the party leader, who was the president and no opposition to the seat was encouraged. Frustration of opposition was further experienced during the election where the government used state machineries to bar them and their supporters from participating. This was usually through violence orchestrated by the government to scare away the opposition.

In view of the above practices deduced from the three regimes, it is clear that democratic ideals were not upheld. Njogu (2013) elucidates that since independence, Kenya has held elections after every five years. Up to 1992, Kenya was a *de jure* one party election system and it has been suggested (Wanyande, 1985) that in such a state, it is illegal to form an opposition party, hence democratic ideals could not be met under such a system. The freedom of choice and the lack of democratic space was inherent and the three essential components of civil liberties in a society of participation, competition and legitimacy were not met. This implies that according to him, the multi party system of election that began in 1992 should be termed democratic with the assumption that the mentioned basic ideals could be realized.

Democratic establishment

One of the important questions that Huntington (1991) addresses in his book, *The Third Wave: Democratization in the Late 20th Century* is; how were the third wave democracies of the late 20th century made? For him, they were made simply by methods of democracy, and no other way. They were made through negotiations, compromises, and agreements. They were made through demonstrations, campaigns, and elections, and through the nonviolent resolution of differences. They were made by political leaders in governments and oppositions who had the courage both to challenge the status quo and to subordinate the immediate interests of their followers to the longer-term needs of democracy. They were made by leaders in both government and opposition who had the wisdom to recognize that in politics no one has a monopoly on truth or virtue. Following the undemocratic practices of both the colonial and first two independent regimes of Jomo Kenyatta Daniel Arap Moi, Kenya finally adopted multi party system of government 1991, which was seen as an important step in the establishment of democracy in the country. It worthy to note that this was achieved after a prolonged negotiations, compromises, demonstrations and campaigns advocated by private individuals, organizations and pressure groups.

Following Huntington's assertion, the importance of these individuals, organizations and pressure groups cannot be overstated. Gibbon (1995) elucidates that the rise of political dissent and subsequent re-introduction of political pluralism was basically a product of politics as practiced in the Second Republic. The growth of dissent was not confined to one factor or one ethnic group. Dissent was the result of multiple concerns ranging from the inability to meet

public expectations aroused by Moi's populism to his narrower Machiavellian "high political" strategies. Every ethno-regional group and most segments of the population had something to protest against. The dissent translated into pressure for political liberalization. It can thus be concluded that challenges of the time, especially as related to the political leadership resulted into the destruction of one party. This, Karl Marx (1818-1883) interprets in terms of history. According to him, the seeds of destruction are implicit in each epoch of history (Wood, 2005). Implicit in one party state were injustices and undemocratic practices that brought it down.

The establishment of multiparty politics brought many expectations, and to many, it was Kenya's second liberation. This was liberation from the one party dictatorship and from the era of unaccountability and lack of inclusivity. Many saw the future as being full of promises, especially promise of good leadership. After more than two decades, however, still Kenya seems to struggle with the same undemocratic practices of the one party politics.

Conclusion

This paper has analyzed the background to the present Kenyan democracy. The paper has established that there were deliberate attempts to undermine democracy during the colonial, Kenyatta and Moi regimes, and that these attempts in turn acted as the motivation and impetus to establish democracy in the country.

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