



## **Global Impulses / Local Politics: Comparing two Eras of Constitution making in Kenya**

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Do current globalisation trends spell out an era of post ethnicity? This paper argues that With Africa on the current global stage, and given the current globalising trends, ethnicity as a central basis for cleavage formation in local politics is weakening as new forms of interaction between global forces and local events inspire alternative forms of coalitions and cleavages among citizens. In making this argument, I examine two eras of constitution making in Kenya associated with different manifestations of global trends i.e., the independence constitution era that ended in 1963, and the current on going constitutional review process that began in 2000.<sup>1</sup> I argue that global and local forces that led to constitutional changes associated with decolonisation in the 1960s ushered in forces that oriented Kenya to play her role in a global stage. Currently global forces and local interactions that urge constitutional changes associated with democratisation impel Kenya to make global consensus work locally. In this regard, there has been a shift in emphasis from globalising the local that was pre-eminent at decolonisation to that of localising the global that is pre-eminent in the current constitutional review environment. With this shift, ethnicity as the significant factor in cleavage formation has been weakened as newer global and local forces that urge a localising of the global call for and provide newer bases of group and interest formation.

In spite of the current pre-occupation with globalisation and statements to the effect that “Globalisation is inevitable and irreversible,” Globalisation has been going on since mid 15<sup>th</sup> Century. In the 18<sup>th</sup> Century, global forces sent impulses that led to colonisation of Africa by European nations. By the mid 20<sup>th</sup> Century, global impulses interacting with local forces necessitated constitutional changes that led to decolonisation. Globalisation in its current content and form that began in the post-Cold War period send impulses that interact with local forces that urge a move towards democratisation through constitutional changes.

The current constitutional review process in Kenya does not mark the first time that global and local forces have converged to impel constitutional changes in the country. Between 1940s and 1963, Kenya underwent a process of constitutional debates and constitutional changes that culminated in the three constitutional conferences at Lancaster House in London, ending with the independence constitutional arrangement of 1963.

The independence constitution derived from global impulses interacting with local politics that played out both inside Kenya and in the UK at Lancaster House where the

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<sup>1</sup> The processes that urged the current constitutional processes that ushered in the current constitution began earlier than 2000. However, it is in this year that commissioners were appointed and work on constitutional review currently under progress began.



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independence of Kenya was negotiated. The constitutional events and engagements drew from global impulses emanating from as diverse locations as America, Egypt, Southern and Central Africa, India, USSR among others.<sup>2</sup> These global impulses flowing via specific discourses, agents and international agreements interacted with local forces that resisted colonial exploitation and forced a crafting of alternative competing constitutions that represented various interests in colonial Kenya. The debates and disagreements manifested in competing constitutional proposals finally led to the three constitutional conferences at Lancaster House in the UK. The first conference in 1960 was to draft the independence constitution. The second took place in 1962 to thrush out the differences and disagreements which arose from Glocal\* (Global & Local) issues that delegates had failed to agree upon in the previous conference. A third conference in 1963 was to finalise constitutional arrangements for independence - the independence constitution. The independence constitution gave birth to the current constitution under official review since 2000. The constitution however had been under scrutiny almost from the time of its inception.

There are a number of significant parallels in the global and local interactions that propelled constitution making in Kenya in the two eras. The current comprehensive review of the constitution draws from a history of a number of constitutional amendments that vested unchecked powers on the presidency and in turn, led citizens to call for constitutional changes that would enable power sharing, checks and balances and greater citizen participation in the 'making of Kenya'. Similarly, same issues of power and control were at the centre of the controversies over the independence constitution. Constitutional debates at the time drew from colonial constitutional legacy that had vested much power on settlers at the expense of other racial groups. This ignited demands for constitutional changes that would address many of the issues around representation and control of the state.

From a global perspective, both constitution making eras have taken place within the context of two major wars, which produced global impulses, that urge the constitutional changes. In the first era, a war weary world in the post Second World War period sent impulses that urged decolonisation. In the current era of constitution making, the post Cold War period produced global impulses that urge democratisation. In a rather significant way, both the independence constitution and the current constitutional review process hold definite roles in positioning Kenya to function in a global system. On the one hand, the constitutional arrangements through which Kenya became independent meant that Kenya would have the opportunity to perform among independent nations of the world. One of the immediate actions after independence was an application for membership to the United Nations through which Kenya became a Member of the United Nations 'just hours after attaining independence' in December 1963, making the occasion a giant step in the exercise of independence and sovereignty in the arena of community of nations.<sup>3</sup>

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<sup>2</sup> For more on these global derivations see Oginga Odinga, (1967), *Not Yet Uhuru*, Heinemann London

<sup>3</sup> See "Kenya and the United Nations", [http://www.un.int/kenya/kenya\\_un.htm](http://www.un.int/kenya/kenya_un.htm)



While the independence constitution gave rise to the current Kenyan constitution under review, constitutional amendments during the presidencies of Kenyatta and Moi can be viewed as moulding the highways through which issues that currently plague the constitutional review process travelled, became modified and were transported into current constitutional debates. In the 1980s and early 1990s, a burgeoning vocal civil society became the agents that generated constitutional debates, while Human Rights discourse served as the frame around which constitutional issues were initiated and debated. This is markedly different from the colonial times when colonial administrative practices both invented and established ethnicity as the single most significant context of political interest.<sup>4</sup>

### **The Independence Constitutional Issues, Global impulses and Persistent Ethnic Frames.**

The independence constitution was negotiated within the context of global impulses and local demands in colonial Kenya that ultimately coupled constitution making and constitutional changes to ethnic demands. The Independence constitution was debated in a global era that demanded rights of peoples to choose the form of government that they deem right, and representative of their aspirations. With the formation of the United Nations (UN) in 1945, Kenyan nationalists sought independence from British colonial rule within the global paradigm of the rights of people to choose. The nationalists' language of self-determination drew directly from international discourses on self-determination and peoples right to choose. Locally however, different groups, arranged along ethnic cleavages, became located in different standpoints to the proposed constitutional changes while they in turn proposed competing alternative constitutions that made for much disagreements, bargains and negotiations in order to arrive at a final constitutional arrangement negotiated to accommodate the ethnic equation in Kenya.

The initial constitutional hitches arose from parameters framed by racial questions and race relations of the day that pitched various racial groups in Kenya against each other. From its inception, colonial administration placed various racial groups in a hierarchy of racial privileges, rights, and status in politics, economy and in social life. Leys (1975) describes how European settlers, for example, maintained a racial supremacy and racial advantages and privileges through a system of monopoly of high potential land, agricultural labour, government services and the most profitable crops. Africans at the opposite extreme in the racial divide lived under appalling conditions in poor and congested reserves, overcrowded urban centres, with poor or no government services, and were subjected to extremely poor working conditions.

Joseph (1997), points out that under racial hierarchies, constitutional debates are often limited to demanding rights and privileges that the other race possesses, or to its corollary of removing constraints on lesser privileged racial groups. Indeed as the constitutional

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<sup>4</sup> For a detailed discussion on ethnicity in Kenya, see "Ethnic Patronage and the Politics of Uncivil Nationalism", Bruce Berman, *African Affairs*, July 1998, v 99.



debates raged in Kenya in the 1950s, racial tensions were drawn into the conflicts around the constitution that pitched European settlers, Africans, Asians and Arabs as racial groups in opposing & contentious positions with regard to their location in any constitutional arrangement.<sup>5</sup>

The settler's demands centred around continued European dominance in Kenya. This was part of an earlier and wider global enterprise at enforcing Anglo supremacy.<sup>6</sup> However, the Kenyan variant of European supremacy had taken a local flavour since the European occupation as settlers became 'declassed' and assumed an overall racial privilege in Kenya. For example, a significant number of settlers who came to Kenya came from the lower classes. Frost (1997) describes the composition of settlers as including blacksmiths, shoemakers, Afrikaners running from depression and hardship that arose due to the Anglo Boer war as well as from the aristocracy with money and social position. In spite of the mix, the settlers took on privileges and assumed status that they did not ordinarily enjoy in their own countries, but those that acted as symbolic to a privileged status in Kenya. A memo by sir Donald Cameron lamented thus,

Where native labour is available, Europeans even of the domestic class refuse to perform for themselves the services which they were forced to discharge for themselves in their own country.<sup>7</sup>

Such symbolic assumption of supremacy was accompanied by demands for greater rights and privileges within the colony viz African and other racial groups. By 1945, these rights were deeply entrenched and the settlers, through their party Electors union - aimed at preserving these rights and privileges at all costs including the use of military force against any constitutional change that did not guarantee them such privileges.<sup>8</sup> A note from Mr. Hugh Fraser for example, described some Europeans as "once more carrying constitutions inside their pistol holsters"<sup>9</sup> In addition to demands within Kenya, the

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<sup>5</sup> These are the four categories of race used by the colonial government in its administrative policies. In addition to these is the category 'other' that appeared in population census. Somalis who did not fit in the four racial categories fall in this group although they were often also referred to as Somalis.

<sup>6</sup> Racial supremacy was encapsulated in the very ideas of a civilizing mission as one of the justifications of colonialism and in words of key personalities such as "The white race... is the guardian of values that are essential to the welfare of the black race as well as our own", J.H Oldham, quoted in Richard Frost, Human Relations and politics in Kenya before Independence, Transafrica press, 2<sup>nd</sup> edition, 1997 p 15.

<sup>7</sup> PRO CO 822/4/19 Imperial Policy in East Africa, Revised memo by Sir Donald Cameron on Federation, 3/6/1927

<sup>8</sup> In March, 1944, the Europeans in Kenya formed a new party, the Elector's Union, with the express aim of forging and sustaining white unity in the face of what was seen as turbulent years ahead (They published in 1949 the Kenya Plan, which outlined policies that spelt out European determination to continue in their dominant position in the country. The Kenya Plan advocated for a constitution that would give the European community the greatest possible executive control and the maximum amount of local government autonomy outside the native land units (Ogot 2000 p 63 - 64).

<sup>9</sup> Hugh Fraser, The Kenya Constitutional Question: A Note. CO 822/599



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Electors' Union also mobilized opinion externally, drawing from global impulses and urging local inclinations into the global scene.<sup>10</sup>

In their search for European supremacy at all costs, the settlers were completely indifferent to the African political aspirations and adopted an uncompromising racial attitude that brought white nationalism on a direct collision course with African nationalism (Ogot 2000 p 65). The collision was to cause a local political split among Europeans<sup>11</sup> during which race was translated into ethnicity as Europeans became "tribalised" and joined local tribes in opposing or advocating specific constitutional arrangements.<sup>12</sup>

Another impulse entrenching ethnicity as the central locus of cleavage during the constitutional debates was the colonial government that increasingly began to see tribes as the main cleavage for calculating any constitutional arrangement. The Colonial Office in particular began to view Kenya not just from the prism of Race, but also through the prism of "tribe", and ethnicity began to figure more prominently in imperial calculations (Maxon 46).

The Asians, who were new arrivals to Kenya, with colonization formed a separate racial group with neither the privileges of the white colonizers nor the under privileges of the Africans. Yet their constitutional politics, like that of the Europeans and that of the Africans had a global derivation as well as a local flavour. With Origins in India and the connection between India and Britain, Indians in Kenya held a rather precarious comparative racial position of a 'privileged/disadvantaged' group. They initially had a nominated representation in the legislative council, but later were enfranchised to elect representation to this council through a common communal roll. Through out the colonial period, settlers continuously resisted political concessions to Indians, and often the settlers got their way.<sup>13</sup>

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<sup>10</sup> The Electors Union for example had a "Foreign Affairs" dept., which liaised with representatives in London, and the Joint East and Central African Board. They also developed contacts with influential individuals in Central and Southern Africa, became a member of United Central Africa Association in Southern Rhodesia (Zimbabwe)

<sup>11</sup> The European electorate had largely united against the colonial government, but now was faced with a growing African nationalism and militarism around MauMau. This led to a split in which 6 of the 14 European Elected members joined with some Asian elected members to form a non-racial party – The New Kenya Group led by Michael Blundell, while 8 remained on a policy based on maintenance of their racial superiority demanding racial segregation and racial supremacy.

<sup>12</sup> Wilfred B Havelock remarked that the Europeans had transformed themselves into a small tribe to gang up with other smaller tribes against domination and exploitation by larger and more powerful groups. Quoted in Macharia Munene, "The Manipulation of the constitution of Kenya, 1963 – 1996: A Reflective Essay, 2001.

<sup>13</sup> For example, there were numerous meetings in the early 1920s among white settlers who resolved to resist by armed force if necessary any policy which they believed to involve dangerous concession to Indians. At that, time too, a deputation of settlers asked for unofficial majority so that among other things, full control would be given them over Indians. See Cameron 1927 PRO CO 822/4/19.



When the constitutional debates began, European settlers drew from this legacy and locally expressed sentiments against concession to Indians. The global implications of the local political rivalry between Indians and settlers became clear in the fears expressed by Sir. S. Wilson. He had earlier noted that any alteration of the existing constitution in Kenya, which would give greater representation to Europeans, and no proportional increase of representation to Indians would reopen the floodgates of the 1923 controversy that would be felt more in India than in Kenya.<sup>14</sup> Indians on the other hand were also the envy of other racial groups, particularly the Arabs and the Somalis. The former sought equal treatment and status with the Indians while the latter sought racial identity parity with Indians.<sup>15</sup>

Arabs stated that they represented the Arab immigrants from Arabia, demanded that they be distinguished from natives, and protested against criminal procedures, ordinances and other colonial statutes that included Arabs and Somalis as natives.<sup>16</sup> Indeed the official definition of Native had a clause that excluded a Somali or a Swahili.

Originally, the Imperial vision that was predominant since 1942 was to find people who could be bound to Britain in such a way that they would protect and maintain British economic and strategic interests in Kenya (Maxon 2000 p46). Along these lines, and coupled with the increasing demands by Africans for greater representation and their calls for “Africa for the Africans”, the colonial government worked around initiatives on multiculturalism.<sup>17</sup> Initially Africans and moderate European settlers used the multicultural proposals to stake out concessions.<sup>18</sup> By the late 1950s, both Africans and radical Europeans vehemently opposed multiculturalism, as an option for Kenya, finally forcing the colonial government to adopt a policy aimed at scraping multiculturalism and to pursuing a rapid policy towards African majority rule.<sup>19</sup>

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<sup>14</sup> See Wilson PRO CO 822/4/19

<sup>15</sup> Somalis had demanded to be classified as Asiatic but this could not be granted. The colonial government argued that such a classification would cause an embarrassment to British administration in Somaliland and Northern Frontier Province of Kenya. In the end, Somali's paid non-native poll tax at their own request in order to be distinguished from African natives.

<sup>16</sup> See Arab witness to the Joint select Committee, Afro-Asian Association petition: Status of Arabs PRO CO 533/425/20

<sup>17</sup> Both the Lyttelton constitution of 1954 and the Lennox Boyd Constitution of 1958 (named after the two secretaries of State who proposed them), proposed constitutional changes that aimed at providing greater African participation while maintaining the principle of multiculturalism.

<sup>18</sup> In the 1950s, the paradigm of multiculturalism had served as a useful reassurance to the white settlers, imperial power, and Africans. Europeans needed support from Asians, Arabs, and at least some of the Africans in order to maintain continuing white leadership of the country. On the other hand, indigenous black Kenyans saw multi-racialism as an intermediate stage pending black majority rule. See Mazrui (2002 p 70

<sup>19</sup> Mazrui points out however that for the Swahili, Asians and Arabs, multiculturalism was in a ‘genuine political lifeline. Ethnic confusions that Swahilised Arabs and Arabised waswahili contributed to the coastal preferences for a multicultural rather than an Afrocentric Kenya. (Mazrui 2000 p 71)



Once the colonial government abandoned multiculturalism as a constitutional option, ethnicity took centre stage as the locus of constitutional bargain and negotiations. I noted earlier that within Kenya, Europeans became 'tribalised' while the Colonial Office convinced itself that tribalism and ethnicity were the factors to reckon with in Kenya's politics. Among the Africans, ethnic divisions became glaring as ethnic interests emerged as a common feature of decolonisation (Murungi 1995) and demanded constitutional safeguards to the interests of 'minority' groups. Ethnicity and ethnic tensions held up constitutional talks at Lancaster as London watched to see its desire for rapid independence held up by ethnic disagreements. The disagreements pitched various ethnic groups against each other leading to both internal and interracial splits, coalitions and counter coalitions among groups with competing ethnic agendas and visions for constitutional changes and constitution making. With these ethnic tensions and conflicts in the 1960s, the constitution was debated, negotiated and finally agreed upon within the framework of fear and desire to protect threatened ethnic group interests.

Ethnicity not only became the central identity divide, but also the central locus of configuring interests. Consequently, 'minority' ethnic groups bargained from the position of fear that the larger ethnic groups would dominate independent Kenya. Their desire through Kenya African Democratic Union (KADU) was to have a constitution that would protect their interests as minority groups in Kenya. The settlers approached the constitution from fear that their dominant position would come to an end and wanted a constitution that would protect their interest as a minority. They joined forces with the smaller African ethnic groups on a commonality founded upon fear. The larger ethnic groups wanted 'independence now' to acquire the necessary power to rule Kenya. In the midst of these local politics, global impulses flowing through US and USSR pressure, also sent renewed pressure for decolonisation.

Following the 1961 elections, European settler influence was greatly reduced, but this only served to provide wider glimpse of ethnic divisions among the African majority. In the final analysis, the Majimbo constitution<sup>20</sup> that ushered in independence in 1963 sealed ethnicity, as the central locus of political competition, and of cleavage formation into the political system of independent Kenya by passing Lower House constituencies and Upper House seats almost exclusively on ethnic lines. Ogendo (2001) concludes that political parties reached independence as mere federated ethnic loyalties grouped around individual personalities.

### **The Current Constitutional Review process: Decentring Ethnicity.**

Speaking from hindsight, and a clear picture of unfolding myriad constitutional amendments since independence, a number of Kenyan scholars have pointed out that the independence constitution was untenable for various reasons. It was too complicated, according to the Constitution of Kenya Review Commission (CKRC), it showed a

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<sup>20</sup> 'Majimbo' was the system of government introduced in Kenya by the Kenya Order in Council legal Notice no. 245 of April 18 1963. It provided for the sharing of executive, legislative and financial powers of the state between central and regional governments. Kiraitu Murungi "Ethnicity and Multipartyism in Kenya: Thoughts on Democracy series, Issue 3, 1995.



remarkable distrust of power (Ghai and McAuslan, quoted in Ogendo 2001), the constitution was alien to the history of government in Kenya and at variance with the authoritarian structure of the administrative set up inherited from the colonial period (Ogendo 2001), and the signatories had no faith in it anyway (Munene 2001). These sentiments are significant in understanding some of the modalities of interaction between global forces and local politics. Justifying the need for a comprehensive review of the constitution, CKRC stated that the attempt to accommodate everyone's interests in the 1963 constitution necessitated an approach that resulted in inherent instability.<sup>21</sup>

By the time of the first anniversary of independence, constitutional amendments initiated a practice that has seen an average rate of one constitutional amendment per year. (Muigai 2001). The frequent amendments to the constitution resulted in extensive presidential powers that finally led to much abuse of power by the two presidents of Kenya.<sup>22</sup> The first group of amendments removed and finally wiped out regionalism as designed in the independence constitution creating instead a situation that KANU would have liked to see in 1963 (Ogendo 2001).<sup>23</sup> In 1964, KADU dissolved and members joined KANU, but without any clear crafting of alternative modes of cooperation on previous contentious issues that divided the two parties along ethnic lines. Consequently, while KADU joined KANU, resolves and cleavages remained trapped in ethnic interpretations and meanings. The move transferred ethnic strife and competition from regions to parliament. With increased presidential power, the presidency turned into the epitome of patron client relationships now operating in Parliament. Ethnic rewards and privileges that are characteristic of patron/client relations inspired a need to defend the presidency and subsequently the president became jealously guarded along ethnic interests and the presidency became an object of ethnic defence at all cost.

For example, when Odinga broke away from KANU in 1966 and formed an opposition party, Kenya People Union (KPU), the Kikuyus began to take an oath to defend the presidency. In the same vein, as Kenyatta's health failed a group referred to as the "Kiambu Mafia" tried to change the constitution so that Moi would not automatically take over power from the President.

In the Moi era, Adar and Munyae (2001), point to a clear 'Kalenjinisation' of the Public service with a concomitant 'dekikuyunisation' of the same. This once again points to the ethnic trappings that continued to orient political outlook and options for resolving national issues.

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<sup>21</sup> For a detailed analysis of constitutional amendments in Kenya, see J.B. Ojwang', *Constitutional Development in Kenya: Institutional Adaptation and Social Change*, Acts Press, 1990. Also Okoth Ogendo

<sup>22</sup> The constitutional amendments created a powerful presidency and presidential powers through constitutional changes that at the same time weakened the authority of parliament, restricted arena of political discourse and subordinated holders of constitutional offices to the whim and pleasure of the president (Constitutional Review Commission; 2002 p 20-21).

For the Kenyatta era, see Okoth Ogendo, Oginga Odinga and for the Moi era, see Adar and Munyae

<sup>23</sup> It took seven separate amendments, in three years to establish a single-chamber National assembly, see J.B., Ojwang, *Constitutional Development in Kenya: Institutional Adaptation and Social change*, Acts Press, 1990, p 115





Furthermore, in both the Kenyatta and Moi era, nation building and national unity were framed around ethnic thinking that viewed tribalism as the main threat to national unity. On the other hand, ethnic patronage remained the main lifeline of most political leaders. Ethnicity remained both seduced and rejected by political authorities. In the Moi era, ethnic associations such as Luo Union, GEMA, Abaluhya Union were all banned. In the late 1980s and early 1991 when citizens demanded multi party politics, the reason given as dangers of multi party politics was centred on ethnic understandings of the political implications of multiparty politics. Indeed in the first multi party elections in 1992 and the second one in 1997, ethnic conflicts flared up in a number of provinces.

Yet even as local politics elicited trappings of ethnicity, The post independence period produced local contexts that interacted with newer global impulses that were both re-framing issues, re-mapping boundaries of coalitions and cleavages, and laying groundwork for broader based thinking on events and national issues, creating new areas of tensions that motivated alternatives to ethnic based cleavages. Cleavages among intellectuals and student politics marked by student riots at the university of Nairobi for example began in the early 1970s. Marxist ideologies brought Marxist scholars together around intellectual cleavages that produced other alternative bases of interests. 1975 was the Decade for women that culminated in an international meeting in Nairobi in 1985 to mark the end of the Decade, bringing new areas of tensions and cleavage around gender issues as women's issues began to emerge more strongly as a global agenda.

Clearly, global and local initiatives and forces were beginning to interact in ways that unveiled diverse and alternative lines of cleavage around issues such as democracy, Human Rights, gender, justice, freedoms and opposition to authoritarian rule. With these, a post-ethnicity era began to emerging more clearly, with possible alternative platforms in the formation of new alliances, coalitions and issues motivating consensus among interest groups that are not necessarily bound to ethnicity, nor framed around ethnicity as the central divide or the central locus of cleavage. Such newer lines of cleavages with other bases of motivation also point to fragmented ethnicities that are continually being fractured more openly by divided loyalties, interests and motivations that are beyond ethnic frames. This happens as newer alternative lines of cleavages are becoming more readily available to the general populace in the current constitutional review processes that would not have been so obvious in the pre-independence era and the immediate period following independence. Possibility of alternative lines of cleavages allows for experimenting with more divers compositions of interest groups and alternative lines of cleavages

In the 1990s for example, as the civil society questioned the Human rights abuses associated with a powerful presidency, various groups explored and experimented with newer options of coalition and cleavages for engaging the state, based on common interests and concerns outside the frames of ethnicity. Odinga and Anyona, for example



tried to register an opposition socialist party in 1982. There was a coalition around justice issues between the churches and Lawyers through the Justice and peace Convention<sup>24</sup> chaired by Bishop Okullu with Paul Muite of Law Society of Kenya (LSK) as secretary. The Kenya Human rights Commission was formed via motivations that derived from common interests around human and people's rights, e.g.. A number of women's organisations such as League of Kenya women Voters, National Committee on the Status of women, Women Political Caucus were formed along gender lines that made for alternative lines of cleavages. These new coalitions drew from internal forces as much as they were propelled by global impulses particularly those urging democratisation. But had clearly shifted away from the ethnicity as the motivating force of formation.

This however, does not mean that ethnicity has been erased, or that there are no further ethnic motivations even within the interest groups. Ethnicity indeed remains a glaring force. Multi party politics in Kenya in the first multi party elections in 1992 and again in 1997 suffered tremendously from the entrenched legacy of ethnicity and ethnic trappings in political outlook within the civil society even as alternative lines of cleavages emerged. The ethnic factor in the split among opposition parties was paramount, and the strong link between party politics and ethnic rivalries and cleavages coloured Kenya's multi party politics in the 1990s almost as extensively as it had coloured the splits and division in the constitutional debates around independence.

There are clear opportunities to move away from ethnic trappings that were not as readily available to constitution makers in the independence era. For example, the composition to the review process of women's representation draws directly from global efforts and local initiatives to have women represented in national decision-making bodies in Kenya. In its composition that is based on affirmative action, the review commission responded to pressure by Kenyan women who had also drawn a lot from the international support based on demands for women's involvement in national decision-making positions.

Review itself was also a response to global impulses and local politics that led to demands for greater democratisation and called for a necessity to look at the constitutional issues that continue to deny rights to Kenyans. Joseph (p369) explains how private Africans and non-African actors steadily increased their efforts on behalf of Human Rights, Civil Liberties and Pluralist democracy during the 1980s. External forces narrowed the options available to recalcitrant regimes in ways that weakened their ethnic patronage while at the same time bolstering insurgent groups.<sup>25</sup>

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<sup>24</sup> The Justice and Peace Convention aimed at bringing about 'peaceful changes in Kenya through a public dialogue and peoples understanding of their rights and responsibility as free citizens. See discussion in Galia Sabar Friedman, "Church & State in Kenya, 1986 – 1992: The Churches' Involvement in the Game of Change, *Africa Affairs*, vol. 96, Issue 382, Jan 1997, pp 25 – 52.

<sup>25</sup> See Joseph R., *Democratisation in Africa after 1989, Comparative Theoretical Perspectives, Comparative Politics*, vol. 29, no. 3 April 1997, 363 - 382



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The constitutional review itself is taking place at a time when there is a general critique of Africa and the globalisation process and what impact globalisation is having on Africa. Amidst all of this, are suggestions on possible ways that Africa can manage globalisation which is seen to be inevitable and that is already present in Africa. There are calls by African intellectuals pointing to a need for Africa to define its place in the new globalising world by fashioning our own modernity (Mazrui 2001). There are fears that globalisation may eclipse Africa and her people, or further marginalize Africa and her peoples making them unequal partners in a global village, or contrastingly hope that globalisation will usher Africa and her peoples into a new phase of development, peace and progress (Jack – Bromilow 2003). Clear calls to counter the global power games and define African terms around which to engage globalisation.

The emergence of new cleavages that cut across ethnicity in the new constitutional debates and tensions make for a rethinking of the strength of ethnicity as a cleavage factor in the globalisation era and Kenya in the globalisation era. The place of women, minorities and disability in the constitution make for expanded trajectories around which political tensions and conflicts can be centred and resolved. Furthermore, with new global forces taking on currency, there are clear possibilities of that producing mitigating effects of ethnic differentials removing the so far restricted focus on power and privilege that derive from ethnic strength in politics? Indeed religious cleavages may make for other means of viewing contestants and providing for a variety of choices not necessarily locked in ethnicity. The civil society that was so vigorous at the height of multi party debates and democratisation has not settled back into a residual ethnic mould. On the contrary, bases of unity to object to excesses, undemocratic practices and unlawful behaviour by leaders remain a potential area for crafting forms of democratic oriented cleavages and civil society groups that would keep a watchful eye on proceedings and political procedures. Yet, clearly, the inverse relationship to the global forces is evident. The Human Rights discourse around which constitutional demands have been made are a clear attempt to localise much of this global discourse on models of justice, freedoms and rule of law. In the lead up to independence global and local forces interacted in directions that eclipsed much of such possibilities. The lead up to the comprehensive constitutional reviews taking place have assembled many more alternative lines of interest formation that would enable Kenya to move forward. Stakeholders and those involved in the process of constitution making have the responsibility to draw from such alternative forms of cleavages.



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