

**DEMOCRACY WITHOUT OPPOSITION  
-KENYAN CIVIL SOCIETY AT A JUNCTURE**

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**Abstract**

*One result of the Kenyan national election in 2007 was the construction of a "Grand Coalition". That circumstance left Kenyan democracy without a formal opposition, a gap that has been suggested to be filled by civil society. This article explores the role of Kenya's civil society in the struggle for democracy, its role in a transitional democracy and its capacity for being a "check and balance institution" in a democracy without a parliamentary opposition. It argues that civil society cannot fill the role of opposition within a democracy that has not been consolidated, since the foremost role of civil society is to promote public participation and the fulfilment of a social contract between state and society that is aligned with the societal values of redistribution, equality and inclusiveness.*

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**INTRODUCTION**

**A NECROLOGY OF HOPE**

The confidence in Kenyan democracy has been exaggerated, and this has happened in conjunction with the international description of Kenya as the "beacon of stability" in East Africa. The country's economic stasis, which began in the 1990s, has been to some extent improved under the National Rainbow Coalition (NARC) government while re-distribution issues remained pending. The popular impression of stability ignores the pressing socio-economic constraints of average Kenyans, the so-called "mwananchi"<sup>1</sup>. To comprehend the full magnitude of the post-election crisis, it should first be acknowledged that the history of Kenya, for most of its citizens, has been stained by violence, inequality and rampant poverty. Additionally, the divide and rule policy of the British has continued in post-independent Kenya, as a tool used by the political elite to keep itself in

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<sup>1</sup> According to the Kenyan Integrated Household Budget Survey of 2006, 46 percent of Kenyans do not meet daily food needs (Department for International Development, retrieved at: <http://www.dfid.gov.uk/countries/africa/Kenya-facts.asp>).

power. A nation building process that transformed fractural Kenya into one nation has never taken place, and contemporary political identity still correlates with ethnic identity<sup>2</sup>.

Kenya comprises of 42 ethnic groups whereas the largest groups are the Kikuyu, Kalenjin, Luo and Luhya. The Kikuyu constitute the largest group with approximately 20% of population, followed by the Kalenjin with 15%, Luhya 14% and Luo with 12%. Kenya's first president Jomo Kenyatta (Kikuyu) was followed by Daniel Arap Moi (Kalenjin) in 1978. Daniel Arap Moi ruled 24 years, before Mwai Kibaki in 2002 (Kikuyu) got the presidency of the wining Rainbow Coalition. Mwai Kibaki was a long serving vice president and minister under Moi until he in 1988 was excluded from Moi's inner circle. Politics and economy in postcolonial Kenya was closely related to ethnic affiliation as presidents and leading politicians often favoured their regions. GEMA (Gikuyu<sup>3</sup>, Embu, Ameru Association) for example unities related Bantu groups at Mount Kenya into an influential association with cabinet members in its rows. The Nilotic Luo of western Kenya often felt excluded from political influence especially after the assassination of Tom Moya<sup>4</sup> (1969) and Robert Ouko<sup>5</sup>(1990).

However, to perceive the recent crisis as a pure ethnic conflict, in the way that the international media did, does not consider the roots of the conflict between the 'haves' and 'have-nots'. Ethnicity has merely been an instrument for the realisation of political ambitions on both side of the divide. Kenyan politicians, some more vocal than others, succeeded in pulling a veil of ignorance over the most pressing issues by mobilizing their supporters along ethnic lines and thus successfully suppressing a conflict between the ones who have and those who have not. Political protagonists succeeded at making the impression that if in power, their respective community would gain and make progress. In that light, it is not surprising that Kenyan communities turned on each other during the post-election crisis. It could easily have been predicted, and some commentators in fact did exactly that<sup>6</sup>.

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<sup>2</sup> Kenya comprises of 42 ethnic groups. The largest groups are the Kikuyu, Kalenjin, Luo and Luhya.

<sup>3</sup> Gikuyu means Kikuyu

<sup>4</sup> Minister of Justice and Constitutional Affairs, and later Minister for Economic Planning and Development in the Kenyatta cabinet.

<sup>5</sup> Minister of Foreign Affairs in the Moi cabinet

<sup>6</sup> One of them was Mutahi Ngunyi who wrote in December 2003: "Consider a hypothetical situation here. What would happen if President Kibaki decided to run for re-election in 2007 and lost? Would he and his men have the grace to hand over power peacefully? From the way they have behaved in the last one year, I doubt it. And where would that leave the country? At the risk of sounding crazy, I want to suggest the following: If we thought that Mr. Moi would plunge the country into civil strife, he proved us wrong. Nare is the party to plunge the county into civil strife. You just have to listen to the FM stations and the call-in television programmes to see a pattern. From the name of the

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The NARC governments that succeeded the Moi regime in December 2002 gave a lot of hope to the common *mwananchi*. Ultimately, many Kenyans were deeply disappointed when NARC was not capable to introduce a new constitution, fight corruption, and significantly reduce poverty in the country. The constitutional crisis that had been ongoing for many years broke the NARC collation into the banana and orange fractions, as they were known in popular terms. A constitution that would abolish the “winner takes it all” democracy and introduce the devolution of power was never realised and left people in vain with the Bomas process<sup>7</sup> collapsed at its peak. The bill was presented to the political elite in December 2007 at the same time as many well established politicians - some of them ministers and one of them the vice-president - were not re-elected. People turned out in great numbers at the polling stations only to receive another disappointment three days later. The delayed tallying process, taken together with the report of international observers, suggested a flawed election result. The sovereign had spoken, but the political establishment was not ready to receive the verdict. The so-called East African “beacon of stability” turned into instability as the state lacked popular legitimacy by all Kenyans. The last candle of hope for change, which had been lit in 2002, was blown out in December 2007 and turned Kenya into a land of skirmishes of violence and unrest.

Today, after the coalition government has been put together, Kenya as a part of its transition towards democracy lacks a formal opposition in parliament. Many eyes turned towards civil society as a possible solution to fill the gap<sup>8</sup>. The following will explore whether Kenyan civil society would be able to fill this role and what that might mean for the consolidation of Kenyan democracy in the future.

### GRAND COALITION AND THE LOST OPPOSITION

Kofi Annan should be honoured for succeeding in his efforts to get the protagonists of the post-election crisis to sit down together at one table. However, the solution of this grand coalition leaves some questions as to how the checks and balances between government and opposition will work

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caller, you can almost predict what they will say and what side of the divide they will take. In a disputed election, *such polarity would certainly take ugly proportions*” (Ngunyi, M. (2003), Why our second liberation is yet to be completed, Sunday Nation, italics added).

<sup>7</sup> The Bomas -process one, two and three were to amend the current Kenyan constitution under the NARC government. It has been already started under President Moi while it collapsed while NARC government was in power. It was a citizen driven process with more than 600 delegates participating in the amendment of the Kenyan constitution.

<sup>8</sup> Some members of parliament (MP), principally those belonging to the Orange Democratic Movement (ODM), felt left behind when minister and other posts were distributed within the new cabinet, and then challenged the party leadership to constitute an official opposition in parliament. The ODM leadership convinced them to refrain from this step, using the argument that every MP has an important role to play in the Grand Coalition.

during the upcoming legislative period. The overdue implementation of the peace accord brought with it as one result a bloated cabinet of 40 ministers and the introduction of a Prime Minister post as a way to assure real power-sharing. This eradicates the existence of a real opposition in the parliament, because all parties find themselves represented within the legislative. Robert Dahl emphasises that liberal democracy without a formal opposition in parliament questions the very existence of democracy (Dahl, 1966):

*" (...) one is inclined to regard the existence of an opposition party as very nearly the most distinctive characteristics of democracy itself, and we may take the absence of an opposition party as evidence, if not always conclusive proof, for the absence of democracy"*

Kenyan democracy is transitional, since it lacks consolidation within its own institutions, electoral processes and in relation to popular participation. Within contemporary literature, Carothers' illustration of the three phases of transitional democracy assists to understand the current state of democracy in Kenya, as explained below (Nasongo'o, Murunga, 2007:7).

The first transitional phase comprises the *opening*, the movement from dictatorship towards a regime of democratic governance. In Kenya, this took place between 1992 and 2002 when multi-partyism returned. The second phase, the *breakthrough*, can be marked by the 2002 election when the NARC government came to power. The NARC government was in conception a grand coalition, with the paramount goal of extracting power from the Kenya African National Union (KANU)<sup>9</sup>, which was then left as the only opposition party in the 9<sup>th</sup> parliament. One major goal of the NARC coalition was the promulgation of a new constitution – the most crucial feature of the *breakthrough* phase. That particular goal was never reached and the coalition split into the already mentioned 'bananas and oranges', where the later comprises the informal but effectual opposition in the 9<sup>th</sup> parliament from 2003 onwards. Therefore the *breakthrough* phase became prolonged. The present governance construction that has followed the power sharing accord has extended the breakthrough phase, by resuming the tasks of the NARC government. It is apparent that the *consolidation* phase - the last of three - has not been accomplished, because Kenyan democracy lacks important consolidating features such as:

*"The reform of state institutions, regularisation of elections, strengthening of civil society and overall habituation of society to the new democratic rule of political engagement" (ibid.)*

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<sup>9</sup> KANU has been in power since independence 1963.

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The reform of state institution and the strengthening of civil society are pivotal for an accomplished *consolidation* process. It goes hand in hand with the transformation of Kenyan society towards one nation - essential for the consolidation of democracy as recent history has taught. Without an opposition in parliament, the ball has “officially” been played into the court of civil society. Protagonists of this view are the builders of the peace/power sharing accord. In other words, civil society in Kenya should serve as a *check and balance institution* within the transitional democracy of Kenya - a feature that calls for further exploration.

### CIVIL SOCIETY AND THE “THREE THEATRES”

To comprehend civil society is a difficult task, since there are many different organizations (Civil Society Organisations) and movements under this particular umbrella. It is therefore essential to introduce a definition for civil society that further on will serve for the understanding of civil society:

*“Civil society is a sphere of social interaction between the household and the state which is manifest in norms of community cooperation, structures of voluntary association, and networks of public communication”<sup>10</sup>. (Bratton, 1994: 2)*

In relation to the above, two contradictory views should be elaborated. The first view emphasises Bratton’s definition by a way of characterizing civil society as the “providential spirit dispatched to redeem a political world gone awry” (Nasong’o, 2007: 23). Using the conceptualization of Bratton for Kenya, civil society influences the political process by being the voice of the *mwananchi*. It is a force that propels inclusion in the political process beyond elections. It assumes real impact on social and political change, while not being part of the formal parliamentary system. It builds on the dichotomy of state and civil society and promotes inclusion and participation of citizens in the legislative processes, while additionally serving as a societal watchdog. The second view introduced here contradicting Bratton criticises civil society as being a “metaphor masquerading as a political player” (ibid.). It suggests that civil society is only a construction, a hidden political player that has its own agenda while being detached and incoherent to the general society.

Historically, both concepts are relevant in Kenya and for that matter to a conception of global civil society. Civil society organisations (CSO), like social movements, Community Based Organisations (CBO) and Non-Governmental Organisations (NGO) have often been stepping stones for

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<sup>10</sup> Civil society is a theoretical concept that builds on a universal idea of civic participation in democracy. Its roots can be found in liberal as Marxist traditions of political thought. De Tocqueville on the liberal side as Gramsci on the Marxist side can be named as being important theorists. While De Tocqueville points to the importance of voluntary associations for democratic citizenship Gramsci emphasises the role of social institutions for challenging or enrich state power (Bratton, 1994:1).

individuals and groups to enter the formal political “theatre”, Mutahi Ngunyi<sup>11</sup> offers a description of the three theatres - *the elite theatre, the external theatre and the theatre from below* – that profoundly distinguishes between actors on diverse political stages<sup>12</sup>. Ngunyi developed this distinction to illustrate actors and stages of the post-election crisis in Kenya. At this point, it is a distinction that can be used to analyse the contemporary governance regime of the Grand Coalition in Kenya and the subsequent consequences for civil society within the *consolidating* process of democracy.<sup>13</sup>

#### ‘THEATRE FROM BELOW’ TURNS ELITE

After a failed coup attempt in 1982, Kenyan civil society as well as its opposition parties experienced a crackdown on their associational freedom and freedom of speech, which nearly eradicated civil society from the political and societal map. After the *opening* in the 1990’s, civil society flourished within a supportive movement towards multi-party-ism and democracy. Kenyan civil society along with its CSOs played a crucial role for the re-establishment of democracy. At that point in time, it was possible to establish a united civil society by pressing for a democratic *opening*. However, the *opening* and the *breakthrough* later in the 1990’s and 2000’s changed part of civil society as these transformed into political parties. The hidden political player became visible and detached itself from its own civil society agenda.

Civil society as a *hidden political player* suggests that actors within civil society change the scenes and theatres in its continuing search for political influence. The “theatre from below” (civil society as a motor) would consist of the interface between civil society organisations and *mwananchi* (households) by promoting popular participation in the political process. However, the scenario of the hidden political player characterises the *mwananchi* as the voiceless, listening audience, whereas the actors on the scene are the voices for their own good and thereby use civil society as a personal stepping stone for political ambitions. Kenyan civil society in the Moi era of the 1990s profoundly illustrates this metamorphosis of CSOs into this kind of role.

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<sup>11</sup> Presented at the MS Kenya Annual Meeting on the 27.03.08

<sup>12</sup> This article distincts civil society and CSO’s from political parties. The latter is formally part of the political system while CSO’s search to influence it through formal and informal institution. Political parties furthermore outline a clear goal to access formal political power. To distinct political parties from civil society evolves the possibility to analyse the relationship between the two.

<sup>13</sup> This article will not elaborate on the role of the “external theatre” which points to the international community (including international NGOs) and its role in Kenyan post-colonial politics and its particular role in the establishment of the peace accord. Its important role is not neglected, but would go beyond the scope of this article.



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### From Civil Society to Political Party

A prominent case of the above-mentioned metamorphosis is the formation of the Forum for the Restoration of Democracy (FORD) and its transition from a democratic (social) movement - envisaging the democratisation of Kenya under Moi - to its fragmentation into two political parties. The abolishment of single party rule, which came about through pressure from parts of Kenyan civil society such as FORD together with encouragement from the UK, US and some Scandinavian countries, provided the necessary space for maturation of the political scene. However, the *opening* towards democracy in 1992 resulted at the same time in a disintegration of the movement into two parties: FORD Kenya, under the leadership of Odinga Odinga (later Raila Odinga<sup>14</sup>, his son) and FORD Asili under Kenneth Matiba. Both parties ran for the first multiparty election, but neither was able to defeat Moi's KANU.

Although CSOs mushroomed after 1992, organizations like FORD failed to construct a common agenda for democratisation and social change in Kenya, for the most part due to personal ambitions. The major problem FORD faced was that it turned itself into a vehicle for accessing direct political power. This led to disintegration and the construction of new political factions in Kenya based on ethnicity (Nasongo, 2007:39). This meant failure for the initial goal of Kenyan civil society, which was to propel an inclusive democracy. Civil society was not able "to articulate an ideology to unify its varied elements and catalyse the commitment of its followers to action for social change" (ibid.). The *opening* phase within Kenya's transition towards democracy was therefore characterised by the introduction of "person related politics" instead of politics geared towards an ideology that would bring social change for the common *mwananchi*. The following disintegrative dynamics that came to the surface in Kenya prevented the formation of a cross-ethnic civil society that could jointly advocate for a more inclusive democracy model.

### Civil Society and the Divide

Within the *opening* towards democracy, the NGO act of 1992 played a pivotal role as it provided the legal space for civil society to engage in political and social matters. The establishment of the NGO Council included all registered NGOs that elected their own board and chairperson and is the important civil society umbrella in Kenya which should preferably unite civil society. Bratton emphasises that, "in deeply divided societies, the emergence (of) civil society is likely to be

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<sup>14</sup> The present Prime Minister of the Grand Coalition government, a post newly created to ensure power sharing between the rival parties of Party of National Unity and Orange Democratic Movement

accompanied by an intensification of ethnic identity" (Bratton, 1994:4). Although it is preferable to refer to a politicised identity along ethnicity, instead of pure ethnic identity, Bratton's analysis applies to Kenya. Unfortunately, the ethnic political divide has affected the work of the NGO Council in recent years, as predicted by Bratton. Members picked sides as to political protagonists on either side of the divide, which split the council into fractions and crippled the important work of uniting civil society. The vital point to make is that civil society does not operate in a politics-free vacuum. It is part of the political landscape, since it comprises one of the important institutions of liberal democracy. The lack of cohesion within the NGO Council emphasises the aforementioned disconnection and disintegration that took place between CSOs and civil society and *mwananchi* as such: the three disintegrative theatres.

Some of the council members occupy seats on the NGO Board, which is the government arm that regulates civil society in Kenya. The NGO Board registers and de-registers<sup>15</sup> NGOs in Kenya and is consequently a powerful tool, one that influences the work of civil society and their methods of association, activities and advocacy. Broadly speaking, civil society in Kenya suffers on one side from the politicised ethnic divide existent between organisations, and on the other from the regulative control of the state. Both alienate civil society from the social constraints of the *mwananchi*, as this situation prevents the communicative and interactive role of civil society between state and citizenry.

The "elite theatre" sets the agenda for civil society's way of operation. The referendum on a new constitution in Kenya split civil society not only within the NGO Council, but also at the grass roots level. The banana and orange identity conflict forced CSO's either to support one or the other side. This meant civil society was following a political agenda set by the main political figures without establishing its own. In relation to state power, civil society should play a legitimising role for ideally providing popular acceptance to established institutions. To silence civil society in this respect, two strategies are apparent. The first one is to take away their freedoms, as happened in Kenya during the 1980's. The second strategy is to integrate them within the "elite theatre". The latter is not a conscious strategy, since the dynamics of the *breakthrough* phase enable civil society to engage in the "elite theatre" as active actors. This is a natural dynamic when the open democratic space needs to be filled. This very process in Kenya, however, left civil society in the lurch as many of its leaders lost their initial identities and the original objectives of many CSOs vanished. What

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<sup>15</sup> Any NGO must be registered at the NGO Board; without registration the NGO is not allowed to operate.



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was left in 2007 was a civil society which consciously or unconsciously supported one or another side in the political struggle by emphasising their own respective political-ethnic identity.

Within the *post-breakthrough process* civil society did not play the role as a civic institution that could be neutral in relation to party (ethnic) politics in Kenya. Instead of voicing the pressing problems of the *mwananchi*, party politics threw a veil over the pressing social problems. The *breakthrough* phase in Kenya created disorientation for civil society once it achieved its prime goal, which was to remove Moi from power. Civil society leaders left for the “elite theatre” in order to get their share of the now accessible cake, while the “theatre from below” had to orchestrate its play alone. Kenyan civil society was thereby silenced as it became incorporated into the struggle for power along well-known Kenyan ethnic lines. However, with the election of the NARC government in 2002, it seemed that Kenya might overcome the long history of this ethnic-politic divide, through amendment of the Kenyan constitution and formation of a government representing the majority of ethnic groups.

This early assumption turned out to be flawed, as the split of the NARC coalition and the 2007 election skirmishes emphasised<sup>16</sup>. Civil society had been a strong force in terms of civic education (for example the considerable improvement in turnout at polling stations) but was weak in terms of unifying Kenyans in the struggle for democracy as one nation (thus the skirmishes of the 2007 election). In other words, civil society has been squeezed between its struggle for democracy and the demand to access power.

Civil society in its current state will not be able to unify all Kenyans in the struggle for a *consolidated* democracy that will change the socio-economic conditions of the citizenry. Its ability to be an opposition to the Grand Coalition are meagre, because functioning institutions for the engagement of the civil society in the legislative process are crippled, not readily available or not properly established. The split of the NGO Council and the controlling NGO Board also limits the role of civil society as a check and balance institution, since it is divided along ethnic lines. The often close affiliation to political parties and their main protagonists further undermines the civil society capacity for the task. A Kenyan civil society that is engaged in all *three theatres* misses its function

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<sup>16</sup> One reason the coalition broke up was acrimony as to how to amend the constitution. The orange faction disagreed on the proposed amendments of the presidential faction and lobbied for a “no” at the referendum. The amendment was outlined single-handedly by the presidential faction after the Boma process collapsed. The major critique was that the proposals were not for devolving power but rather adding power to the position of president.

as a catalyst for a social contract – one between the state and the *mwananchi* for the *common good*, which builds on a consolidated democracy as a system of social justice.

#### **KENYAN CIVIL SOCIETY: CATALYST INSTEAD OF OPPOSITION**

The following section will look at which role civil society is actually capable of fulfilling in order to establish a contract that envisages “an overlapping consensus between people who otherwise have a very different comprehensive concept of the good” (Nussbaum, 2006: 70). It will elaborate on the possibilities for overcoming the division between the *three theatres*, within civil society and between Kenyans, and to thereby promote inclusion, redistribution and the eradication of poverty.

Kenyan civil society’s main objective, namely to re-establish democratic processes in Kenya, was paired with the assumption that democracy working together with a liberal market economy would automatically lead to prosperity and the eradication of poverty. The relation built between the people of Kenya and the state focused merely on the process (democracy) rather than the actual achievement of social justice. The *common good* emphasised by ethical values and virtues related to re-distribution; inclusiveness and equality were lost in the process itself, which in turn inherited the concepts of mutual advantage and equal opportunity for participation: a common philosophy related to the market dogma of demand and supply. Recent history in Kenya has taught that democracy is rather an empty shell of democratic procedures more than an effective tool for positive change for the *mwananchi*. The obvious problem was the lack of basic ethical values to drive home the democratisation process, and no clear formulation of where the journey should lead to. Civil society was too busy trying to be part of the “elite theatre” to take the *mwananchi* along on this vital journey. In this respect, a look at social contract theory helps to identify the gaps in the relationship between state and society and the pivotal role of civil society as a catalyst.

#### **Social Contract**

A social contract theorist such as John Rawls and others before him build their concepts on the state of nature (e.g. Hobbes) as the initial state of society. Rawls refers to it as the “origin society” that provides the guiding idea for a basic structure<sup>17</sup> (Rawls, 1972: 11). Justice for Rawls (in contrast to Hobbes) is contextual and substantive and takes societal values into account. In relation

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<sup>17</sup> Basic structure is defined as “the way in which the major social institution distribute fundamental rights and duties and determine the division of advantages from social cooperation” (cited at Nussbaum, 2006: 232)

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to Kenya, justice urges people to fill the empty “democracy shell” with values that are derived from society:

*“Whenever institutions satisfy these principals [of social justice] those engaged in them can say to one another that they cooperating on terms to which they could agree if they were free an equal persons whose relations with respect to one another were fair”  
(ibid.13)*

Institutions need in this respect to reflect the values and virtues of its society. Rawls assumes that this can be accomplished by involving people in the process to create a common basic structure. To accomplish this societal task, the *basic structure* of society is the point of departure. It defines what justice is and how people can participate in the definition process of social justice. Rawls contract theory aspires to implement “justice as fairness”, where the contract is made between equal partners that engage each other to mutual advantage (Nussbaum, 2006: 227). Rawls follows the Kantian tradition while assuming a “moral state” that represents the parties of the original position (initial state of society). In this respect Kenya seem to fall short of fulfilling the Rawlsian idea, since the post-independence state did not inherit the “moral” of all Kenyans in terms of equality, inclusiveness and redistribution. Leaders all too often do not represent the people in this respect, and Kenya seems to be no exception.

Communication between the citizenry and the state, with civil society as a catalyst, did not create a “Kenyan basic structure” at the institutional and a state level. The role of civil society as a catalyst for the legalization of a social contract between Kenyans and the state met serious obstacles in term of freedoms and its own attitude (the masquerading political player). The concept of nation - another pre-condition for Rawls - does not apply either as the Kenyan society is not only divided by ethnic (politicized) identities but also by strained social and economic conditions. To agree on a common *basic structure* as the crucial point for justice, a nation should consolidate itself not only in terms of procedures but also in terms of objectives which define social justice. Since in Kenya the negotiation process on equal grounds for a common *basic structure* was seriously flawed, due to historical unequal distribution of bargaining power, social contract theory calls for some augmentations.

### Capabilities: The Missing Link

It is vital to acknowledge that Rawls is oriented towards process (procedure) and is not normative in his approach. He assumes that popular participation on equal grounds, with mutual advantage as a driving force, would lead to a just society. The problem lies with the concept of equal grounds, as this concept often presume a non-existent equal society in terms of access to political, social and

economic resources. Nussbaum (2006) argues for a normative concept that builds on entitlements instead of procedures. These entitlements are "pre-political, not merely artifacts of laws and institutions" and they are based on human dignity as a mean and an end (ibid: 285). The existence of rights does not mean everybody can exercise them, alongside people who lack the capacity to do so. Nussbaum's capability approach enriches Rawls contract theory by pointing towards the need for an ability to exercise the right of participation – whether such exercise is political, economic or social. To enjoy ones right of speech, for example, one would need sufficient access to education (ibid.: 289). Although Kenya formally ensures free primary education and since the 10<sup>th</sup> parliament also secondary education is at least in theory free, many children and particularly girls miss out on adequate education opportunities. In this context, there is need for a substantive approach towards rights and procedures that is concerned with the outcome and not concerned only with the process itself.

**CONCLUSION: "NO PEACE WITHOUT JUSTICE"**

Civil society in Kenya has in the recent past been vibrant and certainly played a vital role in the restoration of democracy in Kenya at the end of the Moi era. The political vacuum after years of political oppression was filled by civil society protagonists who turned movements like FORD into political parties. However, Kenyan democracy still lacks the reform of state institutions, the proper implementation of elections and the "overall habituation of society to the new democratic rule of political engagement" ( Nasongo'o Muranga, 2007: 7). A consolidated democracy needs a strong civil society which freely engages in political, social and economic deliberations. Furthermore, Kenyan civil society needs to sustain interaction between the state and the citizenry in order to consolidate Kenyan democracy.

Civil society in Kenya is not able to fulfill the role of an opposition to the current Grand Coalition, simply because formal institutions for engagement are not established and that situations prevent an active role for any kind of opposition. Kenyan civil society and its CSOs cannot take the place of an active parliamentary opposition, which is pivotal for a consolidated democracy. The transitional process towards democracy that started in 1991 has therefore not been concluded. There is a need for a vibrant civil society which engages the citizenry in the political process, and also gives them voices to articulate their political, social and economic preferences, all the while acting as a visible and audible watchdog. Civil society will not be able to play on the stages of both theaters - the one from below and the elite, as history has shown.

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A first step to be taken is the civil society in Kenya to be called upon to advocate for all citizens' rights of participation, while simultaneously building capacities for political, economic and social participation. This would turn the "immoral state" into a state that lives up to intrinsic societal values that exist in every society. It would lead to a *basic structure* that enhances re-distribution, equality and inclusiveness and that furthermore is built on a *consolidated* democracy which envisages the Aristotelian Eudemonia (the common good) as its foremost objective, and would include human dignity as the vital indicator for the fulfillment of this objective.

Secondly, the constitution itself must be a pivotal part of the *basic structure* discourse. This document defines the distribution of power between Kenyans, the participation of Kenyans in political processes beyond elections, and the composition of institutions that enhance public participation.<sup>18</sup> Instead of just civic information, a civic education that articulates and demands active participation and ways of advocacy for change should be at the centre of these activities. Kenyans are aware of the governance system they live under, but lack ways to actually have an influence on it. As a catalyst, civil society has the obligation to advocate for the participation of Kenyans in the political process and should work for institutions that enhance public participation. It should transport the values and virtues of Kenyans towards the "elite theater" and at the same time unite Kenyans under these articulated values.

Third, civil society is urged to work towards one nation while at the same time it is necessary to overcome its own internal division. Hence it is essential for a *basic structure* to be built on an *overlapping consensus*, and this in turn will enable the political process to overcome the historically rooted social and ethnic divide between Kenyans. The formulations of a pro-poor agenda independent of ethnicity will for the first time unite Kenyans in a struggle for a just society and will also *consolidate* democracy into a substantive form. It will furthermore enhance the focus on political programs (ideologies) instead of person-related politics and build a political consciousness that is unrelated to ethnic heritage.

Civil society at this juncture should be a genuine part of the "theater from below", influencing the "elite and external theater" for the common good of all *mwananchi*. It should refrain from being a

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<sup>18</sup> The amendment of the constitution is part of the peace accord and should be concluded within the next year. Unfortunately, the process does not include public participation as it is negotiated between the PNU and ODM fractions within the parliament (government). It is not clear if the amendment of the constitution will be concluded by a referendum. However, a referendum would only seek public agreement but not participation.

*hidden political player* that does not bring change but still prefers to be part of the very political system in question. Acting independently, civil society will be able to set a popular agenda that looks towards the fulfillment of a social contract based on a consolidated democracy. However, democracy alone will not be able to overcome the socio-economic divide that is the undercurrent of ethnicized political conflict. Democracy is only a vehicle to distribute power while bargaining power within Kenya is unjustly distributed. Civil society could have the essential role to impel redistribution of political, social and economic power between those who have and those who do not have.

“No Peace without Justice” was the chant of people demonstrating in the streets of Nairobi and elsewhere in Kenya after the election in 2007, and this pinpoints the vital task of civil society and the Grand Coalition. If the question of justice in relation to democracy and participation is not addressed as part of this process, it will take Kenya back to skirmishes and unrest and leave the country without a consolidated and substantive democracy in its immediate or more distant future.



## Carsten Brinkmeyer – Democracy without Opposition

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**ABBREVIATIONS**

CBO	Community Based Organizations
CSO	Civil Society Organizations
FORD	The Forum for the Restoration of Democracy
GEMA	Gikuyu, Embu, (A) Meru Association
NARC	National Rainbow Coalition
NGO	None Governmental Organisation
ODM	Orange Democratic Movement