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The power and limits of social movements in promoting political and constitutional change: the case of the Ufungamano Initiative in Kenya (1999-2005)

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The power and limits of social movements in promoting political and constitutional change: The case of the Ufungamano Initiative in Kenya (1999-2005)

A thesis submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, South Africa, in fulfilment of the requirements for award of a degree of Doctor of Philosophy

By

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ABSTRACT

The Kenyan political landscape has, since the 1990's, been tumultuous and characterised by multiple political and social struggles centred on embedding a new constitutional order. This thesis is a qualitative case study of the Ufungamano Initiative, a powerful movement involved in these struggles between 1999 and 2005. Emerging in an environment of deep societal divisions and multiple sites of struggle, the Ufungamano Initiative is a remarkable story of *how* and *why* previously disjointed and disparate individuals and groups came together in a 'movement of movements' to become a critical contender in Kenyan constitutional reforms. The movement utilised direct citizens' actions and was directly in competition with the Moi/KANU state for control of the Constitution Reform Process. This direct competition and challenge, posed a legitimacy crisis on the state led process forcing an autocratic and intolerant regime to capitulate and open up space for democratic engagement of citizens in the Constitution Reform Process. But the Ufungamano Initiative is also a story of the limits of social movements. While holding so much power and promise, movements are limited in their ability to effect fundamental changes in society. Even after substantial gains in challenging the state, the Ufungamano Initiative was vulnerable and agreed to enter a 'coerced' merger with the state-led process in 2001. The merger dissipated the Ufungamano Initiative's energy.

This study therefore speaks to the power and limits of social movements in effecting fundamental changes in society. Applying a socio-historical approach, the study locates the Ufungamano Initiative within the broader social, economic and political struggles to argue that contemporary constitutional reform struggles in Kenya were, in Polanyi's (1944) terms, double movement type of societal counter-movements to protect itself from an avaricious economic and political elites. Engaging the political process model, this thesis analyses seventy in-depth interviews and secondary data to explain the dynamics in the rise, operations, achievements and decline of the Ufungamano Initiative as illustrative of how movements emerge, take on a life of their own and sometimes metamorphose into phenomenal forces of change, or just fizzle out.

Keywords: Social Movements. Civil Society. Citizen Participation. Constitutional Reform Struggles. Kenya.

DECLARATION

I declare that this thesis is my own unaided work. It is submitted for the degree of Doctor of Philosophy at the Faculty of Humanities, University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university. Parts of this thesis appear in a recent (2012) journal article 'Social movements and socio-political change in Africa: The Ufungamano Initiative and Kenyan constitutional reform struggles (1999-2005)' that I published in *Voluntas*, (2012), 23: 63-84.



Jacob Mwathi Mati

23rd day of May 2012

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This thesis is a result of collective labour of many individuals and institutions that I wish to express my appreciation to. The thesis is a culmination of many years of carefully nurtured self-introspection as well as extrospection of my lived experiences. In 1990, a year before I sat for my high school examinations, the government of Kenya was 'forced' by the Bretton Woods Institutions to cut public expenditures in social services. Health and education sectors bore the greatest brunt of this. The subsequent impacts were manifold. Many children dropped out of school. The state no longer afforded health care to its citizens. When I joined Moi University as an undergraduate student in 1993, the militancy of student activism against the ascendancy of neo-liberal economic orthodoxy and bad governance had reached its peak. Politically, Kenya was a society at war with itself as open defiance against the regime of Daniel arap Moi gained momentum. While jargons like the Structural Adjustments Programmes featured in my lectures, I was also living their effects. I naturally began questioning what was happening around me. Years later, as a Master of Arts student, I became increasingly curious to understand the vortex I was living in. It was then that I decided that I needed to understand the motivations and drivers of all the struggles that were happening in Kenya.

Isaac Newton once wrote to Robert Hooke, a fellow English philosopher on 15 February 1676: 'If I have seen further, it is by standing on the shoulders of giants.' In so many ways, this aptly applies to me in the course of this odyssey, which would never have been easy without the insightful guidance, patience, and critical reviews of my supervisor - Professor Michelle Williams, who has, over the last few years mentored and instilled a sense of focus in me.

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None of these people though, bear responsibility for any errors of fact or interpretation that this research may contain. That is my responsibility as the sole author.

DEDICATION

To the gallant sons and daughters of Kenya who selflessly watered the tree of constitutional change with intellect, sweat and blood, so that every Kenyan may have a better future.

TABLE OF CONTENTS

ABSTRACT ..... ***ii***

DECLARATION ..... ***iii***

ACKNOWLEDGEMENT ..... ***iv***

DEDICATION ..... ***vii***

TABLE OF CONTENTS ..... ***viii***

Chapter One: Introduction and Study Background ***1***

Introduction **1**
Study aims **6**
Study rationale **7**
Organisation of the thesis **17**
Conclusion **20**

Chapter Two: Theoretical Framework and Literature Review ***23***

Introduction **23**
Defining and theorising social movements **25**
Theoretical explanations for emergence of social movements 31
Defining and theorising civil society **41**
Civil society as a relational concept 44
Civil Society as an arena and means of contesting and challenging state power 46
Civil society as a process 50
Towards a working definition of civil society 51
Linking civil society and social movements **52**
State-civil society relations **53**
Conclusion **56**

Chapter Three: Methodology ***57***

Introduction **57**
The study design: a case for qualitative case study **57**
Is the Ufungamano Initiative a sufficient case for this analysis? 60
Data collection and analysis **62**
Literature review 63
Document review 64
In-depth interviews 64
Sampling and access for interviews 66
Issues dealt with in the course of data collection 67
Reliability and validity issues 73
Data analysis 75
Ethics appraisal **76**
Study limitations **78**
Conclusion **78**

Chapter Four: Sowing the Seeds for Kenyan Constitutional Reform Struggles ***79***

Introduction **79**
Struggle cycles in Kenya's reform project: background and analytic model **80**
Phases in the Kenyan reform struggles 86

The pre-1945 struggles against colonial pacification 88
Nascent nationalism and militarisation of the struggle (1945 and 1963) 89
The immediate post-independence decade contentions 91
The 1970's: State predation versus opposition from within 99
The militancy of the 1980s 101
The late 1980s to mid-1990s: confluence of pro-democracy forces in the birth of contemporary constitutional reform struggles 109
The political ping pong of mid 1990s to 2005 128
Post-2005 development and the realisation of a new constitution 144
Conclusion 145

Chapter Five: The Birth of the Ufungamano Initiative: From Discordant Voices in Wilderness to a Forceful Movement of Movements 147
Introduction 147
A cartography of actors in contemporary constitutional reform struggles in Kenya 150
Towards a different typology of actors in contention 154
Actors advocating people-centric and driven constitutional reforms 155
Actors opposed to people-centric and driven constitutional reforms 159
Neutral/ indifferent actors 160
Theorising the Ufungamano Initiative's emergence 163
Relative deprivation of rights and the emergence of social movements 163
Leadership and structural context in the emergence of social movements 165
Political opportunities and constraints and social movement emergence 171
The emergence of the Ufungamano Initiative: the why and the how 175
Structural context of the emergence of the Ufungamano Initiative 176
October 1997 IPPG package; December 1997 general election, and the aftermath 177
Post-1997 general election cooperation and conflicts and emergence of religious community's leadership 182
The role of the Kenya Women Political Caucus leadership in incubating the Ufungamano Initiative 188
Shifting gears and heightening of contention 190
Conclusion 205

Chapter Six: Getting Down to Work: The Power and Limits of the Ufungamano Initiative in Framing Contention and Mobilisation Strategies 207
Introduction 207
The role of leadership in the Ufungamano Initiative action phase 209
The Ufungamano Initiative leadership and strategic decision making 211
The Ufungamano Initiative leadership and empowerment of followers 217
The Ufungamano Initiative and its framing of demands and strategies for contention 230
The Ufungamano Initiative's mobilising structures 240
Stakeholders' forum/Plenary of stakeholders 245
Steering Council 247
The People's Commission of Kenya (PCK) 253
The Secretariat 254
The specialised technical Committees 254
Conclusion 263

Chapter Seven: The merger and after: A dream deferred? 265
Introduction 265
The merger: motivations, process, and effects 270
Those who embraced the merger proposal 281

The 'principled' middle ground group 286
Group totally opposed to the merger proposal 289
The post-merger developments 305
The 2002 transition without transformation 308
A dream deferred? 323
Conclusion 325

Chapter Eight:A Turning Point When History Failed to Turn? A Conclusion 327
Introduction 327
Generative factors for the Ufungamano Initiative 329
Political opportunities and leadership nexus 330
Role of elite pacts and fragmentations 333
The changing global political economy 338
Rational choice, principled ideas, or structural causes? 339
Impacts of the Ufungamano Initiative to the reform process 342
Looking forward 353

BIBLIOGRAPHY 356

Appendix I: Participant list and categories 381

Appendix II: Introduction and information about the researcher and the project 384

Appendix III: Research study participant consent declaration 386

Appendix IV: Participant's consent for tape-recording of the interview 387

Appendix V: Interview Guide/schedule 388

Chapter One

Introduction and Study Background

> *'We are never completely contemporaneous with our present. History advances in disguise; it appears on stage wearing the mask of the preceding scene, and we tend to lose the meaning of the play […]. The blame, of course, is not history's, but lies in our vision, encumbered with memory and images learned in the past. We see the past superimposed on the present, even when the present is a revolution' (Regis Debray, 1967: 19).*

Introduction

This thesis is a qualitative case study of the emergence, growth, and decay of the Ufungamano[1] Initiative as illustrative of the power and limits of a social movement[2] engaged in attempts to re-order the Kenyan state through struggles for constitutional reforms, between 1999 and 2005. It utilises the political opportunities model[3] to analyse the power of citizens' actions to challenge the state through a social movement.

The contemporary Kenyan political landscape, just like that of many other African countries, has not been spared widespread unrests. The most significant of such unrests in Kenya's recent history was the widespread insurrection arising from the disputed 2007 presidential election. The single most driving factor in this conflict was ethnicity[4] resulting from a distorted competition for state power that affords the controllers of the same, the largesse to buy tribal loyalties.

Over the years, the Kenyan socioeconomic and political system has idolised materialism that does not interrogate the means used to acquire the same. The system has offered little opportunities to majority of citizens while favouring a few economic and political elites. Millions have been condemned to perpetual existential misery characterised by neglect, exclusion and

[1] Ufungamano comes from the Kiswahili word *fungamana*, which means to join together. The Ufungamano Initiative was so named after the Ufungamano House, also known as The Christian Students' Leadership Centre, located in the precincts of the University of Nairobi. It is an ecumenical endeavour between the National Council of Churches of Kenya (NCCK) and the Kenya Episcopal Conference (KEC) who jointly own the centre. The centre provides a place of worship, pastoral care, guidance and counselling to the students and academic community.

[2] In this thesis, social movement refers to 'means through which ordinary people come together to make collective claims on others […] through a distinctive combination of campaigns, performances, and displays' (Tilly 2004: ix). Detailed discussion on the operationalisation of this concept is provided in chapter two of this thesis.

[3] The political opportunities model has been popular in social movement studies in analysing the degree of receptivity or vulnerability of a political system to organised protest groups (Chan, 2009; McAdam, 1982; 1999; Tilly, 1978; 1984; Voss and Williams, 2009 [2011]).

deprivation while a few accumulate obscene wealth riding on a wave of negative ethnicity, corruption, nepotism and patronage.

The resultant wealth disparities have in turn, created vast cleavages and sources of conflict in Kenyan society. These cleavages have manifested themselves through crime and other forms of social contentions. Some Kenyans, feeling left out of sharing the supposed largesse from the state and the market, have turned against those perceived to be benefiting. Although wealth disparities are arguably not always directly correlated with societal conflicts (Sen, 2006; 1992), a closer look at the Kenyan social and economic realities suggests a different picture. Indeed, as McVeigh (2006: 512) proposes, 'structural conditions can generate pockets of discontent. This discontent can provide incentives to participate in social movement activism, but may also be expressed in other ways, including criminal activity.'

The cleavages in Kenyan society, while fundamentally economic in nature, have in most instances been disguised as ethnic. Mamdani (1996) in *Citizens and Subjects* offers useful insights into why and how ethnicity is a compelling explanatory variable of societal cleavages throughout Africa. He posits that while the postcolonial African nationalists succeeded in de-racialising (i.e. Africanising) the civil and military bureaucracies, they failed to detribalise and democratise the countryside. Moreover, in post independent Kenya, regional development inequalities continue to be expressed as ethnic and political conflicts (Currie and Ray, 1986).[5] A majority of Kenyans still see themselves first, through ethnic lenses. State power in the hands of one of their kinsmen is seen as the ultimate solution to a 'tribe's' economic maladies. As such, the 'tribal card' has been invoked quite often by politicians of different political and ethnic origins, who preach tribal populism and perpetrate ethnic animosity while doing little to address the plight of the poor. Such ethnic manipulation precipitated the 2008 Kenyan post-election violence.

The 2008 post-election violence was a symptomatic manifestation of recurrent episodes of a rebellion based on 'social grievances with long roots to Kenya's pre- and post- independence'

[5] Currie and Ray (1986: 48), argue that ethnicity is particularly important in explaining the 'tension between Central […] and Western Kenya [...] often presented as "Luo-Kikuyu rivalry"[…]. While the "ethnic" factor should not be over-stressed, one should recognise that "uneven development" might be given ideological expression in terms of ethnic loyalties. Indeed, since 1966, several radical politicians (Luo and non-Luo) have argued that whereas Central Province has benefited from land re-distribution, other areas, especially western Kenya, have done less well.'

era (Ochieng W., 2008) resulting from political elites whipping raw ethnic emotions. While the 2008 post-election violence is an example of one of the most horrific manifestations of such grievances, there have been constant and perhaps comparatively less violent protests for a long time. Some of these struggles have taken the shape of organised social movements engaged in sustained protests in the context of multiple crises of economic and political (mis)governance, human rights abuses, and distribution concerns (e.g. land, jobs, political opportunities, education) in the Kenyan society.

On August 4, 2010, Kenyans, in a constitutional referendum, overwhelmingly voted by 68.55% in favour of a proposed constitution (*Kenya Gazette,* 24/08/2010). When the new constitution was promulgated on August 27, 2010, it was a culmination of a two decade long sustained struggle for a new constitution. This struggle was initially led by political and civil society[6] activists but later diffused to the broader Kenyan society. In the course of this protracted contention, several successive social movements reflective of Tarrow's (1998) concept of 'cycles of contention' were the engines of these social mobilisations. The Ufungamano Initiative was, between 1999 and 2005, one such important player in these social contentions and mobilisations in the recent constitution reform project in Kenya.

The Ufungamano Initiative, emerged in December 1999 from citizens' palpable rage against the refusal of the government of President Daniel arap Moi (Kenya's second president who reigned between 1978 to 2002) and the then ruling party –the Kenyan African National Union (KANU) – to allow popular participation of the Kenyan people in reviewing their constitution. The Ufungamano Initiative was a broad based movement. In its formative years, it epitomised a social movement with extraordinary mass appeal and a multiplicity of actors that many social

[6] This thesis adopts a Gramscian dialectical conception of civil society. Gramsci (1971) perceives civil society as 'intertwined in a hegemonic historic bloc' in which 'the massive structures of modern democracies, both as state organisations and as complexes of associations in civil society, constitute for the art of politics, as it were, the 'trenches', and the permanent fortifications of the front in the war of position' (Gramsci, 1971: 243). Civil society is therefore the 'sturdy structure . . . and powerful system of fortresses and earthworks' (Gramsci, 1971: 238) behind the state that serves as a stabilizing, conservative force and ensures popular consent to hegemonic forces. It includes a whole range of non-coercive institutions: non-state and non-market structures and activities such as trade unions, schools, professional, educational and cultural associations, political parties, and churches that organize consent backed up by the potential application of force (coercion) (Bond, 2006; Katz, 2006; Price, 2003). At the same time, if society is to free itself from hegemonic oppressive and exploitative forces in society, Gramsci advocates for a counter hegemonic 'war of position' for ideological dominance (hegemony) of civil society. More discussions in the operationalisation of the concept of civil society are dealt with in chapter two.

movements, especially its predecessors like the National Convention Executive Council (NCEC), had failed to achieve. Its membership was drawn from fifty-four stakeholders of citizens' organisations including human rights non-governmental organisations (NGOs), faith groups, students and youth organisations, women's organisations, grassroots social movements, trade unions as well as some opposition political parties. The Ufungamano Initiative mounted a credible challenge to the Moi/KANU state in Kenya's constitutional review project (Ogony, 2004; Andreassen and Tostensen, 2006). Available literature converges on the fact that the government of President Moi resorted to violence, harassment, arresting or beating the Ufungamano Initiative leaders and supporters in order to break the movement (Amnesty International, 28 November, 2000; 7 February, 2001; 13 February, 2001; Human Rights Watch, 2000; The Economist, 10 Feb. 2001; Karanja, 2008; Majtenyi, 2000). However, the Ufungamano Initiative leaders and its supporters remained undeterred in their mission.

The Ufungamano Initiative is a remarkable story of how direct citizens' actions pressured an autocratic and intolerant regime to acquiesce, thereby opening up space for democratic engagement of citizens in the Constitution Reform Process. It utilised direct social movement action through one of its organs, the People's Commission of Kenya (PCK) that was in direct competition with the Moi/KANU state for control of the Constitution Reform Process. This direct competition and challenge, posed a legitimacy crisis on the state led process. But the Ufungamano Initiative is also a story of the limits of social movements, which, while holding so much power and promise, are limited in their ability to effect fundamental changes in society. Even after substantial gains in challenging the state, the Ufungamano Initiative was vulnerable and in a way, agreed to a 'coerced' merger with the state-led process in 2001. The merger dissipated the Ufungamano Initiative's energy.

Building on the convergence of Polanyi's (1944) concept of 'double movement' with the 'political process model' (see for example Tarrow, 1998; Tilly, 2004; 1977; 1978), this thesis explains the sources, processes, actors, and outcomes of social contentions in contemporary Kenya. Additionally, the thesis explores the viability of the political process model to explain these social contentions in light of the fact that the concept and theory of social movements trace their intellectual roots to the social, political and economic transformations in the '1750s Western Europe and North America' (Tilly, 2004: 3; Foweraker, 1995; Seddon, 2002). As

Foweraker (1995) observes, the increasing separation between the sites of theoretical production and collective action, raises questions on the applicability of theories modelled on Western Europe and North America to analyse social movements in other social, economic and political settings, as they do not take sufficient account of the local situations of popular struggles and changes elsewhere (Foweraker, 1995; Chan and Zhou, 2009; Seddon, 2002; Voss and Williams, 2009[2011]).

The study further seeks to contribute to the scholarship on the congruencies of, and relationships between state structure and the emergence, operations and achievements of social movements in the constitutional reform process in Kenya. In so doing, the thesis draws its methodological approach from Charles Tilly's (2004) proposition that the contentious nature of social movements requires systematic socio-historical approaches. Following this approach, the thesis argues that an attempt to explain the Ufungamano Initiative and its constitutional reform struggles must be located within the broader historical socioeconomic and political struggles and contestations in Kenya. The Ufungamano Initiative, the thesis contends, was one wave of social mobilisations in the Kenyan constitution making that emerged encumbered by memories and images of previous struggles. This, I argue, resulted in certain contradictions in the movement. The contradictions essentially emanated from a duality of the movements' strength and weakenesses drawn from the diversity of its membership and mass support. The diversity of support and membership was its most potent power. Nonetheless, diversity also presented a potential Achilles heel in the event the movement failed to accommodate the various expectations of such diverse groups. This became especially true with regard to the movements' operational democracy and in ensuring agreements on the substance of the constitution that emerged from its collective action efforts. The deep divisions in Kenyan society and multiple sites of struggle did not make things any easier for the Ufungamano Initiative. As such, the thesis attempts to answer the question *why* and *how* previously disjointed and disparate individuals and groups of individuals came together in a 'movement of movements' known as the Ufungamano Initiative and become a critical actor in the Kenyan constitutional reform contentions.

At this point, some critical questions emerge regarding the choice of the Ufungamano Initiative to illustrate one of the cycles of contention in the Kenyan constitution reform project. First, why is the Ufungamano Initiative an appropriate reference point for this kind of study? Or put another

way, how is it representative of these struggles? Second, why does this analysis concentrate on the period 1999 to 2005? The succeeding section in this introductory chapter attempts to answer these questions by presenting the specific study aims and thereafter, a discussion on the rationale for choosing the Ufungamano Initiative as a case study. Additionally, the rationale section foregrounds the emergence of Kenya's contemporary constitutional reform struggles that are analysed in-depth in chapter four. The chapter then provides an outline of the entire thesis before concluding.

Study aims

Broadly, this study seeks to unravel how citizen's actions through social movements can effect fundamental change in society. The thesis primarily provides answers to the following key questions:

1. What were the specific factors (i.e. social, economic and political) and conditions that aided the emergence of the Ufungamano Initiative?
2. What were the Ufungamano Initiative's key organisational and mobilisation structures, resources and actors? What were the political dynamics and nature of relationships between the different structures, resources and actors?
3. What were the dynamics and outcomes of the interactions between the Ufungamano Initiative and its targets/antagonists (the state, the ruling party)?
4. What explains the key successes and limitations of the Ufungamano Initiative?

To address these questions, the thesis utilises an analysis of seventy in-depth interviews held with a cross section of activists, civil society leaders, government officials, and ordinary Kenyans, conducted between September 2009 and April 2010. Given that the constitutional reform struggles have been a nation-wide project in Kenya, and the Ufungamano Initiative claimed to have had widespread mass appeal in these struggles, the study sampled participants from six of the then eight Kenyan provinces. The six provinces are Nairobi, Eastern, Coast, Nyanza, Rift Valley and Central. The thesis also uses primary documents from the Ufungamano Initiative archived at National Council of the Churches of Kenya at its Jumuia Conference Centre in Limuru. Furthermore, the analysis uses ethnographic observations of successor groups from the Ufungamano Initiative such as the Kenyan Civil Society Forum that continued keeping vigil on the constitutional change struggles in Kenya. Finally, the thesis also utilises data from

published books and journal articles, government of Kenya official publications such as *Kenya Gazette*, parliamentary Bills and Acts, as well as newspaper and magazine articles. A detailed discussion that covers these aspects is the focus of the methodology chapter.

Study rationale

My interest to study the Ufungamano Initiative emanated from observing that while the second wave of democratisation struggles that began in the mid 1980s in Kenya, and the actors driving them have been widely studied, there is no systematic study to date of the Ufungamano Initiative struggles. Perhaps, this is because much as the Ufungamano Initiative straddles two regimes (having emerged in the twilight years of Moi/KANU reign) it is still a relatively recent phenomenon.

This study therefore illuminates a social movement, which has been an important facet of Kenya's recent tumultuous social and political landscape, but largely neglected so far in in-depth scholarly analysis. Moreover, while Kenya's constitutional reform contentions over the last two decades have been a scholarly staple, most of the scholarship on these struggles is limited in scope and depth. Most scholarship identifies human and political rights as the determinants for the emergence of these struggles. For example, some of the analyses concentrate on specific accounts of the role played by civil society or religious groups prior to 2002 (see for example, Willy Mutunga's (1999) *Constitution Making from the Middle* that describes the role of human rights NGOs in challenging the existing constitutional order). Others analyse only a fraction of actors or specific aspects or causal factors. Examples here include, but not limited to, Robert Maxwell Press's (2004) thesis, *Establishing a Culture of Resistance: The Struggle for Human Rights and Democracy in Authoritarian Kenya 1987-2002*, which concentrates on the framework of fighting for human rights and democratisation in Kenya between 1987 and 2002; Stephen Ndegwa's (1996) *The two faces of civil society* dealing with the dynamics of relationships between state and civil society; Duncan Okello's (2004) edited work, *Civil Society in the Third Republic*; and John Karanja's (2008) 'Evangelical Attitudes Towards Democracy in Kenya'.

These works pay little attention to the role of the economy, especially free market fundamentalism pushed by the Bretton Woods Institutions in cahoots with the Kenyan political and economic elites, in fuelling discontents that culminated in struggles for constitutional

reforms. Indeed the effect of encroachment of free market fundamentalist forces on the lives of Kenyans in fuelling the grievances that led to the emergence of the various constitutional change struggles and movements remains largely unexplored. Perhaps, notable exceptions here include Godwin R. Murunga and Shadrack W. Nasong'o's (2007) edited volume *Kenya: the Struggle for Democracy*;' Julius Nyang'oro's (2000) 'Civil Society, Structural Adjustment, and Democratization in Kenya'; and Katumanga's (1999) article, 'Civil society and the politics of constitutional reforms in Kenya: a case study of the National Convention Executive Council (NCEC).'

Another notable gap is the silence of these works on the linkages between civil society and social movements' struggles. Most of these works equate civil society with Non-Governmental Organisations (NGOs), which in the Kenyan case are far from being social movements. Such arrogation and instrumentation of the concept of civil society by NGOs has denuded civil society of its classical intellectual roots in social movements.[7] In effect, this NGOisation has led to most analytical work on Kenyan constitutional reform struggles overlooking a key 'conceptual apparatus [social movement literature] in comprehending the implications of these struggles' especially on state-civil society relations (Nasong'o, 2007: 25). This study attempts to bridge the two bodies of theoretical literature.

Further, this thesis makes another scholarly contribution by utilising empirical evidence to suggest that contemporary Kenyan constitution change struggles, cannot be explained by a single factor, a single actor, and more importantly, have not been singularly directed. Moreover, their root causes are not necessarily contemporaneous. Rather, there have been and continue to be, multiple struggles within at least two realms: 1) the broader political liberalisation and democratisation struggles since the 1990s, and 2) struggles against the social and economic effects of neo-liberal economic policies.[8] These two realms, the study argues, have been the key

[7] I am indebted to a reader to the proposal for which this research is based -Gilbert Khadiagala-for bringing this to my attention.

[8] This thesis uses the term neo-liberalism, to mean an ideological system consisting of a 'heterogeneous set of institutions consisting of various ideas, social and economic policies, and ways of organizing political and economic activity […] it includes formal institutions, such as minimalist welfare-state, taxation, and business regulation programs; flexible labor markets and decentralized capital – labor relations unencumbered by strong unions and collective bargaining; and the absence of barriers to international capital mobility' (Campbell and Pederson, 2001: 5). Neoliberalism according to Fourcade and Healy (2007: 287) is 'rooted in a moral project, articulated in the

drivers of social mobilisations leading to constitutional change struggles in Kenya. As such, while some aspects of the cocktail of struggles are easily explained by socio-political factors, others are derivatives of long histories of economic grievances. As such, I posit that any attempt at building a coherent explanation of the constitution reform struggles in Kenya and especially how the different socioeconomic and political struggles culminated in the clamour for a new constitutional dispensation, must of necessity, use an assortment of variables. Following this reasoning, chapter four situates the genesis of the contemporary Kenyan constitutional reform struggles and the Ufungamano Initiative emergence in socioeconomic and political discontents. The thesis approaches this task by applying the logics of at least three theoretical concepts: a) Gramsci's (1971) concepts of 'the war of position' in 'counter hegemonic' struggles; b) Polanyi's (1944) concept of 'double movement'; and c) the 'political process model' in an attempt to explain contemporary struggles in Kenya's governance.

The main thesis here is that contemporary constitution reform struggles in Kenya are, to borrow from Polanyi (1944), double movement type, composed of two opposing forces – 'the laissez-faire movement to expand the scope of the market, and the protective countermovement that emerges to resist disembedding the economy' (Block, 2001: xxviii). It is worth noting, however, that Polanyi's double movement thesis singles out the expansion of the 'self-regulating market' as the central factor that threatens to push society to the 'edge of a precipice.' Societies in turn, react by resisting to 'act like lemmings marching over a cliff to their own destruction' (Block, 2001: xxv). Society retreats from the tenets of market's self-regulation by '(re)constituting itself as active society' (Burawoy, 2003: 193) 'to save [itself] and nature from destruction' (Block 2001: xxv). Block (2001: xxv) continues to argue that:

> In a sense one may say that disembedding the market is similar to stretching of a giant elastic band. Efforts to bring about greater autonomy of the market increase the level of tension. With further stretching, either the band will snap – representing social disintegration–or the economy will revert to a more embedded position.

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language of economics, that praises 'the moral benefits of market society' and identifies 'markets as a necessary condition for freedom in other aspects of life' (cited in Mudge, 2008: 705).

While a clear correlation of Polanyi's 'double movement' is reflected in the social upheavals resulting from the effects of post Cold War market and economic liberalisation,[9] the concept is an insufficient analytic model in studying the motivations for all the societal responses reflected in the struggles to change the Kenyan constitution. The reason for this lies partly in the context within which the 'double movement' concept originated. While Polanyi's 'double movement' concept was developed to largely explain a different phenomenon – i.e. the post First World War political economy vortex in Europe, this thesis tries to explain a contemporary social and political phenomenon in Kenya. The point to note, therefore, is that this study does not claim to neatly fit into the application of 'double movement' as an analytic model. Rather, the study borrows from the logic of 'double movement' due to the historical entanglement of the political and economic elites who collectively, have been at the centre of ravaging Kenyan society (Currie and Ray, 1986). The 'double movement' logic is reflected in an increasingly avaricious market with the political elite on the one end of the contestations, and a countermovement of citizens resisting their entanglement on the other. As such, this thesis posits that excessive encroachment on Kenyan society by political and economic elites through political, social and economic repression incubated mass discontent that in turn nurtured the emergence and development of social struggles seeking changes through constitution reforms.

To understand how mass discontent on social, economic and political conditions in Kenya crystallised into social struggles and social movements and later into a 'movement of movements' (the Ufungamano Initiative), I offer a historiography of successive struggles in chapter four. As such, it needs mention that while the thesis focuses its analysis on the period 1999 to 2005; this is purely for pragmatic reasons. This is based on careful considerations that the mid 1990s marks a critical threshold of a great social epoch in the political history of Kenyans' quest for a new constitution. Moreover, it is important to acknowledge that social struggles and especially the constitutional change struggles are not a phenomenon limited to the

[9] Examples here include widespread labour unrests as a result of massive labour layoffs and ghettoisation and arrested social economic progress in many developing countries. Some of the resultant social movements struggles on the African continent are the subject of analysis in Mahmood Mamdani and Earnest Wamba-dia-Wamba (1995) *African Studies in Social Movements and Democracy.* Robert H. Bates (1999), 'Economic Bases of Democratization' as well as Thandika Mkandawire (1999), 'Crisis Management and Making of "Choiceless Democracies"' also deal with the impacts of economic neo-liberalism on the democratization project on the African continent.

period 1999-2005. As such, this thesis devotes some space in analysing the post 2005 developments in Kenyans' quest for a new constitution.

Contemporary constitution reform mobilisations and struggles are a product of a long history of nested and successive layers of struggles rooted in social, economic and political grievances over unjust modes of Kenya's governance (social, economic and political). Some of the underlying discontents especially on the dynamics of wealth creation and distribution, for instance land ownership, began in colonial times and have never been fully resolved in the post-colonial period. A socio-historical approach is therefore imperative to enable this study to probe the theoretical question and offer explanations of growth and decay of successive Kenyan social movement struggles and to locate the emergence of the Ufungamano Initiative within the same.

This socio-historical approach traces the broader context of contemporary Kenyan constitutional reform struggles that the Ufungamano Initiative illuminates, to the 1980s and the immediate aftermath to the enactment of the constitutional amendment Act No. 7 of July, 1982 that introduced Section 2A in the Kenyan constitution (see for example, Mwaura, 1997; Ajulu, 2000; Nasong'o, 2007; Cottrell and Ghai, 2007). This constitutional amendment made Kenya a *de jure* one party state and declared KANU the sole political party. It led to further erosion of basic liberal democratic rights like free speech, the right of assembly and association. The state also usurped enormous powers to clamp down on those who expressed dissent (Mbingu, 1991). Despite continued political oppression, these struggles, accompanied by changes in the global political arena due to the end of the Cold War forced the state to repeal Section 2A in 1991. The post-Cold War developments specifically contributed to the withdrawal of political support hitherto enjoyed by repressive regimes (including Kenya's) purely on the basis of alignment of politico-economic ideology. After the end of the Cold War, former friendly Western allies and the Bretton Woods Institutions turned to push for the embedding of neo-liberal fiscal austerity measures as part of donor conditionality −Washington consensus policies-in the Kenyan economy as well as entrenchment of political pluralism.[10]

[10] The transition from one party to multiparty politics in Kenya as in many other African countries has been attributed in part to the influence of the wave of political changes occasioned by the end of the Cold War (Oyugi, 2002. See also Huntington, 1993; 1996; and Osaghae, 2008 for similar arguments). This resulted in political opportunities created by the waning support of the authoritarian Moi government by Western powers that had

As part of these reforms, donors cut funding while at the same time pushing the state to reduce expenditure on basic services, introduce user fees, and privatise public enterprises and services. The reduced support had numerous effects: the collapse of the state's ability to deliver essential services; the erosion of basic social solidarity; increasing inequality (Stiglitz, 2002); and most importantly, the state's dwindling ability to crush dissent. The resulting socioeconomic and political doldrums were perfect recipes for widespread Polanyi-type responses against the political elite, forcing Moi's government to give in and introduce political reforms. The pressure included mass protests, worker strikes, student protests and a proliferation of social movements and civil society organisations questioning neo-liberalism and advocating a greater role of the state in the provision of social services (Kanyinga, Mitullah and Njagi, 2007).

As such, just before the turn of the 21st century, the 'anti-capitalist' protests gained ground against neo-liberal globalisation that had by then, been mainstreamed in global political economy. In Kenya, there were localised struggles, many of which found allies in what has come to be referred to as democratization movements. It is through such convergences that a stronger and larger collection of movements known as the Ufungamano Initiative emerged. This did not, however, happen overnight. The turn of the millennium saw continued struggles especially on economic and political fronts. Years of accumulating economic strain with a negative 0.2% growth in 2002 (Republic of Kenya, 2007) and growing income inequality, with over 50% of the population living in poverty, bad governance, and mismanagement of the economy in a more liberalised political environment, saw increased activism with calls for a new constitution in the country.

The analysis in this thesis reveals that there are a number of key features of the Kenyan movements. First has been the centrality of ethnicity. Struggles have sometimes taken a distinctly ethnic angle, or ethnicity has been selectively applied to 'kill' the collective spirit of such struggles. For instance, many of the so-called dissidents during the Kenyatta era (1963-78), were mainly non- Kikuyu (his tribe). Conversely, in Moi's time (1978-2002), it was mainly non-Kalenjins who were the main dissidents.

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hitherto supported it during Cold War for ideological reasons. This study, however, adopts a hybrid of reasons as providing the impetus for the creation of social movements that challenged Moi's authoritarian rule.

Second, Kenyan politics and economy, has since independence been controlled by a corrupt and avaricious ruling class, which has been increasingly oppressive to the masses (Lamb, 1975). Over the years, politicians of all political and ethnic persuasions have bonded in creating and perpetuating a well-oiled system that multiplies miseries for the ordinary masses. This has led to the third key characteristic of Kenyan struggles, especially since the 1980s – the escalating use of violence in some of these protests. This militarisation is a product of large numbers of young and jobless poor people, who have been hirelings to loot, destroy, maim, rape and kill in the service of ethnic power barons. This has been most rampant especially after the introduction of political pluralism in 1991.

But these struggles have been complicated, as the Ufungamano Initiative demonstrates, by convenient elite pacting in the face of collective threats to their hegemony. This, as the thesis shows, has been a key feature of post independent Kenya. This bonding and ganging up of political and economic elites through creation of artificial crises, or use of, and manipulation of ethnicity, has ensured the reproduction of their hegemony. Even the supposedly non-ethnic secular and religious Kenyan civil society has not been spared these ethnic rivalries. The vicious wars at the National Council of NGOs of Kenya since 2002 are indeed a reflection of this. This study sees these manifestations of struggles and protests within what Gramsci (1971) describes as the 'war of position' to win the control of the Kenyan society. As such, there is consensus that one of the reasons for Kenya's backward slide from 2005 even after the mirage of change in the 2002 general election in which KANU was defeated by a united opposition, was due to the massive co-optations of civil society and social movement leaders by former fellow activists turned parliamentarians and cabinet ministers in the new National Alliance Rainbow Coalition (NARC) administration.

In this study, the Ufungamano Initiative illuminates one key moment and features of the many successive waves of social mobilisations for constitutional reforms in Kenya since the early 1990s. The Ufungamano Initiative, this thesis shows, emerged from the ashes of earlier mobilisations and militancy of 1997 led by the NCEC (for in-depth analysis of the NCEC, its work, achievements and decay, see Mutunga, 1999; Katumanga, 1999). By succeeding to bring together a large number of actors opposed to the Moi/KANU state's refusal to demands for

popular participation of Kenyan citizens in reforming their constitution, the Ufungamano Initiative managed to achieve what NCEC had unsuccessfully tried to do in 1997. This raises an important question of interest to this study: What factors allowed the Ufungamano Initiative to succeed where its predecessors had failed?

The Ufungamano Initiative is attractive for other reasons too. In December 1999, in the face of the state's refusal to allow popular participation in the Constitution Review Process, the Ufungamano Initiative resorted to a rare form of direct social movement action by forming its own Constitutional Review Commission – the People's Commission of Kenya (PCK). The PCK competed with the state-led process by mobilising, organising and leading Kenyan citizens in what was termed a parallel process of writing the constitution instead of relying on the more orthodox strategic repertoire of actions and reactions of social movements.[11] By forming the PCK, the Ufungamano Initiative illustrated that it was not just offering abstract criticism to the exclusive Moi/KANU regime-led Constitutional Review Process, but practical alternatives on how citizens would be directly involved in writing their own constitution. This demonstrable effect served to challenge the legitimacy of the state process that had been designed to be an exclusive domain of a Parliament controlled by the Executive. The direct actions of the Ufungamano Initiative through the PCK are illustrative of the changing nature of collective action that existing social movement theories fail to predict or account for. The Ufungamano Initiative therefore raises several interesting questions. These include: how does society respond to increasing repression by the state, especially to refusal to involve citizens in such a crucial matter as constitutional review? At what point does society respond to refusal by the state to engage with popular will? What type of responses does society resort to? The Ufungamano Initiative case serves to provide answers to these questions.

The ambitious actions of the Ufungamano Initiative also raise several questions that pertain not only to its power, but also to its weaknesses, especially when compared with its main targets – the state, ruling party, and part of the political elites. These include: what political opportunities

[11] Tilly (2004) enumerates such repertoire of social movement actions and reactions as including demonstrations, campaigns, rebellions, riots and strikes. Adil Najam (2000), from his studies of civil society relationships with the state in the policy process, argues that such repertoires include engagement that involves civil society making submissions to the relevant state institutions. The Ufungamano Initiative, as shall become clear in this thesis, went beyond such repertoires of action/engagement.

allowed the Ufungamano Initiative to emerge? What were the key activities and strategies utilised in its work? What were the determinants for the different strategies employed in these interactions? To what extent did the strategies employed, act as either sources of strength or weakness for the Ufungamano Initiative? How did the state respond to the Ufungamano Initiative's actions to form a commission to lead Kenyans in writing the constitution outside of the state's established structures? What was the nature of public support for the Ufungamano Initiative? How successful was the movement?

In answering these questions, the thesis engages the state-civil society relations' theoretical model to establish the nature of relationship between the Ufungamano Initiative and the state in the course of its struggles. Specifically, as the Ufungamano Initiative's work bestrides two regimes (i.e. the sunset years of KANU and the subsequent National Alliance Rainbow Coalition (NARC)), the study explores the nature of relationships with the state under both regimes. The study specifically utilises Adil Najam's (1996; 2000) Four-Cs model (cooperation, complementarity, co-optation and conflict) to analyse the nature of relationships between the Ufungamano Initiative and the state.[12] The thesis further engages both empirical studies and theoretical models of state and civil society relations in Kenya (see for example Oyugi, 2002/4; Ndegwa, 1994; 1996; Katumanga, 2004).

The use of the Ufungamano Initiative for this study is also informed by the fact that arguably, no single movement in Kenya's recent history systematically, powerfully, and in a protracted way, challenged the state in the constitution review, as did the Ufungamano Initiative. The Ufungamano Initiative epitomises effective conglomeration of ethnic, religious, generational and class power politics.

To explain how and why Kenyan constitutional change has been possible despite strong opposition by the Moi/KANU regime, this thesis conceives the Ufungamano Initiative and its struggles for constitutional reforms, as a 'counter hegemonic' movement that crystallised from recurrent episodes of protests against social, economic, and political marginalisation of citizens,

[12] Najam's Four-Cs model argues that convergence or divergence of policy goals determines strategies used by social movements/civil society. See also Coston (1998), Sanyal (1994), Waddell (1998), Bebbington and Farrington (1993), Pearce (1997), Fisher (1998), Young DR (1999), Tandon (1989), Bratton (1990), Commuri (1995), for similar arguments on state-civil society relations.

and continued suppression of political dissent. This countermovement posed a crisis of legitimacy to the political leadership, which further fragmented elite political consensus.[13] Happening at a time when the state's capacity to suppress dissent was dwindling, this widened political opportunities for further protest cycles. Chapters two, four, and five, engage and demonstrate this argument in greater detail.

The choice of the period (1999-2005) and the movement (the Ufungamano Initiative) are also illustrative of growth and decay of social movements. The Ufungamano Initiative has been celebrated and romanticised by some who were behind its formation and operations as a potent example of organised citizens' power to order and effect change in society (see for example Pinto, 2008; Kibaki, 2003 as cited in Lumumba 2008: 93). However, the Ufungamano Initiative, as shall become clear in this thesis, remained vulnerable and its leadership acrimoniously drove it to a merger with the state-led process in 2001.

This merger had conflicting outcomes on the Ufungamano Initiative. On the one hand, the merger was arguably an indicator of success, and by extension, the potency of the movement. Owing to the distinctive contentious actions of its Commission, the Ufungamano Initiative managed to get recognition as a legitimate actor in the constitutional reforms in the country to warrant the state to approach it for concessions and a merger. Indeed, the Ufungamano Initiative got a major political boost in November 2000, when the nominated chair of the government review team, Kenyan constitutional law expert, Professor Yash Pal Ghai, stated, as a condition of his acceptance, that he is given a free hand to negotiate for a joint Constitutional Review Process between the Ufungamano Initiative and the government Commission. To demonstrate his seriousness, he declined to take the oath of office unless there was a joint Commission (Chitere *et al*, 2006; Constitution of Kenya Review Commission, 2004). Arguably, Ghai's stance enhanced political opportunities available to the Ufungamano Initiative and effectively reduced the power discrepancy between the two groups. Ghai successfully negotiated a merger with the PCK with an amendment to the Constitution of Kenya Review Act introduced to effectively seal the merger in 2001.

[13] This is not to say that the Kenyan political elite had hitherto, been a united entity. Rather, as shall become clear in this thesis, there have always been fragmentations long before independent and this has continued to date. As such, the argument here is that the fragmentation was within the then ruling elite as typified by the break-up of KANU and the formation of opposition groups by the same people who had initially been in KANU.

However, the merger, among other things, contributed to the decay of an otherwise vibrant movement. With time, it lost the mass support it had enjoyed. Ultimately, the promise that the Ufungamano Initiative held slid into the dustbin of lost opportunities and false dawns of the transformation of the Kenyan state. While the Ufungamano Initiative managed to push the frontiers of constitutional reforms, the rejection of the draft constitution in a national referendum in November of 2005 left the constitutional overhaul project on going. Specifically, the said rejection of the draft constitution did not result in the withering of the dream of a new constitution. Instead, it opened new frontiers for contention.

As such, the Ufungamano Initiative type struggles and its key demands continued to manifest in different forms. Indeed, a new wave of contention peaked after the 2007 widespread citizens' insurrections as a result of a slipshod presidential election that resulted in the realisation of a new constitution in August 2010. The Ufungamano Initiative itself did not collapse after the absorption of its Commission into the state-led Constitution of Kenya Review Commission. The Ufungamano Initiative continued to be a critical voice and force in the Review Process. However, after the merger, new cleavages that deflated the energy of the Ufungamano Initiative emerged. By 2005, the Ufungamano Initiative was no longer a united force, differed on the substance of the proposed constitution, no longer commanded a mass following and its leadership had fallen out with each other. This reveals an important trajectory on how social movements decay when they are absorbed into rigid power structures.

Organisation of the thesis

The thesis is divided into three main parts. The first part comprises of the first three chapters. This introductory chapter, the first in section one, has offered the background to the study. It has brought forth arguments that made this case an interesting subject for social scientific inquiry. Chapters two and three cover the literature review and the methodology respectively. In chapter two, the thesis lays the theoretical bedrock, building on the convergence of Polanyi's (1944) concept of double movement with the political process model as the analytical tool employed in explaining the social contentions in contemporary Kenya. The chapter also looks at state-civil society relations' model as employed in the analysis of the relationship of the Ufungamano Initiative and the state. Additionally, the chapter deals with the concepts and theories of social

movements, civil society and their role in shaping citizen power and participation as employed in the thesis.

The third chapter –Methodology- presents an argument in support of the appropriateness of a case study approach. The chapter argues that given the many overlaps in the boundaries between the Ufungamano Initiative and other constitutional reform struggles in Kenya, a qualitative in-depth study allowed for 'explorations of broad historical patterns and macrostructures' (Burawoy, 1998: 6) and thereby reconstruct[s] the chains of sequential interactions and events to enrich the analysis (Strauss and Corbin, 1990). The chapter specifically provides details and reflections on the experiences in the operationalisation of a qualitative research methodology. These reflections address the issues of data collection including data collection techniques and procedures (in-depth interviewing and note taking, observations, document analysis and sampling), data analysis processes employed, as well as measurement, reliability, validity, objectivity, and the inherent challenges and how such were addressed. Lastly, the chapter deals with ethical issues relevant to the study.

The second part of the thesis deals with the empirical findings of the study. This section is divided into four chapters. Chapter four –Sowing the seed for constitutional change struggles in Kenya- is a historical analysis of the precursors to the contemporary socioeconomic and political struggles in Kenya. It is a story of the successive cycles of contention preceding the Ufungamano Initiative. These are treated as *preparatoria* Ufungamano Initiative. The chapter provides the socio-political and economic specificities leading to emergence of different constitutional reform struggles in Kenya. Here, the social, economic and political grievances that ignited desires and struggles for contemporary constitutional changes in Kenya are periodized from pre-independence to present. The discussion identifies the main players in the contentious politics and how each period and its actors feed into the next. The chapter ends by showing how the congruence of issues and actors in mid to late 1990s prepared for the emergence of the Ufungamano Initiative opposing a state-led and-controlled Constitution Review Process.

Chapter five –The birth of the Ufungamano Initiative: from discordant voices in wilderness to a forceful movement of movements- builds on chapter four, identifying the main players behind the formation of the Ufungamano Initiative, their relationships, as well as the specific triggers

that informed its emergence. This chapter looks at the following questions: first, why and how was the Ufungamano Initiative formed after 1997 when the issues it set to address had been a part of Kenya for a long time? Second, why did a new movement emerge when there were already too many other groups pushing for constitutional reforms? In answering these questions, the chapter argues that the Ufungamano Initiative emerged after the 1997 general elections as a broad umbrella movement of fifty-four different organisations and epitomises both intra and inter ethnic, religious, generational, and class power politics in Kenya. This phenomenon, the chapter argues, imbued the movement with multiple contradictions that subsequent chapters analyse. The chapter argues that the emergence of the Ufungamano Initiative, just like many of its attributes, is full of contradictions. Building on the analysis of such contradictions, the chapter poses the question: how viable and effective are movements with diverse constituencies and internal competing interests and strictures? Can they hold together for long periods and collectively continue pushing for common demands in light of often differing interests, and in effect, achieve changes in society? This question is addressed in subsequent chapters.

The sixth chapter –Getting down to work: The power and limits of the Ufungamano Initiative in framing contention, mobilisation, strategies and structures- analyses two key parameters–issue framing and mobilisation versus the architecture of the movement. The analysis reveals a contradiction between rhetoric and practice in the Ufungamano Initiative. This contradiction emanated from the Ufungamano Initiative's framing of contention and agitation on a people-led process that drew from Rousseau's political philosophy on direct democratic participation of citizens. However the movements' practices and structures were deficient in ensuring People's direct participation. To demonstrate such contradictions, the chapter analyses the (dis)connections between the grassroots struggles that found expression in national struggles and, by extension, in the Ufungamano Initiative struggles. This is especially on the nature of the participation of grassroots movements in shaping the Ufungamano Initiative agenda at the national level. The specific variables analysed include: the nature of participation, mobilisation and accountability (upward, horizontal and downward) within and between the Ufungamano Initiative members/constituent groups. Additionally, the chapter addresses the question of how the above-mentioned internal contradictions contributed to, or hindered the Ufungamano Initiative's work.

The seventh chapter –Merger and after: a dream deferred? -applies a co-evolutionary analytic frame in looking at the convergence of structural conditions (including political, economic, and social such as class formations, worsening economic conditions in the country, a crisis of state legitimacy, and increasing threats of violence), as drivers that enabled the Ufungamano Initiative to push the Moi/KANU state to appoint an internationally credible person to lead the statutory Constitution of Kenya Review Commission. The impact of this appointment, the chapter argues, motivated talks and processes for a merger between the Ufungamano Initiative's People's Commission of Kenya and the government led process. The chapter argues that given the multiple strictures within the movement, a part of the Ufungamano Initiative leadership took the overtures from the state-led process, to agree to a merger. Utilising Gramsci's concept of hegemony, the chapter advances an argument that the different contenders in the Kenyan constitutional reform struggle managed to turn popular democratic contentions (as exhibited by a majority of actors identifying with the Ufungamano Initiative cause), into a terrain of struggle between different elite formations (i.e. political-economic, academic and religious). The end result was a reproduction of elite domination of the under classes, thus undermining a radical transformation of the existing order. The chapter further analyses the post merger developments and their effects on the eventual decay of the Ufungamano Initiative.

I conclude the thesis in chapter eight –A turning point when history failed to turn?- where I reflect on the contributions of the Ufungamano Initiative to the constitutional reforms including post 2005 referendum developments of the constitutional reform project in Kenya. The chapter shows that while some actors behind the Ufungamano Initiative kept vigil and new alliances emerged as some of the old ones broke, there were others who opposed the very reforms they had fought for. The chapter also offers reflections on key findings and key contributions of this study to the theoretical and empirical literature on social movements and political change struggles, in specifically answering the question: what new knowledge does it give to the scholarship of social movements, especially in African contexts?

Conclusion

This chapter concludes with a note that Kenya's political and social struggles since the 1990s have centred on constitutional reforms to embed democracy. Some scholars theorise that the

culmination of these struggles into constitutional reform movement, is reflective of Kenya's desire to transform the state to be of service to the majority in society (see for example Kindiki, 2007; Currie and Ray, 1986; Bannon, 2007). Specifically, it was aimed at structuring the state away from an imposed independence constitution that resulted from compromises between the departing colonial regime and the incoming cooperative African elite (Currie and Ray, 1986; Bannon, 2007; First, 1970; Zeilig *et al.*, 2008). As Mamdani (1996) observes these struggles have been reflective of a dialectic conflict of state reform and popular resistance that owes its roots to colonial institutional legacy that continues to be reproduced throughout Africa.

In Kenya, this dialectic resulted in over 38 constitutional amendments by 2004 (Ojwang, 2003), many of which have had adverse effects on Kenya's social, political, and economic fabric.[14]These developments ignited protests and calls initially for democratization, and later transformed into constitutional reform struggles. As this thesis shows, due to multiple cleavages in Kenyan society as well as in the movements at the heart of these struggles, it took two decades to realise a new constitution.

I posit a theory bridging approach to the understanding of these struggles. Specifically, this is because while Polanyi's 'double movement' concept offers a theoretical logic to explain the emergence of these contentions, it is Gramsci's (1971) concept of hegemony, and specifically his framing of the 'war of position', that offers the conceptual apparatus for comprehending how popular struggles either succeed or are captured to reproduce domination in society. This case study of the Ufungamano Initiative clearly illustrates this duality. Specifically, the thesis shows that the divisive characteristics of Kenyan society such as ethnic, religious, economic and political differences were the drivers leading to the abortion of the dream for a new constitution in Kenya in 2005.

[14] According to Kindiki (2007), the core adverse amendments included: 1) the 1964 amendment, which unified the offices of the Head of State and the Head of Government. 2) The 1964 and 1968 removal of the constitutional protection against the redrawing of regional and district boundaries or the creation of new regions or districts. 3) The 1965 amendment that changed the state of emergency approval from 65% to simple majority and the 1966 amendment that removed the time limitations on state of emergencies. 4) The 1966 amendment requiring Members of Parliament who defect or start a new party, to seek a fresh mandate from their constituents. 5) The 1968 abolition of the Senate. 6) The 1968 amendment that gave the President the authority to appoint twelve nominated Members of Parliament. 7) The 1975 amendment that allowed the President to waiver the penalty on persons found guilty of an election offence not to contest elections for five years. 8) The 1982 constitutional amendment that made Kenya a *de jure* one party state.

Gramsci's concept of 'hegemony' further helps this thesis give meaning to opposition parties' unity under the umbrella of the NARC that effectively ended KANU's forty-years of political hegemony in 2002. Specifically, Gramsci's concept of hegemony helps us explain why the newfound unity imploded under the weight of the very maladies that NARC had vowed to fight: tribalism, corruption and politics of exclusion, poverty and deprivation. The NARC coalition partners' honeymoon after the December 2002 electoral victory was short-lived. Simmering disquiets over the Memorandum of Understanding (MoU) derailed many of the pre-election pledges and illusions of progress quickly faded as political elites soon turned to fight each other. The thesis treats these intra-elite struggles as manifestations of hegemonic wars that frustrated the transformations that the Ufungamano Initiative had sought.

The 2005 constitutional referendum provided a perfect opportunity for the final fallout. Soon, there were political realignments and those who had been part of the former Moi regime and would have otherwise been permanently consigned to political dustbins, found a new lease of political life as new alliances were built. This also bred new sources of dissatisfaction that led to tensions and mobilisations culminating in ethnic bloodbath after disagreements on the outcomes of the presidential election in 2007. Though ethnic in nature, the 2008 post-election violence threatened the collective interests of political and economic elites. This forced them into a negotiated truce that among other things delivered a new constitution.

The analysis in the succeeding chapters extrapolates the propositions made in this introductory chapter in an attempt to answer the key research questions.

Chapter Two

Theoretical Framework and Literature Review

Introduction

Dramatic transformations in society intermediated by social movements, social protest actions, trade unions, and even political organisations unaligned with major political parties, are the empirical fodder, which have nurtured social movement scholarship and theory building (della Porta and Diani, 2006). As Tilly (2004) as well as della Porta and Diani (2006) show, social struggles and the organisations that drive them have been many, and for several centuries. However, they have multiplied in numbers, forms, and manifestations, which dot grassroots to the trans-national planes, so much so that Snow, Soule and Kriesi (2004: 5) comment that they have 'become a more ubiquitous social form in the world today, even to the point of becoming routinized avenue for expressing publicly collective grievances.'

Charles Tilly's greatest contribution to social movement theory was his systematic socio-historical approach in the study of protests and collective action. Tilly also demonstrates that 'social movements are modern phenomena that find their genesis in the advance of capitalism and especially with the development of the modern nation state' (Voss and Williams, 2011: 4). Modern social movements protest over a wide number of issues and themes that include gender inequality, ecological conservation, human rights, democracy, child labour, neoliberal globalisation, etc. According to della Porta and Diani (2006: 2), the ensemble of individuals, organisations, and forms of protests involved, 'illustrates what doing 'social movement analysis' actually means.' Essentially, it presents conceptual challenges due to the changing nature of social movements and collective action.

This chapter specifically reviews literature on concepts and theories utilised in this thesis. In doing this, it seeks a good interplay between theory and concepts in keeping with Kaplan's postulation that 'proper concepts are needed to formulate a good theory' (Kaplan, 1964: 53) while aware of Hirschman's (1970) warning that over-adherence to theory can be a hindrance in research. At the same time, a good theory is needed to arrive at the proper concepts. The chapter proposes a convergence of Polanyi's (1944) concept of 'double movement' with the 'political

process model' as a theoretical framework utilised in studying and explaining the emergence of contentions centred on constitution reforms in contemporary Kenya, and specifically in understanding the Ufungamano Initiative's efforts in creating an alternative socio-political order.

The chapter specifically engages the two main strands of theoretical literature; one focused on social movements, and the other on what Obadare (2007: 136) following Tvedt (2000) calls civil society and its 'ambiguous relationship with the state'. For the purposes of this study, it is important at the onset to acknowledge that the intermeshed nature of actors within the Ufungamano Initiative and other forms of civil society, presents not just a conceptual challenge, but also an opportunity to mainstream civil society in the broader social movement literature. A case study approach is appropriate for creating this conceptual linkage particularly in the Kenyan and African contexts, where as noted in chapter one, the 'NGOisation' of the concept of civil society has stripped it of its intellectual roots in social movements.

In this study, I propose to bridge the two literatures (civil society and social movements) in order to show their relationships. Social movements are therefore treated in this study as actors with a civic agency that is directed toward change. They therefore engage in contentious politics for the purposes of change. On its part, civil society generally includes more actors, such as religious organisations, development NGOs, grassroots community-based organisations, some of whom, are denuded of politics (Fowler and Bieckart, 2011). This raises interesting dilemmas on the nature of the relationship between the different forms of civil society, especially religious organisations and secular civil society[1] within the Kenyan constitutional reform struggles. Chapter six reflects on these dilemmas within the Ufungamano Initiative as well as in the wider constitutional reform struggles in Kenya.

The study applies the political opportunity model (developed by the likes of Tilly 1978, 2004; McAdam, 1995; McAdam, McCarthy, and Zald, 1996) and Polanyi's (1944) double movement in the analysis of power and participation as defining features of contention for the movement under study. As chapter four will show, neither Polanyi's concept of double movement explanation of social contention to be a product of market penetration on society, nor the

[1] Secular civil society is a term used in this study to denote civil society excluding faith-based groups. I adopt this usage to separate Faith Based civil society organisations from other civil society forms and more so, to amplify the internal differences between Kenyan civil society.

political process model on their own, can adequately explain the emergence and operations of the Ufungamano Initiative.

The chapter has three sections: The first section below defines and sketches the conceptual cornerstones (social movement and civil society). This is followed by an attempt at marrying the political process model to Polanyi's double movement in the evolution of an analytic model utilised in this study. Lastly, the chapter engages with state-civil society relations' literature.

Defining and theorising social movements

Different theoretical models have evolved and been utilised, overtime, in the study of social movements. This therefore means that there is no single theory referred to as 'the' social movement theory but rather, a nested collection of theories and models advanced in the study of social movements. This multiplicity of underlying theories, has resulted in the concept of social movement being described fluidly as something that 'sponges up so many different meanings' (Tilly, 2004: ix) which presents conceptual challenges to students of social movements. Tilly (2004), links the term social movement in sociological literature to Lorenz von Stein's (1850) *History of the French Social Movement from 1789 to the present.* von Stein used the term social movement to convey the 'idea of a continuous, unitary process by which the working class gained self-consciousness and power' (as cited in Tilly, 2004: 5). Tilly (2004) argues, however, that works on social movements, predate von Stein's publication. Despite the term's long history, its usage and meaning has not escaped what has been described as commonplace but 'wrong' practice of scholars defending specific usage of certain concept(s) in the firm belief that it is the most appropriate, or simply because it belongs to their paradigm of reference (Kuhn, 1962).

Kuhn's observation is relevant in explaining why, despite the fact that social movement struggles have been a phenomenon on the political scene for over two centuries (Tilly, 2004), there are still conceptual and theoretical contestations on how best to define and study social movements. These contestations are rooted in the different theoretical models that have been advanced and utilised over time in the study of social movements. Buchler (2000) [2] identifies at least five

[2] della Porta and Diani (2006) have similar typologies as Buechler (2000) of social movement scholarship. Habib (2008: 3) gives three different explanatory variables advanced by distinct schools in social movement theory: i.e. the political structure which defines both opportunities and constraints (Tarrow, 1994[98]), the human and financial resources that enables movement's mobilisation and operations (McCarthy and Zald, 1973; Tilly, 1978) and the identities which provides the impetus for actors to get involved and provides the movement its legitimacy.

different theoretical models employed in the study of social movements. These are: 1) the collective behaviour theory (which has three variants: symbolic interaction (Blumer, 1951; 1969; Turner and Killian, 1957), structural functionalism (Parsons, 1951; Smelser, 1962) and relative deprivation (Davies, 1962; Geschwender, 1968; Gurr, 1969)); 2) the resource mobilisation theory (McCarthy and Zald, 1977; 1973; Tilly, 1977; McAdam, 1982; McAdam, McCarthy, and Zald, 1996); 3) the political process theory (Gamson and Meyer, 1996; Jenkins and Perrow, 1977; McAdam, 1982; 1986; Tarrow, 1994; 1998; McCarthy and Zald, 1977; Tilly, 1978; Snow *et al.*, 1980; Jenkins, 1983; McAdam and Paulsen, 1993); 4) the new social movement theory (Touraine, 1981; Melucci, 1980; 1989; 1996; Cohen and Arato, 1992; Escobar and Alvarez, 1992; Buechler, 1995; 2000; Pichardo, 1997; Habermas, 1987); and 5) the social constructionist theory (Gamson, 1995; Snow, Rochford, Worden, and Benford, 1986; Piven and Cloward, 1991; 1977; McAdam, 1982; Goffman, 1974).

Each of these models has a distinct conception of social movement, which has implications to its empirical application. From the start, it is important to note that while this study primarily utilises the political process model, this chapter also cites and engages other theories utilised in the study of social movements as theoretical antecedents influencing the political process model. Moreover, the engagement of such theories helps demonstrate the challenges entailed in studying social movement as both a contested concept and social reality.

Tilly (2004) apportions the basic conceptual challenge in studying social movements, to scholars' loose application of the term to all relevant popular collective action, be it random, unorganised or organised and carefully planned. For example, collective behaviour analysts have for long treated social movements as random occurrences of individuals emotionally reacting to situations outside their control (see for example Blumer, 1951; 1969; Turner and Killian, 1957; Parsons, 1951; Smelser, 1962; Davies, 1962; Geschwender, 1968; Gurr, 1969). However, as Tilly (2004) as well as della Porta and Diani (2006), point out, such conception obscures: a) the incessant jockeying and realignment that always go on within a social movement; and, b) the interaction among activists, constituents, targets, authorities, allies, rivals, enemies and audiences that make up the changing texture of social movements. Tilly (2004) also faults analysts' oft-

conflation of a movement's collective action with organisations and networks[3] that support the action, or even sometimes, consider the organisations and networks to constitute the movement rather than the work and campaigns in which they engage. For Tilly (2004), while this inflation and conflation does not do much harm in casual political discussions, and that it may in fact aid social movements in their recruitment, mobilisation, and morale, it can greatly handicap efforts to describe and explain how social movements actually work.

According to della Porta and Diani (2006), another conceptual problem emanates from the treatment of social movement actors, especially by the collective behaviour theorists as homogeneous entities with their struggles or even as a single unitary actor (See Touraine, 1977, 1981). This obscures the different actors, targets and actions that make up a movement (Axtmann *et al.*, 2008; Zeilig, Dwyer and Seddon, 2002; Petras and Engbarth, 1988; Tilly, 2004). Melucci (1996: 19) criticises this approach arguing that 'collective behaviour is too general a container, bringing together under its categorical unity a great multitude of different empirical phenomena ranging from "spontaneous" panic to planned revolutions.'

Still, other scholars and activists have a romanticised and valorised conception of social movements. Habib (2008: 5) criticises the often-romantic description of movements as:

> Arenas of free egalitarian and democratic debates and participation epitomised in "principled internationalism, a socialist vision, and an independent mass-based mobilisation and struggle as an ideological and organisational alternative to … capital[ism] (McKinley 2004)" and excesses of a predatory state.[4]

Such normative stance can be problematic. For instance, a closer look at Kenyan social movements and their struggles, reveals that they are replete with constant frictions, internal tensions and contestations 'between ethnicities, classes and other interests' and they do not always necessarily agree on what to contest, and most crucially, how to contest (Nasong'o, 2007: 24. See also Mati, 2008; Murunga, 2000). This is particularly instructive for the Ufungamano Initiative case. As this study shows, dynamics such as ethnicity, class, generational and other

[3] A network is used in this study to mean an organisational structure or architecture that allows people to network (activity). Networking connotes the active participation in activities together with other network members (Østergaad and Nielsen, 2005).

[4] See also Voss and Williams, 2009/2011; Atibil, 2010; Cohen and Arato, 1992; Diamond, 1999; Harbeson, 1994; Habermas, 1996; Nasong'o, 2007; Offe, 1985; Silva, 2008 for similar arguments. Voss and Williams (2011: 2) for instance sees these movements, as 'seek[ing] to build participatory democratic mechanisms for economic, social, and political justice, [and therefore] create new spaces for practicing democracy.'

interests played a role in the establishment and operations, and had implications on the Ufungamano Initiative's inclusiveness, internal democratic mechanisms, and generally to its struggles and unity.

Finally, some analysts treat social movements as 'normatively oriented interactions between adversaries with conflicting interpretations and oppose societal models of a shared cultural field' (Touraine, 1981: 31-2; Cohen and Arato, 1992: 510 as cited in Nasong'o, 2007: 21). As such, they treat social movements as sources of the contentious dynamics in politics that contradict those of the larger society rather than sometimes, seeing them as emanating from contentious dynamics in politics in the larger society (for example Buechler, 2000; Touraine, 1985). Touraine (1985: 749) for instance argues that social movement's 'goals and strategies have a social coherence and rationality of their own […and] cannot be understood within the logic of existing institutional order, since their overriding function is precisely to challenge that logic and transform the social relations which it mirrors and reinforces.'

Despite the many differences, works by scholars such as Tilly (2004), Wilkinson (1971), Mamdani (1996), Nasong'o (2007), and della Porta and Diani (1999), converge on the fact that social movements essentially refer to 'means through which ordinary people come together to make collective claims on others […] through a distinctive combination of campaigns, performances, and displays' (Tilly 2004: ix). For a struggle to qualify as a social movement, Tilly (1977: 3), argues, it should be 'durable and pursue broad aims.' Furthermore, actors involved must be aware of their common interest and distinct identity, and self-consciously seeking a set of changes. For Tilly (1978: 7), a social movement must:

> Evince a minimum degree of organisation, though it may range from a loose, informal or partial level of organisation, to highly institutionalized and bureaucratized structures […. It must be] founded upon the conscious volition, normative commitment to the movement's aims or beliefs, and active participation on the part of the followers or members.[5]

della Porta and Diani (2006) advance a similar but more integrated conception of a social movement.

[5] See also Snow, Soule and Kriesi (2004: 11) who see movements as 'collectives acting with some degree of organization and continuity outside of institutional or organizational channels for the purposes of challenging or defending extant authority whether it is institutionally or culturally based, in the group, organization, society, culture, or world order of which they are a part.'

For della Porta and Diani (2006), a social movement is characterised by at least three distinct aspects: 1) structurally, it is constituted by dense informal networks[6] of interactions that create the preconditions for mobilisation of resources (financial and human) necessary for collective action; 2) A social movement relies on a shared system of beliefs and ties of solidarity between participants, which constitutes its collective identity. The network structure contributes to this by providing a continuous flow of information and meanings between participants; 3) A social movement's *raison d'être* is its deliberate collective endeavour to promote change either for the benefit of members or secure a common societal goal through collective action outside the spheres of the established institutions and structures of the state (see also Tilly, 1978; Touraine, 1985; Nasong'o, 2007; Osaghae, 2008). This change or transformational orientation is a defining character of the conflictual relationship social movements have with those that they seek changes or concessions from.

Building on the discussion above, this study conceives of social movements as organised and sustained collectives independent from the state and market, with shared identity and goals, engaged in resistance and protests against social, political, economic or cultural hegemony or dominance with a view to changing or transforming the status quo. The words change and/or

[6] Such informal networks have not received much attention in the scholarship of Kenyan constitutional reforms that suffers from over concentration of on formal civil society organisations such as labour unions, church, business and professional associations. Arguably, the reasons for this bias are obvious as formal 'organised groups are more amenable to empirical investigations' (Maina 1998: 136). However, such an approach blinds investigators who fail to see that much of the struggles also took place outside of formal organised groups. Evidence from the current study corroborates observations pointed in a variegated body of literature including Maina (1998), Mutunga (1999), Nzomo (2003), Press (2004), Anderson (2005), among others, that 'much that is both interesting and transformative in Kenya's history occurred outside, or at the periphery, of formal organisational life. Spontaneous protests, laxity and lack of discipline and active non-cooperation with the state are important civic activities that take place outside the formal organizations. Spontaneous, non-confrontational methods such as these are safer ways of registering one's disagreement with the government than more robust public activities such as protest marches, placard-waving and burning effigies' (Maina, 1998: 137). Press (2004: 244-5) for instance demonstrates how a protest by 'elderly mothers of Kenyan political prisoners' was 'an example of spontaneous support for individual activists that stirred much of the Kenyan public and brought harsh international condemnation for its brutal disruption…' This protest started in March 1992. The Mothers of Political Prisoners 'were not supported by any organisation other than their own informal network among half a dozen or so mothers' and tactical support from Wangari Maathai and Njeri Kabeberi, the then chair of the Release Political Prisoners, described by Mutunga (1999: 41) as 'an extremely astute organiser, an activist, a courageous and intelligent woman.' Although they made no concerted effort to attract crowds, they soon had the nation's attention (Press, 2004: 245). People began showing up spontaneously at their open-air camp in Uhuru Park. In the event, the mothers, coupled with the local and international support they received managed to push the state to release all political prisoners. An analysis of such informal networks reveals that informal associations are important because of their ability to act as and provide a social security system critical in times of need.

transform are critical in the conception of social movement for this study because it highlights collective understanding and constitutional change orientation of the Ufungamano Initiative. As shall be discussed in chapter five, these were key generative forces for the Ufungamano Initiative. The movement was built by actors collectively driven by a desire to change the existing constitutional order, shared the objective of a people-driven Constitution Review Process which the state opposed. These actors collectively acted in establishing an alternative process that challenged the states' established one. This in turn, forced concessions from the state and allowed popular participation in the constitution making process.

Arguably, while the constitutional change processes remained largely elite-led, as the empirical analysis shall confirm, it is evident that the movement achieved some of its goals. This building of alternative modes of collective action, is an emergent form of social movement action that 'focus[es] on building alternatives and new collective capacities for civic engagement rather than simply oppositional politics' (Voss and Williams, 2011: 19). As such, this thesis is also an attempt to respond to Voss and Williams's (2009: 5) call on 'scholars to reorient theory by taking seriously recent changes in the nature of collective action.'

The operational definition used in this study therefore views the Ufungamano Initiative as a counter movement that sought fundamental changes in Kenyan society through constitutional reforms. It is this conception that also marries Polanyi's double movement concept with Gramsci's conception of civil society – another key concept utilised in this study and closely related to social movements. But how exactly do the two concepts become enmeshed in their application to the current analysis? The next section provides answers to this question through theorising social movements' emergence before turning to define and theorise civil society. Critical questions that the chapter addresses here are: how do movements emerge? How does existing literature theorise and provide empirical evidence for the emergence and operations of social movements in an effort to create alternatives and change in society?

Since the emergence of social movements and collective action as a phenomenon on the political scene, there have been contestations on how best to study social movements. The section below unpacks literature on the political process –the main theory utilised in this study, explanations of emergence of social movements. However, considering the successive nature of the nested

theories collectively termed social movement theories, the discussion begins by citing earlier theories used in the study of social movements as they have influenced the development of the political process model.

Theoretical explanations for emergence of social movements

Although it is no longer as widely used, the collective behaviour theory needs mention as the historical antecedent that has informed later developments in social movement theories. Leading collective behaviour theorists, such as Turner and Killian (1957), Parsons (1951), Smelser (1962), Blumer (1951), and Kornhauser (1959), argue, albeit with varying degrees of emphasis, that social movements are fundamentally irrational (psychological) forms of reactive, defensive, and particularistic actions and behavioural responses to changes in society (see also Buechler, 2000; Foweraker, 1995; Mamay, 1991; Tilly, 1995; Scott, 1991; McAdam, McCarthy, & Zald, 1996; Scott, 1991; Habermas, 1973, 1979; McAdam *et al.,* 1988; McAdam, 1982). For collective behaviour theorists, these actions are elementary, amorphous, unpredictable, non-institutional and spontaneous (Blumer, 1951, 1969; Kornhauser, 1959; Buechler, 2000). The ensuing collective behaviour leads to a social movement if it persists, and evolves integrated structures and establishes new norms.

Today's dominant political opportunities model and its immediate predecessor, the resource mobilisation theory, challenge earlier view of collective behaviour theory that movements were psychological. Rather than conceiving social movements as deviance and disorganisation symptomatic of social malfunction, they treat social movements as part of the ever-present political processes and organisations competing over interests in modern pluralistic societies (Oberschall, 1973; Voss and Williams, [2009] 2011; Buechler, 2000; Mamay, 1991; Tilly, 1984; 1978; McCarthy and Zald, 1977, 1973). As such, these theories see social movements as extensions of politics by other means (Tilly, 1984). For resource mobilisation and political process theorists, social movements are created to tap new political resources and opportunities available in modern democratic societies, which can be analysed in terms of conflicts of interest just like other forms of political struggles (Buechler, 2000; Mamay, 1991; McCarthy and Zald, 1973; 1977; Oberschall, 1973; Tilly, 1978; 1984; Voss and Williams, [2009] 2011).

Empirical confirmation of these views is found in the fact that social movements at times are geared not at contesting the status quo, but in ensuring that ruling party politicians do not abandon the masses that voted them into power (Tilly, 2004). To this effect, Tilly (2004) cites a Canadian activist Murray Dobbin who in 1999 argued:

> The most basic understanding of the state theory tells us that when a social democratic party wins "power" in an election, it really does nothing. Senior bureaucrats, virtually all of whom are now schooled in neo-liberal ideology operate as a fifth column to sabotage progressive policies. As well, when transnational corporations threaten a capital strike … governments don't have the "power" to stop them…. (Tilly, 2004: 2-3)

Dobbin therefore advocates building of social movements that can spontaneously get thousands of people into the streets to ensure that when a Leftist party that they support wins an election and takes office, it is does not abandon its constituency, by 'cav[ing] in to the very real power of corporations, exerted with breath-taking ferocity and on a daily basis' (1999: 2 as cited in Tilly, 2004: 2-3). On a similar note, Nyamu-Musembi (2006) argues that the failure of representative democracy to produce a political culture of accountability and responsiveness especially to poor and marginalised people is the reason why there have been significant investments in the search for alternative ways for citizen engagement. Significant attention has therefore been directed toward political activism by organised civil society groups since the second wave of democratisation in the early 1990s (Nyamu-Musembi, 2006. See also Held, 1993; Fung and Wright, 2003; Cohen and Rogers, 1995).

As such, social movements respond to, but at times create substantive political uncertainty in democratic systems (Schedler, 2001: 19 as cited in Habib, 2008) as they promote democratic accountability of the elected to the citizenry (Habib, 2004; 2008; Habib and Opokuh-Mensah, 2008; Ballard *et al*., 2006; Fowler, 2011b).[7] Nyamu-Musembi (2006) concurs that civil society and social movements' activism has provided some stitches. However, she is sceptical of organised civil society's power to bring about substantive change. Citing the Kenyan case, Nyamu-Musembi (2006: 1), argues that after more than a decade of 'political activism by

[7] Habib and Opokuh-Mensah (2008 citing Schedler 2001: 19), argue that the essence of democracy is political uncertainty, which takes two distinct forms; institutional and substantive. Institutional uncertainty - the uncertainty about the rules of the game – implies the vulnerability of the democratic system to anti-democratic forces. Substantive uncertainty – the uncertainty of the outcomes of the game – is about the perceptions of ruling political elites in a democratic system on whether they will be returned to office. The latter – substantive uncertainty - is good for democracy for it keeps politicians on their toes, and makes them responsive to the citizenry.

organised civil society groups [and] an observable change in a significant number of civil society actors […] join[ing] competitive politics and government bureaucracies,' there is little evidence to show that this has enriched the political culture. Here, I digress a little to invoke resource mobilisation theory's postulation of continual political realignment and transformation due to competing interests in society, to argue that the retreat of social movements occasioned by contentment that the new regime would deliver a better life for all, might explain the turn of events in Kenya post- 1963, as well as post- 2002 transition.

A significant contribution of the resource mobilisation theorists to social movement theory was the argument advanced by McCarthy and Zald (1977) that social movements develop when individuals with grievances are able to mobilise sufficient resources to take action. This happens through organisation and continuity of leadership without which, social movements and their protests cannot occur. This brings to the fore, the role of agency in incubating social movements through leadership and participation. In this thesis I borrow the conception of agency from Emirbayer and Mische (1998: 962) to mean:

> A temporally embedded process of social engagement, informed by the past (in its "iterational" or habitual aspect) but also oriented toward the future (as a "projective" capacity to imagine alternative possibilities) and toward the present (as a "practical-evaluative" capacity to contextualize past habits and future projects within the contingencies of the moment).[8]

Nonetheless, both the resource mobilisation theory and the political process model do not specifically use the terminology agency in their theories. Its value in these theories is only implied. Indeed, the political process model has been criticized for its neglect of agency (Voss and Williams, 2011). Agency and structure are common threads of analysis used in the empirical chapters to show the role of leadership, followers and the structural conditions that allowed for the Ufungamano Initiative's emergence and operations and how these determined outcomes.

The resource mobilisation theory therefore views participants in social movements as rational decision-makers who utilise their agency to weigh costs and benefits of collective action and decide that goals of protest are worth time and effort (McCarthy and Zald, 1977). Resources utilised in social movement protests include money, knowledge, political influence, media,

[8] Debates of what agency is are as old as the discipline of sociology. In its more generally used form, it refers to the capacity of individuals to act independently and to make own free choices. But these choices and actions, are depended on

labour solidarity, legitimacy, and internal and external support from power elite. It was Tilly's (1977), and McAdam's (1982), further refinement of the resource mobilisation theory that offered explanations why some discontented/deprived individuals are able to organise while others are not. For both theorists, the answer lies in social movement entrepreneurs who catalyse and transform collective discontent (read here as a manifestation of structural strain) into social movements. Applying this tenet, this study endeavours to establish the nature of the resources that the Ufungamano Initiative entrepreneurs mobilised for its formation and operations.

Critics of this theory charge that the emphasis on resources, especially financial resources is misplaced as some movements have been effective without money and are more dependent upon the movement members for volunteered time and labour. Moreover, the theory fails to account for the principal differences between diverse types of social movements. As such, it does not answer the question, why and how, for example, fascist social movements, or revolutionary, harmful radical ones, emerge and why they lead society to self-destruction (Mamay, 1991). In the last two decades, much work has gone into refining the theory resulting in the political process model. Contributions from scholars such as Jenkins and Perrow (1977), McAdam (1982; 1986); Tarrow (1994/98), McCarthy and Zald (1977), Tilly (1978), Snow, Zurcher and Ekland-Olsen (1980), Jenkins (1983), McAdam and Paulsen (1993) led the refinements and improvements to the resource mobilisation theory. At the same time their contributions were able to speak to the deficits of the collective behaviour model.

Among the leading lights of the political process theory are Tilly's (1978) socio-historical work on the emergence of social movements, and Doug McAdam's (1982) study of the American civil rights movement (Voss and Williams, 2011). Like the resource mobilisation theory, the political process model conceives social movements as rational actors having enduring, patterned and institutionalised elements trying to gain entry into the established structures of society to produce social reforms (Walsh and Warland, 1983; Buechler, 2000).

The political process theory emphasises three key aspects as important in the emergence of a social movement. First is the existence of political opportunities i.e. the degree of receptivity or vulnerability of the political system to organised protest groups (Chan and Zhou, 2009; McAdam, 1982; 1999; Tilly, 1978; 1984; Voss and Williams, 2011). Second is insurgent consciousness,

which is a collective sense of injustice felt by certain members of society that they are mistreated or that somehow, the system is unjust and with it, a sense of 'cognitive liberation' (McAdam, 1982), i.e. a sense of optimism that by 'acting collectively, they can redress the problem' (McAdam, McCarthy and Zald, 1996: 5). For McAdam (1982), insurgent consciousness is a key determinant for 'whether or not groups can take advantage of …political openings' (Voss and Williams 2011: 5). It is this 'cognitive liberation' that scholars such as Snow and Benford (1988), Snow, Worden, and Benford (1986), Keck and Sikkink (1998), reinterpreted as 'framing' of shared feelings of grievance or outrage prompting people to form collectives (see Habib, 2008; Voss and Williams, 2011). Chapter six of this study deals with how such cognitive liberations/framing was conceived and utilised in the Ufungamano Initiative.

The third key aspect of the political process model is borrowed from the resource mobilisation theory: social movements are generated if there is sufficient organisation and mobilisation of resources to utilise existing political opportunities. To do this, social movements need to organise, have strong leadership and sufficient resources (McAdam, 1982; Voss and Williams, 2011). By identifying these aspects, the theory addresses the timing of emergence as a determinant of social movements' success (Mati, 2008; James and Malunga, 2006). The political process theory also advances the political mediation process that outlines the way in which the political context, wherein movements operate, intersects with the strategic choices (and consequences) that movements make. This is an important observation for this study in explaining the strategic choices that the Ufungamano Initiative movement had to make in the course of its work and what the implications of the same have been internally on the movement, its struggles, as well as its targets or antagonists.

As such, this study finds conceptual alignment with the political processes theory, and especially so, because it allows for a convergent application of Polanyi's concept of double movement in focusing on social responses to the state in capitalist societies (Voss and Williams, 2011) and Gramsci's logic of counter hegemonic war, in analysing the Ufungamano Initiative as a social movement seeking to change the Kenyan political landscape. At this point, it may be useful to reiterate the argument made in chapter one that the Kenyan constitutional change struggles, which climaxed in the mid-1990s, cannot be explained by a single factor but must be viewed within the broader democratisation and anti-economic liberalisation struggles in Kenya. While

the Ufungamano Initiative case illustrates how collective actions are generated and utilise political opportunities to challenge the state, it is also illustrative of what Burawoy (2003: 23) calls the universalism of the impacts of the market offering possible grounds for counter hegemony (see also Harvey, 2003; Pithouse, 2004; Hardt and Negri, 2000; Habib, 2008 for similar arguments).

The embrace of the political process model for this study is a qualified one though, as despite its popularity within the academy, its deficits have been a subject of a barrage of criticisms (see for example Buechler, 2000; Chan and Zhou, 2009; Crossley, 2002; Eyerman and Jamison, 1991; Gamson and Meyer, 1996; Goodwin and Jasper, 1999; Johnson and Klandermans, 1995; Melucci, 1988; 1996; Voss and Williams, 2011). First, as Voss and Williams (2011: 4) observe, is the models' 'neglect of the role of community organizing in social movement' creation/generation, as well as overlooking important questions of agency (Flacks, 2004) and locally based initiatives (Warren, 2001 cited in Voss and Williams, 2011). Yet, as the empirical chapters shall demonstrate, community organising is a key dimension of contemporary movements' focus on building organisations and enduring mobilising structures that ensure 'victories won are actually implemented' for long-term transformation of communities (Voss and Williams, 2011: 8).

This thesis takes the view that while the political process model can explain the emergence of the Ufungamano Initiative by looking at the relationship between civil society and the state, it is precisely due to community organising that different struggles by middle and lower classes were able to unite under the Ufungamano Initiative. This reasoning is pursued further in the analysis in chapters five and six to show that while civil society mobilisers were interested in long-term community organising aspects that are transformative, the political and economic elites in the Ufungamano Initiative (e.g. opposition Members of Parliament) were not. This, the thesis argues, accounts for some of the reasons for the complex nature of the relationships within the Ufungamano Initiative.

Second, the political opportunities theory fails to acknowledge the reality of changing political opportunities within a state (Chan and Zhou, 2009; Gamson and Meyer, 1996). Moreover, due to its structural deterministic nature (Goodwin and Jasper, 2004), the political process model takes

as a given, that social movements emerge only to take advantage of existing political opportunities within a democratic state (Tilly, 1984; McAdam, 1982). This renders political process model less useful in accounting for emergence of social movements under restrictive political conditions (Chan, 2005; Chan and Zhou, 2009; Goodwin and Jasper, 2004; Payne, 1996; Press, 2004). Also, the political process model does not take sufficient account of the interpretative processes of social movement actors to the existence or absence of political opportunity. This means that unrecognised and un-interpreted opportunities cannot be regarded as political opportunity, nor can they be utilised to affect a movement. Additionally, as Chan and Zhou (2009: 3-4) argue, the political opportunity should not be 'treated purely as something "objective" and … independent variable in causal analysis… as political opportunities are dynamic, can be produced and magnified.' As shall become clear later in this thesis, the Ufungamano Initiative entrepreneurs made many strategic choices in recognising and creating opportunities that it utilised.

Third, the state-centric focus of the political process model has been criticised for its marginalisation of culture and identity (see for example Armstrong and Bernstein, 2008; Buechler, 2000; Goodwin and Jasper, 1999; Habib, 2008; Poletta, 1999, 2006; Poletta and Jasper, 2001; Taylor and Whittier, 1992 as cited by Voss and Williams, 2009). This critique is somewhat true for the Kenyan case because, as shall become clear in chapter four, there have been distinct artistic and cultural aspects in these struggles (see for example Njogu and Oluoch-Olunya, 2007). Besides, as the new social movement school's critics charge (see for example Kitschelt, 1990; Melucci, 1988; 1996; Offe, 1985; Routledge, 2002; Touraine, 1981 as cited in Voss and Williams, 2011), political opportunity model neglects social cleavages that generate new 'habitus' and class based identities and types of movements, and how these new formations affect the speed of the tide and direction of transformations. Nonetheless, however appealing identity and cultural variables maybe, the two are insufficient in explaining the Ufungamano Initiative especially given the multiplicity of both distribution politics as well as mixed identities of those who congregated under the Ufungamano Initiative.

The above critique is particularly relevant for the Kenyan case because of the incessant jockeying in the contestations among different groups of varying identities. The argument here is that it is important to analyse these cleavages. They have partly been behind the reason why the

Ufungamano Initiative and other social movement actors did not successfully deliver a new constitution in Kenya in 2005. But the struggles continued until a new constitution was delivered in August 2010.

I submit here that as shall become clear in the course of this thesis, both the delays and false starts in the achievement of a new constitution, and the cleavages displayed in the course of the long struggle, are products and manifestations of a multiplicity of actors with competing interests. At various points in this struggle, multi-interest coalitions and alliances[9] have been built between different forces resulting in remarkable progress. However, frequent disagreements between the most influential actors, social movements, religious institutions, and political party elites have always derailed the reform train. This has resulted in a series of 'cycles' or 'waves' of protest where movements are formed, take off, take on a life of their own, and sometimes metamorphose into phenomenal forces of change or just fizzle out.

Cycles or waves of contention are utilised in this study to refer to 'a 'strong increase and subsequent decrease in the level of contention' (Koopmans, 2004: 22. See also Tarrow, 1998; Strang and Soule, 1998 for similar conception). According to Koopmans (2004: 22), there are three distinct characteristics of waves of contention. These are:

> First…a strong *expansion* of contention across social groups and sectors superseding the narrow boundaries of policy fields […] second […] a *transformation* of contention, that is, changes in strategies, alliances, structures […] which inevitably arise in the process of dynamic interactions and ensure that no protest wave ends up where it begun […] third […] *contraction* of contention.[10]

[9] Alliances are defined as organised groups of organisations that share common concerns, synchronise efforts and resources and have a well-defined understanding about how they will work together (Ashman, 2001: 5). Coalitions are more tightly organised groups of diverse organisations that need each other to accomplish goals beyond the capacities of individual members. Coalitions tend to produce a new organisational entity (Ashman 2001; Fowler 1997). Coalitions and alliances have similarities in the 'centrality of values or principled ideas, [and] the belief that individuals can make a difference, the creative use of information, and the employment of sophisticated political strategies in targeting their campaigns' (Keck and Sikkink, 1998: 2).

[10] Strang and Soule (1998: 280) see such cycles of protest as exhibiting at least three kinds of diffusion: '(1) Collective action spreads across space and sectors... (2) New frames of meaning diffuse across as well as within movements ... and (3) novel tactics, such as the sit-in, are forged and diffuse within protest cycles.' For his part, Tarrow (1998: 142) sees cycles of contentions as characterised by: '(1) a phase of heightened conflict across the social system, with a rapid diffusion of collective action from the mobilised to the less mobilised sectors. Collective action spreads across space and sectors […]. (2) a rapid pace of innovation in the forms of contention; (3) the creation of new or transformed collective action frames; (4) a combination of organised and unorganised participation; and (5) sequences of intensified information flow and interaction between challengers and authorities.'

Koopman (2004: 22) further explains that:

> Expansionist forces work throughout a wave, though they will obviously be less powerful – at least relative to counteractive forces- towards its end. Transformative and counteractive mechanisms and process are likewise not confined to the later stages of a protest wave, but are present from the beginning and may, in fact, prevent a wave from taking off altogether.

Koopman's observations are important in explaining the various waves and cycles in the struggle for a new constitution in Kenya. Specifically, the vortex of the 2008 post-election violence, that forced a political marriage between the Orange Democratic Movement (ODM) and the Party of National Unity (PNU), is one such cycle of heightened contention. It is specifically treated as the conjecture that forced the different elite formations to agree to give Kenyans a new constitution. The key questions arising then are: does the Kenyan constitutional reform struggles narrative suggest that confluence of means and ends within the different elite formation are a *sine qua non* for transforming the power relations in a polity? What has been key to sustained pressures and success for reforms in Kenya after such a protracted period of time?

Building on the available criticism, I identify the limitations of the applicability of the political process model in this study on at least four accounts. First, while arguably, the emergence of the Ufungamano Initiative is traceable to a specific conjecture (the enactment of the Constitution of Kenya Review Act, 1997) political process theory does not help us in analysing the immediate political environment within which the Ufungamano Initiative emerged. In fact, the state in 1999 was busy blocking the very political opportunities that it had earlier acceded to, two years earlier. Second, after the formation of the People's Commission by the Ufungamano Initiative, the state responded with excessive force in trying to break the Ufungamano Initiative. This raises important questions on how the movement emerged and continued to operate under such restrictive conditions that the political process model may not necessarily answer.

Third, the political process model cannot help us understand why the Ufungamano Initiative decided to form its own Constitution Review Commission, both as a new form of collective action as well as an institution in civil society that in a significant way contributed to challenging the status quo and extending the frontiers of democratic participation. Understanding this

requires reflecting on what Voss and Williams (2011), borrowing from the work of Payne (1996) and his emphasis on the creation of new alternatives for collective capacities to act (i.e. organising), have called the 'generative aspects' of social movement. Voss and Williams observe that, existing social movement theories have given less attention to this partly because they are less dramatic forms of protest or collective action.

However, Payne's (1996) propositions are less useful for the analysis of the Ufungamano Initiative. Unlike Payne's observation on the Civil Rights Movement in the United States, the Ufungamano Initiative was forged from pre-existing organisations like human rights organisations, religious organisations, opposition political parties as well as some other grassroots civil society and social movement formations. These existing organisations (churches, Mosques, temples, civil society organisations, and opposition political parties) crystallised into a new movement structure that launched an alternative Constitution Review Process (the People's Commission of Kenya). The Ufungamano Initiative never invested in building local capacity, leadership, and organisation. As shall become clear in chapter six, it is arguably this failure to build local capacity, yet arguing for citizen participation as a driver of the constitutional change process that antagonised the more radical and empowered groups within the movement.

Fourth, the political opportunity model cannot help us understand how the Ufungamano Initiative expected to build a consensus among Kenyans to accept the constitution that its Commission (i.e. the PCK) would produce especially given that they were operating outside of the state structures. Moreover, was it even possible for the PCK to go all the way? These are interesting aspects that this study probes in the empirical chapters. For these reasons, this thesis adopts a theory-bridging approach as it recognises that no single social movement theory can, on its own, offer an analytic model to address the different facets of the Ufungamano Initiative that the study examines.

The question for this study then is whether the political process model is useful in the analysis of the Ufungamano Initiative given the highlighted weaknesses of the model. To answer this, I argue that it is important to remember the context within which this theory originated. It largely developed in the context of the increasing power of the nineteenth and twentieth centuries' democratic Western Europe and North America, which led to theoretical emphasis on how

movements could secure concessions and rights from powerful nation states (Foweraker, 1995; Seddon, 2002; Tilly, 2004; Voss and Williams, 2011). Notwithstanding the above criticisms, the political process model's place in the analysis of social movements especially in relationship to the state is not in doubt. This study takes the view that the political process model, combined with Polanyi's double movement are sufficient analytic models for the Ufungamano Initiative as they help us understand how the movement was able to force concessions from the state. It is a narrative of complex relationships between the state and civil society. It is these that the chapter turns to address.

Defining and theorising civil society

Due to its different theoretical origins, disciplinary traditions, as well as its content, scholars of civil society generally agree that it is a uniquely imprecise, fuzzy, and extremely complex and contested concept (Atibil, 2010; Burbidge, 1998; Chatterjee, 2000, 2004; Corry, 2010; Foley and Edwards, 1996; Harriss, Stokke and Tornquist, 2004; Heinrich, 2005; Jenei and Kuti, 2008; Keane, 2003; Mati, 2009; 2008; Monga, 1996; Munck, 2006; Osborne, 2008; Voss and Williams, 2011). As such, the concept of civil society has infamously earned itself the tag a 'loose and baggy monster' (Kendall and Knapp, 1995 cited in Corry, 2010: 11).

Students of civil society do not agree on whether studying civil society should be approached ontologically or epistemologically[11] (see for example Corry, 2010; Nasong'o, 2007). Even then, ontological conceptions have differing views on what civil society is made of, and what is excluded. This is partly due to disciplinary contentions, but also to the normative stances taken by different schools of thought. Corry (2010: 12) though not claiming a neat geographical fit, subdivides the schools of thought in the study of civil society as encompassing the American and European traditions. For him, the American school treats civil society (he uses the term 'third sector') as 'a discrete sector characterized by certain qualities such as civility' and therefore excludes anything uncivil in its analysis.

[11] Ontological approaches are interested in defining what things 'are', charting out their existence and finding methodology to uncover the truth of their being while epistemological approaches are concerned with how things (structures, organisations, or identities) come to be made real, defined, and authorised, and how different perspectives generate different understandings of them (Corry, 2010: 12).

The European traditions theorists on the other hand, criticise the American selectivity in the normative operationalisation of civil society (see for example Munck, 2006; Nasong'o, 2007). As such, European traditions theorists take '"the hybrid view" that …third sector organizations [are] essentially… mixtures of other kinds of social organization such as private and public, or hierarchic and anarchic' (Corry, 2010: 12). These organisations can be 'illiberal, anti-democratic and violent as well as liberal, democratic and peaceful' (Wild, 2006: 2; Evans, 2005; Held and McGrew, 2003; Mati, 2009; 2008).

The epistemological approach views civil society not as an 'object out there waiting to be authoritatively defined but as a kind of societal process' (Corry 2010: 12). The epistemological approach therefore looks at, and interrogates, the kinds of knowledge that inform how identities, practices, structures, organisations of civil society are 'generated, the position of observations that identify a third sector in a particular way, and what makes it possible to see such a thing in different ways' (Corry, 2010: 13. See also Åkerstøm, 2003). It is from an epistemological point of view that economists for instance focus on the non-redistribution constraints. On their part, sociologists look at value-based motivations, persuasions, normative appeals, communicative rationality and idealism of participants as key generative and operative drivers of civil society (Corry, 2010; Etzioni, 1973; Jenei and Kuti, 2008; Lewis, 2003).

There is also a different form of contention centred on whether civil society actually exists. Some scholars (see for example Bratton, 1994; Young C. 1994; 1999; Chabal and Daloz, 1999; Nasong'o, 2005) dismiss the 'notion of civil society as a mere metaphor masquerading as a political player' (Nasong'o, 2007: 23). Some of these scholars 'deny the concept concrete reality and contend that it is essentially a child of anthropomorphic fertility of the social scientific mind. In this view, civil society is a theoretical construct lacking empirical locus, whose contemporary currency is only an intellectual fad that is inherently limited in heuristic value' (Nasong'o, 2007: 23).

Ensuing from such theoretical disagreements, Seligman (1992: 3) notes that 'works of writers as diverse as Ferguson and Marx, Hegel and Adam Smith, de Tocqueville and Gramsci are all invoked in contemporary "rediscovery" of civil society' (cited in Mati, 2008: 21). The usage of the term civil society nonetheless is traceable to seventeenth and eighteenth century political

realities and thought in the development of princely city-states in Western Europe and later in North America and has undergone several adaptations over the centuries (Hyden, 1998; Voss and Williams, 2011; Chweya, 2004). For Kaldor (2003: 6), 'originally, civil society referred to a rule-governed society in which the public good comes before the ruler's private interests, but was later refined through the idea of a social contract, the rise of individual rights, and the assumption of human equality.' For Corry (2010: 14), these were termed 'civil societies' in reference to 'virtues of citizenship associated with the rule of law and political society.' For him therefore, 'civil society was at one stage closely related to the very idea of the state and political society that governed and ordered a society' (Corry, 2010: 14).

As Voss and Williams (2009) as well as Kaldor (2003: 7) argue, Hegel (1996, 185-6) took the idea of civil society further by distinguishing it from the state through his definition of civil society as the 'realm of difference, intermediate between the family and the state.' In the 20th century, 'Gramsci further refined civil society to refer to forms of social interaction that are distinct from both the state and economy' (Voss and Williams, 2009: 11).

Some of the contemporary usage of civil society has inherited the valorised and virtuous conception. Some scholars argue civil society is defined by voluntary and non-coerced associational life, independent of, and competing with the state and as protections against the domination of society by the state, and in pursuit of shared public interests, adherence to value-based rationality (see for example Atibil, 2010; Corry, 2010; Salamon and Anheier, 1997). For some therefore, the idea of civil society comes imbued with a potential as a watchdog and as a way to educate citizens by fostering democratic dialogue and deliberative democratic control over terms of political discourse and the operation of governance (Silva, 2008: 5; Fowler, 2011b; Monga, 2009; Glasius, 2010). Others however, reject this normative conception (Fowler, 2011b). For the purposes of this study, contemporary literature on the conceptions of civil society can be categorised into the following: a) civil society as relational concept (Voss and Williams, 2009; 2011); b) civil society as an arena of contestation (Bayart, 1996; Corry, 2010; Nasong'o, 2007; Gramsci, 1971); and c) civil society as a process (Foucault, 1978). Below, I explore each of them.

Civil society as a relational concept

Here, most of the literature conceives civil society (mainly referred to as 'third sector') as a residual category, in relation to two other sectors with state as first sector, and market as the second sector (Etzioni, 1973; Corry, 2010; Kanyinga, Mitullah and Njagi, 2007; Katumanga, 2004; Mati, Silva and Anderson, 2010; Voss and Williams, [2009] 2011; Walzer, 1991; Chweya, 2004). Civil society lies between and intersects with both the state and economy (Chweya, 2004; Ngunyi 1996; de Tocqueville, 1835; Hegel, 1821/1952).[12] For Corry (2010: 11) the logic of civil society, 'unlike the state and the market economy, …can scarcely be subjected to detailed planning or regulated without it losing some of its …qualities such as voluntary participation, value-based motivation, and independence from more institutionalized power structures.'

But such residual conception of civil society as the 'third sector' has been faulted on the basis that 'it is always one (or two) steps behind in terms of primacy' and that the other two sectors or domains affect its nature and character and in the process subordinating it (Corry, 2010: 15; Voss and Williams, 2009; 2011). As Corry (2010: 15) citing Kaldor (2002), argues:

> Defining the third sector in relation to the market and the state (as separate or hybrid) points focus toward its functionality vis-à-vis those sectors: nongovernmental organizations fill a service gap for welfare states; the "social economy" covers for failings in the market economy. If the fourth "private" sector of family and community is included, the third sector is again conceived in terms of its functionality for "cohesion" or "the family." This is why the third sector, despite its potentially subversive effects, is accused of being a "tamed" sector subservient to other societal forces, in particular neoliberalism.

The relational and sectoral approach also assumes coherences in the entities that make up civil society. It also suggests clear lines of demarcation between it and the other sectors (Corry, 2010). However, there are many differences in the forms of social, political, and economic organisations that fall within civil society, creating doubts as to whether a third sector necessarily exists (see for example Evers, 1995; Laville *et al.*, 1999).

[12] Chweya (2004: 28) notes that the addition of the markets appears 'justified in the light of the threats that citizens face from the market besides threats from the state. That is citizens are under siege from both the state and the market, although sometimes, citizens ally with state against the free market such as the Leftist campaigns against neoliberal conservatives, in defense of the welfare (Keynesian) state system. Jude Howell and Jenny Pearce (2001) arguing from a development perspectives have noted that under socially responsible capitalism (Keynesianism) civil society complements the state in effort to redress the inequalities created by the market and thereby also both exonerates and protects the market.'

Moreover, there are disagreements among scholars of different disciplinary traditions especially between economics and sociology or even with political science regarding what the primary defining characteristics of human organisations occupying the civil society terrain should be. The primary disagreement is on 'whether civil society is primarily an economic or a sociological phenomenon' (Hyden, 1998: 19). Here, the interchangeable usage of terms 'non-profit sector' with 'civil society' is the case in point. This has however been charged as 'conceptually unsound, as the two terms denote quite different phenomena and use different perspectives, with the non-profit sector being grounded in economic and social policy debates, and civil society being rooted in democratic political and social theory' (Heinrich, 2005: 219).

The relational conception of civil society has also resulted in disagreements on whether 'civil society is essentially autonomous of the state or civil society and the state are organically linked' (Hyden, 1998: 19. See also Atibil, 2010; Beckman, 1998; Clayton, 1998; Corry, 2010; Mamdani, 1995; Nasong'o, 2007; Shivji, 2006). While some scholars, for example, Price (2003), Putnam (1993), Walzer (1991) among others, have embraced the state-civil society dichotomy, others for example, Beckman (1998), Mamdani (1995), Shivji (2006), Katumanga (2004), see such as either oxymoronic, or an 'ideological strategy of current neoliberal offensive' (Nasong'o, 2007: 23).

Some scholars taking cue from Hegel (1952), reject the idealisation of separateness of civil society arguing that civil society and the state are mutually inter-dependent (Atibil, 2010). Shivji (2006: 15) for instance rejects the idea that civil society is separate from the state arguing that 'whereas civil society likes to present itself as an ensemble of free individuals and as a separate sphere from state/politics, it is, as a matter of fact, the soil from which state power arises, and is embedded' (cited in Atibil, 2010: 6). Other scholars argue that 'civil society is incapable of remaining "civil" unless it is so ordered politically and subjected to higher surveillance by the state' (Katumanga, 2004: 44). It is from such that the Kenyan state for example, required civil society organisations to register through the various legal and administrative instruments (Oyugi, 2002/4; Ndegwa, 1996; Katumanga, 2004). For Ndegwa (1996), this is a step towards neutering civil society, as a state controlled civil society is more unlikely to be a challenge to the state.

Beckman (1998: 46) offers a reason for emergence of state-civil society dichotomy arguing:

> In an effort to delegitimise the principal ideological rival −economic nationalism- neoliberals seek to delegitimise the state, the main locus of nationalist aspirations and resistance to the neoliberal project. In order to undercut the claims by the state to represent the nation, its alien nature is emphasised. Its retrogressiveness is explained in terms of its separation from civil society… [its] rent-seeking, patrimonialism and … autonomy (cited in Nasong'o, 2007: 24).

But this bastardisation of the state has not been just a neoliberal economic orthodoxy. Rather, the gospel spread far and wide. The resulting delegitimisation of the state became a generally accepted reality by even the loudest of anti-economic neoliberal scholars and activists in many parts of Africa and the world. In effect, civil society has abetted the expansion of the frontiers of economic neoliberalism in society (Bond, 2007: 43; Petras and Veltmeyer, 2002; Munck, 2006). Some scholars have indeed argued that:

> It is understandable that given the scholarly preoccupation of Africanists with the weakening of the African state and its presumed lack of capacity to fulfill its obligations to its people, coupled with the pattern of actions by external donors to push the African state out of many of its traditional functions, African civil society entities are wont to believe that they are equal to and independent from the state. […] to a large extent, these assumptions of independence from and equality with the state […] have something to do with the character of state-civil society relations in Africa (Atibil, 2010: 5. See also Moyo, 1993; Ngunyi, 1996).

Civil Society as an arena and means of contesting and challenging state power

Some scholars, following conflict traditions, have conceived civil society as a transformative 'providential spirit dispatched to redeem a political world gone awry' (Nasong'o, 2007: 24) or a 'corrective add-on to the blind spots of a market economy' (Corry, 2010: 15). Here, we see a valorised conception of civil society based on struggles for human rights, democracy and even economic freedom. This celebrates actual and potential capacity of civil society to transform politics towards greater democracy (Nasong'o, 2007; Silva, 2008; Whitfield, 2003; Atibil, 2010; Fowler, 2011b; Glasius, 2010).

It is from such normative twists that the role of civil society in the struggle for democratisation and constitutional changes in Kenya has remained largely romanticised in existing literature (see for example Kibwana, 1996; Nasong'o, 2007; Mutua, 2008; Mutunga 1999; Ngunyi, 1996; Oloka-Onyango, Kibwana and Peter, 1996). In reality however, a closer analysis reveals that

arguably, civil society is more of a battleground for hegemonic wars for the control of Kenyan society.[13] Civil society is not always the innocent and germane victim pursing collective public interest, and 'the state always the aggressor whose power has to be checked' (Atibil, 2010: 5).

It is true that through civil society, we have seen society actively contesting increased encroachment of private and social spheres by market forces. As Gramsci argues, civil society is therefore an 'arena of conflict' and where 'the control the dominant class has over society can be overturned' (Hyden, 1998: 21) through counter hegemonic 'war of position' (Gramsci, 1971) for ideological dominance of civil society in the struggles against hegemonic oppressive and exploitative forces in society (Glasius, 2010; Katz, 2006; Burawoy, 2008b). Such 'war of position' results in creation of alternative norms for transforming society. As Burawoy (2008b: 5) argues, Gramsci is not alone in the belief that 'the dominated, or some fraction thereof, can indeed, under certain conditions, perceive and appreciate the nature of their own subordination.' Other social theorists of distinctive Marxist perspectives such as Fanon (1967), De Beauvoir (1949), follow similar lines of argument (Burawoy, 2008b). Polanyi's (1944) conception of civil society as a counter-hegemonic project that challenges economic, political, social and cultural hegemonies (Mati, 2009) is also an example of theorisations of possibilities of societies to throw off the yoke of their domination.

Through civil society *a-la* Gramsci, alternative leadership and movements from below can emerge to mobilise consciousness around real or perceived deprivation that can lead to a revolution (Gramsci 1971; Katz, 2006). As such, according to Katz:

> Hegemony necessitates counter-hegemony—hegemony and counter-hegemony are best seen as 'simultaneous double movements' that reciprocally shape one another—hegemony informs counter-hegemony, and counter-hegemonic efforts cause hegemonic forces to re-align and reorganize themselves (Persaud, 2001, p. 49). Civil society, and not the state as in Hegel, is the active and positive moment of historical development. It is the creative space, where subaltern groups, encouraged by intellectuals, can coalesce, form a historic bloc, and engage in a counter-hegemonic war of position to alter society (Sassoon, 1982) (as cited in Katz 2006: 336).

The current study also concurs with Atibil's (2010) observation that there are clear demarcations between civil society as an arena of spontaneous citizens' collective action and the

[13] For a detailed discussion on similar arguments on civil society generally, see Fowler (2011b) and Glasius (2010).

institutionalised/organised (NGOs) forms of civil society. Like Atibil (2010: 6), the study takes the view that 'only the people, the citizens, can speak for themselves. Non-profit organizations, NGOs, governments, and the market are all subject to their own forms of repression' as well as limitations in the levels of participation that they allow. Because of such repressions, active citizen participation in social movement has been declining. In its stead, we have seen an onset of managerial forms of civic organising with an impoverished base of paper membership and steadily declining collective action (Skocpol, 2004 cited in Voss and Williams, 2011: 8). This observation is important in the analysis of the structures created by the Ufungamano Initiative and how such structures enhanced or stifled participation. It will also be useful in the comparative analysis of congruencies and contradictions in the different forms of organisations that joined the Ufungamano Initiative. Atibil's (2010) observation while limited to the Ghanaian case is also particularly applicable in analysing the differentiated nature of relations between the Kenyan state (both under Moi and Kibaki regimes) and its attitudes towards different forms of civil society organisations (professional associations, NGOs, grassroots civic organisations etc.). I argue that both regimes were selective in their relationships.

This selectivity and relationship has largely been defined by client patronage, ethnicity and class (Nasong'o 2007, Ndegwa, 1996; Ngunyi, 1996), but to some extent, also by religion (Karanja, 2008; Gecaga, 2007). I propose here that this essentially explains the paralysis of the society, state, and civil society, as there has not been a clear winner in the (counter)hegemonic war in Kenya. While chapters six and seven shall explore this proposition, I specifically, submit here, that part of the reason for Kenya's arrested developments in the counterhegemonic project results from the inherent repressions in existing participation channels, and most importantly, the complicity in the massive co-optations of social movements and civil society operatives by fellow activists-turned- politicians. For example, in the post 2002 era, the following who had civil society activism backgrounds made it to the cabinet: - Kiraitu Murungi, Kivutha Kibwana, Mukhisa Kituyi, Koigi wa Wamwere, Wangari Maathai, and Kijana Wamalwa. The co-optations were mainly in the form of appointments into the civil service, a prominent one being John Githongo, a leading anti-corruption activist and head of Transparency International, Kenya Chapter, who became the ethics and governance permanent secretary. By agreeing to work with, or for the government, and not pushing for transformations, former civil society and social

movement activists' turned-politician- and-bureaucrats failed to keep eternal vigilance as the price to pay in ensuring that the new political elite they had elected to power, implemented the social democratic agenda they had been elected to fulfil. The co-optation in effect had two main impacts on the civil society. First, even those who were left in civil society slackened as they were now too close to the government and some of them had an illusion, naively so, that the fight was over. Second, a huge gap was left in civil society leadership and mobilisation abilities since it was the top leadership that was co-opted.

It is such co-optations that studies on the transformative potentials of African civil society, read as betrayals and variously termed as 'catalepsy' (Maina, 1998: 135), or 'paralysis of perspective' (Mamdani, 1996) due to '*tout court* applied assumption that civil society is by definition primarily a countervailing power to the state' (Maina, 1998: 135). Maina (1998: 135) offers a generalised explanation for such an assumption of civil society, which, while would be contested for example by Tarrow (1998), may still offer a qualified reason. For Maina (1998: 135), such assumptions are:

> Moored to a fact true of western society but hardly so of Africa: namely, that political resources are on the whole, fairly distributed in society or, at any rate, that the rules for the distribution of such resources are even-handed. By this accounting, civic groups have a roughly equal chance of accessing these resources. That assumption rests in turn on a view of the State as a largely passive and generally indifferent bystander with limited adjudicatory functions *[… between different civil actors…]* coming in only to stem acrimony and adjust conflicts that get out of hand. This assumption ignores the fact that in Africa, the assumed boundaries between the State, political society and civil society are rather porous, often blurring into each other… the State in Africa is neither indifferent nor passive (Ekeh, 1992). Historically, its political project has been domination and its *modus vivendi* the fragmentation of any opposition to that project.

Also cited in conception of civil society are collective actions and struggles against economic neo-liberalism. This conception builds on Polanyi's (1945) contributions that show society's capacity to challenge the deleterious effects of a market economy through counter-hegemonic struggles (Gramsci, 1971). Here, civil society is seen as a way in which citizens acting either spontaneously or through organised associations confront the vagaries of market failure and excesses of the state (Atibil, 2010; Anheier and Salamon, 2006; Murunga, 2007; Nyang'oro,

2000; Voss and Williams, 2009; 2011; Burawoy, 2008b). Voss and Williams (2009: 11) for example offer two dimensions in conception of civil society:

> It is both a domain of social organization and is [...] an arena of contestation and generative practices made up of concrete organizations. As an arena of contestation and generative practices, civil society consists of discrete organizations between the state and economy where daily life is lived out and includes a multitude of publics each with their own vision and interests. […] since civil society is a space in which daily life is experienced, it offers tremendous space to challenge the penetration of the market into this domain and hence helps clarify the shift in movement practices.

Civil society as a process

This view takes cue from systems theory approach. It views civil society as a particular form of communication between different societal systems facilitating certain activities while obstructing others (Corry, 2010: 12). As such, civil society is a zone of dialogue or struggle between diverse actors and holders of institutional power. This, as Cory (2010) notes, draws from Foucault's (1978) discourse-theoretical view of how holders of institutional power order people and ideas along certain practices while discouraging others. This idea therefore suggests that:

> Civil society […is] not free of power or coercion, nor essentially dialogical, but on the contrary forms of power that to a large degree condition and constrain which actors can exist and what they can do and say.… In this light, civil society has been seen as part of, or even a tool for, the dominant liberal order in Western countries and the global Western conglomerate of international organizations and global civil society (Corry, 2010: 16).

In empirical terms, the above conception would then dispute popular orthodoxy that conceives civil society as including a whole range of non-coercive institutions: - non-state and non-market structures and activities like trade unions, schools, professional, educational and cultural associations, political parties, churches, charities, nongovernmental organisations (NGOs), self-help groups, social enterprises, networks, and clubs etc. (see for example Corry, 2010; Mati, 2008, 2009; Putnam, 1993; Walzer, 1991; Voss and Williams, 2009; 2011). The key to appreciation of why these still qualify to be part of civil society lies in three related concepts in the definition of civil society applied in this study. These are hegemony, domination, and symbolic violence.

Towards a working definition of civil society

While acknowledging the contentions and the blurry usage of the concept of civil society, this thesis adopts a Gramscian perspective. Gramsci (1971: 238, 243) sees civil society as sturdy structures of fortresses and earthworks of modern democracies that include what he called private organisations like church, the trade unions, schools, where state organisations, and complexes of associations in civil society, are part of politics. While Gramsci's definition includes political parties, I have excluded these from my conception of civil society because of the state power capture orientation that they have. Gramsci's (1971: 243) conception is particularly instructive for this study due to its argument that civil society 'constitutes for the art of politics, as it were 'trenches' and the permanent fortifications of the front in the 'war of position.' In this, Gramsci argues that civil society is one of the 'mechanisms for exercising control in society' (Hyden, 1998: 21. See also Corry, 2010; Mati, 2009; Katz, 2006; Bond, 2006; Price, 2003). For Gramsci, this happens because civil society is intertwined in a hegemonic historic bloc as the massive 'sturdy structure […] and powerful system of fortresses and earthworks' behind the state that serves as a stabilising, conservative force and ensures popular consent to hegemonic forces (Gramsci 1971: 238).

For Gramsci (1971), hegemony involves subordination obtained by psychologically conscious and deliberate consent or a 'substratum of agreement so powerful that it can counteract the division and disruptive forces arising from conflicting interests' (Femia, 1987 as cited in Press 2004: 21). Citing Gramsci (1971) and Femia (1987), Press (2004: 20-21) argues that this consent/conformity can be extracted in several ways: 1) coercion or fear of sanctions; 2) habit or 'unreflecting participation'; 3) conscious attachment to, or agreement with, certain core elements of the society, especially the dominated, and 4) pragmatic acceptance.

Gramsci's conception of consciousness on the part of the dominated is however criticised by the likes of Bourdieu. According to Burawoy (2008a), Bourdieu explains the mechanics of domination through 'symbolic violence' and claims that submission 'is deep and unconscious.' For him, 'submission is not a matter of consciousness but of *habitus*, those deeply embedded perceptions and appreciations, inaccessible to consciousness' (Burawoy, 2008a: 21). However, as Burawoy (2008a: 28) observes, one can discern parallels between Gramsci's powerful system of fortresses to Bourdieu's proposition that the 'state orchestrates hegemony through its

connections to civil society, so the state holds the monopoly of legitimate symbolic violence by consecrating the classifications, capitals, and stakes of the separate fields that compose the field of power.'

Following these arguments, this study has chosen the Ufungamano Initiative for its illustrative power of such antinomies. On the one hand, it shows how such transformative power can create a 'politically and/socially directed collective, involving multiple organizations, networks, and people focused on changing some elements of the social, political, and economic system within which they are located' (Ballard, Habib and Valodia, 2006: 3). It also builds on Press's (2004) work on the Kenyan case (1987-2002) that invokes Gramsci in an attempt to show how individual citizens were able to create alternative norms through shifts from compliance or indifference to resistance and defiance to an authoritarian regime. Press's (2004) central thesis explains how individuals created political opportunities and processes, and collectively organised and mobilised, to force democratic concessions from the state.

On the other hand, the Ufungamano Initiative demonstrates the limitations on the power of movements in achieving their objectives. This is explained in this thesis to be a result of the heterogeneity of civil society and social movements and their competing ideologies, interests, and purposes. This heterogeneity means that there is not a single type of relationship between different types of civil society organisations and the state (Oyugi, 2002/4; Ndegwa, 1994; 1996). Moreover, while the heterogeneity has been a source of strength, it has also been a source of internal frictions within civil society including social movements, especially as different actors have at times failed to agree on common positions or have differing relationships with the state. As such, as shall become clear in the empirical chapters of this study, this heterogeneity of the actors was a major fault line within the Ufungamano Initiative.

Linking civil society and social movements

Having dealt with conceptual and definition issues for both social movements and civil society, we turn to establishing linkages between the two concepts. This study is of the view that the concept of civil society is an overarching one and subsumes within it a variety of social formations including the more or less spontaneously emergent associations, organisations, and social movements, NGOs, trade unions, professional associations, student organisations and

other civic organisations 'attuned to how social problems resonate in private life spheres, distil and transmit such reactions to the public sphere' (Habermas, 1996 cited in Nasong'o, 2007: 25). 'The core of civil society comprises a network of associations that institutionalizes problem-solving discourses of general interest inside the framework of organised public spheres' (Habermas, 1996: 367). Therefore, this study concurs with Chandhoke's (1998: 29) observation that 'if the literature on social movements describes a phenomenon of popular struggles, civil society provides the conceptual apparatus to comprehend the implications of these struggles on state-civil society relations' (cited in Nasong'o, 2007: 25). Thus at this point, this chapter turns to looking at the state-civil society relations. The main argument is that a defining feature of social movements as a form of civil society is the conflictual nature of its relationship with the state because their core business is to make demands on others.

State-civil society relations

This study does not treat the Kenyan state or Kenyan civil society as homogeneous units. This emerges from the contentions on definitions and composition of civil society and secondly, from the fact that fragmentation has been an intermittent feature of the Kenyan state since pre-independence days (Press, 2004). As Press (2004) argues, such fragmentation leads to a fragile hegemony of the elites, hence opening political opportunities for challenges. In such a scenario, a regime stays in control because 'the dominant economic groups…maintain their rule through… the practice of incorporating the leaders – cultural, political, social, economic – of potentially hostile groups into the elite network, the result being 'the formation of an ever broader ruling class.' Inducements range from 'flattery to offers of employment in administration to the granting of substantial power in decision-making' (Femia, 1987: 47, cited in Press, 2004: 23-4).

This observation is particularly important for the Kenyan case. As Press (2004) observes, African leaders, and President Moi in particular, have been able to metamorphose through the use of a system of patronage to maintain support. As shall be explained in chapter four of this thesis, I suggest here that a weak economy in the late 1980s and 1990s reduced the resources available for buying support. In turn, this reduced ability to buy patronage led to a disgruntled middle class, especially lawyers as well as the business class and some politicians. These groups, feeling the negative consequences of a weak economic environment, turned against the Moi regime and pushed for change. This was the tipping point as new civil society's power forced the

state to acquiesce to constitutional reforms. The Kenyan constitutional reform struggles therefore fit well into Gramsci's analysis, and in many ways, 'lays the ground for understanding how activism or resistance to the regime could result in a shift of norms from deference to defiance or resistance for an important segment of the public' (Press, 2004: 23).

Historically, the Kenyan fragmentations have had shades of ethnicity and ideology. For example, during the protracted Lancaster House constitutional conferences (1960, 61, and 63) that negotiated Kenya's independent constitution, the smaller ethnic groups in the country were represented by the Kenya African Democratic Union (KADU) that advocated a federal constitution so as to protect minorities from the major ethnic groups (Kikuyu, Luo, Kamba, Gusii, Meru and Embu). As such, Kenya gained independence in an environment of ethnic and ideological mistrust among the political elite who inherited the colonial state (Barkan, 1992; Wanyama, 2002).

Further manifestations of political elite and state fragmentation surfaced immediately after independence. These were initially due to ideological tensions between the radical and conservative forces in KANU. I deal with these in detail in chapter four where I show that the ensuing divisions gave rise to new conflicts and fragmentations of the political elite that still manifest in Kenya to date. In the period under review, we see fragmentation in the state and the political class in Kenya through the fact that some of those who actively supported the Ufungamano Initiative or were behind its formation were prominent opposition members of parliament. Examples here include James Orengo then of Social Democratic Party, and Njeru Kathangu of Ford Asili who were prominent leaders of the Muungano wa Mageuzi (a part of the Ufungamano Initiative). On the other end of the spectrum were the likes of Raila Odinga who chaired the government-led Parliamentary Review Committee.

While acknowledging the fragmented nature of both the State and civil society, this study borrows from Najam's (2000) Four-Cs model of state-civil society relations. The thesis is also intellectually indebted to many other scholars such as Oyugi ([2002]4), Katumanga (2004), Ndegwa (1994; 1996), who have researched this subject in Kenya and whose works help us understand the dynamics in state-civil society relations in Kenya. Ndegwa (1994), for instance, identifies tensions between state and civil society as centred on civil society's activities in

political reforms. Oyugi ([2002]4) identifies two key factors that determine the nature of relations between civil society and the state: 1) the regime type and 2) function served by civil society. On the second aspect, Edwards and Hulme (2002: 56), argue that 'traditionally, most NGOs have been suspicious of governments, their relationships varying between benign neglect and outright hostility.'[14]

However, Najam's theoretical model is particularly useful for this study because of its postulation that civil society organisations are policy entrepreneurs and that the congruence or divergence of means and ends between the state and civil society in the policy process is what determines the nature of relationship between state and civil society. Najam identifies four main types of relationships, which include co-operation, complementarity, co-optation and conflict.

Najam's (2000) thesis is that when civil society and State seek similar ends and have similar means, they cooperate (see also Coston, 1998; Sanyal, 1994; Waddell, 1998). When state agencies and civil society consider each other's goals and strategies to be antithetical, there is confrontation (see also Bebbington and Farrington, 1993; Pearce, 1997; Najam, 1996; Young D.R., 2000). For the Kenyan case, Oyugi ([2002]4) argues that confrontation has resulted from the alternative leadership approach that certain civil society organisations propagate. Citing Fisher (1998), Najam (2000: 385) argues that in confrontational relationships, 'governments … are often willing to use, their coercive powers for outright repression and harassment' of the nongovernmental actors (see also Ndegwa, 1996). Complementarity, according to Najam (2000), happens when the state and civil society seek similar ends but prefer dissimilar means, i.e., they have divergent strategies but convergent goals (see also Coston, 1998; Young. D.R, 1999; 2000). Lastly, when they prefer similar means but dissimilar ends, there is co-optation (see also Tandon 1989; Bratton, 1990; Commuri, 1995; Pearce, 1997; Fisher, 1998).

Najam's theoretical formulation is significant in the analysis of the dynamic interactions between the Ufungamano Initiative and the state in the different phases of the constitution making process in Kenya. This is because there is empirical evidence to support the different theoretical formulations of the theory in Kenya, especially given that its lifespan stretched across two regimes, each with a different type of relationship to civil society. Moreover, Najam's (2000)

[14] I deal with the nature of these relationships in detail in chapter four.

model helps this thesis build a hypothesis that the Ufungamano Initiative lost its appeal after merging with the state-led process because it was a co-optive rather than cooperative process.

Conclusion

This chapter has attempted a review of the theoretical literature relevant for this study. The chapter has identified, defined and theorised the concepts of social movements and civil society, which are the two theoretical building blocks for this study. In doing so, the chapter has shown the relationship between the two and how they are applied in the current study. By looking at the contestations in the usage and application of these terms, as well as the deficiencies of usage, the chapter has managed to come up with an operational definition of each of these concepts.

Additionally, by looking at the strengths and the deficiencies of the political process model and Polanyi's double movement concept, the chapter has succeeded in developing a theoretical model that applies the convergence of the political process model and Polanyi's double movement as an appropriate framework for studying and explaining the Ufungamano Initiative and its role in the contentions for creation of an alternative socio-political order in contemporary Kenya. Utilised together, the political process model and Polanyi's double movement concept, offer possibilities of comprehensively understanding why the contemporary social, economic and political struggles have been deeply embedded constitutional change struggles.

Chapter Three

Methodology

Introduction

This chapter outlines and discusses the methodology employed in this study. It covers the research design, the procedures in sampling, the instruments and techniques of data collection, and analysis employed to ensure validity and reliability of the results presented in this thesis. The chapter starts by building a case for why a case study approach is appropriate for a study concerned with power and limit of social movements in effecting fundamental changes in society. Moreover, it attempts to justify why the Ufungamano Initiative is an appropriate case for this analysis. The chapter also gives detailed reflections on the experiences of the operationalisation of a qualitative research methodology in this socio-historical analysis, with a view to explain how measurements were done, choices made, what informed these two, the results they yielded, and how reliability and validity were ensured. Lastly, the chapter deals with ethical issues pertaining to this study.

The study design: a case for qualitative case study

As already mentioned in chapter one, while there is a lot of generic work on the constitutional reform process in Kenya, little attention has been paid to the intricate intersections of issues, actors, and the ensuing relationships between social movements and state structure in the constitutional reform process in Kenya. Such terrain, coupled with the fluidity and subjectivity of human behaviour and relations, rendered a deductive approach common in quantitative research design undesirable for this study. Instead, an exploratory design was deemed a better option in uncovering, understanding and yielding novel insights on the Ufungamano Initiative mainly from the perspectives of its various internal as well as other relevant external actors. The interactions between and amongst these actors have profound discursive significance regarding the course of the struggles for the Constitution Review Process in Kenya between 1999 and 2005, given that these actors and their interactions have informed the theorising and explanations of why certain phenomena have happened the way they have in the Ufungamano Initiative.

This thesis therefore, explored the Ufungamano Initiative in an attempt to unpack the contextual micro and macro nature of a social movement involved in the contentions of embedding a new constitutional order to serve as the bedrock for Kenyan society. To do this, the study utilised a socio-historical approach to analyse the emergence, operations, successes and limitations of the Ufungamano Initiative to illuminate and explain the variables and context of the subject matter (Mwanje, 2001a). This approach draws intellectual strength from Tilly's immense contribution in the scholarship of social movements' contentious protest and collective action. This is especially so, from his proposition that because social movements and protests are expressions of recurrent attitudes, interests, or social conditions with long-running histories, their understanding requires a systematic socio-historical analysis (Tilly, 2004; Voss and Williams, 2009: 6).

As a sociological phenomenon, the Kenyan constitutional change struggles have not, to quote Karl Popper (1972: 254), been a 'closed physical system [to be viewed in] strictly deterministic ways.' Such deterministic views would render illusory, the rationality of human creativity embedded in the collective actions in these struggles. This qualitative approach is further indebted to ontological assumptions posited by Mwanje (2001a: 85), that the 'reality' of the subject matter of this study—contestations around the constitutional reform struggles in Kenya—just like many other social phenomena, has been highly 'subjective' as different actors have multiple perspectives on their experiences. The perceptual interpretations of these struggles are therefore not fixed and predictive and have always had a degree of uncertainty (Press, 2004).

As such, considering that the key concern for this study was to offer in-depth and contextual understanding and meanings to the experiences of participants of these contentions (Kitthananan, 2006; Mwanje, 2001a; 2001b; McBride and Schostak, 1995), a qualitative approach was found to be necessary. The interesting and intricate details of the Ufungamano Initiative and its struggles are interplays between the human imagination and creativity emanating from both agency and social structure. Such experiences, perceptions and attitudes are not quantifiable. As such, they require an interpretive investigation (Silverman, 2001; Strauss and Corbin, 1990). Indeed, as Berlin (1998) comments, 'there is something intangible and often quite [unquantifiable] that is involved in political change.' A qualitative approach therefore helps me to accurately dissect the pieces of what happened, as well as explain why things happened the way they did, by providing sufficient insight into attitudes, lived experiences, and motivations for certain actions and

behaviour in the struggles for constitutional reforms in Kenya (see Press, 2004 for similar arguments on the struggle for human rights and democracy in Kenya).

Qualitative approaches have been criticised especially by the positivist paradigm for their relative bias and subjectivities. However, given the multi-faceted nature of social science research, and its primary nature of seeking to interpret and understand social phenomenon, it may be difficult to completely eliminate values or biases (Mwanje, 2001a). Axiological values direct or influence social science research at different levels. These values emanate either from internal or external factors to the researcher or the research subject itself (Mwanje, 2001a). Such values determine the interpretive processes and choices of what is relevant at the various phases of a social science research project.

For the case at hand, values and interests influenced choices in the conception and formulation of the research problem/question and approach, the development of study instruments, the entry into the study site, the way data was collected, the exit strategies and the power relations between the researcher and the researched, the way data was analysed, interpreted, and disseminated and the use to which the findings were put. Values have been at play specifically because material conditions and lived experiences influenced the choice of the subject of study. Being a Kenyan I lived and experienced some of the phenomena that I attempt to give a sociological meaning to. For instance, the impacts of the Structural Adjustment Programmes in higher education and the economy in general hit hard in the 1990s and the resulting vortex of social and political unrests caught the attention of many. Moreover, as it is impossible to study all the aspects of particular social phenomena, I narrowed down to constitutional reform aspects and further to the Ufungamano Initiative case in order to understand the power and limitations of citizens' collective action in effecting constitutional changes in society.

To conclude, I attempt to apply a method of sociological inquiry that is, as Burawoy (2008a: 10) stresses, 'reflexive [and] capable of objectifying the very process of knowledge production' in understanding the sociology of the contention in the Kenyan constitutional reforms which, besides generating knowledge for its sake, I hope will be of some use in similar or related contexts of on-going struggles for fundamental socio-political and economic transformations in

society. This project therefore takes the form of research as social action common in many sociological analyses.

Is the Ufungamano Initiative a sufficient case for this analysis?

The usage of the term case study in this thesis is both in its narrower sense, i.e. the Ufungamano Initiative as a unit of analysis, but also as a research method employed in the analysis of broad study phenomenon: social movement struggles in constitutional reforms. As a method, a case study approach enabled me to pay close enough attention in observations, reconstructions of the chains of sequential interactions and events (Strauss and Corbin, 1990) in the development of the Ufungamano Initiative within the context of the constitutional change contentions in Kenya. As such, the approach broadly covers multiple variables and actors at play in efforts aimed at shifting the political sphere while simultaneously paying close attention to the specific context to demonstrate the power and limits of social movements in effecting fundamental changes in society through analysing the emergence, operations, strategies and structures, successes and challenges of the Ufungamano Initiative.

The constitution making and reform processes in Kenya have been quite complex and have involved multiple actors and processes. A basic question would then be: Is the Ufungamano Initiative a sufficient case to study the broader social phenomenon of social movements' constitutional change struggles? As shall become clear in chapter five, the Ufungamano Initiative was not just a single actor movement. It (the Ufungamano Initiative) epitomised the largest umbrella gathering of the pro-reform groups of civil society, religions organisations and opposition political parties from the late 1990s, replete with many ideological paradoxes. It was a manifestation of high class and power politics, of promises and betrayals in Kenyans' quest for a new constitutional order. It is therefore clear that it is difficult to analyse the Ufungamano Initiative outside the context of the constituent and protracted socioeconomic and political struggles against marginalisation in Kenya. These struggles, as chapter four shows, are traceable to: 1) the resistance to the pacification and colonisation of Kenya; 2) the anti-colonial struggles, including the socioeconomic; and 3) socio-political struggles after independence. This research identifies the broader pro-democracy and anti-economic neo-liberalism struggles of the late 20th century, as well as the beginning of the new millennium, as the specific epoch in which the Ufungamano Initiative was a leading movement.

A mapping of the different pro-reform forces and their crystallisation into the Ufungamano Initiative in chapters four and five will reveal a long list of actors and history of struggles for democratization and constitutional reforms in contemporary Kenya. The Ufungamano Initiative and its attendant contentions, as reflected in its emergence and operations (analysed in detail in chapters five and six), present an empirically complex social phenomenon evidenced by its non-unitary and intricate web of multiple actors/units –secular civil society,[1] religious organisations and opposition political parties. As Yin (2003) proposes, a case study is the best approach for studying such complex social phenomena within their real-life context. For the case at hand, the Ufungamano Initiative as a case study is representative of one of the many heightened moments of social mobilisations in the wider terrain of the Kenyan socioeconomic and political contestations of the last two decades. Moreover, the many overlaps in the boundaries between the Ufungamano Initiative and the constitutional reform struggles in Kenya between 1999 and 2005, and the ensuing complexities, allow for in-depth dialogues and 'explorations of broad historical patterns and macrostructures' (Burawoy, 1998: 6) of the actors in the Constitution Review Process in Kenya and attendant contentions reflected in the emergence and operations of the Ufungamano Initiative. The same multiplicity and overlaps also allow for isolation of the crucial variables and their influence in the rise, operations, successes, challenges and failures of the movement.

The Ufungamano Initiative case study therefore offers a chance for multi-perspective analysis on the general issues of the Kenyan constitutional reform struggles to yield results that allow some accurate, reliable, and limited generalisations and qualified inferences to the broader constitutional reform struggles. But crucially, a case study also allows for the analysis of the peculiarities of this case (Burawoy, 1998). The current study is therefore concerned with achieving a balance of what may be regarded as the broad brush strokes of trends, events and happenings in the constitutional reform struggles, with the 'underbrush of [intimate] facts' (Moore, 1966, cited in Press, 2004: 37). This is in an attempt to measure as accurately as possible, the contentious politics the Ufungamano Initiative engaged in trying to create an

[1] Secular civil society is a term used by many of the participants in this study to denote civil society excluding faith-based groups. I adopt this usage to separate Faith Based civil society from other civil society form and more so, to amplify the internal cleavages within Kenyan civil society.

alternative socio-economic and political order in Kenya through constitutional reforms. The in-depth dialogue with multiple actors involved in the Constitution Review Process in Kenya enables the understanding of the explanatory variables in the context of Ufungamano Initiative's emergence, operations, successes and challenges, constituent parts, competitors, allies and antagonists, and the multi-causality of factors/variables in all these processes and outcomes.

This thesis does not, however, purport to recreate the entire field and events within which the Ufungamano Initiative was embedded as that is far from the objectives of this study. Moreover, while some of the explanatory variables specific to this case may be general and thus travel well to other settings with different circumstances, caution must be exercised in over generalising from this case as it is only representative of Kenyan social movements involved in constitutional reform struggles at a specific time and under specific circumstances. As such, the explanations from this case may not guarantee complete 'accuracy, generality and parsimony' advocated by Przeworski and Teune (1970: 74) to allow for unqualified generalisation. Hence the wider applicability of this case study should be further tested.

Data collection and analysis

Three different kinds of data collection tools were employed to complement each other and to also enhance internal validity and reliability. These tools included in-depth interviews, document analysis and observations. Combined, these tools and techniques helped the study to avoid one-sided views and perspectives by getting documented views from a variety of relevant actors, researchers and commentators while also observing some of the activities of some of the actors (especially civil society and the Committee of Experts for the review of the Kenyan constitution) in the then, yet to be concluded constitutional reforms in Kenya. The aim of the observations was to help capture a sense of how the continuing civil society activism and the civic education around constitutional reforms by the Committee of Experts, was being done. These observations have enriched this study by capturing practices and operations in their 'naturally' occurring sense. Furthermore, some of the observation sessions also afforded me an opportunity to identify people I targeted for later in-depth interviews so as to get more information from them.

Literature review

The process of data collection did not follow a specific chronological order of finalising one type of data collection and then moving to the next. However, as is standard practice, data collection and analysis started with a review of existing literature as well as document analysis of newspaper articles, and secondary data (articles and books written about the Ufungamano Initiative and the Constitution Review Process in general). Given that there is no one set of literature that describes the process and the inherent contestations in the constitutional reform struggles in Kenya, the thesis had to draw on a variety of literature and themes on social movements, as well as on agency and structure in political protests and mobilisation, democratisation struggles and the role of civil society in all these aspects.[2]

The literature review helped in the writing of the proposal for this project. Its subsequent design fed into this thesis in different ways. Specific examples of reviewed literature included but are not limited to Andreassen and Tostensen (2006), Cottrell and Ghai (2007), Kindiki (2007), Mutua (2008), Mutunga (1999), Ngunyi (2001), Karanja (2008), Okello (2004), Press (2004), Oyugi, Wanyande and Odhiambo-Mbai (2003), all who speak to one or more objectives of this study or offer historical background on the issues.[3] Relevant articles were reviewed in blogs like *Mashada*, and Mars Group, and local newspapers in Kenya such as *Daily Nation*, The *East African Standard*, The *People Daily* (all private but ideologically diverse) and the *Kenya Times* (owned by KANU at one point but has since changed hands). These newspapers were chosen on the basis of the differences in their ideological orientations as well as ownership (state/ruling party versus private). The reviewed literature also helped develop an analytical frame through which in-depth interviews were framed and analysed.

Importantly, the literature review also enabled me to make references to the wave of social mobilisations towards democracy on the African continent as documented in works such as Mahmoud Mamdani and Wamba-dia-Wamba's (1995) *African Studies in Social Movements and Democracy,* and Richard Joseph's (1999) *State, Conflict and Democracy in Africa* to mention but a few. Such reviews enabled the identification of similarities between the Ufungamano Initiative struggles with similar ones on the African continent. Like the Ufungamano Initiative,

[2] See Press (2004: 7) for similar framing of his approach in the study *'Establishing a Culture of Resistance: The Struggle For Human Rights and Democracy in Authoritarian Kenya 1987-2002.'*
[3] Full titles in the reference list

such movements have been marked by what Crawford Young (1999: 15) refers to as 'political vitality yet precarious fragility' because they have been manipulated or outmanoeuvred by the state. Most importantly, this literature review also enabled me to isolate the peculiarities of the Ufungamano Initiative and in the process, strengthen the theory-testing dimension of this study.

Document review

The selection of analysed documents started with visiting three organisations in Kenya, i.e. the Citizens Coalition for Constitutional Change (4Cs) Resource Centre in Nairobi, the National Council of Churches of Kenya (NCCK) library in Limuru, and the Kenya National Archives in Nairobi. From these visits I was able to draw a detailed catalogue of documents available on the historiography of the general Kenyan constitutional reform struggles. Specifically, the documents covered the Ufungamano Initiative's origins, conditions for its emergence, key organisational structures, operations, and strategies as well as key achievements and challenges, the political dynamics and relationships of the actors and key allies and adversaries. This compendium of analysis helped to identify the political conditions that made the Ufungamano Initiative possible. It also enabled the determination of some of its crucial features (structures) and strategies. Lastly, it enabled explanation of significant changes in the movements' operations. The construction of this historiography involved analysis of relevant literature in articles, books, as well as archived surveys and opinion polls, websites (especially of institutionalised civil society and religious groups within the Ufungamano Initiative), blogs and press reports relevant to the study. Moreover, articles and manuals produced by the Constitution of Kenya Review Commission (CKRC) were also identified for analysis.

Journals and magazines like *Nairobi Law Monthly*, *Society*, *Weekly Review* and the *Finance* were also reviewed. These magazines and Journals were chosen on the basis of their different ideological orientations. This review was in the form of archival research as these magazines are no longer in publication (except for the *Nairobi Law Monthly* which is back in circulation since 2010). But past copies of such magazines are still available in public archives as well as in archives and libraries of a few CSOs in Kenya.

In-depth interviews

The review of archived documents informed interviews, especially in drawing up names of people directly involved or interacting with the movement. The interviews took a key informant

format where an interview guide/schedule was utilised in interviewing participants who were knowledgeable on the constitutional reform struggles in the country. A majority of the participants were people who had been active participants or interacted with the Ufungamano Initiative either as civil society activists, clergy, politicians, state bureaucrats, parliamentarians, and ruling party operatives. With participants' consent, the interviews were tape recorded and then transcribed verbatim, with the exception of only those participants expressly declined to be tape-recorded.[4] Tape recording was appropriate to ensure accuracy in comparison to other techniques such as note taking and memory (Lankshear and Knobel, 2004). In addition, notes were also taken and memos drawn up in the course of interviewing. These helped later in the analytical process (Silverman, 2001).

As has become increasingly clear, interviews in social research have moved from the traditional hierarchical arrangement to acknowledging them as a co-constructed interaction and interpretive process. In my view, this is where the greatest biases from value judgments may come into research because of demands for greater reflexivity on the part of the researcher. To guard against such bias, interview remains the best way for a respondent to tell their story, albeit one bounded by the concerns of the researcher. My interviews were with a carefully selected sample to allow for what Seidman (1991) calls 'in-depth phenomenological interviewing' by working closely with participants to hear their own narratives of their experiences while interrogating the social, cultural, political and historical milieu in which these struggles emerged and were played out.

Further, steps were also taken to ensure the maximization of interactions with the study participants. Specifically, two rounds of data collection were done. The first round of data collection was carried out in September and October 2009 and the second between March to April 2010. This punctuated way of collecting data allowed for preliminary analysis of both interviews and documents in between. The advantage brought by this approach was that it allowed for identification of emerging themes as well as critical gaps from the fieldwork that needed special attention in subsequent field visit. Specifically, the second round of field work was more targeted and concentrated mainly with interviewing people at the grassroots – ordinary

[4] There were only four participants who requested not to be tape-recorded. In this case, I collected data by taking notes as I interviewed them.

people in communities that had their own struggles somewhat enjoined in the clamour for a new constitution and by extension, found expressions and representation in the Ufungamano Initiative. It also allowed for targeted follow-up interviews (two of them were done in Nairobi and another in Taita Taveta) to fill some of the gaps identified from previous interviews. Moreover, the number of interviews (70) was aimed at ensuring there were opportunities to interview more people to either confirm or challenge the various issues that emerged as contentious in a study of this nature.

Sampling and access for interviews

Data collection procedures were flexible and aimed at capturing reality based on actions, perceptions, and experiences of informants. As such, the study utilised a targeted purposeful snowballing technique in choosing appropriate and most relevant respondents knowledgeable enough to give information useful for this thesis. This reflective critical approach was applied in sampling to ensure that participants included both people who were active participants in the movement as well as others not directly in the movement, but were in one way or another, participants in contentions for the constitutional reforms. This ensured that the sample would not have glaring biases. I therefore developed a sampling frame for categories of interviewees as shown in table 3.1 below.

Table 3.I: Categories of interviewees

1. Employees of civil society organisation involved in constitutional reforms	2. Grassroots community organisers and mobilisers
3. Convenor of the Ufungamano Initiative	4. Members of the Ufungamano Initiative
5. Activists (e.g. political party/civil society/community etc.)	6. Commissioners of the Constitution of Kenya review Commission (CKRC)
7. Members of People's Commission of Kenya.	8. Members of People's Commission of Kenya and later CKRC
9. Members of Parliament (current and past)	10. Members of Parliamentary select committee on the constitutional review (from 1998).
11. Members of the National Constitutional Conference	12. Religious leaders
13. State employees involved in relevant departments dealing with constitutional reforms	14. Ordinary members of the Kenyan society

Besides sampling, a critical analytic approach was also taken to ensure that words of different participants were not taken at face value. As such, two levels of analysis (vertical and horizontal)

were utilised where each view was closely analysed taking cognisance of the different constituencies the participant came from. Views at this level were later correlated to views of other participants in different categories in order to establish convergences and divergences.

Selection of the respondents hinged on personal experiences, expertise, and availability to participate in the study. As such, respondents included the Ufungamano Initiative leaders, activists and religious leaders, public agencies like parliament, employees of the state dealing with constitutional reforms, former commissioners of the Constitution of Kenya Review Commission, Members of Parliament, researchers, and experts. In order to achieve deeper insights of the actions, perceptions and experiences of the respondents in the contention for the Kenyan constitutional review, an open-ended interview schedule was used for the in-depth and mostly face-to-face interviews save for four interviews that were done telephonically due to distance, time and availability constraints.[5]

Issues dealt with in the course of data collection

Power relations between a researcher and the researched impacts on the quality of data collected through face-to-face interviews. As such, gaining entry into a research site and leaving with accurate information are important tasks for any researcher. How well this is done, depends on the cultivated power relations between a researcher and the researched. On the whole, the mode of entry and exit has to take into consideration the existence of gatekeepers who are a critical linchpin in a study community. Getting blessing from such people was key for the success and validity of the data gathering exercise and also for the purposes of ensuring that the narratives that I unearthed made sense and represented the different and competing view points on the subject. Besides, I knew that gatekeepers of the Kenyan constitutional reform struggles would be very good sources of information as they serve as opinion leaders. A potential challenge however arises from a situation where one might get a gatekeeper who has lost touch with the evolving complexities of the Kenyan constitutional reform struggles. Such a gatekeeper could potentially mislead/misinform the research.

[5] The three of the four telephone interviews were done with participants in Taita Taveta in Coast province who had not been available face to face when I visited this site in September 2009 and again in April 2010 while the forth was with a former convener of the Ufungamano Initiative and currently a member of parliament since 2008.

As a researcher, I knew these were key issues I had to deal with long before I ventured into the field. In a way, while I am Kenyan and have lived experiences of some of the struggles at the heart of this study, I have been away from the country since 2003. As such, I have lost the grassroots feel to issues and the way they have unfolded over the last couple of years. Nevertheless, I had the advantage of having contacts from the past that have continued to be intimately involved in these struggles. I utilised such contacts to gain audience with the appropriate interviewees. In essence, I utilised a snowballing method in sampling. The first key contact was an activist I knew–Lawrence Apiyo. Apiyo is a grassroots community organiser and current chair of Community Organisers Professional Association (COPA) of Kenya. I have known Apiyo since 2000 as we both worked in Kibera in community organising and civic education for the constitutional reform struggles through the Catholic Justice and Peace Commission. Apiyo was a great resource in granting me an interview and going out of his way to give me contacts to other activists.

Apiyo's equivalence within the Kenyan bureaucracy was also a friend of many years who works for the Kenyan parliament. Though a civil servant and not involved in these struggles, this source advised me on the relevant state departments and people to approach. He was particularly instrumental in providing names of parliamentarians (current or former) who had been directly involved with the constitutional reform processes or struggles.

The next link for me pertaining access, was to physically visit the offices of the National Council of Churches of Kenya (NCCK), the Kenya Episcopal Conference (KEC), and the SUPKEM, which were the three most visible actors within the Ufungamano Initiative.[6] From these two, I was able to get contacts within the faith community. Moreover, I also established that all the documents of the Ufungamano Initiative's activities in the constitutional reforms were archived at the NCCK Resource Centre at Jumuia in Limuru (40 kilometres from Nairobi). Besides this information, I also requested interviews with the heads of these institutions or with the most relevant persons. As it turned out, in both institutions, I did not manage any interviews. The

[6] This is not to underplay the role of the Hindu Council of Kenya or the National Council of NGOs, but was rather for pragmatic reasons given the numerical dominance of the other three religious actors in Kenya as well as in the Ufungamano Initiative. Moreover, I had a fair knowledge on the Kenyan civil society and as such did not find it worthy going to the NGO Council as I could still get access to the non-religious NGO type actors without necessarily going to the NGO Council.

current General Secretary of NCCK had an extremely busy schedule throughout the period of my stay in Nairobi. He also had international trips. The person he delegated to be interviewed did not have adequate knowledge on the subject. Nonetheless, I interviewed the former General Secretary of NCCK Rev. Mutava Musyimi who was at the helm of the NCCK until he joined elective politics in 2007. Musyimi, who represents Gachoka Constituency in Parliament, was a co-convenor of the Ufungamano Initiative.

As for the Catholic Church's Kenya Episcopal Conference (KEC) head, despite numerous attempts to get him, the church bureaucracy proved too difficult to crack. After numerous physical visits I was instead asked to talk to the Secretary of Kenya Catholic Secretariat. The secretary sent me back to the KEC chair whose secretary never gave me a definitive interview date despite numerous attempts. I was however able to interview the theological advisor to the KEC as well as two other people working within the Catholic Church's Justice and Peace Commission and *Chemi Chemi ya Ukweli* (Oasis of Truth). As such, the views on the role of the Catholic Church may not represent any of the official leadership accounts.

The snowballing *modus operandi* was driven in part by the fact that I needed to get people who were knowledgeable enough on the Ufungamano Initiative either based on their own experiences in the same or through interacting with the main actors in Ufungamano Initiative. The approach yielded both successes and failures. On the whole, a majority of the participants did not have any reservations participating in the study expect for one case where the former Chair of the Parliamentary Select Committee on the Constitutional Review indicated his hesitation to participate in the study on fears that I 'might not be genuine' in what I was doing. He cited his experiences of having been interviewed by Prime Minister Raila Odinga's biographer – Babafemi Badejo. He argued that Badejo did not inform him that he was going to write a book from the interview. Despite my assurance that I was not into such a mission, he did not grant me an interview.

Another critical aspect was the utility of cell phone numbers for all those who agreed to participate. Through snowballing, I was able to get personal contact details wherever possible for the people I targeted for interviews. Whenever I got cell phone numbers and called, it was always easier to get potential interviewees to agree to an interview. This was especially so

whenever I indicated that I had received their contact details from people they knew or were professional colleagues or comrades in the struggles.

The cell phone helped me overcome an important hurdle of gatekeepers (this time, security men and women, and secretaries in offices of these high society participants) who had real power over access to potential participants. Moreover, it also helped me avoid unnecessary bureaucratic procedures in government offices, NGOs and religious institutions. Indeed, in all cases where I did not have direct cell phone contacts and had to approach possible participants through their offices, I was always asked to follow certain formal protocols of access, such as having to explain in great detail to receptionists what my intention was. I was usually asked to leave a formal letter requesting an interview and in many cases not even to the person I had said I wanted to interview, but to an organisation or a department of the government or an NGO. I was advised that the 'concerned' people would look into my request and respond accordingly.

Except for three cases (Dr. Kamau Kuria, Abubakar Zein, and Prof. Kivutha Kibwana) all other requests[7] did not yield positive results. It is probable that the targeted individuals did not get to know that I had requested an interview, as my requests were most likely not forwarded. I believe that, given the bureaucratic nature of access, I would for example never have managed interviews with high ranking government officials like the Director of Committee of Experts, or a judge of the High court besides many others, had I not been given their direct cell phone numbers by people who knew them at both professional and/or personal levels. This is not to say that I succeeded in all cases as the already cited case of the former chair of the parliamentary select committee on the constitutional reform, Paul Muite attests. Moreover, there were a couple

[7] These were over 20 requests that included but not limited to, Hon Raila Odinga, Kenya's Prime Minister and former chair of the Parliamentary Select Committee on the Constitutional reforms (1998-2002) (I spent two half days trying to secure the attention of his diary manager without any success); the Kenya Human Rights Commission's Executive Director, Muthoni Wanyeki; Federation of Kenya Women Lawyers (FIDA); Law Society of Kenya; Kenya National Commission of Human Rights Commissioner Lawrence Mute; Dr. Phoebe Asiyo of the Kenya Women Political Caucus (credited as the brains behind asking the religious community to take charge of the Review Process, though I interviewed a programme officer in the organisation); Rev. Ndingi Mwana a Nzeki (former Archbishop of the Archdiocese of Nairobi); Cardinal John Njue (the current head of the Catholic Church in Kenya), Rev. Wambugu of Kenya Catholic Secretariat; Hon. Kiraitu Murungi (former Justice Minister (2003-2006); Hon Prof. Anyang' Nyong'o (minister for Health Services), Hon. Charity Ngilu (Minister for water), Hon. James Orengo, James Mageria (former Ufungamano Initiative Secretary) among others, all who were closely involved in one way or another in the contestations on the constitutional reform processes in Kenya. I was however able to compensate for these with other equally involved people.

of other cases where time was a great hindrance to securing an interview as shall be explained in detail later.

While aware that this nature of getting access has a potential for creating a validity or internal reliability bias as a result of potentially sampling people who agree with each other on certain aspects, I did not have a reason to suspect this to be the case as I had multiple starting nodes in my snowballing. I do not also suspect any 'doctoring' of responses from any of the respondents as my analysis of data reveals very interesting convergences as well as divergences especially on opinion questions.

I did not restrict my fieldwork to just Nairobi. I did interviews in various other provinces including Coast, Central, Eastern, Nyanza, and the Rift Valley. While this might have added to the costs of my research budget, as I had to travel long distances and even spend some time to get few interviews done, each individual interview was worth the time spent and the resources invested on it. Moreover, such visits enabled me to get a feel of the surroundings and the environment which somewhat shaped some of the experiences in the struggle.

As already noted, I conducted two rounds of data collection. The second round of interviews was aimed at, amongst other things, establishing the linkages between the grassroots and national struggles that had congregated under the Ufungamano Initiative. These interviews were therefore like litmus paper tests on some of the ideas reported mainly by national civil society leadership during the first round of my fieldwork. During the second round of data collection, I also observed two public forums in Kibera and Dandora (Nairobi) that afforded me a glimpse of current mobilisations and discussions happening at grassroots on various issues in the proposed draft constitution. Moreover, the second round of interviews came well into new heightened mobilisation and advocacy by activists in a new civil society formation known as *Katiba Sasa* (Constitution Now) Coalition. *Katiba Sasa* Coalition had emerged from some remnants of the Ufungamano Initiative membership who remained a critical voice pushing for constitutional reforms. I had an opportunity to observe one of their activities (a regular press briefing every Sunday morning to drum up support in the run-up to the August 4, 2010 constitutional referendum) as well as interview some of the activists involved.

Even though interviews were done in at least six of the then eight Kenyan provinces, I further sampled three areas in three provinces in Kenya to get in depth insights of the grassroots and also to ascertain the Ufungamano Initiative's claim to be a national movement with widespread grassroots appeal and following. The first of such sites was Nairobi. Nairobi is the national capital of Kenya and draws its inhabitants from all the parts of the country. Most civil society organisations are concentrated there. The Ufungamano Initiative was also run from there. I therefore did most of the interviews in Nairobi with civil society activists, state officers, politicians, religious leaders and ordinary citizens. I did the majority of the interviews with ordinary citizens with residents of Kibera slum. I chose Kibera because of the fact that it has provided the majority of the ordinary masses of people supporting the reform struggles. Moreover, it has been an arena for the exercise of intra-elite contestations for the control of the under classes.

Kisumu in Nyanza province in Western Kenya was the second site of intense investigations. Kisumu has since mid-1960s to date, been the bastion of pro-reform struggles. Kisumu is Kenya's third largest city and predominantly inhabited by the Luo ethnic group. It was the only place in Kenya that the Ufungamano Initiative's People's Commission of Kenya (PSC) had a hostile reception that degenerated into chaos after the PSC commissioners were petrol bombed in 2000 at a public meeting while seeking views of the citizens.

The third site sampled was Taita Taveta in the Coast province. This is a fairly rural site. Taita Taveta typifies some of the areas in Kenya with the most acute land problem. I chose Taita Taveta as it epitomises struggles for land reforms as well as the distribution of the national income, which were key grievances in the generic constitutional reform struggles in Kenya. According to respondents from Taita Taveta, 78% of the land is owned by three families (who farm sisal or mine gemstones), or falls under the largest game park (Tsavo) in the country. Proceeds from this park do not directly benefit the local people. This has created intense human-wildlife conflicts in the area.

Besides the formal interviews, I had informal discussions with at least four other respondents at the Institute for Policy analysis and Research (IPAR) who hosted me during my fieldwork. In addition to the interviews, as already indicated, I also spent time going through files of

documents at the NCCK as well as 4Cs. From the two organisations, I accessed over 200 different documents that included communications (emails, letters), strategy papers, press statements, reports of meetings, minutes of the Ufungamano Initiative meetings – all of which informed this study on both the process as well as the content of the movement's evolution and operations.

Reliability and validity issues

Reliability refers to 'the degree of consistency with which instances are assigned to the same category by different observers or by the same observer on different occasions' (Hammersley, 1992: 67 cited in Silverman, 2001: 33). This consistency is limited in qualitative studies principally by space constraints, which leaves researchers to provide only a brief of what they consider (and unfortunately sometimes in a subjective manner) to be 'persuasive extracts' of interviews and observations (Silverman, 2001; 33). Moreover, such reporting in qualitative research studies could suffer from what Silverman (2001: 34) calls 'anecdotalism.' Here, research reports presents only a few 'telling "examples" of some apparent phenomenon, without any attempt to analyse less clear or even contradictory data' (Silverman, 1989 as cited in Silverman, 2001: 34). The net result is that such approaches may dilute the validity of the explanations.

Some qualitative researchers argue that reliability should be a concern only within the quantitative research traditions. This is because of the positivist position that 'sees no difference between the natural and social worlds. Conversely, it is argued, once we treat social reality as always in a flux, then it makes no sense to worry about whether our research instruments measure accurately' (Silverman, 2001: 34; Mwanje, 2001b). However, the selection and use of relevant statistical figures to explain social phenomenon may also produce their own interpretation out of the value-based identification of relevant variables because 'statistical correlations may be based upon variables that, in the context of naturally occurring interaction, are arbitrarily defined' (Silverman, 2001: 31).

Despite these challenges, all research should strive to ensure reliability and validity. The ability of research to produce reliable and valid results depends on a number of factors at different levels. For example, the interviews should be able to yield consistent results over time. They

should also be able to represent accurate views of the population under study (Golafshani, 2003). In other words, if the same participants were interviewed again under the same methodology, their responses to the questions would be consistent to those gathered from the initial interviews (Golafshani, 2003). This is only possible if the interview questions are unambiguous and as clear as possible. In this study, such clarity and standardisation of the questions in the interview guide ensured that different participants' answers to the same/similar questions were consistent. This in effect ensured reliability of the interview schedule, process and the results.

The interview schedule served as a guide in directing the questions that were asked to participants and the interview sequence was designed to check for consistency of claims made through each respondent's story. I constantly probed responses in cases where the questions seemed unclear to participants or unclear answers were given. Probing was therefore used to clarify responses and to elaborate questions whenever necessary. In this way, probing allowed for the questions to yield answers that were focused instead of vague and generic. Thus, for the above-mentioned reasons, the interview schedule was perceived to be reliable. Additionally, the interview schedule was also perceived to be valid in that from the initial process when it was designed, questions were developed in such a way that they were able to answer specific research questions and therefore ensured instrument validity (Golafshani, 2003).

To further ensure reliability at the analysis level, interviews were tape recorded unless the interviewees declined the same. Hand written notes were also taken for all interviews. However, as Silverman (2001: 33) warns, great care had to be taken because 'even when people's activities are audio or video recorded and transcribed, the reliability of the interpretation of transcripts may be gravely weakened by a failure to note apparently trivial, but often crucial, pauses, overlaps or body movements.' I ensured that I took into consideration such issues during transcription. Once transcription was done, I also sent the transcripts back to the interviewees to check for accuracy of their own views and make amendments accordingly. This, however, was not a smooth process as a great majority of the respondents did not get back to me even after several reminders and a couple of months of waiting.

For the current study, I utilised sufficient steps to ensure that personal subjectivity, bias and beliefs that could affect the conclusions (Leedy, 2000; Opie, 2004) are avoided in the analysis.

Besides this, there are multiple confirmations and verification tests from the 70 interviews, and the multiple documents analysed for this study that ensure greater reliability of conclusions drawn from these data sources. Document analysis gave me a unique opportunity to get data on events, albeit sometimes with an element of subjective orientation, to the experiences described from the perspective of the participants without introducing my own perspectives to shape the study phenomenon. Document analysis therefore enabled elimination of researcher perspectives (see Mariampolski and Hughes, 1978 for a detailed explanation of how a researcher's perspective can influence the interview process as well as responses).

Even then, this is not to say that it is possible to eliminate all biases in research. On the contrary, as Pommerolle (2006: 75) argues, and this is particularly instructive for this study:

> The strength of Kenyan human rights nongovernmental organizations derives partly from this symbolic and ideological heritage. Manufacturing heroes and combining ideologies and moral standpoints requires the erasure of contradictions and, at times, the simplification of history in order to fit the past into contemporary political movements. Nevertheless, recurrent references to the past have allowed human-rights defenders to further their cause and justify their demands regarding wealth and accountability in the national community.

This essentially means that some of the documents analysed may already carry biases of the original authors. Moreover, some of the archived documents may present a sanitised position and fail to capture the background of what happened and why. However, as much as possible, I have tried in this analysis to get multiple sources (triangulation) to the perspectives presented in the documents. This, I hope, enhanced the validity of the results.

Data analysis

I utilised multi-layered qualitative data analysis techniques that included text and thematic content analysis. The analysis frame drew upon the objectives of this study, and from the themes predetermined from the literature and the research questions. I further delineated these into thematic categories that include: a) historical background and the emergence of the Ufungamano Initiative. This covers the various activists and groups, their political dynamics and the nature of their relationships, main motivations for involvement in constitutional review struggles to coalesce around what became the Ufungamano Initiative, as well as the political opportunities that allowed for the same; b) the key architectural features of the Ufungamano Initiative which

cover the strategic structures developed by the movement to ensure Ufungamano Initiative's running as well as accountabilities to different stakeholders of the process, the nature of public support for the Ufungamano Initiative; c) the dynamics and nature of interactions between the Ufungamano Initiative and its antagonists, the Ufungamano Initiative's activities and strategies and outcomes, its key allies and adversaries; d) threats to the Ufungamano Initiative's operations, and e) the Ufungamano initiative's impact and influence on the constitutional reform process in Kenya and lessons therein.

I present and discuss the findings thematically in the next four chapters according to this framework drawing upon the interviews and linking the findings and analysis to the theoretical and conceptual framework. Excerpts from the interviews are used to illustrate responses from the participants. The analysis also seeks to establish trends, convergences and divergences within and between different categories of participants.

Ethics appraisal

This research endeavoured to be sensitive to the study participants' rights while being as objective as possible in ensuring the final research findings are accurate, reliable and unbiased. At the design phase of the study, I was acutely aware that the nature of the research touches on people, institutions (some, who were targets of the state in past years during the struggle) as well as spaces. Many of the actors in the Ufungamano Initiative or in the broader Constitution Review Process are public figures and were interviewed in their official capacity. Thus, the findings of this research speak not just to the academy, but also to these organisations and individuals who gladly agreed to be exposed to a sociological gaze. Such a gaze, of necessity, raises the possibility of exposing sensitive information on people and organisations. This raises ethical dilemmas that this study had to deal with by paying heed to potential conflicts between the production of sociological knowledge and protecting the interests of the movement and participants in this study (see Bevington and Dixon, 2005 for similar dilemmas in the study of social movements).

I undertook necessary precaution to ensure the protection of interviewees from possible harm as result of their participation in the study. To do this, I ensured confidentiality by upholding the

participant's right to remain anonymous whenever they chose to.[8] I therefore explained to each participant verbally and in a letter, the nature of the research and that participation was voluntary. The same letter assured the participant of his/her confidentiality and that the information obtained from interviews would only be used for purposes of this research and no personal risks would be incurred from participating in the study. The letter also sought permission from the potential study participants, informed each potential interviewee of the purpose of this study, and the nature of the questions (see annexed interview guide/schedule –appendix V).

The letter also sought permission for usage of any internal documents and communications relevant to this study but not available in public archives such as the parliamentary Hansard, and websites. The letter also explained the participants' right to decline to take part in the study if they so wished (see appendix II). A consent form annexed to this thesis (see appendix III), was used for the purpose of registering consent. As I intended to tape record the interviews to capture verbatim the responses of the interviewees in order to allow for fuller records than notes would, I also sought permission to tape record the interviewees (see appendix IV). Moreover, each participant was assured that data and information obtained through interviews would be stored using pseudonyms. Some participants found such level of formality a little bizarre. Many however, signed these forms except for a few who requested to be interviewed even without signing the forms indicating that they did not have any reasons to suspect me of any malice and therefore trusted my mission. Nonetheless, to ensure that the interview material utilised in this thesis reflected the true views of the participants as expressed in the interviews, I sent the interviewees a verbatim transcript for their review and confirmation before I started the analysis and writing.

There was a challenge in the course of data collection involving how to obtain cooperation from marginalised communities such as residents of Kibera who have good reasons to distrust researchers. The challenge in data collection came compounded in what Mertz (2002) calls the 'worry of gazing at poor communities or groups disorganised by multiple challenges.' Perhaps this is because of the fact that Kibera is an 'over' researched community that has over the years

[8] Nonetheless only one participant expressed a desire to remain anonymous but only on matters of sensitive information.

not seen much 'tangible' positive results for all the information they give to researchers every year. At times, respondents asked what they stood to gain if they gave information. I was able to get the cooperation of the participants by explaining that the study was for academic purposes and any publications from the same may benefit future struggles. As such, engaging in an exercise aimed at levelling expectations helped not just me, but the participants to know what to expect in return for their participation. I will also share electronic copies of this thesis with my respondents. I believe this may assist future researchers in getting easy access, besides helping members of target communities to feel greater ownership of the results and appreciation for their efforts. In short, the ethics of dissemination to a wider stakeholder audience and especially to the sources of information are crucial in this case as they help create mutual respect and trust between me as a researcher, and the participants in this study.

Study limitations

As a case study, this study is, by nature in-depth and narrow in its extent and period. It is therefore not exhaustive and so generalisation to social movements in Kenya is limited. Although the Ufungamano Initiative may not reflect a wide scope of all the contemporary social movements in Kenya, because of its broad- based nature, as well as the heterogeneity of actors within it (members), its findings allow for qualified generalisation of the social movement struggles in constitution making in Kenya during the period under review.

Conclusion

This chapter has presented the research design, approach, methods, instruments and techniques of data collection and analysis used in the study. The chapter has justified the research design and methodology utilised. Specifically, it has argued why a qualitative case study is best suited for the study phenomenon in question. Methods of collecting data as well as analysis have been discussed and justifications for the same offered. The chapter has reflected in detail, the ways in which reliability and validity of the results was ensured throughout the study process. While agreeing that it is not easy to have a completely value free research, it has shown how every effort has been made to ensure this by justifying data collection and analysis methods to ensure validity and reliability of the results. The next four chapters present and analyse the empirical data and findings of this research.

Chapter Four

Sowing the Seeds for Kenyan Constitutional Reform Struggles

> '*Often times, individual opinions and concerns turn into various forms of political and social participation. Moral and philosophical worldviews and deeply felt convictions are then paralleled by specific attempts by individuals to stop threatening developments, redress instances of injustice, promote alternative options to the managing of social life and economic activity' (della Porta and Diani, 2006: 3).*

Introduction

This chapter traces the socio-political and economic realities that ignited struggles for constitutional changes in Kenya. This is done through a periodization approach that follows an evolutionary path. It traces the roots of these contentions to the early decades in the establishment of a colonial state in present day Kenya. It then moves to cover successive periods up to the present. The discussion involves identification and analysis of the issues, and the main players in these contentions. It further shows how each period and its actors fed into the next wave of contentions that ultimately led to Ufungamano Initiative in late 1990s. The chapter specifically speaks to what the earlier waves of social contentions in Kenya that the Ufungamano Initiative inherited in the late 1990s, can tell us about the political opportunities and collective action in the emergence and sustenance of social movements and contentious politics in Kenya.

This socio-historical analysis reveals that the Kenyan struggles for constitutional changes were, like for most other parts of Africa, reactions to social, political, and economic malaise of the time. Emerging after the 1997 general election as a broad umbrella movement of 54 different organisations[1], the Ufungamano Initiative epitomises ethnic, religious, generational and class power politics in Kenya. The analysis foregrounds the central argument in the next chapter which shows that the Ufungamano Initiative evolved from a confluence of at least three key actors in the constitutional reform struggles in Kenya: i.e. secular civil society, opposition political parties and movements, and religious groups.

[1] These organisations included among others, the Kenya Human Rights Commission, the Release Political Prisoners (RPP), the National Convention Executive Council (NCEC), the Citizens' Coalition for Constitutional Change; the Catholic Church's Kenya Episcopal Conference; the Anglican Church of Kenya; the Presbyterian Church of East Africa; the Seventh Day Adventists, Salvation Army; the Methodist Church in Kenya; the Evangelical Alliance of Kenya; the National Council of Churches in Kenya; the Organisation of African Instituted Churches; and the Hindu Council of Kenya and the Supreme Council of Kenya Muslims; the Kenya Women Political Caucus, the Democratic Party, the Social Democratic Party, Saba Saba Asili, Ford Kenya.

By the time the Ufungamano Initiative came into being, these three constituencies had carved a niche for themselves as critical players in pushing for socioeconomic and political reforms. This discussion will demonstrate how, at different times, these actors have come together in a unity of purpose but without necessarily choosing to be under a unitary identity, to push for state reforms. By analysing the nature of relationships between actors, the chapter highlights a series of 'betrayals' by different actors at various points in these struggles. I argue here that these 'betrayals' are products, as well as manifestations, of fragmentations within these groups (Currie and Ray, 1984). Such cleavages have served as opportunities but also constraints to the achievement of comprehensive constitutional reforms in Kenya.[2]

Struggle cycles in Kenya's reform project: background and analytic model

Although the *terminus a quo* of this study is 1999, the phased nature of the constitutional reform struggles in Kenya, and their historical anchorage in the larger socio-political and democratisation struggles, dictate that of necessity, any analysis of the emergence of the Ufungamano Initiative must be nested within wider struggles. As such, while I cannot recreate the entire canvas within which the Ufungamano Initiative was embedded, the task for this chapter is, to borrow from Burawoy (2008), to place the Ufungamano Initiative in the context of the field of its production, its competitors, allies and antagonists, as these invariably shaped its emergence and practice. Therefore, while the thesis does not focus on the generic social movements and especially those in early Kenya's history, as it is an area where much scholarly analysis has been done, it is nonetheless, important to highlight these as they inform the nature of subsequent movements and their struggles. In so doing, this thesis builds on Tilly (2004), Wallerstein (1974), and Silver and Slater's (1999), advocacy for the centrality of history in explaining contemporary social political contestations. This illumination of history is therefore an effort to avoid a common pitfall of some analysts who treat social movements as 'expressions of current attitudes, interests, or social conditions rather than as elements of longer-run histories' (Tilly, 2004: 8). This analysis concludes that the propulsion of a conglomeration of actors into the Ufungamano Initiative propelling it to the centre stage of activism for constitutional reforms is a product of its time. Specifically, it was a citizens' response to a conflict orchestrated by political behaviour of the state.

A socio-historical analysis of Kenya's political economy and the attendant social struggles reveals three key interesting features relevant to the current case: the primacy of externally

[2] A necessary qualification here is that this refers to the period up to 2005 as it is primarily the concern for this study.

driven economic, social and political strains initially mediated by colonialism and later neo-colonialism and global capitalism, as drivers of contentions; the centrality of ethnicity in social contentions; and the existence of elite consensus and fragmentation as a common feature of these struggles. Below I illustrate how these have played out.

A) ***Externally induced economic, social and political strains***

European imperialism in Africa, mediated by slave trade and later Christian missionary work that prepared the ground for the imperial colonial project, heralded what Huntington (1993) while predicting the nature of future global conflicts, called the 'clash of civilisations'. Specifically, both soft power and brutal force were utilised in the establishment of the colonial state. Such brutality was central in the germination of substantial distrust of colonial state institutions that served as both opportunities and constraints for the emergence and nature of collective action. The effects of the colonial state still continue to manifest in the forms of associational life as well as the relationship between citizens and the state in present day Kenya (Maina, 1998; Gimode, 2007).

The emphasis on state brutality as fuel for contentions is synonymous with social movement literature's stress on social dysfunctions, socioeconomic and political strains as generators of social contentions in societies (see for example McAdam *et al.,* 1996; Foweraker, 1995; Scott, 1991; Habermas, 1973; 1979; McAdam *et al.,* 1988; Buechler, 2000; Blumer, 1951). This formulation of sources of social contention owes its intellectual ancestry to the functionalist approach in sociology. Specifically, mass society theory prominent in the 1950s drew from Emile Durkheim's theory of modernity and anomie. It theorised social disorder as resulting from breakdown of traditional patterns of order and social control incubated by rapid or massive changes and dislocations in society (Kornhauser, 1959; Buechler, 2000; Foweraker, 1995).

The mass society theory holds that:

> A normal or healthy society is characterised by strong class and group solidarities, which play the controlling function and prevent the manipulation of the people. But when this class or group solidarity becomes weak under the conditions of

> industrialisation and urbanisation, the processes of 'massification' ('anomie', 'atomisation', 'rootlessness') begin (Mamay, 1991: 47. Quotation marks in original).[3]

This leads to a shared sense of either excitement or stress or anxiety or frustration (Buechler, 2000). To adapt to these strains, elementary forms of amorphous, unpredictable and non-institutional collective behaviour spontaneously evolve among individuals who feel insignificant or socially detached from the new form of society (Kornhauser, 1959; Blumer, 1951; Buechler, 2000; Tarrow, 1998). As pointed out in chapter two, later theories in the study of social movements such as resource mobilisation and political opportunity no longer conceive collective action as psychological, but rather as political responses. Nonetheless, as this chapter demonstrates, the primacy of social dysfunctions in germinating social contentions and social movements throughout Kenyan history cannot be gainsaid.

Historically, we see early forms of collective action in modern day Kenya to be responses to socioeconomic and political imperial occupations. In this regard, Maina's (1998: 141) observations are insightful. For him, the early Kenyan African associational life during the colonial times was predicated on a two-fold objective:

> To ameliorate the rigours of the colonial labour system on the one hand, and on the other, to preserve their imperilled traditions. On the labour question, the colonial government would not relent… the labour system was harsh. It comes as no surprise then, that some of the more radical associational activities in colonial times, African as well as Asian, involved trade unionism. Some famous names of Kenya's liberation movement (Bildad Kagia, Fred Kubai, Kung'u Karumba, Makhan Singh, and …Tom Mboya) were all children of the labour movement (Maina, 1998: 141).

B) ***Centrality of ethnicity***

The earliest social struggles in Kenya emerged as a response to the imposition of the colonial state. These protests, as shall be illustrated later in this chapter, took a distinctive ethnic character in addressing grievances. Even after the amalgamation of the various struggles into nationalist struggles against colonialism after 1945, there were distinct ethnic, if not intra-ethnic (family, clan)[4] cleavages that continue to permeate Kenyan, and in general, African

[3] See also Buechler (2000: 27), who argues that the mass society leads to isolation, depersonalisation and alienation that result to individual and structural strains. Structural strain in turn leads to psychological, discontent, irrational ideation, and extreme, deviant, or short-circuited behavioural responses.

[4] Such intra-ethnic/clan and family struggles pursue valued social goods such as power to control, recognition/respect, economic goods (e.g. land, jobs). See Phillip Mbithi, 1974, *Rural Sociology and Rural Development: Its Application in Kenya* on his analysis of ethnicity, kinship and tribalism as well as power and leadership. These intra-ethnic cleavages are not of core concern for the current thesis. Nonetheless they are

societies. Several commentators offer various reasons for the primacy of ethnicity as a basic defining feature of African struggles. Two of them (Mamdani, 1996 and Maina, 1998) are particularly useful. Below I engage their arguments with a view to highlighting their relevance to the current study.

For Mamdani (1996), colonial rule in Africa through a policy of institutional segregation resulted in racial dualism of two separate developments. On the one hand was a powerful colonial state with mainly white (enjoying political and legal rights) and a few Africans as *citizens.* On the other hand were separate *native* communities with unprivileged *subjects* of colonised people who included mainly rural based African peasants. This duality had an effect on the nature of social contentions that emerged. Principally, it divided African protest movements. As urban African city-dwellers started demanding for themselves the same rights the Europeans enjoyed, in the customary courts of collaborationist African chiefs in the countryside, 'decentralized despotism' flourished (Mamdani, 1996: 23). I argue here that these dichotomies between the urban and the rural struggles remain a feature of modern Kenyan society.

In colonial Kenya, developing alongside the nascent labour movement, which had a more urban and intertribal membership, was a cementing of the 'traditionally, high trust institutions such as the family, clan and tribe' into sites for political activism (Maina, 1998: 138; Nzomo, 2003). As Nzomo (2003: 186), argues, this was because of the 'institutional exclusion of African associational forms and the failure of the colonial state to provide an institutional channel for Africans to express themselves and their grievances.' This is especially so, as the only opportunities open to African populations for any associational life until late 1950s were only up to district level. Districts had themselves been chiselled as 'insular ethnic enclaves' (Maina, 1998: 143). This was for operational purposes of divide and rule (along ethnic lines). Nonetheless, the same were used as opportunities rather than a limitation to collective action mobilisation. The Mau Mau example, as do many other struggles in colonial Kenya, serves to amplify the fact that transformative resistance occurred mostly within ethnic groupings. The Mau Mau used the language of ethnicity to protest the duality of autocratic colonial authority.

The colonial regime especially during the State of Emergency years (1952-60), further entrenched ethnicity. The intensification of the conflict with the colonial administration

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viewed as impediments to deny Kenyans an opportunity to mobilise collectively across the different ethnic groups.

revealed what Berman (1990) refers to as the 'two faces of Africans' in the conflict. Specifically, there were deep divisions between militant freedom fighters and colonial African chiefs cooperating with the colonial government who gave 'orders to billet *askaris* (police) attached to their offices and generally recruited from ethnic communities considered dependable by the colonial government' (Maina, 1998: 143). This deepened ethnic cleavages.

Maina (1998: 138) citing Berman and Lonsdale (1992), advances two compelling reasons for the centrality of ethnicity in Kenyan politics:

> [First is], *tribe and ethnic identity* [which] *give groups a political language,* 'unites people over what to argue about; …provides the images on which they can base their ideologies (and) ideologies mobilize political support around social divisions….[Second is] *people's histories and identities [*that*] are encoded in their customs, as are their philosophies of power, justice and entitlements* (*emphasis in the original).*

On the second reason, Maina (1998: 141-2) continues to argue that colonialism's cultural assault on African traditional societies led to a second strand of associational life in an attempt to preserve African 'traditions, often suppressed by the new [Christian] missionary teaching.' Moreover, the Church's (especially the Anglican Church) proximity to the state symbolized physically by the 'erection of the bishop's house next to the governor's residence …created a perception among Africans that the Church was itself an instrument for buttressing colonial rule […a] suspicion that carried over into independent Kenya' (Maina, 1998: 141).

Quasi-religious and ethnic movements such as *Gikuyu Karing'a* ('authentic Kikuyus') with its African Independent Churches and schools, as well as *Dini ya Msambwa* and *Legio Maria,* emerged soon after, to counter the cultural affront that Christianity had brought. The Gikuyu Independent Churches for instance, went as far as reworking the Old Testament theology by:

> Infusing their own Kikuyu creation myths and religious beliefs with prophetic and heraldic messages of the Bible. Their hymns foretold the coming of a deliverer, secular rather than spiritual, and reminded the Gikuyus of the special divine ordination by which Ngai, their [G]od, gave them their land and bid them never to surrender it …The Mau Mau songs illustrate dramatically the debt that the Mau Mau fighters owed to the theology of power churned out by these churches (Maina, 1998: 142. See also Nzomo, 2003 for similar arguments).

According to Maina, these quasi-religious and ethnic movements provided then, as they do today, effective counterweight to the State's hegemonic project of official histories that 'have reworked the past to buttress predatory government, ethnic awareness and historiography' (Lonsdale and Berman 1992: 210 as cited in Maina, 1998: 138). Taking cue from this, one recognizes, as Maina rightly observes:

> Ethnicity supplies the grammar and metaphor of African politics, even for the middle classes. It frames the political and social demands that they make on the state. The African middle class straddles the twilight zone between individualism and communitarianism. They are not just members of a class, they are also sons and daughters of the tribe. They are held up as icons of progress and power, its emissaries at negotiations, and their exploits, the stuff of which fireside tales are made (Maina, 1998: 138).

Generally speaking, Kenyan civil society has not been spared manifestations of ethnicity. As a result, it remains riven down the middle. The vicious wars at the National Council of NGOs of Kenya since 2002 are a reflection of this. This suggests that formal institutions be they civil society or otherwise, are not necessarily representative of popular social and political interests (Maina, 1998). Rather, they have been iterations of intra-elite struggles, an elite, with a cunning ability to impose a 'national consensus' that reflect interests of dominant social groups, with only a few concessions to other groups in society (Mutunga, 1999; Nzomo, 2003; Mutua, 2008; Maina, 1998).[5]

C) ***The role of elite consensus and fragmentation***

An analysis of successive eras and interregnums of struggles for state reforms in Kenya isolates the existence of elite consensus and fragmentation as a common feature of these struggles (see for example Currie and Ray, 1984; Mutua, 2008; Mutunga, 1999). This has in effect ensured that the transformation of the state does not occur. Indeed, there is evidence to support a claim that while the language of reforms has been framed to indicate the need for fundamental changes in the architecture of the state and its relationship with the citizens, this has not been achieved due to the duality of elite consensus and fragmentation.

Classic political process model sees elite fragmentation as opportunities for social movements' advance (see for example Tarrow, 1998). However, for the Kenyan case, while

[5] Reflecting on the constitutional reform struggles, Nzomo (2003: 203), as does Mutunga (1999) observe the hegemony of middle-class in the 'constitutional reforms [because these struggles were] clearly engineered and led by an urban-based middle class composed of pro-democracy human and legal rights NGOs, religious organisations and opposition forces.' A critical question relevant to this study then is how these groups managed to do this.

elite fragmentation has offered vanguards of these struggles, further fragmentation and, at times, momentary consensus within their ranks, have resulted in derailing of the reform train. To this effect Mutua (2008: 117-8) notes: 'the African state has shown a surprising ability to be impenetrable by the citizenry, a fact that makes its reform a daunting task. Invariably, even new elites who yesterday sang from the hymnbook of reform seem to quickly fall into the pit of anti-reform after they ascend to power.'[6] But betrayal and ensuing marginalisation of some social groups provide fodder for continued contentions, sometimes, outside of formally structured civil society. The next section identifies and analyses the key phases in Kenyan contentions since the colonial era with a view to showing the deep-rooted causes of contemporary constitutional reform struggles.

Phases in the Kenyan reform struggles

A mapping of the different pro-reform forces and their crystallisation into the Ufungamano Initiative reveals a long list of issues and actors in socioeconomic and political struggles in Kenya. These struggles have long roots in the colonial and immediate post-colonial socio-political economy and governance. The rich and long history of popular struggles in Kenya is a statement of massive discontents on social, economic and political conditions that crystallised into social movements' struggles. For purposes of this study, I offer broad brushstrokes of the key factors that over the last century have generated discontents leading to emergence of resistance movements in the country.

This analysis identifies at least six distinct phases in the struggle for political, socio-economic change that eventually resulted in a unified struggle for constitutional reforms in late 1990s. It is instructive to note that a historiography of popular struggles in Kenya broadly reveals many similarities with a Pan-African periodization offered by Zeilig et al (2008).[7] However, Zeilig *et al.*'s (2008) periodization can only be useful as a generalisation that describes the main features, issues, and how these harboured the embryo for constitutional reform struggles. As such despite its utility for the African case, there are peculiarities of the Kenyan case that warrant a different periodization. Table 4.1 below summarises the key

[6] See also Currie & Ray (1986), Zeilig *et al*., (2008), Davidson (1992), Lamb (1975), Fanon (1967) for similar conclusions for Kenya and other African states.

[7] Zeilig *et al*., (2008: 4-26) in a comparative study of African social movements offer at least four significant moments through which popular struggles can be categorised and analysed in Africa: 1) Classic nationalism: 1945-70; 2) Critical nationalism and 'IMF riots': 1970-1990; 3) Pro-democracy movements: 1990-2000; and 4) The beginning of the 'fourth' period is marked by the 'anti-capitalist' Seattle protests. Zeilig *et al.* (2008: 1) argue that even though 'each period is more or less distinct, there have always been similarities in the composition of exploited and oppressed social groups involved in a revolt against those who exercised power and control over them.'

periods, mobilisations, actors and characteristics as identified by this study. As the table shows, the land question has been a key concern throughout the phases. In this regard, Mathiu (2011) is correct in his invocation of colonial and postcolonial historical reasons when he opines:

> The land conundrum…started with the British at the turn of the last century. The Land Title Ordinance of 1908 declared all land, which was not under cultivation to be Crown property. Another 1915 law stripped Africans of land ownership, turning them into tenants of the State.[8]

Table 4.1: Summary of the key Kenyan social mobilisations periods, issues, actors, and characteristics

Period	***Key mobilisation issues/triggers***	***Examples of Keys actors and movements***	***Key characteristics***
Pre-1945	Struggles against the pacification for colonialism Land and livestock dispossessions, taxation, colonial oppression, education.	The Giriama rebellion (1914) led by Mekatilili wa Menza The Nandi rebellion (1894-1905), East African Association (1921) led by Harry Thuku, Kikuyu Central Association (1936), Kenya African Union (1944), Taita Hills Association, Coast African Association, North Kavirondo Central Association, The Akamba members Association.	Mainly tribal/ethnic grievances against establishment of the colonial state
1945-1963	Land and livestock dispossessions, taxation, colonial oppression, jobs, anti-colonialism.	Mau Mau, Dini ya Msambwa, Kenya African Union, KANU, KADU, labour movement (Kenya Labour Federation)	Nascent nationalism, militarisation, ethno-religious, labour, ideological.
1960s	Distribution concerns (land, jobs); ideology.	Petty bourgeois elements, intra elite struggles, political opposition by Kenya People's Union.	Critical nationalism, elite fragmentations along ethnicity, economic concerns and ideology, shifting alliances, political assassinations.
1970's to 1982	State predation vs. opposition from within.	Military and student-intelligentsia, 1982 failed coup.	Critical nationalism, elite fragmentations along ethnicity, economic concerns and ideology.
1982-1990	Distribution concerns (land, jobs); ideology; SAPs; political pluralism.	Mwakenya, December Twelfth Movement, Release Political Prisoners.	Critical nationalism, ethnicity, economic concerns, ideology, political assassinations.
1991-1997	Distribution concerns (land, jobs); ideology; corruption; SAPs, changes in global political economy; democratisation; human rights abuses; constitution change.	Associational revolution: Ford, NCEC among others.	Ethnicity, nationalism, economic focussed.
1998-2005	Distribution concerns (land, jobs); ideology; corruption; SAPs, changes in global political economy; democratisation; human	Ufungamano Initiative, Mungiki.	Inter-ethnic, elite fragmentations, ethnicity.

[8] http://www.nation.co.ke/blogs/-/446718/1297198/-/view/asBlogPost/-/vi1txa/-/index.html

	rights abuses; constitution change.		
Post 2005	Constitutional change, land, distribution concerns, Ethnicity	Remnants of the Ufungamano Initiative; Kenya Civil Society Forum, Katiba Sasa Coalition, Sabaoti Land Defence Forces, Mombasa Republican Council, Mungiki.	Ethnicity, religious divisions, Intra-elite contentions.

The periodization adopted here is based on key epochs of the Kenyan nation. It is also important to mention that each of these phases has shaped the nature and character of subsequent struggles. In the following section, I analyse each of these phases using the key characteristics as well as generative issues and players, in an effort to offer a general understanding of the environment within which Ufungamano Initiative emerged. A caveat is however in order. What I offer is a simplified summary for the purposes of showing the cumulative nature of the contestations. Greater in-depth analysis is nonetheless offered for the periods starting 1980s because these had direct connections to the focus of this thesis – constitutional reform struggles.

The pre-1945 struggles against colonial pacification

The reform agenda has been on Kenya's political lexicon since the 1885 forceful annexation of various parts/tribes of present day Kenya by Britain. The processes of establishing a colonial state, the ensuing violence of the colonial state in both physical and symbolic terms, nurtured the emergence and an enduring civic/associational life and even armed insurrections. Specifically, Kenyans' contact with European colonialism led to at least four different types of grievances that fuelled discontent. These were grievances against: 1) pacification to formal colonialism; 2) land annexations by the colonial state; 3) the integration of indigenous non-monetary socioeconomic systems to the global capitalist economy; 4) discriminatory colonial administration systems like the *Kipande* (the pass) law[9] and taxation. These struggles, perhaps with the exception of Harry Thuku's East African Association formed in 1921, were mainly tribal/ethnic in nature. They ranged from violent revolts, trade unions, and even quasi-religious social movements opposed to colonial rule in almost all parts of present day Kenya.[10] Despite their distinct ethnic constituencies, these

[9] *Kipande* was an identity document introduced under '*The Native Registration Amendment Ordinance of 1920.'* This ordinance made it compulsory for African males above the age of 15 years to register and carry it whenever they went. It was meant to restrict mobility of Africans. It was extremely unpopular (Anderson, 2005; Elkins, 2005).

[10] Some of the best-known examples of such early revolts include the Giriama at the Coast, who, led by the charismatic young woman-Mekatilili wa Menza, rebelled against British Colonial Administration and policies between 1913-14 (Mugi-Ndua, 2000; Orchardson-Mazrui, 1999). Other examples included the eleven-year (1885-1905) Nandi resistance movement against British colonial rule led by Koitalel Arap Samoei. Another

movements converged on the fact that they were all against the impositions of the colonial state.

Nascent nationalism and militarisation of the struggle (1945 and 1963)

The period 1945-1963 is specifically critical in understanding how a negotiated independence and the resultant independent constitution heralded long struggles aimed at transforming the post-colonial state. The 1940s marked the first major transition of movements from tribal enclaves to nationalist mass movements. Like the rest of Africa, at least five different actors drove the wave of nationalist movements in Kenya (Zeilig *et al.,* 2008). These were: the students and intelligentsia, trade unions, the Pan-African movement (which up to 1945 had a strong presence in the Diaspora), the co-opted African leadership (i.e. colonial chiefs), colonial settlers, and mass movements. Their roles are briefly explained below.

The burgeoning Kenyan student-intelligentsia was exposed to their own kind through the 5th Pan-African congress held in Manchester in October 1945. Jomo Kenyatta, a Kenyan Pan-African nationalist, was among its organisers and attendees. In its 'Declaration to the Colonial Peoples,' the Fifth Pan-African Congress exhorted intellectuals and professional classes of the colonies to:

> Waken to their responsibilities. By fighting for trade union rights, the right to form cooperatives, freedom of the press, assembly, demonstration and strike, freedom to print and read the literature which is necessary for the education of the masses, you will be using the only means by which your liberties will be won and maintained. Today there is only one road to effective action—the organisation of the masses. And in that organisation the educated Colonials must join (Padmore, 1947/63: 7).

This call shaped the anti-colonial struggles in the years that followed. Firstly, as Zeilig *et al.,* (2008: 5) argue, 'the role that African students played in these movements was crucial. They believed that they embodied the aspirations of national liberation and saw themselves as the liberators of Africa "representing", speaking for, and leading the emergent nation.' Zeilig *et al*., (2008: 1) further argue that the ensuing period (i.e. after the 1945 Pan-African Congress),

> Saw poorly organised ...trade unions come to the fore of a nascent nationalism ... often under the leadership of petty bourgeois elements, notably the military and student-intelligentsia. This leadership...played a particularly crucial – but in many senses contradictory and non-

example was Dini Ya Msambwa in western Kenya in the 1940s. This was a quasi-religious movement whose spiritual leader was Elijah Masinde. Dini Ya Msambwa opposed the colonial government and earned its leader many years in detention. It also opposed the independent government after 1963. Its activities were thus declared illegal by both the colonial and subsequent post-colonial governments.

> visionary role in national liberation. The political and ideological influences drew upon a cocktail of ideas ranging from Soviet influenced socialism, African nationalism and anti-colonialism.

Former African fighters who had taken part in the Second World War (hereafter WWII) also contributed to the nationalistic bonding as well as the militarisation of anti-colonial and other social struggles. While many of the movements behind these struggles remained largely free of violence, the colonial state always responded with inordinate force against unarmed people. A critical observation here is that again, contacts with the external forces, mediated by Africans' participation in WWII, where they fought alongside white colonialists contributed largely to the emergence of the armed insurrection as well as to the nationalist sentiments that galvanised and banded student-intelligentsia, labour movements and peasant revolts together in these struggles (Elkins, 2005). Many black Kenyans were recruited as soldiers, porters and scouts for the Allied forces during the WWII. These soldiers returned home to a colonial state that still considered them inferior. They had fought to protect the interests of colonial power only to return to exploitation and indignities of colonial rule. They became bitter and discontented[11] with colonial rule fraught with systemic abuses and denials of social, political and economic rights for indigenous populations.

The above-mentioned conditions produced widespread resentment and sometimes, violent protests that ultimately culminated in, among other things, the Mau Mau insurrection aimed at liberating the black population and its land in central parts of Kenya (Kanogo, 1987; Throup, 1987; Furedi, 1989; Maloba, 1998; wa Kinyatti, 1992; 1986). The Mau Mau insurrection, and the resultant brutality of the colonial regime after declaring a state of emergency in Kenya, has since become scholarly fodder for many. Commenting on the resultant declaration of the State of Emergency on October 20, 1952 by the colonial regime to suppress the Mau Mau insurgency, Elkins (2005: ix) writes:

> From the start of the war in October 1952, tales of Mau Mau savagery spread wildly among the white settlers in the colony and at home in Britain. Mau Mau was portrayed as a barbarous, anti-European, and anti-Christian sect that had reverted to tactics of primitive terror to interrupt the British civilizing mission in Kenya...While the Mau Mau insurgents claimed they were fighting for *ithaka na wiyathi*, or land and freedom, few people in the Western world took seriously the demands of these so-called savages.

[11] http://science.jrank.org/pages/10398/Nationalism-in-Africa-African-Nationalism-after-World-War-II.html.

The state of emergency was to last until January 1960. This period 'witnessed the inauguration of the Lyttelton (1954) and Lennox-Boyd (1957) constitutions' to give Africans limited representation in both the Legislative and Executive Council (Maxon, 2009: 12). However, in both instances, these constitutions had been non-negotiated and imposed by the colonial regime. They were only meant to appease the agitating masses and local comprador class, while domination continued.[12]

The Lyttelton (1954) and Lennox-Boyd (1957) constitutions failed to appease Africans and agitations for comprehensive constitutional talks to facilitate independence continued to be a key demand of Africans and their representatives. Subsequently, the first fully pledged Constitutional Conference was held in January to February 1960 at the Lancaster House. This produced what came to be known as the Iain Macleod Constitution. The Iain Macleod Constitutional Conference was ostensibly meant to map out future constitutional developments for Kenya.[13] The reaction of the colonial regime and the subsequent concessions to some forms of self-rule for the so-called natives, were results of pressures from below. Owing to these pressures, internal self-rule was finally achieved on June 1, 1963. Six months later, Kenya gained her 'full independence' from Britain. These developments serve to denote what some social movement scholars have theorised as co-evolution of social movements and their targets. As Oliver and Meryer (2003) argue, movements and their targets learn and adjust in response to each other's actions and in an effort to outmanoeuvre each other. Nonetheless the bottom line is that social change is shaped by such actions and counteractions between movements and their targets. Chapters five, six and seven illuminate how similar processes occurred through mobilisations by the Ufungamano Initiative.

The immediate post-independence decade contentions

The anti-colonial struggles succeeded to midwife Kenya's' independence. However, they did not necessarily transform the new independent state. After liberation, the new post-independent political elites did not develop a satisfactory programme of socioeconomic reforms especially in regard to the question of land reforms. Neither did they challenge the

[12] The point I am making here is that a local comprador class was deliberately created by the colonial state to ensure fragmentation of native African opposition to the colonial rule by ensnaring part of the local Africans. This local comprador was made of 'chiefs and headmen- outriders of the colonial administration [*created and nurtured by the colonial administration after bastardising traditional leadership and authority structures*] indebted [*to the departing colonial power*] because of the opportunities for accumulation and personal advancement that these positions offered' (Maina, 1998: 142-3. *Italics my emphasis*).

[13] http://www.ski-pix.com/parliament/history_Steps_2_Independence.php

exploitative production relations. This ensured that Kenya stuck to production relations in world capitalism with her economy (a periphery) producing primary agricultural goods for the core (Britain and other developed economies). As such, the independent Kenyan economic script was no different to the rest of Africa. For 'a growing and increasingly radical generation of Africans, independence was gradually being seen by the 1960s as a charade barely disguising the imperialism of former colonial powers' (Zeilig *et al.*, 2008: 9). Frantz Fanon (1967) as well as Basil Davidson (1992), described such developments throughout Africa as 'the African encounter with the "curse of independence" characterised by growing authoritarianism, and corrupt economic aggrandisement of the political class at the expense of the nation' (cited in Zeilig, *et al.*, 2008: 2. See also Kamau, 2007; Muluka, 2011b[14] for similar arguments).

Subsequent disillusionments were manifold. Looking at the Mau Mau struggles and the subsequent political developments in Kenya for instance, one comes to a disheartening conclusion that the personal sacrifices by hundreds of thousands of ordinary Kenyans came to nought. The main beneficiaries of *Uhuru* were Jomo Kenyatta, a man who despised the militancy and violence of the Mau Mau, together with a group of Western educated sons of African comprador class. The post-colonial Kenyan state has since been under the firm grip of this group.

It is ironical though that some of those behind the betrayal, came to power from a strong civil society background. This gives credence to the argument that the African civil society is exhibits a particular dualism. It has both a pluralising potential, but has also been utilised by the state and power elites as a 'vehicle for its hegemonic project, shrinking the popular sectors of civil society and sundering and frustrating democratic deepening processes' (Maina, 1998: 135). It is essentially this dialectic characteristic that makes the Gramscian

[14] Barrack Muluka, in an article published in the *Standard* on 08/07/2011 titled 'As Africa welcomes Southern Sudan, there's cause to celebrate with caution' on the eve of South Sudanese declaration of independence, argues that 'Africans know how to turn a blessing into a curse'. He gives a compelling account of past liberation stories that turned out to be a disaster for the continent as 'heroes of yesteryear reinvented themselves as the enemies of the people...There have been far too many false dawns in Africa... Everywhere, the parties of independence became draconian behemoths. They began trampling on the people's rights and freedoms soon after independence. African liberators have confounding capacity to transformation into dictators. Even the very finest ... degenerated into dictators and megalomaniacs *[or...]* integrated harvester of wealth and property [who...] dared anybody to challenge' *[them as they embraced not good governance and equal opportunity but a]* 'political economy of negative ethnicity and exclusion... corruption...vaporisation of citizens and detention without trial...' (*Italics own insertions*) Available online at: http://www.standardmedia.co.ke/columnists/InsidePage.php?id=2000038593&cid=650&. (accessed on 09/07/2011).

conception of civil society amenable to this study. It is important, however, not to quickly jump to conclusions that the new African post-colonial elites were just eager to embrace the capitalist economic model. A couple of factors came into play to ensure this outcome. First, the departing colonial elites ensured that their rights to land would remain unchallenged. The independence constitution said as much. The capital and land owning class (the white immigrant settler community) were constitutionally protected from any acts by the state that would undermine their continued land and capital ownership monopoly. Moreover, they went to great lengths to ensure that no real transformation in the new 'independent' state occurred. In this regard, Bruce Mackenzie, a member of the colonial cabinet was retained as the Minister for Agriculture and in charge of land, in the post independent government. As already mentioned in chapter one, Mamdani (1996: 3-4) attributes this kind of protection in many of post-colonial African states, to the resultant dialectic of state reform and popular resistance that remains intact to date.

Second, as noted in almost all African countries, the independence constitution was a compromise between the departing colonial regime and the incoming collaborating African elite (Currie and Ray, 1986; Bannon, 2007; Fanon, 1967; First, 1970; Zeilig *et al.*, 2008). This left intact, the 'bureaucratic state machinery that had been developed to facilitate extraction of an economic surplus, rather than furthering the needs of local welfare' (Currie and Ray, 1986: 47-8. See also Zeilig *et al.,* 2008, and Mamdani, 1996 for similar observations on other African countries). This happened through protracted constitutional negotiations (in Lancaster House in 1960, 1961, and 1963), which resulted in what came to be known as negotiated settlements at independence. As such, critics like Ruth First charged that decolonisation had been nothing more than a 'bargaining process with cooperative African elites.… The former colonial … government guarded it options and …the careerist heirs to independence preoccupied themselves with "Africanization" of the administration' (First, 1970: 57-8 as cited in Zeilig *et al.*, 2008: 7).

Independence also exposed the new independent state to the geopolitical dynamics of the time. In particular, the Cold War played a significant role in the mobilisations as well as demobilisations that followed in Kenya. The Cold War specifically played itself on the Kenyan domestic front as one part of the Kenya African National Union (KANU) party with the help of the skilful Thomas Joseph Mboya, the first Minister for Economic Planning and Development in post-independent era, pushed for continuation of the economic capitalism

model. Mboya ingeniously renamed capitalism 'African Socialism' through the *Sessional Paper no. 10 of 1965* that he aptly named *'African socialism and its Application to Planning in Kenya*.' Perhaps, this was to counter the true socialist camp in KANU.[15] The *Sessional Paper no. 10 of 1965* spelt out the economic blue print for 'independent' Kenya. It offered governments' continued commitment to respect private ownership of capital, industrialisation, human resources development, and rejected the existence of a class struggle in Kenya.

The *Sessional Paper no. 10* also set in motion a project for ideological demobilisation of the trade union movement as well as other social groups that had been key actors in the fight for independence. George Gona is of the view that Mboya knew and feared the power of unions. He helped the Kenyatta state that he was part of, to dismantle all radical elements as a strategy for cementing the post-colonial state's powers.[16] Article 128 of *Sessional Paper 10, 1965* that Mboya penned for example, stated:

> Strikes cost the national output, the workers' wages, companies' profits, and Government taxes. Wages in excess of those warranted by productivity increase unemployment, encourage the substitution of capital for labour, and lead to bankruptcies. In order to avoid these drags on development, legislation will be needed providing for compulsory arbitration of major issues not resolved through regular bargaining processes….

As a result, the KANU government was openly disinterested in fostering a vibrant labour union. It was Mboya, ironically, who had been from the trade union movement (Kenya Federation of Labour, and had been the General Secretary from 1953) who played leading role in neutering not only the labour movement in Kenya, but in dismantling any socialist ideals in the country (Okwatch, 2008). Commentators such as Okwatch (2008), Ng'weno (2008), among many others, have offered varying reasons for this. I find the reason suggested by Okwatch (2008) a compelling one for this study.

In an article published in the *East Africa Standard* on July 28, 2008 Okwatch implicates Mboya for having been used by the American Central Intelligence Agency (CIA). Okwatch argues that Mboya was in fact a CIA agent out to nip in the bud, any ideas of socialism in the country. Mboya targeted the same labour movement that had nurtured and propelled him to national and international limelight. To support his claim, Okwatch (2008), cites an article

[15] I deal with the ideological cleavages later in the chapter.
[16] Informal talks with this author on the September 5, 2008.

appearing in the June 1969 issue of the now defunct American political and literary magazine published in the 1960s and early 1970s magazine *Ramparts*, argue:

> The CIA programme in Kenya could be summed up as one of selective liberation. The chief beneficiary was Tom Mboya. … Both a credible nationalist and an economic conservative, Mboya …was ideal for CIA's purpose. Soon after, Mboya joined the CIA jet set, travelling around the world…on funds from such conduits as the Africa Bureau and from the International Confederation of Free Trade Unions (ICFTU). ICFTU, which played a key role in Kenya's independence through trade unionism, was an aggregation of international trade union secretariats set up in 1949 to counter an upsurge of left-wing trade unionism outside the communist bloc.... The CIA allegedly funded operations at the time…. Initially, CIA's natural strategy was to underwrite Mboya and his labour federation as a force against Kenyatta who was considered not 'sufficiently safe' owing to his initial deep socialist leanings.[17]

As such, after independence, the Mboya and Kenyatta camp continued its systematic ideological assault on the Left using such policy documents as the 1965 *Sessional Paper no. 10* that guaranteed there was little room for social movement unionism. Studies of ICFTU and American Federation of Labour and Congress of Industrial Organisations (AFL-CIO) activities during this time, confirm that indeed, trade union leaders world over, were recruited to serve American interests during the Cold War (see for example Spalding, 1976). Arguably, due to his association with, and funding by AFL-CIO, IFTUC and CIA, Mboya was instrumental in reducing an otherwise vibrant and progressive social movement unionism of the Kenyan labour movement to business unionism concerned with only bread and butter issues of the workers. This business unionism left the Kenya labour movement vulnerable to their own myopic interpretations of social, economic and political issues, which impinged their actions. The Kenyan labour movement is yet to recover from this. Its co-optation by KANU in the post-independence era, further limited its ability to act as a progressive social force in search for the country's social economic and political solutions.[18]

Perhaps the critical questions to ask are: why did labour in the immediate aftermath of systemic oppression through colonialism, relax and leave politicians without any meaningful opposition? Did the absence of political opposition undermine both labours' and social movements' ability to mobilise for 'substantive uncertainty' (Schedler, 2001) to push for real transformation? I submit that a look at the Four-Cs (cooperation, complementarity, co-

[17] http://africanpress.me/2008/07/03/revealed-mboyas-fatal-links-with-cia/

[18] The Kenyan case therefore contradicts Munck's (2003) assertion that labour movements can be a 'progressive solution' to the contemporary social economic problems.

optation and confrontation) model proposed by Najam (2000) might help us discern the nature of relationships between the state and social organisations in post-independence Kenya.[19] Specifically, the confluence or divergence of means and goals between civil society and the state defined the subsequent demobilisation of the social forces that had been key drivers in the independence struggle. Furthermore, the nation-building project of the 1960s throughout Africa played a big role in these demobilisations as one party states were pushed as vehicles of achieving national unity. This required subordination of all other forces to the party.

The end result was that the 1960s came to reflect a certain dichotomy. On the one hand, it reflected what Bates (1999: 93) describes as 'the creation of characteristic political patterns; clientilistic and patronage politics, corruption, and privatization of public institutions.' On the other hand, these developments elicited serious intra-elite contestations – initially ideological but later turned ethnic, between the pro-capitalist and pro-socialist groups in KANU.

Immediately after independence, ideological cleavages between radical and conservative forces in KANU[20], the party that won the elections that ushered Kenya's independence, emerged. On the one hand, a pro-capitalism wing led by President Jomo Kenyatta and Mboya preached *Uhuru na kazi* (independence with hard work). This group, intent on continuity of the nature of state power, did not question or reform it. The Kenyatta group viewed the state as an enabler of free market economy and took an increasingly pro-business, and anti-reformist stance (Mutua, 2008: 76; Odinga, 1967). On the other hand, a pro-socialist group that coalesced around the then vice president Jaramogi Oginga Odinga, and included Ochieng Oneko, and Bildad Kagia among others, pushed for the transformation of the state to better serve Kenyans.

The pro-capitalists later known as the Kiambu Mafia[21] ultimately prevailed in these murky ideological wars. They enriched themselves through massive corruption and flawed 'land

[19] The literature review chapter (two) as does chapter five deal with this in greater details.
[20] KANU had been crafted by the then major ethnic groups i.e. Kikuyu and other groups with close affinity to them (e.g. Embu, Meru) and the Luo. Its formation triggered some panic among smaller ethnic groups such as the Luhya, Miji Kenda and the Kalenjin, who, with the support of White Setters, formed the Kenyan African Democratic Union (KADU) to cater for their interests.
[21] The pro-capitalist group led by President Kenyatta came to be known as the *Kiambu Mafia* as many of these were Kikuyus from Kiambu district where the president came from. These controlled the country and increasingly became corruptly wealthy, avaricious, and oppressive in a sea of 'continuing poverty and deprivation for the masses' (Lamb, 1975: 84). However, there were other pro-capitalists who were non-Kikuyu. Some stood firm against what they saw as an immoral primitive accumulation by the so-called Kiambu mafia.

reform processes' that replaced the white *bwana* (master) with a black one. They became the new national black bourgeoisie and quickly degenerated into an exploiting class akin to the white colonial one that they had supplanted (Fanon, 1967; Currie and Ray, 1986). The new elites continued suppressing dissent and totally neglected the radical transformative agenda that had underwritten the fight for independence. The Mau Mau freedom fighters, who had earlier on, waged a war against these very issues, were shunned, neglected, and forcefully reminded by Kenyatta that '*hakuna cha bure'* (nothing for free) in independent Kenya (Hansard, 04/04/2002; Mbataru, 2005).

Looked through a political opportunities and constraints model lens, these developments sowed the seeds of disillusionment on *Uhuru* (independence) especially on the part of the masses, which saw nothing different after change of the Kenyan status from a colony to a post colony. This disillusionment was the mortar that cemented successive struggles. Thus, maintaining unity among political elite after liberation proved difficult. The key political contention was based on the framing that *Uhuru* had been hijacked. These contentions resulted in the Oginga Odinga led Left group breaking away from KANU to form the Kenya People's Union (KPU) in 1966. This was after Pio Gama Pinto, the *de facto* ideologue of the socialist faction, had been assassinated for what was said to be his Communist sympathies (Mutua, 2008: 76; Odinga, 1967: 287-8).

The decamping of Odinga and others to form KPU precipitated a constitutional amendment (Act No. 17 of 1966) instituted by the Kenyatta camp to force Odinga and his KPU camaraderie to lose their parliamentary seats. Consequently, they sought a fresh mandate from electorates through what came to be known as the little general election of 1967. Thereafter, the Kenyatta regime became overly sensitive to dissent. All forms of protest and

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Chief among these was Thomas Joseph Mboya, then the Minister for Economic Affairs who is on record as having suggested in Parliament that a number of Kikuyu politicians, including members of President Kenyatta's extended family, were enriching themselves at the expense of other Kenyans (Orengo, 2008). However, Mboya's criticism was almost hypocritical as he was the high priest of the capitalist block. As the minister for economic affairs, Mboya led the KANU government in ingeniously renaming capitalism 'African Socialism' through the *Sessional Paper 10 of 1965: African socialism and its Application to Planning in Kenya* that he penned. The paper spelt out the economic route that Kenya would be taking. It offered to respect private ownership of capital, industrialisation, human resources development, and rejected the existence of a class struggle in Kenya (Kenya, 1965). On the opposite side of the ideological divide, Oginga Odinga, Bildad Kagia, and Ochieng Oneko led the socialists.

dissent were met by strong state repression including mass massacres as happened in Kisumu in 1969, detentions without trial, and assassinations.[22]

The creation of KPU as the supposed vanguard of a transformative *Uhuru,* and the ensuing state's response, particularly its 1969 detention without trial of Oginga Odinga and the entire crop of KPU MPs after the stoning of President Kenyatta's motorcade in Kisumu (Odinga's home area), marked the death of open contention based on ideological and opposition party politics in post-independent Kenya (Ng'weno, 2008). What followed was the systematic 'tribalisation' of the contention. Both protagonists, i.e. KANU and KPU, were guilty of this.

First, as Currie and Ray (1986: 48) observe, growing regional inequalities were translated along ethnic lines to exacerbate 'tension between Central Province and Western Kenya …apparent in the split between …KANU and …KPU.' Second, the Kenyatta state portrayed KPU as a Luo party led by a disgruntled Oginga Odinga because KPU had a majority of Luo support and leadership. KPU also painted KANU as a 'greedy' Kikuyu party (Ng'weno, 2008). This was despite the fact that each of these parties had support from different parts of the country. Henceforth, contention took an ethnic turn especially among the subaltern. Years later, events in the 1980s where majority of those opposing the Moi rule were mainly non-Kalenjin (Moi's ethnic group) served to amplify deep rooted ethnicisation of Kenyan political contentions. This point also functions as empirical support for the argument made earlier in this chapter that tribe and ethnicity have been central to political contentions in Kenya.

Third, the assassination of Thomas Joseph Mboya (an ethnic Luo,[23] and one of the strongest of the Kenyatta allies during the ideological battles) on July 5, 1969 by a KANU youth winger, Nashon Njenga, an ethnic Kikuyu – did not help matters. The youthful and brilliant Mboya, was a man of immense international connections with widespread support across the country. He was widely seen as a serious contender to the presidency (Okwatch, 2008). Mboya's assassination was perceived as authored by Kikuyu elites close to Kenyatta who distrusted his power and influence. This was read as yet another plot by Kenyatta and his Kikuyu elite allies to prevent any Luo from assuming the presidency (Ng'weno, 2008;

[22] Examples of prominent persons assassinated during Kenyatta's rule (1963-78) include Pio Gama Pinto (1966), Thomas Mboya (1969), J.M. Kariuki (1974). Those detained without trial included Oginga Odinga, Bildad Kagia to mention but a few.

[23] There are contestations on Mboya's 'Luoness' as he was ethnically a Suba, a Bantu ethnic group that was assimilated by the Luo, a Nilotic group. Critics charge that Jaramogi Oginga Odinga appropriated Mboya's ethnic proximity to the Luo after he was assassinated to advance his war against Kenyatta and his Kikuyu tribesmen.

Orengo, 2008). Commenting on the effect of Mboya's assassination, in a film documentary: *The making of a Nation,* Hilary Ng'weno (2008) notes:

> Within hours, there were riots and demonstrations in Nairobi and in towns and villages in Luoland. The experience of the KPU had given most Luo the feeling that the Kikuyu were out to deny them any position of political leadership. They had pushed Oginga Odinga out of the ruling party-KANU. Now they had killed Mboya.

With Mboya assassinated, and the opposition KPU leadership detained, Kenya became a *de facto* one party state. This continued until 1982, when KANU pushed through parliament, a rushed constitutional amendment that introduced the infamous section 2A, making Kenya a *de jure* one party state and KANU the only legal party. This effectively criminalised any political opposition in the country. I discuss the effects this had on Kenyan struggles later in this chapter.

The 1970's: State predation versus opposition from within

The 1970s saw a continuation of the 'non-traditional nationalism' (Zeilig *et al.,* 2008). It was characterised by continued intra-elite political contentions against increasing centralisation of state power into the presidency, and the curtailing of freedoms of speech and assembly. Ethnicity firmly took centre stage in the contentions. There were, however, many cleavages and paradoxes within existing contentions.

While there were some contentions against the Kenyatta regime, the new challengers were bereft of ideas for meaningful change (See Davidson, 1992 for similar observations about the African continent). This was because such challenges came from 'mostly the same coalition of petty bourgeois elements who identified the problems of independence but could not resolve their contradictions' (Davidson, 1992 as cited in Zeilig *et al*., 2008: 3). By early 1970s, only a few dissenting voices were left questioning state's failure to transform land ownership as the key driver of the economy and development. Josiah Mwangi Kariuki, a former Mau Mau detainee and a fierce anti-establishment MP, was arguably, the most visible. Kariuki questioned the 'willing buyer willing seller' policy on land reforms adopted by the Kenyatta regime. For his troubles, Kariuki was assassinated on March 2, 1975 by elements of the Kenyatta government (Mutua, 2008; Mutunga, 1999; Ng'weno, 2008).

Kariuki's murder did not necessarily end challenges against Kenyatta's centralisation of power and his resolve to further push Kenya into a capitalist model. The mantle passed on to

what Charles Njonjo, the then Attorney General derogatorily referred as the 'seven bearded sisters' who included the fiery legislators Mashengu wa Mwachofi, Koigi wa Wamwere, James Orengo, George Anyona, Onyango Midika, Dr. Chibule wa Tsuma and Lawrence Sifuna. This group, including Ms. Chelagat Mutai, Martin Shikuku and Jean Marie Seroney, were the only opposition left in KANU. The group carried its anti-state crusades in parliament (Mutunga, 1999). For this, some paid with detentions or escaped into exile, except for Sifuna and Mwachofi who continued being a thorn in the flesh of the government until they were rigged out of parliament through the infamous *Mlolongo* (queue) voting in 1988 (interviews: Mwachofi, 27/09/2009; Gitari, 21/09/2010).

What is also instructive in this phase is that after vanquishing their common 'enemy', the now clearly hegemonic capitalist group turned on each other mainly on the basis of tribe in their competition for the largest share in looting the state. Furthermore, due to fears by a group close to Kenyatta on losing out in the event of his death as he was aging and clearly frail, there were growing frictions with calls for constitutional changes pushed by Gikuyu, Embu and Meru Association (GEMA) politicians meant to block Daniel arap Moi (then vice president), from ascending to power (Ng'weno, 2008; Currie and Ray, 1984).[24]

Ethnicity therefore continued to play a huge role as a key obstacle to realization of any cross regional/inter-ethnic movement (Currie and Ray, 1984). During Kenyatta's era, many of the so-called dissidents with the exception of the likes of Ngugi wa Thiong'o, JM. Kariuki, Bildad Kagia, and Koigi wa Wamwere (whose differences with Kenyatta were ideological) were all people from other ethnic groups and mainly Luo. Despite a spirited campaign to prevent Moi from assuming office, Kenyatta died in office in 1978 and Moi took over. Upon taking over, Moi's main critics continued to be mainly from GEMA communities, who were now joined by their erstwhile 'enemies,' the Luo. This illustrates that when it suits them, elites close ranks to face a commonly defined 'enemy.' The above is particularly important for this study as it endeavours to establish the conditions that allowed the Ufungamano Initiative to emerge as a mass appeal movement across the different Kenyan ethnic groups in such a divisive environment. The study also analyses whether ethnic cleavages influenced the operations of the Ufungamano Initiative.

[24] Moi was saved by a decisive intervention by Charles Njonjo, then Attorney-General, who, 'in a strongly worded statement, subsequently endorsed by Kenyatta himself … ruled that it was an offence even to "imagine" the President's death' (Currie and Ray, 1984: 585).

The militancy of the 1980s

This study treats this period as the '*preparatoria'* constitutional reforms decade. It was marked by co-evolutionary Polanyi type 'double movement' developments defined by heightened tensions and militancy between the ruling elite and dissident groups. The period was also characterised by intensification of elite antagonisms and dwindling of resources that political elites had utilised to keep themselves in power, i.e. foreign aid and economic resources brought by commodity (especially coffee) boom (Parsitau, 2008; Rono, 2002; Currie and Ray, 1984). The Moi state resorted to greater corruption, oppression of political competitors and any pro-change elements and the general masses, while at the same time flirting with 'mass line populism' (Currie 1984: 570).

The first wave of heightened tensions and militancy of the pro-reform formations were largely shaped by the events leading to and immediately after the 1982 failed coup. Further, available literature on the contemporary constitutional reform struggles in Kenya traces the origins of these struggles to the events leading to and immediately after the constitutional amendment Act No. 7 of June 9, 1982 that introduced Section 2A into the constitution, making Kenya a *de jure* one party state (see for example Currie and Ray, 1986; 1984; Ajulu, 2000; Nasong'o, 2007; Cottrell and Ghai, 2007; Mutiga, 2010). These contestations included intra-elite antagonisms as well as wider political and economic grievances centred on deteriorating political rights, and land tenure systems which remained a key divisive issue (see Currie and Ray, 1986; 1984; Kanogo, 1987; Throup, 1987; Furedi, 1989; Maloba, 1998; wa Kinyatti, 1992; 1986).[25]

On the land question, its control and ownership system had by now become an instrument for entrenching political patrimony. While a majority of the masses remained landless, political elites led by Kenyatta accumulated so much land and also continued large-scale commercial farming in many highly productive agricultural areas of the country (Ng'weno, 2008). This sowed seeds for grievances against political and economic elites. These grievances intensified to a point where in 1982 squatters moved on to some farm estates (Currie and Ray, 1986). This alarmed political and economic elites to a point the *Daily Nation* ran an editorial in June 1982 that among other things stated, that 'land is so central to the political health of this nation that we believe that whatever else is occupying the centre stage in politics should be relegated to second place' (cited in Currie and Ray, 1986: 49).

[25] These authors place the unresolved land problem at the heart of Kenya's contemporary constitutional conflicts

While this was happening, the ruling elite moved to formally criminalise political opposition in an environment of growing discontent with the state and elites. On June 9 1982, amid talks of the registration of a new political party, the Moi/KANU regime rushed through parliament, a constitutional amendment that made Kenya a *de jure* one party state and declared KANU the sole legal political party (see Hansard, 09/06/1983). The effect of this constitutional amendment confirmed Franz Fanon's warning that single parties would be nothing but 'the name, the emblem, and motto [and that they would be used to] immobilise the people [and become] a means for self advancement' (cited in Murungi 1995: 16). Essentially, the move led to further erosion of basic liberal democratic rights like free speech, assembly and association. The state also usurped powers to clamp down on those who expressed dissent (Mbingu, 1991). Mbingu (1991) asserts that this made even members of parliament think twice before speaking up in parliament as the state continued repressing those opposed to it (see also Currie and Ray, 1986).

What followed after, in the words of Ndubi (interview, 24/09/2009), was that the 'Moi/KANU rule became so brutal that the division between right and wrong was so clear. There was no grey area in between' (see also Atieno-Odhiambo, 2004). Such state brutality continued to fuel anti-regime sentiments. These sentiments were used to 'mobilise popular opinions on need for reforms, and also in the development of common principles and understanding of what the constitution should be like so as to curtail the excesses of Moi's absolute and brutal powers' (Ndubi, interview 24/09/2009). As such, instead of the death of contention, the first major threat to the Moi regime came less than two months after this infamous constitutional amendment. This was in the form of a coup attempt on August 1, 1982.

Many commentators attribute the abortive coup spearheaded by non-commissioned officers of Kenya Air Force with tacit support of students[26] and intelligentsia on August 1, 1982 to

[26] Students were seen prematurely celebrating in the streets immediately following soldiers' pronouncement of the toppling of the Government of President Moi. In the aftermath of the coup, the Government charged numerous university students (most notable being Titus Adungosi -a student leader who later died in prison, Paddy Onyango, Joseph Hongo, Maurice Adongo Ogony, Onyango C. A., Oginga Ogego, Francis Kinyua, Onyango Oloo, Thomas Mutuse, Johnstone Simiyu, Jeff Mwangi, Ongele Opala, Muga K'Olale and Wahinya Bore) and as well as some professors for a role in the failed coup (Mbingu, 1991; Atieno-Odhiambo, 2004; Friedrich Ebert Stiftung, 2003). It is 'important to note that prior to the coup the student community …was the only group to publicly challenge the decision by parliament to impose a one party rule by law in Kenya. The students organised several rallies culminating in the presentation of a memorandum to president Moi that called for a national referendum to ask Kenyans to decide on the one party rule' (Friedrich Ebert Stiftung, 2003: 2).

dissatisfaction with the Moi/KANU regime (see for example Mutunga, 1999; Currie and Ray, 1986; 1984; Mbingu, 1991; Kamau, 2007; Atieno-Odhiambo, 2004; Badejo, 2006; Mwaura, 1997; Ajulu, 2000; Nasong'o, 2007; Cottrell and Ghai, 2007). Specifically, these included increased human rights abuses, a generally 'worsening economic crisis, and [deepening] regional-ethnic tensions[27], open struggles over land allocation, and deteriorating relations between the Government and the University of Nairobi' (Currie and Ray, 1986: 47).[28]

The Moi/KANU state nonetheless blamed the uprising on foreign ideologies and cultures, which was a euphemism for Marxism (Currie and Ray, 1986; Mbingu, 1991). Commentators such as Mbingu (1991: 14) on the contrary, argue that the 'student struggles were not inspired by foreigners or Marxism,' but were rooted in Kenyans' material conditions and sought 'to address the problems of dictatorship, underdevelopment, cultural dependency and state unaccountability.' As Kamau (2007) points out:

> Other than the announcement of the takeover by the Peoples' Redemption Council (PRC), four other things that … Ochuka [*the Kenya Air Force Senior private who was the coup leader*] mentioned were …the economy is in shambles…Government ministers have grown rich overnight…the KANU regime has impoverished the masses… and the decree of the immediate disbandment of the Kenya Police Force, and immediate replacement of the same by the Military.[29]

The coup had a tremendous impact on the Kenyan political scene. The political environment in Kenya worsened after the 1982 coup attempt. The irony of the attempted coup is that it also gave Moi's government a perfect excuse to be overly repressive (wa Thiong'o, 1983; Mwaura,

[27] Currie and Ray (1986: 47) amplify the regional-ethnic tensions stating that 'the short-lived "People's Redemption Council" … received extensive popular support in Nairobi, Mombasa, and Western Kenya.'

[28] See also Kindiki, 2007; Zeilig, *et al*., 2008; Mutunga, 1999, Ngunyi, 2001; Currie and Ray, 1986; Bates, 1999 all who converge on deteriorating economic, social and political conditions as harbingers of contemporary contentions in Kenya. Bates (1999: 93) for instance notes that an orchestra of 'disequilibria in the markets, clientilistic politics, fiscal crisis and growing political disaffection…constituted the core characteristics of the African malaise' a phenomena that included international capital and the donor community imposed conditions that fragmented domestic bourgeoisie and introduced new pressures for change on many African states. The conditions were part of what the Bretton Woods Institutions framed as Structural Adjustment Programmes (SAPs) traceable to international recession of late 1960s and falling commodity prices of mid 1970s (Zeilig *et al*., 2008; Ake, 1996; Babawale *et al*. 1996; Momoh and Adejumobi, 1999). Kenya started implementing SAPs during the '1980/81 fiscal years…and did not become an important part of economic management until after the publication of the Sessional Paper No. 1 of 1986. Since then SAPS have been integrated as policy tools for economic management' (Rono, 2002: 82-3). Nonetheless by 1982, things were already getting out of hand as hope and optimism evaporated with the economic crisis that followed the gradual slide into social, economic and political doldrums due to implementation of SAPs. I deal with the impacts of SAPs on the nature of contentions later in this chapter.

[29] Accessed from http://kumekucha1.blogspot.com/2007/07/august-1st-1982-coup-attempt-unanswered.html

1997; Mbingu, 1991). Writing in 1983, Ngugi wa Thiong'o for instance had this to say of the coup:

> The August 1 attempted coup came as a God-sent opportunity for the regime to root out and silence its critics. The same pattern of repression it had embarked upon has since been intensified and accelerated. More lecturers and students and critical politicians have been arrested; detained without trial or else imprisoned in the same dubious legal circumstances. More students have been killed. Many Kenyan Air Force members were killed or imprisoned after the coup attempt was crushed. Now, American and British Royal Air Force personnel fly Kenyan planes. More American and British advisers have been added to the neo-colonial think-tank of the regime (wa Thiong'o, 1983: 2).

While the coup failed, there emerged an extraordinary cocktail of social forces opposed to state repression. Most were underground movements like the Mwakenya and led mainly by the intelligentsia. The University of Nairobi continued to be an active arena of dissent against the state (Mutunga, 1999). A section of university academics such as Nana Tago, Micere Mugo, Kamau Kuria, Willy Mutunga, Ngugi wa Thiong'o, Alamin Mazrui, David Mulwa, Kivutha Kibwana, Shadrack Guto, among others, were particularly instrumental in what was then branded as radical Leftist intellectuals (interviews: Zein, 07/10/2010; Kibwana, 21/10/2009; Omar, 11/10/2009; Kibara, 15/10/2009). Many of these lost their jobs, others were detained, and many more went into exile especially after the 1982 attempted coup (Atieno-Odhiambo, 2004).

Willy Mutunga's *Constitution Making from the Middle* offers a useful chronology of the developments of the subversions within the intelligentsia from early 1980s. According to Mutunga (1999: 2-3), when Moi banned the University Academic Staff Union (UASU) on July 19th 1980, their agitation resurfaced as an underground December Twelfth Movement. This movement published its first organ, *Pambana* (Kiswahili for Struggle) in May 1982 in which it declared support for armed struggle as *Uhuru* had been betrayed. Former official of UASU including Maina wa Kinyatti, Alamin Mazrui, Edward Oyugi, Kamonji Wachira, Mukaru Ng'ang'a and Willy Mutunga were arrested, jailed or detained especially in the months prior to and immediately after the failed coup (Atieno-Odhiambo, 2004).

These spates of detentions did not end the struggle. The December Twelfth Movement's subversion project was inherited by another underground movement –Mwakenya, and its organ *Mpatanishi* (Kiswahili for Reconciler) (Mutunga, 1999; Currie and Ray, 1986;

Friedrich Ebert Stiftung, 2003). Mwakenya operated for several years until a major state crackdown on its members in 1986/87. The continued crackdown on dissenting voices saw the struggle moving to spheres occupied by professional associations who had so far maintained aloofness to political issues (Nzomo, 2003; Kibwana, interview 21/10/2009).

As far as the professional societies are concerned, the Law Society of Kenya (LSK) stands out. The LSK, Nzomo (2003:187-8) writes, has had a chequered career. Up to the early 1970s, the LSK was mainly dominated by Asians and Europeans and rarely spoke out on political issues. Instead, it confined itself to the welfare of its members. It is the increase in its African membership that brought about a change in orientation of its Council. From the 1980s, it took an increasingly critical stance on the repressive activities of the government. Most importantly, it resisted government's unofficial policy of co-optation of all strategically placed civil society organisations as befell such organisations as the premier Women's organisation – *Maendeleo ya Wanawake Organisation* (MYWO) and the Central Organisation of Trade Unions (COTU) during the 1980s.

Teaming up with the religious bodies, the LSK emerged as an important pro-democracy civil society actor from the mid-1980s (Nzomo, 2003). Kibwana (interview, 21/10/2009) highlights the drivers for these developments when he argued that this happened because for lawyers, there were many abuses on not just their clients, but on themselves too. Lawyers perceived by the state to be anti-establishment, simply because they represented political actors agitating for return to political pluralism faced the same fate as their clients – harassment, abductions, imprisonment, assassinations, and/or exile (see also Mutiga, 2010; Friedrich Ebert Stiftung, 2003). Major examples here include Gitobu Imanyara who had made a name representing soldiers prosecuted for their role in the aborted 1982 coup. Imanyara was also at the time publishing the highly influential journal-*Nairobi Law Monthly* that he had established. The journal was renowned for its outspoken condemnation of the Moi regime's excesses (interviews: Imanyara, 28/10/2009; Kihoro, 23/09/2009; Kuria, 23/09/2009).

Imanyara was jailed in 1987. In 1990, his prominent journal was banned. Leading lawyers opposed to the regime including Paul Muite, Kivutha Kibwana, Martha (Njoka) Karua, Willy Mutunga together with Dr. Gibson Kamau Kuria, Kiraitu Murungi, and Mirugi Kariuki among others were either detained and/or exiled for their advocacy. Under these

circumstances, it is easy to understand why motivations for the legal fraternity to join these struggles aligns with Tarrow's (1998: 56) assertion that bereft of a middle class as a buffer between the state and society, people become 'self seekers practicing narrow individualism…the result [is] a jealous egalitarianism, sporadic and uncoordinated mobilisation,' that may ultimately lead to a revolution. Specifically, the treatment meted by state on perceived dissidents including lawyers and their clients, convinced them that 'there was no more law to practice...life was not worth living anymore. So [they] decided to oppose these things' (Kibwana, interview 21/10/2009). LSK mobilisations further strained its relationship with the state. By the end of the 1980s the strain had reached a point of no return as LSK became firmly embedded in the democratic change movement (Maina, 1998).

LSK also played a role in diffusion of the change agenda. It sought alliances with a section of the Kenyan clergy actively involved in struggles against further erosion of the political space, especially after the introduction of the 1988 infamous *Mlolongo* (a queue) voting system by the now openly intolerant and dystopic Moi/KANU. The *Mlolongo* voting system operated such that electorates would openly queue behind their preferred candidates (see figure 4.1. below) but not cast any ballots. The system was open to voter manipulation and intimidation, as voters would be threatened not to queue behind any politicians who spoke ill of the Moi political establishment. With Mlolongo, KANU dropped all pretences of championing a mass democratic party as citizens were coerced through intimidation and indoctrination[30] into supporting unpopular candidates approved by Moi. In instances where electorates defied threats and intimidation and queued behind a politician of their choice who was not sanctioned by Moi, the direct outcome was a declaration by the provincial administration, the elections supervising authority in these elections that the candidate had lost even though he/she had the longest queues.

[30] Such indoctrination included instruments of state propaganda such as the 'Nyayo' patriotic songs, the Loyalty Pledge, which had been tailored to ensure loyalty to President Moi with the words: 'I pledge my loyalty to the President and Nation of Kenya, My readiness and duty to defend the flag of our Republic, My life, strength and service in the task of nation building, In the living spirit embodied in our National motto 'Harambee' and perpetuated in the Nyayo philosophy of Peace, Love and Unity.' The patriotic songs have their origins to the colonial era when, according to Dennis Onyango (2007), 'Kenyans, as was the case in many colonised African nations, came up with inspiring compositions that sought to remind the populace of its need to free itself from oppression.' Post independence, a Permanent Presidential Music Commission (PPMC) was established to nurture talent and facilitate research in Kenyan indigenous music. At the height of Moi's era, the PPMC did more than just what its mandate required. It turned into a huge propaganda machine responsible to composing numerous praise songs for the regime (For a detailed arguments of this aspect of PPMC, see Amos Ngaira 'Nostalgia of a groovy musical tradition' in *Daily Nation* July 13, 2011).



Figure 4.1: A picture of citizens voting through the mlolongo (queue) in the 1988 general election. Source: The Weekly Review December 5 1997: 4)

The first victims of this gerrymandering were the outspoken 'seven bearded sisters' mentioned earlier in this chapter (interviews: Gitari, 21/09/2009; Mwachofi, 27/09/2009; Odenda, 07/10/2009). There were also attempts to deny victory to several other key politicians including the then Moi's own vice president (Mwai Kibaki) and ministers like Kenneth Matiba. At the height of this, Moi established a powerful KANU disciplinary committee that he used to humiliate other politicians through expulsions from the party. Given the fact that there was no other party, anyone expelled from KANU risked political isolation. Moreover, expulsion from KANU meant suffering at the hands of ruthless state secret agents.

Among the notable clergymen who openly opposed this system of voting and other forms of state excesses was Bishop Henry Okullu of the Anglican Church. The Anglican Church, despite its earlier (especially during the colonial era) pro-establishment stance, had by now re-established itself as a voice of dissent against the excesses of the state (Maina, 1998). In the aftermath of the 1988 general elections, Bishop Okullu is on record as having said that '75% of the members of parliament were selected not elected' (Gitari, interview 21/09/2009). Others included Rev. Timothy Njoya of the Presbyterian Church of East Africa (PCEA), Bishop David Gitari (Anglican), and later Bishop Alexander Muge, Lawford Imunde, Manasses Kuria, Ndingi Mwana a Nzeki, all who were against the excesses of the one party state dictatorship by late 1980s (Mutua, 2008). Reminiscing on this, Gitari (interview, 21/09/2009) stated: 'we preached against the queuing system every Sunday until it was

scraped in 1990...they [KANU] were determined to continue the queuing system but pressure locally and internationally was too great ... The following year, they scraped section 2A.'

The clergy at the heart of these struggles were not spared the Moi/KANU regime's wrath. Some suffered physical harassment and oppression. Some were defrocked and others murdered. Bishop Alexander Muge, a fierce critic of the Moi establishment for instance was killed on August 14, 1990 in a mysterious road accident en route from Busia in Western Kenya. Muge had been warned a week earlier by Peter Okondo, then Labour Minister and a KANU stalwart, that because of his opposition to the government, should he set foot in Busia, he would never leave alive (Menya, 2010; Press, 2004). Paradoxically, such acts hardened some of the otherwise conservative clergy. These repressions emerged as opportunities. For instance, in spite of Muge's killing, the clergy became more emboldened in their criticism of the Moi regime. It was this section of the clergy, together with radical elements in secular civil society and opposition political elite whose interest was establishing an even political playing field that incubated the struggles for constitutional reforms in Kenya.

The tide started turning against the Moi/KANU regime in late 1980s when prominent politicians openly joined the clergy and LSK in calling for political changes in the country. Towards the end of 1980s, a general consensus started emerging among the older generation of politicians particularly former KPU operatives, academics and religious leaders that Kenya's 'political transition from authoritarian, illiberal state to a more open society…was centred on the constitution' (Mutua, 2008: 99). By 1988, calls for political pluralism to embed democracy and transform the state were heard from many quarters.

Despite the emerging consensus, the late 1980s are also significant for the lack of consensus on how best to carry out the state transformation project. In this regard, Mutua (2008: 99-100) posits:

> Starting in the 1980s, two schools of thought emerged in Kenya with respect to the democratic transformation of the state. The first, whose adherents advocated for the legalization of opposition, argued for minimum legal and constitutional reforms to level the playing field. Its main objective was the capture of state power. The second school, prevalent within the emergent civil society organisations, called for a constitutional overhaul of the state and a basic reformulation of the purposes of political society. Although the two schools

formed the opposition to the Moi/KANU regime until 2002, their visions of reform sharply diverged beyond a certain point because of these fundamental differences.

This lack of consensus is important in explaining the manifestations of the potentials but also limitations that characterised constitutional reform struggles when they took off in earnest in 1990s (Mutunga, 1999; Zein, interview 07/10/2009).

The late 1980s to mid-1990s: confluence of pro-democracy forces in the birth of contemporary constitutional reform struggles

Vladimir Lenin is credited for writing in 1910 that 'despair is [*only*] typical of those who do not understand the causes of evil, see no way out, and are incapable of struggle' (own emphasis). Clearly, the Kenyan pro-democracy advocates were not about to despair. As pointed out, state brutality emboldened activists and a pro-democracy movement started crystallising in 1990. The actual source of the push for political pluralism is contested. Rev. David Gitari, a key figure in these struggles for instance stated, 'the debate for multiparty was started by Njoya on January 1, 1990 when, preaching at St. Andrews in Nairobi arguing we should be a multiparty state.[31] Later, Bishop Okullu joined him. Then Matiba and Rubia were the politicians who started to vigorously oppose the one party system' (interview, 21/09/2009).[32] But religious leaders did not start struggles for constitutional changes. On the contrary, a section of the Kenyan political elite, students and intelligentsia, and some members of the legal profession were already in active opposition, even in the most repressive days. However, it is definitive that the debates for the contemporary struggles for democratization that mutated later into struggles for constitutional reform in Kenya were re-ignited by among others, the clergy. The clergy's opposition to the excesses of the Moi/KANU regime after the 1982 coup attempt and the ensuing crackdown on political opposition did expand political opportunity as well as diffusion of anti-state sentiments among the faithful congregants that they ministered to (interviews: Gitari, 21/09/2010; Njoya, 29/09/2010; Ombok, 24/09/2009; *Weekly Review*, 11/07/1997; 24/01/1997; 05/10/1990).

For the purposes of this thesis, the critical questions here are: what motivating factors enabled

[31] This information is corroborated by among others, personal interviews with Njoya (29/09/2009) and Ndubi (24/09/2009) as well as in works by Nzomo (2003), Atieno-Odhiambo (2004) among others.

[32] As shall become clear later in this chapter, the significance of Kenneth Matiba, a cabinet minister in Moi's government announcement that he was joining those calling for restoration of multi-partyism cannot be gainsaid. Together with other political activist, they formed the Forum for the Restoration of Democracy (FORD) movement. Despite the tribulations faced by leaders of FORD and the Kenyan masses who supported it, by sheer determination and a mix of different strategies including mass protest as well as the changing global political environment in the post cold era led to Moi's government giving in to all the pressure and introduced political reforms.

this crystallisation of the pro-democracy struggles into a constitutional change movement? What strategies did they use? What opportunity structures did they use? What form of framing did they use to elicit support? In the following section, I analyse the broad political opportunities and constraints for the emergence of pro-change movements in Kenya. I argue that these movements were essentially possible given the new geopolitical realities occasioned by the end of the Cold War. This saw an 'ascendancy of a new ideological dispensation among Western donor countries that increasingly linked aid disbursement to good governance and economic and political liberalisation' (Nzomo, 2003: 189. See also Maina, 1998; Murunga and Nasong'o, 2007; Press, 2004; Diamond *et al.,* 1988; interviews: Ochanda, 22/09/2009; Odhiambo M., 01/04/2009; Ndubi, 24/09/2009; Kibwana, 21/10/2009). Further, I argue that these developments should be read together with the effects of a near decade of neoliberal austerity measures implemented through SAPs on the Kenyan economy.

Taking cue from Mkandawire (1999), I further argue that the twin push for political and economic liberalisation presented nascent prodemocracy movements with contradictory opportunities. Writing in 1999 on the then ongoing 'democratic transitions in Africa', Mkandawire pondered over whether the 'exigencies of globalization can be reconciled with the processes of political liberalization and democratisation' (119). He continued to wonder: 'how can fragile democratic regimes improve their prospects for consolidation at a moment when the distributive impact of concurrent programs of economic liberalization and adjustments may be highly contested?' (Mkandawire, 1999: 119). Mkandawire (1999: 119-120) concludes:

> Globalization contains within it two contradictory effects on democratization. On the one hand, the "opening up" of economies and societies, the political conditionalities transmitted through global institutions, and the solidarity from movements encapsulated in the notion of "global civil society" are generally supportive of democratization efforts in many countries. On the other hand, the demands of globalization, especially the erosion of national sovereignty and the uniformalization of what are considered 'fundamentals' in economic policy, limit the range of policy options for democratic regimes. Those who hold the first part of the dominant effect of globalization consider democracy and economic liberalization as simply two sides of the same coin – the edification of a liberal order, a natural convergence of the processes that marks the triumph of liberal capitalist order and "the end of history" an end of state toward which teleology has dutifully moved us all along. This 'good things go together' approach is often derived from first principles, whether liberal democracy and free

> markets always go hand in hand, since both processes entail the dispersion of power and the emergence of a bourgeoisie, both of which are said to be good for democracy.

To demonstrate how this binary played out in Kenyan's pro-reform movements, I analyse the effects of Structural Adjustment Programmes before bringing into the picture, the changing geopolitics in the global arena. Before doing this, it is imperative to mention here, that economic neo-liberalism and political liberalisation originally fashioned by Milton Friedman (1962) as Siamese twins, was not a late twentieth century phenomenon in Kenya.[33]

The effects of SAPs in the generation of constitutional reform struggles

Economic liberalism grew from imperial capitalism. As already indicated, independence did not pose any serious challenge to capitalism. The *Sessional Paper 10 of 1965: African socialism and its Application to Planning in Kenya*, that deceptive economic blueprint, promised respect for private ownership of capital. As a result, Kenya became one of the greatest allies of corporate capitalism and a regional hub for multi-national capitalism in Eastern Africa (Lamb, 1975). This type of capitalism was presented with a deceptive coat of social justice and equity. Paragraph 16 of the *Sessional Paper 10,* 1965 for instance stated:

> No matter how pressing immediate problems may be, progress towards the ultimate objectives *[political equality; social justice; human dignity including freedom of conscience; freedom of want, disease and exploitation; equal opportunities; and high and growing per capita, incomes, equitably distributed]* will be a major consideration. In particular, political equality, social justice, human dignity will not be sacrificed to achieve more material ends more quickly. Nor will these objectives be compromised today in the faint hope that by so doing they can be reinstated more fully in some unknown and far distant future [*Italics, my own insertion drawn from paragraph 4 of the same document*] (Republic of Kenya, 1965: 6).

While the practice of capitalism deviated from this, as the country was 'controlled by a corrupt and avaricious local ruling group,' who became increasingly oppressive and wealthy as 'poverty and deprivation for the masses' continued (Lamb, 1975: 84), the state, at least on paper, continued its commitment to social goals by providing for some basic health care, education and many other social services. However, the 1990's saw major structural changes in the management of the economy. Donor conditionalities aggressively pushed through

[33] The Chicago school thinkers are credited to be the intellectual force behind the wave of economic neo-liberalism from the late 1970's initially pushed in Chile and then by Margaret Thatcher and Ronald Reagan regimes in the United Kingdom and the United States respectively. Friedman (1962), of the Chicago School had earlier argued that political freedom can only come through competitive capitalism This neo-liberal economic agenda was later picked and mainstreamed by the Bretton Wood Institutions through the Washington Consensus.

Structural Adjustment Programmes required the country's economy to embed itself into the highly competitive global market economy, while simultaneously inducing growth and development in a volatile global political economy.

Notwithstanding arguments by commentators like Williamson (2002, cited in Dervis and Özer, 2005: 90) that SAPs were 'a fiscal discipline; a redirection of public expenditure priorities toward activities offering both high economic returns and the potential to improve income distribution, primary health care, primary education, and infrastructure' these policies failed to inspire much economic and social wellbeing for a majority of the world's population in the developing economies.

Like in many other developing countries, Structural Adjustment Programmes in Kenya led to cataclysmic social and economic problems. This was characterised by an economic crisis, collapse of the state's ability to deliver essential collective goods and an increase in inequality, which destroyed basic social solidarity (see Evans, 2005; Duda, 2007; Esteva, 1992; Forrest, 2003; Stiglitz, 2002). This crisis was further characterised by spiralling unemployment and massive labour lay-offs. Moreover, reduced budget support resulted in dwindling state resources and inability to buy patronage and to crush dissent. The infamous cost sharing in social services led to a near collapse of the public health care and education systems.

Indicators of social economic wellbeing such as infant mortality and life expectancy started to deteriorate. As Ikamari (2004: 9) notes, analysis of Kenyan Demographic and Health Data on infant and child mortality since 1970s for instance shows that:

> Infant, child and under-five mortality rates had declined in the 1960s and 1970s but were taking an upward trend since early 1990s. This situation is attributable to a combination of factors, including increased poverty, *adverse effects of economic hardships and cost recovery programs associated with structural adjustment programs*, increased childhood malnutrition, decreased use of certain maternity care services, decline in the coverage of child immunisations, inability of the public health system to provide services, and the HIV/ AIDS epidemic.... (*My emphasis*).

A select sample of various Kenya Demographic and Health Survey data is presented in table 4.2 below to demonstrate the worsening infant mortality from late 1980s.

Table 4.2: Recent trends in early Childhood mortality rates in Kenya (1974-1994)

Period	Infant Mortality Rate	Child Mortality Rate	Under-five Mortality rate
1974-1978	64.1	44.2	105.5
1979-1983	57.6	37.8	93.1
1984-1988	59.6	31.5	89.2
1989-1993	61.7	36.7	96.1
1994-1998	73.7	40.8	111.5

Source: Ikamari (2004: 10). Data compiled from the 1989 Kenya Demographic and Health Surveys (1989, 1993, and 1999).

SAPs also aggravated an already spiralling debt problem and depletion of foreign currency reserves (Ikamari, 2004; Were, 2001). Were (2001), using a time series data for the period 1970 to 1995 shows that Kenyans' external debt rapidly rose from US$477.5 Million in 1970 to US$ 4,412.4 Million in 1995. At the same time, the 'debt-to-GDP ratio and debt-to exports ratio, [rose] from an average of 38.5 per cent and 121.1 per cent for the 1970-80 period to 89.2 per cent and 268.2 per cent for 1991-99 period, respectively' (Were, 2001: 1). This had a negative impact not only on economic growth, but also on provision of social welfare services as substantial amounts of revenue went to servicing this debt. Table 4.3 below summarises the external debt figures.

Table 4.3: Kenya's external debt stock and debt service.

Year	External debt (in million US$)	Debt service (in million US$)	Growth in debt (in %)	GDP Growth rate (in %)		Year	External debt (in million US$)	Debt service (in million US$)	Growth in debt (in %)	GDP Growth rate (in %)
1970	477.5	50.0		6.2		1985	4,181.3	621.2	19.1	5.1
1971	497.5	52.4	4.3	4.9		1986	4,603.6	677.3	10.1	5.5
1972	581.2	48.3	16.7	6.4		1987	5,783.7	691.4	25.6	4.9
1973*	844.7	65.2	45.3	4.0		1988♣	5,809.7	737.6	0.4	5.2
1974*	1,152.7	97.6	36.5	3.1		1989♣	5,890.1	708.8	1.4	5.1
1975	1,290.2	151.0	11.9	2.9		1990	7,058.1	790.9	19.8	4.2
1976	1,493.3	169.3	15.7	4.4		1991♣	7,452.9	719.4	5.6	2.1
1977	1,658.9	326.0	11.1	8.1		1992♣	6,898.1	669.9	-7.4	0.5
1978*	2,173.7	215.7	31.0	7.7		1993♣	7,11.3	631.5	3.1	0.3
1979*	2,721.0	299.3	25.2	4.9		1994♣	7,202.3	880.8	1.3	3.0
1980*	3,386.8	433.5	24.5	3.9		1995♣	7,412.4	901.4	2.9	4.9
1981	3228.2	485.0	-4.7	6.0		1996♣	6,931.0	844.4	-6.5	4.6
1982	3,367.8	496.9	4.3	3.4		1997♣	6,602.8	669.1	-4.7	2.4
1983	3,628.3	515.0	7.7	3.0		1998	6,943.3	611.7	5.2	1.8
1984	3,511.5	578.7	-3.2	0.4		1999♣	6,561.5	716.0	-5.5	1.4

Adapted from Maureen Were (2001: 3&5). Data source: World Bank (Global Development Finance [CD] 2001).

Explanatory notes drawn from Were (2001: 2-6)

* The table shows a significant rise in Kenya's external debt for periods 1973-74, 1978-80, 1985-87 and 1990 due to increased borrowing. The first (1973-74) and second (1978-80) periods coincided with the first and

second oil crises, respectively. These created a severe balance of payments (BOP) crisis and decelerated growth that forced the Kenyan government to borrow heavily from external sources. Moreover, a drought in 1980 led to more borrowing for food imports compounded by increased interest rates on international loans that raised debt service charges substantially. The two oil crises were punctuated by the 1977 coffee boom whose effect was an abrupt increase in export earnings and therefore a temporary drop in the debt-servicing ratio in 1978. The third period (1985-87 and 1990) coincided with the funding of structural adjustment programmes by International Monetary Fund (IMF) and World Bank.

♣ The decline in growth of external debt in 1988 and 1989 is partly due to debt write-offs (of US$ 463 million 1989) and a decline in bilateral and private debt. The decline in the 1990s can be attributed partly to the negative net repayments and aid embargos/freezes in 1991 and 1992 but also to a slackened and conditional aid flow thereafter resulting in rescheduling for the first time in 1994 as well as a fall in the level of external indebtedness as the government resorted to borrowing more from the domestic market. Of note here is also the fact that the debt burden also came at a time of severe economic declines that started in 1997. The Encyclopaedia of Nations writes that the 'economic performance in the 1990s declined severely, and the average annual GDP growth rate, which stood at 6.5 per cent between 1960 to 1980, fell to 2 per cent between 1990 to 1999. In August 1993, inflation temporarily reached a record high of 100 per cent. Five years later, in 1998, the unemployment rate soared to 50 per cent. Both the IMF and the World Bank suspended structural adjustment programs in 1997, as a result of KANU's failure to implement governance conditionalities.

The effects of SAPs were not limited to social services. Physical infrastructural developments such as roads were frozen while existing ones decayed into a sorry state of disrepair. Moreover, falling international commodity prices forced many primary farmer producer cooperatives in rural Kenya to collapse (see for example Ombongi and Kanyinga, 2001). Multiple ghettoes sprung up in all urban centres. The picture below clearly captures what had become of Kenya's infrastructure by early 1990s.



Figure 4.2: A section of a desperately in need of maintenance road in Nairobi's Eastlands in the 1990s (photo Courtesy of Antony Kaminju).

The significant thing to note for our case is that the ensuing socioeconomic and political doldrums were perfect recipes for widespread Polanyi type 'double movement' protests

against political and economic elites. These manifested themselves as popular mass protests, workers' protests and strikes, student's protests and a proliferation of social movements. Popular support for the Moi/KANU regime took a nosedive resulting in a crisis of legitimacy as various social forces emerged to challenge the regime. Besides ethnicity,[34] which continued to provide some of the undercurrents for ensuing political agitations, students and the working class were the centrepieces of the emergent struggles. Their mobilisations and ensuing collective actions were therefore clearly counter movements against the great upheavals they faced. It was a time that also witnessed the resurgence of labour militancy especially from the teacher's union, the Kenya National Union of Teachers (KNUT). However, labour unions generally remained concerned only with bread and butter issues for their members. In doing this, a natural starting point was to question neo-liberalism.

There is substantial literature mapping actors at the heart of these emergent struggles as well as providing insight into the critical questions of the motivating factors, strategies, the existing and created political opportunities for the pro-democracy movement in Kenya in early 1990s. These studies (for example Mutunga, 1999; Ngunyi, 2001; Press, 2004; Nasong'o, 2007; Karanja, 2008) enumerate multiple actors including the clergy, students and intelligentsia, youth, workers, political and social activists, and civil society organisations. Common among these actors was their feeling that the repressive political regime and limited economic opportunities they were facing were not insurmountable. Citizens therefore mobilised as organised society and as social movements to confront the adverse socio-economic and political issues in Kenyan society. This mobilisation coupled with their challenges to existing laws tended to put the state on the defensive and naturally attracted negative reaction from the state (Oyugi, 2002[4]).

It was no accident that the increased thrust of economic neo-liberalism from the late 1980s witnessed a dramatic growth in the number of citizen groups whose primary mission was service delivery/self-help as well as protest movements (Kanyinga, Mitullah and Njagi, 2007). Moreover, their capacity, scope, reach, public profile and influence increased at the same time (*ibid*). This 'associational revolution,'[35] as it came to be known, was in effect a

[34] Members of Moi's own Kalenjin community were perceived to be unfairly benefiting from state largesse at the expense of other Kenyans. As already noted, most of Moi's adversaries, arguably save for a few Kalenjins like Rev. Muge and Tirop Kitur, most were non-Kalenjins.

[35] Lester Salamon is credited with the phrase 'associational revolution' to denote the massive growth in numbers of not for profit citizens associations in late 1980s to early 1990s. See for example Salamon, L. (1994) 'The Rise of the Nonprofit Sector', *Foreign Affairs*, 73: 109; Salamon *et al*., (1998) *The Emerging Sector Revisited:*

reaction to the many effects of neo-liberalism. Noteworthy here, is the fact that economic liberalisation pushed together with political liberalisation, fronted civil society organisations especially NGOs as the sponge to soak up the social costs of economic liberalism. Consequently, the welfare of the most vulnerable and dependent reverted from the state to the individual, family and community through these NGOs (White, 2003).

Clearly, NGOs failed to soak up the social costs of market fundamentalism. As social distress resulting from the economic stagnation of the 1990s started building up, neo-liberalism came under severe attacks. A wide range of civil society organisations took up active agenda for advocacy on 'right to development' as a necessity in the struggle to reduce massive distress induced by neo-liberal economic policies. Many started calling for the abandonment of neo-liberalism and for the state to play a greater role in the provision of social services due to a realisation that markets or NGOs cannot solve development challenges. Prominent movements opposed to neo-liberalism included the Kenya Social Forum, Jubilee 2000, among others.

As pointed out already, democratisation and the accompanying struggles were also heavily influenced by the changing nature of global geopolitics that favoured and funded democratisation struggles especially in the developing world. Below, I look at how this played out.

Changing nature of global geopolitics and their role in generation of social struggles

Wachira Maina (1998) extensively documents the relationship between donor conditionalities and democratisation in Kenya. As already argued, after the 'triumph of western liberalism' and the fall of the Berlin Wall, donors stressed 'both economic and democratic reforms as the overall goals of their aid programmes' (Maina, 1998: 154). This in turn ended political support that many repressive regimes (including Kenya's) had enjoyed for ideological reasons. The Moi/KANU regime's intransigence to calls for democracy, and the ruthlessness with which it came down on prodemocracy protesters in 1990 saw some donors resort to tying aid explicitly to political reforms. The US was the first such donor country to suspend 'balance of payment support to Kenya, awaiting further progress on a select number of governance issues in 1991 with Denmark following suit' (Maina, 1998: 154).

A Summary. Baltimore: Institute for Policy Studies, Johns Hopkins University; Salamon, L. and Anheier, H (1998) 'Social Origins of Civil Society: Explaining the Non-profit Sector Cross-nationally.' *Voluntas*, 9 (3): 213-248.

These developments further constricted the state's capacity to provide social welfare and security to citizens. This created greater opportunities for the nascent civil society and opposition groupings to continue pushing for democratic space (Nzomo, 2003. See also Ibrahim, 1997; Mkandawire and Soludo, 1999 for similar conclusions on other African countries). Nzomo (2003 citing Maina, 1998) attributes the immediate release of all political prisoners and repeal of the one-party law to the pressure that the suspension of the balance of payment support had on the Moi/KANU regime. Other analysts attribute the suspension of aid to the emergence of opportunities for movements like Mothers of Political Prisoners (cited in chapter two) and other prodemocracy and human rights movements to emerge and flourish (Mutua, 2008; Mutunga, 1999; Nzomo, 2003).

Whatever the reasons for the suspension of balance of payment support to the Moi/KANU regime, it is clear that the mounting pressures from activists and the nascent movements coupled with state's reduced ability to quell mounting civil disobedience, forced the regime to finally cave in (Maina, 1998). In an extraordinary Annual General Meeting, Moi convinced KANU leadership to allow for the repeal of section 2A of the Kenyan constitution on December 19, 1991. This opened the floodgates to political pluralism and ignited several other significant political developments. A key political opportunity availed by the repeal of section 2A was the opening up of space for new forms of protest action. Consequently, by 1992, calls for a total overhaul of the Kenyan constitution started emerging.

While the repeal of section 2A of the constitution opened up some democratic space, it did not necessarily translate into fair democratic political competition. From 1991, in a desperate effort to maintain power, Moi/KANU government initiated or abetted systematic violence against pro-opposition groups in many regions of the country (Kagwanja, 2003; 2006). This resulted in further crisis of negative ethnicity and distribution concerns. Under state's watch, people were raped, killed, and their property destroyed on the basis of suspicions that different ethnic groups supported other candidates in the political competitions based on ethnicity. Massive dislocation ensued as many in the affected regions (mainly Rift Valley, Coast, Eastern and Western provinces) were internally displaced. The cycle of violence has repeated itself every five years during general elections. The 2008 post-election violence in most parts of the country was the most recent and serious. Based on this, some commentators conclude that Kenya's embryonic democracy has been confined to a 'cold storage' (Kagwanja, 2003).

As a result of state sponsored violence, certain sections of the citizenry established covert and overt ethnic and generational identity movements as counter-forces to state sponsored violence against the targeted ethnic groups. The state, as expected, responded by declaring them illegal. This only served to harden such groups while most became clandestine and violent. Perhaps the most popular and one that refuses to die despite successive regime's assault on its members is the Mungiki[36] made up of mainly Kikuyu youth (Kagwanja, 2003; 2005). Others include Baghdad Boys (Luo), Chinkororo (Kisii) Sabaoti Land Defence Force (Sabaoti), Kamjesh etc. Most of these groups became criminal extortionist gangs with the net effect of the privatization of violence (Wamucii and Idwasi, 2011). The emergence of these groups corroborates McVeigh's (2006) observations that crime and protests are symptomatic of structural strain. However, the propensity for groups to turn violent or into crime depends on how the state responds to them as well as the opportunities available for them to flourish. In this regard, Wamucii and Idwasi (2011: 196) citing Branch and Cheeseman (2009: 15) note:

> The emergence of gangs throughout Kenya in the 1990s was largely in response to economic rather than political stimuli, which formed the foundations for the privatisation of violence. The majority of gangs in Kenya evolved first because of the marked absence of the state and later because of the direct sponsorship of the state.… Many youth gang activities were geared towards providing some of the public services that would ordinarily be provided by government, therefore earning the groups the label of 'shadow governments.'

But not all struggles turned violent. For example, it is interesting to note that pressure groups like Release Political Prisoners (RPP) did not turn violent despite the repression that its leaders and followers faced. The RPP was not alone in this regard. Many of the pro-democracy and human rights organisations in the country remained non-violent. This may suggest that social struggles in pursuit of issues of distribution (land, jobs, etc.) as opposed to the more abstract ones of civil and political rights are more likely to resort to violence.

It is also instructive to note that this should be viewed within the context of the state's significant reaction. Important to note for this study, is that outright political repression was not the only instrument that the state used. Other means such as legislations were also

[36] Mungiki is considered a neo-traditional religious movement and a vigilante organisation, which takes inspiration from the spirit and practices of Mau Mau (Anderson, 2002; Kagwanja, 2003; Pommerolle, 2006; Wamue, 2001). The name means 'a united people' or 'multitude' in the Kikuyu language. Many reasons have been advanced to explain the origins of Mungiki but they all point to it having developed in late 1980 to early 1990s as response to the ethnic clashes in the rift valley (see for example Kagwanja, 2003; 2005).

employed. For example, by 1990, the state in an effort to control and regulate the activities of a large number of civil society organisations at the forefront of the struggles resorted to enacting the *Non-Governmental Organisations Co-ordination Act no. 19 of 1990* (hereafter NGO Act 1990). This Act required NGOs to register with a central NGO Bureau 'ominously placed under the internal security secretariat of the Office of the President' (Ndegwa, 1994; 1996). In the process of enacting this Act, Ndegwa (1994) argues:

> The government considered the need to control NGOs so urgent that the bill introduced in parliament was rushed through the required readings, debated, and passed within two days. The only other comparable legislation passed by a full house and at similar speed was a constitutional amendment establishing a de jure single-party state in 1982.

Because of this law, the state refused to register civil society groups that it considered too adversarial. The new Act also forced the 'NGOisation' of many social movements' struggles that wanted to operate within the law while criminalising many others.

Another significant development relevant to this study was that donor conditionalities and suspension of funding did not just 'force' the Moi/KANU state to concede some political space. As already mentioned, the tantalising embrace of civil society as an alternative to state meant that civil society became a key actor in donor politics of resource allocation from the late 1980s (Maina, 1998; Nzomo, 2003; van Rooy, 1998). This resulted in huge investments in germinating a civil society empowered to play a major role in poverty alleviation, governance, social change, and even 'mobilization in favour of SAPs' (Mkandawire, 1999: 129. See also Chole, 1999; Harbeson, 1999; Mkandawire and Soludo, 1999; Nyamu-Musembi, 2005; van Rooy, 1998).

These developments also led to a condition Maina (1998: 166) describes as Kenyan civil society's 'donor aid addiction, fostering financial and, more perniciously, intellectual dependency' (see also Mutunga, 1999 for similar conclusions). This dependency raises key questions about contemporary Kenyan civil society's transformative potential (interviews: Odhiambo M., 01/04/2009; Kibwana, 21/10/2009; Omtatah, 31/03/2010). The critical question is: how transformative, can civil society be when it is dependent on funds from the same forces that masquerade as friends but who stand to lose should the very structures of the Kenyan society be reformed to be pro-people? Some previous studies have reflected on this question. For instance, in a preface to their book, *Kenya: The Struggle for Democracy*, Murunga and Nasong'o (2007: xx-xxi) argue:

> Some local intellectuals, activists and politicians simply lacked the critical sensitivity to engage this donor discourse without relenting on the noble goal of fighting internal mismanagement, corruption and authoritarianism, [while] others hoped to use donor demands as leverage to fight the Moi/KANU regime. But they failed to offer credible alternatives to the donor-driven agenda whose aims are not consonant with local interests and needs and cannot therefore be beneficial to local communities.

Participants in the current study including Odhiambo M. (interview, 01/04/2009), Kibwana (interview, 21/10/2009), Omtatah (interview, 31/03/2010) Njoya (interview, 29/09/2009) as well as Timothy Njoya's key note address during the 2007 World Social forum in Nairobi titled '*The Remaking of the Global Family (Jamaa)'*[37] concurred with the above observations. Odhiambo M., for instance, suggested that donor funds might have served as a subversive force against radical transformations of Kenyan society. Traditional Western donors have a stake in the status quo in Kenya. As such, they have covertly and

> Continuously undermined the underclasses from organising on their own. This is why very many movements are quickly attracted and co-opted by the donor dangled funds…With the donor community, I have seen certain trends. When movements become radical, they [donors] tend to be quite apprehensive…They do not want to fund any work that in effect 'radicalises' communities. So the question of resources will always be hindrance to radical transformations in society. Our struggles cannot continue to be funded by foreign donors if we expect to transform our society. Our struggles have to find ways of sustaining themselves. They have to get more grounded in the grievances of the people (Odhiambo M., interview 01/04/2009).

Another participant in the current study, Kivutha Kibwana, shares Odhiambo's views. Reflecting directly on the successful emergence of the Ufungamano Initiative, Kibwana (interview, 21/10/2009) stated:

> The Ufungamano Initiative was an offshoot of an earlier movement –the NCEC. Part of its emergence was because NCEC was perceived to be very radical. There was therefore a need in the view of the international donor community and the political elite as a whole, and not just the opposition, together with the religious groups, to kind of de-radicalise the contention.

The above examples are cited to dramatize the constraints that the pro-democracy movement faced and which may easily pass as opportunities. This notwithstanding, secular civil society,

[37] In this address, Njoya, borrowing from Andre Gunder Frank's (1967) centre-periphery model of the organisation of global relations in capitalist production decried the global capital forces' ensnarement of post-colonial societies in an extractive and exploitative relationship.

religious organisations, and nascent opposition political parties played a significant role in political socialisation and sensitisation of ordinary citizens. This was mainly through voter education programmes. These enlightened citizens were critical in turning the constitutional reform contestations tide in favour of pro-democracy groups as the reform message spread outside a small middle class coterie who up to then, had hegemonic dominance over the same.

A constitutional change movement crystallised

To understand how these struggles moved from the exclusive domain of the middle class and elites, one needs to look at the finite developments within this phase (late 1980s to mid-1990s). The phase had two specific distinct sub-phase developments. First were developments between late 1980s up to 1992 and later, post-1992 to mid-1990s. The 1992 election results in which Moi/KANU defeated a divided political opposition was a significant landmark in these struggles. The defeat of the opposition by the Moi/KANU regime saw the struggles fundamentally moving to change the rules of the game to benefit not just the political elites but Kenyans in general (Harbeson, 1999). Notwithstanding the question of whether these struggles were capable of pursuing a more radical agenda, they did in fact move from just agitating against political rights infringements to issues of inequalities in access to land, insecurity, jobs, healthcare, and education among others. This was possible because of the amalgamation of middle class and grassroots struggles. The joining of *Muungano wa Wanavijiji* –a subaltern slum dwellers movement– to the NCEC forces dealt with in detail in the next chapter, aptly demonstrates this.

As shall be discussed in greater details in chapter five, another significant and related development was also the deepening of the fragmentations among the nascent pro-reform struggle actors. This was specifically highlighted in their diagnosis of the Kenyan problem. On the one hand, an emergent civil society formation coalescing around the Kenya Human Rights Commission (KHRC), Release Political Prisoners (RPP) as well as the Law Society of Kenya (LSK), called for fundamental changes in Kenyan basic law arguing that the national debate was not simply about political pluralism. This group saw the national debate as a search for the 'most appropriate political system that would create the political conditions within which Kenyans can meaningfully achieve their social, cultural, economic and other related societal goals' (Mutua, 1991: 25 as cited in Mutua, 2008: 100). For this group, such change was only possible through the overhaul of the constitution because the then

constitution was, by its very nature, tyrannical. After all, they argued, in addition to the multiple mutilations after independence, the original post-independence constitution was an imperial imposition, its framework was non-participatory, and was therefore not a true reflection of the will of the people of Kenya (Zein, interview 07/10/2009). On the other hand, a group, mainly of emergent political opposition parties and their leaders, whose greatest proponent included Mwai Kibaki, then leader of the Democratic Party, argued that what was needed to solve the Kenyan problem were well-trained technocratic managers to transform Kenya because the constitution was not that bad (Zein, interview 07/10/2009). From these two positions, we can clearly discern cleavages in the reform project.

Despite these divisions, in May and June 1992, the National Council of Churches of Kenya (NCCK) organised two symposia that brought together different forces including some civil society organisations and the nascent opposition political parties to discuss unity among those who advocated the need for more fundamental constitutional changes (Mutunga, 1999; Mutua, 2008; Nasong'o, 2007). While these symposia did not achieve their stated intent, they are significant for this study for at least two reasons. First, it was from the preparations for the second symposium held July 11-12, 1992 that the Coalition for National Convention (CNC), the first ever coalition of forces seeking a national dialogue on the way forward for Kenya after the repeal of section 2A was formed on June 17 1992. The CNC is significant for the current case (the Ufungamano Initiative) as it brought together many civic organisations, opposition political parties and individuals who were later instrumental in the formation and operations of the Ufungamano Initiative. Below, I cite extensively from Mutunga (1999) to bring home the import of these developments to the crystallisation of the constitutional reform movement.

According to Mutunga (1999: 27-30), in the Coalition for National Convention's fold, were mainly unregistered (save for a few exceptions) groups with grievances against the state, and included:

1) Youth and student organisations such as National Union of Students in Kenya (NUSKE), the Kenya Youth Foundation Movement (KYFM), Students' Organisation of Nairobi University (SONU '92). These agitated for students and youth issues such as participation of students and the youth in the democratisation process and unemployment among others.

2) Workers' rights and economic justice movements such as Restoration of Workers' Freedoms and Rights (ROWFAR), Matatu Touts Organisation, (MATO), Jua Kali Association, Matatu Owners Association (MOA).
3) Human rights advocacy groups such as Kenya Human Rights Commission (KHRC), Release Political Prisoners (RPP), Kenya Ex-Exiles and Ex-Political Prisoners Organisation (KEPPO), February Eighteenth Movement (FEM), Kimathi Funeral Organisation (KIFO), Kenya Anti-rape Organisation, Recompensation of Ex-Mau Mau Organisation, Stop Political Clashes Group.
4) Democratisation and governance organisations such as *Mwakenya, Umoja wa Wazalendo wa Kupigania Demokrasia* (UWAKE), Committee for Democracy in Kenya (CDK); New Approach to Democracy (ANAD), Policy Advisory Foundation (PAF), and Citizens for Good Governance.
5) Registered and unregistered political parties. Registered parties included Kenya Social Congress (KSC), Labour Party of Kenya (LDP) and Kenya National Democratic Alliance (KENDA). Unregistered parties included the Islamic Party of Kenya (IPK), Green Party of Kenya (GPK), Democratic Movement, and People's Party of Kenya.

The organic emergence of these groups by Kenyans from different walks of life, all victims of various forms of injustice perpetrated by the state, is testament to the deep-rooted anxieties experienced at different socioeconomic strata. Common among these struggles was a shared 'systems of reference' (Melucci 1989) in the form of a collective outrage over an economically predatory and anti-democratic state that they wanted to change (interviews: Khairallah, 26/09/2009; Lamba, 23/10/2009; Ndubi, 24/09/2009; Zein, 07/10/2009).

The Coalition for National Convention experiment stagnated and did not take off because of a lack of decisive leadership and deep-rooted divisions between the two pro-reform groupings – civil society and the political parties (Mutunga, 1999). Moreover, the Coalition for National Convention failed to attract support from mainstream opposition parties and religious organisations who, even though part of the national symposia (religious groups had in fact organised the symposia), were 'horrified' with CNC's radical agenda of demands for a total overhaul of the political, economic and social fibre of the nation (Mutunga, 1999). For political parties and mainstream religious groups, the only reforms they were interested in were those that ensured free elections that would ensure state capture for them. These developments clearly confirm arguments advanced by Mutunga (1999), Maina (1998),

Nzomo (2003), Katumanga (1999), Murunga and Nasong'o (2007), among others. Specifically, these authors argue that:

> [There was a] conspiracy by political parties to confine constitutional changes to contestations of political power [… because] a new social order [that the CNC advocated for...] would inhibit the winning political parties from inheriting the machinery of violence and power reflected by the presidential authoritarianism seemed unacceptable to opposition political parties (Mutunga, 1999: 35).

Instead of joining the Coalition for National Convention, mainstream religious groups' initiatives, in particular the Catholic Church's Justice and Peace Commission project and the National Council of Churches of Kenya led processes, together with the mainstream opposition parties, formed the National Ecumenical Election Programme.

The formation of National Ecumenical Election Programme pointed to the fact that these major forces in the politics of the day were content with the constitutional status quo. At the time, Muslim leadership, with notable exception of the very active Islamic Party of Kenya (which the government had refused to register), and the Hindu community, were generally indifferent to the constitutional change project (interviews: Wandati, 17/11/2009; Lamba, 23/10/2009). Pentecostal churches had been on the side of the Moi/KANU state and vehemently opposed to both religious and secular challenges to the state (Karanja, 2008; interviews: Gitari, 21/09/2009; Ndubi, 24/09/2009).

Notwithstanding the above observations, the Coalition for National Convention dialogues, though short-lived, were opportunities for those congregating around the idea that Kenya needed a radical constitutional reform to vigorously contribute to these debates, and in the process, sowed the seeds for ensuing constitutional reform struggles. More fundamentally, as it retreated to oblivion in early 1993 after the 1992 general election, the Coalition for National Convention's agenda was bequeathed to its various successors, some of them from constituencies that had opposed CNC's call to overhaul the constitution. One such constituency was the Catholic Church's Kenya Episcopal Conference, which in March 1994 issued a pastoral letter calling for a new constitution to reflect the new multiparty reality in Kenya.

It is however, the Kenya Human Rights Commission's *Model Constitution* project that is singled out as the real heir of Coalition for National Convention and whose efforts kept the constitutional reform struggles' ship on course. The *Model Constitution* project brought

together a steering committee made up of the Law Society of Kenya, the International Commission of Jurists, and Kenya Human Rights Commission, in the drafting of a *Proposed Model Constitution* as well as in organising a series of three consultative workshops between 1993 and 1994 culminating in the launch of a printed *Proposal for a Model Constitution* on November 3 1994 at Ufungamano House (Mutunga, 1999). According to Mutunga (1999: 56), the successful launch and the 'popularisation of the *[Proposal for a Model Constitution]* was deeper than had been anticipated.' Copies of the document were reproduced, distributed and even sold in the streets for one hundred Kenya Shillings by some unknown entrepreneurs. These unknown entrepreneurs, Mutunga argues, provided a sense that there was broader public interest for the constitution reform project and not just the few people and organisations that had invested in its production.

For the *Model Constitution* project, this was therefore an opportunity to broaden the constituency interested in the search for a new constitution. This broadening happened through the Constitutional Caucus held on December 9, 1994 again at the Ufungamano House. The Caucus with 634 individual and organisational invitations had 217 exclusively middle class civil society and religious organisations representatives in attendance (Mutunga, 1999). Apart from the conspicuous absence of lower classes, women, Muslims, the youth and cooperative movements were not invited. Also notably absent were politicians as only four MPs and one civic leader attended despite an open invitation extended to all of them.

The Constitutional Caucus had a significant impact in the crystallisation of the agitation for a new constitution. According to Mutunga (1999: 59) an intervention by Bishop John Njue of the Catholic Diocese of Embu and the Deputy Chair of the Episcopal Conference of Catholic Bishops brought home to the gathered middle class Kenyans, 'the essence and spirit of the new Constitution if it were to be relevant to the survival of the nation.' For Mutunga (ibid) Njue registered a sense of moral outrage and spoke for many absent Kenyans when he said:

> We cannot be blind to the sad situations that surround us. As we sit here…there are people suffering …in the various parts of the country…living in sub-human conditions…without shelter…citizens …deprived of their rightfully acquired lands and have had their property destroyed…people in this country… in daily search for employment which they never find… people …who do not know where they will get their next meal. Our city and towns are teaming with street children. It is not a secret any longer that corruption is the order of the day…. Do you need to be told that insecurity is rampant? Am I the only one who wonders why some elected leaders cannot meet their constituents …simply because they are in the

> opposition? [For] how long must Kenyans continue to pay debts they never even participated in borrowing? [For] how long must we stand and watch our cultural and religious moral values be[ing] eroded by the Western World with the consent of our government? (cited in Mutunga, 1999: 59-60).

Njue further underscored the 'God-given right' of the Kenyan people to make their own constitution and as such supported the draft *Proposal for a Model Constitution* calling it a skeleton that needed some flesh to be added to it. His interventions received widespread support from other participants such as the Methodist Church, a section of the media, sections of labour movement, students' movement, NGOs and some political parties. According to Mutunga (1999), the Caucus confirmed that more work was needed to market the constitution-making project through even wider consultations. Njue's contributions, which will be highlighted in the next chapter, are an empirical confirmation to the theoretical underpinnings of the role leadership plays in a movement's emergence. Specifically, it points to the relevance of contributions of men and women with the gift of gab and illustrated by a sense of conviction that, things can be different and the status quo needs to be challenged. It also points to how the creation of counter hegemony was possible.

Following the December 1994 caucus, the constitution-making idea gained some traction. This was because of an overwhelming endorsement by a variety of middle class civil society and religious actors (Mutunga, 1999). 1995 started on a great note. Firstly, on New Years' eve, Moi, a politician with an instinct for not underrating his opponents, made a surprise announcement that Kenya needed a new constitution. He outlined how he wanted this achieved. He told the Kenyan people that his government would invite foreign experts to collect views from Kenyans, draft a constitution and hand over the draft to parliament for debate and ratification (Mutua, 2008). In this announcement, Moi made it clear that if the review were to happen, it had to be something he had to control and determine its outcome.

Another development was that the steering committee of the *Proposed Model Constitution* project in a meeting on January 6, 1995 renamed the project as Citizens' Coalition for Constitutional Change (4Cs) (Mutunga 1999; 4Cs, 1995). Its structure was expanded to include four co-chairs drawn from the Catholic Church, Protestant Churches – mainly the NCCK affiliated ones, women's and professional organisations, to accommodate the new developments (Mutunga, 1999). The crucial role played by these groups in the emergence of the Ufungamano Initiative is discussed in greater detail in the next chapter.

The 1995 New Year's announcement by Moi incensed the constitutional reform activists drawn from civil society and religious groups because they felt the president and KANU were insensitive to the demands for popular participation of the Kenyan people. This would soon open new frontiers for contention. The succeeding chapters of this thesis discuss in greater detail, the inviolability of the fundamental principle of citizens to write their own constitution. This remained one of the key pillars driving the contentions in the Kenyan constitutional reform project. Moi's announcement, however, turned out to be just hot air meant to steal thunder from middle class civil society groups coalescing around the 4Cs, and their published *Proposal for a Model Constitution* that had captured a lot of public imagination. Nonetheless, his 1995 New Year announcement was also a welcome political opportunity to mobilise for greater interest and participation of Kenyan citizens in a constitution reform project whose dawn seemed in sight. More importantly, the announcement also offered an opportunity for the nascent movement to utilise what Keck and Sikkink (1998), refer to as 'accountability politics' when Moi reneged on his promises to the nation.[38] This therefore may explain the escalation of militancy in the push for a new constitution that distinctly marked the next phase of the struggle.

Of significance here, and as shall be shown below, is that despite public pronouncements and promises to the nation, Moi and KANU spent the next two years tarnishing the idea of a comprehensive constitutional review. The following year (1997), 4Cs convened what came to be known as the National Convention Assembly (NCA). The NCA had brought together over 500 individuals from different civil society, social movements and political organisations (except KANU) at Limuru in April 1997 and gave birth to the National Convention Executive Council (NCEC) as NCA's executive implementation organ (Mutua, 2008; Mutunga, 1999). NCEC took the Moi/KANU regime head-on, through mass action and political sensitizations to mobilise for reforms before the December 1997 general election. These mass protests threatened to derail general elections.

[38] According to Keck and Sikkink (1998: 22-24) there are at least four political strategies that activists use to make their campaigns and struggles effective and ensure clarity, potency and dramatic appeal: 1) Information Politics: The ability of a movement to quickly and credibly generate politically usable information and using it where it will have the most impact; 2) Symbolic Politics: identifying and providing convincing explanations for powerful symbolic events; 3) Leverage Politics: mobilisation of targets to hold up to the scrutiny of peers, thereby exerting moral leverage on the assumption that governments and other targets, value the good opinion of others; 4) Accountability Politics: social movements try to convince their targeted actors to publicly change their positions on issues. This also happens through exposing the differences between the talk from the walk.

Ultimately, the Moi government was forced to concede some space through minimum electoral law reforms. In an effort to arrest the NCEC's wave of militant protests that were gaining ground, Moi invited religious leaders and opposition political parties (but not the NCEC), for dialogue through what came to be known as the Inter-Parliamentary Political Parties Group (IPPG). This resulted in the infamous IPPG agreement of 1997. The events and actors in these developments are dealt with in greater detail in the discussions in the next phase. Critically important for this analysis, is that the IPPG agreed to set up a commission to review the constitution. The subsequent Constitution of Kenya Review Commission (CKRC) Act of 1997 formally ushered in the Review Process (Kindiki, 2007).

The political ping pong of mid 1990s to 2005

This phase was characterised by intensification of the struggles for constitutional reforms through mass actions beginning in mid-1990s. More forces became sympathetic to the 4Cs constitutional reforms agenda as a manifestation of their protest against the downward spiral of the economy (already cited in the discussion in the previous phase), as well as against Moi/KANU state's continued suppression of dissent and opposition to reforms. The 4Cs also took its task seriously and wanted to bring together Kenyans to discuss and write the constitution they desired. To do this, 4Cs started several projects. The first of such projects was the popularisation of the *Proposal for a Model Constitution.* In Mutunga's (1999) account, 4Cs was at the beginning acutely aware that the *Proposal for a Model Constitution*, because of the conspicuous absence of many of the social groups, was a reflection of the voices of the Kenyan male middle class and not necessarily a consensus of all dominant social forces. As such, it actively reached out to all the constituency groups (workers movements, women, youth, all political parties including KANU, the business community, all religious groups, the media, the lower classes in general). This active engagement led to fruition of a National Convention Assembly in April of 1997.

While 4Cs had wanted the National Convention to assemble in 1995, internal politics within the reform movement, particularly divisions between political party leaders interested only in minimal reforms (that would guarantee them a level political playing field), on the one hand, and secular civil society and clergy advocating for more fundamental reforms on the other hand, plagued the movement. This delayed the realisation of a national convention in 1995 (Mutunga, 1999). Additionally, politicians from the opposition who congregated under the umbrella of the newly formed Inter-Parties Committee (IPC), did not want to participate in

the civil society led 4Cs initiative which was gaining popularity among Kenyans. However, a deal was brokered, to allow religious leaders arrange for a meeting of all (civic and political parties) stakeholders to dialogue on the way forward. This ultimately gave birth to the National Convention Planning Committee (NCPC) on May 31, 1996 and helped to steer the process towards a National convention. The first meeting of the NCPC held on May 31, 1996 recorded representations from the opposition, the National Council of NGOs, Kenya Human Rights NGO network, the NCCK, National Commission on the status of Women, LSK, Kenya Consumer organisation, National University Students Organisation, SAFINA party and Islamic Party of Kenya (both had been refused registration). Apologies were sent by *Maendeleo ya Wanawake* organisation, SUPKEM and the Federation of Kenya Employers (Mutunga, 1999).

The meeting discussed and agreed on how to go forward with organising a national convention. Its management and leadership were agreed upon. This leadership was represented by a panel of convenors from the NCCK, the Episcopal Conference of the Catholic Bishops, SUPKEM, and a fourth convenor would be chosen jointly by the National Council of Women of Kenya, the National Commission on the Status of Women, *Maendeleo ya Wanawake* and Kenya Women Workers Union to represent the women constituency. However, as I shall shortly discuss, mobilising some constituencies posed challenges. Significant among these was the Women constituency, NCCK and the Episcopal Conference (Mutunga, 1999). It is the NCPC that later transformed into the National Convention Executive Committee (NCEC) and organised a successful National Convention Assembly (NCA). The NCEC/NCA was a coalition of alliances from different civil society groups to push for democratisation and constitutional reforms in the country. The immense contribution of the NCEC in shaping the pace of reforms has received widespread attention in scholarly works by Murunga and Nasong'o (2007), Mutua (2008), Katumanga (2006; 2004; 1999) among others.

In reference to the challenges in mobilising women, the role of *Maendeleo Ya Wanawake* Organisation (MYWO) needs further interrogation. Maria Nzomo writes of the MYWO that had been tasked, together with three other leading women organisations, to select one of their own as a co-convenor:

> MYWO which has remained the largest national women's organisation, with the widest national spread— was a creation of the colonial state in 1952 as the only national gender

> based civic arm of the colonial state, and with an all-white leadership, initially served to contain pro–Mau Mau women activists/sympathizers and promote passivity and subservience among African women (Nzomo, 1996). … Although it has grown, become Africanised and evolved overtime, it largely continued to be a civic arm for promoting the state interests of both the Kenyatta and Moi regimes. Despite several attempts in the 1990s to disengage itself from state control, it had not succeeded by 2002, when it declared its partisan support towards the then ruling party, KANU's political bid to retain power (EAS, 16 August 2002, as cited in Nzomo 2003: 188).

This suggests that MYWO leadership was unwilling to support anything seen as subversive to the Moi/KANU hegemony. This was particularly so because the State had captured MYWO, coupled with the role of ethnicity shaping the complexity of the relationship between the State and civil society. By now, even the chairperson of MYWO, Zipporah Kittony was a Kalenjin like Moi. Besides this, most leaders in the movement were spouses or relatives of key KANU leaders.

MYWO's dithering on the reform question enabled other active women groups to emerge and later play an active role especially in the formation of the Ufungamano Initiative. One such organisation was the Kenya Women Political Caucus (KWPC). The KWPC was constituted in 1998 as a national umbrella body, made up of 43 women's organisations and accommodating 23 women leaders, including six MPs, to lobby for, and influence issues relating to constitutional review, economic participation and legal rights of women among others (Nzomo, 2003; Mitullah, 2003). Specifically, it was created to engender the constitutional reform process through:

> Translating the numerical strength of the Kenyan women into a political voice for creating, nurturing and sustaining a democratic, prosperous and peaceful society where women, men and children regardless of social, economic and political divides can uphold and enjoy rights at all times and under all circumstances (KWPC Draft Constitution, 2000).

The initial Kenya Women Political Caucus was short-lived as it splintered due to leadership wrangles and one camp moved to form the Kenya Women's Political Alliance. Before its split, the KWPC had played a key role in the events leading to the establishment of the Constitution of Kenya Review Commission (CKRC). The KWPC influence was particularly significant in the battles for the control of the Review Process between the Ufungamano Initiative and the Parliamentary Select Committee (PSC). The KWPC also utilised the provisions of the IPPG agreements (details provided later) to lobby and push for greater

women representatives in the Constitution Review Process (Nzomo, 2003).

For the NCCK and the Episcopal Conference, their reservations to participate in the National Convention Planning Committee (NCPC) and later NCEC must be seen in light of the fact that they both had on-going parallel constitution making related projects. They continued being loyal to their own projects and only abandoned them to take up a mediation role through what came to be known as the Religious Community Facilitation Team (RCFT) at the behest of President Moi in 1997 (Mutunga, 1999; Gitari, interview 21/09/2009). This may have influenced their refusal to take up leadership positions in NCPC and later the NCEC (Mutunga, 1999; Wandati, interview 17/09/2009). This observation is significant in highlighting the potentially subversive role churches played in the reform project. In fact, religious leadership secretly met the President on April 1, 1997 in what is believed by those close to the NCEC to have been a suspicious agenda detrimental to the reform train. I mention this here to demonstrate that the Moi/KANU regime was active in ensuring that there would be no long-term unity between the different pro-reform forces by sabotaging any mobilisations towards unity.

Some commentators have argued that the clergy's dalliance with the state, the lack of commitment to the NCEC, coupled with the willingness of opposition politicians to dialogue with KANU, gave the Moi/KANU regime room to out-manoeuvre the strong wave of reforms buttressed by accelerated mass action across the country prior to the 1997 general election (see for example Mutua, 2008). Despite Kenya Episcopal Conference and NCCK's official absence in NCEC, other individual Christian denominations like the Methodist, Presbyterian, Anglican and also SUPKEM, had direct representations in the NCEC. In the end, NCEC brought together over 800 registered NGOs, professional organisations, some labour unions, youth and women groups from across the entire country. NCEC utilised existing structures to mobilise citizens to participate in the struggles for constitutional reform. Some of these constituencies were active in NCEC and later in the Ufungamano Initiative. The Youth and Women are examples of such constituencies (Mutunga, 1999).

At the time of the first NCA, cleavages —read by some as betrayal–were evident. Such betrayals/cleavages saw NCEC escalate its activities by taking the message of the National Convention directly to the grassroots after it became apparent that the Moi/KANU regime would not relent to have the constitution reviewed. NCEC aggressively campaigned for a boycott of the 1997 general election unless comprehensive reforms were put in place. Being a

general election year, the Moi/KANU regime was particularly vulnerable to the mobilisation that NCEC was marshalling across the country for mass action. These mobilisations went hand in hand with wide scale civic education led by religious organisations such as the Catholic Justice and Peace Commission, NCCK, and National Ecumenical Civil Education programme (NECEP). Though the state fought to keep civic educators at bay, restrictions on civic education nonetheless served to harden the clergy as well as their faithful. The upsurge of protests that followed in many urban centres in Kenya demonstrates a clear resolve by the movements at the heart of these struggles.

Civic education further sensitised the under classes and therefore played a role in creating consciousness through assigning meanings to their collective suffering, identifying with their cause and bringing the grassroots struggles to the side of the NCEC by blaming their problems on a dictatorial state. A leading figure in the Muungano wa Wanavijiji, stated the following, as a reflection of such consciousness and ensuing actions in generating the Muungano wa Wanavijiji:

> Social struggles are fought by individuals directly affected by injustices. But we did not have any formal organisation uniting us. But a few of us realised that the problems we were facing were not limited to Kibera alone. It was the same story in all the slum areas of Nairobi, in Mukuru Kayaba, Mukuru kwa Reuben, Korogocho, Kingston in Spring Valley, Mutumba, City Cotton in Nairobi West, Mariguini etc. We realised that we needed to get organised and start a strong movement to raise alarm on the problems of evictions of the poor and grabbing of public land. Therefore, we started organising on our own [the poor in urban slums]. NGOs then came in later with their own programmes like Operation *Firimbi* [whistle] of Mazingira Institute. Others who came in included Action Aid, Kituo Cha Sheria, the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) etc. That is how we formed the Community Against Forced Eviction and Land Grabbing (CASE), the predecessor to Muungano wa Wanavijiji (Rema, interview 22/03/2010).[39]

Below, I further explain the generative aspects of Muungano wa Wanavijiji to illustrate how these grassroots movements were empowered through joining of forces with the middle class struggles.

[39] Rema's narrative of the emergence of Muungano wa Wanavijiji is corroborated by Mwachofi (interview, 27/09/2009) who was among the community organisers who helped mobilise residents of 82 different slums into forming the Muungano wa Wanavijiji. Mwachofi was also instrumental in formation of other grassroots movements like ILISHE in Mombasa and SEMA in Taita Taveta. All these grassroots groups were involved in conscientization of the masses through civic education.

Muungano wa Wanavijiji as did SEMA among many other grassroots movements, emerged in response to issues of distribution concerns over land, jobs, allocation of revenue from natural resources such as national parks, occasioned by increasing dispossession by state and economic elites through widespread evictions of the poor, and systematic corruption in allocation of land. Ordinary people who were victims of the evictions mobilised protest against these actions. Overtime, these protests became sustained and organised leading to the birth of Muungano wa Wanavijiji as a grassroots slum dwellers movement (Exodus-Kutoka Network[40], interviews: Rema, 22/03/200, Kotieno, 07/04/2010; Ong'ong'a, 26/03/2010; Mwachofi, 27/09/2009).[41] The narration below by one of the participants in this study (Rema, interview, 22/03/200) vividly captures this:

> The small businesses we run here [Toy-Kibera] were always exploited by the provincial administration at the behest of the owners of capital…. The land where our business stalls are built was said to be owned by a private individual and there were evictions happening every time. Even when the president in 1995 gave order for some public land to be given to hawkers for the construction of the Kibera Hawkers Market, the allocations were done by the provincial administration in a very corrupt manner. Only six hawkers from Toy market were allocated stalls from the total 196 stalls allocated in the market. The rest were allocated to well-connected people. Because we did not get stalls, we continued occupying our places in Toy market and the harassment led by the provincial administration and the Nairobi city council continued. In 1996, there were threats of evictions all the time. We mobilised ourselves to resist the evictions. During a presidential function in our constituency, we decided to have a peaceful protest march to register our displeasure with the way things were going. The DO [District Officer] was very unhappy with this. He threatened to demolish our stalls whether we liked it or not. He told us that we did not have a right to anything around. We however continued organising. On the 14th of June 1996, the market was destroyed by city council askaris. …So many people were affected. Many lost their entire livelihood sources in the process.

It is noteworthy that such evictions were not just directed at individuals in the slums but also community development initiatives such as schools, houses and any other physical

[40] http://www.kutokanet.com/evictions/evictions.html

[41] Similar narratives of unfair allocation of resources abound. For instance, proceeds from the Tsavo National Park that did not benefit the local people, and land ownership in Taita Taveta were mentioned as grievances that ignited grassroots movements like SEMA. As Mwanyumba (interview, 07/04/2010) a local inhabitant of Taita Taveta stated, 'the biggest problem in Taita Taveta is land ownership. The National Park did not benefit the indigenous people and if I may add, our land is not very arable. Most of what is arable is occupied by a few people and is under large-scale sisal estates. They grabbed these lands from local people. Local people were and still are against that. That is why they wanted the land issue changed in the constitution.'

infrastructure in the slums. A review of literature retrieved from Exodus-Kutoka Network[42] confirms this.

Muungano wa Wanavijiji received *pro bono* legal aid support from Kituo Cha Sheria (Legal Resources Centre) in suing the state over the dispossessions and evictions its members were facing. This shows emergence of alliances between middle and lower classes. This was a significant step in giving confidence to the masses to continue protesting. It was a symbiotic relationship that benefitted the middle class movements and civil society organisations.[43] Rema (interview 22/03/2010) captured this best when he stated:

> There were many restrictions especially through the notorious Chiefs Act, which made our work difficult. But the support we got form NGOs like Pamoja Trust and *Kituo cha Sheria* helped us in building our confidence. We did not have wealth, but we had good imagination. This is what has been key to our survival. We started conventions in the slums and later joined the NCEC and later the Ufungamano Initiative to continue pushing for reforms. We joined them [NCEC and later the Ufungamano Initiative] because we wanted our voices as ordinary citizens to also be heard alongside others agitating for change in the country. We went to them, to tell them that their struggles also resonated with our struggles. And they were accommodating. We helped them build their legitimacy because they had people and movements like ours in them.

Nonetheless, the NCEC failed to mobilise sufficient mass support and to fully integrate social movements of the under classes into its fold (Mutunga, 1999; Nzomo, 2003, Kibwana interview 21/10/2009). That said, NCEC did manage to marginally link the legal reform agenda to the sociology, economics, culture and political situation prevailing in the social and economic sectors, e.g. health and education, as well as to raise pertinent questions regarding the sharing of national resources and welfare concerns, including pervasive poverty, the inability of the majority of Kenyans to access water, shelter and credit facilities. Specifically, the NCA/NCEC's appeal was in bringing together more constituencies particularly of

[42] http://www.kutokanet.com/evictions/evictions.html

[43] Such legal aid and other forms of assistance from middle class organisations to grassroots movements were not limited to urban areas only. Indeed, groups like Kituo cha Sheria, Action Aid among many others played a leading role in incubating the emergence of many grassroots movements including in rural areas. For instance, Mwachofi (interview, 27/09/2009) demonstrates this when he stated: '...I went to work with Kituo cha Sheria as a volunteer. It is from Kituo cha Sheria working together with Action Aid, that I found myself in Korogocho... and later in Mombasa helping community grassroots organisations like ILISHE bringing together squatters, women groups and youth groups...when I was done with that, I came into this district [Taita Taveta] and we formed SEMA. In Nairobi while working with Opiyo and others I did a conceptual paper and finally was instrumental in forming Muungano wa Wanavijiji as a movement. And in that effort of forming muungano wa wanavijiji we also came up with Pamoja Trust which was supposed to facilitate the wananchi's (citizens) efforts.'

grassroots movements such as Muungano wa Wanavijiji mentioned earlier, as well as SEMA and ILISHE into these struggles.

From these examples and many others, I argue that while NCEC may not have succeeded in becoming a truly common person's mass movement, it played an important role in pushing the frontiers of political and constitutional reforms, and managed to mainstream constitutional reform struggles into Kenyan socioeconomic and political struggles.

The reaching out to grassroots by NCEC did have some positive impacts on these struggles. When calls for mass action were made by NCEC, ordinary citizens heeded to these calls. From then, Mutunga (1999) writes, it did not matter whether the NCEC leadership was with the religious and political leaders or not. With ordinary citizens on their side, NCEC between May and October 1997, called for mass protests to push for minimum reforms before the general election could be held. The clarion call from NCEC was 'No Reforms No Elections'. Between May and October 1997, Kenya was a country at war with herself. NCEC supporting citizens and its leadership engaged the police and state hired/sponsored thugs in street running battles during mass protests. Talk of a civil war breaking was rife (Mutunga, 1999; interviews: Gitari, 21/9/2009; Kibwana, 21/10/2009).

The first of such mass actions was held on May 3, 1997 and started with a meeting at the historic Kamukunji grounds.[44] A procession from the city centre to Kamukunji grounds by Rev. Njoya, one of the co-convenors of NCEC representing the religious community, was viciously attacked by a state sponsored 'group of thugs, thieves, muggers, cutthroats and murderers calling themselves *Jeshi la Mzee*[45] (The Army of the Old/Big Man)' (Mutunga, 1999: 164). Many people were injured in the process. According to Mutunga (1999), the May 3rd mass action was even more instrumental owing to the show of concern that the middle class had demonstrated. They had come in large numbers to join ordinary citizens in the demonstrations as opposed to their traditional participation in protests only at the level of ideas. This, Mutunga (1999) argues, signified increasing support for the reform movement.

[44] Kamukunji grounds in Nairobi's Eastlands are historical for the role they played in the independence struggles as many public rallies were held there. The Kamukunji grounds were also significant in the struggle for democratisation in Kenya.

[45] It needs mention here that such private militia was not limited to KANU only. Some opposition politicians had also funded the establishment of their own militia. The Baghdad Boys in Kisumu and largely associated with Jaramogi Odinga and later his son Raila, is such an example. Other examples include the Jeshi la Embakasi associated with the DP MP for Embakasi, David Mwenje. Mungiki, which has been a prominent feature in organised crime in Kenya has also been associated with Kikuyu political leaders in Rift Valley and Central provinces.

Standing out in the mass actions were the youth, who Mutunga (1999), credits as the true leaders of the mass action. They were 'organising the *wananchi (*citizens), challenging and intimidating the police, singing, debating with the police, evacuating the injured, protecting their leaders and implementing their [resolve to] make the country ungovernable if reforms were not carried out' (Mutunga, 1999: 166).

Subsequently, a series of mass actions were called nationally, some of them on symbolic days in Kenya. These included May 31, the eve of Kenya's attainment of self-internal government in 1963, June 17 (the National Budget day), July 7, August 8, September 9 and October 10. NCEC chose to organise specific protests and mass actions in other towns in the country. Such protests were organised in Kisumu on August 6, Nyeri on October 20, Mombasa on July 27 and August 12, 1997. All these were met with raw state brutality and many members of the public lost their lives at the hands of the police. There was widespread looting in the streets too, with the state blaming NCEC for this. Of all these mass protests, perhaps the most symbolic and which fundamentally altered the rules of the game, was the July 7 (*Saba Saba*) 1997 protests. *Saba Saba* is specifically significant for its symbolism in Kenya's contemporary struggle for democracy. On the same day in 1990, peaceful pro-democracy demonstrations were violently broken by the police resulting in the death of twenty-one Kenyans. This was accompanied by widespread arrests and detention of the leaders of the pro-democracy movement. Raila Odinga, Kenneth Matiba, Charles Rubia, Gitobu Imanyara, Mohammed Ibrahim, and Dr. John Khaminwa were detained while George Anyona, Njeru Kathangu, Isaiah Ngotho Kariuki and Prof. Edward Oyugi, were charged with treason. NCEC chose mass action on this day to commemorate the seventh anniversary of escalated authoritarianism by the State.

What happened on July 7, 1997 was equally tragic, if not as dramatic, for NCEC. The police descended on demonstrators who had taken refuge at All Saints Cathedral, teargased and beat many people, including several opposition MPs, the clergy and leaders of NCEC. The greatest casualty, however, were two people key to NCEC: Rev. Timothy Njoya a co-convenor who was beaten senseless and left for dead. The other was Kepta Ombati, the Youth Leader in NCEC. Blood was spewed everywhere in the church. Used teargas canisters also lay everywhere inside the Church (*Weekly Review*, 11/07/1999; Mutunga, 1999; interviews: Gitari, 21/09/2010; Njoya, 29/09/2009). Twenty-one people were killed during the ensuing mayhem (Njoya, 2007). This incident incensed the clergy who had been

relatively less militant. Six days after the incident, the head of the Anglican Church in Kenya, Rev. David Gitari held a cleansing ceremony of the Cathedral on July 13, 1997. Rev. Gitari who led 'the combative God-fearing flock' preached from the Book of Daniel Chapter five in the Bible and told President Moi, in front of international journalists and a section of diplomatic corps that 'if you do not change, the hand of God is going to write in the walls of the State House *Mene, mene, tekel, parsin* i.e. the days of your reign have been counted and brought to an end; you have been weighed on the balance and found wanting' (Gitari, interview 21/09/2009; Mutunga, 1999: 175). Mutunga (1999: 175) opines that 'if the presiding Bishop … had given the clarion call of "Onward Christian Soldiers" to march to State House, this call would have been heeded.' The photographs below are used to illuminate the violence that was meted on otherwise peaceful demonstrators as the contention intensified.



Figure 4.2: Police attack activists enroute to Kamukunji on May 31 1997 (photo courtesy of Antony Kaminju).



Figure 4.3: Police attack demonstrators outside parliament buildings on Saba Saba 1997 (photo courtesy of Antony Kaminju).



Figure 4.4: Journalists photograph an injured youth dying on the streets after being attacked by the police (photo courtesy of Antony Kaminju).



Figure 4.5: A leading opposition leader, Ms. Charity Ngilu of Social Democratic Party runs for her dear life after a demonstration she was a participant in, is attacked by police and hired thugs in 1997 (photo courtesy of Antony Kaminju).



Figure 4.6: A section of the crowd attending one of the many NCEC meetings in 1997 (photo courtesy of Antony Kaminju).



Figure 4.7: A section of the leadership of the 'No reforms no elections' campaign attending a rally in Nairobi (photo courtesy of Antony Kaminju).



Figure 4.8: Kenneth Matiba, a hero of the 1990 mobilisations that forced Moi to allow for multi-party politics, and one of the leaders who stuck with NCEC on their 'No reforms no elections' campaign, addresses a public meeting at Nairobi's Uhuru Park in 1997. He was the leader of the only political party that refused to contest the 1997 election under the then constitution (photo courtesy of Antony Kaminju).

The July 7, 1997 incident proved to be a turning point in the struggle. The State capitulated under increasing pressures and condemnations especially from international media, diplomats and donor countries that threatened to place further economic sanctions on the Moi regime unless he dialogued with the opposition. As a result of these condemnations, a senior police officer personally visited Rev. Njoya at Nairobi hospital where he had been hospitalised and apologised for the 'violent invasion of the All Saints Cathedral and for the attack on Njoya' (*Weekly Review*, 11/07/1997). Moi himself joined the chorus of those calling on the police to tone down their use of violence on demonstrators. More importantly, two days after the sermon (July 15, 1997), a clearly besieged Moi called the leading clergy from all faiths (Christians and Muslims) to State House to dialogue with them on the way out of the impasse created by continuing riots (*Weekly Review,* 18/07/1997; Mutunga, 1999). He allegedly sought the clergy's help in containing the NCEC tide with a promise that he was now for reforms. According to Gitari (interview, 21/09/2010), Moi asked religious leaders for their assistance to end the impasse by mediating between KANU and NCEC. The clergy accepted.

As it turned out, the Moi/KANU game plan was not limited to only appeasing and neutralising an angry clergy. As mass protests continued unabated as shown in the images above, Moi sensed that he was losing grip of the situation. As Moi was talking to the clergy, he also sent KANU emissaries to approach part of the opposition for a political settlement. He agreed to minimum reforms that came to be known as the Inter Parliamentary Parties Group (IPPG) reforms with a promise that comprehensive reforms would be held after the 1997 general election. Moi went as far as agreeing to the enactment of a law in parliament, i.e. the Constitution of Kenya Review Act, 1997. According to Mutunga (1999) and Mutua (2008), both sympathetic to the NCEC mass actions, the opposition fell for the bait and abandoned NCEC mass action and went back to parliament to negotiate for the minimum reforms. But this development, though read by some as betrayal of a cause that had by now become popular in Kenya, begs the question: why did the opposition behave this way?

Activists and politicians close to these developments have advanced several reasons to explain the politician's behaviour. Mutunga (1999) for instance argues, as does Mutua (2008), that a majority of the opposition politicians were already feeling irrelevant as NCEC was firmly in control of the struggles, the mobilisation structures, and networks. 'A bonfire for reforms had been stoked in the populace by NCEC and the political parties who claimed to represent the masses had to find a way to tap into this political capital or risk

marginalization' (Mutua, 2008: 108). Majority of politicians did not wish to be driven to further political irrelevance by heeding to NCEC's call to boycott elections. Kiraitu Murungi (2000 as cited in Mutua, 2008: 107-8), one of the leading lights of the IPPG deal, argues that NCEC drove MPs from the National Convention into KANU's IPPG arms because NCEC had deliberately taken positions to create a crisis. Secondly, MPs who were talking to KANU had been exposed to ridicule by NCEC as the latter had become a formidable force. In IPPG, they saw an opportunity to neutralise NCEC and in the process ensure that 'NCEC was no longer the solo voice of all pro-democracy voices in Kenya' (Murungi, 2000: 80). I argue here that this clearly demonstrates that politicians had a clear plan to either co-opt or arrest NCEC's agenda so as to remain the dominant. When NCEC's terrain of contention proved un-co-optive, political elites jumped ship. By doing so, the political elites acted as a unified force to derail the reform train.

Another reason advanced for the stalling of NCEC's reform train was the role played by donors. The events of *Saba Saba* had also convinced representatives of foreign interests (donors) of the need to look for solutions to the political crisis Kenya was facing as more and more 'Western diplomats became weary of a possibility of an election boycott and its potential effects on both the stability of Kenya and the interest of their countries' (Ng'ethe and Katumanga, 2003: 332; Mutunga, 1999; Murungi, 2000). They therefore began pressurizing some NCEC members to initiate dialogue with a regime that had made it clear that it did not recognise NCEC's contentious claim as a legitimate player in these contentions. Therefore, the IPPG initiative came as a relief to many stakeholders including MPs, foreign interests, political parties and religious groups (Mutunga, 1999). As Mutua (2008: 109), argues, 'suddenly, there was a "rational" and "less threatening" alternative to the NCEC's "radical" agenda.' In the event, 'a nod from the clergy and pressure from donors for MPs to join the IPPG' talks sealed the fate of the NCEC reform efforts (Mutua, 2008: 108; Ng'ethe and Katumanga, 2003).

Significantly, the above cited reasons point to underlying cleavages within the reform movement. While existing political opportunities allowed different actors to start cohering under the NCEC, this marriage was short lived as both politicians and the clergy had little faith in NCEC's radical agenda and approach in pushing for comprehensive constitutional reforms.

The IPPG process and its outcomes, while managing to pacify the anxieties of foreign interests, the clergy and opposition political parties, resulted in yet another betrayal of the popular will. Its outcome is read here, as preservation of elite dominance/hegemonic interests as in the process, it gave Moi and KANU a much-needed respite. But it also points to how entrenched interests of the so-called donor countries have subverted meaningful transformations (see Brown, 2001 for an analysis of how foreign donors helped to keep Moi in power). The IPPG forestalled the derailing of the 1997 general election, which NCEC and other like-minded groups had been campaigning and applying pressure politics (mass demonstrations) to push for its boycott or postponement. The IPPG deal and subsequent elections enjoyed the participation of all influential political parties. In the end, only the Kenneth Matiba-led Saba Saba Asili boycotted the polls. Opposition political elites' decision to participate in the 1997 polls left many activists feeling bitter and betrayed by the political elites' closing of ranks (Mutua, 2008; Mutunga, 1999). More than that, it led to a sense of greater distrust of politicians whether in government, or the opposition (Mutunga, 1999; Lamba, interview 23/10/2009). Mutua (2008) offers helpful insights to explain why this was the case. For him, 'political parties are essentially governments in waiting because they seek to capture political power. Historically however, civil society has not sought the capture of the state, but rather has striven to influence the exercise of power' (Mutua, 2008: 105). For this thesis, I posit this as a constant alignment that always happens in hegemonic and counter-hegemonic struggles.

The IPPG marked the deflation of yet another movement at the heart of the struggles for transformative reforms in Kenya and gives credence to Mutua's (2008: 75) apt summary of the key experiences of what befalls majority of Kenyan struggles that do not temper their radical agenda:

> Since the British founded Kenya…it has been the graveyard for radical, progressive, Leftist, or transformative politics. Virtually every revolutionary political, economic, or social cause has been either rejected or crushed. Only gradualist or accommodationist political projects have achieved any measure of success…both the colonial and postcolonial states have been pitiless in meting out grim fates to radical visionaries and change agents.

As I shall show in greater details in the next chapter, among the key agreements of the IPPG package was the enactment of the CKRC Act of 1997. However, its enactment did not result in an agreement by different stakeholders involved in the Constitution Review Process. Moreover, religious groups and civil society felt that the CKRC Act did not effectively

encompass the various interest groups and that the process was captive to the narrow interests of the political elites to the exclusion of the Kenyan people (4Cs, 2006). In the midst of this acrimony between different interests in the country, protests by civil society and religious groups against a government controlled process crystallised into a movement that came to be known as the Ufungamano Initiative and agitated for a people-driven constitutional review process. The next chapter provides an in-depth analysis of how the disparate actors joined forces to form the Ufungamano Initiative.

Post-2005 development and the realisation of a new constitution

While it is beyond the remit of this study to deal with the post-2005 developments in the Kenyan constitutional reform struggles, it is noteworthy that, the post-2005 referendum in which the Draft Constitution was rejected crystallised into a new phase of contention. This was characterised by increased ethnic rivalries and emergence of new alliances in the push for a new constitution. One such leading alliance was the *Katiba Sasa* Coalition that essentially comprised some of the former members of the Ufungamano Initiative who remained steadfast in pushing for a new constitution. What is interesting to note of these developments was that the religious leadership remained divided. Further fragmentations continued even within the Christian community leadership, which was part of the Ufungamano Initiative.

Both the 2010 and 2005 referenda, had similarities in their scripts especially in the political behaviour of the actors at the heart of pushing for constitutional reforms. While some civil society actors supported the proposed Constitution in 2010 as some did in the 2005, others ganged up with part of the political elite and vigorously campaigned against it over the inclusion of a contentious abortion clause in the draft as well as the inclusion of the Kadhi courts in the new constitution. Muslims were vehemently opposed to anything that would deny them a chance to have Kadhi courts as part of their fundamental rights under the current constitution. Some ordinary citizens of Kenya saw all these divisions as a ploy to yet again deny Kenyans a new constitution as happened in 2005. An analysis of the contentions within the constitutional reform process reveals how some part of the political opposition elite became co-conspirators in the process. This was made possible by ethnicisation of the struggle as well as hero-worship of some of the leaders by the masses.

Conclusion

Kenyan post-independent elites have often closed ranks when collectively threatened by a push for a new order that may alter their hegemonic status in society. Such closing of ranks has been spearheaded by politicians of all political persuasions who have created, oiled, and perpetuated this system of hatred and animosity between the different ethnic communities. This became even more pronounced after the introduction of political pluralism in 1991.

The result of such hegemonies has been multiple betrayals widely cited by participants of this study as well as by previous studies as the defining feature of these struggles (see for example Mutua, 2008; Mutunga, 1999; Amutabi, 2007; Nasong'o, 2007; Mwangola, 2007; Murunga, 2007; 2009; Murunga and Nasong'o, 2007). Activists and politicians who at certain epochs position themselves as champions of democratic struggles have often times, turned against the very ideals they fought for. This corroborates Murunga and Nasong'o's (2007) observations that:

> Kenyan transition is beset by a politics of selective blame that has, in turn limited the emancipative capacity of the new leadership. The transition [2002…] laid bare the disconnection between the ideas of the opposition-aligned politicians, activists and intellectuals with respect to democratisation and their practices and actions once in power [as they turned against the very ideals that they had advocated for while in the opposition] (Murunga and Nasong'o, 2007: xix-xx).

This chapter has shown that Kenyan reform struggles have a long history, and have been cyclical and duplicitous, characterised by elite consensus and fragmentations and multiple betrayals of popular cause. Further, it has located the issues and principal actors behind contentious politics in constitutional reforms in Kenya. It has outlined the historical specificities that led to the emergence of different pro-constitutional reform struggles in Kenya. It has underscored the social, economic and political disquiet as a major factor in the emergence of constitutional reform movements in Kenya. Examples of such dysfunctions have been enumerated and analysed. Specifically, the chapter has presented evidence to support the argument that these social mobilisations were a response to a long history of misrule and Executive excesses, which had irredeemably mutilated the constitution as a covenant defining the power of the people and relationships with their governors (Kawive, interview 13/10/2009).

The discussion so far has offered broad-brush strokes in the successive waves of social mobilisation that started crystallising as contention for the constitutional review in early 1990s. These mobilisations confirm both Gramscian and Polanyian perspectives that faced with increasing threats to its survival, society retreats by constituting itself to save itself from destruction (cited in Burawoy, 2003: 193). Social movements therefore, mirror mobilisations against discontents. But not all discontents in society are translated into collective action and social movements. Nasong'o (2007: 21), provides useful insights into how this happens (see also Buechler, 2000; McCarthy and Zald, 1977; Jenkins, 1983; McAdam and Paulsen, 1993; Snow Zurcher and Ekland-Olson, 1980; Tilly 1978). For Nasong'o, there are three key stages in the evolution and development of social movements. These are: 1) The incubation period; 2) The action phase; and 3) The institutionalisation phase. These three phases are discussed in more detail in the next chapter in the illustrations for the emergence of the Ufungamano Initiative.

An emerging pattern from the analysis presented in this chapter, indicates that these struggles have been through successive waves of contention. Taking a cue from this, I argue that despite the IPPG stealing the reform thunder from the NCEC, and the paralysis of action towards giving Kenyans a new constitution following the 1997 general election, coupled with existing mass discontent in the country, it did not take long before a new wave of contention started to build up. Sidney Tarrow (1998: 141) argues that:

> Whatever the source of contentious claims, it is political opportunities and constraints that translate them into action. They produce social movements by accessing known and flexible repertoires of contention; by developing collective identities; and by building mobilising structures around social networks and organisations. While opportunities and constraints in their environment give challengers incentives to mobilise, it is their cultural, organisational and practical resources that are the foundations of social movements.

The next chapter interrogates the above citation, in an attempt to unearth the political opportunities that allowed the emergence of the Ufungamano Initiative.

Chapter Five

The Birth of the Ufungamano Initiative: From Discordant Voices in Wilderness to a Forceful Movement of Movements

'Despite the distrust between the Kenyan political parties and civil society, Moi's 'chicanery' served to drive the opposition and civil society into each other's arms' (Mutua 2008: 105).

Introduction

On December 15, 1999, two simultaneous and intimately related and significant events, which dramatically heightened the contention in the Kenyan constitutional reforms process, took place. The first was a gathering of over fifty stakeholder organisations drawn mainly from religious groups, secular civil society and opposition political parties at the Ufungamano House in Nairobi, to launch what they framed as a people-driven constitutional reform process (Ufungamano Initiative, 28/09/1999; Karanja, 2008; interviews: Ombok, 24/09/2009; Kuria, 26/09/2009; Musyimi, 09/10/2009; Ong'wen, 09/10/2009). The second was the establishment of a Parliamentary Select Commission by members of parliament allied to KANU and its cooperating partner, the National Development Party, to spearhead a parliamentary led review of the constitution. The two processes were opposed to each other's work and existence.

The Ufungamano House gathering was convened under the auspices of the Religious Community Coordination Team made up of representatives of the Catholic Church's Kenya Episcopal Conference, the Supreme Council of Kenyan Muslims, the National Council of Churches of Kenya, the Hindu Council of Kenya, the Muslim Consultative Council, the Organisation of African Instituted Churches, the Anglican Church of Kenya, the Presbyterian Church of Eastern Africa, and the Methodist Church in Kenya. This gathering, aimed at finding a consensual way forward, out of an impasse created by the Moi regime's continued refusal to meet a popular demand for a people-driven constitutional Review Process. All stakeholders including the then ruling party, the Kenya African National Union (KANU), as well as all opposition political parties had been invited to the Ufungamano House meeting (Ufungamano Initiative, 17/12/1999). KANU, the Shirikisho Party, and the Kenya Social Congress and a

section of the National Development Party, specifically its leader, Raila Odinga, boycotted the Ufungamano House consultation.

The Ufungamano House consultation took two days (15-16 December, 1999). A significant outcome of this consultative meeting was the establishment of the People's Commission of Kenya (PCK) as an implementing organ of what soon came to be known as the Ufungamano Initiative – a movement of over 54 different organisations that included human rights organisations, several faith groups, women's organisations, as well as some parliamentary opposition parties (Ogony, 2004; Andreassen & Tostensen, 2006; Ufungamano Initiative, 17/12/1999; interviews: Musyimi, 09/10/2009; Njoya, 29/09/2009; Lamba, 23/10/2009; Musau, 24/09/2009). The PCK was established to lead Kenyans in comprehensively reviewing the constitution through collecting and collating their views (Ogony, 2004; Andreassen & Tostensen, 2006; Kindiki, 2007).

As different stakeholder consultations unfolded at the Ufungamano House, KANU and its co-operators, mainly the National Development Party, took advantage of the absence of most opposition legislators from the National Assembly to set up a Parliamentary Select Committee to review the constitution (Karanja, 2008). The committee chaired by Raila Amolo Odinga of National Development Party – the party he led and was in cooperation with KANU. It consisted of fourteen KANU legislators and thirteen from the opposition, mostly from Odinga's NDP as many other opposition parties, including the Democratic Party, Ford Kenya, and Social Democratic Party, refused to partake in the Committee, opting instead, to align with the Ufungamano Initiative.

These developments were significant in triggering a new wave of intensified contention among the constitutional reform stakeholders. The new wave of contention crystallised on the one side, into the Ufungamano Initiative made up of a majority of civil society (both secular and religious) and opposition political parties. On the other side of contention, was the Parliamentary Select Committee. This group had support from a smaller section of religious organisations represented by the Evangelical Fellowship of Kenya and its member churches (e.g. The Africa Inland Church, the African Independent Pentecostal Church of Africa, the Deliverance Church,

Redeemed Gospel Church of Kenya, and the Church of God in East Africa). Many other stakeholders were caught in between the two opposing poles.

The above developments in the contention of the constitutional reforms are the concern of this chapter. The chapter specifically traces the emergence of the Ufungamano Initiative. It adopts a relational approach in explaining this emergence by borrowing from Jameson (1956: 100) who argues that: 'all the varied activities of men in the same country and period have intimate relations with each other, and that one cannot obtain a satisfactory view of any one of them by considering it apart from the others' (cited in Tilly, 2004: 31-2). To understand the emergence of the Ufungamano Initiative therefore, I holistically look at the conditions that led to the tensions and the centripetal and centrifugal forces generated by the socio-political forces and organisations contending the Kenyan constitutional reforms.

The chapter uses two concurrent analytical tracks: 1) a chronological narrative of the emergence of the Ufungamano Initiative, and 2) a thematic analysis that attempts to mirror the Ufungamano Initiative's evolution to the theoretical literature on political opportunities and emergence of social movements. The second track is aimed at elaborating the applicability of the political opportunities model in explaining the Ufungamano Initiative. The first track is socio-historical and is informed by Tilly's (2004: 3) advocacy that the contentious nature of social movement politics 'requires historical understanding.' This track therefore traces the dynamics in the emergence of the Ufungamano Initiative to the universe of its contention (Tarrow, 1998), i.e. within the catalogue of actors and issues in the constitutional reform processes in Kenya. Situating the Ufungamano Initiative in the context of its history helps explain its emergence, why it incorporated certain features/structures in its operations, as well as in identifying its achievements and limitations. Moreover, as Tilly (2004: 10) argues, explanations of social movements and their history must of necessity 'mesh themselves with explanations of other sorts of contentious politics.'

The chapter is organised into three main parts. The first section maps out the actors behind the formation of the Ufungamano Initiative. The next section sifts through the theoretical models that explain emergence of social movements with a view to show the utility of the political opportunities model in explaining the emergence of the Ufungamano Initiative. The latter part of

this section attempts to provide answers to the question: how does the emergence of the Ufungamano Initiative empirically illustrate the relevance of the political opportunities model in explaining the socio-political contentions in the Kenyan constitutional reform struggles? The third section reflects on the specific challenges and contradictions inherent in the Ufungamano Initiative given its intentions, as well as the broad nature of its constituent membership. The chapter argues that the broad based nature of the Ufungamano Initiative imbued the movement with multiple contradictions. The generative contradictions at the formative stages of the Ufungamano Initiative are analysed in this chapter. Ensuing from the analysis of these contradictions, the chapter poses a critical question on the viability of a movement with a wide and diverse constituency in not only effecting changes in society, but also remaining united in the pursuit of its collective goal(s). This question is answered in subsequent chapters.

A cartography of actors in contemporary constitutional reform struggles in Kenya

According to Tilly (2004: 12), social movements are:

> Not solo performances, [but] interactions between temporarily connected (and often shifting) groups of claimants and the objects of their claims [whereby] third parties such as constituents, allies, rival claimants, enemies, authorities, and various publics often play significant parts in the campaigns.'

As such, he continues, 'we will never explain social movements' variations and claimants without paying close attention to political actors, other than the central claimants...' (Tilly 2004:12).[1] Taking cue from these views, it is clear from the previous chapter, that contenders in the constitutional reforms in Kenya have been many. Indeed, a mapping of the different pro-reform forces reveals successive interregnums and cycles of contention before and after their crystallisation into the Ufungamano Initiative. Borrowing from Tarrow (1998: 24), I propose that the perceived success of earlier cycles of contention enumerated in the previous chapter, explain the widening of political opportunities for the wave of contention represented by the Ufungamano Initiative because of the susceptibility of the Moi/KANU regime especially because the Ufungamano Initiative enlisted activists and 'ordinary people' to test the limits of its power.

[1] Because of this emphasis on political actors, especially the relationship between social movement and the state, the political opportunity model has been charged of political reductionism i.e. a bias of concern for only the relationship between social movement and the government (see for example Chan and Zhou, 2009; Melucci, 1994; Goodwin and Jasper, 2004).

The nature of the relationships between actors within the Ufungamano Initiative as well as with the rival contenders has been fluid and dynamic and mostly dictated by a rationality of congruencies or divergences of means and goals between the different contending actors – in this case, principally civil society and the government in the constitutional reform process in Kenya. As already pointed out in chapters one and two, this study adopts Adil Najam's (2000) model for the analysis of such congruencies and divergences that produces a set of four possible types of relationships – cooperation, complementarity, co-optation and confrontation between the actors in the constitutional reforms in Kenya. Najam (2000) plotted such relationships as shown in Figure 5.1 below. I briefly look at each of the four types of relationships with regard to the Ufungamano Initiative.

		Goals (Ends)	
		Similar	Dissimilar
Preferred Strategies (Means)	Similar	Cooperation	Co-optation
	Dissimilar	Complementarity	Confrontation

Figure 5.1: The Four-C's Model of NGO-Government Relations. Source (Najam, 2000).

Civil society-state cooperation

Within the constitutional reform process, whenever civil society organisations (taken here not as a collective whole, but individual atomised organisations) cooperated with the state (represented in this case by Moi/KANU regime), it was because they were seeking similar ends and utilised similar means. For the case at hand, such cooperation was exhibited by the then ongoing cooperation of KANU and the National Development Party (NDP) in the initial days that later assumed co-optive dimensions as well as the religious community mediation work at the height of the NCEC-led mass actions (interviews: Wanga, 08/04/2010; Apiyo, 16/09/2009; Ndubi, 24/09/2009). As will become clear in this chapter, the 'cooperation of Moi and Raila was a blessing in disguise. While it seemed negative in as far as the unity of different reform struggle groups were concerned, it made some positive contribution because it inadvertently challenged

other reform struggle groups to seek cooperation' (Wanga, interview 08/04/2010). This was essentially because the cooperation reinforced discontentment against KANU and NDP by other forces who found themselves excluded by the new elite bargains that the Moi/KANU state had perfected in an effort to ward off increasing pressure from popular protests and retain power (interviews: Churchill, 02/10/2009; Lethome, 02/10/2009; Ndubi, 24/09/2009).

Civil society-state confrontation

According to Najam (2000), confrontational relationships between state and civil society occur whenever state agencies and civil society consider each other's goals and strategies to be antithetical. This was the main form of relationship between the various constitutional reform struggle actors such as the Ufungamano Initiative and the NCEC among others, and the government. Citing Fisher (1998), Najam (2000: 385) argues that in confrontational relationships, 'governments … are often willing to use, their coercive powers for outright repression and harassment' of the nongovernmental actors (see also Ndegwa, 1996 for similar views). As we have already seen in the previous chapter, confrontation has been a common feature of the Kenyan constitution reform project. The senseless beating of Rev. Timothy Njoya and other peaceful demonstrators at the All Saints Cathedral on July 7, 1997 and earlier on May 3, 1997, cited in the previous chapter, serve as illustrations of such confrontational relationships. Other examples include attempts on the lives of some religious leaders such as Bishop Gitari whose Embu home was attacked by thugs said to be on the state's payroll. Gitari had to hide in the ceiling of his house to save his life (Gitari, interview 21/09/2009). He was also later on, at the height of the Ufungamano Initiative struggles, attacked by state incited Muslim youths in South B neighbourhood in Nairobi. The attacks were prompted by state agents' torching of a Mosque to fuel animosity between Christians and Muslims in order to scuttle the Ufungamano Initiative (interviews: Gitari, 21/09/2010; Lethome, 02/10/2009; Wandati, 17/09/2009).

Scholars who have studied the nature of state and civil society relations in Kenya offer insights into the reasons for such confrontations (see for example Ndegwa, 1994; 1996; Oyugi, 2002/4; Katumanga, 2004). Katumanga (1999: 8-9) opines:

> The regime type and response to contestations for an open associational space have over the years not only determined the nature of social movements, but also the modes they use to apply in their struggles against the state. Essentially, social movements have over time emerged in Kenya

> consequent to economic and political exclusion. Underlying their emergence has been the attempt to pressure the regimes in power for inclusion by mobilizing outside existing social-political institutions or the deconstruction and reconstruction of alternative institutions. While the former has been favoured by moderates, the latter model has been preferred by radical formations. Those controlling the state on the other hand have tended to respond to any such challenges by seeking to co-opt moderates while isolating radicals. The successful application of this strategy through economic mutation and application of violence has allowed them to not only maintain control over the reins of power, but also sustain its nature. Consequently to the foregoing, the state has remained a contested space, as the leadership and captured institutions have remained incapable of responding positively to social processes.

Oyugi (2002[4]) adds that such confrontation resulted from the alternative leadership approach that certain civil society organisations have been propagating. Indeed, this study is premised on dynamics of tensions and confrontations in the state-civil society relations centred on civil society's push for constitutional and political reforms.

Complementarity

According to Najam (2000), complementarity ensues when State and civil society seek similar ends but prefer dissimilar means, i.e., they have divergent strategies but convergent goals (see also Coston, 1998; Young D.R., 1999; 2000 for similar arguments). This is exhibited especially by the different strategies employed by different actors in the Kenyan constitutional reform process. I present and analyse the outcomes of these strategies in chapter six.

Civil society co-optation

When the actors (State and civil society) prefer similar means but dissimilar ends, there is co-optation (Najam, 2000; see also Tandon, 1989; Bratton, 1990; Commuri, 1995; Pearce, 1997; Fisher, 1998). Such co-optations happened in the build up to the Inter-Parties Parliamentary Group agreements in 1997, and also in the processes of mergers of the Ufungamano Initiative in 2000 and later of NDP and KANU merger, whose net result 'undermined civil society transformative efforts' (Odhiambo M., interview 01/04/2010).

Najam's theoretical formulation is useful in the analysis of the dynamic interactions and nature of relationship between actors within the Ufungamano Initiative and the state in the different phases of the constitutional reform process in Kenya. As pointed out earlier, the life of the

Ufungamano Initiative cut across two regimes. Each regime exhibited a different attitude to civil society. On the one hand, the Moi/KANU regime was largely sceptical and treated civil society disdainfully, hence the confrontations (Katumanga, 2004; 1999; Oyugi, 2002/4). On the other hand, the National Alliance Rainbow Coalition regime's view of civil society was different, and exhibited greater signs of complementarity, cooperation and co-option, than outright confrontation (interviews: Ndubi, 24/09/2009; Odhiambo M., 01/04/2010; Wanga, 08/04/2010. See also Katumanga, 2004). This is perhaps informed by the fact that the new regime (NARC) had many activists whose political training ground had been in these movements in civil society. Moreover, Najam's (2000) model is useful in explaining why the Ufungamano Initiative lost its appeal after merging with the state-led process because it was a co-optive, rather than cooperative process, which eventually resulted in betrayal of the popular will. This is covered in detail in chapter seven.

Nonetheless, Najam's model has an inherent assumption of homogeneity within the two distinct groups in contention (i.e. civil society and state). This is problematic because a closer look at the contenders reveals that this was not the case. Groups on both sides of the contention were heterogeneous and had multiple cleavages within themselves. Thus, there were complex relationships, a point that challenges Najam's 4Cs model. Therefore, from this analysis, a different typology of actors reflective of the realities of the different actors as well as the relationship between the different claimants in the constitutional reform struggles in Kenya was deemed appropriate.

Towards a different typology of actors in contention

To appreciate the idiosyncrasies and the intricacies in the struggles over Kenyan constitutional reforms, one needs to look at the dynamic and fluid composition, and relationships, between the claimants (secular civil society, religious community and sometimes opposition political parties) on the one hand, and targeted objects of claims (the Moi/KANU political edifice and sometimes the entire political elites spectrum that included the opposition). From such an analysis, Mutua (2008: 124) offers a categorisation of four types of political behaviour to describe the different actors in these contestations that have 'recycled themselves throughout the history of the struggle for reforms in Kenya.' For him:

> The first was the centralizing of undemocratic strand [...] the tendency of the fraction of elite that has historically held power in Kenya ... The second is the syndrome of the government-in-waiting, represented […] by the political opposition…. The third tendency is the "radical" and progressive option, which […] the NCEC and more activist civil society organizations had revived…the last tendency is the cautious middle, a worldview expressed by religious organizations, which has historically backed either the first or the second tendency, depending on personal, institutional, and external factors (Mutua, 2008: 123-4).

I mention these tendencies here, as they are significant in explaining the fragile nature of alliances formed in the pro-reform camp. Moreover, it helps explain the rise of the religious community leadership in mediating between the different initiatives that gave rise to the Ufungamano Initiative, specifically, due to the fragility of the political context from the 1990s.

From the four categories of political behaviours, I develop a different typology that accommodates different variables. These variables include: organisational identity (i.e. civil society organisations in different forms vs. political parties); the actor's stance on preferred process of constitutional reforms; relationships with similar and differently oriented organisations, relationship between reform groups and the state; and models of resource mobilisation. At the formative stages of the Ufungamano Initiative, the main actors coalesced into at least three distinct groupings: 1) actors advocating people-centric and driven reforms; 2) actors opposed to people-centric and driven reforms; and 3) neutral or indifferent actors. It is instructive to note here, that the dominance of elites in all these formations denotes presence of elite fragmentations, which have served as political opportunities for movement emergence and operations. Below, I engage these groupings in greater detail.

Actors advocating people-centric and driven constitutional reforms

The actors advocating for people-centric and driven constitutional reforms coalesced around the Ufungamano Initiative. This is the group that the current study is primarily concerned with. This group brought together a range of actors from the more combative activist human rights civil society organisations that had hitherto congregated under the National Convention Executive Council (discussed in the previous chapter). The group included both middle class radical struggles as well as subaltern struggles such as the Muungano wa Wanavijiji, students, youth and women's movements. But this group also included opposition political parties whose 'government-in-waiting syndrome rendered [them] generally […] unprincipled and subject of

corruption by the ruling bloc [with] its interest in reforms ...not centred on democratization of the state, but rather on … minimum changes to make its ascendancy to power possible' (Mutua, 2008: 123). Some of the participants in this study corroborate Mutua's assertions (for example Odhiambo M., 01/04/2010; Onyango, 07/10/2009; Zein, 07/10/2009; Mwachofi, 27/09/2009). Odhiambo M. (interview, 01/04/2010), for instance, offers an insightful narrative on how this rather large grouping of the so-called pro-reform movement evolved, and how it has been characterised by multiple struggles and cleavages within the main constitutional reforms struggle:

> From the early 90s we had a coming together of what is called loosely a pro-reform movement and pro-reform politicians, largely responding to the closed up Moi/KANU system, into a movement that took constitutional reform as its key focus. Basically this movement was saying that in order for us[2] to anchor other reforms, in order for us to start transforming the state, not just in the sense of how the elite share power, but also in the sense of how the common man [sic] begins to have a better relationship with governance and with institutions of state, we need to overhaul the governance framework itself. But there have been of course, different points of emphasis. Politicians have always emphasized aspects that bring them closer to power. On the other hand, the common man [sic], in a context where we have very high levels of poverty, has always thought that the struggle is about basic rights, access to improved living conditions, and generally issues of bread and butter (interview, 01/04/2010).

Odhiambo M. went on further to pose an important question of where these two positions converge to explain why certain aspects of this struggle have been emphasized more than others. For him, it is important to look at the politicians and other elite and ask:

> To what extent have the needs of the common man and woman who is thinking about his/her kids' access to education, food on the table, plough their small shambas etc been emphasized? The dominant voices within the struggle have actually been the voices of those who are saying power first and in Nkrumaist cliché, "seek ye the political power and all the rest will flow in" (interview, 01/04/2010).

There is therefore evidence to support the conclusion that such cleavages are the bane of socio-political and economic struggles in Kenya. Indeed, over a decade ago, Katumanga (1999: 6), citing the case of the National Convention Executive Council noted:

[2] 'Us' in this case has duo references: firstly to Kenyans, and secondly to movement activists and movements they formed.

> While it is imperative for the success of the movement that the ideas which evolve are clear and able to connect the problems with the system, while evolving alternative solutions that seem indeed realizable... the National Convention Executive Council's... only problem lay in the fact that they seemed to talk essentially for the English-speaking external and middle-class audience. It was only in the later stages of the movement's maturation that they sought to talk for the constituency whose manpower they needed for their street battles with the state. Such lapses spell doom for movements.[3]

For the current study, as already pointed in chapter four, the words of Abubakar Zein (interview, 07/10/2009) demonstrate further cleavages even among the elite formations:

> After the repeal of section 2A in 1992, two main schools of thought emerged within opposition political parties. The first block were those congregating around Mwangaza trust and later SAFINA party and later in Muungano wa Mageuzi and believed that Kenya had undergone a transition from single party status to a multiparty without radical transformations. This group wanted radical constitutional changes that would radically alter the nature and mind-set of the state of Kenya. Without this, true transformation would not be possible. This group was pushing for this kind of radical reforms arguing that the constitution was tyrannical because of imperial presidency that did not allow for participation of the people or even the true reflection of the will of people. Another block congregating around the Democratic Party, which became the official opposition in parliament after 1997 general election wanted only piecemeal amendments. This group believed and argued that Kenyan problem was a public management or governance problem and not a fundamental constitutional question. The biggest proponent was Democratic party leader Mwai Kibaki who kept on saying what you need are managers; smart people who have gone to university and have got economic degrees like himself. The current constitution is not bad, if you had well trained technocrats, you can transform Kenya. In fact, this argument played into Moi's hands and at some point, even some people in the SAFINA camp were persuaded by this change of management theory. These congregated under the leadership of Richard Leakey who later on, even after being nominated as a Member of Parliament on a SAFINA ticket, joined the government and became the Head of the Civil Service and the

[3] Katumanga (1999: 6) quotes Willy Mutunga (1998: 19-20) position that 'two contestations seem to take place in the constitutional reform movement, that is the radical and the liberal components. The liberal and the neo-liberal line sought to emphasize the lawyer paradigms in constitution making, namely the process and procedures that end up in an immensely useful minutiae but which are politically barren. Here, constitution making assumes a narrow project crafting structures of good governance, free and fair peaceful elections, etc. A radical line avoids the nominal form and emphasizes the implantation of reform in the preoccupation of quotidian activities. These included existential issues such as creation of jobs, production and equitable distribution of foodstuffs, health needs, issues of ethnicity, regionalism, racism, religious bigotry and sexism.'

> Secretary to the Cabinet to lead the so-called technocratic dream team that was to save this country.

These cleavages continued to play throughout the life of the Kenyan constitutional reform struggles and even within the so-called proponents of the people led-process (interviews: Waruku, 29/09/2009; Odhiambo M., 01/04/2009. See also Mutua, 2008; Katumanga, 1999). Indeed, with the exception of NCEC allied civil society groups, neither the moderate civil society formation represented by the National Council of NGOs of Kenya (NGO Council), nor political parties, were necessarily pushing for fundamental review of the constitution. Their interests were firmly focused on changes that would allow fairer political competition (Mutua, 2008). It is therefore within this context that Mutua (2008) records an instance prior to the 1997 general elections, when a bitter struggle ensued between civil society and the opposition politicians over the extent and depth of reforms. This struggle had been occasioned by the relative success of NCEC in bringing masses of people to the streets in their 'no reforms no elections' campaign. This struggle, Mutua (2008: 110), writes:

> Broke the guarded trust and alliance that the two sectors had forged since 1980s.... After the electoral debacle of 1992 and 1997, civil society became even more circumspect about joint reform projects with the opposition. The opposition appears to have decided that it was unwise to have ceded so much political space to civil society. As such, in 1998, even though Moi had deceived it, the opposition nevertheless decided to restart negotiations with KANU on the constitutional reform process.

The above scenario of multiple cleavages in the struggles poses a couple of critical questions on the potency of the constitutional reform struggles in Kenya. Some of these questions include: have the different struggles always understood each other? Have the dominant elite voices of the struggle always understood what the ordinary citizen is struggling for, and therefore, at least within their own struggles, tried to mainstream them? Or have the elite always wanted to capture power as an end in itself? Evidently, there has been tension between the different perspectives and intentions within the broader constitutional change struggle. As Odhiambo M. (interview, 01/04/2010) noted, the voices of elites have been most heard. This has resulted in changes that are only reflective elite bargains and pacts rather than transformations that benefit the subaltern. As such, the voices of the under classes, even though loud enough, have in most instances fallen

on deaf political ears. There have nonetheless, been occasional instances of failure of elite to agree among themselves, hence the resultant fragmentation. Part of such intra-elite struggles have in some occasions, been forced to congeal with ordinary people's struggles to face the dominant or hegemonic elite force. The National Convention Executive Council cited in the last chapter is a referent case here. Moreover, as we shall see later in this chapter, the Ufungamano Initiative was also one such instance.

However, such congealing has been usually characterised by co-optive relationships that have resulted in betrayals of the common person's cause (interviews: Apiyo, 16/09/2009; Odhiambo M., 01/04/2010; Aukot, 19/10/2009; Onyango, 07/10/2009. See also Katumanga, 1999; Maina, 1998 for similar views). This suggests the reason why one of the most frequent outcomes of such improvised convergence, is that things never change for the common citizen. Even when anything changes, in the face of multiple internal oppositions, the pace has remained painfully slow (Interviews: Odhiambo M., 01/04/2010; Waruku, 29/09/2009). The case of the so-called 2002 transition, where even after a new set of political elite got into power, riding on the promises to fundamentally alter the state, but little if anything changed, serves to augment this observation. Moreover, this explains, in part, as we shall see in chapter seven, the circumventing of the people's will by the NARC administration in 2005 leading to a rejection of the government proposed constitution. This further serves to remind Kenyans that even after the passing of a new constitution in 2010 radical transformation of the Kenyan state is not going to be easy, while the same opposing forces remain relevant in Kenyan politics.

Actors opposed to people-centric and driven constitutional reforms

The second major category of actors included those opposed to people-centric and driven constitutional reforms and primarily coalesced under the Parliamentary Select Committee. The main actor here was the Moi/KANU regime and its collaborators (NDP, Shirikisho Party, Kenya Social Congress, and pro-state civil society organisations represented by the Evangelical Fellowship of Kenya and its affiliated churches) (Karanja, 2008; Mutua, 2008). According to Mutua (2008), actors in this group represented a fraction of elite that has historically held power in Kenya, and pushed for undemocratic centralization of power within the presidency and among a few political elites. For Mutua (2008: 123), these have been particularly 'opaque, despotic and resistant to democratic transformation.' I argue that this has also been the hegemonic political

and economic force in Kenya's intra-elite struggles and has, over the years, managed to subordinate society to its whims through coercion, co-optation, as well as instruments of symbolic violence. There is still no conclusive evidence on whether this group lost its hegemonic status with the passage of a new constitution in August 2010.

As shall become clear later in this chapter, this group (those opposed to people-centric and driven constitutional reforms) was directly the target of the Ufungamano Initiative. In these contentions, this group has succeeded in deliberately frustrating reforms in Kenya through a combination of

> […its] ability to divide and successfully isolate the radical formation from the mainstream opposition and the religious sector co-optation, economic motivation and diplomatic duplicity and the inability of [social movement's] leadership to interpret social process correctly, to the extent of evolving right institutional design and programmatic responses for mobilisation... (Katumanga, 1999: 1).

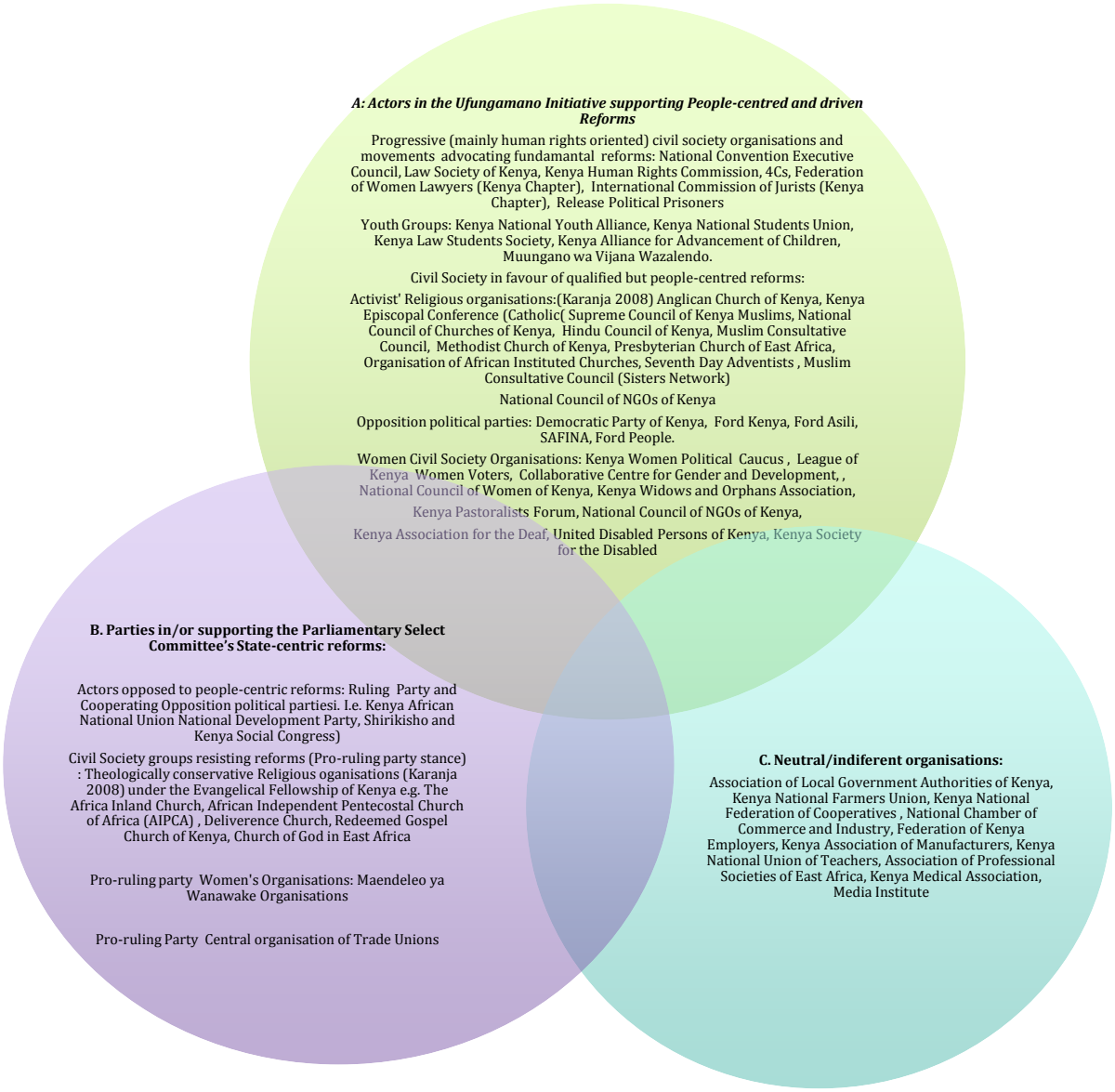
Neutral/ indifferent actors

The third type of actors, were the neutral or indifferent ones, who, according to Mutua (2008: 124), were ideologically 'pro-establishment.' This group has had a 'distrust and distance from the more vocal fractions of civil society or even the political opposition.' Mutua refers to this collective, as the 'middle from whence most of Kenya's elites are drawn [and] has vast interests in land, property, the professions and the marketplace. The middle is ethnically, racially, regionally, and religiously diverse, a fact that makes it formidable' (Mutua 2008: 124). It is this group that has occasionally provided the tipping point in the incessant Kenyan intra-elite struggles.

From the three categorisations, and a mapping of the actors within each camp, it is evident, using a three sector model of analysing society (i.e. state, civil society and private sector), that there was no uniformity or generic consensus between the different actors in terms of where they fell in these contentions. Those in favour of what they called a 'people-led process', as did those opposed and even the neutral ones, included groups and people drawn from part of political parties, civil society and private sector. The three types of actors in relation to their stance on the

Kenyan constitutional reforms contention during the period under review are plotted in Figure 5.2 below.

Figure 5.2: Constitutional reforms actors in Kenya and their relationships



Explanatory note: *Names of actors in the figure are drawn collectively from First Schedule of the Constitution of Kenya Review Act (1997), as well as the Ufungamano Initiative's strategy paper for the people-based constitutional Review Process (28/09/1999). The cycles are used in this figure to represent cleavages between different actors (state, political parties, secular civil society and religious organisations). The intersections represent fluidity of contention. Considering that the main focus for this thesis are the actors within the Ufungamano Initiative, other actors outside our relational references are used to explain the crystallisation of these types of actors under the Ufungamano Initiative. There were at least three distinct types of groups under the Ufungamano Initiative all who supported a people-driven constitutional change but with multiple variations on the nature of reforms required in the country. These groups, as shown in this figure, included secular civil society, religious civil society groups, and opposition political parties.*

It is important to note at this point, that the formation of the Ufungamano Initiative and particularly its launch of a parallel constitutional reform process divorced from state/parliamentary control, was a fruition of an earlier idea that had been floated by Rev. Timothy Njoya, one of the co-convenors of the National Convention Executive Council, during National Convention Assembly at the Blue Post Hotel in Thika earlier that year (i.e. January 7-9 1999) but did not gain any immediate traction (Njoya, interview 29/09/2009; Kuria, 1999). When the different stakeholders gathered at the Ufungamano House on December 15th to 16th 1999 and announced the formation of the People's Commission of Kenya (PCK), to collect and collate views from Kenyans, the Ufungamano Initiative succeeded where its predecessors like National Convention Executive Council and CNC had failed. Specifically, it succeeded in bringing together, a broad spectrum of pro-reform actors including ordinary peoples' struggles, influential citizens' groups like political parties, religious institutions, and human rights civil society organisations into league with one another to mount a coordinated and sustained challenge on the Moi/KANU political edifice through direct action in writing the constitution.

While the Ufungamano Initiative started off as an alliance of stakeholders specifically mentioned in the First Schedule of the Constitution of Kenya Review Act of 1997, with time, it also 'attracted ordinary people's struggles in the economic field, political field, those who were struggling thorough scholarship in the university, those who were struggling through culture, into one umbrella' (Zein, interview 07/10/2009; Njogu and Oluoch-Olunya, 2007; wa Mutonya, 2007). In a way, the Ufungamano Initiative emerged as a 'movement of movements' in that the different constituent campaigns and struggles, served not only as hubs of the struggles in themselves, but also as arteries for the Ufungamano Initiative's work. As a result, the Ufungamano Initiative exhibited a great sense of adaptability and complexity in its organisational form. This begs two key questions: first, how and why was it possible, for such diverse groups to converge under one umbrella movement, in a political atmosphere with so much suspicion based on a long litany of betrayals? Second, what changed with regard to political opportunities or constraints? These are the questions that the chapter turns to address in the next section. It does this, initially by looking at the theoretical literature on political opportunities that inform social movement emergence, and later by empirically locating the emergence of the Ufungamano Initiative within the theory.

Theorising the Ufungamano Initiative's emergence

To explain the emergence of the Ufungamano Initiative in later 1990s, I utilised three closely interwoven explanatory variables prevalent in the academy to account for the emergence of social movements. The first is the existence of denial of rights of claimants. The second is the existence of a leadership that incubates the movement through mobilisations, to respond to the third variable – existing political opportunities and constraints (see Tilly, 2004; Tarrow, 1998). These three represent a progression in theoretical models that have been utilised by sociologists over the years, in the study of why and how social movements emerge. In utilising the three approaches dominant at various times in the development of the scholarship of social movements, I position myself in the same camp as Buechler's (2008: 1031) who suggests a 'viability of a synthesis between older [i.e. strain and breakdown] and newer explanations [opportunity] of collective action' (my emphasis). The bottom line is an acknowledgement that structural conditions generated discontent, which in turn provided incentives for generation and participation in social movement activism (see McVeigh, 2006 for similar arguments on evolution of social movement activism and crime).

Below, I engage with each of the three variables and their corresponding theoretical and empirical explanations of the emergence of the Ufungamano Initiative. First I offer an exposition of the developments with a view to recapitulate on the theories explored in chapter two, to explain social movement emergence. I then move to analysing empirical data on the emergence of the Ufungamano Initiative.

Relative deprivation of rights and the emergence of social movements

The last chapter provided a litany of socio-political and economic variables, especially material and political rights deprivations that have been the powder keg for the various waves of contention in Kenya. As already seen in chapter two, the nexus of relative deprivation, claims to denied rights, and injustice as a justification for collective organising that generates collective action and social movements is not a new argument in social movement studies. A variegated body of work such as Osaghae (2008), Buechler (2000), Gurr (1969), Davies (1962) and Geschwender (1968), argues that collective action behaviour results from people subjectively judging or perceiving themselves as lacking resources enjoyed by a particular reference group. Davies (1962: 5-6) for instance, theorises that collective action is most likely to occur when a

'prolonged period of objective economic and social development is followed by a short period of sharp reversal…. People then subjectively fear that ground gained with great effort will be quite lost; their mood becomes revolutionary'. This occurs because there is a substantial intolerable gap between what people have come to expect, and what they are actually getting or expect to receive in the future based on their sense of deteriorating conditions (Davies, 1962; Buechler, 2000). For Davies, it is this sense of acute deprivation that motivates people to participate in collective behaviour to alter their situations.

Following suit, Geschwender (1968: 127) suggests a theory of cognitive dissonance to explain motivations for individual predispositions toward participation in social movements. The theory has three temporal hypotheses (i.e. rising expectations; relative deprivation, and downward mobility); and one non-temporal one, status inconsistency. For Geschwender (1968) cognitive dissonance gives rise to the following cognitions: a) there is an image of a state of affairs that the actor believes is attainable; b) there is a belief that the actor is entitled to that state of affairs; and c) there is knowledge that the actor is not currently enjoying that state of affairs (see also Buechler, 2000). These situations give rise to a psychological pain that pushes people to act collectively to reduce it.

Ted Gurr in his book *Why Men Rebel* (1969) follows suit to claim that grievance-induced discontents are the main determinants for political mobilisation that result in social movements (as cited in Langer, 2005). Gurr (1969) posits a primary causal sequence in which relative deprivation fosters discontent, which is first politicised and then actualised in political violence (cited in Buechler, 2000). Gurr (1969) views 'collective behaviour' in social movement as a 'mild' (aborted, weak, undeveloped) form of revolutionary outbreak or an aspect of revolution' (as cited in Mamay, 1991: 47).

Nonetheless, an increasing body of work criticises the emphasis on deprivation as precipitants for social movement's emergence on a number of counts (see for example Osaghae, 2008; Nasong'o, 2007; Buechler, 2000; McAdam and Paulsen, 1993; Jenkins, 1983; McAdam, 1982; Snow, Zurcher and Ekland-Olsen, 1980; Tilly, 1978; McCarthy and Zald, 1977). For instance, McAdam (1982) argues that the claim that social movements are a response to social strain ignores larger political contexts within which movements arise. The relative deprivation

approach also 'assumes a mechanistic and linear relationship between macro-level strain and [the resultant] macro-level behaviour' while in reality, the approach cannot explain how social discontents over denied rights translate into collective action (Buechler, 2004: 51; 2008). Moreover, by identifying individual discontent as the proximate cause of social movements, it problematically presumes an abnormal (deviant even) psychological profile for individuals who participate in movements (McAdam, 1982: 11–19). As such, while discontents over denied rights/entitlements are necessary, they are, in themselves, insufficient in explaining the emergence of social movements (Osaghae, 2008; McAdam, 1982).

Leadership and structural context in the emergence of social movements

The leadership and structural context approach in explaining social movement emergence, borrows from the resource mobilisation model. As pointed out in chapter two, resource mobilisation theorists emphasize the importance of resources in social movement emergence, development, and success. For instance, McCarthy and Zald (1977) argue that social movements develop only when individuals with grievances are able to mobilise sufficient resources to take action. As shall become clear later in this chapter, critical resources including money, knowledge, political influence, media, legitimacy, and internal and external support from power elite enabled the congregation of the different actors feeling aggrieved by KANU's refusal to let Kenyans write a constitutions of their choice, to challenge the state. This was only possible because of organisation and leadership provided.[4]

Scholars such as Osaghae (2008), Tilly (2004), and Tarrow (1998), among others, have argued that understanding *why* and *how* social discontents translate into collective action groups and social movements requires,

> [A deeper analysis of the] historical context of the struggles, the social basis of the movements, the nature of leadership of the movements, how the constituency of interests is mobilized, why certain rights and not others are demanded, and the prospects for success of the rights struggle, which also requires some analysis of the nature of the state and its engagement with social movements (Osaghae, 2008: 195).

Morris and Staggenborg (2004) point out that approaches that attempt to explain the *why* (i.e. structural strain) but also the *how* (agency-leadership- and structure) in contributing to generative

[4] See Morris and Staggenborg (2004) for similar arguments to explain the role of leadership in movement emergence.

and operative aspects of social movement, are largely ignored in social movement theorising. For Morris and Staggenborg (2004: 171), the relative drought on the utilisation of structure and agency, stems from social movement theorists trying to avoid the obvious dangers as:

> A focus on great leaders [agency] risks neglect of structural opportunities and obstacles to collective action, while an emphasis on structures of opportunity risks slighting human agency. Moreover, an emphasis on leaders seems to unfairly relegate the critical masses of movements to the category of "followers" (cf. Barker *et. al*. 2001). Thus, any approach to leadership in social movements must examine the actions of leaders within structural contexts and recognize the myriad levels of leadership and roles of participants.

Tilly (2004:13) argues that this has resulted in 'good deal of the twentieth and twenty-first century social movement [scholarship]... disguising the entrepreneurial effort in favour of images portraying the spontaneous emergence of WUNC' (Tilly 2004: 13).

Taking the two together (leadership –agency- and structural context), I posit that the organisation and psychology of leadership is an important variable in explaining social movements' emergence, operations, internal coherence and effectiveness, and in effect, their power and limits, success and failures (Tarrow, 1998; Morris and Staggenborg, 2004). Leadership, especially charismatic leadership, plays an indispensable role in creating, recognising and utilising political opportunities that transform discontents into collective actions by channelling and driving them through three distinct phases of incubation, action, and institutionalisation of social movements (Nasongo, 2007; Katumanga, 1999). To be effective, the type of leadership has to 'change through time as a function of different forms of structure and of different situations in which organized movements operate as they become large and institutionalized' (Gusfield, 1966: 137). As such, in the life of a movement, leadership plays different roles such as creating and recognising opportunities and devising strategies in an effort to influence outcomes (Morris and Staggenborg, 2004). Corresponding to the three categorisations of incubation, action and institutionalisation sequencing, Erick Hoffer (1958), identifies three types of leadership: 1) 'Men [and women] of words' 2) the 'fanatics' or cadres; and 3) the 'practical men [and women] of action.' As Katumanga (1999: 7) notes, these differentiations of categories of the stages in social movement's developments, and the corresponding categorisation of leadership, are only valuable for their analytical utility. Indeed, they are mutually exclusive and the most successful movements are those with individuals who can merge the three roles. Below, I briefly look at the

roles each of these plays in the evolution and life of a social movement and specifically link it to the Ufungamano Initiative.

Men and women of words in social movement incubation

Leaders catalyse collective discontent into social movements by providing 'a body of organising principles and slogans around which people are organised for action' (Nasong'o 2007: 21; Katumanga, 1999) while 'mobiliz[ing] resources and found[ing] organizations in response to incentives, risks, and opportunities...' (Morris and Staggenborg, 2004: 173; see also Nasong'o, 2007; Katumanga, 1999; McCarthy and Zald, 1973: 1977; Oberschall, 1973). Nasong'o calls these catalysts, 'men and women of words' while Tilly (2004; 1997), and McAdam (1982), refer to them as 'social movement entrepreneurs' who are mainly the intelligentsia and ideologues on which social movements 'depend heavily ... for their scale, durability and effectiveness' (Tilly, 2004: 13). These entrepreneurs utilise their charisma, oratory capacity and the power of written word, to publicise existing social dysfunctions and discontentment of people, and philosophise on how these can be fixed (Katumanga, 1999). According to Hoffer (1958, as cited in Nasong'o, 2007: 21), these men and women of words seek to 'undermine the existing belief systems and institutional arrangement while simultaneously promoting hunger for faith among masses' (see also Katumanga, 1999 for a similar argument). The men and women of words also 'go out of their way to weaken the beliefs of the "better people". This is done mainly to neutralise their impact as a new fanaticism evolves' (Katumanga, 1999: 6). As such, social movements emerge 'in part from prior planning, coalition building, and muting of local differences' (Tilly, 2004: 13). This is particularly true of the Ufungamano Initiative that emerged from a great diversity of actors. For the Ufungamano Initiative, the men and women of the word included a section of the clergy, the intelligentsia, politicians, and activists, especially from the Kenya Women Political Caucus (whose role is discussed in detail later).

The actual input from the men and women of words in the Ufungamano Initiative was illustrated through a conviction held by religious leaders and activists, that the socioeconomic and political conditions in the country could be different. The clergy, among others, specifically held moral theological convictions. Many of the so-called radical clergy in Kenya borrowed a leaf from the Rev. Martin Luther King Jr. who once said that 'any religion that is not concerned about the poor and disadvantaged, the slums that damn them, the economic conditions that strangle them, and

the social conditions that cripple them, is a spiritually moribund religion awaiting burial' (cited in Gabriel Dolan, 2010). Gitari (interview, 21/09/2010), concurred with this positioning of religion, arguing that the church took a deliberate step to challenge the state because of the leaders and congregants' theological conviction that:

> The church's mission is just not spiritual. It is spiritual, political, social, and economic...man is a psychosomatic being i.e. body and spirit. You cannot separate the two. So we cater not only for the spirit, but for the body too. Therefore, our involvement in development and in fighting injustices whether it is structural or whatever, is biblically based. It is because of our theology that you cannot keep yourself away from the welfare of your people. Yes, we are for heaven, but we are in this world, and we cannot just abandon the affairs of the world to politicians... politics is so important that it should not be left to politicians alone.

Njoya (interview, 29/09/2010) argued along the same lines when he stated that the clergy have a divine role to intervene on issues of injustice and at the time of establishing the Ufungamano Initiative, they had strong convictions that they were doing the right thing as God would have wanted them to. Even lay people supported such theological convictions. Indeed, Apiyo (interview, 21/09/2009) argued that 'religious leaders are not here just to show the people the way to heaven. They must build that heaven on earth by talking about the daily issues that affect the people, lead the people, lead the process, and speak for the people when there is need.'

As such, it is clear that religious organisations and their leadership played an important role in organising and mobilising people to act against injustices in society. The Catholic Church in partnership with the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) for instance introduced formal courses in community organising whose primary beneficiaries were the urban poor living in the slums. The Exodus-Kutoka Network made up of parishes of the Catholic Church in the slums, is also a demonstration of the Church's involvement in organising and mobilising citizens in the slums against forced evictions and other injustices including constitutional reforms. Chapter six analyses in detail, the strategies as well as structures that the Ufungamano Initiative utilised in its action phase.

Fanatics in social movement action

The action phase depends on the skills and temperament of fanatics that are imperative for hatching and animating movements' actions (Nasong'o, 2007: 21; see also Katumanga, 1999).

Katumanga (1999) calls these 'cadres'. For Nasong'o (2007: 21) these 'take the ideology and words of the ideologues and translate them into comprehensible terms for the masses in distress.'

For Katumanga it is the ability to build cadres that helps movements undercut their opponents by 'easily reach[ing] the society through their ability to use and talk the language of the people' (Katumanga 2006: 6 as cited in Nasong'o, 2007). Katumanga (2006) further contends that the ability of a movement to train a cadreship and pass on its objectives, and to convince and motivate them, can determine a movement's ability to survive and achieve goals' (cited in Nasong'o, 2007: 21). Tilly (1977), as does McAdam (1982), gives weight to the role of these fanatics in explaining why some movements develop and others fail. For Tilly (1977), a movement's accent is contingent upon the aggregation of resources. Organisation and continuity of leadership are therefore crucial in explaining success or failure of movements. Also crucial is the way movements mobilise support.

Mobilisation processes and structures create support from the general population by forming recruitment networks to tap potential members. Recruitment takes place through cadres arousing, nurturing, and motivating targeted individuals and groups through issue framing. Once support is won, movements have to build collective identity and continue to pursue collective interests. For the case at hand, these cadres and fanatics included an already existing large pool of trained community organisers who had been part of earlier struggles that became constituent parts of the Ufungamano Initiative as well as community activists at the grassroots (Apiyo, interview 10/09/2009). These played a critical role in mobilising support, especially at the grassroots in both urban slums and also marginalised rural areas in some instances e.g. Taita Taveta district. These were able to translate people's distress into comprehensible actions organising for collective action.

The chair of Community Organisers Professional Association of Kenya (COPA), Lawrence Apiyo for instance demonstrated their contributions to change through working with care and devotion when he said:

> I was involved in political grassroots activism since the clamour for multiparty democracy. I remember we used to mobilize our people to hold night meetings for people to push for change of section 2A, which made Kenya a one party state. We were doing night meetings because

> gatherings were not allowed. If you were found you could be arrested and charged. So, at night we went across the slums holding meetings in our houses. This is why Kibera slums of Nairobi hosted the first opposition party cell even before the removing of section 2A (interview, 16/09/2009).

This confirms that the clergy were not alone in their convictions and zeal. Cadres drawn from activists and community organisers in different parts of Kenya took over and propagated the desires for, and ensured the idea of constitutional change struggles achieved a life of its own and remained alive. Moreover, this happened through conscious efforts by the Ufungamano Initiative utilising civic education to sensitise, nurture, and motivate Kenyans on the need to stand up and agitate for change. This study treats such zeal in the actions towards organising by both leaders but also the followers, as an illustration of agency.

Practical men and women of action and social movements' institutionalisation

According to Hoffer (1958, as cited in Nasong'o, 2007: 21) the third phase in a movement's development is its institutionalisation. In this phase, the social movement becomes bureaucratised on account of its growth in age and size, as it attracts different elements in society as its constituency.[5] This bureaucratisation results from increasingly routinized nature of the

[5] Hoffer (1958) suggests three types of characterizations: The disciples, militant followers and passive sympathizers. A 'movement's success is predicated on the ability of the disciples to work together while submerging their personal differences, egos and ambitions. They also contribute to the failure as a result of the converse' (Katumanga, 1999: 7). Indeed, as discussed in chapter seven, the Ufungamano Initiative was unruffled by what Katumanga (1999: 7) cites as 'petty unprincipled rivalries' predicated by 'ethnic bigotry, opportunism and unbridled ambition which punctured the wind out of the reform balloon.' Katumanga (1999: 7) further argues that two positions are discernible in discussions on the militant followers: ***the orthodox approach*** that posits that movements attract psychologically maladjusted individuals, seeking what Sigmund Freud called a crowded cure for their neurotic or psychotic symptoms; the ***revisionists approach*** that posits that movements are a collective response to objective problematic situations than a mélange of personally frustrated fringe elements of the society. They indeed contain a wide range of humanity that Rudolf Herble (1951), applying Max Weber's typology of motivation notes as revolving around ***value rational motivations*** (i.e. those committed to universal sets of values e.g. religion or ideology and whose action is dictated by a desire to realize the goal of the value system; ***traditional motivations*** (actors pursuing prescriptions of immemorial tradition and seeking to defend traditional values and cultures - common among nativistic movements); ***emotional affection motivations*** (closer to Hoffer's account of misfits); and ***purposive rational motivations*** (those who seek personal goals such as safety, power and income. These individuals join movements less for the ideology or myth, but more for the opportunistic value likely to be derived). Indeed Apiyo (interview 16/09/2009) held that 'there have been a lot of betrayals. People joined the struggles with different intentions...you would think you are on the right path and the process, but other people would deviate because either their objectives have been met, or they do not see any of their intentions or objectives being met. So the struggle for change kept on changing and taking different shapes and processes…' Many other participants such as Waruku, Odhiambo C., Athman, Wandati, Oganda, Eban, Basole, Nyokabi, Mwachofi, Omtatah, Musau, Khairallah, Kuria, Gathaka, Zein, Onyango, Raiji, Aukot, mentioned betrayal as a key theme running through these struggles. For instance, Zein, a former commissioner with Ufungamano Initiative and later the Constitution of Kenya Review Commission noted that there were people he had been 'together in the trenches, and were caught up by the attractions of the empire and betrayed the cause and that at a price, they changed their positions.' As such,

movement's activities, which calls for administrative and organisational skills on the part of the leadership (see also Katumanga, 1999 for similar ideas). Consequently, this phase requires the leadership of practical men and women of action. Nasong'o (2007: 21) argues that, 'without such leadership, a movement may lose its drive, become tame and experience paralysis and may ultimately atrophy.' Within the Ufungamano Initiative, this leadership was offered by a secretariat that oversaw the running of the movement as well as the People's Commission of Kenya under Oki Ooko Ombaka who oversaw the operations in the collecting and collating of views from the Kenyan public. Chapter six will deal with the functions of these leadership roles in greater detail.

Political opportunities and constraints and social movement emergence

Political opportunities –defined as the degree of receptivity or vulnerability of the political system to organised protest by challenging groups that facilitate or constrain the emergence of social movement or other forms of insurgency (Chan and Zhou, 2009) – alongside resources, are treated by political opportunity theorists as the most important social structures/factors that favour/hinder social movement emergence and evolution (McAdam, 1982; Tilly, 1978). Proponents of this theory such as Tilly (2004; 1978); McAdam (1982); and Tarrow (1989; 1998) show that this receptivity or vulnerability can be the result of any or a combination of the following:

a) Growth of political pluralism (i.e. democratisation) (Tilly, 2004), or a decline in effectiveness of repression by the state.
b) Internal fragmentation and disunity of elites which could lead to support of organised opposition by some part of the elite. Elites give support by encouraging movements to organise, by providing public legitimisation and legal or administrative support. This support may at times be traded for electoral support for these elites by the movements.[6]
c) Broadening of access to institutional participation in political process.

These factors translate into net gain in political opportunity that movements can utilise. Political opportunities improve when the power discrepancy between authorities and challengers is

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Katumanga (1999) rightly concludes that these characterizations are important in understanding the levels of commitments and the speed with which movements are unruffled.

[6] A typical example of this in Kenya is politicians' flirtations with movements like Mungiki, Sabaoti Land Defense Forces, and the recent Mombasa Republican Council, among many others.

reduced and the bargaining position of challengers is improved (McAdam, 1982 cited in Buechler, 2000).

For Tarrow (1998: 142), the explanatory variable for the broadening of political opportunities is what he calls 'cycle of contention' that

> Produces externalities that gives challengers at least a temporary advantage and allows them to overcome the weaknesses in their resource base. It demands that states devise broad strategies of response that are either repressive or facilitative, or a combination of the two. It produces general outcomes that are more than the sum of the results of an aggregate of unconnected events.' [7]

Tarrow further offers useful insights into *why* and *how* movements emerge in a contentious environment. For him:

> Contentious politics is triggered when changing political opportunities and constraints create incentives for social actors who lack resources on their own. They contend through known repertoires of contention and expand them by creating innovations on the margins. When backed by dense social networks and galvanised by culturally resonant, action-oriented symbols, contentious politics leads to sustained interaction with opponents. The result is a social movement… [i.e.] sequences of contentious politics that are based on underlying social networks and resonant collective action frames, and which develop the capacity to maintain sustained challenges against powerful opponents (Tarrow, 1998: 2).

The emphasis here is on structures of political opportunity. Movements therefore develop in contingent *opportunity structures* that influence their efforts to mobilise (Tarrow, 1998; McAdam, 1982; Tilly, 1978). Each movement's response to the opportunity structures depends on its organisation and resources. As such, there is no clear pattern of movement development,

[7] White (1993: 430) offers a useful synthesis of Tarrow's cycles of contention and its linkages to political opportunity. For him the cycles of contention result more from political opportunity structure that people face than by the grievances that drive them. The political opportunity structures have the following six features: '(1) an increasing and then decreasing magnitude of disruptive direct action; (2) Social diffusion- characterised by an increasingly and then decreasingly broad spectrum of social sectors involved in disruptive direct action; (3) increasing spatial/geographical diffusion of contention; (4) increasing involvement of social movement organisations (relative to interest groups and *ad hoc* groups) as the cycle nears its peak; (5) the broadening of grievances and demands from concrete, direct popular interests toward the reconstruction of society's overall concept of popular contention; and (6) repertorial evolution from more institutional and patterned behaviour to more confrontational and tactically versatile activities and back.' According to White (1993: 430), 'Tarrow sees cycles of contention as leaving behind three probable and one possible residues: (1) an expanded space in which people feel that they can effectively and/or legitimately express grievances; (2) expanded opportunities for collective action organisers and organisations; 3) expanded opportunities for social groups to increase their influence and achieve their goals, and perhaps; 4) policy reform, the likelihood of which depends on the presence within the elite of minorities whose own interests are served by reforms responsive to the wave of contention.'

nor are specific movement techniques or methods universal. A key task set for this chapter therefore, is to analyse the shifting political opportunities and constraints in the contention for constitutional reforms in Kenya that allowed the different actors to congeal as the Ufungamano Initiative.

While earlier versions of political opportunity model did not pay much attention to leadership, recent political opportunities literature has paid greater attention to the 'role of leaders in recognizing and acting on opportunities' (Morris and Staggenborg, 2004: 173). In addition to political opportunities, the political process theory also identifies two other vital components for movement formation. The first borrows from the relative deprivation theory (already dealt with earlier), but framed under the political processes model as insurgent consciousness. This is defined as a collective sense of injustice felt by certain members of society that they are mistreated or that somehow the system is unjust and with it, a sense of cognitive liberation from the potential movement participants (McAdam, 1982). The second is organisational strength, which is based on strong leadership and sufficient resources (Tilly, 2004; Osaghae, 2008). Charles Tilly (2004) –a leading proponent of the political opportunities model-provides a useful analysis to show how disaffection and contention transforms into social movement organisation through a synthesis of three main elements – campaigns, repertoires of contention, and WUNC displays.

1) Campaigns result from organising efforts whereby discontent is initially channelled through an organised and sustained public effort to making collective and contentious claims on targeted authorities. As a result of this organisation, protests are self-directed with a clear leadership and therefore assume their own lives as campaigns.[8] In a campaign, core actors mobilise others and initiate the task of structural integration and negotiations among the groups in the network for the purposes of building coalitions. Campaigns manifest some centralisation at least of ideas in mobilisation for actions in the arena of struggles. Keck and Sikkink (1998: x), explain that the core aim of a campaign is to 'multiply the voices […] by overcoming … deliberate suppression

[8] A campaign according to Keck and Sikkink (1998: 17) is a 'set of strategically linked activities in which members of a diffuse, principled network develop explicit visible ties and mutually recognised roles in pursuit of a common goal and generally against a common target.'

of information' thereby helping reframe debates, changing their terms, their sites, and the configuration of participants (Mati, 2008).

According to Tilly, (2004: 4):

> A campaign always links at least three parties: a group of self-designated claimants, some object(s) of claims, and, a public of some kind. The claim may target "authorities" [that] may include government officials, owners of property, religious functionaries, and others whose actions (or failures to act) significantly affect the welfare of the citizens [in general and the claimants in particular].

For Tilly (2004: 4), it is not the single 'action of claimants, object(s), or public, but intentions and interactions among the three that constitute a social movement.'

2) Repertoire of contention refers to how an emergent campaign employs a combination of the following forms of political actions: 'creation of special-purpose associations and coalitions, public meetings, solemn processions, vigils, rallies, demonstrations, petition drives, statements to and in public media, and pamphleteering' (Tilly, 2004). According to Tilly (2004: 4), 'social movement repertoires of contention overlap with repertoires of other political phenomena.' However, it is the integration of most, or all of these performances into a sustained campaign, that is the mark of social movements from other varieties of politics.

3) Worthiness, unity, numbers and commitment (WUNC) displays. These involve participants' concerted public representation of:

a) **worthiness** –which involves sober demeanour; neat clothing; presence of clergy; dignitaries; and mothers with children);

b) **Unity** –, which involves marching badges, headbands, or costumes; marching in ranks; singing and chanting;

c) **Numbers** –which involves headcounts, signatures on petitions, messages from constituents, filling streets; and

d) **Commitments** –which included braving bad weather; visible participation by the old and handicapped; resistance to repression; ostentatious sacrifice; subscription; and/or benefaction (Tilly 2004: 4).

WUNC displays take the form of statements, slogans, or labels that imply worthiness, unity, numbers, and commitments (Tilly, 2004).

The relationship between the three aspects (campaigns, repertoires of action, and WUNC displays) of a social movement are made clear by Tilly's (2004) typology of claims that resultant social movements make. The first is 'program claims, involv[ing] stated support for or opposition to actual or proposed actions by the objects of movement claims' (Tilly, 2004: 12). The second is 'identity claims consist[ing] of assertions that 'we'-the claimants- constitute a unified force to be reckoned with' (*ibid*). The third is 'standing claims [which] assert ties and similarities to other political actors...' (*ibid*). It follows then, that there is a conscious planning on the part of movement entrepreneurs who figure out the need to organise a sustained campaign. This sustained campaign utilises repertoires of action while actively buying public support and allies through WUNC displays.

A clear advance of the political opportunity model therefore is in further explaining the linkages between campaigns repertoires and WUNC displays, in the timing of emergence and success of social movements. The political context (opportunities and constraints) faced by movement actors, therefore intersects with strategic choices made in mobilising support and utilise existing or create new opportunity structures, to determine the emergence and success or failure of movements.

Having laid the theoretical background to the emergence of movements, the chapter turns to analysing the emergence of the Ufungamano Initiative with a view to demonstrating the critical question of political opportunity theory's relevance in the Ufungamano Initiative's emergence. Specifically, how does the theoretical model link to the empirical in the emergence of the struggles that converged under the Ufungamano Initiative? To answer this question, the next section looks at the precipitating factors that created a sense of deprivation, denial of rights, and injustice among the different groups that coalesced together to form the Ufungamano Initiative.

The emergence of the Ufungamano Initiative: the *why* and the *how*

Two broad but intimately interwoven explanatory variables are used to explain why and how the Ufungamano Initiative evolved. The first is structure, i.e. existing and evolving political opportunities and constraints. The second explanatory variable is agency, i.e. the role of leadership, in mobilising discontents among various previously organised but disparate actors (see chapter four) to respond to the changing political conditions by carefully building and

utilising new structures that incubated a movement within the existing political opportunities and constraints. The two variables reinforce each other in explaining the emergence of the Ufungamano Initiative. The central thesis here is that political opportunity structures on their own would not transform discontent over denied rights into a movement. Likewise, the movement entrepreneurs needed the opportunity structure within which to mobilise discontents into a movement with a sustained campaign, repertoires of actions/contentions as well as the WUNC displays that became the Ufungamano Initiative. The chapter first empirically examines the political opportunities and constraints and the role of leadership in the emergence of the Ufungamano Initiative.

Structural context of the emergence of the Ufungamano Initiative

The Ufungamano Initiative emerged in a context of expanding political opportunities that various civil society groups and political parties utilised in its formation. These opportunities were the result of earlier cycles of contention (discussed in the previous chapter) that had managed to expand spaces for more contestations. Specifically, the Ufungamano Initiative emerged from discontents emanating from the Moi/KANU regime's intransigence to allow the Ufungamano Initiative actors (movement entrepreneurs and members), to take part in the constitution making process despite the October 1997 Inter Parliamentary Parties Group (IPPG) agreements between the opposition political parties and KANU, having promised the same. As such, the narrative below picks up from where the last chapter ended. It treats developments in the aftermath of the IPPG package, as the political opportunities that allowed collective grievances (read relative deprivation) to emerge and be channelled through a collective action that incubated the Ufungamano Initiative. The developments included the Constitution of Kenya Review Act of 1997; outcomes of the 1997 general election, and the subsequent negotiations that came to be known as the Safari Park Process that the Moi/KANU regime later reneged (interviews: Apiyo, 16/09/2009; Wandati, 17/09/2009; Gitari, 21/09/2009; Kihoro, 23/09/2009; Ndubi, 24/09/2009; Kuria, 26/09/2009; Mwachofi, 27/09/2009; Gathaka, 29/09/2009; Waruku, 29/09/2009; Njoya, 29/09/2009; Churchill, 02/10/2009; Ocholla, 06/09/2009; Onyango, 07/10/2009; Wambugu C., 09/10/2009; Ong'wen, 09/10/2009; Athman, 12/10/2009; Kibara, 15/10/2009; Aukot, 19/10/2009; Kibwana, 21/10/2009; Lamba, 23/10/2009; Nyokabi, 31/03/2010; Odhiambo M.,

01/04/2010; Nyabinda, 25/03/2010; Mwalulu, 01/04/2010. See also Mutua, 2008). These political opportunities are considered in the section below.

October 1997 IPPG package; December 1997 general election; and the aftermath

Among many other analysts, Oyugi (2003), and Mutua (2008), offer insights into the general political climate that the 1997 general election generated. They converge in their argument that KANU's political behaviour towards the opposition did not necessarily change even after the 1997 IPPG package of reforms. This is corroborated by several of this study's participants (e.g. Apiyo, Wandati, Gitari, Kihoro, Ndubi, Kuria, Mwachofi, Gathaka, Waruku, Njoya, Churchill, Ocholla, Onyango, Wambugu C., Ong'wen, Athman, Kibara, Aukot, Kibwana, Lamba, Nyokabi, Odhiambo M., Nyabinda, Mwalulu). Through the IPPG reforms of 1997, the Moi/KANU regime agreed on some minimum administrative reforms to electoral laws but dissolved parliament before these reforms could be anchored in the constitution (interviews: Athman, 12/10/2009; Onyango, 07/10/2009; Wambua, 13/10/2009).

Nonetheless, some of the more significant of these administrative reforms that had an impact on the expansion of political opportunity structure included the expansion of the electoral commission by ten new members to be nominated by opposition political parties.[9] The others were: 1) an agreement that the twelve specially nominated members of the Kenyan parliament would, after the 1997 election, be allotted to political parties on the basis of the strength of seats they would win in parliament; 2) the abrogation of the *Sedition Act* to enable freedom of expression; 3) purging of powers of chiefs through an amendment of *Chiefs' Authority Act*; 4) last but most importantly, the enactment of *Constitution of Kenya Review Act* of 1997 (here after 1997 Review Act) (interviews: Onyango, 07/10/2009; Ochanda, 22/09/2009. See also Badejo, 2006; Lumumba, 2008; Mutunga, 1999). While most opposition political parties saw these as positive developments, a few political parties, including a section of Ford Asili and National Development Party sided with the National Convention Executive Council (NCEC), to dismiss the IPPG package as inadequate and argued that without a constitutional anchorage, it would be open to manipulation by President Moi (Oluoch, 1997; Lumumba 2008; interviews: Kuria, 26/09/2009; Kibwana, 21/10/2009). Indeed, ten years later (in 2007), President Kibaki's flouting

[9] This number was however a minority compared to the number of commissioners nominated by KANU.

of the administrative reforms and the electoral process as agreed through the IPPG in 1997, was cited as a major cause of the post-election violence that brought Kenya on the brink of a precipice (The *Standard*, January 9, 2007; January 12, 2007; Kenya National Commission on Human Rights, 2008).

Despite misgivings by the NCEC allied groups, the IPPG did offer new political opportunities that would be crucial in the post-1997 general election mobilisations. One of the most ardent critics of the IPPG and a former NCEC leader, Kivutha Kibwana (interview, 21/10/2009) for instance, argued:

> IPPG emerged as a response to a politically charged environment that had radicalised demands by the NCEC. The state responded in trying to address these demands through the IPPG, which, even though rejected by NCEC, weakened Moi's power. Things we were not aware of before, started happening, his way of running everything, guarding turf etc. was weakened.

A prominent figure in the pro-reform movement since his days as a student leader at the University of Nairobi and current leader of the Citizens Coalition for Constitutional Change, Paddy Onyango (interview, 07/10/2010) similarly captured the impact of the IPPG on the pro-constitutional change struggles when he argued:

> The IPPG was a double-edged sword. On the one hand, it gave us a window of opportunity. For example, the *Preservation of Public Security Act* was reviewed and therefore the right to assemble was made easier because what we needed to do now was notify the police of the same. Secondly, the knowledge that you could demonstrate without being taken to the Nyayo House[10] was in itself liberating and gave us a good opportunity to mobilise.

However, the IPPG deal, it has been argued, also 'punctured the reform momentum in the sense that with the 1997 election approaching, the actual interest of the opposition was exposed as they crossed over to make deals with KANU' (Onyango, interview 07/10/2010).[11] Onyango (interview, 07/10/2010) argued that this had resulted from a monumental failure on their part as 'leaders of this process to acknowledge early enough, that the political interests of our political

[10] During the single party rule era, Nyayo House was home to the notorious chambers where political prisoners were detained without trial in solitary confinements and were tortured by the state intelligence agencies.

[11] Many other participants from a spectrum of constituencies and social classes in the Ufungamano Initiative including Apiyo, Gitari, Kihoro, Ndubi, Kuria, Mwachofi, Waruku, Njoya, Muihia, Suba, Ocholla, Wambugu C., Ong'wen, Athman, Wambua, Kibara, Aukot, Kibwana, Lamba, Nyokabi, Odhiambo M., Wanga, and Mwalulu had similar views. Mwalulu for instance argues that 'IPPG literally robbed the movement of its political wing.' Wambua (13/10/2009) adds that 'the 1997 IPPG deal and the rapidity with which the opposition politicians agreed to the deal with KANU left many in civil society feeling wounded, but most importantly, deflated.'

colleagues were not necessarily in consonance with the aspirations and the spirit of the rest of us.' However, others see it differently. Kibwana (interview, 21/10/2009) for instance, supports the view that political elites uncomfortable with the civil society led mass actions of 1997, needed an excuse to clip civil society's growing power and designed the IPPG principally to do exactly that (see also Mutua, 2008 for similar conclusions). For Kibwana, during the height of the 1997 civil society led mass action, 'politicians realised that civil society people were getting too much limelight, and becoming too popular. That is how they went to Moi and hammered the IPPG deal because they were afraid of a NCEC led radical agenda' (*Ibid*. See also Mutua, 2008; Murungi, 2000; Misoi, 2007; Nasong'o 2007 for similar conclusions). Nonetheless, Ochanda (interview, 22/09/2009), as did Gitari (interview, 21/09/2009), read the IPPG as an expression of some 'goodwill coming in from the political side, particularly the ruling party.'

As already mentioned, one of the significant outcomes of the IPPG agreements, albeit dismissed by some participants of this study (for instance Lethome, Wandati, Kibwana, Ong'wen) as a red herring by politicians to steal the thunder from civil society on the constitutional reforms in the country, was the 1997 Review Act (Mutua, 2008; Mutunga, 1999; Oyugi, 2003; Nzomo, 2003; National Convention Executive Council, 1997; 1998; *East African* 3-9 November, 1997; 10-16 November, 1997; *The Economic Review* November 3-9, 1997). The 1997 Review Act created a sort of reference point that became significant in the post-1997 election mobilisations. Nonetheless, the haste with which it was expended with in the process of its enactment, having been negotiated outside of parliament and only taken to parliament for enactment just before parliament dissolved, meant there was not much space to debate the bill (interviews: Ochanda, 22/09/2009; Wandati, 17/09/2010). However, the 1997 Review Act was good enough for many of the stakeholders for a number of reasons.

First, the 1997 Review Act spelt out how the Constitution of Kenya Review Commission (here after the Commission) was to be constituted to carry out constitutional reviews for the country. The 1997 Review Act also acknowledged the need for popular involvement of the citizens of Kenya. This had been a key demand of the NCEC allied civil society. In responding to this demand, the 1997 Review Act endeared itself to a good number of contenders who now thought that they would have space to participate (Ochanda, interview 22/09/2009). Specifically, the 1997 Review Act's First Schedule listed the following as the stakeholders with legitimate

representations in the Review Process: 1) Political parties; 2) Religious organisations; 3) Women organisations; 4) Civil society, and 5) the Attorney General. Nonetheless, the 1997 Review Act fell short of spelling out how the actual process would happen. Its main undoing was its exclusivity in the definition of the stakeholders to the process. This was compounded by the lack of clarity on the formulae to be used in constituting the Commission. All the same, the IPPG and the resultant 1997 Review Act, broadened access to institutional participation in the constitutional making process. Moreover, it served to confirm that with greater pressure, the Moi/KANU regime was vulnerable and open to negotiations. In the end, as I shall later discuss, the 1997 Review Act despite its flaws, was utilised as an important rallying point in the accountability politics and protests against the Moi/KANU regime after KANU reneged on the promises made in it, and led to the emergence of the Ufungamano Initiative. Below is a narrative analysis that helps explain how this happened.

Kenyans went to the polls at the end of 1997. The Moi-led KANU yet again, defeated a divided opposition that 'had ignored pleas from their supporters to unite.' But KANU won with only a slim majority (i.e. 108 KANU MPs against opposition's 102) in parliament (*Weekly Review*, 09/01/1998: 5). According to the *Weekly Review*, Moi's performance in the polls was not unexpected as:

> Each of the major presidential candidates from the majority ethnic communities in the country [had] count[ed] on their tribal arithmetic to upset KANU. This was not to be and in fact, …as Luoland voted overwhelmingly for Mr. Raila Odinga, Kalenjinland for Moi, Luhyaland for Kijana Wamalwa, and Kikuyuland for Kibaki many of the smaller of the 42 Kenyan tribes sided with Moi (*Weekly Review*, 09/01/1998: 5).

In the election month (December 1997) and the immediate months following elections (January through March 1998), politically instigated ethnic violence broke out in various multi-tribal districts of the country especially in Rift Valley and Coast provinces, just as had happened in the 1992 general election. This violence was specifically targeted at ethnic groups seen to be predominantly pro-opposition (*Weekly Review*, 09/01/1998; 16/01/1998; 23/01/1998; 30/01/1998; 06/02/1998; 27/02/1998). These attacks seen as state sponsored, united a collection of the leadership of the various opposition parties, civil society and the religious groups in condemning them (*Weekly Review*, 09/01/1998; 16/01/1998; 23/01/1998; 30/01/1998; 06/02/1998; 27/02/1998). However, the divisions within the political opposition elite continued

to play out when Raila Odinga and Kijana Wamalwa accepted the 1997 elections and congratulated the winner, Daniel arap Moi of KANU while Kibaki, the first runner-up, rejected the election results and called for a re-run (*Weekly Review,* 09/01/1998). This division served to further fragment the political opposition.

The year following the 1997 general election (1998) began on a low note. As a divided opposition licked its wounds in defeat, a bitter National Convention Executive Council seemed to have been telling the opposition 'we told you so.' The speed with which opposition political parties and religious leaders pushing for reforms fell for the Moi/KANU bait through the IPPG deal, left some egg on the face of the radical elements in National Convention Executive Council (Mutua, 2008: 109; Katumanga, 1999). Indeed, some politicians and journalists, weary of the growing influence of National Convention Executive Council through the mass protests were already calling for the disbandment of National Convention Executive Council arguing that it had exhausted its mandate and should be wound up (Kibwana, January 2000). The National Convention Executive Council's saving grace, paradoxically, came almost immediately after the 1997 general election as Moi yet again, started reneging on the very promises he had made to other politicians through the IPPG.

The Moi/KANU strategy post-1997 general election was multi-pronged. With a reduced majority in parliament, Moi, always ahead of the pack in the political game, started calculating on how he would dilute the opposition in parliament. Immediately after the 1997 general election, Moi surprised many after he reached out to one of his erstwhile nemeses, Raila Odinga and his National Democratic Party (NDP), which was the third largest party in parliament, for cooperation. This cooperation ultimately led to a merger of KANU and NDP under the name KANU with Moi as the President of the party and Raila Odinga as the Secretary General on March 18, 2002. Even before the actual merger happened, the Moi/KANU regime, with Raila Odinga's NDP support, started a process of mutilating the 1997 CKRA and in effect, some of the IPPG agreements.

Moi's actions to reach out to Raila Odinga and their subsequent manipulation of the Review Process, became the reference point upon which anger and a sense of bitterness over denied rights to participate in the constitutional Review Process emerged. The seemingly strange

bedfellows of opposition politicians, religious leaders and the radical National Convention Executive Council allied civil society groups were forced to the same side and became allies. In the event they started seeking collective action solutions. Many people including civil society, opposition political parties and religious leaders who had invested their faith and hope in the IPPG process felt cheated and betrayed. It was now the opposition politicians and the religious leaders' turn to be embarrassed by the turn of events. Moi's behaviour also served to vindicate the National Convention Executive Council's stance which had opposed the IPPG deal vehemently with arguments that Moi and KANU could not be trusted to implement the IPPG agreements given a past history of broken promises to the nation (Mutua, 2008; National Convention Executive Council, 1998).

Post-1997 general election cooperation and conflicts and emergence of religious community's leadership

To appreciate the intricacies in the struggles over the constitutional reforms post-1997 general election, one needs to look at the dynamic and fluid composition and relationships between the claimants and targeted objects of claims. This fluidity was reflected in secular civil society, the religious community and a section of opposition political parties on the one side, with the Moi/KANU regime and sometimes the entire political elites including opposition invariably being the targets. The nature of this relationship goes a long way to explain the emergence of religious leadership of the Ufungamano Initiative as a mediating force between different competing interests and positions within the pro-reform actors. Overtime, their mediating role, read together with the continued frustrations with Moi/KANU regime's intransigence and contempt for other constitutional review contenders, together with widespread socio-economic and political dysfunctions in the country, metamorphosed into discontents that incubated the Ufungamano Initiative. The narrative below explains exactly how this happened. The core of contention was the operationalization of the 1997 Review Act.

In the aftermath of the 1997 General Election, National Convention Executive Council in its characteristic radical/progressive tendency as discussed earlier in this chapter, while acknowledging modest gains made through the IPPG, continued trashing the deal arguing that it was fundamentally flawed and most importantly, despite its flaws, KANU could not be trusted in its implementation (Kibwana, January 2000; Mutua, 2008). NCEC cited a long history of the

Moi/KANU regime in systematically undermining constitutional stability through partisan and oft hurried adverse amendments aimed at curtailing people's freedoms and democratic rights, to shepherd a process that would be pro-people (Ufungamano Initiative, September 2000). The fullness of time proved National Convention Executive Council right. This came through efforts to redress what most actors saw as fundamental flaws of the 1997 Review Act (Mutua, 2008; Ochanda, interview 22/09/2009) through a series of consultations aimed at agreeing on the norms, institutions, and processes for the constitutional reforms (Mutua, 2008). These talks were dubbed the Bomas, Safari Park I, Safari Park II and Safari Park III processes (Lumumba, 2008; Nasong'o 2007; Mutua 2008; Wandati, interview 17/09/2009). The initiation of these talks revealed deep divisions within civil society and other actors within the pro-reforms camp. I argue here, that the cracks served to derail, albeit temporarily, the reform train but more fundamentally, it served as an opportunity for Moi/KANU regime to try to permanently wrestle the control of the reform process from the people.

Specifically, political opposition parties seemed to be torn between supporting either civil society 'positions' that they did not fully embrace given the fact that the nature of their reform interests were not synchronised, or to continue in the IPPG spirit of cooperation with KANU despite the fact that they did not trust Moi to implement the letter and spirit of the 1997 Review Act (Kibwana, January 2000; Mutua, 2008). In mid-1998, opposition political parties chose to support the latter when they joined the regime to form the Inter Parties Parliamentary Committee. It was the Inter Parties Parliamentary Committee that invited other key stakeholders identified in the 1997 Review Act to the Bomas and Safari Park talks. This support on the part of parliamentary political parties was illusory. It was based on the political opposition's argument that parliamentary processes were superior and had the legal imprimatur as opposed to an extra-parliamentary one that the NCEC-led civil society had been advocating for. Moreover, the opposition felt that in placing the Review Process in parliament, they were firmly in the driver's seat and civil society was now playing a peripheral role (Wambua, interview 13/10/2009).

Reality however dawned on opposition political parties as the year progressed. By mid-1999, they had to turn to the very civil society they had shunned, for support in wresting the control of the process from the Moi/KANU regime. This happened because political parties 'technically' allowed the stakeholder consultations that started in mid-1998 to be convened by the Attorney

General. This was ostensibly meant to cure the defects of the 1997 Review Act due to the incessant criticism by a majority of the stakeholders. Specifically, as confirmed in *Njoya and 6 others vs. Attorney General & 3 others* that indeed, under section 27 of the then constitution, Parliament's Power was limited to only alterations of the existing constitution and it 'had no jurisdiction or power … to abrogate the existing constitution and enact a new one in its place' (Kenya Law Reports, 2004: 262). The real power to make a new constitution belonged to the people of Kenya as a whole. Save for KANU and National Development Party members of parliament, other stakeholders to the Review Process argued that parliament was itself, a creation of the constitution and it was improper for parliament to review itself or define what its role in the Review Process was to be. Only the Kenyan people could review the constitution and define the role of various actors in reviewing the same (Ufungamano Initiative, 04/01/2000; Kenya Law Review, 2004: 262). As such, ordinary Kenyan people's involvement in radically reviewing the constitution was a key demand that radical civil society groups allied to National Convention Executive Council had stuck to during the Safari Park negotiations.

Before the first stakeholder consultative forum at the Bomas of Kenya in May 1998, the Attorney General solicited, through the press, views to be used to review the 1997 Review Act. These views formed the basis for deliberations and negotiations that continued during the series of Safari Park Meetings in 1998 (Kibwana, January 2000; Mutua, 2008). That KANU wanted to out-manoeuvre other players, became apparent when it sought to exclude National Convention Executive Council and other radical civil society groups from the Safari Park talks because they were insistent on an extra-parliamentary national convention to write the country's constitution (Mutua, 2008). KANU insisted on only having groups earlier identified as the 'middle or indifferent' on the negotiating table. It also proposed, against the grain of the 1997 Review Act, that appointments to the Review Commission, be along district lines (Mutua, 2008; *Weekly Review,* 26/06/1998; 24/7/1998). Opposition political parties, National Convention Executive Council, Law Society of Kenya, and religious groups identified as stakeholders in the 1997 Review Act vigorously opposed this, terming it an effort at ethnicising the constitutional Review Process (*Weekly Review,* 26/06/1998).[12] KANU relented under pressure and what was then seen

[12] It is my considered opinion that while KANU proposal to recruit the constitution making stakeholders along district lines had some merit given these have for long been ethnic and at least guaranteed representation of all

as a genuine consensus to allow for cooperation of different stakeholders in the reform process was reached at through the Safari Park negotiations (*Weekly Review*, 26/06/1998).

The Safari Park III agreement in October 1998 contained several vital features and a number of amendments to the 1997 Review Act that later defined the nature of the grievances that informed the emergence and operations of the Ufungamano Initiative. This was because the Moi/Odinga alliance reneged on these agreements in 1999. The most significant agreements of the Safari Park process in 1998 included:

1. The constitution would be *comprehensively reviewed* and not simply amended;
2. The people of Kenya, as a whole, would be involved in the review through: (i) civic education, (ii) expression of their views on desirable alterations and additions, (iii) appointment of representatives to the District Forums and in *addition* to already elected councillors and MPs, and (iv) nominating three persons from each District Forum to represent them at the National Forum which would debate, negotiate, and approve changes to the present constitution;
3. An independent 25 member Commission, appointed by the 54 named stakeholders, would oversee the entire process;
4. The day-to-day management of the process would be undertaken by a Chairperson appointed by the Commission while secretarial and practical responsibilities would be exercised by Commission-appointed Secretary and staff both at the Commission headquarters and at the District Forums;
5. A time table which envisaged that a comprehensively revised constitution would be ready and in place some 31 months after the commencement of the Review Process as provided for in the Act, suggesting that a new constitution would be ready about July/August 2001;
6. Financing of the process would be a charge on the state funds in the Consolidated Funds, and;
7. The role of Parliament in the process was clearly stipulated to be (i) to pass into law, a bill giving effect to the above six agreed considerations, (ii) to pass un-amended, a bill agreed to by the National Forum to alter the Constitution of Kenya as an Act of Parliament. The 222 MPs were expected to participate in the formulation and approval of the bill to alter the

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ethnicities in Kenya, the then gerrymandered districts would end up with some ethnic groups being dominant over others as districts were not fairly distributed on one ethnic group one representative formulae.

constitution. MPs were also expected to form a third of the 600 or so members of the National Constitutional Forum.

The above seven points constituted what most stakeholders took to be a contract between the 54 stakeholders, parliament, and the government of Kenya, to review and alter the Constitution legitimately and within the law. This agreement and the subsequent 'Constitution of Kenya Review Commission Amendment Act of 1998 yet again, was interpreted as a sign of good will from political elites in taking the review forward' (Ochanda, interview 22/09/2009). The 1998 Constitution of Kenya Review Amendment Act was negotiated outside parliament by a majority of stakeholders who were not parliamentary political parties. The 1998 Amendment Act was to be taken to parliament to be enacted without any amendments (Wandati, interview 17/09/2009). The agreement suggested that the actual process was to be divorced from Executive and Parliamentary control as much as possible.

However, if opposition political parties, secular civil society and religious civil society retreated to the comfort of having secured an agreement, there was a rude awakening in store for them. The consensus bliss was short-lived. An element of confusion was deliberately added by KANU at the end of the final drafting process by adding new clauses to the Act that made its implementation problematic (Kibwana, January 2000). This was specifically in the schedule that named the so-called stakeholders. The list was exclusionary. Moreover, as Mutua (2008: 111) notes:

> The bane of the Safari Park compromise was the composition of the CKRC [Constitution of Kenya Review Commission]. Although the forum agreed that the CKRC would be composed of twenty-five commissioners – thirteen from parliamentary political parties and twelve from stakeholders outside Parliament – the formula for doling out the slots among political parties was not written into law.

In February 1999, the process for appointing the commissioners stalemated one step from the constitution of the Review Commission. This stalemate resulted from KANU and opposition's failure to agree on how to share 13 slots that were allocated to political parties in a 25 member Review Commission. 'KANU walked out of a meeting called by religious leaders to mediate an agreement between the political parties on the sharing of the 13 slots and in the process created a crisis between it and the opposition parties' (Athman, interview 12/10/2009). The stalemate

revealed that the terms of the Safari Park Agreement would not be translated into a properly enforceable contract (Kibwana, January 2000). Moreover, the desire by the various groups, particularly political party formations to secure their interests only through nominating commissioners from their own lot as prescribed under the 1998 Amendment Act, undermined the principle of neutrality deemed necessary for the execution of the duties of the commission. This lent credence to the grievances of those who felt left out of the list of stakeholders (Ufungamano Initiative, 27/01/2000).

As only a few stakeholders had been expressly identified, the 1998 Amendment Act locked out from the process, many Kenyans and large numbers of other groups that had equal or superior claim of legitimacy (Ufungamano Initiative, 27/01/2000). For instance, grassroots groups of urban poor such as the *Muungano wa Wanavijiji* were left out, as were, youth groups like the National Youth Movement, National Youth Lobby for Reforms, among many others (interviews: Rema, 22/03/2010; Khairallah, 26/09/2009; Waruku, 29/09/2009). To the excluded claimants, this exclusivity, 'seriously undermine[d] the credibility and legitimacy of the process prescribed under the Safari Park agreement' (Waruku, interview 29/09/2009). For many, it amounted to elite pacts given that only exclusively middle class organisations were identified as stakeholders with legitimate claim to representation (Odhiambo M., interview 01/04/2010). This exclusion created further cleavages and feelings of betrayal that incubated grievances against elites within the reform movement. A youth participant in the Ufungamano Initiative captured this clearly when he argued:

> The constitution making has taught me a lot...in this process you think that you are together kindred spirit... some took off to the other side when they were assured of something. Take Honourable Phoebe Asiyo for example. At Safari Park we were together, as youth and women negotiating together. In Ufungamano we were together, agitating and piling pressure on KANU and NDP to come and negotiate and move the country together. But when women were assured of more slots through the Kenya Women Political Caucus, Phoebe Asiyo, I remember one morning she was with us at the Ufungamano, and in the afternoon, was being interviewed by Raila Odinga to be a commissioner.... It taught me a lot that there are people furthering certain self-interests only. The political elite mistake however was to think they could take the youth for granted and so nobody was keen on getting their youth participation (Waruku, interview 29/09/2009).

Under the circumstances, it was not surprising that the Ufungamano Initiative entrepreneurs utilised the very exclusionary 1998 Amendment Act as an opportunity to frame contention and the entire enterprise of the resultant Ufungamano Initiative, came to be based on this 1998 Amendment Act.

The role of the Kenya Women Political Caucus leadership in incubating the Ufungamano Initiative

Immediately after the enactment of the 1998 Constitution of Kenya Review Commission Amendment Act, squabbling over the number of positions apportioned to each political party started as each political party insisted on nominating more of its own to the Commission[13] and intensified in early 1999 (Mutua, 2008). This threatened to get out of hand before two women, described by one of the participants in this study as 'the unsung heroines behind the establishment of the Ufungamano Initiative – Honourable Dr. Phoebe Asiyo and Honourable Dr. Julia Ojiambo [14] approached various religious organisations to mediate a political parties stalemate' (interviews: Athman, 12/10/2009; Ocholla, 06/10/2009; Wandati, 17/09/2009). These women leaders further urged the religious leaders to seize the moment to unite the different fragmented constitutional reforms and generic democratisation initiatives. This led to the birth of what came to be the first clear immediate predecessor to the Ufungamano Initiative known as the Religious Community Coordination Team. According to Athman, who served as a commissioner in the Ufungamano Initiative's People's Commission of Kenya and a member of the Executive Council of the Supreme Council of Kenyan Muslims (SUPKEM) at the time, and who was privy to the behind the scenes dealings:

> They [Dr. Julia Ojiambo and Dr. Phoebe Asiyo] quietly went behind the scenes to different religious leaders and talked to them individually and said: 'we have a problem in this country and you must intervene.' They went to Archbishop Gitari, they went to Archbishop Ndingi, they went to Shashi Raval (the head of the Hindu Council at the time), they went to the Muslim Council.... Primarily, those were the initial leaders involved in these discussions, but were later on joined by

[13] Political parties had collectively nominated 21 commissioners instead 13 allocated to them because they could not agree on a formulae to determine each party's worth.

[14] Both Dr. Phoebe Asiyo and Honourable Dr. Julia Ojiambo were key leaders of the original Women Political Caucus but it later split into two grouping and later separate organisations –The Kenya Women Political Caucus and the League of Kenya Women Voters - specifically over what side of the constitutional reform contention i.e. Ufungamano Initiative or the Parliamentary select Committee to support. Dr. Phoebe Asiyo later abandoned Ufungamano Initiative to become a commissioner in the Parliamentary Select Committee's Commission long before the merger (Waruku, interview, 29/09/2009; CKRC, 2005).

> NCCK who had been initially opposed to the idea.... Gitari ...gave it quite a bit of thrust …(Athman, interview 12/10/2009).

More interviews with the Ufungamano Initiative insiders (e.g. Wandati, 17/09/2009; Gitari, 21/09/2009; Ocholla, 06/10/2009 among others) as well as reviews of various internal Ufungamano Initiative documents reveal that the two key members of the Kenya Women political Caucus played a significant role in the movement's emergence. Ocholla (interview 06/10/2009) for instance revealed:

> With the political parties at a stalemate, it was realised that we were going nowhere, and given the fact that the will and desire of the Kenyan people for a new constitution was far greater than the interests that were sabotaging the process … the Caucus led by Hon. Asiyo decided to put the parties down to sit and talk…. She even called the then president and asked him for a specific audience … because the then political atmosphere in the country was very tense.

A confidential document by the Religious Community Coordination Team dated September 28 1999 titled '*Strategy For The People-Based Constitution of Kenya Review Process by the Religious Community in the Republic of Kenya'* provides further evidence of the role of the Kenya Women political Caucus. Specifically, the presence and contributions of Dr. Julia Ojiambo, recorded in various minutes of meetings and internal documents confirm the key role of these two women in these developments.[15]

The initial activities of the Religious Community Coordination Team were crafted as mediation intervention by religious leaders to break the political parties' stalemate over the sharing of their 13 slots in the review commission. The first meeting that took place in April 1999 was chaired by then head of the Anglican Church in Kenya - Archbishop David Gitari (Religious Community Coordination Team, 28/09/1999). All parliamentary political parties, including KANU attended and made what appeared to be substantial concessions as KANU's representatives in the meeting, its Secretary General and cabinet minister, Julius Sunkuli "gave up one of their seats," from seven to six. National Development Party and Ford Kenya followed suit to drop "their" respective one slot claim to the commission (Gitari, interview 21/09/2009; Religious Community Coordination Team, 28/09/1999). It appeared that the Religious Community Coordination Team

[15] For instance minutes of Religious Community Coordination Team Silver Springs Hotel meeting on April 1999; Religious Community Coordination Team *Strategy for the People-based Constitution of Kenya Review Process by the Religious Community in the Republic of Kenya* (28/09/1999)*;* Minutes of Religious Community Coordination Team at the Machakos Garden Hotel meeting 13th and 14th October 1999 to mention but a few.

effort was gaining some grip. However, agreements reached at this meeting still needed to be reconfirmed by president Moi (Gitari, interview 21/09/2009). The supposed concessions turned to be smokescreens meant to hoodwink the Religious Community Coordination Team and the rest of the stakeholders. Moi dismissed agreements reached by other stakeholders including KANU in open discussions and even refused to meet the Religious Community Coordination Team leaders despite their pleas (Gitari, interview 21/09/2009).

Shifting gears and heightening of contention

In May 1999, amid the political parties' acrimony, President Moi buoyed by his newfound strength that the KANU cooperation with the Raila Odinga-led National Development Party had given his party, announced a major assault on the Review Act and as well as the 1998 Safari Park stakeholder agreements. Moi re-launched an old debate to the contention when he authoritatively stated that parliament would be the sole and appropriate body to review the constitution at the exclusion of other stakeholders. He further argued that a people-centred process was not necessary. Instead of using the 4.5 billion Kenya shillings set aside in the budget for the review, Moi stated, this money would be used for poverty eradication programs. He further stated that two good foreign lawyers would be invited to write the constitution, and pass it over to parliament for debate and ratification (Wandati, interview 17/09/2009).

In Moi's reasoning, 'Wanjiku (denoting an ordinary Kenyan female) was not interested, nor qualified to participate in the comprehensive reforms.' For him, it was only the busy bodies in NGOs who had been masquerading as the people, who wanted a new constitution when they had not been elected by anybody (Mutua, 2008; Wandati, 2009; interviews: Wandati, 17/09/2009; Zein, 07/10/2009; Ombok, 24/09/2009; Chitinis, 20/10/2009; Aukot, 19/10/2009; Kibwana, 21/10/2009). Of significance here is the fact that this was not the first time Moi was reneging on the promises he had made to the country regarding his commitment to ensuring a new constitution. As such, it was not lost on the Religious Community Coordination Team that the same institution – parliament, through parliamentary political parties that Moi and his sympathizers were rooting for, had created the stalemate. Moreover, other stakeholders especially those allied to NCEC were already opposed to parliament as it was heavily controlled by a one-party executive which was not keen on consensus but on dominance (Njoya, interview 29/09/2009).

Secular civil society (mainly NGOs and grassroots movements), religious organisations and what remained of political opposition parties were alarmed by Moi's May 1999 pronouncements. Immediately after Moi's pronouncements, stakeholders except KANU and NDP, who had been meeting under the mediation of religious leaders, also shifted gear when it became apparent that Moi was not relenting. Indeed, the May 1999 pronouncements and developments leading to, and after it, added to a long litany of broken promises by the Moi/KANU regime and served as the wakeup call for those opposed to Moi and KANU – that if things were to change, unity was paramount (interviews: Omtatah, 31/03/2010; Athman, 12/10/2009; Wambua, 13/10/2009; Wandati, 17/09/2009).

The pronouncement, seen as a diversion by Moi, led to the hardening of positions by the contending actors (civil society and opposition political parties) who identified Moi's chicanery as the single most threat to a comprehensive Review Process (Mutua, 2008). These groups also wondered why foreigners would be involved in a process that was purely a Kenyan affair and whose process and stakeholders had been agreed upon in open negotiations, enacted by parliament, and assented to by Moi himself (interviews: Gitari, 21/09/2009; Kuria, 26/09/2009; Ombok, 24/09/2009; wa Gathaka, 29/09/2009; Beatrice, 30/09/2009; Lethome, 02/10/2009; Kamau, 13/10/2009; Ghai, 23/10/2009; Omtatah, 31/03/2010; Mwanyumba, 07/04/2010; Mwachofi, 27/09/2009). In opposing Moi's position, the Religious Community Coordination Team further argued that his proposed formulae amounted to breaking the law, and that they 'could not, in conscience, sit by and continue to watch the flagrant disregard of the law by the law makers and parliament… [and therefore] moved in to fulfil the law, not to break it' (Ufungamano Initiative, 28/09/2000). They further framed their contention as based on 'justice and fairness founded on *morality and the will of the people',* which in their view was, 'the highest law' (ibid).

The Religious Community Coordination Team together with Kenya Women Political Caucus now started reaching out to civil society and like-minded opposition political parties to build consensus on the need to salvage the process and allow popular participation in the constitutional reforms (Religious Community Coordination Team, 28/09/1999; Athman, interview 12/10/2009). The Religious Community Coordination Team met again in June 1999, this time alone with the Kenya Women Political Caucus to plan a way forward to take Kenya out of what

they framed as a 'deep crisis [epitomized by]… the slime of corruption, environmental degradation, robberies, murders, family violence, ethnic violence, general insecurity, land grabbing and many other vices' (Religious Community Coordination Team, 28/09/1999: 4). They posited comprehensive review of the basic rules of governance as the only antidote for this malaise.

Possibilities of the religious community taking over the stewardship of the constitutional Review Process in line with the spirit of the 1997 Act and as amended in 1998 also emerged during this June 1999 meeting (*ibid*). The proposal was for other stakeholders from secular civil society and opposition parties under the stewardship of religious organisations, now seen as neutral arbiters,[16] to lead the people of Kenya in an extra-parliamentary Review Process (*ibid*). Further, a vocabulary of claims to rights of the Kenyan people to make their constitution was further entrenched in the reform struggles during this meeting. Specifically, the argument was that 'a country's constitution is a covenant which all people of a nation commit to govern themselves in justice, peace and prosperity for all…and all the people of Kenya should be fully involved (*ibid*: 5; interviews: Wandati, 17/09/2009; Athman, 12/10/2009).

At the same June 1999 meeting, a leaner taskforce made up of four persons (that included Dr. Julia Ojiambo of the Kenya Women Political Caucus, Said Athman of Supreme Council of Kenya Muslims, James Mageria and Rev. Harold Mwang'ombe of the Anglican Church) was established to think through a strategy to make a 'people-based constitutional Review Process by the religious community possible' (Religious Community Coordination Team, 28/09/1999). This taskforce continued working on the strategy, which was presented to Religious Community Coordination Team on September 3, 1999 as *Strategy for the People-based Constitution of Kenya Review Process by the Religious Community in the Republic of Kenya* (*ibid*).

The strategy had a clear plan on the need to establish a parallel process complete with timelines for doing so. A key recommendation was for the Religious Community Coordination Team to retreat on October 13 and 14, 1999 to review and approve the strategy and make a covenant

[16] Note the fluidity in the position of religious institutions in this case to confirm Gramsci's (1971) view that civil society, of which the religious institutions are part of, as intertwined in a hegemonic historic bloc and can serve as a stabilizing, conservative force that ensures popular consent (Katz, 2006; Bond, 2006; Price, 2003); or, can be a transformative anti-systemic force of counter hegemony in the economic, political, social, and cultural spheres (Mati, 2008).

among the actors. As the development of the strategy continued (between June and September 1999), the Religious Community Coordination Team together with the Kenya Women Political Caucus continued 'reaching out to individual political parties including Democratic Party, Ford Kenya, Social Democratic Party and also smaller parties, as well as NCEC and many other civil society and social movement organisations on the need to agree to come together. It was after these stakeholders' agreement that the need to have in place a structure with specific leadership to give the emerging movement a shape and voice was deemed necessary' (Athman, interview 12/10/2009).

On 13th to 14th October 1999, the Religious Community Coordination Team leadership, representing most faiths in the country, retreated at the Machakos Garden Hotel ostensibly to 'pray for the country in the face of Moi and KANU's hard-line stance' (Religious Community Coordination Team, 14/10/1999). The retreat approved the strategy and further reinforced the need for a parallel process as a new repertoire of contention in the struggle for constitutional reforms in Kenya. The formative framing of contention was that the religious community, besides being a majority of Kenyans, were also the voice of reason and had the moral authority to legitimately take a positive and redemptive action in conjunction with the will of the people of Kenya, to change the country for the better (*ibid*). The religious leaders gathered in Machakos saw themselves as 'divin[ely] called and [with a] mission which ordains justice and dignity for all men and women […as well as] morally obligated to proceed with the stalled Constitution Review Process in the Spirit of the Constitution of Kenya Review Act, 1997' (Min 1/99 of the Machakos meeting of Religious Community Coordination Team Leaders, 14/10/1999). In this meeting, the present religious leaders further argued that they needed to urgently do what was right to create a new, peaceful, prosperous and united Kenya (*ibid*).

A key outcome of the Machakos meeting was a resolve to take the process forward in case the political parties refused to accede to the formula that the religious leaders had suggested i.e. 'KANU, 5 seats; Democratic Party, 3 seats; National Development Party, 2 seats; Ford Kenya, 1 seat; Social Democratic Party, 1 seat; SAFINA, 1 seat' (Report of Machakos Meeting of RCCT Leaders, 13-14 October 1999: 6). Thereafter, the RCCT leaders wrote to the Attorney General, giving him a one-month ultimatum to convene a stakeholder consultative forum to confirm these configurations so as to redress the problems with the Act. Failure by the Attorney General to do

this, they warned, would result in the Religious Community Coordination Team leaders taking their own initiative and convene such a meeting (Athman, 12/10/2009).

In the days following the Machakos meeting, a flurry of activities intensified consultations among many stakeholders. For example, there were religious leaders' meetings on October 26, 1999 and again on November 2, 1999. These meetings continued strategizing on how to get other stakeholders, specifically political parties and secular civil society on board. A preliminary stakeholder's meeting on December 3, 1999 brought on board many of the secular civil society actors as well as most of the opposition political parties. Finally, on December 15-16th 1999, with the ultimatum on the Attorney General having lapsed, the Religious Community Coordination Team made true their threat. They convened a Stakeholder Consultation Forum at the Ufungamano House. It was this convention that launched a parallel Review Process.

The declaration at the end of the two-day Stakeholder Consultation Forum meeting communicated a clear consciousness and a claim to sovereign rights of the Kenyan people to make their own constitution, and that they were doing it. Specifically the declaration stated:

> **KNOWING** that a constitution is ultimately the expression of sovereign will of the people.
>
> **CONSCIOUS** of the fact, the right and wishes of the people of Kenya to make their own constitution through a people-driven Review Process has been compromised by certain sectors of the political class.
>
> **WE** the people of Kenya gathered here at the Ufungamano House in Nairobi, under the stewardship of the Religious Community **DO HEREBY LAUNCH** the Constitution of Kenya Review Process by the people of Kenya.
>
> The Mechanisms, procedure and timetable of the Review Process will be announced in due course under the guidance of the Steering Committee, which shall include women and Youth [**Bold upper case emphasis in original**] (Ufungamano Initiative, 16/12/ 1999).

The Ufungamano Initiative's process, despite its lack of legal backing, did pose a crisis of legitimacy to the Raila Odinga-led Parliamentary Select Committee that was formally announced on the same day (December 15, 1999) to yet again collect views of Kenyans and propose amendments to the 1998 Constitution of Kenya Review Commission Amendment Act. The announcement of the two parallel processes heightened the stakes in the process and for a while,

there seemed to be no turning back for both groups. The game moved from the accountability politics usually played by social movements to each group competing to win Kenyans to its side.

The relative success of the Ufungamano Initiative against its rival in this regard, lay in being the first constitutional reform Initiative in Kenya that had succeeded in fashioning a national framework that brought together nationally diverse groups. This begs the question, how did the Ufungamano Initiative succeed where similar attempts had failed in the past? Below is a summary of the explanatory factors.

I argue here that a congruence between the May 1999 Moi pronouncement and his assault on both the earlier IPPG agreements and the subsequent CKRA 1997, which had further been polished through the Safari Park agreements and the subsequent Constitution of Kenya Review Commission (Amendment) Act of 1998, were the opportunities and constraints that profoundly shaped the next phase, pace and character of the constitutional reform struggles in Kenya. The Ufungamano Initiative utilised the same 1997 Review Act, and the 1998 Constitution of Kenya Review Commission (Amendment) Act as a political opportunity initially for the exercise of accountability politics, to galvanise different actors in forming the People's Commission of Kenya (PCK). As it was to be, it was only KANU and NDP that did not send their nominees to the Ufungamano Initiative's PCK. The centrality of the 1997 Review Act and the subsequent 1998 amendments as a political opportunity is for instance underscored by one of the resolutions of the October 13 and 14, 1999 Machakos meeting. Minute 1/99, of this meeting for instance stated that 'the Kenyan people were morally obligated to proceed with the stalled Constitution Review Process in the Spirit of the Constitution of Kenya Review Act, 1997.'

The second element of the political opportunities was the discontent borne out of broken promises by the regime. The narrative above has shown the existence of a convergence of opinion that the Ufungamano Initiative emerged out of frustrations with KANU's refusal to agree on a people centred and led process. The Ufungamano Initiative's constituent struggles were therefore joined together by a shared 'systems of reference' (Melucci, 1989) in the form of a collective outrage over an anti-democratic state, which would not acquiescence to demands for a 'people driven' comprehensive review of its contract with its citizens (interviews: Khairallah, 26/09/2009; Lamba, 23/10/2009; Ndubi, 24/09/2009; Zein, 07/10/2009).

It is this collective sense of outrage and a common target that enabled people to initially self-organise in confronting shared problems. To demonstrate this, a participant in this study for instance noted:

> It became clear that the problems we confronted were rooted in a bad constitution of the country. That is why we would go to court to seek redress but could not succeed. That is why we had the rich flashing out fake title deeds and would have the state on their side to oppress the poor. We started agitating not just against the evictions but also for changes in the basic law of the land. We started educating others and ourselves on the key fundamentals of the constitution (Rema, interview 22/03/2010).

The emergence of the Ufungamano Initiative therefore confirms the centrality of cognitive consciousness in incubating protests and struggles as emphasised by scholars of different schools of thought and disciplinary orientations. Within social movement scholarship for instance, the new social movement theory scholars emphasise identity consciousness based on among other things, culture, status, ideology, generalised beliefs, values, ethnicity, gender, and sexual orientation of actors as the ultimate glue in the mobilisation of collectives (Buechler, 1995; 2000; Cohen & Arato, 1992; Escobar & Alvarez, 1992; Habib, 2008; Melucci, 1996; 1989; 1980; Pichardo, 1997; Touraine, 1981). The famous Nigerian writer Chinua Achebe (1989: 6-7) argues:

> To answer oppression with appropriate resistance requires knowledge of two kinds. Self-knowledge by the victim means in the first place an awareness that oppression exists... secondly, the victim must know who the enemy is. He must know his oppressor's real name, not an alias, a pseudonym, or a nom de plume!

A citation from a speech by the Burkinabe revolutionary, Thomas Sankara (1985) provides further arguments on what it takes for changes in society to happen. For him, 'you cannot carry out fundamental change without a certain amount of madness. In this case, it comes from nonconformity, the courage to turn your back on the old formulas, the courage to invent the future.' In the Kenyan case, we showed in chapter four how much of such consciousness and courage initially emerged from the ranks of the elites. Such cognition was initially a product of intra-elite struggles. Over the years, this consciousness cascaded through advocacy and civic education to the general Kenyan population resulting in a consensus on the need for reforms,

albeit contestations remained on the nature and desired outcomes of such reforms by different groups of actors.

The contested mandate of the religious community's leadership

Despite its success in bringing forth a diverse constituency together in the push for a people-centred Review Process, the Ufungamano Initiative was riddled with many contradictions and cleavages, which served both as opportunities but also constraints in its work. Specifically, the existing mistrust between radical civil society and opposition political elites, offered an opportunity for moderation by religious leadership. However, this suggests an indictment on social movements' and other forms of civil society organisations' as well as the political elites' to offer leadership. The mistrusts, as already seen, had been occasioned by successive betrayals already highlighted.

As such, while religious leadership came to be seen as 'more trusted' under the circumstances (interviews: Apiyo, 16/09/2009; Ochanda, 22/09/2009; Odhiambo M., 01/04/2009; Ndubi, 24/09/2009; Kibwana, 21/10/200; Omtatah, 31/03/2010; Athman, 12/10/2009; Wambua, 13/10/2009; Wandati, 17/09/2009), it is instructive to note that there was cautious optimism, if not initial hostility from certain key players especially the National Council of Churches of Kenya, the National Convention Executive Council, and the Youth constituency. NCCK who later occupied pivotal positions in the movement, for instance, seemed unwilling to provide the required leadership at the time of the conception of the movement and failed to be the movements' entrepreneur. This is why the two most prominent Christian forces in Kenya – the National Council of the Churches of Kenya and the Catholic's Kenya Episcopal Conference – were both unrepresented in the first meeting even though they had been invited in the crucial October 13-14 Machakos meeting. While Archbishop Njue, the Kenya Episcopal Conference chair sent apologies on behalf of the Catholic Church, the National Council of the Churches of Kenya did not. In fact, a key leader in the National Council of the Churches of Kenya (the then General Secretary) was said to be initially opposed to the idea and had not attended the series of retreat meetings that made the idea a reality (interviews: Athman, 12/10/2009; Wandati, 17/09/2009).

According to Athman (interview, 12/10/2009), the supposed boycott by the NCCK should be understood in the context of 'National Council of the Churches of Kenya defending their turf.… NCCK was used to leading and in particular the then General Secretary thought that it must be him leading the process.' Nonetheless, a series of behind the scenes negotiations persuaded him to join the bandwagon. Paradoxically, he became the leading voice in the Ufungamano Initiative. A respondent who attended these meeting argued that National Council of the Churches of Kenya's General Secretary Rev. Mutava Musyimi, only agreed to come on board after his demand to steer the process was agreed to by other religious leaders (Athman, interview 12/10/2009). As such, one clearly sees that participation of National Council of the Churches of Kenya as an institution with a huge following in Kenya, pivoted on its General Secretary being allowed to control the process. This yet again further demonstrates how personal interests were at the centre stage of constitutional reform struggles in Kenya. Notwithstanding the above views, the National Council of the Churches of Kenya stance at the formative stages suggests the different roles that different forms of leadership, as cited earlier, play in the evolution and operations of social movements.

There were also further quiet protests against the leadership of religious leaders. Specifically, the radical/progressive sections of civil society (mainly NCEC and the National Youth Movement) were also not keen on it. Some of those interviewed (for example, Wandati, Athman, Wambua, Waruku, and Khairallah) argued that similar to NCCK, the reasons for NCEC's initial discomfort with the religious leadership stewardship of the Ufungamano Initiative must be viewed in the context of hegemonic struggles for the control of the reform agenda.[17] Others (e.g. Omtatah, Odhiambo M.), cited centralist tendencies highlighted earlier in this chapter as the reasons for the same. Indeed the clergy's role has, on the whole, been full of contradictions on many fronts. For example, within the Christian community, while mainstream churches' (mainly Catholics, Methodist, Anglicans and Presbyterians) leadership was at the heart of struggles for change, the evangelicals were on the state's side. This is not to say there was universal unity in the mainstream churches. Within the Methodists for instance, its retired presiding Bishop, Lawi

[17] The argument here is that NCEC which had started as a project of the Kenya Human Right Commission and 4Cs to serve as a political wing of civil society in pushing for a new constitutional framework though which Kenya would be governed, saw in Ufungamano Initiative, a threat to its hegemony in what it called citizens' struggles in constitutional reforms (interviews: Wambua, 13/10/2009; Waruku, 29/09/2009).

Imathiu supported Moi and KANU, while the then Presiding Bishop Nthamburi worked with the rest of the clergy in these struggles against KANU and Moi.

The youth and students movement in a Constitution of Kenya Review Stakeholder meeting held at the Ufungamano house on December 3, 1999 had also warned that every time the religious community had been called to mediate between KANU and other Kenyan interests, the outcome had always been in KANU's favour. As such, the youth and students' movement questioned the impartiality of the clergy. This lends credence to Mutua's (2008) observation earlier in this chapter regarding the religious community leadership being pro-status quo. The NCEC led by activist academics, shared with the students' movement, the scepticism over the clergy's impartiality. Some participants in this study saw a natural connection between the students and youth movements and their professors. Some respondents alluded to the fact that some of the most vocal student leaders were 'mouthpieces' of some academics and politicians. These claims notwithstanding, I submit here, that the contestation on the leadership by religious leaders in the Ufungamano Initiative was a manifestation of mistrust and fears of betrayal. Granted betrayals were not a new thing in Kenyan political struggles, as there are many examples to demonstrate betrayals of the popular will in Kenya,[18] it is important to take these into account in the analysis of internal contradictions within the Ufungamano Initiative as a possible contributor to its ultimate decline.

While it is not my intention to over amplify the role of the religious leadership as a key factor in the Ufungamano Initiative, there is evidence to suggest that for NCEC, it could have been a case of the pot calling the kettle black. Some of its leadership, especially in post-2002 Kenya, have done a great disservice to the reform agenda to the point of being labelled by the likes of Murunga (2009: 19), as 'periodic democrats.' The common thing among both secular and faith based civil society was that there were profound class interests and a general shared uneasiness following the President's suggestion that the reform process being referred to Parliament would

[18] While the contemporary constitutional reform struggles in Kenya were reactionary forces to the avaricious political and economic elite, the leadership of these struggles in many senses have been at the very least non-visionary and contradictory and to some, their behaviour is just history repeating itself as a theatre of the absurd (Phillip Ochieng 2006). There are many examples to demonstrate betrayals of the popular will in Kenya. For instance, in the immediate aftermath of Kenya's independence from Britain in 1963, the political leadership that had played a particularly crucial role in national liberation were disillusionment for many Kenyans. It degenerated into an exploiting class a kin to colonial one that they had supplanted very much along the same lines as observed by the likes of Currie and Ray (1986) and Fanon (1967).

breed chaos in the country. Indeed, these contradictions may help unearth further value-based cleavages between this particular constituency (youth and the NCEC) and the religious groups.

There was indeed an exhibition of such strong value-rational motivations among the members of the Ufungamano Initiative. Ombok (interview, 24/09/2009) for instance captures this well. When asked what his motivations to take part in these struggles were, he stated:

> My conviction is ideological. Firstly as a Christian, I have a duty to challenge the powers that are oppressive to people…. I kept on asking myself why should there be so much poverty, and pain; who are the children in the streets... interrogating into these things, I came to understand that corruption was contributing into all this, and also greed from runaway capitalism. I therefore identified with the poor, oppressed and I also identified with those who wanted to struggle for change because not all the poor were willing to be part of the struggle.

However, it needs qualification that not all participants in this study felt that the religious institutions' theology was radical enough to motivate and mobilise people to act and liberate themselves. On this note, Omtatah (interview, 31/03/2010) argued that 'there was no theological exposition of the struggle in the Ufungamano Initiative. It lacked a strong intellectual content, and a theological articulation of the problems.' Omtatah's position has some merit. Had theological questioning of hierarchy and power structures, driven the Ufungamano Initiative, there might have been the possibility of a people's movement and not just middle-class theologians, secular civil society and political self-preserving activists' movement. In this regard, Chitnis from the Hindu Council of Kenya offers some insight. He confirmed that the Hindu Councils' involvement in the constitutional reform struggles for instance, was more of a self-preservation act, and not transformative in any way.

Arguably, self-preservation was not unexpected given that in Kenya, the Hindu community is mainly associated with the class that owns capital and usually conservative. This is not to suggest that self-preservation is not an important basis for emergence of social struggles. On the contrary, as Tilly (1995) shows, massive changes across the 17th and 18th centuries Europe were initially met with defensive behaviour by large numbers of ordinary people. Subsequently, offensive forms of popular mobilisations popped up to preserve old customs or establish new rights (cited in Buechler, 2000: 4). Of relevance here therefore, is that different social formations, joined the Ufungamano Initiative for different, and usually self-interest reasons. This

would serve as a source as well as manifestation of the cleavages throughout the life of the Ufungamano Initiative.

For the Kenyan Hindu Community, the declining economy, which they attributed to economic mismanagement and bad governance, and the turbulent reactions in the form of riots, demonstrations, mass action, and labour unrests, meant dwindling fortunes for its mainly business oriented membership (interviews: Lamba, 23/10/2009; Chitinis, 20/10/2009). They reacted by joining forces with those who wanted these trends reversed. Lamba (*ibid*), one of the co-conveners of National Convention Executive Council reveals that this response did not come naturally. Rather it took some persuasion:

> Knowing that these organisations are very timid, we knew that it would take a lot of persuasion to bring them in. We wrote to them, and promised to hold their hands and bring them into the convention and take away the fear, and finally to get them to sit down. It was a matter of principle and we walked them through this process, which initially terrified them, to get the confidence to engage with the other actors in the faith sector.

Despite the initial protestations by different stakeholders, the Ufungamano Initiative was possible because religious leaders continued stressing the need for 'unity if they [contenders] were to succeed in undertaking of the people-driven Constitution of Kenya Review Process' (Minute 38/99 of the minutes of the meeting of the Religious Leaders in Kenya discussing the Constitution of Kenya Review Process held on Monday the November 22, 1999 at the Ufungamano House, Nairobi; see also minutes of the meeting of the Religious Leaders in Kenya discussing the Constitution of Kenya Review Process held on Monday November 10, 1999 at the Ufungamano House, Nairobi). The rapidity with which the opposition politicians agreed to make deals with KANU also convinced many in civil society (both religious and secular) of the value of this unity of purpose.

Indeed, by the time of the actual crystallisation of the movement towards the end of 1999 in what came to be called within the Ufungamano Initiative as the *First Plenary* or *Ufungamano I* (December 15-16th), the leadership of the religious community had become widely accepted among the different stakeholders. Participants were reminded of the fact that a segment of the religious leadership had been at the heart of struggles for political reforms in Kenya since late 1980s and were among the first in the country to openly oppose and preach against the one party

dictatorship in the country (interviews: Ombok, 24/09/2009; Gitari, 21/09/2010; Njoya, 29/09/2010; Njoya, 29/09/2010; *Weekly Review* 11/07/1997; 24/01/1997; 05/10/1990). [19] The clergy's role was particularly instrumental. *Weekly Review* (05/10/1990: 3) for instance, wrote of the current day Anglican Church in Kenya then known as The Church of the Province of Kenya: '…the CPK as an institution remains the most resilient focus on dissent, with the political opposition largely having been silenced by the crackdown….' Arguably, it is from this that they received admiration from many Kenyans.

Ordinary Kenyans have always looked to one or more forms of leadership for guidance. The highest trust for such guidance is on the religious leaders more than any other form of leadership. For example, data from Afrobarometer (2006) confirms that Kenyan people hold the religious leaders in high regard and often consult them on various issues more than they consult political leaders and bureaucrats combined.[20] As such, during the Ufungamano Initiative crystallisation, the faith in religious leadership was invoked due to what some paradoxically argued was their neutrality. In the formative meeting (December 15 and 16, 1999), for instance, a leading opposition politician, Kenneth Matiba argued that religious organisations could 'clearly give outlook of the views of Kenyans because they are neutral' (Minutes of the Ufungamano Initiative 15 to 16/12/1999 Consultative Forum). He added that he had constantly advocated that the religious communities assisted by technical support should spearhead the review as happened in South Africa and Philippines. He stressed that religious leaders had a mandate from God to

[19] This notwithstanding, an analysis of the role of religious leadership in the constitutional reform struggles, indeed, reveals that they have perhaps been the force that has ensured the status quo. Whether this has been out of naivety or through calculated schemes is hard to tell. What is clear is that by late 1980's the clergy, especially from the mainstream churches in Kenya given their spread in most parts of the country, coupled with the Muslim clergy's mainstream presence in at least two of Kenya's eight provinces, had built a solid constituency that looked upon them for guidance and direction. Realising this, Moi and his KANU machinery recruited some of them into his schemes. A closer analysis of the role of even those who were not co-opted reveals that their actions at decisive moments in these struggles aided the status quo because many had an aversion for anything that would fundamentally unsettle their relative peace and comfort (refer to the middle tendency discussed earlier in this chapter). Their involvement in political struggles as such, can be seen as essentially to be a product of fear that the direction things were taking under Moi, were breeding perfect conditions for a revolution (interviews: Kibwana, 21/10/2009; Njoya, 29/09/2009). As such, theirs was to convince Moi to give room to his political detractors as well as do something to alleviate the social and economic suffering of the ordinary masses if he were to forestall a bloody revolution or a civil war as was happening elsewhere in the region and Africa in general (Ufungamano Initiative Report of the 15-16/12/1999 consultative forum).

[20] Data from the Afrobarometer data for 2006 reveals that a cumulative percentage of 61.2% of sampled Kenyans consult religious leaders on socioeconomic and political matters. Indeed, to paraphrase Mbiti (1969), Kenyans are 'notoriously religious.'

rescue the Kenyan people and were in a better position than the other actors (secular civil society and political parties) to steer a people driven constitution.

In the same vein, Kivutha Kibwana suggested in the same meeting: 'all people present be established as stakeholders so that the group can have legal standing …religious people who are people of God deal with matters of constitutional review meetings since the parliament has not succeeded' (Ufungamano Initiative, 17/12/1999). This was seconded by the then LSK chairman, Dr. Gibson Kamau Kuria (they were both NCEC co-conveners) arguing that the constitutional review impulse in the country needed direction and religious leaders should form a steering group to spearhead it. This suggests a complete change of position of the leadership lot in NCEC regarding the role of religious leaders. The proposal was debated and agreed through a vote and a declaration that 'this meeting is now the stakeholders' forum as has been elected until further notice' (Ufungamano Initiative 17/12/1999). In choosing to follow this path, those present argued that the religious community would give Kenya a reason to hope, and a sense of reason that set emotions aside.

In the end, the religious leaders won the support of other constituencies and were therefore able to galvanize other actors under the Ufungamano Initiative. While to an outsider, the Ufungamano Initiative's formation may have appeared a radical departure from previous attempts at unity, I suggest here that it was only possible because it was a middle to conservative movement led by a clergy that was able to mediate between the extreme radicalism of the secular civil society on one hand, and the conservatism of the political elites on the other. The success of the Ufungamano Initiative in bringing these different forces together suggests that broad based movements are possible when the resultant movement or alliance can offer a middle ground coalition that has the ability to sponge up the various competing interests.

Nonetheless, as I show in the next two chapters, the Ufungamano Initiative did provide a platform from which some demands were made on a rogue state and was able to force concessions. Moreover, the Ufungamano Initiative forced concessions that avoided a meltdown and checked Moi and managed to bring KANU to the negotiating table. Nevertheless, as revealed from the analysis in chapter six, the Ufungamano Initiative lacked clarity of issues. This was partly because the Ufungamano Initiative brought together radical groups as well as the

traditionally more conservative faith groups that did not necessarily have a common and coherent storyline or, common socioeconomic and political background. The different 'subjective elements of identity consciousness' (Melucci, 1989) within it, therefore imbued the movement with multiple contradictions that were reflected at several stages in the evolution and operations of the movement.[21] Commentators predicted that its weakness would be its heterogeneity. Zein who served as a commissioner in the Ufungamano Initiative's People's Commission of Kenya and later in the Constitution of Kenya Review Commission after the merger of the Ufungamano Initiative process with the parliamentary led process, admits that such an initiative would indeed be beset with 'principle-setting challenges' (interview, 07/10/2009. Kibwana, interview 21/10/2010; as well as Odhiambo, M., interview 01/04/2010 had similar arguments).

To overcome such challenges, a clear set of principles were proposed, openly discussed, and accepted (minutes of proceedings of Stakeholder Consultative Meeting, 15-16, December, 1999). The main set of principles for operations and engagement included the fact that 'the process of the constitutional review in Kenya [was to be] as important as the eventual content of the constitution and the integrity of the process was central to the legitimacy of the constitution' (minutes of proceedings of Stakeholder Consultative Meeting, 15-16, December, 1999). Moreover, it did stress the principles of openness and transparency; inclusivity, accessibility and non-discrimination; accountability, and cumulativeness and self-correction, as key and integral principles to be part of constitution making (*ibid*). However, there emerged clear contradictions worth highlighting. As shall become clear in chapter six, because of structural deficiencies, the main actors within the Ufungamano Initiative did not remain overly faithful to these principles. Nonetheless, the statements of the above principles are cited as some of the enduring contributions of the movement to the constitution reform project in Kenya (interviews: Zein, 07/10/2009; Gathaka, 29/10/2009: Wambugu C., 09/10/2009; Lamba, 23/10/2009; Chitnis, 20/10/2009; Lumumba, 01/10/2009).

Another contradiction was that like its predecessors, the movement remained urban-based and middle class led. As such, it reflected more an intra-elite class struggle than a mass movement.

[21] As already noted, within the Ufungamano Initiative, there were all faiths, ethnicities and ideologies in the country (Ong'wen, interview 09/10/2009) and these did not necessarily agree on the nature of the desired reforms.

This is however not to obscure the role played by many other struggles as exemplified by groups such as Muunganao wa Wanavijiji, SEMA, ILISHE, or Matatu Touts Organisation (MATO) that emerged organically from the grassroots and were driven by people directly affected by state oppression at those levels. But these had remained single-issue movements until they linked up with the middle-class led democratisation struggles.

Conclusion

This chapter has identified the issues and principal actors behind the Ufungamano Initiative. It has outlined the historical specificities, which led to emergence of the Ufungamano Initiative. The chapter has underscored the social, economic and political disquiet in Kenya as a major factor in the emergence of the constitutional reform movements in Kenya. Examples of such dysfunctions have been enumerated and analysed.

Specifically, the chapter has presented evidence to support the argument that the Ufungamano Initiative emerged as a counter to KANU's brinkmanship in the midst of its long history of misrule and the Executive excesses, which had irredeemably mutilated the constitution as a document and covenant defining the power of the people and relationships with their governors (Wambua, interview 13/10/2009). The Ufungamano Initiative became possible from the confluence of interests and frustrations from multiple betrayals by the political elites. It was also a product of a long history of the 'bowling alone' of the different actors and struggles in the constitutional reforms forced into a marriage of convenience by political opportunities of the moment (interviews: Apiyo, 16/09/2009; Wandati, 17/09/2009; Gitari, 21/09/2009; Mwachofi, 27/09/2009; Kibwana, 21/10/2009). The Ufungamano Initiative, the chapter has argued, was an effort to push for not only reviews, but more fundamentally, to reclaim and rewrite the Kenyan people's relationship with their leaders. However, as I show in next chapter, there was a great disconnect between word and deed especially in the framing of 'the people's' agenda within the Ufungamano Initiative. As such, the Ufungamano Initiative only managed to be a people's movement insofar as it was an alliance of various civil society organisations, religious institutions, political parties as well as grassroots movements with a grassroots membership involved in constitutional reforms which had by then, become the rallying and mobilisation tool in Kenya.

The chapter has also argued that the fragmentation and differences between different constituency groups have continued to be replayed in the Kenyan constitutional reform process so much so that it is credible to conclude that politicians, whether in opposition or in power, have based their support or opposition to constitutional reforms primarily on their calculation of the extent to which such reforms would advance or curtail their chances of getting or retaining power. Under such political logic, it is plausible to note that no constitutional reform initiatives have been permitted that would threaten the political and economic interests of the political elites (Nzomo, 2003). As chapter seven shall show, activists and politicians who have positioned themselves as champions of democratic struggles have often times, turned against the very ideals they fought for. This has beset these struggles with selective and opportunistic politics that is devoid of any emancipative or transformative capacity.

The chapter has also argued that despite the centrality of their common or shared grievances, and cognitive consciousness, such factors cannot on their own generate social movements. Instead, it takes resources –key among them, social movement entrepreneurs, who 'can channel their moral and philosophical worldviews and deeply felt convictions to stop threatening developments, redress instances of injustice, promote alternative options to the managing of social life and economic activity' (della Porta and Diani, 2006: 3). The following chapter analyses these qualities under the theme of leadership to show the role of such entrepreneurs in reaching out to each other, in directing mass discontents toward collective action in facing a common adversary – the Moi/KANU regime. However, the Ufungamano Initiative as the chapter has argued, was imbued with multiple contradictions that principally emanated from the broad based nature of the movement. The analysis of such contradictions in form (structure) and operational strategies, which ultimately defined its effectiveness, are the focus of the next chapter.

Chapter Six

Getting Down to Work: The Power and Limits of the Ufungamano Initiative in Framing Contention and Mobilisation Strategies

Introduction

The following words of a leading social movements scholar, Charles Tilly, summarises the principal empirical concerns for the current chapter. According to Tilly (2004: 13):

> Social movements assert popular sovereignty. Although particular movements differ fiercely over who counts as 'the people,' the whole apparatus of campaign, repertoire, and WUNC[1] displays embodies the more general claim that public affairs depends and should depend on the consent of the governed. The claim is not necessarily democratic, since ethnic, religious, and nationalist movements sometimes invest their powers in charismatic leaders rather than democratic deliberation yet still insist that those leaders embody the will of the people at large...the stress on popular consent fundamentally challenges divine right to kingship, traditional inheritance rule, warlord control, and aristocratic predominance. Even in systems of representative government... social movements pose a crucial question: do sovereignty and its accumulated wisdom lie in the legislature or in the people it claims to represent?

Tilly is not alone in noting such tendencies in movements. Early in the 20th century, Robert Michels (1911) observed that organisations, including membership based, inevitably tend toward oligarchy, authoritarianism, and bureaucracy as top leaders, whether member controlled or not, develop a strong personal interest in maintaining their powers and privileges, thereby lessening members' influence. Enjolras and Waldahl (2008) citing Lipset, Trow, and Coleman (1962), state that three factors lead to the development of oligarchies in the governance of organisations:

> First, large-scale organizations give ... officials a near monopoly of power. Second, the leaders want to stay in office since they may get prestige and material benefits from their positions. Third, the member may be passive. Although high participation is not necessarily a sign of democracy, the maintenance of effective opposition to leaders requires membership participation (Enjolras and Waldahl, 2008: 1).

[1] WUNC refers to worthiness, unity, numbers and commitments. For a detailed explanation on this, please refer to chapter five.

This chapter analyses three key parameters within the Ufungamano Initiative: the role of leadership in issue framing, mobilisation, and structure, and the relationships among them. Specifically, the chapter analyses the role of leadership in decision-making, and the relationship between the Ufungamano Initiative and the Kenyan people. The chapter's central thesis is that Ufungamano Initiative had multiple internal contradictions especially between its rhetoric in framing contention (pushing for a people-centred and driven constitutional reform process) and its practice. The chapter argues that these contradictions were products of: 1) heterogeneity of actors and interests, which led to fragmentations in the struggle; and, 2) the movements' mobilisation structures and strategies. The key argument advanced from the Ufungamano Initiative case therefore, is that leadership matters, particularly in decision making, in framing contention, as well as in establishment of movement structures. There are multiple cleavages emanating from the politics involved in the three aspects of the movement, but these must weave together to give a movement a purpose, structure and direction.

From this analysis, the chapter argues that the Ufungamano Initiative's framing of contention was premised on Jean Jacques Rousseau's political philosophy whose democratic vision of community politics is enshrined in rights of citizens to direct democratic participation in the determination of the affairs of their own polity. In the case at hand, the Ufungamano Initiative framed its contention on an inalienable right of citizens to participate in writing their own constitution. However, as argued in the current and subsequent chapters, internal practices and decision-making powers and structures were deficient in ensuring maximum Kenyan people's participation. This is because decision-making powers concentrated on a few leaders. The chapter builds on Marx's criticism of liberal democracy which he argues is framed in the 'language of equality, solidarity, emancipation, and the transformations of existing power relations' (cited in Held and McGrew, 2003: 114) to show that in the absence of sufficient dispersal of such authority, the movement depended heavily on a few leaders.

Other aspects analysed in this chapter include: 1) the nature of resources mobilised to steer the movement; and, 2) linkages between the grassroots struggles and the Ufungamano Initiative as a nation-wide struggle, and especially, the nature of their participation in shaping the agenda of the movement. The specific questions answered include: what was the nature of participation, mobilisation and accountability (upward, horizontal and downward) within and between Ufungamano Initiative and its constituent groups? The chapter addresses the

question of how these contradictions contributed to, or hindered the Ufungamano Initiative's work. The chapter further elaborates on the argument in the previous chapter, that is: the Ufungamano Initiative was made up of strange bedfellows. The goals of the constituent struggles at the heart of the grassroots and the elite's movements were not always in congruence with each other. In fact, at times, certain goals were diametrically opposed to each other. This inevitably limited Ufungamano Initiative's effectiveness and ability to continue being a united force. This consequently suggests a reason for the 'haste' with which many of the Ufungamano Initiative stakeholders succumbed to the overtures from the state controlled process to agree to a merger process.

The chapter is organised into four main sections. The first section introduces the general analytic frame utilised in this chapter. Here the role of leadership is stated to be key in the action phase of the movement. The next section analyses how the Ufungamano Initiative framed demands and its strategies for contention. Further, the chapter deals with the questions of the institutional/organisational structures established to ensure that the Ufungamano Initiative achieved what it set itself to do as well as how these structures related to one another to ensure upward, horizontal and downward accountability within the movement. The critical question to address here is: how did structures contribute to, or hinder the Ufungamano Initiative's work? The section also deals with the question of the relationship between leadership and the structural context in mobilising capacities and resources to steer the movement in its constitution reform struggles in Kenya, before offering a conclusion.

The role of leadership in the Ufungamano Initiative action phase

The role of the Ufungamano Initiative leadership is analysed in this chapter as an explanatory variable for the movements' operations, in that it framed demands, determined strategies, mobilised structures and repertoires of action, which in turn had a bearing on the movements' internal coherence and effectiveness, and in effect, its power and limits, successes and failures (See Tarrow, 1998; Morris and Staggenborg, 2004 for similar arguments). By taking into account the role of leadership in this analysis, the discussion here builds on the stages in social movement's existence – incubation, action and institutionalisation (Nasong'o, 2007; Katumanga, 1999; Hoffer, 1958) – cited in the previous chapter, to argue that, as the Ufungamano Initiative moved to action phase, the framing of contention determined its action strategies as well as structures crafted to enable it to contentiously participate in the

politics of constitutional reforms in Kenya. As such, the role of leadership for the Ufungamano Initiative is analysed in relation to negotiating the 'unfamiliar' path it chose to travel in the Review Process.

As already stated in the last chapter, part of the criticism for earlier versions of the political process model was its neglect of role agency plays through leadership in movements' emergence and operations. This deficiency in the model has been redressed in works of scholars such as Goldstone (2001), Aminzade et al. (2001) and Morris and Staggenborg (2004), among others, who have emphasized the importance of leadership in social movements. Following Morris and Staggenborg (2004), I argue that movements' leadership matters. By performing various roles, movement leadership is critical at various stages of its development. According to Morris and Staggenborg (2004: 171), movements' leaderships specifically 'inspire commitment, mobilize resources, create and recognise opportunities, devise strategies, frame demands and influence outcomes' (See also Blumer, 1951; Lang and Lang, 1961; Roche and Sachs, 1955; Wilson, 1973; Turner and Killian, 1987; Marullo, 1988; Staggenborg, 1988; Klandermans, 1989; Melucci, 1996; Robnett, 1997; Herda-Rapp, 1998; Aminzade *et al*., 2001; Goldstone, 2001 for similar arguments).

Morris and Staggenborg's (2004) taxonomy of the role of leadership is attractive for this analysis for a number of reasons. First, Morris and Staggenborg (2004) clearly articulate the differences in the type of leader(s) a movement requires at different stages in its development. Second, they recognise the complex, evolving, dynamic, and sometimes conflicting, requirements for leadership function within movements and outside the movement. Within the movement, leaders mobilise and inspire participants while articulating and linking the movement to the larger society (Gusfield, 1966. See also Turner and Killian, 1987; Marullo, 1988; Staggenborg, 1988; Klandermans, 1989; Melucci, 1996; Robnett, 1997; Herda-Rapp, 1998; Aminzade *et al*., 2001; Goldstone 2001 as cited in Morris and Staggenborg, 2004: 171). This means that leader(s) needed at the incubation phase, may not necessarily be the best leader(s) for the action phase, or the institutionalisation phase. This suggests that different leadership roles metamorphose over time in social movements. In some cases, the same person(s) can perform the different roles but in others, new leadership evolves to fill a need in the movement (Katumanga, 1999; Gusfield, 1966).

I term such developments *diffusion of social movement leadership* among the different levels, members and structures. Such leadership diffusion served as a strategy that ensures that roles

and responsibilities are spread to many movement members. Such dispersal of leadership allows for greater influence and roles for various members of the movement. Indeed, within the Ufungamano Initiative, Kibwana (interview, 21/20/2009) alluded to such diffusion when asked to situate where the ultimate leadership of the movement lay. He argued:

> When social forces and citizens congregate for collective action, how do you define leadership? In the Ufungamano Initiative, one could say that the religious leaders who were the chairs were leaders. But then, within the leadership, there were so many components reflective of the many important things that were done so that things could go on. Therefore, maybe the leadership is embodied in the people that defined the agenda, because there were many leaders at different levels. So if really one wants to define a movement leadership, one has to look at what kind of influences different actors within the movement had (Kibwana, interview 21/10/2009).

The Ufungamano Initiative narrative suggests that different leaders evolved at different stages in its development, to perform different roles especially between the incubation and action phase. As such, those who played a leading role in incubating the movement were not necessarily the leaders that led the action phase. Nonetheless, the performance of the different roles in movements is not necessarily mutually exclusive. Different roles can be performed concurrent to each other and by either same or different actors (Hoffer, 1958; Katumanga, 1999; Nasong'o, 2007). The dualism of these developments within the Ufungamano Initiative is analysed and explanations for the same offered below. The discussion is organised thematically by functions performed by the Ufungamano Initiative leaders. These included strategic decision-making (including creation and/or, recognition and utilisation of political opportunities) in emergence and operations; empowerment and inspiring commitment among followers; framing demands and strategies for contention and mobilisation; determining mobilising structures.

The Ufungamano Initiative leadership and strategic decision-making

Leaders are strategic decision-makers in emergence and operations of social movements. Through analysing the emergence of the Ufungamano Initiative in the previous chapter, I showed that leaders are the 'political entrepreneurs who mobilize resources and found organizations in response to incentives, risks, and opportunities' (Morris and Staggenborg, 2004: 171) while supporters make rational choices to follow effective leaders (McCarthy and Zald, 1973; 1977; Oberschall, 1973; Morris and Staggenborg, 2004). These aspects were displayed in the Ufungamano Initiative in various ways. From the very beginning the launch

of a parallel process by the Ufungamano Initiative was a strategic decision. As highlighted in chapter five, there were lengthy consultations and deliberations before the eventual action to launch a parallel process.

The first meeting that hinted to a parallel Review Process after multiple betrayals by what respondents referred to as the 'political class'; was the meeting in June 1999 by the Religious Community Coordination Team with the Kenya Women Political Caucus cited in the previous chapter. As highlighted in the last chapter, the Religious Community Coordination Team invested in a leaner taskforce to develop a strategy that would make a parallel 'people-based Constitution Review Process' possible. This taskforce consulted widely in its development of a strategy document it called *Strategy for the People-based Constitution of Kenya Review Process by the Religious Community in the Republic of Kenya* (discussed in details in the last chapter). The merits for launching a parallel process as espoused in the strategy paper were presented and debated in numerous forums before formal adoption by the Machakos Garden Hotel meeting on October 13 and 14. The Machakos meeting did more that approve the strategy. It 'made a covenant among the actors' (Religious Community Coordination Team, 14/10/1999).

The analysis of the steps and processes leading up to the adoption of a parallel process (dealt with in detail in the previous chapter), suggests that all these steps were careful and strategic. Moreover, it also suggests that the religious leaders were more cautious than abrasive with the KANU regime. It required skilful and strategic leadership to realise that politics of the street – peaceful mass protests, that NCEC allied organisations, including *Chemi Chemi ya Ukweli* (part of the more radical faith based civil society) had been calling for – was not getting the Moi/KANU regime to break the stalemate deliberately created by political elites. As such, innovative ideas were needed to apply pressure and coerce the state into some compromise (minute 7/99 of December 3, 1999 meeting).

Strategic decision-making required clarity of thought and ability to recognise and create opportunities. As highlighted in the previous chapter, this was evidently exemplified by the role played by the leadership of the different stakeholders during the Safari Park negotiations between May and October 1998. While these may not have been framed explicitly as political opportunities at the time, read conjunctively with later developments in 1999 that emphasised fidelity to the Safari Park and previous IPPG agreements in the face of Moi's obstinate resistance to a people-centred Review Process, one sees clear recognition of the Constitution

of Kenya Review Act 1997 and the subsequent 1998 Amendments after protracted Safari Park negotiations as political opportunities (interviews: Ndubi, 24/09/2009; Lethome, 02/10/2009). This is because the Ufungamano Initiative entrepreneurs utilised Moi/KANU's infidelity to these agreements to incubate a movement and frame contention.

As Ibrahim Lethome, a former People's Commission of Kenya and later Constitution of Kenya Review Commission commissioner pointed out, after Moi's May 1999 pronouncement reneging on the promises of the 1997 Constitution of Kenya Review Act, other stakeholders, especially the Religious Community Coordination Team realised that there would be no progress.[2] From then onwards, Lethome argued, they went back to the same Act that many had dismissed as unworkable: 'all what we now wanted to do was just go on and implement the Act, collect the people's views and come up with the draft constitution as the Act had stipulated' (interview, 02/10/2009). This, I argue, was because the Ufungamano Initiative entrepreneurs recognised the 1997 Review Act, despite all its flaws, as an opportunity around which they could mobilise for accountability[3] of the Moi/KANU state.

But political opportunities were not present only in internal Kenyan politics. As Wandati (interview, 17/09/2009) noted, the 'opportunities were also from the changes taking place globally at that time. Demands for accountability and transparency, and multi-partyism were supported by readily available cash from Western donors channelled to NGOs.' Building further on this, Wandati (*ibid*) stated:

> Because a majority of us in the Ufungamano Initiative were not your orthodox religious organisations, but rather quasi-religious NGOs, we knew the NGOs speak; we knew the NGO culture. So we wrote proposals and because the language and the demands could be paid for, it became easy for us to mobilise for donor funds for some of the activities that we wanted to do.

The willingness of these Western donors to fund civil society activities must, as I indicated in chapter four, be seen within the broader context of the fiscal austerity reforms that the IMF and the World Bank had been pushing in Kenya. By 1999, the effects of these Structural Adjustment Policies had made the Moi/KANU regime quite unpopular. The deep corruption, land grabbing, economic mismanagement, and blatant abuse of human rights added fuel to

[2] The full import of this pronouncement is discussed in chapter five.
[3] This is discussed further in the section on framing demands and strategies for contention.

the discontents leading to greater pressure on the Moi/KANU government (Raiji, interview 14/10/2009).

As already seen in chapter four, the economic meltdown in Kenya in the 1990s, is widely acknowledged to be one of the main harbingers of contemporary constitutional review struggles (interviews: Odenda, 07/10/2009; Rema, 22/03/2010; Chitnis 20/10/2009; Kibwana, 21/10/2009; Nyabinda, 25/05/2010. See also Mutua, 2008; Cottrell and Ghai, 2007; Murunga, 2007; Mutunga, 1999, Maina 1998; Ngunyi, 2001). These also ensured citizens of different social economic classes collaborated in collectively confronting the conditions they faced. Odenda (interview, 07/10/2009) advanced similarities with the rest of Africa at the time when he argued: 'after 1990, there was a wind of constitutionalism going on in most of Africa. Regimes that had been draconian – the military type and other dictatorships were all going for new democratic or multiparty constitutions.'[4] Mkandawire (1999: 121), explains the then wind of change on the African continent as aided by 'liberalisation of the market [which] weaken[ed] the state's ... capacity to use patronage to keep its supporters in line or to buy off potential challenges...'

These new constitutional dispensations across many Sub-Saharan African countries served as reference points for the Ufungamano Initiative. According to Odenda, South Africa, the last of the Sub-Saharan African countries under minority white rule,

> …was at the time gaining independence [sic] in 1994 and drafting a constitution, which almost became a blue print to a number of countries especially due to the fact that it had eventually gone beyond entrenching civil and political rights to the socio-economic rights in its Constitution. It became an inspiration. A lot of constitutions that followed tended to borrow a lot from the South African 1996 constitutional framework (Odenda, interview 07/10/2009).

[4] Indeed, countries such as Uganda, Eritrea, Ethiopia, South Africa, underwent constitutional reforms while others like Malawi, Tanzania, Zambia, DR Congo, Benin, Burundi, Congo, Namibia, and Nigeria among others, embraced political pluralism sometimes with substantial amendments to the existing constitutions (Cottrell and Ghai, 2007; Whitaker and Giersch, 2009). Mutua (2008: 141) talks of a 'fever of regime change' in Africa in early 1990s noting that 'the early 1990s saw many autocratic governments on the African continent ousted in a fever of regime change.' This fate befell Zambia, Mali, Benin, and Congo among others. In these countries, citizens' uprising forced the regimes to fall. This was followed by national constitutional conferences to negotiate new constitutional orders (Mutua, 2008; Zeleza, 2004). However, KANU managed to 'avoid rout by prodemocracy advocates' because of Moi's ingenuity in speedily repealing the law that had prohibited multipartism (*Ibid*). Thereafter, he was able to 'outmanoeuvre an immature opposition that mistakenly believed that it could beat him at the polls, absent [of] legal and constitutional reforms. That is how Kenya lost an [earlier] opportunity for a national conference, despite calls for such a forum' (Mutua, 2008: 141). Those that refused to accommodate popular demands ended up in great turmoil of military *coup d'état* and civil war – e.g. Somalia, Liberia, Nigeria, Algeria etc.

Ufungamano Initiative leaders also recognised and utilised 'the International Human Rights Conventions that Kenya had signed, but was doing little to implement' as an opportunity to push for accountability on the same (interviews: Ndubi, 24/09/2009; Rema, 22/03/2010). Some of the most relevant of such Conventions included the International Covenant on Economic, Social and Cultural Rights which Kenya had acceded to on May 1, 1972; the International Covenant on Civil and Political Rights which Kenya had acceded to on March 23, 1976; the Convention on Discrimination Against Women which Kenya had acceded to on March 9, 1984; and the Convention against Torture, which Kenya had acceded to on February 21, 1997. The main thrust here, as shall become clear in the discussion under accountability politics, was to highlight the discrepancy between Moi/KANU international obligations under these conventions, and the domestic situation. As such, these conventions offered opportunities for activists to push the Moi/KANU regime to fully embrace these Conventions in the domestic legal system fashioned as accountability politics.

Another opportunity bringing together the different and sometimes ideologically disparate groups that had singularly been struggling, was a common adversary to all of them – the Moi/KANU regime. Here, a Catholic theologian and the theological advisor to the Justice and Peace Commission, Reverend Peter Gichure, offered insights into how this was possible. He argued that as Catholics, they had been campaigning against the Moi/KANU regime's excesses for a while. But they discovered that by acting alone, there was no way they would win:

> It was very easy to be isolated because the state would frame your resistance as 'Catholics or Protestants are against this, or that.' So it was a matter of saying here is a common problem, a problem that affects the nation. It is a cry about basic rights, about food, about clothing, about the country's wealth. So a collective national effort was required. And, because Moi had become very powerful and involved in a lot of impunity, he would hit back at any opposition either by killing or by bribing. But acting collectively we realised there was no way they could kill everybody as the outcry would be too much (Gichure, interview 12/10/2009).

Notwithstanding the advantages the identification of a common adversary brought, as I shall show in chapter seven, this unity of purpose may also explain why groups under the Ufungamano Initiative held on together for as long as there was Moi as a common adversary. Indeed, as Odhiambo M. (interview, 01/04/2010), in referring to the merger between the Ufungamano Initiative and the parliamentary led process, speculated:

> Had the People's Commission gone on for a few more months than it went [i.e. without merging], we would eventually have begun to see its tensions and cracks. It survived united because it was set against the Moi regime's Constitution of Kenya Review Commission (CKRC), which enjoyed less legitimacy. If we did not have CKRC at that point, then we might have seen more pronounced tensions within the Ufungamano Initiative's People's Commission. But that is something we probably will never know.

A former chair of the National Council of NGOs of Kenya, Gichira Kibara, and at the time of interviewing him, the Constitutional Affairs Secretary in the PNU/ODM coalition government, added another dimension to the opportunities available after the 1997 general election. This was in the form of Moi/KANU's new vulnerabilities. Specifically, while 'Moi had won the 1997 elections, he looked weak and vulnerable as he did not have as many MPs in parliament. He looked "beatable". Ordinary Kenyans saw the moment as having a lot of hope of delivering them from Moi's malaise' (interview, 15/10/2009). This explains why the movement was possible at that particular moment because the idea that Moi and KANU could be challenged had diffused more widely to the Kenyan people.

The opportunities highlighted so far point to a fact that an existing order can only become an opportunity, when leaders make strategic decisions to utilise them to incubate as well as drive a movement. Indeed, as Morris and Staggenborg (2004: 171) argue, 'movement leaders [are] strategic decision-makers who inspire and organize others to participate in social movement.' After hatching, a movement moves to action phase. As I argued in the last chapter, the action phase of social movements' leadership is steered by fanatics or cadres who translate discontents into comprehensible terms for the masses in distress and inspire commitment to collective action. Like Gusfield (1966: 137) I argue that in the Ufungamano Initiative, this happened in an environment where,

> The incumbent leadership [wa]s the center of demands… in both internal and external environments. [Leadership was] at the head of a hierarchy of authority and decision-making within the movement. At the same time, in the effort to affect change and to prevent the detrimental damage of a hostile environment, […leadership] operates in an environment of clients, enemies, adherents and potential recruits in which […they had] no authority ...

Successful navigation of such hostilities depended on the leadership being able to make strategic decisions to guide operations, structures, framing of demands, mobilising resources and support, and even in agreeing to negotiate and ultimately merge with the state

led/controlled process. For instance, as I show in the analysis of the merger process in the next chapter, understanding the merger process and outcomes, required an interrogation of the role of the various leaders in the Ufungamano Initiative and their adversaries in these contentions. In this regard, it is imperative to consider the impact of both the appointment of Yash Pal Ghai, a renowned Kenyan legal scholar to chair the state led process, and his subsequent strategic interactions with some key leaders in the Ufungamano Initiative.

The Ufungamano Initiative leadership and empowerment of followers

A primary strategy of the Ufungamano Initiative leadership to win support and inspire was to first empower Kenyans through awareness-raising and citizen rights education (Cottrell and Ghai, 2007; interviews: Gitari, 21/09/2009; Kibara, 15/10/2009; Apiyo, 16/09/2009; Ochanda, 22/09/2009; Ombok, 24/09/2009; Khairallah, 26/09/2009; Kibwana, 21/10/2009; wa Gathaka, 29/09/2009; Wambugu N., 23/10/2009; Lamba, 23/10/2009; Runguma, 13/03/2010; Rema, 22/03/2010; Odhiambo M., 01/04/2010; Mwanyumba, 07/04/2010; Shereta, 07/04/2010; Mwakio, 07/04/2010; Maganga, 07/04/2010; Ochieng, 08/04/2010). Such empowerment enabled ordinary masses of people to 'move from a position of total subservience – accepting everything because you cannot deal with that power– to a level where people are able to stand up, question power and demand change through demonstrations in the streets' (Mwachofi, interview 27/09/2009).

But how exactly did empowerment happen? Here Morris and Staggenborg (2004: 192), provide some insights arguing that organisational theorists 'stress the importance of situational context, in the ways …leaders empower others to lead, and the dispersal of leadership in organizations.' As shall become clear from the analysis of the Ufungamano Initiative structures and relationships between the different components of the structure and desired outcomes, a formal committee responsible for civil education was formed. A clear role of leadership in ensuring certain outcomes through an established structure therefore becomes evident. In this regard, many of this study's participants concurred with Cottrell and Ghai's (2007: 23) observation that 'empowerment of the people, responsiveness to their aspirations, and a common process emphasizing national unity, were important goals' of the reform movement. According to Cottrell and Ghai, the process,

> …succeeded in raising the political awareness of the people, and the results of that were already evident in the way they voted in the general elections of 2002. And it is evident in the way that, since then, people have demanded more accountability and government policies and acts are subjected to greater scrutiny…. By taking seriously the views of the people hitherto reduced to

> passive submission, the review gave them a sense of their own worth and importance. It emphasized the character of a Constitution as a compact, not only between citizens and rulers, but also between people and communities. The process gave individuals, organized groups, and communities the incentive to study the ways in which public power can be organized and exercised. It increased their awareness of the structures of state (2007: 23).

Civic education had a number of impacts on the constitutional reform struggles. First, it politicized the struggles of the subaltern classes by making them aware that the problems they confronted were rooted in a bad constitution governing the country. These people refused to take any more exploitation (Cottrell and Ghai, 2007; Interviews: Rema, 22/03/2010; Gitari, 21/09/2009). A leading member of one of the subaltern movements explained how this happened when he stated that as Muungano wa Wanavijiji, they started agitating not just against the forced evictions in the Kenyan urban slums, but also for changes in the basic law of the land. To be effective, they realised there was a need to be conversant with fundamentals of the constitution.

> When we started educating ourselves on the constitution, we realised that the document did not protect us but only the wealthy and corrupt leaders who had title deeds to the land we squatted on in the slums. Then we started educating other people in the slums. Many people joined us. We had and still do have over 15,000 members from Kibera alone. At one point we had over 30,000 members. Anyone evicted would run to Muungano wa Wanavijiji and we would take up the matter (Rema, interview 22/03/2010).

Secondly, civic education enabled the bridging of grassroots struggles with national struggles. In this regard, Rema (interview 22/03/2010) explained that the successful politicization of the subaltern struggles was possible, because of the support they received from national NGOs like Pamoja Trust, Shelter Forum, and Kituo cha Sheria among others. The interventions of these NGOs through civic education as well as solidarity (through for instance, participation in joint demonstrations) in the struggles, helped in building the confidence of grassroots struggles to join mainstream struggles for constitutional reforms. The civic education by the NGOs, according to Rema, highlighted weaknesses of the constitution but also the discrepancies in areas where the constitution required the government to act in a specific manner and it never did. Through participating in these civic education fora, members of Muungano wa Wanavijiji interacted with experts and gained new knowledge that cascaded further down to the communities and would be useful for

accountability politics (interviews: Apiyo 16/09/2009; Alloys, 21/03/2010; Rema, 22/03/2010). In this regard, Rema (interview 22/03/2010) stated:

> We got skills that we used to create more awareness for people and tell them this is what the constitution of Kenya says about the land. We were able to talk confidently in our forums. If it is the issue of housing, it was very clear international treaties have been signed by the government, we were able to know that there is a convention where the government committed themselves that they would deliver this and that, and were not delivering. Such knowledge added a greater force to our struggle. In that process we were also able to interact with so many people who helped us in participating in demonstrations. When we wanted to demonstrate, you see we would have an MP in the protest. It was then not easy for a policeman to just start shooting or doing anything. They would start negotiating with us to stop protest. Then it was easy to engage them and get our voices as ordinary citizens to be also heard and amplified.

Such interactions brought to the fore a third outcome of the civic education in these struggles. Specifically, solidarities were built across board that helped the middle class struggles 'build their own legitimacy because they had ordinary people's movements like Muungano wa wanavijiji in or with them' (Rema, interview 22/03/2010). The Muungano wa wanavijiji case and its positive interactions with human rights NGOs therefore suggests an interdependence of the two levels of the struggle – i.e. grassroots and the national.

The fourth product of civic education was the creation of widespread awareness that enabled citizens to be well-informed of their rights so much so that when the commissions (both PCK and CKRC) went round the country collecting the views of citizens, people had already developed their positions, and the level of manipulation was minimal (Interviews: Apiyo, 16/09/2009; Gitari, 21/09/2009; Ochanda, 22/09/2009; Ombok, 24/09/2009; Khairallah, 26/09/2009; Kibwana, 21/10/2009; wa Gathaka, 29/09/2009; Wambugu N., 23/10/2009; Lamba, 23/10/2009; Runguma, 13/03/2010; Rema, 22/03/2010; Odhiambo M., 01/04/2010; Mwanyumba, 07/04/2010; Shereta, 07/04/2010; Mwakio, 07/04/2010; Maganga, 07/04/2010; Ochieng, 08/04/2010; Wadenya, 09/04/2010). Julius Wadenya (interview, 09/04/2010), a resident of Kibera explained that the widespread awareness was a result of cumulative impacts of interdependent interactions that had started in the early 1990s with groups such as Citizens Coalition for Constitutional Change sensitising the community on the need to

overhaul the constitution.[5] Such sensitization made the community 'yearn for reforms because most of us were affected by adverse conditions in the country' (Wadenya, interview 09/04/2010). Indeed, the slum areas in Kenyan urban centres have remained hotbeds of struggles. At the time of collecting data for this thesis, I had the privilege to observe two public forums in some of Nairobi's slums, one in Kibera and another in Dandora, on participatory budgeting exercises where members of the Muungano wa Wanavijiji were active participants. This confirms that Muungano wa Wanavijiji has remained a vehicle for mobilising poor urban slum dwellers.

The fifth impact of civic education was to strengthen the resolve and commitment of Kenyans to these struggles. Accordingly, some of the participants argued that such resolve is what ultimately led to citizens voting KANU out of power in 2002 because 'for once Kenyans voted with a clear conscience and not along tribal lines nor did they vote those who had been bribing them with ill-gotten wealth' (interviews: Rema, 22/03/2010; Apiyo, 16/09/2009; Alloys, 21/03/2010; Nyabinda, 25/03/2010; Odhiambo M., 01/04/2010; Mwalulu, 01/04/2010; Mwanyumba, 07/04/2010; Shereta, 07/04/2010; Wandati, 17/09/2009; Kaimba, 19/09/2009; Kibara, 15/10/2009). Cottrell and Ghai (2007) have posited similar reasons for the loss of KANU in 2002.[6]

Clearly, civic education served more than immediate empowerment goals. The impacts enumerated above were not a happenstance, but a result of strategic calculations on the part of leadership. In this regard, Mutava Musyimi, a leading member of the movement who ultimately became its spokesperson, stated: 'we believed that it was right that people be helped to understand why we were doing what we were doing' (interview, 09/10/2009). The Ufungamano Initiative leadership was therefore acutely aware of the need to inspire Kenyans' faith and confidence that the contention would amount to better things for all. This was especially so, because, as Rashmin Chitnis, the Chair of the Hindu Council of Kenya argued, due to the kind of political environment Kenyans were subjected to at the time,

[5] Refer to chapter four for explanations of emergence of the Citizens Coalition for Constitutional Change and its work in mid 1990s.

[6] Notwithstanding the post 2002 developments where the new political elite voted into power in 2002 behaved very much, if not worse than the Moi/KANU elite that they had replaced (Wrong, 2008) as internal fragmentations and sharing of positions in government along ethnic lines took centre stage and the new regime failed to deliver on the very basic promises they had made to Kenyans, it was an empowered citizenry that voted KANU out. It was out of such empowerment that a majority of citizens refused to endorse a new constitution that promised little transformation in the November 2005 referendum. These issues are the concern for the next chapter.

> Most people had a resigned feeling that nothing would make a difference. However, some of the people did have some hope that constitutional reforms would eventually bring institutional reforms. But this was going to be a slow process and could not be done overnight. It therefore needed patience and longer term commitment for these things to go through (interview, 20/10/2009).

In January 2000, Kivutha Kibwana, a leading member of the NCEC and its spokesperson, in a memorandum to the Ufungamano Initiative, aptly captured the issues that the Ufungamano Initiative had to grapple with and the need to remain committed when he wrote:

> If the [Ufungamano Initiative] stands firm, the Raila Odinga-Moi route of constitutional reform will not succeed. It will not accrue the necessary countrywide legitimacy.... However, if they waiver, then MPs who are currently supporting the parliamentary initiative may trickle back to Raila.

Furthermore, to counter the continued attacks by the state propaganda machinery on the legality of their process, the Ufungamano Initiative leadership argued that while the government process had the legality of law, it did not enjoy the legitimate support of Kenyan people (interviews: Lumumba, 01/10/2009; Musyimi, 09/10/2009; Ghai, 23/10/2009; Lethome, 02/10/2009). In this regard, Lethome stated:

> Our argument then was: 'we might not have legal authority but we have the moral authority...' and we kept on repeating that. We had the moral authority because people wanted a constitution reform process that was people driven...and religious leaders, like Mutava Musyimi kept on reminding us: 'we were the moral voice of this country. We have to give guidance to this country.' So we wanted to provide leadership in as far as the Review Process was concerned (Lethome, interview 02/10/2009).

Besides, as I highlighted in chapter five, even though contested by some of the participants in this study, the Ufungamano Initiative leadership also saw a theological basis in their framing of the struggles (interviews: Gichure, 12/10/2009; Apiyo, 16/09/2009; Ombok, 24/09/2009; Gitari, 21/09/2009; Njoya, 29/09/2009). Some religious leaders argued that it was the church's business to get involved in politics and that the church's leadership and mission is just not spiritual, but has in addition to the spiritual, political, social, and economic elements to it. As such, when the government failed, the church had a role to play to force it to respond to the demands of the citizenry (interviews: Gitari, 21/09/2009; Njoya, 29/09/2009; Gichure, 12/10/2009). Gichure (interview, 12/10/2009) for instance argued that Catholics reached out to other faiths, because, besides the common problem facing the country, they were

spiritually convinced that the religious community should rise to the occasion and do something for the country. He commented:

> There was a universal spirituality geared towards the realisation of humanity. Such spirituality is present in all religions whether Muslims or Hindus or Buddhists or Christians or African indigenous religions. They all aim at that peace and harmony that the creator wanted. So religion is more of a vehicle to a higher human goal. And that was the goal that was being attacked from its roots by the Moi regime. So when you are preaching every day about people that they should not kill, and the murder still increases, you feel threatened (Gichure, interview 12/10/2009).

Therefore, for the clergymen, their involvement in fighting injustices had a Biblical basis. Similar ideas were expressed by some clergy and lay people that I interviewed (for example Apiyo, wa Gathaka, Ombok) as well as in the various minutes of the Ufungamano Initiative stakeholder consultative meetings (for example the Machakos meeting; the December 3, 1999 meeting; the December 15-16, 1999 meeting).

Given the inspirations and commitments, whatever resistance and harassment the Ufungamano Initiative faced from the state, it countered them by promising Kenyans that nothing done by those who feared losing power as a result of the envisaged changes would deter them from pursuing their mandate. The Ufungamano Initiative kept on reminding the state that it was the one that had reneged on earlier promises. The Ufungamano Initiative also promised to do everything and as quickly as possible, to speed up the process so that wanton loss of human life was minimized or avoided, and the nation could start addressing other issues like the collapsed economy and the deep levels of poverty. They argued that these were critical issues affecting the country and could not be addressed within the framework of existing constitutional order and governance, which through concentration of power in a few hands, had encouraged appalling levels of corruption and shocking disregard towards human life (The Ufungamano Initiative Stakeholder Support Group, 27/1/2000).

Despite evidence of theological framing, as already highlighted in chapter five, there were nonetheless, contradictions on the nature of the movement itself. Some participants disputed that the Ufungamano Initiative had any liberation theology within it (Omtatah, interview 31/03/2010). The argument here is that if it did, it would have remained steadfast in its push for a new constitution as well as having participatory and emancipatory structures to ensure that the general masses of Kenya would participate and in the process made the Ufungamano Initiative a true people's movement. According to Omtatah, this was evidently not the case –

the Ufungamano Initiative was purely a battle between the elites. In this regard, Omtatah (interview, 31/03/2010) highlighted the contractions with the movement when he stated:

> It is true, the clergy had issues that it tried to address but they were not tactical, they were not radical enough. Moreover, because the Ufungamano Initiative was largely driven by the clergy, there is no way it could be a people's movement….But all in all it did provide a platform from which some demands were made on the rogue state. And they were able to force concessions that avoided a meltdown and checked Moi. They managed to bring us to some talking table of sorts. So it was a necessity. But it did not go far enough because it lacked clarity of issues. And that comes out when Moi goes and Kibaki comes in and then identities changed. You find that the Catholics now feel because Kibaki is a Catholic like them, they do not have to work against government. So the issue now becomes were they fighting Moi and his identity or were they fighting for an ideal? So you find that they were fighting against the oppression yes, but with no ideals to replace the problem they were dealing with.

There is definitely some merit in the above criticism. As shall become clear in chapter seven, the clergy led the Ufungamano Initiative to a merger that greatly compromised chances of any radical reforms. In the section on mobilisation structures in this chapter, I draw attention to the full import of religious institutions in the movement, by showing that the movement depended heavily on existing structures, which were mainly religious institutions. As such, religious institutions' influence in the movement was disproportionate to all other actors. Nonetheless, Omtatah's views may appear to be overly critical and devoid of the realities that the clergy-led Ufungamano Initiative had succeeded where most other struggles and failed before. Besides, it fails to acknowledge the multiple nodes of leadership within the movement as highlighted earlier in this chapter, choosing, instead, to heap blame on the clergy for the movement's ideological indolence. Yes, the clergy were the most visible part of the movement leadership. But the critical question is why did other actors in the movement not push for the type of ideas that they wanted? Omtatah's view also betrays a valorised conception of the role of civil society. Specifically he treads a typical slippery path that leads to conception of African civil society as always in opposition to, and aimed at transforming the state. Omtatah's view of changing identities after 2002, nonetheless brings out the complex and fluid nature of state-civil society relations. He however falls short of

recognizing the means and ends congruence/divergence advanced by Najam (2000) as determinant for this nature of relationship.[7]

Despite the above criticism, the Ufungamano Initiative was able to mobilise support, commitment as well as resources from many Kenyans that ensured an energised, solid and for once, what appeared to be a unified push for a new constitutional dispensation. As such, most of the groups pushing for a new constitution and opposed to state's hegemony in the project, bought into the Ufungamano Initiative idea of a parallel constitutional making project. They became willing participants and even promoted the idea. In this regard, Onyango (interview, 07/10/2009) stated that 'ordinary people in urban streets and village squares, in churches, mosques, and temples throughout Kenya, accepted and identified with the alternative vision that the Ufungamano Initiative was offering.' They showed their solidarity and commitment. They saw the Ufungamano Initiative leadership as partners in their ordinary struggles. People came out and personally sacrificed to this struggle (interviews: Onyango, 07/10/2009; Oganda, 26/03/2010; Raiji, 14/10/2009; Musyimi, 09/10/2009; Waruku, 14/10/2009; Musau, 24/09/2009; Wambugu C., 09/10/2009; Onyango, 07/09/2009; Athman, 12/10/2009; Khairallah, 26/09/2009; Wanga, 08/04/2010; Ufungamano Initiative, 08/08/2000). Musyimi (interview 09/10/2009) for instance, highlighted a general, 'public admiration' for the movement. In this regard, Musyimi stated: 'I get the impression we had massive public support for the process because financially, we raised money from the public. We probably raised something like Shillings 600,000 to 700,000 directly from the public, which was a good indicator of public support.[8]

These assertions find more empirical support from the words of another respondent – Wanga, an ordinary resident of Kibera, who when asked whether they supported the Ufungamano Initiative stated that he and others participated in the activities of the Ufungamano Initiative through its constituent organisations:

[7] Please see chapters two and five for a detailed discussion on Najam's Four-Cs (cooperation, complementarity, co-optation and conflict) model of state-civil society relations.

[8] Minutes of the Ufungamano Initiative Stakeholder Council meeting held at the Mombasa Civic Education Trust on August 8, 2000 and a subsequent press statement specifically thanked the Kenyan public for 'their support …especially in making cash donations' to the Ufungamano Initiative and hoped they would continue doing the same. For Musyimi (interview, 09/10/2009) the public liked the idea that there was a protest movement led this time, by the religious community, and arguably fairly stable, reasonable, and detested anything to do with violence -this was in relation to the militancy of the NCEC in 1997. Musyimi however expressed doubts that the public was fully convinced that the Ufungamano Initiative would get very far with the project.

> Yes I participated in those struggles. There was the Saba Saba Asili, the NCEC, and even Muungano wa Mageuzi led by Orengo. We visited different areas, and attended different rallies by Muungano wa Mageuzi in Mombasa, in Kisumu, and here in Nairobi (interview 08/04/2010).

Another ordinary citizen in Kibera, Wandenya (interview, 09/09/2010) stated that as he grew up, the struggles continued. He 'attended forums within the community that had to do with the struggle for constitutional changes and there were many local community initiatives that attracted support from the Ufungamano Initiative such as seminars and paralegal training.' The above suggests that indeed, there was some support for the movement through the various affiliates of the Ufungamano Initiative at the grassroots.

Despite the generally positive response from Kenyans, the Ufungamano Initiative received mixed, if not open hostility in some parts of the country, specifically in Luo Nyanza. The reasons for this are found in the way the Ufungamano Initiative and its affiliate groups operated. Specifically, the avenues for participation were mostly more accessible to elites at different levels in society. This cut off some potential supporters who felt slighted and also gave their competitors (KANU and the National Development Party) some ammunition. For instance, when the Ufungamano Initiative's Peoples' Commission on Kenya went for a public hearing in Kisumu, a militia group allied to the National Development Party – The Baghdad Boys – attempted to petrol bomb the PCK commissioners. However, there was a general agreement by participants from that part of Kenya that the hostile reactions were a reflection of power struggles for the control of the reform movements' process and outcome as well as control of the subaltern classes in many parts of the country (e.g. interviews: Ochanda, 22/09/2009; Oganda, 26/03/2010; Nyabinda, 25/03/2010; Lethome, 02/10/2010; Zein; 07/10/2009).

Oganda, a one-time leader of the Baghdad Boys militia group, for instance stated that the hostile reception the Ufungamano Initiative received was a reflection of an on-going battle for political supremacy that pitted Raila Odinga against James Orengo in Luo Nyanza (interview, 26/03/2010). This reveals the intra-ethnic cleavages within these struggles as highlighted in chapter four. Specifically, both Odinga and Orengo are prominent sons of the Luo community who had initially been part of what in Kenyan political parlance of the 1990s were called 'Young Turks' of the second liberation. When the doyen of Kenyan opposition politics, Jaramogi Oginga Odinga (Raila's father) died, Raila contested the leadership of Ford Kenya, the political outfit that his father had headed. Orengo, who at the time was the

national vice chair of the party, supported Kijana Wamalwa, an ethnic Luhya in this contest. Raila lost the acrimonious battle for the chair to Wamalwa in an election marred by violence and bloodletting. Bad blood ensued. Raila ultimately left Ford Kenya in a huff for a little known National Development Party in 1997 (Badejo, 2006). He contested the presidency in the 1997 general election and came third. He surprised many when he started his cooperation with Moi, whose government had detained him without trial cumulatively for over seven years. It is from this cooperation that Raila was nominated Chair of the Parliamentary Select Committee on the Constitution (PSC), which was in direct competition with the Ufungamano Initiative.

While Raila Odinga was executing the manoeuvres detailed above, James Orengo headed Muungano wa Mageuzi and was affiliated to the Ufungamano Initiative's stance. The chair of the Ufungamano Initiative's People's Commission of Kenya also happened to be an ethnic Luo and a former Ford Kenya parliamentarian, Dr. Oki Ombaka. It emerges that the Ufungamano Initiative was targeted in Kisumu, not so much because it was adversarial to the state-led process, which by then was chaired by Raila Odinga, but to embarrass Orengo and Ombaka in front of the Luo Nyanza people, a majority of whom have been fanatically sympathetic to the politics of the Odinga family since pre-independence days.

Views from respondents such as Ochanda, Khairallah, Apiyo, Zein and Lethome as well as an article by Cottrell and Ghai (2007) and reports from the *Weekly Review* (23/04/1999) echoed the above narrative.[9] Ochanda (interview, 22/09/2009) for instance stated:

> The PCK commissioners were seen as commissioners that were on the other side. This is exactly why they had a problem in Kisumu because the Ufungamano Initiative was already collecting views from people and were running ahead with their process. By then, Raila had joined Moi. In Kisumu, given that many times the demonstrators were 'owned' by Raila and if you had opposing or different views, or you were appearing like you were against that, definitely the public would throw stones at you. That is what they did to Oki Ombaka on that day.

[9] On the Kisumu violence, Lethome (interview, 02/10/2009) noted: 'I was the Master of Ceremonies and I was injured. I lost my jacket and my pager. I was with Justice Lenaola and Dr. Ombaka...the moment we landed in Kisumu, we met with Orengo who was flying back to Nairobi. Orengo was a veteran of these things and he realized something was wrong. He warned us that all is not well in Kisumu: "boys have been hired to hit you. In fact, they are waiting for you on the way from the airport." On asking him who had hired them? He responded that it was "KANU, Raila and his group." They are the ones who did that... stones and petrol bombs. And the first petrol bombs were hurled at us and landed under Ombaka's seat. Fortunately, Orengo had organized for some well-trained people to rescue Ombaka because we all ran away and left the poor blind guy. What saved us was the building that we retreated to. It was pelted with stones, petrol bombs were thrown in, our equipment was destroyed, our Land Rover was completely burnt.'

Khairallah (interview, 26/09/2009) added another variable to this hostility. For him, it emanated from the fact that

> The powers that be, at that point in time, were very impatient and felt threatened by the activities of the Ufungamano Initiative because it had a very broad and popular support from the masses who felt the Ufungamano Initiative were actually articulating their collective aspirations. It was like the hope people were seeking. They seemed to say 'we have been in many problems and in the Ufungamano Initiative, we see ourselves out of the problems that have for a long time afflicted the very heart and the very soul of society.'

Cottrell and Ghai (2007: 2) are more analytical and observe that the Kenyan constitutional reforms' tale has many morals:

> Perhaps the most critical and also the most obvious, is that constitution making is highly political, with high stakes for those who make a living out of politics, the politicians. The constitution is important for them primarily as the gateway to state power, and personal considerations dominate the national interest.

This suggests existence of variations of opinion on the explanations of what was really behind the scenes in the hostile reception of the Ufungamano Initiative Commissioners in Kisumu. For instance, a former councillor in Kisumu Municipality, and who had been on the local political scene initially as a Trade Unionist since late 1980s – Samuel Nyabinda, had a different explanation. For Nyabinda (interview, 25/03/2010), the hostility towards the Ufungamano Initiative in Kisumu was because it was perceived as delaying real change and the will of the people:

> We had the second liberation heroes and some of the people in the Ufungamano Initiative had not been part of it. Many people could not understand how now, the Ufungamano Initiative could change the system whereas they had not done it when we wanted the repeal of Section 2A. It was not just attacking the Ufungamano Commissioners here in Kisumu; it was their delaying of the process that we attacked. We were saying let us wait and vote this government out with the view that the government coming in had promised change and we knew them well. It was unacceptable for the Ufungamano Initiative to come here selling their ideas.

Nyabinda added that he had witnessed NDP talking to KANU, and had seen agreements between the two parties to give the nation a new constitution. This made NDP support KANU because there was a supposed change of heart in politics. NDP had realised that they could not totally disregard KANU and started playing power games with it. Nyabinda added that 'the parties at the Ufungamano Initiative saw their process as workable not knowing that

KANU had already put its machinery through the provincial administration to every corner of the country to prevent it from succeeding' (interview, 25/03/2010). While Nyabinda's views have their own merit, if one looks at the larger picture in the country and how the Moi/KANU regime was very determined to prevent the Ufungamano Initiative from doing its work, it is an argument that is difficult to sustain. The myopic conception of power and the momentary exigencies that many Kenyan politicians including Raila Odinga plays, further nullifies the claim that the hostile reception was in opposition to the Ufungamano Initiative's reform abilities or credentials. Odinga's own actions in leading his party, the NDP, into cooperation and eventual merger with KANU, and his complicity in derailing the reform train betray other intentions. It is difficult therefore, to see how any progressive change would have come from the Raila/Moi axis when all they had been interested in, was retention of power and dominance, so as to control the eventual outcome of the Review Process.

These differences notwithstanding, there was however, a genuine disquiet even on the part of those who supported the Ufungamano Initiative in Kisumu. This was because the organisation and mobilisation for the Kisumu meeting was done exclusively from Nairobi by Chemi Chemi Ya Ukweli youths (interviews: Ombok, 24/09/2009; Lethome, 02/10/2009). Local supporters on the ground felt slighted by this and wondered why they could not be trusted with local organising (Oganda, 25/03/2010). This played a role in undermining the legitimacy of the Ufungamano Initiative at the local level (Oganda, interview 26/03/2010).[10] This happened despite the claim that the Ufungamano Initiative had representations or a presence in all parts of the country and that this meant that it had people's legitimacy (interviews: Ndubi, 24/09/2009; Musau, 24/09/2009; Lethome, 02/10/2009; Athman, 12/10/2009; Raiji, 14/10/2009). Nonetheless, it also needs to be noted that in an environment highly charged with intimidation from the state, trusting a group close to the movement made sense to the Ufungamano Initiative leadership. Indeed, Zein (interview, 07/10/2009) credits Chemi Chemi ya Ukweli with a sterling job in protecting PCK: 'if it was not for Chemi Chemi ya Ukweli some of the commissioners would have been killed in Kisumu.'

[10] Ombok confirmed that the organisation of public hearing and security of the PCK commissioners was centrally coordinated by Catholic Church affiliated movement, Chemi Chemi ya Ukweli with local groups left only to do the mobilisations of the public to attend such forums. Even then, the religious institutions oversaw most of this work in various parts of the country and sometimes, the secular groups were totally left out. Indeed a former PCK commissioner, Riunga Raiji (interview, 14/10/2009) confirmed this when he stated: 'whenever we travelled to a place where the Christians were the dominant section of the population the local Christian Council, NCCK, the Catholic Church would provide us with transport, accommodation, and generally take care of the expense of the commission, when we went to the Muslim dominated areas the Muslims were very useful, they again provided the facilities and that is how we operated.'

In the end, as a result of this exclusionary behaviour as well as the vested competing interests of various actors, despite the popular support it enjoyed, the movement found it exceedingly hard to achieve universal purchase by the Kenyan people. This is not to say that it did not enjoy much support on the ground. On the contrary, there was strong support for the Ufungamano Initiative in the following provinces: Nairobi, Central, Coast, Eastern, Western and parts of Rift valley and Nyanza (see the Kenyan provincial map figure 6.1 below). The Ufungamano Initiative had a hostile reception in Kisumu in Nyanza province and to some extent, Garissa in the North Eastern Province.



Figure 6.1. Map of Kenya Source http://www.worldofmaps.net/en/africa/map-kenya/political-map-kenya.htm

The Ufungamano Initiative and its framing of demands and strategies for contention

Another key role of leaders at action phase is influencing, if not shaping demand frames as well as strategies for contention. The Ufungamano Initiative captured popular support of the Kenyan public which enabled it to pose substantial challenges to the state through a combination of strategies such as demonstrations, civic education, and public collection of views from Kenyan citizens, so much so that the state had no alternative but to seek ways to save face in light of a growing legitimacy crisis to its own Constitution Review Process (interviews: Ghai, 23/10/2009; Kuria, 26/09/2009; Kibwana, 21/10/2009; Lumumba, 01/10/2009). Key to legitimacy of the Ufungamano Initiative, was its' framing of contention around the constitution making process.

Keck and Sikkink (1998) argue that effective framing of demands must be clear, dramatic, powerful and appealing to shared principles. For Keck and Sikkink (1998: 20) framing 'calls attention to issues, or creates them by using language that dramatizes and draws attention to their concerns.' They identify four key strategies used by movements for this purpose: 1) Information Politics: movements quickly and credibly generate politically usable information and use it where it has most impact; 2) Symbolic Politics: identifying and providing convincing explanations for powerful symbolic events; 3) Leverage Politics: mobilisation of targets to hold up to the scrutiny of peers, thereby exerting moral leverage on the assumption that governments and other targets, value the good opinion of others; 4) Accountability Politics: movements try to convince their targeted actors to publicly change their positions on issues. This happens through exposing the differences between the talk from the walk (Keck and Sikkink, 1998: 22-24).

These four different types of politics in framing contention were evident in the Ufungamano Initiative in varying degrees. To begin with, even before the launch of the parallel process, the Ufungamano Initiative entrepreneurs had initially styled as a pressure group to force the state to acquiescence to what it framed as a people's fundamental and sovereign right in deciding the way they wanted to be governed (interviews: Apiyo, 16/09/2009; Kuria, 26/09/2009). The Ufungamano Initiative entrepreneurs argued that the constitutional reform process should be people-centred, and the commission steering it had to be inclusive of all the social groups in Kenyan society (interviews: Wandati, 17/09/2009; Zein, 07/10/2009; Wambugu, 09/10/2009; Lethome, 02/10/2009; Odenda, 07/10/2009). The Ufungamano Initiative justified this framing by arguing that people were superior to institutions and that:

> Constitutional making is a social, rather than a legal process. Therefore, parliament cannot engage in this process without violating the constitution…. Parliamentary intermeddling only makes the process unconstitutional...only Kenyans acting collectively as a people are above the constitution and therefore have the sovereign right to act outside the constitution while making a new constitution. No institution that is a creature of the constitution can act outside the constitution. It is not therefore any individual or group of individuals that wish to lock Parliament, the Presidency or the Attorney General out of the constitution making process – it is the current constitution itself that locks them out. The occupiers of the offices of the President, Attorney General, and Members of Parliament can only participate in this process as individuals like other ordinary Kenyans (Ufungamano Initiative, 27/01/2000).

For the Ufungamano Initiative therefore, the power of the three arms of government (Judiciary, Parliament and the Executive), lay beneath the mandate of the people who held the ultimate constituent power. As such, the superiority of Parliament in the process of constitutional making did not arise (Kibwana, 2000; interviews: Kibwana, 21/10/2009; Kuria, 26/09/2009). This framing reveals that the movement utilised as its strategy and in the framing of contention, the same constitution they wanted to re-write, to challenge the acts of other contenders. They did this by appropriating for themselves, the 'we the people' tag and promised to carry out the Review Process with all other Kenyans. From a legal viewpoint, the Ufungamano Initiative was correct because the then constitution did not provide a mechanism for its own overhaul.

As the Ufungamano Initiative noted in January 2001, Parliament could only exercise its legislative responsibility within parameters of the Constitution and not outside. As such, the Ufungamano Initiative argued that

> The Constitution of Kenya Review (Amendment) Act [of 2000 that Moi/KANU and Raila/NDP engineered] is clearly unconstitutional and the stakeholders are not legally bound to adhere to it…the stakeholders and the religious community have a moral obligation to ensure that it does not remain in our statute books. The constitutional defect is incurable and fatal to the Act and no amount of amendment or legislative manipulation can salvage it… the Act is terrible fraud on the people of Kenya (Ufungamano Initiative, 27/01/2000).

As such, any attempts by parliament or the government to overhaul the constitution still needed the Kenyan people's participation. In any case, it also required a two-thirds majority of sitting Members of Parliament to even change a clause of the constitution, a number that the Ufungamano Initiative knew KANU and NDP would not marshal in Parliament.

But a critical question still needs to be answered regarding the framing of contention: how specifically did the four forms of politics identified by Keck and Sikkink (1999) empirically play out in the Ufungamano Initiative's framing of contention? Below, I engage with each of them with a view to demonstrate their manifestations in the Ufungamano Initiative's work.

Ufungamano Initiative's symbolic politics

The Ufungamano Initiative framed the constitution as a sacred covenant (symbolic politics) between the Kenyan people and their rulers (interviews: Gitari, 21/09/2009; Njoya, 29/09/2009; wa Gathaka, 29/09/2009; *Weekly Review*, 12/02/1999). As a covenant, it required input from both the ruled and the rulers because, as reportedly put by the former head of the Catholic Church, Archbishop Ndingi Mwana a'Nzeki, 'the constitution belongs to all Kenyans and not just to the political class [sic] in parliament' (cited in *Weekly Review*, 12/02/1999: 8).[11] Several key personalities echoed these sentiments during the two day stakeholder meeting on the 15th and 16th of December 1999 at Ufungamano House that launched the Peoples' Commission. Kenneth Matiba the leader of Saba Saba Asili party for instance argued:

> The real issue is how Kenya is going to be governed. Constitution writing should be with the people. Any attempts to abrogate the inevitable right of the people should be resisted. The President or Parliament cannot usurp the right of the people.... There is nowhere in the world that Parliament has been given the right to write the constitution. The people as a whole are superior to the legislature, executive and judiciary… (Minutes of December 15-16, 1999 Ufungamano Initiative Stakeholder consultative meeting).

In the same meeting, Kivutha Kibwana, the spokesperson for NCEC argued that as citizens, with or without the government, could write their constitution. He further contested the notion that the Ufungamano Initiative was a parallel Review Process, arguing that both the process and the country belonged to the people who were with the Ufungamano Initiative. He called for the rejection of the Parliamentary Select Committee on the Constitution, which was in competition with the Ufungamano Initiative, as it was an illegality under the then existing constitution. Kibwana however, stressed that they were not against Parliament as an institution, and ultimately, the constitutional enactment would end in Parliament as per the 1997 Review Act. A leading female politician, Charity Ngilu, the first to contest for the

[11] The Archbishop was part of the religious leadership that was at the time (i.e. February, 1999) attempting to broker an agreement to break the stalemate over the political parties sharing of their 13 positions in the Review Commission. This suggests an early attempt at framing contention. This is the position the Ufungamano Initiative took later when it was established.

Office of President in Kenya, and the then leader of the Social Democratic Party, eloquently argued that Kenya belonged to all and that they would not allow Parliament to abrogate the ultimate power of the Kenyan people.

Such framing, in a political environment hostile to the same, confirms the nature of civil society as a scene of resistance. However, it is also either paradoxical, or tactical, that Kibwana saw a role for Parliament in the Review Process. Moreover, those gathered at Ufungamano for the December 15-16 meeting that launched the parallel process, still reserved seats for KANU and NDP (who had opted for Parliamentary Select Committee to lead the process). This confirms that the Ufungamano Initiative indeed wanted an inclusive process; a process that would involve ordinary Kenyan people while giving parliament its space to participate as one of the key structures of the state.

Ufungamano Initiative's information politics

Keck and Sikkink (1998) see information politics as the ability of a movement to quickly and credibly generate politically usable information and using it where it will have the most impact (cited in Mati, 2008: 71). Information politics are important for legitimacy of leadership and the demands of the movement. As already pointed out, the movement achieved this through massive civic education and sensitisation of citizens in an effort to win them to their side. As shall become clear later in this chapter, a specific organ within the Ufungamano Initiative was tasked with this role. Another manifestation of information politics critical for framing of contention was in the Ufungamano Initiative's engagement in alternative analysis of the law. It is through such analysis of the 1997 Constitution of Kenya Review Act that they identified political and legal opportunities to utilise as well as the 'flaws' it contested. This was in view of the fact that the First Schedule of the Act had identified secular civil society, religious groups as well as opposition political parties, among the key stakeholders of the process who would be required to appoint some of their own into the Review Commission.

Information politics were also manifested in the key messaging that capitalised on the anxieties created by Moi's refusal to accommodate other stakeholders. The Ufungamano Initiative argued that Kenyans had placed immense value on the envisaged process and that in reneging on earlier promises, the Moi/KANU regime was igniting chaos (Minute 6/99 of the December 3rd 1999 Stakeholders Consultative Meeting). In doing this, Ufungamano Initiative relied on alternative media like Royal Media Services' Citizen Radio and

Television, religious organisations' own communication channels/media, independent newspapers and magazines (Imanyara, interview 28/10/2009). The independent magazines that included *Beyond, Finance, Nairobi Times*, *Nairobi Law Monthly*, and *Society* together with an emerging cellular phone communication medium were also utilised as repertoires for mobilization and marshalling of support through amplification of the forces and voices as the state controlled public broadcaster, Kenya Broadcasting Corporation, remained hostile to the Ufungamano Initiative (interviews: Musyimi, 09/10/2009; Alloys, 21/03/2010; Raiji, 14/10/2009; Wandati, 17/09/2009; Gitari, 21/09/2009; Ndubi, 24/09/2009; Ombok, 24/09/2009; Musau, 24/09/2009; Lenaola, 03/10/2009; Churchill, 02/10/2009; Musyimi, 09/10/2009; Athman, 12/10/2009; Raiji, 14/09/2009; Kibwana, 21/10/2009; Rema, 23/03/2010; Imanyara, 28/10/2009).

Media have always played an important role in what Strang and Soule (1998: 278) refer as '*discursive frames'* which 'arise in the social movement arena [because they] apply characteristic modes of inquiry and representation. For example, newspapers editorialize while television is guided by a particular conception of balanced reporting where two sides of every issue are located and represented.' Citing Tarrow (1989) Strang and Soule (1998: 278) argue that 'media's attention to the sensational produces spirals of more controversial action – and insight that might also be applied to organizational innovation.' Strang and Soule (1998: 271) further state that 'mass media plays a crucial role in amplifying and editing the diffusion of collective action, and much protest today is organized around that fact.' They further cite Spilerman's (1976: 790) explanations of 'temporal clustering of urban riots in the US in the 1960s by arguing that television drew national attention to riots in Newark and Watts, creating a "black solidarity that transcended bounds of communities."' Therefore, as Oberschall (1989) observes, there was a contagion effect as 'sit-in tactic diffused via the mass media: students watched what other students were doing on the news and then staged their own sit-ins.'

Strang and Soule (1998: 271) citing Koopmans (1993) further argue that 'news media do much of the job of social movement organizers during periods of heightened mobilization and conflict…. High levels of media attention speed the introduction of innovations.' For the Ufungamano Initiative, the existence of an alternative media that was not state controlled offered opportunities for mobilising and in 'setting the agenda for change. This was especially true in urban areas where the high density of FM radio stations played a significant

role in enlightening the people and making them understand what was happening' (Alloys, interview 21/03/2009). Arguing along the same line, Wandati (interview, 17/09/2009) adds that

> People in the rural areas tended to identify with what was reported. Media, in those days, played a crucial role in changing the perspectives of the Kenyans and even sowing some seeds of doubt in Moi and his men in terms of how they were running the country especially as it was not just highlighting the local aspect, but also showing what happened in the Philippines[12] and the role the religious leaders played to bring about those changes. If the media had decided to give Ufungamano a blackout, we could not have done what we did.

A former PCK commissioner, Isaac Lenaona (interview, 03/10/2009) explained that they strategically reached out to editors in various media houses where they explained that they were not anarchists as the government had been trying to portray them, and that on the contrary, all they wanted was in the best interests of the country. From then, media took them seriously and highlighted their work and strategies. Lenaola further stated:

> When for example we were attacked in Kisumu, the print media put it as front-page story. It also castigated the goons as well as their paymasters.... When the government in Garissa placed thorns on the airstrip where we were to land, we got information and our people on the ground cleared it [sic]. We also had another incident in Nakuru where they disrupted our meeting by using loud speakers in a place next to where we were meeting and tried to woo people not to come to our meeting. It did not work though as people still came. In Nairobi, we were attacked at Kamukunji. The unfortunate thing was that at the time, the general population took you even more serious when it saw that the government was trying to stop what you were doing. As such, state's harassment only added to our credibility in the eyes of the public (Ibid).

Musyimi (interview, 09/10/2009) also offers a candid assessment of the role of media in aiding their struggle: 'there was tremendous support from media which kept the Ufungamano Initiative very much in the public eye and therefore won a lot of sympathy ... *Citizen* for instance covered the proceedings live. They covered the Ufungamano Initiative work more than anyone else.' Nonetheless, Kibwana (interview, 21/10/2009) attributed such gestures from the Royal Media Services (the owners of the Citizen TV and radio) to media ownership. Kibwana held that from the Ufungamano Initiative interactions with the media, they 'learned

[12] This is in relation to the popular people's power revolution in Philippine in February 22-25, 1986 which overthrew the dictatorial regime of Ferdinand Marcos. The role of the clergy in that uprising was being cited as critical and parallels were being drawn on the role the clergy were playing in Kenya.

that while media can be helpful on reform struggles, it unfortunately depends on who owns it' (*ibid*).

Indeed, there was in many instances, selective coverage especially by print media, as journalists and editors considered what news would sell other than the merits of the struggle. On the whole, as Cottrell and Ghai (2007) argue, the reportage of these contentions helped boost newspaper sales. This consideration for sales as well as marginalisation of the agenda of the so-called non-prominent citizens has resulted in condemnation of media by some of the participants in this study who argue that media was being overly selective (interviews: Basole, 27/03/2010; Oganda, 26/03/2010; Odhiambo M., 01.04/2010). A tout at the Kisumu bus park, Basole, for instance stated:

> Media has blacked out issues pertaining to the poor while concentrating on issues of the rich and politicians. For example in July last year [2009] we heard a lot about the launch of *Simama* Kenya by Jimmy Kibaki [President Kibaki's son] for almost three months. The same media disregards all our problems. We are doing a lot but we rarely get to hear anything from the media about it. In fact if you want them to cover your issues, you need to bribe journalists.

Oganda (interview, 26/03/2010) echoed similar sentiments when he commented:

> Media has not played a positive role especially after the 2005 referendum. Reporters want money to write stories about common people's struggles. Even if you pay them, the issues you raise, especially if touching on things political, the same journalist takes the story to the MP or such other political figure and says: 'so and so told me this, but what is your position?' that is what they end up writing. Media has become extremely corrupted just like civil society here [Kisumu]. They must change the system of media in Kenya if we are to have a fairer society.

Clearly, the analysis above points to a disagreement on the nature of the role played by the media. While those at the helm of the Ufungamano Initiative feel media treated their struggle positively, those at the bottom of the power hierarchy felt otherwise. These disagreements suggest that the media has been more concerned or sensitive to certain socioeconomic classes than others. Those in higher socioeconomic class enjoyed better media coverage than the rest. Indeed, Odhiambo M. (interview, 01/04/20010) a trained journalist who spent the late 1990s in journalism, confirmed this when he explained:

> For the Kenyan media, the news values and everything about our media, is a pro-status quo media. It values and promotes the interest of dominant groups. If you talk to any journalist who has been to the school of journalism [University of Nairobi] they tell you that the news value number one is prominence i.e. how prominent is the person speaking? So if Odhiambo

> is speaking somewhere and Kalonzo Musyoka [the Vice President] happens somewhere nearby, Odhiambo never gets noticed. And this is Odhiambo sitting as the Chief Executive of CLARION. Imagine the man or woman sitting at the street corner, a vendor or a hawker selling cigarettes? They are totally marginalised.

Following this, I argue that if the Ufungamano Initiative had been just an ordinary Kenyans' struggle, it is probable that it may not have received as much media coverage as it did. This in effect would have affected its ability to use information politics to endear itself to the Kenyan people.

Having extensively analysed issues to do with information politics, the analysis turns to leverage politics that Ufungamano Initiative employed in its contentious politics.

Ufungamano Initiative's leverage politics

Keck and Sikkink (1998) see leverage politics as emanating from a movement's mobilisation to hold targets up to the scrutiny of peers, thereby exerting moral leverage on the assumption that governments and other targets, value the good opinion of others (cited in Mati, 2008: 71). Even though leverage politics was not as prominent, it was clearly discernible from the fact that in the course of its existence, the Ufungamano Initiative formed the People's Commission of Kenya (PCK) in 1999 to lead the Kenyan People in writing their own constitution when it became apparent that KANU was never going to allow popular participation. The PCK was the most potent of the movement's strategies and politics. While there were apparent self-doubts on the viability of an alternative Review Process (see Minute 84/2000 of 3rd April, 2000 Ufungamano Initiative Steering Council meeting), by launching a parallel constitutional reform process independent of the state, at a time when KANU's fidelity to the 1997 CKRA was in question, the Ufungamano Initiative managed to pose the greatest credibility and legitimacy challenge to the parliamentary led process.

PLO Lumumba, who became the Secretary of the Constitution of Kenya Review Commission in the post-merger period argued:

> Any person who observed the process keenly must recognise a number of things. One was that the process led by Parliament and predicated upon a piece of legislation known as the Constitution of Kenya Review Amendment Act (2000) and on the basis of which Commissioners had been appointed to serve as the vanguard in the process of collection of views. But it was heavily challenged. The Ufungamano Initiative that had been initiated by civil society and a few individuals from the opposition and its People's Commission enjoyed a lot of legitimacy among Kenyans (interview, 01/10/2009).

I submit this legitimacy was possible because, to borrow the words of Downey and Rohlinger (2008: 23) Ufungamano Initiative consisted of actors that were 'widely spread (as opposed to narrowly concentrated) across the political possibilities frontiers.' Such movements, Downey and Rohlinger (2008: 23) argue, are 'generally more strongly articulate.'[13] Second, the leadership of the Ufungamano Initiative had mobilised sufficient numbers of Kenyans to actively support a people-led process (Shereta, interview 07/04/2010). As Ochanda (interview, 21/09/200) observes 'Ufungamano Initiative succeeded because it demonstrated that things could be successfully done outside the arrangement of the state.' Arguably, it is such demonstration that enhanced the political opportunities for the Ufungamano Initiative and effectively reduced the power discrepancy between the parliamentary led process and the Ufungamano Initiative. The impact of the success of Ufungamano Initiative in effectively challenging the state, Lumumba argues, was a demonstration

> That if people want to achieve something, and they have captured the spirit of the nation, then there is no limit to what they can achieve, and that taking refuge in the Law, in and of itself, sometimes does not immunize a process from public scrutiny. If you look at the process that was led by Parliament, it had the imprimatur of the Law. But people did not believe in it. The Ufungamano process did not have the legal backing but they had the moral authority. There was a clear message that it is a combination of legal and moral authority that gives legitimacy [14] to any process. And that when you have moral authority on your side, you cannot be ignored even if the government wants or attempts to ignore you; they do so at their own peril (interview, 01/10/2009).

It was because of the People's Commission of Kenya's challenge to the state process that even the appointed chair to the state-led Review Commission refused to take the position because the state-led process lacked legitimacy in the eyes of many, and thus his quest to

[13] Downey and Rohlinger (2008: 8-14) posit two terms to explain how movements achieve such strong articulation: 'The depth of challenge promoted by an actor, and the breadth of appeal cultivated by that actor. The depth of challenge represents the extent to which a collective actor seeks incremental or fundamental social change. The breadth of appeal dimension represents the extent to which the collective actor comprises a relatively small core of activists with high levels of commitment, or a larger social base with generally low levels of commitment.' The Ufungamano Initiative, it seems, had managed this through opting to directly write the constitution, as well as the massive support they had mobilised for Kenyans to support their contentions.

[14] Many respondents argued that the Ufungamano Initiative's legitimacy came directly from the people. Many of the actors within the Ufungamano Initiative had representations or a presence in literally all parts of the country. The NCEC for instance had people from all over the country, people with grassroots support from throughout the country. The religious groups like NCCK, Catholic Church as well as the Muslims are part of what Tarrow (1998: 128) calls 'structures of everyday life' and have a presence in virtually all corners of the country and reach to a great majority of the population. These structures easily mobilise and demobilise supporters. Information from the Ufungamano Initiative percolated easily to the grassroots and people through these structures. Interviewees argued that as a result, the entire nation was highly mobilised and this was how they managed to challenge KANU's machinery and its hold to power.

push for a merger between the two processes. Arguably, if it were not for the PCK, Ufungamano Initiative, just like its predecessors may have been totally ignored. But the alternate power that the Ufungamano Initiative wielded meant that it could not be ignored (Cottrell and Ghai, 2007; Chitere *et al.*, 2006; CKRC, 2004; interviews: Ghai, 23/10/2009; Wandati, 17/9/2009; Ndubi, 24/09/2009; Lamba, 23/10/2009; Lumumba, 01/10/2009; Athman, 12/10/2009; Raiji, 14/10/2009). I now move to analyse the accountability politics displayed in the Ufungamano Initiative.

Accountability politics

Keck and Sikkink (1998) see accountability politics as tied to a movement's effort in trying to convince their targeted actors to publicly change their positions on issues. This also happens through 'exposing the differences between the talk from the walk' (cited in Mati, 2008: 71). Here, we see Ufungamano Initiative's fidelity to the IPPG agreements, the Bomas of Kenya and the Safari Park agreements and the subsequent 1998 Constitution of Kenya Review Commission Act, as the first instance of accountability politics. Besides this, the utilisation of International Human Rights Conventions that Kenya had signed (cited earlier in this chapter) were also manifestations of accountability politics. Specifically, this meant that the Kenyan government would be called to account for its efforts towards adherence to the treaties it had signed.

But there is also evidence to show that there were cleavages in the way different groups within the Ufungamano Initiative wanted to frame accountability politics. This had the effect of steering the nascent movement towards certain directions that diluted its agenda. More fundamentally, it exposed the recurring ideational polarities in the nascent movement, which were reflective of the diversity of actors. These cracks were between those who wanted the framing of the parallel process to be divorced from the 1997 Review Act and those who saw the Ufungamano Initiative as implementing the mandate of the 1997 Review Act, irrespective of the flaws. Those opposed to the 1997 Review Act argued, it lacked

> … legal, social and political legitimacy… because the Act was *ultra vires* in the Constitution, as it ha[d] no support or basis in the Constitution… [and was] anchored on no known section of the constitution. There [was] no provision in the Constitution under which the Act [could] be made [because] the Constitution did not provide for its review, and any Act of Parliament that presuppose[d] to legislate for a process of the review of the Constitution [was] therefore unconstitutional, null and void (Ufungamano Initiative, 27/01/2000).

Accountability politics was also internally displayed in the movement through the creation of elaborate, albeit limited structures for participation. To a great extent, the Ufungamano Initiative operated an open-door policy that ensured that all reform minded activists and groups (social, cultural, economic and political) were welcome to join the Initiative. In the words of one respondent, the Ufungamano Initiative through its religious leadership used this strategy because the cardinal business of religious leaders is to deliver all souls to righteousness (Njoya, interview 29/09/2009). As such, it welcomed all that were willing and committed to take part in its process.

Having dealt with issues of leadership and its role in strategic decision making and the framing contention for the movement, it becomes imperative to answer the question: what structures did the movement craft to ensure that it achieved what it set itself to do? I attempt to answer this question below while addressing the relationship between mobilising structures and leadership.

Ufungamano Initiative's mobilising structures

Structures, strategies and resources, are the levers that drive movements' work. Tilly (1978: 7) argues that a social struggle qualifies as a social movement if it has some degree of organisation, (ranging from loose, informal or partial level of organisation, to highly institutionalised and bureaucratised structures), is 'durable, and pursues broad aims' and founded upon the conscious volition, normative commitment to the movement's aims or beliefs, and active participation on the part of the followers or members. The choice of a movement's structure nonetheless depends on the issue(s) as well as the diversity of its constituent parts. Tarrow (1998) sees structures as resources which allow contentious acts to be sustained as social movements, and which 'bring people together, shape coalitions, confront opponents, and assure their own future after the exhilaration of the peak of mobilization has passed' (Tarrow, 1998: 123).

Structures therefore institutionalise collective action and are the engines and oil that sustain movements' actions (Mati, 2008). Every social movement, therefore, needs a structure that gives it agency, through which issues are pursued. Keck and Sikkink (1998) argue that structures are important in understanding and gauging the emergence, operations, and the nature of relations and interactions between the different actors and the success of movements. Keck and Sikkink (1998) further argue that issues determine the type of structures that evolve in a broad based alliance. For simpler issues, simpler structures evolve.

Conversely, complex issue movements require complex structures. Therefore, as Tarrow (1998: 137) argues, there are mainly two logics in social movement structures: hierarchical versus autonomous. Tarrow (1998: 137) further argues that there is 'no single model of movement organization' that is suitable for all collective action forms. Nonetheless, the type of organisation that collective action takes has profound effects on success or failure of the movement.

Tarrow (1998) explains that a formal hierarchically centralised structure may allow a movement to easily sustain interaction with allies, authorities, and supporters. Nonetheless, hierarchies can also lead to a loss of capacity or disconnects with the grassroots. Autonomous, horizontally organised structures, allow each actor freedom and participation access. However, a loose and autonomous structure may make coordination and continuity difficult. To redress the deficiencies of each of these models, Tarrow (1998: 124) suggests a delicate balance between formal organisation and autonomy to produce a hybrid bridged by strong, informal, non-hierarchical connective structures. It is such informal connective tissue operating within and between the movement's constituent groups and individuals, that is the mark of successful movements as these structures are 'sufficiently robust to [ensure] structure sustained relations with opponents, but flexible enough to permit the informal connections that link people and networks to one another to aggregate and coordinate contention' (Tarrow, 1998: 124).

But Tarrow (1998) is faulted for his failure to provide a mechanism and formulae for getting the right mix and what the actual 'connective tissues' may be, as these are dependent on contexts as well as relational dynamics within movements, which are key determinants of movement's strategies and organisational structures (Downey and Rohlinger, 2008). Within the Ufungamano Initiative, proposals pushed by one of the organs – the Stakeholders Support Group, suggest that the movement was acutely aware of the need for such 'connective tissues.' As such, a clear strategic framework to guide the Ufungamano Initiative in its work was put in place as a proposal for discussion. A strategic framework was drafted to facilitate the establishment of the structures and organs of the movement. This had an impact on resultant power and functions of the organs of the movement. The framework largely borrowed from the objectives and spirit of the 1997 Constitution of Kenya Review Act as negotiated at the Bomas of Kenya and Safari Park meetings and the resolutions of the

Ufungamano I & II Plenary of stakeholders respectively. The preamble to the framework structure read:

> **We** members of the Ufungamano Forum: **Recognizing** that an open, accountable and democratic system of government that promotes the respect for human rights and sustained economic and social development is a desire of the Kenyan People; **Having** regard to the valiant efforts and painful sacrifices that have been made by the people of Kenya, to establish such a system of government since the dawn of colonial invasion; **Considering** that a national consensus has emerged on the need to comprehensively review the Constitution of Kenya through an open, inclusive and participatory process as a critical measure in the establishment of a just and enduring democratic society; **Recalling** the numerous breaches of promises committed by the Government with regard to constitutional reforms; **Determined** to secure for ourselves and for the future generations a just, peaceful and prosperous society, ***DO HEREBY ESTABLISH THIS FRAMEWORK FOR THE COMPREHENSIVE REVIEW OF THE CONSTITUTION OF KENYA BY THE PEOPLE OF KENYA*** (Ufungamano Initiative, Minutes of the December 15-16th Stakeholders Consultative meeting: **Emphasis in original**).

The December 15-16, 1999 meeting (hereafter Ufungamano I Plenary) therefore attempted to give a structure to the proposed Review Process. A Steering Committee made up of religious leaders was subsequently formed to steer the process. Its first task was to guide the creation of the other organs of the movement. Besides attempts to give the nascent movement a structure, the Ufungamano I Plenary also made note of preparations (psychological) required on the part of the gathered clergy, activists and opposition politicians to successfully embark on their own Review Process. In this regard, Kivutha Kibwana, a co-convener of NCEC, for example urged the religious leaders to be 'steadfast and not to be moved by the government' (Ufungamano Initiative, minutes of the December 15-16th Stakeholders Consultative meeting). Kibwana is reported to have further argued that if Ufungamano Initiative did not move forward in the suggested parallel process, then the people of Kenya would feel dejected. This clearly points to an attempt at inspiring commitment already dealt with earlier in this chapter.

The strategic framework prepared by the Stakeholder Support Group, went further to suggest that essentially, the Ufungamano Initiative needed a very loose structure that allowed constituent groups to carry on with their activities and feed into the larger movement. However, this framing displayed bureaucratic centralisation in some of its activities and

structure, thus displaying characteristics of an alliance/coalition than a unitary movement. The strategic framework suggested the following as part of the structure of the movement: a Stakeholders Forum; a Steering Council; a Commission (Peoples' Commission of Kenya) and Technical Committees in charge of communications and public; relations; legal and constitutional affairs; civic education; parliamentary and political affairs; Location Forums, Subordinate regional Conferences and a National Conference (Ufungamano Initiative Stakeholder Support Group (SSG), 27/01/2000). The strategic framework also proposed an elaborate timetable and a chronological order for establishing the organs of the review.

The strategic framework proposal envisaged the entire process to take 17 months. As the Stakeholder Support Group's strategic framework proposals were being debated, with some groups arguing that the 17 months timeline was too gradual and expensive (interviews Mwachofi, 27/09/2099; Raiji, 14/10/2009) there was a near total breakdown in law and order in many parts of the country which were attributed to:

> Certain individuals within the ruling elite who [were] uncomfortable with the constitutional changes likely to be put in place by the people of Kenya were deliberately fanning insecurity across the country. […] in order to instil fear among people yearning for change, and to divert attention away from this important exercise (SSG, 27/1/2000).

Ufungamano Initiative therefore had to act fast to ensure the process was not protracted. The Ufungamano Initiative Stakeholders Support Group's proposal was therefore further revised in a later memorandum presented to Ufungamano II Plenary by the Steering Council on 27/01/2000 in which they recommended, on the basis of 'a near universal agreement that the Review Act [was] un-implementable [and that] the Steering Council be given a clear mandate by the stakeholders to steer clear of the pitfalls of the Act.' The Ufungamano II Plenary further recommended that 'the Ufungamano Initiative should not be held hostage to the structures, language or time frame prescribed under the Review Act' (27/01/2000).

Resulting from both internal movement dynamic as well as a reaction to the hostile environment within which the Ufungamano Initiative operated, a leaner and more top down structure was adopted for political and economic expediency, while ensuring some high profile visibility which played well with the media (Ombok, interview 24/09/2009). The net effect was that the agreed structure made no conscious efforts to mobilise outside the institutions that had been identified as stakeholders. It is instructive to note here that the process of negotiating structures and process also revealed further cleavages between those who advocated greater people participation and therefore the need to ensure that Ufungamano

Initiative had a presence at the grassroots, versus those who saw no need to establish an elaborate structure for this.

Morris and Staggenborg (2004: 171) in their study of 'Leadership and Social Movements' observe a reciprocal relationship between leadership and structures. On the one hand, movement leaders may shape the nature of mobilising structures. On the other, structures are important situational contexts that influence how leadership evolves and how leaders empower others. Gusfield (1966: 137) also argues that 'leadership changes through time as a function of different forms of structure and of different situations in which organized movements operate as they become large and institutionalized.'

Movements' mobilising structures may emerge, as the Ufungamano Initiative illustrates, as a reflection of a complex mix of actors, and especially because of sometimes opposing positions and deep mistrusts between them (interviews: Mwachofi, 27/09/2009; Lethome, 02/10/2009; Wandati, 17/09/2009; Ochanda, 22/09/2009; Lumumba, 01/10/2009; Ocholla, 06/10/2009). In such an environment, there were many antinomies that made the 'quest for constitutional reforms […reflect] a struggle over the formulation of the norms, structures, processes to govern the state' (Mutua, 2008: 117). The emergent structures therefore had to accommodate different leadership roles as well as competing interests of individuals, groups, regions, ethnicities, religions and institutions. Moreover, the heterogeneity of actors with different competencies and competing interests, as well as multiplicity of leaderships required by the movement, illustrates that the type of structure that evolved had to accommodate the supposed abundance of skills and competencies to be utilised by different structures (Lamba, interview 23/10/2009).

What emerges from the analysis of the evolution of the structures in the Ufungamano Initiative confirms that the resultant structure reflected some consensus aimed at sharing and diffusing leadership roles in the movement at various nodes of the movement as well as to the different stakeholders involved in the movement. Borrowing from Tarrow (1998: 134), I argue that the ensuing mobilisation structure also had to be flexible enough to allow ideological, social, and political pluralism to flourish by having several activities that gave each group a chance to stress its particular interest without feeling 'lost in the crowd.' This suggests that leadership within the movement was by far, pre-determined by pre-existing political and organisational structures. Indeed, leaders from the already existing structures shaped the organisational structures in accordance with their backgrounds and previous

experiences, which in turn influenced the mobilisation, strategies, and outcomes of the movement. In the end the structure represented graphically in Figure 6.2 below was agreed upon.

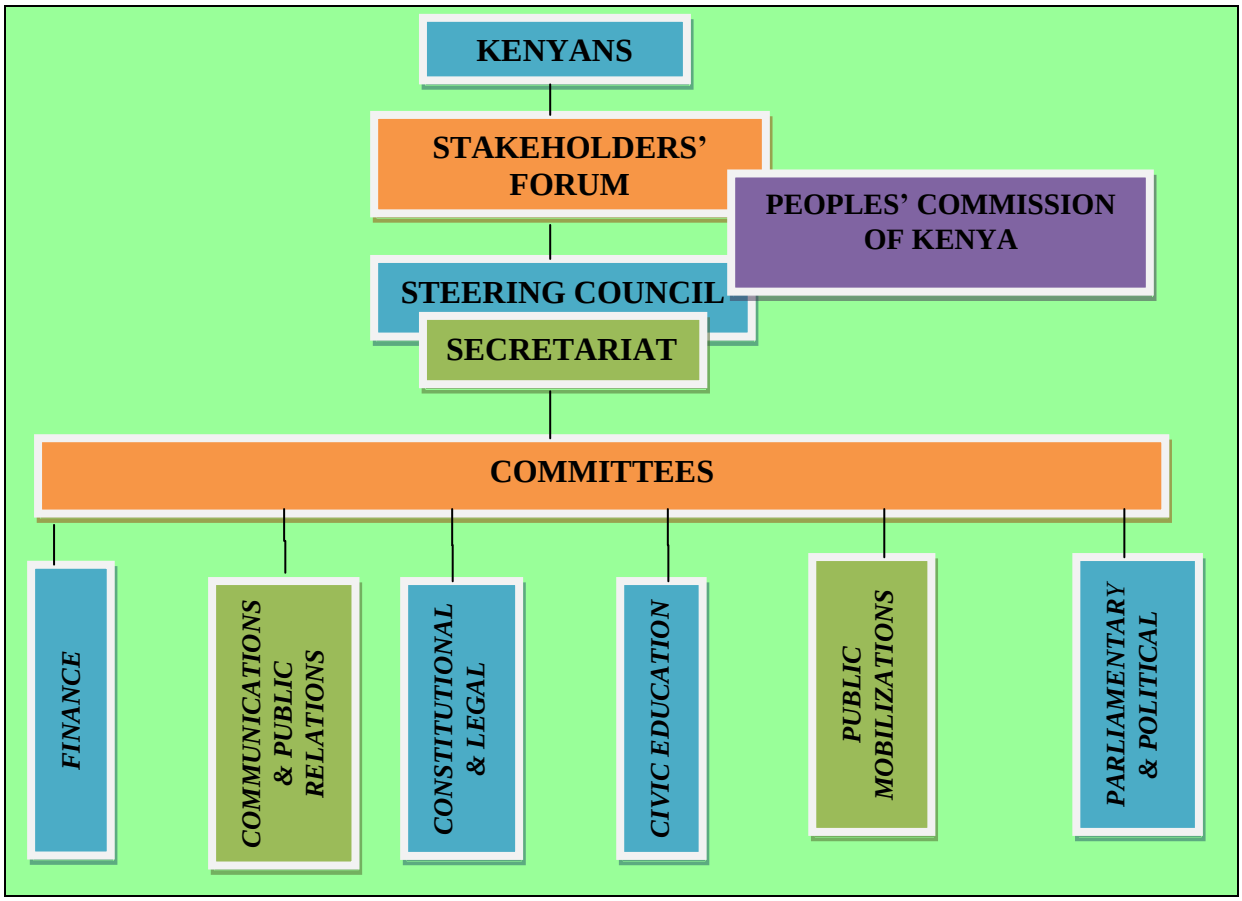

Figure 6.2: The structure of the Ufungamano Initiative (Source: Ufungamano Initiative 19/01/2000). The conveners, as the leaders were known, were part of the Steering council. However, there were multiple leadership roles within the movement.

Stakeholders' forum/Plenary of stakeholders

At the top of the organs of the Ufungamano Initiative was the Stakeholders' Forum/Plenary. As already noted in the last chapter, one of the significant developments of the Ufungamano I Plenary, was a unanimous agreement (by a vote) to a proposal by Kivutha Kibwana of NCEC, that people present establish themselves as the Stakeholders' Forum with a legal standing and the need for action (Ufungamano Initiative, 15-16/12/1999).

The principal purpose of the Plenary of the Stakeholders' Forum was to give general direction to the movement. It was the 'ultimate policy and decision making organ of the movement' (interviews: Raiji, 14/10/2009; Kibara, 15/10/2009; Wandati, 17/09/2009; Ombok, 24/10/2009). It formally met every three months (interviews: Churchill, 02/10/2009; Kibara, 15/10/2009). The Plenary of Stakeholders was an open forum where everybody who

subscribed to the movement's ideas congregated. As such, it had representations from a wide range of actors from across all sectors of society. The open door policy of the Ufungamano Initiative Plenary of Stakeholders was a strategic move to ensure that all reform minded activists and groups (social, cultural, economic and political) were welcome to join the Initiative. It made decisions collegially. Issues were brought to the plenary, discussed and agreed upon mainly through consensus (Kibara, interview 15/10/2009). In cases of disagreements, a vote, as happened during the decision to merge with the parliamentary-led process (discussed in chapter seven), would be the decider (Raiji, interview 14/10/2009).

At its formation, the Plenary of Stakeholders had at least 54 formal representations from a wide range of actors from across all sectors of society including 'under class' movements such as the Muungano wa Wanavijiji. It also had religious organisations, such as Catholic Church's Kenya Episcopal Conference, National Council of Churches of Kenya, Supreme Council of Kenyan Muslims, Anglican Church of Kenya, Presbyterian Church of East Africa, the Hindu Council of Kenya, Muslim Consultative Council, and the Organisation of African Instituted churches. Others included NGOs and movements like National Convention Executive Council, Law Society of Kenya, Kenya Women Political Caucus, Kenya Law Students Association, All Kenyan Farmers, The National Council of NGOs of Kenya, the National Youth Movement, and Kenya National students Union. Political parties such as the Democratic Party, Uma Patriotic party of Kenya, Ford Asili, a faction of National Development Party (Wambui Otieno and Dr. Charles Maranga), Ford Kenya, SAFINA, Shirikisho and Saba Saba Asili among others, were also represented. It is interesting to note the fragmentation of the political elite within opposition political parties. While the opposition was generally represented, the National Development Party (NDP) leader Raila Odinga and most of his NDP parliamentary colleagues were working with the Moi/KANU regime. In fact, the Parliamentary Select Committee was the brainchild of and chaired by Raila Odinga. However, some of his party members and fellow leaders were opposed to this. This is exemplified by the words of Charles Maranga, the then Secretary General of NDP during the December 15-16 1999 Ufungamano I Plenary, who told the gathering the following:

> We are here to state we are for the people driven constitution. Most officials of NDP are present here and it is clear by the show of our presence, that we are here to defy the Parliamentary Select Committee, we opt for a people driven constitutional process.

> Otherwise, we pass a vote of no confidence on all MPs supporting Parliamentary Select Committee (Ufungamano Initiative: Report of the Ufungamano I Plenary).

In the end, the Plenary of Stakeholders brought together all who identified with the movement. The function of convening the Plenary of Stakeholders lay with the next structure in the movement: the Steering Council.

Steering Council

The idea of the Steering Council was first mooted during the Ufungamano I Plenary when John Michuki, a prominent Member of Parliament from the Democratic Party (DP) suggested that two committees be appointed to:

i) Identify the methods to use to reach the population on civic education. He proposed the use of mosques, churches and temples in addition to other available resources such as civil society organisations. He argued for a need to identify other institutions that the Ufungamano Initiative would need to work with at the grassroots.
ii) Propose to the Steering Committee how it can constitute its own Commission, to set up a parallel organisation to write the Constitution of Kenya.

From the Ufungamano I Plenary deliberations, a Steering Council was established as the formal structures at the helm of the movement to captain the process. It was a natural successor to the Religious Community Facilitation Team cited in the last chapter that had initiated discussions that culminated in Ufungamano I Plenary on December 15-16, 1999. The Ufungamano I Plenary agreed that the Steering Council be composed of 36 members with four representatives drawn from each of the following religious groups that had been named in 1997 Constitution of Kenya Review Act and the 1998 Constitution of Kenya Review Commission Amendment Act as the key religious stakeholders in the constitutional reform process: The Kenya Episcopal conference; the Supreme Council of Kenyan Muslims; the National Council of Churches of Kenya; the Hindu Council of Kenya; the Muslim Consultative Council; the Organisation of African Instituted Churches; the Anglican Church of Kenya; the Presbyterian Church of Eastern Africa; and the Methodist Church in Kenya.

The Steering Council's role was to offer collegiate leadership to the movement (interviews: Wandati, 17/09/2009; Lethome, 02/10/2009; Musyimi, 09/10/2009; Kibara, 15/10/2009; Omar, 16/10/2009; Kibwana, 21/10/2009). In its formative stages, this allowed for wide ranging consultations and was a key strength of the movement as it generated consensus. The Steering Council, according to Musyimi (interview, 09/10/2009) was therefore like the

cabinet of the Ufungamano Initiative. It sought to hold the 'political class' [sic] accountable (Lethome, interview 02/10/2009).

The Steering Council was mandated as the official leader of the movement. As such, it was responsible for guiding and directing the movement on the policy and aspirations of the Kenyan people in the Constitutional Review Process. This was aimed at fostering dialogue and understanding among different sections of Kenya society. In order to determine such aspirations, the Steering Council would receive and deliberate proposals and reports of, or actions and decisions taken by taskforces they set, and then approve or modify them. As such, the Steering Council was also responsible for the setting up of other organs, including appointments of the People's Commission of Kenya Commissioners. Moreover, the Steering Council was also required to, in consultation with the Stakeholder Forum, establish Technical Working Committees in charge of communications and public; relations; legal and constitutional affairs; civic education; parliamentary and political affairs, in order to achieve goals and objectives of the movement (Ufungamano Initiative, 19/01/2000). A rotational co-chair appointed at each meeting headed the Steering Council.

Of significance here is that the various other contenders to the leadership of Ufungamano Initiative ceded the stewardship of the movement at the action phase to the clergy. This was a tacit compromise between sections of secular civil society led by NCEC that had been pushing for radical reforms of the state for over a decade, and the opposition political elites who always acted on the exigencies of the moment.

I also find Gusfield's (1966: 137) observations on 'the decline of enthusiastic, agitational leadership and the development of states-manlike, bureaucratic administrators as movements become formally organized into stable structures' to be particularly instructive in explaining the emergence of the religious leaders as the ultimate leaders in the Ufungamano Initiative. The point here is that the emergence of the religious leaders who were more dialogical and accommodating as the ultimate leaders should be read in the context of earlier 'failures' of confrontational approach leaders within the more radical NCEC to make much progress (see also Downey and Rohlinger, 2008).[15] This research established that Ufungamano Initiative

[15] Downey and Rohlinger (2008: 11) identify different reactions and roles different types of social movement actors play. They argue that 'radical/revolutionary groups may force group members to go underground because their activities invite government repression. ...Groups that situate themselves closer to the conflict end of the continuum, but are not revolutionary ...[on their part], may trigger countermobilization by other actors.' This

emerged in an environment of fear among religious leaders and the political elite that the radical NCEC stance and its leadership might plunge the country into chaos. This suggests that despite their social conservatism, a united religious leadership could still be trusted to play a constructive role in uniting different pro-reform forces in a fragile and deeply divided society. Indeed, one of the functions of the Steering Committee was to arbitrate in all disputes that would arise in the course of the review. This reveals that the movement leaders were realistically aware that the process would not be without internal conflicts and cleavages.

As the Steering Council was responsible for overall leadership throughout the constitutional reform project, it was also tasked to receive the Commission's report on the proposals they would gather, disseminate the same to all Kenyans, and finally organise a National Constitutional Conference and later a referendum to enable all Kenyans to partake in its ratification.[16] These activities required huge financial resources. The Steering Council was therefore responsible for mobilizing financial resources needed for the work of the Ufungamano Initiative. Individual religious groups such as NCCK and the Catholic Secretariat and other stakeholders committed to raising funds (interviews: Gitari, 21/09/2009; Wandati, 17/09/2009; Raiji, 14/10/2009; Khairallah, 26/09/2009; Athman, 12/10/2009).

Resource mobilisation was however not as easy (interviews: Musau 24/09/2009; Wandati, 17/09/2009; Musyimi, 09/10/2009). Part of the reason for the difficulty in fundraising, links to the 'donor money addiction' that Maina (1998, cited in chapter four) highlighted. Specifically, most of civil society work in Kenya has over the years, been supported by external donors. But these same donors' (mainly western countries) commercial and economic interests were some of the things that some actors in the Ufungamano Initiative wanted radically transformed for the benefit of Kenyans. As such, donors were not overly enthusiastic about the Ufungamano Initiative's agenda. Only a few (mainly the Scandinavian

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seems to be what befell the NCEC as other actors we now willing to trust religious leaders with the ultimate leadership than the more radical NCEC.

[16] There was an emerging consensus that the institution of the referendum should not only be institutionalised, but also entrenched in the Constitution. For a start therefore, the new Constitution needed to be subjected to the sovereign will of the people of Kenya through a referendum. As shall become clear in the next chapter, this was a key thing that surfaced later in the form of a court case filed by Rev. Timothy Njoya and other leading figures within the NCEC and part of the Ufungamano Initiative when it became apparent that parliament and the National Constitutional Conference had abrogated the rights of Kenyans to participate in a referendum to make their own constitution. The ruling in this case was determined that: 'parliament had no jurisdiction or power under section 47 of the Constitution to abrogate the existing Constitution and enact a new one in its place, ...and that power to make a new Constitution (the constituent power) belongs to the people of Kenya as a whole...In the exercise of that power…Kenyans were entitled to a referendum on any proposed Constitution' (Kenya Law Reports 2004: 262. *Njoya & 6 others vs. the Attorney General and 3 others*).

countries) remained committed to funding Ufungamano Initiative's activities. As it turned out, stakeholders with a wide traditional indigenous support base such as NCCK and the Catholics were the best mobilisers of financial resources. As such, they bore much of the burden of raising funds. Most of the bills were paid by NCCK. The Catholic Secretariat also played its part as did the Hindu Council and the SUPKEM, though to a lesser extent but commensurate to their numbers in Kenya. Politicians who joined Ufungamano also contributed (Gitari, interview 24/09/2009).

Some respondents (for example Musau, Beatrice, Raiji, and Athman) argued that the saving grace for Ufungamano was people's commitment and the volunteer spirit within the membership/followers. People made 'personal contributions and volunteered their time and services in for example, the distribution of fliers. People also donated whatever money they had to support various efforts. Every Sunday, people contributed 'sadaka' (offerings and tithes) (Musau 24/09/2009). Understood within the context of hard economic times that the country was going through, this was truly a great commitment.

Athman (interview, 12/10/2009) as well as Raiji (interview, 14/10/2009) reported weaknesses in this model because those at the heart of the movement had given up their gainful employment and went through the whole period without any salary. Athman (interview 12/10/2009) wondered how they survived without even money for transport to move around. These sentiments are corroborated by minutes of the Steering Council meeting on August 8th 2000 held at the Muslim Civic Education Trust in Mombasa. In this meeting, James Mageria, the Ufungamano Initiative secretariat coordinator, was by that date, owed some substantial amounts of money by the Ufungamano Initiative. While the Steering Council scratched their heads wondering what to do, he indicated to them that 'the attitude he had taken was that since he was serving God by serving the nation Kenya through the Steering Council, and since God was nobody's debtor, he was certain that all his expenses would be fully reimbursed when the Council raised funds' (Minute 177/2000 of the Ufungamano Steering Council meeting, 08/08/2000). Not everyone had such a commitment though. Some people, according to one PCK and later CKRC commissioner, found it hard to continue and opted not to serve in either the Secretariat or Commission (Raiji, interview 14/10/2009). Nonetheless, all of the Ufungamano Initiative's debts were paid off by NCCK and the Catholic Secretariat after the merger with the State-led process had been concluded (Musyimi, interview 09/10/2009).

What is interesting to note from the citation attributed to James Mageria above, is that a lot of volunteerism went into making Ufungamano Initiative a success. This suggests that the movement had a good mix of both '"insular" orientation (...comprising relatively higher numbers of more committed activists) [and] a "mass" orientation (comprising a relatively high number of less-committed participants, and more appeal to outsider support)' (Downey and Rohlinger, 2008: 13). In sum, the movement had a diversified base of material and human support that gave their time and resources towards the success of the movement.

Through a diversification of funding sources, Ufungamano Initiative also managed to mobilise resources at different levels and different forms of contributions were made. For instance, Raiji (interview, 14/10/2009) indicated that there were also lot of in-kind contributions by constituent members through offering spaces for meetings, food, accommodation and even volunteering time. Besides individual citizen donations, there were also a few supportive donors, who constituted themselves into what was called the Friends of Ufungamano that generated a supportive fund (interviews: Musau, 24/09/2009; Khairallah, 26/09/2009; Wandati, 17/09/2009; Musyimi, 09/10/2009; Athman, 12/10/2009).

For Athman, the credit for dealing with the donor world in raising funds for Ufungamano Initiative should go to Mutava Musyimi, whom he described as 'a very brilliant person who will sit and think through an issue and see what will this do?'[17] But this had the effect of giving NCCK and specifically its Secretary General, more leverage in the decision-making process. The net result thus 'turned out to be not as equalizing as it ought to have been... because he who pays the piper, chooses the tune' (Wandati, interview 17/09/2009). This dominance of NCCK and its leader in the movement was further compounded by the failure of the collegiate leadership to function effectively. With time, a 'first among equals' emerged from the leadership. Morris and Staggenborg (2004: 173), argue that

> A key theoretical issue is the extent to which the characteristics and actions of leaders, as opposed to structural conditions, matter. Collective behavior theorists have argued that social structural conduciveness is necessary but not sufficient for movement mobilization; leaders

[17] Rev. Dr. Mutava Musyimi resigned as the Secretary General of NCCK in 2007 and went into elective politics. He was elected the Member of Parliament for Gachoka constituency in Eastern Province. As a result, Athman lamented that the 'religious community had lost a great person with such deep reflective thinking through issues. Most of the reactions in the religious sector are today knee jerk. The religious leadership has transformed these institutions into NGOs. As a result this 'conversion' the NGO workers in religious institutions have gained more strength that the religious workers.'

> create the impetus for movements by providing examples of action, directing action, and defining problems and proposing solutions (Lang and Lang, 1961: 517-524).

For the Ufungamano Initiative, the emergence of a 'first among equals' as well as the legitimacy he came to enjoy in the movement as the *de facto* leader is attributable to a combination of factors such as 1) charisma – explained by individual characteristics and actions of leaders, as opposed to structural conditions; 2) structural vacuum, and 3) the financial resources and connections commanded. To understand how these played out to propel Mutava Musyimi to be the ultimate leader, I invoke Max Weber's theory of charismatic leadership which over the years, has 'immense[ly] influence[d] the thinking of sociologists about the sources of authority and dominance in changing political life' (Gusfield, 1966: 137. See also for example Morris and Staggenborg, 2004; Platt and Lilley, 1994).

Research on how leaders gain legitimate authority in social movements draws heavily from Weber's theory. However, some of the approaches utilising this theory have been castigated for missing Weber's insight on the effects of the interactional nature of leadership on movement characteristics (Morris and Staggenborg, 2004). For instance scholars such as Eichler (1977), Wilson (1973; 1999) use the 'notion of charisma …to refer to a personality type... while others [see for example Platt and Lilley, 1994] treat charisma as a relational approach that assigns a key role to followers in imputing charisma to leaders' (Morris and Staggenborg, 2004: 172). Following suit, Melucci (1996: 336) concludes that the 'Weberian theory of charisma neglects the social relationship between leaders and followers who are viewed as giving themselves up to a charismatic leader and therefore lacking agency' (as cited in Morris and Staggenborg, 2004: 172).

But the emergence of Ufungamano Initiative's ultimate leader demonstrates an interactional relationship between leadership and followers as observed by Weber. Followers did not necessarily lack agency. On the contrary, as the analysis of the merger process in chapter seven shall show, some members and followers fiercely fought against the usurpation of decision-making power in the movement. The role of some of the followers in contesting the merger between the People's Commission of Kenya and the CKRC will be used to illustrate this later in the next chapter. On the whole, this leader emerged from the structural nature of the movement and especially from a vacuum that the structure of a collegiate leadership offered especially given that not all religious leaders under the Steering Council had easy

access to the movement as NCCK and its then Chief Executive did. This arose from the fact that the movement's Secretariat was indeed located at Ufungamano House, a building jointly owned by NCCK and the Catholic Church in Kenya. It was not just the Secretariat that sat at the Ufungamano Initiative. The People's Commission of Kenya (PCK), one of the other most important organs of the movement was also housed there. I now turn to analyse this organ (PCK), its functions with a view to showing its relationship with other organs of the movement.

The People's Commission of Kenya (PCK)

The PCK was the technical and professional organ of the Review Process. Structurally, it was subordinate and answerable to the Stakeholder Forum and the Steering Council. In theory, the Steering Council determined the number and qualifications of the commissioners. The PCK was tasked with collecting and collating views from the Kenyan public. In the December 15-16, 1999 Ufungamano I Stakeholder Forum, each organisational stakeholder was asked to nominate a specified number of commissioners to the PCK. As such, nominations to the PCK were constituency based. The Steering Council inherited the numbers that the Religious Community Facilitation Team had earlier proposed for determining how many people each constituency would bring (Musyimi, interview 09/10/2009).

Most of those who took up positions in the PCK were from the various constituencies and their names had already been submitted to parliament in line with the provisions of the 1997 Review Act and the 1998 Constitution of Kenya Review Commission Amendment Act as part of the initial Review Process before KANU scuttled the process (Ong'wen, interview 09/10/2009). It was these that formed the PCK as they were already nominated and had been appointed to represent different constituencies. However, additional Commissioners came in to fill the slots that had been reserved for KANU and NDP as they were leading a competing process. By sticking to earlier nominations from the already existing process that had been derailed, the Ufungamano Initiative partly lends further credence to the assertion that all that Ufungamano wanted was in tandem with the 1997 Review Act (Lethome, interview 02/10/2009). The Commissioners were sworn in at a Plenary of Stakeholders session and started their work in April 2000.

The Commission was specifically tasked with working with the Technical Committee in charge of civic education to ensure coordinated civic education and that all parts of the country were fairly accessed. The Commission also collected, received, collated and

analysed public views and materials in order to design constitutional issues for debate and negotiations by the stakeholders of the process. This was to ultimately lead to the preparation of a draft constitution based on the materials received (SSG, 27/01/2000). The People's Commission of Kenya also developed technical instruments and papers and positions that were considered by religious leaders and others in the movement and to came up with decisions through debates (Zein, 07/10/2009).

The Secretariat

The Steering Council was also responsible for the running of a small Secretariat that dealt with the day-to-day running of the movement. The Secretariat had 14 staff to support the work of the Steering Council and the Commission. It had three joint secretaries from the Catholics, Protestants and Muslims as Heads. There were a further seven specialists covering areas such as constitution, communications, logistics, finance and administration. There were three office secretaries, two office assistants and two drivers. The Secretariat's role was to aid the operations of the movement by implementing decisions and mandate of the Steering Council and to generate and process proposals, plans and actions, for approval of the Steering Council.

The Specialised Technical Committees

There were also specialised technical committees that included mobilisation, civic education, fundraising, media and publicity and finally, constitutional and legal affairs. The committees were set in a manner that aided the movement in its key functional areas so that it would achieve the larger goal of giving Kenyans a new constitution. In terms of representations/distribution of positions in the committees, nothing was fixed. It was a voluntary process where people took committee positions according to their strengths and expertise (Ombok, interview 24/09/2009). The functional areas within which these committees were formed are discussed below.

Finance Committee

This committee was tasked with assisting the Steering Council in mobilising financial resources for the movement. To do this, the committee had to prepare necessary budgets and financial statements and table the same to the Steering Council. The Finance Committee therefore assisted in raising necessary funds and other material resources for the successful implementation of the Constitutional Review Process. It was also responsible for ensuring that audited financial reports were presented to the Steering Council.

Communications and Public Relations Committee

This committee assisted the Steering Council in effectively communicating within and outside the movement. Specifically, this Committee was responsible for designing and proposing to the Steering Council an effective communication strategy that would speedily, accurately and adequately respond to questions or issues raised by the public on the Constitution Review Process and explain the Initiative's standpoint on key issues of the review. The Communications and Public Relations Committee was also responsible for advising the movement generally and the Steering Council in particular, on the suitability of materials, press statements and releases, and other written communications to the public. This Committee also served as the organisation's spin-doctor and therefore needed to make proposals on ways of maintaining positive media coverage and favourable public image of the Ufungamano Initiative. Internally, the Committee also helped in developing a mechanism for corresponding with members of the Stakeholder Forum and other allies.

Constitutional and Legal Affairs Committee

This was the legal think-tank of the movement. It advised the movement on ways to adhere to the consensuses arrived at the Bomas of Kenya and the Safari Park Forums, whose essential principles were contained in the 1997 Constitution of Kenya Review Act. It therefore provided technical guidance on the constitution making process based on Kenya's history, social, economic and political experiences. One of the most visible works of the Constitutional and Legal Affairs Committee was alternative analysis of the Law. Through this, they pointed out the flaws in the Law as well as the opportunities therein. It was through such analysis of the 1997 Constitution of Kenya Review Act that they identified political and legal opportunities to utilise. This was in view of the fact that the 1997 Review Act had identified civil society and religious groups as critical stakeholders of the process who would be required to appoint some of their own into the Review Commission. When KANU and their Raila Odinga led Parliamentary Select Committee on the constitution changed this, civil society and religious leaders mobilised other stakeholders to constitute a Review Commission faithful to the 1998 Review Commission Amendment Act.

Civic Education Committee

The Technical Committee on Civic Education was charged with reaching out to Kenyans to rally them behind the Constitution Review Process. To do this, it worked out guidelines that helped optimise the nationwide use of available civic education resources. It worked closely

with other organs, especially the PCK and other organisations involved in civic education so as to enhance their work through cooperation.

As already highlighted, civic education was one of the key strategies for the Ufungamano Initiative and its contributions were tremendous. Civic education facilitated a nation-wide awareness creation in a coordinated and collaborative manner for a people-driven Constitution Review Process. It ensured meaningful, effective and efficient participation by ordinary Kenyans in the Review Process. The Civic Education Committee ultimately devised a system that would ensure that civic education was undertaken throughout the country using seminars, workshops, debates, forums, conferences, publications, and use of various organisations throughout the country (interviews: Mwachofi, 27/09/2009; Gitari, 21/09/2009; wa Gathaka, 29/09/2009). Mwachofi (interview 27/09/2009) for instance stated that through *Shirika la Elimu na Maendeleo* (SEMA) in Taita Taveta district, they

> …reached every sub-location and got people to discuss the constitution from the lowest level possible. We innovatively covered all socioeconomic and political aspects required for a comprehensive constitution. In every place we began by enabling the community to analyse their situation. They would come out with all their issues and finally decide the root cause of all their problems....We would follow that, and ask what is the solution for poverty, is it hard work, or it is use of resources? Do we have resources in this area? They would answer in the affirmative and we would ask: why don't we use them? This way, we were able to address the relationship between the people's conditions and the existing constitution and governance systems and institutions in place...and people were able to see that if we change this governance structure, if we had a different constitution, things would change.

This demonstrates the revelatory nature of civic education, which was widespread in the entire nation. Indeed, the Moi/KANU regime was also aware of the potency of these civic education programmes, hence its continued attack of the same. Nonetheless, civic education continued and was responsible for the successes cited earlier in this chapter. So effective was civic education that by 1998, the Moi/KANU regime issued a circular to the NGO council banning civic education. The 'President also attacked the NGOs' concept of civic education, which he claimed was unnecessary in Kenya [and] that NGOs sponsoring civic education [were] a threat to the security of the state and their activities must be curtailed' (van Beurden, 2000; Ghai and Galli, 2006). Moi was not alone in condemning civic education. Indeed, as the citation below, taken from Wanbali (2001) attests, even journalists and other members of society started questioning the value of civic education. Wanbali (2001) specifically wrote:

> Civic education] is puerile nonsense that opportunist traders masquerading as principled civil society activists have used to cheat millions of dollars out of the gullible wallets of well-funded groups in Western countries.… The concept of civil society in Kenya … is a misnomer extracted from the liberal tradition.… The claim that [civil society] can transform Kenyans through civic education is a brazen NGOs lie.… The bifurcated nature of the state … rubbishes any claim these 'civil society crusaders' may have to legitimacy. Their very existence as the better-off, affluent, urban dwellers, somewhat spared the tyranny and poverty of the rural tribal existence, undermines their posture as knights bringing the liberating philosophy of 'civicness ' to the rural masses.

Public Mobilizations Committee

This Committee was responsible for mobilisation of the public in support of the Ufungamano Initiative's Constitution Review Process. It was also responsible for logistical preparations for public events such as meetings, rallies and tours of both the Steering Council and the Commission. The Committee also assisted the Steering Council in developing a strategy for coordinating participation of various communities in the Constitution Review Process.

The Ufungamano Initiative engaged multiple strategies in its mobilisation. The Public Mobilization Committee advised on the need to utilise effective and existing institutions. As such, to reach out to the Kenyan people and in mobilising popular support, the pulpits were the main avenues. This enabled the Ufungamano Initiative to ensure that what they came up with had some support of Kenyans at the grassroots. As already highlighted, the Ufungamano Initiative packaged its messages capitalising on the anxieties that exclusion of popular participation would ignite chaos. In this regard, minute 6/99 of the December 3rd 1999 Consultative Meeting at Ufungamano House for instance noted, 'combined with the general economic situation, it will only take little persuasion for Kenyans to take to the streets.' The minutes further noted that all stakeholders 'must therefore strive to create an environment of trust by facilitating for an understanding that there is immense value in people's participation in the Review Process. This participation must be qualitative, quantitative and continuous for this country to cultivate a constitutional culture' (Minutes of December 3 1999 meeting).

Parliamentary and Political Committee

This organ was responsible for mobilising political actors to support the Constitution Review Process. It worked closely with the Legal and Constitutional Affairs Committee in carrying out regular reviews of the political environment and advising the Steering Council on

evolving political trends and their impact and relationship to the Constitutional Review Process. This committee also liaised with political parties to ensure effective communication and representation of the Ufungamano Initiative's contention in political debates of the day.

All these committees worked under the direction of the Steering Council. Looking at this structure closely, one sees a well-oiled machine responsible for running the movement. But a question then emerges: what was the relationship between different structures? Did the overall structure ensure sufficient participation and accountability of the movement? In the paragraphs that follow, I address these questions.

For starters, most of the people occupying positions in these structures were mostly elites at different levels. For example, Bishop Kairu chaired the Communication Committee while the legal affairs was chaired by Mutasa Jarfa, a legal expert. There was however, generally a collegiate form of decision making in Ufungamano. Issues were brought to the Plenary, discussed and agreed upon through consensus (Kibara, interview 15/10/2009). With reference to accountability, Ufungamano Initiative relied on existing structures (such as the NGOs and social movement organisations like NCEC, churches, mosques and temples) for connections, communications as well as to reach out generally to the stakeholders and Kenyans in general (interviews: Raiji, 14/10/2009; Kibara, 15/10/2009).

The usage of existing structures was rationalised in various ways. According to Churchill (interviews, 02/10/2009), for instance, the combination of expertise, an elaborate network through constituent groups and the fact that the Ufungamano Initiative held regular meetings, ensured people participated effectively and there was therefore no need to create more structures. Moreover, 'occasionally people would be asked to volunteer to develop certain papers or positions and concretize certain ideas into actionable work' (*ibid*). Churchill nonetheless conceded that there was tension within because some people especially those who had come from the NCEC had been used to the limelight and addicted to visibility and publicity in the media.

> Such people could not face a situation where they were being put in a position to sit alongside ordinary mortals, who initially used to look to them as leaders of the reform movement. Despite the tensions, the Ufungamano Initiative resisted the move to create any other structures (*Ibid*).

But the loose structure was ultimately the Ufungamano Initiative's weakness. First, despite the presence of clear accountability lines between the different structures, some personalities within the Steering Committee were too overbearing on the other actors and structures. This resulted in several substantive contradictions. Moreover, some respondents speculated that political elite might have been working behind the scenes with some in the movement, to steer it in certain directions. In the process, these 'collaborators' benefitted from 'new' outcomes and directions. The merger is cited as case to support this view.[18] It is however difficult to be definitive on this as only those who may have played this role know the truth. Second, the net result of this great array of actors' collaborations was the emergence of a movement with multiple internal cleavages.

Such internal contradictions served to amplify tensions on what a 'people-led process' meant for the different groups in the movement. The earlier divisions within the pro-reform movement cited in the last chapter were therefore inherited by the Ufungamano Initiative. Despite these cleavages, Zein (interview, 07/10/2009) argues that credit needs to be given to the Ufungamano Initiative because it managed to

> …run a movement that allowed for interrogation of ideas and allowing for space for people who had very divergent views and forge agreements. It is the values that the people were fighting for, that guided Ufungamano. We did not have to take a common stance but people agreed on a framework that allowed for consensus building.

A key question then is: how did the structure ensure accountability between the different structures? How did they ensure that whatever they did had the mandate or at least the blessings of the representations from the other classes and constituencies especially given that accountability can be elusive between a movement and its members as 'iron law of oligarchy' (Michels, 1911) pressurises movements to bureaucratise and decision-making power ends up at the centre? A review of literature on movements with multiple actors (see for example Mati, 2009, 2008; James and Malunga, 2006; Tarrow, 1998) reveals that while movements get their strength from such numbers and diversity it can also be a source of operational challenges.

For the Ufungamano Initiative, the utilisation of the elaborate infrastructure offered by religious institutions that spread across all parts of Kenya definitely enabled it to substantially rival the state's processes. Utilising already existing structures, the high pitch of the

[18] I deal with this aspect in greater details in the next chapter.

constitutional reform struggles came to be heard in all corners of Kenya. Arguably, without such, it is probable that the Ufungamano Initiative may not have become as successful as it did. Indeed, its predecessors, especially NCEC were unable to achieve as much as the Ufungamano Initiative. However, the Ufungamano Initiative had few avenues for citizens' participation especially in the key structure as the Plenary. Even though citizens were always free to air their views as well as attend the Plenary, the formal designation of some organisations as stakeholders was in itself limiting as it left out many others.

As such, there were shortfalls in this strategy as it resulted in a great disconnect between rhetoric of framing its contention with the state as a people-led constitutional reform process, and the internal practice in the movement. This disconnect emanated from the absence of an enabling structure for direct participation of citizens in directly making the most important decisions at the Plenary of Stakeholders. One therefore reads contradictions between Ufungamano Initiative's rhetoric in framing of contention along the Rousseau decentralized and strong anti-bureaucratic impulses and direct democracy, with the actual practice and intra-elite contestation within and outside the Ufungamano Initiative that continuously characterised the constitutional reform process. As such, despite its self-styling as a peoples' movement and the fact that it indeed had the participation of ordinary peoples' struggles and movements (e.g. Muungano wa Wanavijiji i.e. Slum Dweller Federation, the hawkers, the landless etc) the Ufungamano Initiative remained largely an elite movement. In practice, it lacked an elaborate decentralized structure as had been suggested by some of the actors, to enable direct citizen participation and democracy. Instead, it had strong bureaucratically centralised leadership and inclinations.

The token visibility of ordinary people's struggles and mediocre participation avenues undermined the claim that the Ufungamano Initiative was a 'peoples' struggle. It remained largely elitist and in many instances, an urban movement albeit with some representations from rural Kenya. There is indeed evidence to support a claim that even in rural places, representation occurred mainly through local elite who had greater access to the Ufungamano Initiative leadership. This is perhaps explained by the networked nature of civil society.

It is paradoxical that the Ufungamano Initiative failed to do enough to create structures to reach out to a greater majority of Kenyans despite the support it enjoyed. This left the Ufungamano Initiative essentially a vehicle serving to win the control of the under classes with the leadership of local grassroots movements being the only people finding a seat at the

decision-making table. In the end, the Ufungamano Initiative stakeholders essentially advocated a position on the table of the processes and decision making in the constitutional reform agenda while arrogating themselves the representation of Kenyans without any clear mandate from them. This points to tensions between representative claim-making and 'democracy of the affected' (Marochi, 2011). Even though the youth and the students' movements as well as Muungano wa Mageuzi fiercely contested the narrow interpretations of a people led process, they were unsuccessful (interviews: Hassan, 16/10/2009; Churchill, 02/10/2009). This becomes clear especially during the merger negotiations with the state-led process discussed in the next chapter.

The movement countered the accusation of its elitism with arguments that issues of representation were questionable in Kenya. In the December 15-16, 1999 Ufungamano I Plenary, Matiba captured this well when he argued, 'since 1983, elections have never been free in Kenya and therefore people do not trust most parliamentarians.' At least five respondents corroborated this view (interviews: Kihoro, 23/09/2009; Ndubi, 24/09/2009; Mwachofi, 27/09/2009; Onyango, 07/10/2009; Omtatah, 31/03/2010). These were valid observations. Moreover, given the hostility from the state, it is possible that it would not have been easy to get the popular mandate from the people of Kenya through what the Ufungamano Initiative attempted to do. Moreover, as Ndubi argued, the question of representation

> Probably presupposes that elections are in themselves democratic. There is representation at two levels: 1) process representation where you have to be elected by somebody as argued in the Njoya case.[19] 2) Substantive representation in terms of issues. The issues we represent are the issues out there. They are the issues that people relate with.… Even today, because of the nature of work that we do in activism as well as litigation and going through the media, I meet people in the streets, who tell me thank you very much… [and that I] should not stop.… So they connect with what we are doing (interview, 24/09/2009).

Notwithstanding these claims, as well as the fact that many of the actors within the Ufungamano Initiative had representations or a presence in all parts of the country and that this meant it had people's legitimacy (interviews: Ndubi, 24/09/2009; Musau, 24/09/2009; Lethome, 02/10/2009; Athman, 12/10/2009), this arrogation played a role in undermining the

[19] The *Njoya case*, already cited was a constitutional challenge filed by Rev. Njoya and others against the Attorney General to force the draft Constitution to be ratified by Kenyans through a referendum before it could be enacted.

legitimacy of the Ufungamano Initiative (Oganda interview, 26/03/2010). Indeed, even the worst dictators use similar words and define and frame their legitimacy in terms of representing and protecting their people. Second, notwithstanding claims that both participation and legitimate representation of Kenyans has been contested on the basis of lack of free and fair elections since 1983 (Ufungamano Initiative Stakeholder Consultative Meeting 15-16, December 1999 minutes; Ndubi, interview 24/09/2009), little was done to ensure popular participation of the masses at all levels in the Ufungamano Initiative process. Participation avenues remained largely limited to certain elite formations (Odhiambo M., interview 01/04/2010). As such, 'while the Ufungamano Initiative appeared to be a popular movement and the Peoples' Commission particularly gave some sort of institutional face to that, it is not true that the main goal of the Ufungamano Initiative was to ensure that space for the 'under classes in constitution making' (*Ibid*).

This is in no way to discount the fact that whatever the Ufungamano Initiative stood for resonated with many Kenyans. Rather, it is to demonstrate operational challenges in ensuring popular direct participation in key decision-making organs for a movement of the kind that the Ufungamano Initiative was. As such, in spite of its defects and challenges, the Ufungamano Initiative did transparently lay the principles for operations and engagement. These included 'the process of the constitutional review in Kenya [was] as important as the eventual content of the constitution and the integrity of the process [wa]s central to the legitimacy of the [resultant] constitution' (Ufungamano Initiative December 15-16th 1999). Moreover, it adopted the following principles as key and integral of constitution making:

a) Openness and transparency: each stage and organ of reform was to be open to public scrutiny, evaluation and critique and that the review would announce and adequately publicise in public and private media in advance of their work, the formal criteria and decision rules for carrying out their respective mandates under the Review Act;
b) Inclusivity, accessibility and non-discrimination: i.e., it would not exclude any group on account of race, religion, ethnic origin, sex, local connections, occupation and status. The review organs would in particular, provide adequate opportunity to the disadvantaged groups to participate in the constitutional reform;
c) Accountability: The organs and the constitutional reform process would at all times be accountable to the people of Kenya. In particular, the organs of the review should ensure that in translating memorandum into a draft, the views of the people are meaningfully taken into account;

d) Cumulativeness and self-correction.

While there was no fidelity to the letter on these principles by the Ufungamano Initiative in its operations and structures, the statement of these principles as inalienable rights of Kenyans has been its enduring contributions to the constitution reform project in Kenya.

Conclusion

Through a combination of leadership and effective strategies within the above-discussed structures, the Ufungamano Initiative arguably achieved a lot. It was able to mobilise the citizenry, facilitated civic education, as well as started collecting views from the public on aspirations of a constitution they desired. The Ufungamano Initiative was able to capture popular imagination of the Kenyan public and in the end, posed a substantial challenge to the state. Nonetheless, the movement and its leadership faced numerous challenges. First, the re-writing of the constitution required massive human and financial resources that were not easy to mobilise. Second, the Ufungamano Initiative's actions to form a Commission to write the constitution outside of the state established structures, as shown variously in this chapter, elicited strong reactions from the Moi/KANU regime and his NDP allies. The Government publically condemned the Ufungamano Initiative activities and even threatened and used violence in some cases. However, there were other covert reactions/responses from the state. The state security infiltrated the movement and started sowing seeds of distrust and suspicion among different faiths as well as leaders. A typical case here was the example of Honourable Phoebe Asiyo, the leader of the Kenya Women Political Caucus, who, despite positioning herself and the group she led as a sympathiser of the Ufungamano Initiative was interviewed by the Parliamentary Select Commission, and accepted a position of a Commissioner in the government-led process (Waruku, interview 29/09/2009).

Such actions by some of the Ufungamano Initiative leaders, seen as selfish by some, were energy sapping for the movement. The State continued its pressure but the Ufungamano Initiative was unrelenting. A former Secretary to the merged Constitution of Kenya Review Commission, Lumumba (interview, 01/10/2009) pays tribute to what the Ufungamano Initiative was able to achieve. The Ufungamano Initiative had against many odds, managed to 'push' and create a certain level of substantive uncertainty that the government secretly started looking for a way out of a stalemate it had engineered. It did help the Ufungamano Initiative that the government's own credibility was getting a heavy beating from many quarters especially from donors. But even then, there were uncertainties on how far the

Ufungamano Initiative would go. As such, when a desperate Moi regime tried to hire a renowned Kenyan constitutional Law scholar, Professor Yash Pal Ghai to steer the Government process in the face of a growing legitimacy crisis to its legally sanctioned process, a ray of opportunity beckoned. Ghai succeeded in convincing the Ufungamano Initiative to agree to a common process. The next chapter analyses how this was approached and why it became possible.

As shown in this chapter, key to the Ufungamano Initiative's success was the way it framed the issue at hand: constitution making as crucial to the lives of all Kenyans and that it should never be left to politicians alone. As such, the Ufungamano Initiative placed the centrality of the citizen (the Wanjiku) in this process, arguing that the people were sovereign and had inalienable rights in deciding the type of constitution they wanted. Second, we have seen that it framed the constitution (in my view rightly so), as a sacred covenant between the people and their rulers that required the input of both. From the above, we have also discerned that while the Ufungamano Initiative fashioned itself as an effort to push for reviews and more fundamentally, to reclaim and rewrite the Kenyan people's relationship with their political leaders in a participatory way, its structures ensured that it remained an instrument of elites to bargain a place for themselves at the decision-making table. In its contention, the Ufungamano Initiative chose a simple but nested structure that relied more on the constituent/member organisations to mobilise resources and support. It was an effective structure but nonetheless, one that exposed more cleavages in the movement as it was riddled with many contradictions that fundamentally challenged its standing as a true mass movement.

Chapter Seven

The merger and after: A dream deferred?

Introduction

Social movement organisations might not always achieve what they set for themselves within the duration of their existence. In some instances, movements die or metamorphose into different organisations and forms (e.g. NGO-ise or sometimes go underground as terror/militant group).[1] Sometimes, issues at the heart of social movement's contention may also evolve and mutate through cycles of protest/contention (Tarrow, 1998; Strang and Soule, 1998; Koopmans, 2004; Oliver and Myer, 2003). Cycles of contention ensure continuity of social struggles as they allow frustrations, failures, missed opportunities, and false dawns of transformations, to find expressions and a home in new waves that pick up and continue the struggle from where their predecessors left. This happens because of 'diffusion of collective action from more mobilized to less mobilized sectors' (Tarrow, 1998: 142). Such diffusion and interactions give rise to higher frequencies of protest events across the population, leading to the rise of successor social movements (Oliver and Myer, 2003). In the case at hand, I argued in chapter five that even with the IPPG reducing the NCEC tempo, the Ufungamano Initiative took over from NCEC because different stakeholders agreed to work together to offer continuity by taking the fight for a new constitution forward.

Such continuity, as Strang and Soule (1998: 280) argue, reflects 'complex webs of action and reaction' by the state or groups targeted by social movements and are defined by the nature of relationships between initial movements and their spin-off successors (see also McAdam, 1995). This is because 'for social movements, the tendency of diffusion dynamics to spread and amplify protest is opposed by increasingly strong responses by the state' (Strang and Soule, 1998: 280). The responses of the state therefore act as instigator or inhibitor of subsequent collective action as movements take lessons from such reactions (Pitcher *et al.*, 1978 cited in Strang and Soule, 1998; Meyer and Staggenborg, 1996; Oliver and Myers, 2003). Such lessons and experiences determine further actions and counteractions by movements and the state.

[1] There are many examples in Kenya of such organisations such as *Mungiki*, which went underground due to continued state repression, or Release Political Prisoners which transformed into an NGO, to mention but two.

As such, the 'rise' and 'fall' as well as diffusion of social movement contention, are reflections of both fluidity and innovations of actions and counter-actions and struggles for hegemony. The diffusion of struggles co-evolves as both social movement contenders and their antagonists, learn and adjust in response to each other's actions in an effort to outmanoeuvre each other (Oliver and Meryer, 2003; Chan and Zhou, 2009). Diffusion enables social movements to 'produce general outcomes that are more than the sum total of the results of an aggregate of unconnected events' (Tarrow, 1998: 142). But the succession of one cycle of contention with another is also a testament to the undying faith that it is still possible to change the status quo. For the Ufungamano Initiative, Apiyo captures such faith: 'a good idea cannot be killed. Ufungamano was a good idea and so, its dream still lives on until we see the success of a constitution every Kenyan yearns for' (interview, 16/09/2009).

This chapter utilises Gramsci's (1971) concept of hegemony to analyse and explain the contributions of the Ufungamano Initiative to the constitutional reform struggles in Kenya. Hegemony for Gramsci is constructed as the ability of the dominant class or social force to make their interests, the dominant interests over all others through a combination of force, concessions and organisation of consent of the masses of people to their dominant social order. To understand how this works, Gramsci's concept of hegemony follows Marx and Engels' (1846[1970]: 64) writings from *The German Ideology*:

> The ideas of the ruling class are in every epoch the ruling ideas, i.e. the class which is the ruling material force of society, is at the same time its ruling intellectual force. The class, which has the means of material production at its disposal, has control at the same time, over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it. The ruling ideas are nothing more than the ideal expression of the dominant material relationships, the dominant material relationships grasped as ideas; hence of the relationships which make the one class the ruling one, therefore, the ideas of its dominance. The individuals composing the ruling class possess among other things consciousness, and therefore think. Insofar, therefore, as they rule as a class and determine the extent and compass of an epoch, it is self-evident that they do this in its whole range, hence among other things rule also as thinkers, as producers of ideas, and regulate the production and distribution of the ideas of their age: thus their ideas are the ruling ideas of the epoch.

But for Gramsci, hegemony is also a space that through contestations may allow for alternative hegemonies to emerge. As such, hegemony is 'dialectically where the existing

hegemonic social order is maintained but also [a] realm of social creativity [where contestations within it, can lead to an emergence of] a new social order' (Katz, 2006: 334-5). Commentators of contemporary Kenyan constitutional reform struggles have long argued that the constitutional reform movement brought together 'disparate criticisms of, and advocacy against the status quo, of several rather different stances, combining reasoned thought and political activism' in the face of a common enemy (Omtatah, interview 10/06/2011). This combination of what is loosely termed the pro-reform movement in Kenya meant that the constitutional reform agenda was reflective of a war between the different 'interests of Kenyans – class, religious, gender, ethnic, racial, political, and social…' (Mutua, 2008: 117). In this regard, the Ufungamano Initiative was not any different from its predecessors or successors as it operated in a similarly polarised environment.

Given the foregoing, this chapter seeks to provide answers to the following questions: how viable can a movement with such a wide and varied constituency, competing interests and strictures as the Ufungamano Initiative remain united and achieve the goals it set? Considering that the Ufungamano Initiative operated at the level of improvised unity, was it destined not to last long as a united force? The analysis of various actions, evolutions and outcomes of the constitutional reform contention, leads to a conclusion that the Ufungamano Initiative was yet another narrative of what Muluka (2011a) summarises as a 'false dawn that did not blossom into mornings of salvation and fulfilment' in transforming the Kenyan state, because it did not achieve a new constitutional order. Nonetheless, this chapter argues that despite its limitations, the Ufungamano Initiative was an important cog in the drive that ultimately gave Kenya a new constitution in the August 4, 2010 referendum after two decades of struggles and multiple waves of contention.

The protracted contention over the contemporary constitution reform project in Kenya, also points to an 'organic crisis' of the hegemony in the Gramscian sense. This crisis resulted from two factors. First, was the mobilisation of large numbers of the subordinate classes into the struggle that continued piling pressure on the dominant social forces. Second, it resulted from the State's inability to accommodate or mediate different 'competing interests of individuals, social groups, regions, ethnic groups and institutions' (Mutua, 2008: 117). The Kenyan case specifically speaks to Gramsci's (1971: 178) argument that:

> A crisis occurs, sometimes lasting for decades. This exceptional duration means that incurable structural contradictions have revealed themselves (reached maturity) and that, despite this,

> the political forces which are struggling to conserve and defend the existing structure itself are making every effort to cure them, within certain limits and to overcome them. These incessant and persistent efforts…form the terrain of the 'conjunctural' and it is upon this terrain that forces of opposition organise. These forces seek to demonstrate that the necessary and sufficient conditions already exist to make possible, and hence imperative, the accomplishments of certain historical tasks (imperative, because any falling short before an historical duty increases the necessary disorder and prepares more serious catastrophes).

The significance of the above citation will become clear in the discussion of the aftermath of 2002 general election under what I term a *transition without transformation* that arrested change. This was because of realignment of political forces and interests to forestall any radical transformations of the Kenyan state. Specifically, two elite forces were at play. On the one hand was the group led by National Alliance Party of Kenya (NAK), part of the National Alliance Rainbow Coalition (NARC) led by President Mwai Kibaki. The NAK group altered certain proposals in the draft of the proposed constitution in order to evade dilution of Presidential powers. On the other hand was the Liberal Democratic (LDP) brigade formed by renegade KANU bigwigs led by Raila Odinga and included most of the most-senior KANU leaders such as Kalonzo Musyoka and George Saitoti and Joseph Kamotho among others. The members of this group had defected from KANU two months to the 2002 general election to form LDP after Moi had overlooked them in his choice of a successor. This group re-constituted itself and formed an alliance yet again with what had remained of KANU to lead a majority of Kenyans in what they framed as a resistance to the abortion of the popular will by rejecting the 'government'[2] authored draft constitution in a referendum in November 2005.

The 2005 referendum also brought further cleavages within one of the most important constituencies of the Ufungamano Initiative – the religious groups. In the end, deep division ensued and high parochial stakes, as opposed to the content of the proposed constitution, came to play a decisive role in the referendum outcomes. The cataclysmic post-election violence in late 2007 to early 2008, resulting from the 2007 disputed presidential election, served as a turning point. The violence witnessed in 2008 in Kenya resulted in what Fowler (2011a: 2) refers to as 'civic energy that is "uncivil" and potentially destabilising' but which

[2] I use quotation marks here to denote that the draft that was subjected to a referendum in November 2005 was acrimonious as one side of the ruling coalition disowned and campaigned against it while the then Justice and Constitutional Affairs Minister in the NARC regime – Hon Kiraitu Murungi – and who had been from the NAK part of the coalition, continued insisting that the draft constitution was a government project.

is useful to the achievement of civil ends. Such uncivil energy according to Fowler, results from deep-seated cleavages in society especially when elites unsuccessfully try to bury or suppress them.

Regarding the Kenyan case, one of the outcomes of the 2008 post-election violence (uncivil energy) was a forced political marriage between Raila Odinga's Orange Democratic Movement (ODM) and Mwai Kibaki's Party of National Unity (PNU). As part of the National Accord (the political settlement that got Kenya from the brink of an all-out civil war), a raft of conditions termed Agendas for Reforms, were set for the new coalition partners by the Panel of Eminent Persons that mediated the settlement. One of the principal agreements under Agenda 4 was the need for comprehensive constitutional reforms to save the country from further self-destruction.[3] This forced a majority of politicians on both sides of the political divide to momentarily agree to give Kenyans a new constitution. This is what made the realisation of a new constitution possible in 2010.

The new constitution was therefore a concession by hegemonic political forces. In the face of collective threats that the post-election violence imposed on economic and political elites, political elites acted to preserve and reproduce their own position in the Kenyan society by conceding to a new constitution that in so many ways, was not radically different from the one rejected in 2005. The realisation of a new constitution in August 2010, born out of the ashes of the 2008 post-election violence, confirms that 'uncivil energy' can be a means for achieving civil ends.

Gramsci's concept of hegemony helps us understand how domination and its reproduction have occurred throughout the Kenyan constitutional reform struggles. Specifically, it helps in advancing a thesis that different elite contenders in the Kenyan constitutional reform struggle i.e. those for transformation (in their many hues), and those for status quo, have managed to turn popular constitutional review contentions into intra-elite (i.e. political-economic, academic and religious) struggles by reproducing their domination of the subaltern classes thereby undermining the transformation of the existing order. Here I borrow from Sassoon (1982 as cited in Katz, 2006: 335) to argue that struggles for a new constitutional

[3] The agenda 4 items of the Kenyan National Dialogue and Reconciliation (2008) were geared towards addressing long term issues that included: constitutional, legal and institutional reforms, undertaking land reforms, tackling unemployment, particularly among the youth, tackling poverty, inequity and regional development imbalances, consolidating national cohesion and unity, and addressing impunity, transparency and accountability.

dispensation in Kenya became a strategy to diffuse 'a certain way of life and thought...throughout society to inform norms, values and tastes, political practices, and social relations.' The result was 'a specific organization of consent...result[ing] from a combination of coercion and consent, the latter achieved through the hegemonic co-optation of groups in civil society resulting in "coercive orthodoxy"' (Persaud, 2001: 65 cited in Katz, 2006: 335) that ultimately led to 'a dream deferred.'

The postponement of the realisation of a new constitution emanated from cleavages within the different elite formations and their misadventure in desperately trying to preserve an inevitably dying order. While some scholars within the political opportunity structure paradigm (for example Chan and Zhou, 2009) see such elite fragmentation as an opportunity for social movements as these offer vanguards to struggles, the Ufungamano Initiative narrative shows that fragmentation within the elite was one of the principal causes for the derailment of the constitutional reform train. The sources of such fragmentation within the Ufungamano Initiative included: 1) the effects of the merger of the Ufungamano Initiative with the Parliamentary Select Committee led process; 2) continuation of the centrality of ethnicity in Kenyan politics and struggles (discussed in detail in chapter four); 3) disagreements over the content of the proposed draft constitution which were products of mistrust among leaders, personality power plays, and struggles over different interests, and 4) resource limitations. This chapter demonstrates how these mutually reinforcing factors were the force fields of both driving and countervailing forces that worked for, and opposed the merger, and why the countervailing forces triumphed and frustrated the democratic constitution making experiment under the Ufungamano Initiative in Kenya.

The merger: motivations, process, and effects

Social movements have many dynamics. Their protest cycle dynamics involve shifts in the action repertoires across time. For example, overtime, movements may move from utilising confrontational strategies such as mass demonstrations to institutionalised politics (Tilly, 1978 cited in Oliver and Myers, 2003). The nature of relationships between structures, leadership and followers, resources and frames, determine the path undertaken by a movement. Therefore, like Oliver and Myers (2003: 1), I argue that 'movement trajectories evolve through stochastic processes and are constrained, but not determined, by structures.' This is because, frictions between structures may, for example, be a movement's death knell, or force it to metamorphose into something else. As already pointed out in the last chapter,

there were multiple structural and leadership conflicts within the Ufungamano Initiative that made hegemonic co-optation and organisation of consent through a merger more possible. I analyse the motivations for the merger between the Ufungamano Initiative's People's Commission of Kenya and the government led process with a view to offering further support for this claim. It is also important to note, as Oliver and Myers (2003: 1) stress, that 'stochastic thinking is essential for recognizing both the volatility and path dependence of collective action and its underlying structural constraints... movement dynamics are [also] shaped more by interactions with other actors than by processes internal to a movement.' Following this, I argue that analysing interactions between the Ufungamano Initiative and the state is equally important in determining reasons for the merger.

Such analysis reveals that the merger was influenced by a number of factors. Chief among these was the role of leadership both within the movement and its competitor (the Parliamentary Select Committee). This is especially exhibited by the leadership role played by Mutava Musyimi in the Ufungamano Initiative, and Yash Pal Ghai in the Constitution of Kenya Review Commission. The nomination of Ghai to lead the Constitution of Kenya Review Commission had a tremendous impact on the nature of strategic interactions between the Ufungamano Initiative and the state. Ghai's role corroborates Tarrow's (1998: 142) argument that 'widespread contention produces externalities that give challengers at least a temporary advantage and allows them to overcome the weaknesses in their resource base.' Specifically, as the analysis below reveals, Ghai's role as a new external force in relation to his strategic interactions with the Ufungamano Initiative leadership provided possibilities that made the merger an attractive option. Together with Ghai's influence, the other major factors contributing to a merger were resource constraints, as well as outright intrigues on the part of some of the actors within the Ufungamano Initiative, and the role of the donor community.

The nomination of Ghai to lead the Constitution of Kenya Review Commission process by the Moi/KANU regime was hailed as a stroke of genius on the part of the regime by many commentators of the Kenyan Review Process (see for example Mutua, 2008; Lumumba, 2008; interviews: Apiyo, 16/09/2009; Gitari, 21/09/2009; Kihoro, 23/09/2009; Ghai, 23/10/2009; Ombok, 24/09/2009; Khairallah, 26/09/2009; Ndubi, 24/09/2009; Odenda, 07/10/2009; Zein, 07/10/2009). Ghai's appointment as this analysis shall reveal, pushed for conditions that would enable what Oliver and Myers (2003: 1) call 'strategic interaction'. This refers to how the process and outcomes of actions of movements and their opponents

(regimes or counter-movements) affect each other's actions and counter actions. Oliver and Myers (2003: 1) observe that:

> In social movements, actions affect other actions: Actions are not just isolated, independent responses to external economic or political conditions—rather, one action changes the likelihood of subsequent actions. This broad understanding of inter-action effects encompasses relations often seen as qualitatively distinct. The term "diffusion"[4] is used when prior actions affect the future probability of similar actions, including the spread of ideas or language.

Strategic interactions are therefore products of movement's co-evolutionary and diffusionary developments with regimes (Oliver and Myers, 2003).

The biological analogy of 'diffusion and co-evolution' (Oliver and Myers, 2003: 2) model in the study of strategic interaction between movements and the their targets, offers a useful tool for understanding how both the Ufungamano Initiative and the state co-evolved in this contention to a point where a merger was, albeit not publicly declared, an attractive option for both parties. Oliver and Myers (2003: 2) write that:

> Diffusion and coevolution are closely related. Species which adapt well tend to diffuse, and so do successful actions. Conversely, species can be driven to extinction (negative diffusion, if you will) by the actions of other species. Diffusion processes change the environments to which actions and species adapt. In fact, coevolutionary relationships can most often be conceived as relations between diffusion processes. Coevolutionary relationships may vary in their forms, including predator-prey, niche competition, and symbiosis, as well as the indirect relations that arise from sharing a common environment (e.g., habitat destruction). There are limits to the biological analogy, specifically because the core mechanisms for selection are learning and decision rather than mortality and sexual selection, although chance events play key roles in both. Nevertheless, the insight that movements co-evolve with other actors permeates movement scholarship even when that language is not used. Serious attention to the underpinnings of co-evolutionary theory provides new and powerful ways of theorizing relations among social movements and other actors.

Rev. Timothy Njoya, a participant of this study, also used a biological analogy to express the need for change, arguing:

> Every living organism adjusts to changes in the environment. It is innate in every living organism to adjust to changing environment as best as they can. Human political behaviour is

[4] Indeed, Ufungamano Initiative was somewhat a new wave of protest from the diffusions of the earlier NCEC struggles. Chapters four and five dealt at length with this.

> no different. As Charles Darwin argues, it is not the strongest species that survives; it is not the most intelligent species that survives. Rather, it is the one that is most adaptable to change. But the most genuine change is not one based only on the need to adapt but also on the believe that it is the only way to better creatures and the survival of that particular species especially when it is about the 'rational' human being. For genuine change in political behaviour, new ideas are needed and these need to operate at a different level. This is what will motivate real change. It has to be internal and not externally driven (interview, 29/09/2009).

Using this logic, it is fair to argue that it is pressure on politicians that forced them to change. The key question is whether they changed for better or for worse. Nonetheless, whatever direction change may take, it results from pressure that forces negotiations and concessions.

To understand the significance of the biological analogy for the Kenyan case, one needs to explain the circumstances surrounding the recruitment of Ghai by the state. Ghai had been picked to chair the Constitution of Kenya Review Commission out of desperation on the part of Moi's government. As pointed out in chapter six, while arguably the Ufungamano Initiative did not do enough to create necessary structures to enable direct popular participation, the movement sensitised and mobilised sufficient support to its cause to a level of upsetting the state process (interviews: Kibwana, 21/10/2009; Gitari, 21/09/2009).[5] In the process, the Ufungamano Initiative created a substantive challenge to the legitimacy of the state-led process. The Moi/KANU regime was forced to seek ways to save face by appointing someone who, in the eyes of Kenyans and the international community, appeared to be credibly independent and highly regarded (interviews: Ghai, 21/09/2009; Ochanda, 22/09/2009, Ombok, 24/09/2009; Ndubi, 24/09/2009; Kihoro, 23/09/2009). Ndubi (interview, 24/09/2009) for instance, offers clear evidence for this with his argument that:

> Moi was desperate for international acceptance because he had lost a lot of ground. As such, one of the results he hoped to reap from getting Yash Ghai on his side was that he would be seen as a serious person who was ready for reforms because Yash Ghai had an internationally credible record and reputation.[6]

[5] Gitari (interview, 21/09/2009) attributes this to the fact that the Ufungamano Initiative used organised religious institutional structures, 'probably the best grassroots network for communicating' in the country, and the fact that they 'command a very high following, because they were bold and prophetic.' With such a dedicated force of followers it meant they were a voice that could not be ignored. It is such that brought pressure to bear and might have realistically 'forced' Ghai to seek a merger.

[6] Mutua (2008: 128) argues along the same line when he wrote: 'For the Moi regime, Ghai would lender the process his enormous prestige, making it virtually unassailable as another Moi/KANU sham.'

The significance of Ghai's entry into the picture, and his eventual success in negotiating a merger, corroborates the observations by Oliver and Myers (2003: 3) that:

> Social movements are always shaped by the actions of opponents and bystanders. Actors not only interact strategically at each point in time, they learn over time from past interactions and from information communicated to them by other actors. New dissident tactics diffuse through dissident networks, and new regime responses diffuse through regime networks. These new forms of action influence subsequent interactions.

Specifically, I argue here that the same traits that made Ghai a good candidate for the Moi regime worked to ensure he successfully negotiated a merger between the two competing processes. These traits were Ghai's fortitude – personal integrity and credibility, a personal touch, a reputation both locally and internationally and a sharp and strategic intellect in identifying opportunities for easing tensions within the different elite formations, which created some level of confidence and endeared him to the Ufungamano Initiative without necessarily alienating him from a government that was desperately clutching at straws. Moreover, as Mutua (2008: 128) has argued:

> Ghai seemed to have accepted the appointment well aware that from the start, the Moi government intended to use him for its own political purposes. What Moi did not anticipate, however, was Ghai's political acumen and determination to give Kenya, the country of his birth a modern democratic constitution. For Ghai, such an accomplishment would have been the most fitting epilogue to a distinguished career.

These aspects, I posit, dictated the character of Ghai's well-calculated actions in his dealings with the Moi regime and other contenders in the process as these forces saw Ghai's utility to them, as pegged only on his ability to help them overcome the other side.

To understand Ghai's impacts in these contentions, I digress a little to trace how Ghai was recruited by the state. In his own words, Ghai was reluctantly pulled into the constitutional contestation by the then Kenyan Attorney General, Amos Wako, who is a former student of Ghai from the latter's days as a professor at the University of Dar-es-Salaam (Ghai, interview 23/10/2009). Wako had approached Ghai in September 2000 while he (Ghai) was on sabbatical leave, away from Hong Kong, where he was a law professor. Ghai was spending sabbatical time at the University of Wisconsin-Madison in the United States of America. Wako paid Ghai a visit at Madison to talk him into accepting to be a Commissioner and Chair of a government-led Constitution of Kenya Review Commission.[7] Ghai held that he initially

[7] Ghai's own narrative in this interview is corroborated by Mutua (2008) accounts of how Ghai was wooed into accepting to get into the Commission and chair it.

flatly turned down the offer arguing that he had been 'exiled for a long time and did not follow politics that closely' (interview, 23/10/2009).

Ghai also stated that even then, he was acutely aware of the deep divisions in the Kenyan society coupled with intense political oppression that had led to the emergence of two parallel constitutional reform processes. Knowing a little bit about the Ufungamano Initiative contentions, Ghai naturally identified with it because of the acquaintances driving it. Moreover, Ghai indicated, he had been working with civil society all his life, believed in civil society, and in human rights, and had suffered in his own ways, from the arbitrariness of the Kenyan state.[8] As such, Ghai stated that he did not 'certainly want to be associated with what was seen at that time, as a rival government body' because he was troubled by the deepening cleavages in the Review Process (interview, 23/10/2009), a process he considered essential to the reinforcement of national unity and to move the country forward.

However, Ghai also read Wako's or rather the entire government's desperation to have him on board. This is captured by the fact that Wako, in Ghai's words, urged him to accept the appointment because everybody would accept him: 'you are respected and can play a very constructive role' in the process (Ghai, interview 23/10/2009).[9] Ghai was nonetheless very obstinate and stated clearly that he did not want to be 'associated with the Moi government commission.' Nonetheless, after four days of prodding from Wako, Ghai said, he decided to talk to some of his friends at the heart of the Ufungamano Initiative struggles back in Kenya. These included Willy Mutunga, an old friend and student, Fidelis Nguli and Gibson Kamau Kuria among others, whom Ghai had been meeting and working with over the years he had been in exile. Ghai stated that he got mixed views from his confidants:

> Some said no. Willy said, I think you should come, do not commit yourself, you have not been back for a while. Come, see, meet people and make up your mind. And do not say no just yet, because we are in a crisis and the Ufungamano Initiative cannot go that far. There is a limit. Murungi said the same thing as Willy, but adding that, do not come and add legitimacy to this process.... In the end, I was very torn. I did not know what to do.[10]

[8] This was with regard to a detention order arbitrary placed on him by the Kenyatta regime, which forced him to flee the country in the 1960s.

[9] Indeed, Ghai's resume shows that he has been involved in helping a number of countries in the region as well as globally in constitution making. These include: Zambia, Seychelles, Mozambique, Fiji, Samoa, Sri-Lanka, Cambodia, Papua New Guinea, Solomon Islands, and more recently Nepal and Somalia.

[10] Gibson Kamau Kuria, a prominent member of NCEC and a former Law Society Chair corroborates these discussions with Ghai. He stated: 'I remember talking to Ghai. I told him: "Prof. Ghai, you can help Kenya: But you cannot help Kenya by serving in that Commission. Moi is not ready to have a democratic constitution"' (interview, 26/09/2009).

These different opinions show clear cleavages in the opinions of people associated with the Ufungamano Initiative process. While some saw Ufungamano Initiative as limited, others thought Ghai would only be adding weight to the government process if he accepted the nomination. Under the circumstances, Ghai decided to continue consulting with more people. After those initial phone calls, Ghai agreed to go to Kenya but with the understanding that he was not accepting any appointment yet. Ghai demanded, as a condition of his acceptance to go to Kenya, a free hand to consult widely with the government, members of civil society and opposition politicians, and others who were not part of the government but were central in the making of a new constitution, with a view to exploring possibilities of reconciling the two processes (interviews: Ghai, 23/10/2009; Musyimi, 09/10/2009; Ndubi, 24/09/2009; Ong'wen, 09/10/2009; Raiji, 14/10/2009; Lumumba, 01/10/2009; Odenda, 07/10/2009; Wambua, 13/10/2009; Athman, 12/10/2009; Churchill, 02/10/2009; Zein, 07/10/2009; Wambugu C., 09/10/2009).

Ghai made it clear to Wako that he was not going to lead a process that would further divide the country and that it was not in Kenya's national interest that the country had two rival processes, given the already deep divisions in society (interviews: Ghai, 23/10/2009; Waruku, 29/09/2009). Ghai opined that so long as these divisions continued, there was no prospect of a new constitution. Under the circumstances, Wako assured Ghai that Moi was very keen to have him on board and he was free to negotiate a merger (Ghai, interview 23/10/2009). As we shall see later in this chapter, Ghai's efforts at reconciling the two processes, backed by strong public pressure, succeeded in a merger agreement in March 2001 (Cottrell and Ghai, 2007).

When Ghai finally arrived in Kenya, he met leading political leaders and the different Ufungamano Initiative religious leaders – Christians, Muslims and Hindus and explained to them his mission. Ghai also attempted to sway the Ufungamano Initiative in a similar way he had done with the government by advising the leaders he was meeting to consider a merger with the State-led process for the sake of the country. He also made it clear to them that he had not accepted his nomination but would be willing to chair the Commission if the two processes merged. According to Ghai, most of the people he talked to were opposed to the idea:

> Everyone said no. Kibaki said no, Nyachae said no, all the civil society organisations said no. Even Musyimi was not keen. I was almost giving up and about to go back, when I received a

> message from Archbishop Ndingi requesting that we meet again. So I met with the Ufungamano Initiative a second time (Ghai, interview 23/10/2009).

In this second meeting, some progress was made. The clergy agreed to at least, explore possibilities of a merger if the government was willing. From these consultations, Ghai realised that even though the Ufungamano Initiative had managed to create substantive and procedural challenges to the state in the reform process, there were a lot of limitations and uncertainties (Mutua, 2008; interviews: Ghai, 23/10/2009; Kibwana, 21/10/2009; Musyimi, 09/10/2009).[11] The internal limitations for the Ufungamano Initiative were already a growing concern for the movement. Mutua (2008: 119) reveals this when he writes: 'even as the Ufungamano leaders, most notably Oki Ooko Ombaka and Mutava Musyimi, engaged in brinkmanship with KANU, they hoped that the work of the PCK would force the government to agree to a single national process....' Abubakar Zein, a former Commissioner of the PCK and later the CKRC elaborates further on what was happening:

> We took cognizance that the government side had a critical sector that they were representing. For the well being of the nation, it was important to have a common process that would give birth to one constitution rather than have two processes that would give birth to two constitutions and ultimately lead to further conflict and possibly violence. Secondly, there was a debate that was going on within the Ufungamano Initiative fraternity and especially outside the technical work being done by the Peoples' Commission of Kenya. This was in an attempt to answer some fundamental questions. One of the fundamental questions was how do you bring into being a constitution that would be prepared under Ufungamano? The debate went from: it will be a moral document that would act as a beacon of a possible future for Kenya that people can work with as a vision, to that we can use an armed struggle to bring a revolution in the country.... Many people recognised the value of a common process. If you use hindsight, every time we have worked together for a cause, we have reached very high heights in this country, including the independence struggle and every time we pulled in different directions, it has always led to violence (interview, 07/10/2009).[12]

[11] Ghai (interview, 23/10/2009) summarized his assessment as: 'I felt that Ufungamano was running out of steam because they did not have much money for their work and travels, their commissioners were complaining. I also knew Oki [Ombaka, the Chair of the People's Commission of Kenya] a little bit before though not very well. When I came here [Kenya], I had two or three one-on-one meetings and I liked him very much. I thought he had a lot of vision, he had a lot of skills and that he should be playing an important role. But I also thought Ufungamano Initiative would fizzle out, I did not think they could sustain it much further because of the intimidation from the government, lack of police protection, and they were running out of money. I felt this was an opening to rescue them in a way ... and Oki was extremely keen on a merger.' These words corroborate Mutua's (2008) observations that Ghai was naturally allied to civil society and openly sympathized with the opposition leadership.

[12] Interviews with Ombok (24/09/2009), Wandati (17/09/2009) as well as Gitari (21/09/2009) yielded similar views.

Understanding all these dynamics within the Ufungamano Initiative, Ghai was convinced there was a clear opportunity to negotiate a merger between the two competing processes. Indeed, Ghai recognised that CKRC represented a minority position as government's position had been marooned. It was such a big challenge to have the legality but lack the legitimacy (interviews: Ombok, 24/09/2009; Waruku, 29/09/2009; Hassan, 16/10/2009). [13] Ghai therefore recognised that the Ufungamano Initiative had a major role to play in the whole process. Its goodwill was paramount to the fruitful continuation and conclusion of the government led process. As such, the state would ill afford to ignore the Ufungamano Initiative (Chitnis, interview 20/10/2009).

At the same time, Ghai's credibility in the eyes of many actors within the Ufungamano Initiative, western donor community, as well as the government, worked in favour of his attempt to get the Ufungamano Initiative to agree to explore a merger (interviews: Ndubi, 24/09/2009; Khairallah, 26/09/2009. Most people expressed faith in him and some were willing to give him the benefit of the doubt. According to a former Coordinator of the National Youth Movement who represented the youth movement in both the NCEC and the Ufungamano Initiative - Ochieng Khairallah, 'people, even the Ufungamano community, expressed very strong confidence in Yash Pal Ghai. To [them] Yash Pal Ghai occupied the position of the people. We felt that with him there, he will be able to articulate the collective aspirations of the Kenyan people' (interview, 26/09/2009). Ndubi (interview, 24/09/2009) the then Vice Chair of the influential Law Society of Kenya reinforced this idea when he stated:

> What influenced the half-hearted acceptance of talks about a merger, was the acceptance of Professor Yash Ghai; his personal reputation because people knew him... people said okay, Wako may be devious but Yash Ghai is a steadfast person, let us give him a chance. As the Law Society, we actually feared and wondered whether we could be assured that Ghai could deliver a constitution.[14] And because of the IPPG manipulation, that fear was seen to be

[13] See also Mutua (2008) who provides evidence of the challenge Ufungamano had posed to the state process and why it was increasingly difficult for it to ignore Ghai's call for a merger. Using an article in the *East Africa Standard* (November 24, 2000) titled 'Ufungamano Initiative Illegal', Mutua highlights how 'the daily attacks on the PCK by the KANU-NDP officials betrayed their fear of the Ufungamano Initiative. Musalia Mudavadi, a senior minister asserted that the PCK was illegal. Raila Odinga and other pro-KANU leaders continuously attacked the PCK to discredit it. But the attacks served to enhance the legitimacy' (2008: 119).

[14] Oduor Ong'wen, the then Chair of the National Council of NGOs also stated that they were at first a bit sceptical about Ghai's intentions and whether he would deliver on a common process given the existing acrimony in the country. These fears are also captured by Mutua (2008: 120) who writes: 'even though NCEC thought well of Ghai, it could not separate him from Wako, Moi, and Odinga- the triumvirate that had appointed him chair of the CKRC. The NCEC believed that Ghai would end up a Moi dupe.'

> legitimate.[15] But there was also fear that if we rejected engagement completely, government had the capacity to pretend and run away with it and then they would discredit and brand us as the people who want a constitution yet when they [government] have conceded space, we do not want to engage.

On account of Moi/KANU's desperation despite the public show of might, coupled with the self-awareness on the limitations of the Ufungamano Initiative, and the fact that most people on both sides of the contention had some confidence in him, Ghai sensed he had a certain level of control and an opportunity to negotiate a merger. He offered to mediate between the two processes up to a point where each side was comfortable to meet and negotiate face to face. The clergy agreed to this. He passed on this message to both Raila Odinga and Moi. The two liked the idea of a merger too, but Moi sought to know from Ghai how he would work with the Ufungamano Initiative people considering that they were set on creating their own order. Ghai opined that all actors being Kenyans, if the merger succeeded, three months after the merger no one would remember who came from Ufungamano and who came from the Government Commission (Ghai, interview 23/10/2009). This, as shall become clear later, was prophetic.

Having won some interest from both sides on the need for a common process, Ghai embarked on getting the two sides to directly talk to each other so as to break the hostilities the leadership of the two processes had for one another. To make this happen, Ghai invited Raila Odinga and Mutava Musyimi for a chat over drinks at his home, but unbeknown to either. According to Ghai, 'they were both quite surprised and not very happy to see each other. But at least they had met. In this meeting, Ghai drove home the importance of both of them talking to each other directly: 'I said to them: "come on: if we cannot talk to each other, how then are we going to make this process happen? We have to start building some trust"' (Ghai, interview 23/10/2009).

In conceiving political opportunity for social movement's work/operations, Oliver and Myers (2003: 4) argue that:

> Political opportunity is best understood as a multidimensional space in which some groups or actions are facilitated or responded to by political elites or institutions, while others are

[15] Mutua (2008: 120) also reveals the existence of such fears within the NCEC allied groups who 'cited rigged [1997] elections, and broken pacts, such as the Inter Parties Parliamentary Group (IPPG) and Safari Park compromises, as ample proof that Moi could not be trusted to create a process to return sovereignty to the people.'

> repressed or ignored. For this reason, it is best to think of political opportunity as a matrix of probabilities, where each element is the probability that a particular kind of action will meet with a particular kind of response or action from particular kinds of other actors.

For the case at hand, a key act was Ghai's refusal to take the oath of office as commissioner and Chair of the Constitution of Kenya Review Commission (even after accepting nomination) until there was a joint commission between the parliamentary-led process and the Ufungamano Initiative. This became a great catalyst for the series of events that opened further political opportunities for the Ufungamano Initiative to directly engage the state (Mutua, 2008; interviews: Ndubi, 24/09/2009; Ghai, 23/20/2009; Zein, 07/10/2009). According to Churchill (interview, 02/10/2009) the fact that the state did not see it fit to replace Ghai was read as tacit support for the merger efforts by the state. This proved to be a seismic political opportunity boost for the Ufungamano Initiative's reform armada because it effectively reduced the power discrepancy between the Ufungamano Initiative and the Parliamentary Select Committee. This also precipitated the softening of hearts within the Ufungamano Initiative, and corroborates the co-evolutionary approach.[16]

But a critical question still is: why was Ghai keen on a merger? Ghai (interview, 23/10/2009) argued that the main reason he was keen on a merger was to 'strengthen integrity and honesty of the Commission in the service to Kenyans given the heavy polarization of the country along shades of religion, ethnicity, generation, class etc.' Besides refusing to take the oath of office, Ghai also refused to take/use any government money or resources unless the two processes were merged stating that he would only use public resources when all organs, including the Ufungamano, were together (Ndubi, interview 24/09/2009). These conditionalities helped Ghai navigate the merger process without necessarily appearing to be siding with the Parliamentary Select Committee. Ghai opted for the negotiations to happen at the political organs level by dealing directly with the Parliamentary Select Committee on the Constitution and the Ufungamano Initiative Steering Council rather than with the respective implementing arms i.e. the Constitution of Kenya Review Commission and the People's Commission of Kenya. This was because Ghai understood clearly that it was the poisoned nature of politics that had created the polarised environment in the first instance.

[16] Some of the participants to this study (for example Apiyo) also pointed to the fact that the Chair of the Parliamentary Select Committee at the time, Honourable Raila Odinga was a reformist and this also helped in the warming of the frosty relations between the Ufungamano and the state led process. It is nonetheless a difficult line of argument to sustain. In the 'big man' nature of Kenyan politics, it needs to be remembered that Odinga had broken ranks with his political opposition peers to join hands with Moi after the 1997 general elections. Indeed, at the time, Raila was so hawkish and was constantly trashing the Ufungamano Initiative (Mutua, 2008).

But how exactly did the different actors in the contention react to a merger proposal? This study established at least three distinct positions within the Ufungamano Initiative immediately Ghai reached out to Mutava Musyimi, the *de facto* leader of the Ufungamano Initiative to explore possibilities for a merger. These were: some fully embraced the merger proposal and worked towards its achievement; a second group was more cautious and advocated principled negotiations; while the last group was totally opposed to the merger. [17] Their differences, analysed below, serve to illuminate cleavages within the movement that ultimately led to its demise.

Those who embraced the merger proposal

This was a position shared by a group who supported the merger idea for a variety of reasons. It was comprised mainly of what is seen in Kenyan politics, as reactionary conservative forces in opposition political parties, NGOs and religious groups (Mutua, 2008; Imanyara, interview 28/10/2009). Worth noting here is that this group comprised the most dominant forces in the reform movement that had always been pushing for inclusion. It consisted of actors who were the last to embrace the idea of a parallel process. It was the same group of actors that had abandoned NCEC in 1997 to join KANU in the IPPG process. As such, by embracing the possibilities of a merger, it was history replaying itself. Their actions also confirm that whenever they joined KANU in elite bargains, they were able to push forward some space for change, however minimal.

This group also included the Ufungamano Initiative Commissioners whose key motivation for a merger was based on the political economy of carrying out the reforms. Specifically, according to Ghai (interview, 23/10/2009) 'the big money' that was being given to the CKRC Commissioners made a merger attractive to the Ufungamano Initiative because they were not really getting anywhere themselves and they yearned for similar economic benefits. Ombok (interview, 24/09/2009) also points to resource constraints within the Ufungamano Initiative as a key factor that made a merger attractive. This suggests that while Ufungamano Initiative arguably achieved a lot in terms of mobilising the citizenry through civic education, as well as starting the collection of views and aspirations of a constitution they desired, the movement faced numerous challenges. The massive human and financial resources required for the process for re-writing of the constitution were not easy to mobilise. This evidently

[17] This is not to suggest that the three identified positions or groups were homogeneous in their reasons for embracing or opposing the merger proposal.

added to the strains within the movement (interviews: Ombok, 24/09/2009; Hassan, 16/10/2009).

The resource dearth also dictated that the Ufungamano Initiative was amenable to the lure of money if indeed it needed to continue its work. As such, for Ombok (interview, 24/09/2009), there was therefore pragmatism in agreeing to the merger because while

> …some groups like SDP led by Apollo Njonjo and Ayang' Nyong'o among others, did not want a merger; they were not bringing in even a single penny to the process. We were really straining. By the time of the merger, the Ufungamano Initiative had a debt of around Ksh.14 million which NCCK and Catholic Church devised a way of settling in bits.

As such, resource constraints coloured the nature of relationship between the different actors. For instance, Ombok (interview, 24/09/2009) pointed out that 'Musyimi, the NCCK General Secretary did not like the fact that the Muslim community did not mobilize much financial support.' NCCK's bearing of the huge financial burden of the movement therefore 'made Musyimi big-headed.' Wandati (17/09/2009) of the Muslim Consultative Council, who served in the fundraising Committee of the Ufungamano Initiative, supported this view but argued that information asymmetries were the reasons than failure of other actors to try and mobilise resources when he stated:

> There was always this feeling that some of the partners had more information than others. For example, by default, the then Secretary General of the NCCK became the convener and he always sprung a fast one on all of us because every time we sat down to write a fundraising proposal or even before we presented it, he turned back and said 'look I have already submitted a proposal.' So it was easier for him to mobilise funding, and that gave him more leverage because, as you know, who pays the piper, chooses the tune.

Njoya (interview, 29/09/2009) took a similar position when he stated that 'Musyimi bought us by paying for the process through providing funds for the initiative to meet, produce papers, the Secretariat, etc. He bought us and sold us to Yash Ghai.' A former staff member of the Ufungamano Secretariat, Suba Churchill (interview, 02/10/2009) is also of the view that there was a perception that Mutava Musyimi was becoming a little bit pushy, intolerant and dictatorial because,

> Issues were not exhaustively discussed before decisions were made. I remember in particular some press conferences the Ufungamano Initiative held in which the press statement had been prepared earlier. It was the religious community especially Mutava Musyimi, coming from

religious background where consultations are not so exhaustively done, that came up with the practice. The practice offended a number of people.

This also created further cleavages as it was reported that the Catholic Church at one point threatened not to contribute any of their resources unless the leadership of the Ufungamano Initiative changed. But such cleavages were kept hidden within the movement 'so that everybody out there would not get to know about them. These are the things that I would call the sizzling out of the Ufungamano Initiative' (Churchill, interview 02/10/2009). As such, the nature of its funding sources rendered it vulnerable to State machinations and allowed the constitutional reform agenda to be hijacked for sectarian and political ends.

Hassan (interview, 16/10/2009) added that an element of general fatigue on the part of the Ufungamano Initiative was also setting in because the 'reform process was a very arduous one that required a lot of sacrifices, and resources to drive it forward.' While Ufungamano Initiative's resources were low, the government had massive public resources to drive its own process. As such, when the opportunity for a merger came, the Ufungamano Initiative took it.

Ombok (interview, 24/09/2009) continues to argue that since the Ufungamano Initiative's principal point of contention was for the process to be inclusive, he saw no reason why the Ufungamano Initiative would want to isolate itself when the government looked willing. At the end of the day, Ombok argued, 'the government had the responsibility to take over. Where was Ombaka's draft going to be taken anyway? For us, it was as question of looking at the strategies and seeing we were better off together.[18] Therefore, a number of the constituencies thought that the decision to merge was a good one' (Wandati, interview 17/09/2009). For Wandati, the movement was not sure, if it continued to collect views of Kenyans and indeed write a constitution, at what time would they become legally binding 'unless we dispose of the government totally and come up with a people's parliament to ratify it? We did not see that happening. So this in fact had shortened the process for us.' This suggests some pragmatism in this group.

Further pragmatism on the part of this group was dictated by some of the reactions of the state to the Ufungamano Initiative's actions. The Moi/KANU Government together with its

[18] This argument is further supported by a former Commissioner in the Peoples' Commission of Kenya and later the merged Constitution of Kenya Review Commission, Isaac Lenaola who indicated that 'the Ufungamano Initiative had always been for inclusivity. The moment Ghai overtures came, we agreed to them because this was in tandem with our own stand on inclusivity. It was only KANU and NDP who had a problem with it. There was however internal opposition within the Ufungamano Initiative fronted by NCEC' (interview, 03/10/2009).

NDP allies were quite hostile to the Ufungamano Initiative. They continued to publicly condemn the Ufungamano Initiative as busy bodies out to cause chaos in the country. The state continued to threaten and mete out violence on groups associated with the Ufungamano Initiative (Mutua, 2008; Dolan, 2011b; Gachoka, 06/02/2000; Muungano wa Mageuzi, 18/12/2000; interviews: Ghai, 23/10/2009; Wandati, 17/09/2009; Hassan, 16/10/2009).

The incessant pressure and continued harassment from the state was therefore another of the reasons that forced this group to agree to explore the possibility of a merger with the state led process after more than one year of existence. There were fears that if the two processes continued separately, there would have been a bigger crisis in the country because of the legitimacy challenges that the Ufungamano Initiative had managed to create. Ghai (interview, 23/10/2009) for instance indicated that even on the weekend he had come to get a feel of the environment on the ground after being wooed by Wako,

> People were being shot at in the streets... and shortly before even while we were negotiating, petrol bombs were thrown at the Ufungamano Initiative meeting in Kisumu. I was very worried. A lot of people who were sort of politically neutral, told me they were really worried and this could be a chance to avert a disaster. Maybe we were exaggerating what we could do, but we were really worried about that.[19]

As such, when it became apparent that the state-led process through Ghai, was willing to negotiate with the Ufungamano Initiative, the clergy came in handy to convince the other actors within the movement that this was for the good of the country. This suggests that means-ends rationality also guided this group of the Ufungamano Initiative leadership who agreed to a merger as a strategic way to continue being involved in the reform process.

Even then, as already pointed out, it took Ghai's charm to convince the clergy and give them some confidence and a sense of direction. Ghai (interview, 23/10/2009) stated that he was 'able to persuade the religious group. They said they were people of peace and if your [Ghai's] intervention can stop these killings then we will support it, we want unity.' Reflecting on this, Gitari (interview, 21/09/2009) stated:

> Ghai convinced us that the merger was the right way to go. After all, we were not the ones in power. It was the president and the politicians and therefore we must engage them, and work together with them to bring about change. I do not think we wanted to make our own

[19] This is supported by a letter from the Muungano wa Mageuzi dated 18th December 2000 addressed to the state minister in charge of internal security, the Attorney General and Chief Cabinet Secretary that decried continued use of violence by the state agencies as well as KANU and NDP 'goons' to break their national-wide rallies that agitated against the short charging of the Kenyan people by the Parliamentary Select Committee.

> constitution and leave it there. Even if we did it, to become relevant, it had to go through Parliament.... So, Ghai did a good job, he brought us on board and we accepted and we felt that we were represented even though as a minority in the Commission that was appointed.

This suggests that for the clergy, the decision to negotiate a merger was strategic. It was also not lost to civil society that politicians in this group were openly afraid of losing out altogether should the Ufungamano Initiative continue being obstinate. Indeed, the experiences of NCEC and its refusal to engage with the IPPG had served as warning to civil society that politicians may abandon them yet again, given a chance. The merger proposal clearly presented such an opportunity. Kibwana (interview, 21/10/2009) offered explanations for this when he argued that 'civil society was the first actor to articulate the kind of constitution Kenya deserves. Overtime, opposition political parties decided that they would work with civil society because of the kind of synergy that existed between them.' This suggests that the transformative values and beliefs of some civil society organisations had diffused more broadly. Additionally, it could also signal, in the Gramscian sense, a 'war of position' in attempts to capture civil society to serve the interests of the political opposition parties. In this regard, Kibwana (interview, 21/10/2009) argues that the merger proposal seemed to follow an earlier IPPG script. Once again, as had happened through the IPPG, with the merger carrot dangled by Ghai, politicians were keen to ensure that civil society's continued hegemony over the reform project through the Ufungamano Initiative was destroyed.

As such, the pro-merger group did not share similar reasons for the merger across the board. For some, there was a clear counter-hegemonic strategy by some politicians who feared that the Ufungamano Initiative might become so powerful that it could dictate which direction the country would go. This would be a threat to their collective political interests. This explains why 'they played very pivotal roles behind the curtains, to negotiate and offer themselves operative opportunities' by agreeing to work with KANU and NDP-run Parliamentary Select Committee on the Constitution (interviews: Khairallah, 26/09/2009; Churchill, 02/10/2009).

Moreover, there were also fears on the part of politicians borne out of the perception that the spokesperson of the Ufungamano Initiative was eyeing the presidency.[20] This perception was heightened as the donor community began toying with the idea of selling a compromise

[20] These fears may not have been unfounded as Rev. Mutava Musyimi has since joined politics and has declared his intention to run for the presidency in 2012.

presidential candidate and even went further to suggest that Mutava Musyimi should be that candidate. This 'sent the political class [sic] scampering and spelt a lot of doom for the Ufungamano Initiative' (Churchill, interview 02/10/2009). This suggests that even within the movement, different groups were busy trying to outdo each other and become the dominant force.

Reflecting on the reactions of this group to the positive outcome of a vote in support of a merger, Musyimi (interview, 09/10/2009) said: 'everybody was relieved, happy and full of admiration for how much we had been able to gain in a peaceful and stable way. That had never happened before. NGOs, religious sector and politicians had not come together before for a cause. But leading it was not a piece of cake. It had enormous challenges.'

That said, Ghai indicated that it still took longer to convince politicians to join the clergy in supporting the merger and some feared being seen as sell-outs. Ghai stated that he was constantly under high pressure:

> Television cameras were following me everywhere and even when people came to see me some had to make sure there were no press people around to know they had come. Some like James Orengo, Kiraitu Murungi, Charity Ngilu and Beth Mugo, came at eleven o'clock at night and we would have long meetings (Ghai, interview 23/10/2009).

This suggests that for politicians, their position was one of playing safe and only aligning with the group that seemed more likely to win the internal Ufungamano Initiative contest in terms of where to take the movement, rather than a principled opposition to, or support for the merger. Nonetheless, Ghai was able to convince some of them that it was in the interests of the country that they supported the merger of the two processes. The converted politicians threw their weight behind Ghai's efforts at mediating the merger negotiations.

The 'principled' middle ground group

The second group was in between two extremes (pro and against the merger). It was made up of organisations traditionally allied to NCEC. These included secular civil society groups, especially those working on human rights issues such as Kenya Human Rights Commission, the Law Society of Kenya, but also youth movements such as the National Youth Movement. These were not very excited by the merger proposal though not totally opposed to it at the beginning. They were cautious of government's intentions and only gave qualified support (interviews: Khairallah, 26/09/2009; Kuria, 26/09/2009; Minute 2/2001 of the Ufungamano

Negotiating Team meeting of 30th January 2001).[21] They called for thorough principled engagements and outcomes that had fidelity to the very principles that the Ufungamano Initiative stood for.[22] In essence, what this group was advocating is similar to what Downey and Rohlinger (2008: 4) call 'strategic tradeoffs' (see also Jasper, 2006). It is members of this group that brought the key negotiation issues on the table. These included:

> The powers of the CKRC, its independence from the Executive and its relationship to the PSC, the number of Commissioners, and the manner of their appointment, a National Referendum on the Constitution, the scope of the Review Process, the mandate and composition of the National Constitutional Conference and the legal status of the CKRC in the Constitution' (Mutua 2008: 121).

In an effort to appease this group, Ghai who acted as the mediator between the Ufungamano Initiative and the Parliamentary Select Committee processes wrote a lengthy reflection piece titled *'Proposals for a Common Process of Constitution Review'* on December 25, 2000 that sought to provide a way forward in dealing with the issues raised by this group. In so doing, he offered the dissenting voices something to work with. Ghai's proposals identified the key point of convergence between the two processes as an agreement to overhaul the constitution in a process that would be acceptable to majority of Kenyans. This point of convergence, Ghai argued, should be utilised to unite Kenyans and to give them a constitution they desired. He argued for a need to encourage a consensual and cooperative political process. This was a clear departure from the then winner-takes-it-all system that KANU and NDP were trying to

[21] Ochieng Khairallah (interview, 26/09/2009), one of the youth representative in the Ufungamano Initiative articulated the position of the youth stating: 'youth constituency came out strongly against the merger. Our argument then largely was that the youth are actually the victims of a bad constitutional dispensation. The emerging clamour for constitutional reform was necessitated by the difficult conditions the youths were finding themselves in. For us, it was about ourselves, about our life, and about our future. We wanted this constitution to be the best, to be looked at and processed in the best manner possible and we were not convinced then that the merger could easily yield those intentions. That is why we came out strongly against it. Because we were saying that the people who are pushing for the merger have either benefited or they have kept quiet all this time they did not see the reason for a new constitution. They were either part of the system, or beneficiaries of the system, or they had in a manner, helped in growing the systems to the levels that it was then. We were therefore calling ourselves the greatest stakeholder in the constitution Review Process.' This suggests that the cleavages around the merger and the entire constitutional reform project had a generational angle.

[22] Khairallah (*ibid*) argued that the stance taken by NCEC and Muungano wa Mageuzi, was legitimate because 'constitutional making takes principled dialogue and not the zero-sum game that KANU was playing with the process.' He further indicated that 'genuine constitutional making is about articulation of the collective interest of all. At the time, the KANU power elite was not yielding any space for the effective articulation and effective dialogue. As such, we felt that at some levels, manipulative tendencies would surface and eventually we might not even get a new constitution. The other point was that the merger would sweep the process from the stronghold of the people. It would really take away, slip off the process from the people. And once you lose peoples support in the constitution making process, then you have given way to the intrigues of vested interests. Such vested interest could only be checked if KANU felt that somebody had the capacity to effectively respond through protests. We felt that the merger would really take away the people's interest and the people's confidence in the process. And this, it did substantially.'

apply. Ghai argued that the main contentions between the two competing processes were based on two sets of laws. While the Ufungamano Initiative stuck to the agreements of the Safari Park Process as enshrined in the 1998 Constitution of Kenya Review Commission Amendments Act, the Parliamentary Select Committee had made further amendments in 2000 to the 1997 Review Act from whence the CKRC had been formulated.

To merge the two processes, there was therefore a need to harmonise the legal basis for the two processes, clearly spelling out the role of the Commission in a new legal framework. Ghai argued for the Commission's role to depart from the prevailing (mis)conception that the Commission was an organ for negotiating a new Constitution, to inculcating a role of the Commission as one for facilitating consultations between Kenyans to determine the Constitution that they wanted. The negotiations, Ghai argued, should be left to a National Constitutional Conference and a draft from the same be subjected to a National Referendum. This would ensure the process would remain faithful to the ultimate sovereignty of the Kenyan people.

Ghai also argued that this model would ensure full participation of the people of Kenya. To do so, there was a need to provide an enabling environment, including guaranteed peace for genuine, open, and transparent consultations between the people, state and the organs of the review. There was also a need for well-defined accountabilities between the organs of the review and comprehensive civic education. For Ghai, public participation would:

> a) educate the public in constitutional theory; national values; governance, the legitimacy of public power, and the uses and the fair and equitable exercise of state power; b) impress upon them [people] the value of peaceful means to solve disputes, by discussion rather than force, within a framework of national values and national unity; c) elicit opinions on what has gone wrong in the past, what their aspirations are for the future, and recommendations for constitutional change; d) make them [citizens] aware of their rights, and obligations as citizens, and thus empower them and encourage them to be responsible; e) prepare them to seek accountability from their representatives and the government; and f) confer legitimacy on the new constitution thorough their endorsement and sense of ownership (25/12/2000).

Ghai proposed the key organs of the review to be the Commission, Constituency Forums, the National Constitutional Conference, Parliament, and Kenyan people acting throughout the process as well as specifically in a National Referendum. His proposal also spelt out what the role of each of the organs was to be. As the role of Parliament had been the most contentious,

Ghai proposed a compromise in which Parliament would be required to enact the draft constitution that the National Constitutional Conference would come up with.

This second constellation (those in favour of a principled engagement) was to later join a third group of those totally opposed to the merger when they realised that the state was not making much concession in the negotiations. This happened after the first group had agreed to a merger that left parliamentary and presidential powers in the Review Process intact. For this group, this would leave the process and the Commission vulnerable to parliamentary and presidential manipulation. NCEC, the most visible actor in this group, wanted the process immunised from such manipulation (interviews: Kuria, 26/09/2009; Khairallah, 26/09/2009; Waruku, 29/09/2009). Attempts to decentre the process from parliament and the presidency were nonetheless frustrated by what some participants argue was the clergy's and a section of politicians' willingness to accept compromises that did not change the fundamental character of the process (interviews: Kuria, 26/09/2009; Khairallah, 26/09/2009; Waruku, 29/09/2009; Kibwana, 21/10/2009; Hassan, 16/10/2009; Musau, 24/09/2009; Churchill, 02/10/2009; Odhiambo M., 01/04/2010; Wandati, 17/09/2009; Ndubi, 24/09/2009; Lamba, 23/10/2009; Njoya, 29/09/2009).

Activists allied to NCEC and part of the Ufungamano Negotiating Team read betrayal on the part of the clergy. Kamau Kuria, for instance argued:

> In January 2001 the Ufungamano Initiative selected a number of people to negotiate with the Parliamentary Selective Committee. I was one of them.... Then the Parliamentary Select Committee became arrogant and refused to meet us indicating that the only person it was prepared to have a meeting with was Prof. Yash Ghai. We had negotiated and reached a stage where we saw it necessary to have a face-to-face meeting but the PSC refused. The clergy caved in and were prepared to accept some compromises from the Parliamentary Select Committee.[23]

Group totally opposed to the merger proposal

A third pole, which some of the NCEC allied groups later joined on the day of the merger because of the failure of what was dubbed principled negotiations and outcomes, was led by

[23] Indeed, the clergy gave a lot of ground to KANU-NDP PSC. For instance, an email exchange between Ghai and Musyimi on the 5th of February 2001, pointed out their frustrations that the Parliamentary Select Committee was resistant to meet the Ufungamano Negotiating Team. Minute 29.6 of the Ufungamano Negotiating Team held on January 26, 2001 pointed to a desire for face-to-face meeting with the PSC but which Ghai reported they were not keen on. Even with the KANU-NDP refusal to meet the Ufungamano Initiative Negotiating Team, the clergy continued to have faith and pushed other actors in the movement to agree to a joint process.

Muungano wa Mageuzi. This group was totally opposed to the merger. However, it did not offer any concrete alternatives for a way forward. Its opposition was based on a fear that the merger would end up as co-option, and in the process subordinate the popular will of the Kenyan people. Moreover, they feared that a merger would lead to loss of identity for the Ufungamano Initiative. They also argued that the movement would lose its most potent weapon – the people of Kenya, a majority who seemed to be on the side of the Ufungamano Initiative. This, they argued, would result to dwindling influence of not just the Ufungamano Initiative, but of the people of Kenya too (interviews: Kibara, 15/10/2009; Khairallah, 26/09/2009; Minute 2/2001 of the Ufungamano Negotiating Team of January 30, 2001). Some people in this group fought vehemently against the merger. Others, like Apollo Njonjo, the then Secretary General of the Social Democratic Party wrote complaint letters that Ghai considered petty and libellous. This opposition put Ghai under a lot of pressure from both sides of the contention (Ghai, interview 23/10/2009).

To this group, the merger remains to date, non-principled and detested. This group branded Rev. Mutava Musyimi who led the negotiations, a traitor (interviews: Ndubi, 24/09/2009; Njoya, 29/09/2009; Khairallah, 26/09/2009). But a former Commissioner in the People's Commission of Kenya and later in the merged Constitution of Kenya Review Commission Isaac Lenaola countered the argument regarding the principality of the merger process. In supporting the case for a merger, Lenaola stated:

> NCEC seemed to have an agenda which none of the other actors understood. They argued that the moment we would be 'swallowed' by the KANU-NDP process the good will of the people would dissipate. In fact they were so vehemently opposed to the merger that Kibwana walked out after losing the merger vote. At a personal level, I think the main activists in NCEC and *Muungano wa Mageuzi* had been rendered irrelevant and they saw in the merger, something that would result in cutting off their donor funds and thus the resistance (interview, 03/10/2009).

Ombok argued along the same lines when he said that the constitution-making politics had its own dynamics even within civil society:

> For a long time NCEC was the power base of the civil society struggles. They were now losing ground of civil society leadership. I do not think they liked that…. Kibwana mobilised the more youthful organisations where he sat in their boards, or had a lot of influence in them to oppose the merger. For him, if Ghai took over the process, what would be the role of

> NCEC thereafter? And indeed you realise this since after that time NCEC has just remained a skeleton (interview, 24/09/2009).

The above analysis of the three different positions suggests that different interests within the movement were responsible for these cleavages. While for some, especially the clergy, decisions were based on the risk calculations – that is, on whether they embraced a common peaceful process as opposed to a divisive and confrontational approach (Imanyara, interview 28/08/2009) whereas others were led by the political economy exigencies. However, whatever the source of the divisions, the key point here is that these divisions signalled the earliest serious and visible cracks within the Ufungamano Initiative that later brewed a potent storm that disintegrated the movement (Ndubi, interview 24/09/2009).

These cleavages also reflected 'conflicting visions' both within the Ufungamano Initiative actors and the wider constitutional reform struggles in Kenya (Mutua, 2008: 120). The cleavages were even more pronounced because the Ufungamano Initiative 'brought together people of extreme characteristics – university students who were demanding a return to mass action and the conservative but pragmatic religious leaders who were for dialogue and consultation' (Zein, 07/10/2009). But the divisions were not limited to the Ufungamano alone. Raiji for instance observed that there were healthy and open debates but a lot of tensions and confusions too. This, he argued, pointed to 'multiple groups and interests that were in negotiation both within the government and within Ufungamano Initiative' (interview, 14/10/2009).

The cleavages also suggest that it was really not possible for a movement with such diverse representations to always agree on everything. Similarly, generating consensus and laying down the principles upon which the merger would have to occur was never going to be an easy process. The multi-stakeholder nature of the Ufungamano Initiative suggests that social movements, unless they are single-issue and identity based are seldom, coherent entities of long unitary collective actions. Rather, they are 'populations of collective actions with statistical distributions of properties' (Oliver and Myers, 2003: 2). In such populations and multiple properties, internal cleavages are bound to occur. This makes the analysis of strategic interactions between movements and the state difficult. Indeed, as Oliver and Myers (2003: 2) note:

> Theorists have long insisted that movements be studied not in isolation, but in strategic interaction with their opponents and bystanders, but it has been difficult to do this without

> treating each of the "sides" as if it were a coherent decision-making entity. In fact, neither movements nor states are necessarily coherent: both are collections of actors with different agendas and ideas. Nevertheless, these actors are bound to each other through some kind of common identification, and what they do affects each other. The degree of coherence varies, of course, but even those movements and states, which are hierarchical and fairly unified, have internal struggles and conflicts.

Challenges that emerged from the Ufungamano Initiative cleavages were therefore not just analytical but also empirical as far as taking the merger negotiations forward was concerned. As pointed out in chapter six, there were multiple nodes of authority in the Ufungamano Initiative. In such a situation, leadership was difficult to define. Indeed, Kibwana (interview, 21/10/2009) argues that the leadership within the Ufungamano was so diffused that it was difficult to ascertain where the 'true leadership' resided. Such dispersal resulted from the widespread diffusion of contention. The dispersal also enabled the Ufungamano Initiative to acquire multiple assets like followers and other resources crucial for its mobilisation. But the Ufungamano Initiative case also suggests that such dispersal may also pose challenges especially around strategic interactions for such movements and their adversaries.

The first such challenge for the merger negotiations, treated here as strategic interactions, was structural. This affected the Ufungamano Initiative more than the government, which had a 'pretty clear line of command in terms of who made decisions: It was Moi, it was Raila, the two key persons [besides] the Parliamentary Select Committee, who theoretically were negotiating on the government side. It was much less clear on the other side' (Ghai, interview 23/10/2009). In theory, the Plenary of Stakeholders was the supreme decision-making organ in the Ufungamano Initiative. Considering its diversity (ideological, theological, intellectual, and generational) it would have been impractical to approach an entire Plenary of over 50 different organisations with a merger proposal especially due to anticipated differences of opinion.

It was in an effort to circumvent such structural challenges, as well as the sensitivity of the merger issue, that Ghai opted to reach out first to the group of clerics led by Mutava Musyimi, the Convenor of the Ufungamano Initiative whom he perceived as key in the movement and more open to negotiation. He initially built rapport with religious leaders before reaching out to leaders of political parties allied to the Ufungamano Initiative for audience (interviews: Wandati, 17/09/2009; Ghai, 23/10/2009; Kibwana, 21/10/2009). For

Ghai, this was because the bifurcated nature of authority within the Ufungamano Initiative meant there were no clear lines regarding whom to talk to.

Internally, the Ufungamano Initiative dealt with the fact that it was not coherent and unitary but rather a multi-stakeholder entity, by establishing a new structure —Ufungamano Negotiating Team- to negotiate the merger. This structure was made up of representatives from the three key constituencies within the Ufungamano Initiative: secular civil society, religious organisations and political parties as well as representations from the People's Commission of Kenya. The Ufungamano Negotiating Team gave both legal and political directions to the movement in these negotiations.

The negotiations took a couple of months as Ghai shuttled between the Ufungamano House, whence the Ufungamano Negotiating Team met, and Parliament buildings where the PSC met. Ghai slowly made some progress. He pressured each side to agree to the proposals he had made on December 25, 2000 until he was able to get some broader understanding from both sides (Ghai, interview 23/10/2009). Part of the reason for the slow progress was that the negotiations did not take a formal face-to-face interaction format (interviews: Ghai, 23/10/2009; Raiji, 14/10/2009; Ong'wen, 09/10/2009). This was because the KANU-NDP side refused to meet the Ufungamano Negotiating Team face-to-face. But the discussions especially in the Ufungamano Negotiating Team, as the minutes of the numerous meetings they held confirm, took a structured form, dealing with each of the issues as Ghai had proposed (interviews: Ghai, 23/10/2009; Musyimi, 09/10/2009). By the 25th January 2001, there had been substantive agreements on the following issues:

> 1) That the scope and nature of the exercise be described as "Comprehensive Constitutional Review"; 2) That the constituency forums replace the district forum as one of the Organs of Review; 3) That the Referendum be an Organ of the Review; 4) That there be two additional Vice-Chairs of the enlarged Commission with Ufungamano providing one, and the second one being women; 5) That the decisions of the Commission shall be by consensus, failing which they shall be by 65% vote; 6) That the decisions of the National Constitutional Conference shall be by consensus, failing which they shall be by 65% vote; 7) That the ratification by Referendum shall be by a majority vote, with a minimum of 25% vote in at least 5 [of the 8 Kenyan] provinces; 8) That the political environment supportive of the review be guaranteed through strict observance of the Public Order Act and the Code of Conduct in the Presidential and National Assembly Elections Act; 9) That there be absolute freedom for civic education activities requiring no licensing; 10) That the Kenya Constitution

> Review Act be amended to reflect the proposed agreement; and 11) That the amended Kenya Constitution Review Act be entrenched in the constitution (Ufungamano Initiative Negotiating Team Press Statement 25/01/ 2001).

As the negotiations continued, they reached a point where backing off was not an option. Several factors played out in this. First, Ghai believing that there was a sufficient groundswell towards a common process, agreed to be sworn into office on January 26, 2001 (Minute 30/2001 of the Ufungamano Negotiating Team of January 26, 2001; Mutua, 2008).[24] This had the effect of adding more pressure to those opposed to the merger to acquiesce. But it also served as a source of a bigger dispute between those who were clearly pro-merger and those pushing for the so-called principled negotiations and outcomes (Mutua, 2008; Minute 31/2001 of the Ufungamano Negotiating Team meeting of January 26, 2001; Minute 2/2001 of the Ufungamano Negotiating Team meeting of January 30, 2001). Those opposed to the merger saw negotiations as simply the cajoling of the Ufungamano Initiative as there was little that the other side had offered. Indeed, barely four days after Ghai's swearing in, a storm was clearly brewing within the movement (Minutes of January 30, 2001 meeting of Ufungamano Initiative Negotiating Team).

The brewing storm was based on what remained unresolved in the negotiations, which included: 'a) the mandate and composition of the National Constitutional Conference; b) the desirability of giving the Commission the power to request minimum constitutional amendments; c) the role, if any, of Parliamentary Select Committee; d) the number of Commissioners' (Ufungamano Initiative Negotiating Team Press Statement, 25/01/2001). Also outstanding were the modalities for nominating the Ufungamano Initiative Commissioners who would join the CKRC. This hinged on whether government would have a veto on the Ufungamano Initiative nominated members. The procedure in the earlier nominations had been PSC to nominate the Commissioners and the President to officially appoint them. Ghai convinced the PSC on the need to accept the right of parties to nominate

[24] Mutua (2008: 120) documents the swearing in as 'mid February.' However, I was able to establish that the swearing actually happened on January 26, 2001. Minute 30/2001 of the Ufungamano Negotiating Team meeting of January 26, 2001, which Ghai had attended as part of his mediating efforts documents Ghai's disclosure that he was under pressure from the statutory Commission as well as the government to swear in and have the process take off. Ghai explained that since he had delayed his swearing in because he wanted to secure an agreement between the two processes to merge into one Constitution of Kenya Review Commission, he felt that because this had in principle been agreed upon, he saw no need not to swear in. The same minute records 'Ghai then left the meeting to go for the swearing in ceremony and for the press conference scheduled for 7.00 pm the same evening.' An exchange of emails between Ghai and Musyimi dated February 2 2001, indeed confirms the swearing in as Musyimi congratulates Ghai on being sworn in. This confirms that Ghai's swearing in had already happened by the date of those emails.

their own people without interference or else there would be no progress. As a confidence building measure, Ghai even offered to deputise Oki Ombaka as the chair of the merged CKRC (Ghai, interview 23/10/2009).

Ghai's swearing in, and the press conference he held after that, left some members of the Ufungamano Negotiating Team bitter with the turn of events. Some complained of being kept in the dark while others suggested that there might already have been a secret deal between some people in the Ufungamano Initiative and the PSC and demanded full disclosure (Mutua, 2008). Members of the Ufungamano Negotiating Team made it clear in a meeting held on January 31, 2001 that neither the Convenor, nor the Chair of PCK had the mandate to negotiate on behalf of the Ufungamano Negotiating Team and any informal contacts between them or any other Ufungamano Negotiating Team member would not be binding as far as the negotiations were concerned (minute 35/2001 of the Ufungamano Initiative Negotiating Team). Mutua (2008: 121) concludes that 'suspicion, distrust, and divergent political and personal agendas had once again come to haunt the search for a national consensus on the reform. But for the first time, Kenyans were close to some agreement on a broadly acceptable Review Process.'

But the new developments pointed to fundamental limitations, if not impossibility, of the movement in keeping everyone informed and happy with what was happening. Minute 35/2001 of the same January 31, 2001 meeting indeed acknowledged that inadequate information had been flowing from the Secretariat and that most Ufungamano Negotiating Team members had not been brought up to speed on the progress. Clearly, this represented a paradox. How would members of the Ufungamano Negotiating Team be in the dark yet they had been mandated to negotiate? Fundamental differences were now clearly emerging within the movement. Non-mandated forces seem to have taken over the negotiations. These differences continued to manifest.[25]

These developments notwithstanding, a fundamental observation here was that all along, the main decision-making body of the Ufungamano Initiative, the Plenary of Stakeholders, was yet to be involved in the deliberations for the merger. The discourse around a possible merger as well as the on-going negotiations, were still limited to a few elite leaders within the

[25] These differences later led to eventual breakup of the Ufungamano Initiative when initially secular civil society, and later Muslims, walked out in protest of the dominance of Christian groups. This was especially after Christian groups embraced the Christian evangelicals back to their fold to oppose the inclusion of the Islamic Kadhi courts in the proposed draft constitution later in 2005.

movement, who clearly differed with each other on a number of viewpoints. Musyimi argued that the reason for leaving the Plenary out was that it met once every three months, and the initial negotiations were executive responsibilities, handled by the Steering Council, which had in turn nominated the Negotiating team to do the work on behalf of the Ufungamano Initiative (Musyimi, interview 09/10/2009). There were however, dissenting voices to this procedure. For example, Minute 31/2001 of the January 26, 2001 Ufungamano Negotiating Team meeting documents strong opposition from Kibwana of NCEC and a member of the Ufungamano Negotiating Team to a decision to establish a drafting team of four (two from the Ufungamano and two from the PSC) to harmonize the 1998 and 2000 Review Acts. Kibwana had argued that this should wait until there were agreements on all issues and until the Plenary of Stakeholders had ratified the same. This serves to explain the acrimony with which the decision to merge was taken on March 21, 2001. But one wonders what might have been the outcome of such negotiations had the Plenary of Stakeholders discussed and stated their conditions for the Negotiating Team to follow in their work.

On March 21 2001, the Plenary of Stakeholders —the ultimate decision-making organ in the Ufungamano Initiative – convened to discuss the merger proposal and to take a decision on whether to support or reject it (interviews: Athman, 12/10/2009; Raiji, 14/10/2009). Prior to the meeting, given the opposition to the merger within some quarters of the movement, there had been efforts at serious public education to justify merits of the merger to the public (Kibara, interview 15/10/2009). The debates of the day were impassioned and acrimonious. According to Athman (interview, 12/10/2009), there were a lot of emotions especially because secular civil society was opposed to the merger. There were many conspiracy theories not just against the Government, but also within the Ufungamano Initiative. Nonetheless, according to Athman (*ibid*), the religious and Peoples' Commission leadership became very pragmatic, and saw the folly of continued obstinacy, as it was most likely to plunge the country into turmoil. Faced with choices between a hypothetical victory by continued opposition to the state, or a merger, the religious leadership of the Ufungamano took a hard decision to save the country from the brink of chaos. For Athman (*ibid*) the net result of these internal contentions was that the Ufungamano Initiative seemed to appear to be both 'pro-reform, and against reform at the same time. This undermined the movement, as it was unable to clearly identify allies and adversaries. This is basically what led to disintegration, which started soon after the merger.'

The debates during the March 21, 2001 Plenary of Stakeholders forum were also confrontational. Mwai Kibaki, then leader of the official opposition in Parliament was disparaged by some participants for a previous remark he had made during the clamour for political pluralism in early 1990 when he was still in KANU. Kibaki had then likened those thinking of dislodging KANU as daydreamers trying to fell a *mugumo* (fig) tree with a razor blade (Mutua, 2008; interviews: Njoya, 29/09/2009; Muihia, 29/09/2009; Churchill, 02/10/2009). His critics wondered whether Kibaki, who led a group of older and more conservative and reactionary politicians advocating a merger, was not selling out to KANU because he believed it was unbeatable (Imanyara, interview 28/10/2009). An outraged Kibaki declared that 'there is no one in Kenya who wants the review to be scuttled or delayed... we cannot go back to a parallel process and those who think so are daydreaming' (Mutua, 2008: 122; *Daily Nation* 22/03/2001).

Despite fierce opposition to the merger, a vote was called. NCEC boycotted the vote on sensing defeat. Violence erupted in the Plenary hall as University of Nairobi students said to be supportive of the NCEC's position and on its payroll, accosted opposition politicians and religious leaders who supported the merger process in the hope of disrupting the vote (interviews: Ombok, 24/09/2009; Njoya, 29/09/2009; Wandati, 17/09/2009; Athman, 12/10/2009). In this regard, Wandati argued that these students identified with NCEC's Kivutha Kibwana who 'somehow had a way of moving the young people. When he [Kibwana] did not want these elections to happen, he mobilised them to oppose the merger. But we had people on our side, whose voices would not be neglected' (interview, 17/09/2009). Students' violence was countered by the youths from Chemi Chemi ya Ukweli, who had been providing security to the People's Commission of Kenya Commissioners. They protected the ballot exercise (interviews: Ombok, 24/09/2009; Lethome, 02/10/2009; Zein, 07/10/2009).

Despite the cleavages, the group supporting the merger was able to marshal sufficient numbers to have the merger proposal ratified (Raiji, interview 14/10/2009). The success of the merger vote however acrimonious, demonstrates a triumph of the more moderate to conservative over radical groups in the Ufungamano Initiative. This is the group that assumed a hegemonic status in these struggles (Imanyara, interview 28/10/2009). It also illuminates Najam's (2000) congruence of means and ends as a determining factor in cooperation between civil society and government – in this case, between the triumphant group in

Ufungamano Initiative and their KANU and NDP counterparts who controlled the parliamentary Review Process. The paradox of this however, is that it frustrated the radical transformations that the Ufungamano Initiative had supposedly been seeking all along.

The merger process and its outcome suggest that strategic interactions between a social movement and the state are not always transformative. Sometimes, they result, as the Ufungamano Initiative's merger with the state process shows, in cooperation and co-optation. Both the Ufungamano Initiative and the state got what they wanted in the new arrangement and this was the basis for cooperation. In this regard, Kuria captures the sense of frustration from the happenings on the day the merger vote was taken by the Plenary of Stakeholders:

> I remember March 21, 2001 because for me, it brought some major significance. I was at Ufungamano and I saw the clergy selling out. I have never been to church since then because I found that there was no integrity. The clergy needed not to be perfect. But at least I expected sincerity and what I saw was dishonesty of the worst kind by religious leaders (interview, 26/09/2009.

Likewise, Rev. Njoya captured the tragedy that had befallen those opposed to the merger when he stated that they had been hoodwinked by a few conservative and reactionary religious leaders because NCEC just like many other secular civil society and political organisations had joined the Ufungamano Initiative with the faith it would be progressive because it opposed Moi and KANU. Thus, for such groups, progressiveness was equated with opposition to Moi. Njoya specifically stated:

> We would have joined anything that was anti-KANU and Moi. Little did we know that Musyimi would in fact, be bribed and deliver us hook, line and sinker to the 'enemy.' Musyimi was in cahoots with Kibaki. Both sold the Ufungamano Initiative, which had a promising future in delivering the people of Kenya from the bondage of political class [sic]. The merger was voted and it turned out to be a disastrous venture, and Kenya never realised a new Constitution (interview, 29/09/2009).

The view that those who agreed to the merger were sell-outs is widespread among participants in the Ufungamano Initiative constituency groups that opposed the merger. For instance, Onyango of Citizens Coalition for Constitutional Change (interview, 07/10/2009) stated:

> The merger was chaotic; there was total split. To this day there are those of us who believe that those who joined the CKRC betrayed the initial support and principles under which this reform struggle had been based. And in a way, that began the journey of the dwindling of the

> impact or effect of the Initiative itself to a point that later on, it became a pale shadow of itself.

But Peter Ocholla, an employee of the Kenya Women Political Caucus whose leader Phoebe Asiyo who was accused of double-dealing and short-changing the Ufungamano Initiative by accepting appointment as a Commissioner with the Parliamentary Review Committee, argued that compromises on either side were bound to happen at some point so as to move the process forward (Ocholla, interview 06/10/2009). For Ocholla, the merger offered a win for both sides of the contention. Zein (interview, 07/10/2009), corroborates this position arguing that 'it was not the intention of the people who came together under Ufungamano Initiative to rip the country apart, or to have two constitutional processes. They always saw value in a process that would unify the country' instead of one that would plunge the country into chaos. This doomsday scenario of violent bloodshed if the merger had been resisted, remains difficult to prove. Nonetheless, with Moi/KANU and Raila/NDP playing a destructive zero-sum game with the Review Process, it is not improbable to predict how far they would have gone in ensuring that they got their way or no way at all.

Ndubi (interview, 24/09/2009) and Wandati (interview, 17/09/2009) offered further explanations of what was happening. For them, it was an ideological battle within the movement. The formation that supported the merger was bereft of ideologues. This was not the case in the Youth and student movement, Muungano wa Mageuzi and NCEC which had many ideologues:

> ... and believed in some ideology and they wanted everything premised on theological or a political theory framework and if it did not fit within the theory, they argued you cannot use it. There were pragmatists and these are the ones who said let us take the chance and merge (Ndubi, interview 24/09/2009).

But there were also genuine fears that the merger would further alienate some of the players in the Ufungamano Initiative given that not every PCK Commissioner would be accommodated in the CKRC (interviews: Kibara, 15/10/2009; Ghai, 23/10/2009). The Steering Council who had been the initial appointing authority for the People's Commission of Kenya Commissioners developed what they referred to as 'objective criteria' for determining who to nominate to the CKRC (Minutes of Ufungamano Initiative Steering Council meeting 29/03/2001). The criteria included active participation in the Peoples' Commission of Kenya, fair representation of different stakeholders, provincial/regional

diversity, and a clear articulation of the vision and values that the People's Commission of Kenya would bring into the common process (*Ibid*). Those who made it to the merged Constitution of Kenya Review Commission in a way reflected the diversity of Kenyans (interviews: Athman12/10/2009; Lenaola, 03/10/2009; Raiji, 14/10/2009).

All the same, the criteria elicited some strong reactions specifically from some religious leaders who were part of the Steering Council. The fact that the new merged Commission could not absorb all the Commissioners from Peoples' Commission of Kenya, served as the first major fault line within the Ufungamano Initiative (interviews: Wandati, 17/09/2009; Kibara, 15/10/2009). There were oppositions to the selection criteria. One such opposition was by Rev. S.M. Muchuga who, in a letter addressed to the Steering Council and copied to the Ufungamano Initiative Stakeholders on April 4th 2001, expressed serious reservations in limiting the nominations of People's Commission of Kenya Commissioners to join the CKRC. Muchuga argued that there was need to look beyond the then People's Commission of Kenya to nominate the best-qualified Kenyans who had been part of the Ufungamano Initiative. He argued that it was 'important that we [Steering Council] allow democracy, fairness, transparency to start with us if we are going to serve as beacons for the way we want affairs of this nation to be conducted in the future.' Muchuga's pleas fell on deaf ears. This opened new cleavages within religious leaders in the movement. In this sense, the Ufungamano Initiative demonstrates that its weakness was its internal deficiencies for democratic participation.

In the long run, the merger vote turned out to be a classic case of putting the cart before the horse for the Ufungamano Initiative. According to Mutua (2008: 124), the merger vote affected the Ufungamano Initiative's continued

> …ability to seriously influence the nature of the actual merger [...because it had] voted to approve the joint process before the completion of the negotiations. From that moment forward, the terrain for the contest over the nature of the Review Process shifted to parliament, a development that surrendered control over negotiations to the opposition political parties. Religious organizations and civil society had extracted concessions from the state, only to cede them to the opposition parties and Parliament.

After further negations between political parties in parliament, an amendment to the Constitution of the Kenya Review Commission Act was introduced in Parliament and passed

on May 8, 2001 to formally seal the merger.[26] The merged CKRC 'was a product of protracted negotiations. The CKRC's mandate was predicated upon the object of the Review Act, which the enabling law, clearly spelt out as delivering a constitution acceptable to all Kenyans.[27] Subsequently, on June 11, 2001, ten members from the People's Commission of Kenya were gazetted to join the merged Constitution of Kenyan Review Commission.[28] At the same time, two more Commissioners were also nominated by the Parliamentary Select Committee, and gazetted.[29] These joined the 15 Commissioners[30] from the government side who had been gazetted earlier on November 10, 2000 to form a new 27 member Commission. After the formal gazetting, the Chair of the Ufungamano Initiative's Peoples' Commission of Kenya, Dr. Oki Ombaka and his Deputy, Abida Ali-Aroni were appointed to the positions of First and Second Deputy Chair of the new CKRC respectively (Kihoro, interview 23/09/2009. See also Mutua, 2008: 130).

Several commentators have offered reflections on the character of the resultant Commission. Cottrell and Ghai (2007: 19) for instance, write of 15 who were initially appointed in 2000:

> ...Moi's spoiling tactics go ... to the setting up of the CKRC.... The body seems to have been designed to be ineffective and compliant. It was appointed through an ostensibly open process;

[26] Some opposition Members of Parliament allied to NCEC including Paul Muite, Njeru Kathangu, and Shem Ochuodho opposed the Bill (Mutua, 2008). This shows that NCEC was still opposed to the merger.

[27] The CKRC was expected to lead and facilitate Kenyans in coming up with a constitution that would guarantee peace, national unity and integrity of the Republic of Kenya in order to safeguard the well-being of the people of Kenya; provide for the establishing a free and democratic system of government that enshrines good governance, and constitutionalism, the rule of law, human rights and gender equity; recognise and demarcate divisions of responsibility among the various State Organs including the Executive, the Legislature and the Judiciary so as to create checks and balances between them and to ensure accountability of Government and its offices to the people of Kenya; to promote the people's participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power; ensure respect for ethnic and regional diversity and communal rights including the rights of communities to organise and participate in cultural activities and the expression of their identities; and facilitating regional and international cooperation to ensure economic development, peace and stability and support democracy and human rights; to strengthen national integration and unity; create conditions conducive to a free exchange of ideas; to ensure the full participation of citizens in the management of public affairs; and enable Kenyans to resolve national issues based on consensus. Coming from a climate of heightened mistrust between tribes and political parties, this seemed really a good way to capture the spirit that the new constitution should deliver (Lumumba, 2008: 46-7). On its own, this was also quite progressive and if achieved, would offer Kenya, a clean break from a predatory state dominated by political and economic elite. The language of rights was firmly imprinted in this statute.

[28] The ten were: Dr. Oki Ooko-Ombaka; Mrs. Abida Ali-Aroni; Dr. Charles M. Bagwasi; Ms. Nancy M. Baraza; Mr Isaac Lenaola; Dr. Wanjiku M. Kabira; Mr Ibrahim A. Lethome; Ms. Salome W. Muigai; Mr Abubakar Zein Abubakar; and Mr Riunga L. Raiji (CKRC, 2002).

[29] These were Dr. Mosonik arap Korir and Dr. Abdirizak A. Nunow. These were seen as having been brought in to swell the KANU-NDP numbers in the Commission.

[30] The initial fifteen Commissioners were: Prof. Yash P. Ghai; Ms. Kavetsa Adagala; Mrs. Phoebe M. Asiyo; Pastor Zablon F. Ayonga; Mr Ahmed I. Hassan; Mr John M. Kangu; Bishop Bernard N. Kariuki; Mr. Githu Muigai; Prof. H.W.O. Okoth-Ogendo; Mr. Domiziano M. Ratanya; Prof. Ahmed I. Salim; Dr. Mohamed Swazuri; Mr. Keriako Tobiko; Mr. Paul M. Wambua; Mrs. Alice Yano; The Attorney General (ex officio); and Mr. Arthur O. Owiro (Ex-officio member & Secretary) (CKRC, 2002).

> with two members from each province (except Northeast Province) and by a system of application by those interested in serving. But many people who would have been genuinely good appointees did not apply, and many who did apply were nonentities, and few had any knowledge of constitutions. Many of those appointed to the original Commission were clients of powerful politicians. And there was an expectation that they would do the bidding of their patrons – whether that bidding was the making of a particular recommendation, or applying the brakes.[31]

Both Lumumba (2008) and Mutua (2008), agree with the position above. Lumumba (2008: 35) for instance writes:

> Indeed, many of the original fifteen commissioners, although enjoying necessary paper qualification, could be associated with certain political affiliation within the political dispensation of the day. It must be remembered that a mix of criteria, namely; Kenya's ethnic, geographical, cultural, political, social and economic diversity, and the principle of gender equity, informed the statutory mode of representation, hence the mix of technical 'knowhow' and 'know who' in the appointments.

It was precisely this mix that exposed the process to political interference and also led to a credibility deficit for some of the Commissioners (Lumumba, 2008; interviews: Ghai, 23/10/2009; Lenaola, 03/10/2009). Mutua (2008: 129) argues that the merged Commission was a 'hodgepodge, although it was diverse in terms of gender, religion, region, race, ethnicity and profession... it was difficult to justify why...accomplished individuals were left out.' [32]

The composition of the CKRC also opened a new frontier for contention between the different actors in the Kenyan political power games. The Commission was really not about the ordinary Kenyan public, and confirms what Ghai, during the merger negotiation process had labelled as misconception that the Commission was an organ for negotiating a new constitution. This view is further lent credence by the way sections of the Commission itself served to frustrate the popular will (Lumumba, 2008). As Mutua argues,

> CKRC was a political, not a technical body. Its large size betrayed the political calculations of

[31] Ghai repeated similar sentiments in my interview with him on October 23, 2009 arguing that there were many qualified and good people who did not want to apply because they did not want to be tied to Moi's regime before the merger while they had also refused to participate in the Ufungamano's PCK side, because they felt they could earn any good money.

[32] Mutua's position seems to mirror (Bates, 1999: 91), observations 'that political elites in many African countries have managed to silence the technocratic managerial bourgeoisie and divide loyalties that are subject to political manipulation [and in the process have] factionalised the ranks of the political opposition.'

> its authors. Rather than create a nonpartisan technical body, the politicians crafted a loose receptacle that would advocate their interests from within. The fact that most commissioners enjoyed political patronage made the CKRC a ground for the negotiation of partisan political interests.... Many of the crises that engulfed the CKRC were a result of its composition (2008: 129).

To conclude the discussion on the merger process and outcome, I argue here that dynamics of collective action can result in a combination of contagion, exhaustion, and even accommodation between movements and their targets. Given the fact that Ufungamano Initiative was a veritable bag of contradictions, competing interests and multiple vulnerabilities, the movement did not have a choice but to look for ways to ensure it remained relevant. This came through an opportunity for a merger with the state-led process. Indeed it needs mention that Ghai triumphed on his merger project because of a confluence of factors that included fatigue, resource constraints, the hegemonic capture of the movement by a conservative leadership, and Ghai's own ingenuity, perseverance, and persuasiveness. Ghai's influence in the direction the contentions took was so profound that one respondent argued that it was unimaginable if not impossible, to build consensus between the two processes had Ghai not been appointed to the Commission (Hassan, interview 16/10/2009). But in the end, the Ufungamano Initiative demonstrated that civil society can provide alternatives and that it is possible for citizens, diverse as they may be, to coalesce around shared ideals and outside of state instituted structures to force change. Its challenge to the state and in holding the government to account was a great achievement in this regard.

But as already shown, consensus building and the merger negotiations were not easy. Even as Ghai assured the Ufungamano Initiative that the state was serious about the merger, he had to continue ignoring loud calls from senior cabinet Ministers in the Moi/KANU regime 'including Julius Sunkuli, the minister for internal security...Raila Odinga, the Chair of the Parliamentary Select Committee [for him] to ignore the Ufungamano and impose his terms on them' in order to continue with the negotiations and effectively seal the merger deal (Mutua, 2008: 119). Mutua (2008: 128) further notes that Ghai's challenges in facilitating merger negotiations were compounded by

> Little integrity in Kenyan politics [as] political actors from both the left and right often acted in narrow or partisan interests. Ghai realized that political elites had virtually no concept or commitment to any national interests. Public discourse was coarse and vitriolic. Schemes, vendettas, pettiness, and crass greed dominated the lives of key actors. Above all, the KANU

> elite was determined to do whatever it took to manipulate the constitutional Review Process to its narrow advantages. Moi, the long-term autocrat, was the master tactician and puppeteer, the grand old man around whom the pro-establishment figures genuflected and in whose court devious schemes were hatched.

Many participants of this study corroborated the above views by Mutua. Oduor Ong'wen, a former chair of the National Council of NGOs of Kenya for instance stated that the State was convinced that the Ufungamano Initiative was a group of malcontents who had no business talking to the state (interview, 09/10/2009). As such, despite the indirect negotiations, this is an attitude the Moi/KANU Government maintained throughout their reign. Even after the merger had been achieved, Moi continued to undermine the Chair of the Commission (Mutua, 2008; Lumumba, 2008; Ghai, interview 23/10/2009). For Oduor Ong'wen, such challenges were expected as any negotiation always starts from the extremes:

> From the Ufungamano Initiative side, we were convinced that the State was not committed to the review. So we developed our position based on that. But due to Ghai's shuttle diplomacy, with every session the differences began narrowing to the point we appointed four people who were now doing the actual negotiations. From Ufungamano it was Dr. Ombaka, Abida Ali, and from KANU's side there was Prof. Ogendo and Mutakha Kangu.[33] The group of four are the ones that kept on dealing with the technical issues and reporting back to both sides in ironing out the finer details, until an agreement was finally hammered after more than 20 sessions of meetings (interview, 09/10/2009).

But challenges to the merger were not just from those who opposed it or from the Government's refusal to deal directly with the Ufungamano Initiative. As Mutua (2008: 129) reveals, the character of the opposition and religious leaders also frustrated Ghai's efforts to a merger:

> The opposition leadership, with whom Ghai sometimes openly sympathised, could also show a remarkable political and moral bankruptcy. Civil society, Ghai's natural ally, was also beset with its own pathologies, and its most progressive wing was sceptical of his ability to navigate Moi's labyrinthine world. To complicate matters, the increasingly vocal religious organisations were not always driven by the public good. Kenya's political terrain was thus treacherous and complex....

[33] While Oduor Ong'wen refers to these as the actual people who did the negotiations, records from the Office of the Attorney General indicate that these were known as the Drafting Committee tasked with drafting 'proposal for amending the Constitution of Kenya Review Act 2000 in accordance with the "Principles of the Common Review Process agreed by the Parliamentary Select Committee and the Ufungamano Negotiating Team"' (Amos Wako (Attorney General) 06/02/2001).

Mutua continues to argue that Raila Odinga also created further complications because of his utilitarian interests in Ghai, i.e. 'seeing the Review Process as an avenue to ascend to the pinnacle of state power' (2008: 129). But Ghai was able to navigate through this labyrinth and secure a merger between the two processes.

It is instructive to note that Ufungamano Initiative did not windup after the absorption of PCK into the CKRC. It continued to be a critical voice and force in the review process. Pinto (2008) writes that arguably no single movement in Kenya's recent history challenged the State in the constitutional review, as did the Ufungamano Initiative (Pinto, 2008). At this point, a critical question emerges: what were the key exports of the Ufungamano Initiative to the merged Constitution of Kenya Review Commission? What happened after the merger? I now turn to address these questions.

The post-merger developments

Besides 'forcing' the state to acquiescence to demands for people's participation, Lumumba (interview, 01/10/2009) stated that the Ufungamano Initiative did not lose, as all the work they had done fed into the new structure. Specifically, the views that the People's Commission of Kenya had collected from Kenyans were passed over to the CKRC after copies were made and archived by the National Council of Churches of Kenya (interviews: Musyimi, 09/10/2009; Odhiambo D., 13/10/2009; Ghai, 23/10/2009; Lumumba, 01/10/2009).

There were also many more exports of the Ufungamano Initiative to the merged process. Chief among these was the structure and style of working through committees and a Plenary (Lumumba, 2008). The new CKRC had five major committees and a Plenary.[34] The Plenary was the central deliberation and decision-making organ of the CKRC and comprised only the Commissioners. The Secretariat staff only attended as ex-officials unlike the Ufungamano Initiative where the Plenary involved all stakeholders. Similar to Ufungamano Initiative, the Plenary was the supreme policy and decision-making organ of the Commission and was chaired by the Chair of the Commission or the Deputy Chair in case of the Chair's absence.

[34] These Committees included: A Steering Committee: Somewhat similar to the Steering Council within the Ufungamano Initiative, composed of the Chair of the Commission, Chairs Of Standing Committees, a few Commissioners and the Secretary. Similar to the Ufungamano Initiative Steering Council, it had a collegiate way of making decisions; Resource Development and Budget Committee (supported by a Deputy Secretary in charge of Finance and Administration; Mobilization and Outreach Committee: responsible for organising collection of views and holding public meetings; Research, Drafting and Technical Support; Civic Education, Publicity, Information and Communications Committee (Lumumba, 2008).

According to Lumumba (2008: 37) 'the Plenary superintended the work of the Commission and when need arose, appointed ad hoc Working Committees and Task Forces.' The Secretary to the Commission also attended such plenaries and when need arose, the Deputy Secretaries would be invited too. This ensured that the leadership style was collegiate, just as was the case in the Ufungamano Initiative (Lumumba, 2008: 43). This way of working had emerged as a product of 'the mistrust that characterised the struggle for constitution making, which dictated that nothing be left to chance' (Lumumba, 2008: 37). As such, an elaborate process was necessary to provide an enabling environment for the implementation of the 2001 Review Act. As a result of these mistrusts, Lumumba (2008: 39) writes that the

> Plenary meetings were sometimes a pain to sit through. During the KANU era, prior to 2002 general elections, pro-government Commissioners used the Plenary as a forum to articulate views, which were obviously made in the 'political kitchen'. This trend continued after [the 2002] elections when same pro-KANU Commissioners now joined by others whom I had thought were above partisan interest switched camps to the new administration. It was frustrating and sometimes annoying.

Ghai (interview, 23/10/2009) offered evidence to corroborate Lumumba's assertion above. Ghai argued that some of the Commissioners who were originally from the Ufungamano Initiative and had taken the high moral ground, 'ironically got corrupted.... Perhaps it was the allure of money and the huge salary that we were getting.... But there were two or three Commissioners from Ufungamano Initiative who were very honest and stuck to ethical principles while the rest got corrupted like crazy.' This change of positions posed numerous problems for Ghai and the effectiveness of the Commission in carrying out its mandate.

However, a former Commissioner who had transited from the Ufungamano's PCK to CKRC, Riunga Raiji (interview 14/10/2009), was of the view that the internal problems in the Commission were because 'the Commissions' Chair was not equal to the task.' But this was a minority view. All others who had been part of the CKRC and interviewed for this research (for example Isaac Lenaola, Ibrahim Lethome and Abubakar Zein) held the Chair in high regard. Indeed, Raiji is one of those mentioned in Lumumba's book as having thrown away his supposed forthrightness after the 2002 general election:

> I remember Riunga as one of few commissioners who publicly and loudly supported me when I took unpopular, but in my view, correct positions ...on many occasions, during the KANU era, we lamented with him how some Commissioners were being used as KANU's hatchet

men to derail the Review Process. However, after the 2002 elections his attitude towards the establishment was more sympathetic' (Lumumba, 2008: 27).[35]

Another key outcome of the merger was that the process ceased to be exclusionary as elaborate structures and organs were established at all levels of the country i.e. CKRC, the Constituency Constitutional Forums, the National Constitutional Conference, the Referendum (which came much later though), and the National Assembly.[36]

The Ufungamano Initiative story post-merger demonstrates the typical story of the limits to movements in Kenya. Most die without achieving the ultimate goal for which they were formed to pursue. Specific reasons for this include their being hijacked for political ends, poor development of structures to ensure popular participation, and fundamentally, the donor dependency in their funding. This points to agency in the way people got seduced.

Immediately after the merger vote, deeper cracks started threatening the Ufungamano Initiative. Parochial ethnic[37], religious, political, and economic interests precipitated these fractures (interviews: Ndubi, 24/09/2009; Ong'wen, 09/10/2009; Onyango, 07/10/2009). Immediately after the merger vote, groups allied to the NCEC withdrew their commitment to the Ufungamano Initiative. Many felt betrayed and even stayed away from further participation. Even those who continued participation were somewhat outsiders as they

[35] Such changes were not limited to Commissioners only. In 2002 general election many people who had been in the leadership of Ufungamano Initiative were elected in Parliament and formed the Government. But soon after, many of these people changed or forgot the constitutional reform struggles had not been won yet. According to one of the founders of Muungano wa Wanavijiji, Ezekiel Rema (interview, 22/03/10) 'many even opposed any changes to the very Constitution they wanted changed when they were part of the political opposition and civil society. We realised only after a few days of the NARC regime that things were not going to change as many people were co-opted and kept quiet. With the benefit of hindsight, I think some of these people only came to the masses like us because they had fallen out of favour with the powers that be and wanted to use us to squire it out.' See also Nyamu-Musembi (2006) for similar articulation of failures of the new regime to effect change and enrich a political culture of accountability.

[36] All these, according to Lumumba (2008: 47) were enjoined to: 'a) Be accountable to the people of Kenya; b) Ensure that the Review Process accommodates the diversity of Kenyan people including socio-economic status, race, ethnicity, gender, religious faith, age, occupation, learning, persons with disabilities and the disadvantaged; c) Ensure that the Review Process: 1) provides the people of Kenya with an opportunity to actively, freely and meaningfully participate in generating and debating proposals to alter the Constitution; 2) is conducted in an open manner; and; 3) is guided by respect for universal principles of human rights, gender, equity and democracy.'

[37] Ethnicity has been the dominant factor in shaping the different struggles. There are many examples to support this claim. For instance, the Kenya People's Union of the 1960's for instance ended up being a Luo affair while Ford of the 1990s disintegrated along tribal lines (Kikuyu and Luo). As a result, ethnic and intra-class rivalries have been the bane of many social and political struggles in Kenya especially considering that the Kenyan civil society has not been spared these ethnic rivalries either. Ufungamano Initiative emerged with a great promise to break with this baggage and it got widespread mass support in such a divisive environment. However, this did not last. By 2003, there were clear cracks as ethnic, intra-class and most significantly and for the first time in the country, religious conflicts emerged within the movement and ultimately led to its demise.

relaxed in the belief that what they had been pushing for was popular participation and it had been achieved through the merger (Ndubi, interview 24/09/2009). As a result, some were only given observer status in the National Constitutional Conference. The Ufungamano Initiative therefore lost quite some ground, which left the movement deflated. Khairallah (interview, 26/09/2009) stated that some in the Ufungamano Initiative

> Felt substantially deflated by the merger. I remember some of our people did not participate even in the process very effectively. I remember we did not participate in the civic education, so it had very serious impact in terms of popular participation in the constitution making process.

Moreover, the triumph of the conservative and reactionary forces within the Ufungamano Initiative also had profound impacts on the Kenyan political scene a year and half later as this group was joined by literally everyone who had been part of the Ufungamano Initiative and a breakaway group from KANU led by Raila Odinga who had by then fallen out with Moi. The group crystallised into a formidable political force dubbed the National Alliance Rainbow Coalition that won the 2002 election, effectively routing KANU from power after 37 years at the helm. The net effect of the 2002 general election in Kenya was a mirage of change, a transition without transformation, as the popular will of a new constitution was sacrificed by the new political elites' efforts at self-entrenchment. Below I offer an analytical explanation to support this conclusion.

The 2002 transition without transformation

The Ufungamano Initiative has gone through several phases. Each phase has been defined by differences in the shades of opinion on the part of the same actors at the heart of the contestations. This has mainly been dependent on the prevailing political environment and the attendant alignments that take shades of ethnicity, religious and class interests. Many actors who initially opposed certain positions in mid 1990s today support the very positions that they had opposed. As such, it is difficult to pinpoint who are the real reformers in Kenya. The pendulum has swung so much between positions and compositions of actors at any two different moments, so much so that it has left many of the so-called reformist activists and politicians deeply speckled. Many actors argue that they change opinions and positions because facts change. In the process of these shifts in opinions, the greatest casualty has always been the reform agenda itself, a further fragmentation of society, and a resultant sense of betrayal of the popular will by the leadership (political, religious, ethnic, class). This has

resulted in a scenario where the elite as a collective, reproduces their hegemonic domination and further marginalisation of the subaltern.

Arguably, nothing captures such dramatic shift in positions better than the assertion by John Michuki who, as an opposition member of parliament, had been one of the most ardent pro-reform voices in the group of politicians that identified with the Ufungamano Initiative. His change of position was especially on the need to clip the powers of the Executive. At the height of the acrimonious campaigns on the draft constitution in 2005, he argued that there was no longer a need to clip presidential powers as Moi was now out of power. This was because situations had changed. Michuki was now a cabinet minister in a government led by Kibaki, a fellow ethnic Kikuyu. The great lesson in this case should be that transformation is difficult to achieve unless the Kenyan society shuns ethnicity or discovers how to direct its positives for the benefit of the majority. Such change was clearly informed by ethnicity which has often clouded any objective views of power and its exercise, as a majority of Kenyans do not see any ills of the same as long as it is one of their kith in power. As I show below, it was the 2002 elections that produced new ethnic configurations into the political environment that frustrated transformations.

Oliver and Myers (2003) have argued that the environment determines opportunities and even the decline of movements. John W. Harbeson (1999: 53) argues that 'Kenya ... provides one of the clearest examples in Africa of precariousness of undertaking multiparty elections as the first step towards democracy before inter-party agreement has been forged and the fundamental rules of the game reformed'. Indeed this was true even after the 2002 elections. A great number of activists and politicians associated with the Ufungamano Initiative were now part of the government. This change of environment meant that the common enemy, Moi and KANU, had been vanquished. The absence of a common enemy was debilitating for the Ufungamano Initiative. Parochial interests surfaced yet again as people retreated to a false belief that the new regime would deliver.

The 2002 election was therefore another conjuncture that contributed to a break-up of the 'old' alliances in the Ufungamano Initiative and the emergence of new ones. Here, four groups emerged: a) those who seemed to be committed to reforms and included the Liberal Democratic Party arm of NARC; b) those who had seen their ascendancy to power as an end in itself and no longer needed reforms and included National Alliance Party of Kenya (NAK) arm of NARC; c) a third, and perhaps a naïve group, emerged. This group mainly from the

civil society and the religious groups gave the benefit of doubt to the government hoping that it would deliver. Obviously, the scheming by politicians forestalled reforms; d) a fourth group regrouped as the new Ufungamano Initiative as the more radical reform oriented champions walked out of it. The new Ufungamano included the Evangelical Christian leaders. The Evangelicals were arguably were the final nail to the coffin of Ufungamano Initiative's unity. They joined other Christians at a critical moment before the 2005 referendum to oppose the inclusion of Kadhi courts in the constitution.

Mutua (2008: 143) correctly argues that these changes in positions were also 'driven by the fear of losing the political advantages that the concentration of power in the Executive gives the incumbent government.' Lumumba (2008: 72) saw those unhappy with new developments as those who felt 'threatened by the changes going on around them…. They look to traditions and institutions to give them a sense of security. Newness frighten[ed] them. They became rigid….' However, this could also have been dictated by a congruence of values and interests among the political elite, who in most instances appear to be from the same socioeconomic class. As Mutua (2008: 143) argues, 'this tendency of Kenyan political parties to withdraw from reformation of the State is… a manifestation of political bankruptcy of the ruling elites, which have had trouble envisioning national interests broader than their own political survival.'

Arguably, nothing had as much impact on the Ufungamano Initiative as did the 2002 general election. The defeat of KANU came with great optimism as it was viewed as a moment of great transformation. However 'ironically, the elections diminished the importance of the National [Constitutional] Conference' (Mutua 2008: 143). The opposition coalition – NARC – that defeated KANU, was made up of at least fourteen opposition political parties and civil society organisations. The organisations forming NARC (except for the Liberal Democratic Party, a brigade of former KANU high priests led by Raila Odinga who decamped in huff after they felt slighted by Moi in his selection of a successor) had been affiliated to the Ufungamano Initiative.

The composition of NARC seemed jinxed and at the same time, was a source of deep division within the new Government. It created two distinct groupings around the constitutional reform project. The Liberal Democratic Party wing of NARC regrouped with their former colleagues in KANU to push for certain positions that the NAK wing was opposed to. This was especially around the clipping of the powers of the Executive. The new

positions seemed to be in total contrast to positions that these parties had held before the 2002 general election. Mutua (2008) offers an opinion of what was happening. For him:

> The group that lost the fervour for new constitution after 2002 elections were neither duplicitous nor treacherous. Conversely, altruism cannot be the simple attribution of those that still pushed for a new constitution at the National Constitutional Conference. Both groups – particularly the political parties – took their respective positions based on their political location. Groups that had taken over the state saw no urgency for change, whereas groups that were excluded from the centre of power sought a new constitution that they believed would be an ally in their drive for power. Even though there has been a liberal democratic consensus among Kenyan elites, different political parties, particularly those in power have shown a disdain to the fundamental democratization of the state (Mutua, 2008: 142-3).

Nonetheless, for a great majority of Kenyans, the aura that accompanied the December 2002 general election was interpreted as a great moment for transformation. Subsequent developments demonstrate the possibilities for transformation, while at the same time, showing the limits of this promise given the capture and defeat of the popular will. This contributed to the defeat of the 'government sponsored' draft constitution in a National Referendum in 2005 essentially because of an attempt to subordinate the popular will to the will of a few elites. Moreover, arguments from the NAK wing of the Government in favour of the proposed constitution were based on comparisons of the new constitution being 'better than the old one' without necessarily addressing some of the fundamental issues that Kenyans had wanted. The National Constitutional Conference process and outcomes is used below, to demonstrate these possibilities and limitations. To demonstrate this, I return to the work of the Commission after the merger, with a view to demonstrating the power plays that ensued.

The Commission, immediately after the merger, embarked on massive civic education before collection of views of Kenyans was done. It appointed several organisations to help it run the civic education throughout the country. The Commission also ensured that Constituency Constitutional Forums were in place. The Constituency Constitutional Forums included the area Member of Parliament, Councillors, women, youth and persons with disability representatives. The Constituency Constitutional Forums were 'very important organs during the collection of views, they helped in mobilising the populace' (Lumumba, 2008: 63). But even as the Commission went about its work, it was acutely aware of the need to finalise its work before the 2002 general election. In an internal memo to the Commissioners on November 6, 2001 Ghai wrote: 'given the polarized state of politics and ethnicity, it is in the

national interest that the next general elections and the formation of the next government should be based on the new constitution' (cited in Lumumba 2008: 57). Ghai continued to warn that if Kenya went to the polls in 2002 with the old constitution, new elections would produce a lot of uncertainties and the 'constitutional moment' would be lost.

But Moi was weary of uncertain outcomes of the Review Process. Moreover, Moi did not trust that his new friend, Raila Odinga, would protect him when he left power. Moi manipulated the constitution to ensure that there were elections before a new constitution could be enacted. Moreover, 'elements within the KANU Government and their lackeys in the Commission … embarked on their journey to delay and/or defeat the Review Process' (Lumumba, 2008: 67). Despite the delays created by KANU, the Commission finalised the Process of drafting the proposed constitution in September 2002, after comprehensively consulting Kenyans from all walks of life and all parts of the country. But President Moi was livid, making propagandistic pronouncements that the proposed constitution was very faulty as it contained aspects that were very un-African even before he had seen it. His ministers emphasised the same. Lumumba (2008: 84) states that 'this attitude was exemplified by Julius Sunkuli, a Minister in Moi's government who labelled the draft as very bad even before he had read it.' This, Lumumba argues was the 'official way that Moi and his Government had dealt with the Review Process: condemn first and verify later' (p.84).

By mid-October 2002, it looked as if the Review Process was getting into the next important step: the National Constitutional Conference. But the undiluted presidential and parliamentary powers over the Review Process returned to haunt it. On Friday 25 October 2002, the last day of the inaugural week of the National Constitutional Conference, the President dissolved Parliament throwing the entire Process in jeopardy (Lumumba, 2008; Cottrell and Ghai, 2007). Reflecting on the impact of the dissolution of Parliament, Cottrell and Ghai (2007: 18-9), argued:

> Dissolution had the automatic effect that the Process could not continue: every MP was a member of the NCC, and MPs ceased to be such when the writs were issued for the elections, which took place a few days after the dissolution. The dissolution could not have come at a more dramatic moment: the formal inauguration of the NCC was to be on Monday 28 October 2002. During the previous week all the non-parliamentarian delegates had assembled for a week of pre-conference activities, including ceremonial tree planting (organized by the delegate Wangari Maathai), and sessions where discussions of the CKRC Draft were led by distinguished academics and others, including those critical of the Draft. The President

dissolved Parliament at around 3 p.m. on the last day of this inaugural week, Friday 25 October.

In dissolving Parliament, 'Moi evidently hoped that his party, KANU, would win the elections, and that his chosen successor would slip into his seat' (Cottrell and Ghai 2007: 12). As this was happening, Raila Odinga, whose party, the National Development Party had earlier on March 18, 2002 merged with KANU for Odinga to become the Secretary General, led an exodus of the discontented out of KANU. Odinga's group formed the Liberal Democratic Party that joined hands with a burgeoning opposition unity party under the National Alliance Party of Kenya made up of Mwai Kibaki, Kijana Wamalwa and Charity Ngilu, who had agreed to field Kibaki as their presidential candidate to compete against Moi's chosen successor. The union of NAK and LDP formed the National Alliance Rainbow Coalition (NARC). Lumumba argues that reading the signs of the time, the writing was on the wall:

> It was obvious that the KANU regime would be sent packing and I assumed that the Kibaki administration would be friendly to the Process because within its ranks were men and women who had actively and consistently fought for a new constitutional dispensation. Their own enthusiasm was palpable. They campaigned on the platform of delivering a new constitution within hundred (100) days. I believe others were hopeful too' (Lumumba, 2008: 81).

This shows that Kenyans had a lot of faith in the incoming regime to deliver a new constitution and a better life for them. Indeed, NARC's Mwai Kibaki's defeat of KANU's Uhuru Kenyatta with over 63% of the vote was interpreted as a mandate to steer Kenya from the ills afflicting her. The reform of the constitution was a key priority.

However, after getting into power, the hundred days passed and instead of the National Constitutional Conference being reconvened immediately, NARC, a 'coalition of convenience, united more by what it opposed than by what it actually [stood] for' (Barkan, 2004: 92), started bickering over positions in Government. This paralysed not just Government work, but the Review Process as well. This symbolised a struggle between the new power elites. The bone of contention was based on the fact that NAK had reneged on a secret Memorandum of Understanding on the sharing of power, signed between Kibaki and Odinga as part of the merger deal between NAK and Odinga's Liberal Democratic Party (LDP) (Mutua, 2008; interviews: Ong'wen, 09/10/2009; Wambugu N., 23/10/2009; Odhiambo M., 01/04/2010). For Mutua (2008: 143), this caused delays that allowed the constitutional 'moment to lapse [and] rendered the National Constitutional Conference a

forum for elite bickering instead of a solemn occasion to remake the State' (Mutua, 2008: 143).

Speed bumps in the Review Process were created by NAK's discomfort with the composition of the National Constitutional Conference, which they saw as a product of KANU's electoral gerrymandering. This manipulation had resulted in the National Constitutional Conference delegates being skewed in favour of certain places and interests. This was indeed true, as Moi had perfected the gerrymandering of electoral boundaries since the reintroduction of multipartism in 1991. Commentators such as Brown (2001) conclude that such gerrymandering is what ensured that:

> Moi and KANU [were] re-elected on two occasions. In December 1992 Moi was returned to the Presidency with 37% of the popular vote, which was more than the number polled by any of the seven other candidates. KANU obtained a majority in Parliament (100 out of 188 elected seats), despite only receiving 30% of the parliamentary votes cast, made possible by the first-past the post system and variations in the size of constituencies. In the December 1997 poll Moi was re-elected with a slightly higher plurality (40%) than in 1992, but a mere four-seat majority in Parliament (Brown, 2001: 726).[38]

Such manipulation was not limited to the elections into Parliament only. It was also applied to all other contestations that were alive in the country. The National Constitutional Conference was one area that Moi and KANU as well as their erstwhile nemesis-turned-partner in a national deception plot – Odinga and the National Development Party had ensured would be in their favour. It is worth remembering that with Raila in its fold, KANU had amended the 1998 Constitution of Kenya Review Commission Act in 2000 to ensure that their support bases benefitted in terms of numbers in the National Constitutional Conference which, just like the National Parliament, was based on electoral constituencies as an important organ of reforms. The 2001 amendment to the Constitution of Kenya Review Act did not redress this obvious bias, as three delegates on top of the area Member of Parliament,

[38] Barkan (2004: 89-90) argues along the same line but introduces the idea of a fragmented opposition vote as the reason 'Moi prevailed in Kenya's first two multiparty elections, held in 1992 and 1997, but with only a plurality of the vote. KANU won a narrow majority of seats in the National Assembly but not a majority of the ballots cast. Both elections were characterized by unprecedented levels of communal violence and foul play. Neither could be described as free and fair, despite the presence of domestic and international observers. The main reason for the opposition's defeat, however, was its failure to unite behind a single candidate. In both elections, the opposition split its vote among three major ethno-regional parties and several smaller ones.' This seems to suggest that multi-plurality was a bad thing and a two horse race in democracy is better. On the contrary, twosome races deny people alternatives as electorates are stuck with whatever is offered. As such, I take the view that it was not the failure of democracy Kenyan style, but rather that such analysis has been lopsided in their views of change.

would represent each of the 210 constituencies. Commenting on these matters, Kuria (interview, 26/09/2009) argued:

> The Parliament of the Republic of Kenya is a product of gerrymandering. You will find for instance that the last general election [2007] despite the fact that Kibaki had majority of the votes, ODM has the majority of seats in Parliament. The reason is that ODM is a beneficiary of gerrymandering. One way of controlling the country by Moi was to draw up more constituencies (electoral districts) in the area where KANU had support and leaving intact, areas where he had little support. For instance contrast Embakasi and Ijara constituencies with 120,000 and 7000 voters respectively. They both elect one MP. So the vote of one person in Ijara is not equivalent to that of a person in Embakasi. Therefore any law passed by Parliament governing the rewriting of the Constitution could not be democratic.

The selection of delegates to the National Constitutional Conference was therefore not democratic. Consequently, the National Constitutional Conference did not proportionally represent the entirety of Kenya. Even then, the interests of the incumbent regime had shifted to consolidation and preservation of its hold on power. The NAK arm of the NARC coalition was even toying with the idea of redrawing the list of National Constitutional Conference delegates. NAK wanted to redress the National Constitutional Conference from being a 'staid affair calculated and scripted by the departing KANU regime' (Mutua 2008: 143). Besides the gerrymandering of electoral boundaries, the majority of the appointments to the National Constitutional Conference had been done without any clearly defined criteria. Indeed this becomes clear when one of the delegates who represented Tharaka Constituency to the National Constitutional Conference was asked how he got there. He could not remember the selection process followed. Indeed, while the law was clear on how the representations were meant to be, it is difficult to sustain a claim that the National Constitutional Conference represented Kenyans. It was the same arguments that were used in the *Njoya case* –the constitutional challenge against Parliament to force the Draft Constitution through a referendum before it could be enacted (Ndubi, interview 24/09/2009).

Given the new pulls and pushes, the National Constitutional Conference process was lengthy and punctuated. National Constitutional Conference took place in three phases. Phase one was April 28 to June 6, 2003. Phase 2 was August 18 to 25 2003 and was adjourned following the death of the then Kenyan Vice President in a London hospital to allow for two weeks of national mourning. Phase 3 started on September 6, 2003.

By the time the National Constitutional Conference was reconvened, majority of influential people in the new Government had lost the revolutionary fervour as the environment had changed considerably. Deep divisions had begun appearing 'within the political class [sic] (Lumumba, 2008: 122). According to Lumumba (2008: 92), the National Constitutional Conference was 'convened hot on the heels of spirited attempts to scuttle the Process and the early days were difficult with saboteurs from within and without the Commission.' Lumumba gives an example of this as an attempt to unseat Ghai from chairing the Conference through a motion moved by none other than the Rev. Mutava Musyimi at the start of the Bomas Conference (Lumumba, 2008). However, the attempt was 'nipped in the bud' (Lumumba, 2008: 97). At the time, Musyimi was seen as having a soft spot for the NAK side of government. After the failure of Musyimi's attempt to get elected to the chair of the Conference, he left Bomas and never returned (Musyimi, interview 09/10/2009). Instead, he mobilised what remained of the Ufungamano to produce a rival Draft of the proposed Constitution dubbed the *Ufungamano Initiative Draft*.

Meanwhile, there were also other attempts by the new regime to subvert the will of the people. They used some of the Commissioners from the Ufungamano Initiative side as well as others who had metamorphosed to be supportive of the conservative tendencies of the NAK wing of the new regime. Lumumba notes that, 'as cracks begun to emerge, Commissioners Abida Ali, Charles Maranga, Njoroge Kariuki, Hassan Issack, Pastor Zablon Ayonga, Wanjiku Kabira, Mohammed Swazuri, Domiziano Ratanya, Keraiko Tobiko were invited to a dinner hosted by Minister Kiraitu Murungi' (Lumumba, 2008: 131). Thereafter, these Commissioners stopped rising above partisan interests in the National Constitutional Conference process (Lumumba, 2008). Similar co-optations were happening for civil society operatives. Some of the prominent people in the Ufungamano Initiative got plum State appointments (e.g. Musyimi was appointed to National Anti-Corruption Campaign Steering Committee). Mutua argues that ultimately, the unwillingness of the new power elite had let the constitutional 'moments to lapse' and it was now difficult to 'reform the Constitution under a "democratic" government' (Mutua, 2008: 143).

The National Constitutional Conference met at the Bomas of Kenya from whence it got its name. It had 629 delegates drawn from

> Members of Parliament, District Representatives, Trade Union Representatives, Non-Governmental Organisations, Professional Organisations, Women's Organisations, Religious

> Organisations, Political Party Representatives, Commissioners of the Constitution of Kenya Review Commission (*ex- officio* delegates without a vote*)* and special interest groups. In addition, the Commission accredited thousands of observers from all sectors of the society and the diplomatic community (Lumumba, 2008: 92).

As the Conference continued, so did fragmentations among the power elite. The following were sources as well as effects of such fragmentations. First, ethnicity re-emerged, and as severally mentioned in this study, yet again contributed to frustrate transformatory change. Second were disagreements over the content of the proposed draft constitution. For instance, some actors, especially the NGO types within the Ufungamano Initiative fiercely argued for the scrapping of the Provincial Administration –a Public Administration system inherited from the colonial administration and a key instrument of the State in oppressing citizens. But by 2004, those who had crossed over to politics were opposed to this. Moreover, the inclusion of the Islamic Kadhi courts in the draft constitution led to further fractures between the Christians who opposed it, and the Muslims who supported it. In the end, Muslims walked out of the Ufungamano Initiative. Muslims felt insulted by the fact that Christian groups that had been in the Ufungamano Initiative ganged with those who had been supporting the Moi/KANU State, i.e. the Evangelicals in opposing the inclusion of the Kadhi courts in the draft constitution (Karanja, 2008; Namwaya, 2006; Wandati, interview 17/09/2009).

Third, leadership failures/limitations and personality power plays as well as subversion by the power elites of the day played a role. Indeed, the Moi and subsequent Kibaki administrations, while appearing facilitative, feared an outcome that would see them lose their social, economic and political hegemonic statuses. The loose nature of the Ufungamano Initiative also played a role in this. As already mention in the analysis of the mediations for the merger, despite clear reporting and accountability lines between the different structures, some within the Steering Committee were too overbearing on the other actors and structures. This had the effect of creating further fractures in the movement as a few assumed they knew what was good for the movement and Kenyans in general. This confirms Bourdieu's observations as cited in the Michael Burawoy lecture series: *Conversations with Bourdieu*, on the 'mythology of the organic intellectual… whose habitus is formed by skholé, [and] can never appreciate the condition of the working class, whose habitus is shaped by the endless and precarious

pursuit of the necessary means of existence' (Burawoy 2008a: 14). This is because, Burawoy (2008a: 15) continues,

> If the organic intellectual gets too close to the under-class or any other class […s/he] risk being contaminated by its misrecognitions. [At the same time], because their habitus is so different from the [under] class, organic intellectuals – understanding neither themselves nor those they engage – suffer from the temptation of dictatorship of ideas, and liable to manipulate the working class…. Bourdieu extends this criticism to political leaders in general who are governed by the logic of the political field, the field in which representatives of organizations compete with one another, manipulating representations of their followers for their own ends.

The merger negotiations process analysed earlier in this chapter demonstrates this arrogation of representation.

A key outcome of the contentions in the content of the proposed constitution was a constitutional interpretation case filed by *Njoya and others*. In the views of some of the people involved in the National Constitutional Conference process, the Government had been working in cahoots with some former members of the Ufungamano Initiative who filed a constitutional interpretation case on the rights of Kenyans to make the constitution, and specifically on the need for a referendum. Given the high polarisation of nature of the Reform politics some critics trashed the ruling by Justices Aaron Ringera, Benjamin Kubo and Mary Kasango on March 25, 2004 as ill motivated. However, the ruling also received support from the likes of Philip Kichana of International Commission of Jurists who wrote of it:

> The power to make and enact a new constitution exclusively belongs to the people and therefore no amendments to the constitution can give parliament that power. In addition, the court reasoned that since Kenya is a multi-party democratic State, its people have an implied but mandatory right to ratify a new constitution (2004: 1).

But the contentions within the Ufungamano Initiative were not the only thing that made the National Constitutional Conference process chaotic. According to Lumumba (2008) during the life of the National Constitutional Conference, a number of prominent Kenyans at the heart of the constitutional reform project died in office. This further polarised the process in fundamental ways. The most notable were the deaths of Dr. Oki Ooko Ombaka on June 15, 2002; Michael Christopher Wamalwa (the Vice President) in a London Hospital on August 25, 2003; and finally, the alleged assassination of Dr. Chrispin Odhiambo Mbai, the convenor of the contentious technical Committee on Devolution on September 14, 2003. The former

CKRC Secretary, PLO Lumumba, writes of the effects of each of these deaths to the constitutional reform train:

> Oki's death was a big blow to the Review Process. He had been a fearless crusader for a people-driven Constitution and a voice of reason and honesty within the Commission. With him and Yash we had constituted a formidable bulwark against the shenanigans of state-friendly commissioners whose subterranean machinations were designed to torpedo the process (Lumumba 2008: 69. Original underlined).

Regarding Wamalwa's death, Lumumba (2008: 112) noted:

> Diviners could easily say that Bomas II was jinxed.... No sooner had the dust settled on the Plenary debate than the Conference was hit with news of death in what the Rapporteur General of the Conference, Prof H.W.O. Okoth-Ogendo called in his report 'interruptions in mortis causae'. Delegate No.2 Kijana Michael Christopher Wamalwa, then Member of Parliament for Saboti and Vice President and Minister for Regional Development passed away in a London Hospital on August 25 2003. President Kibaki declared two weeks of National mourning to be observed between August 25 and September 6, 2003.

Kijana Wamalwa was no ordinary mortal in the then Kenyan politics. Wamalwa had been instrumental in the reform movement. Since early 1990s he had been part of a younger group of politicians known as the 'Young Turks' who had teamed up with the older generation of opposition politicians to push for the return of political pluralism in the country. Yash Ghai the chair of the Bomas Conference eulogised Wamalwa as 'a much admired and loved person, he listened to all and he had the ability to inspire and to reconcile [...] and a peacemaker [who] built bridges across different sectors of our society and of politics' (CKRC National Constitutional Conference - Plenary Proceedings on Adjournment of the Conference- 25.08.03: 6; Lumumba, 2008: 113). Ghai continued to point out that Wamalwa

> …was a person of great integrity and reliability…steadfast…sharp intellect and he spoke with great eloquence and conviction, and had great sense of humour...a champion of political and constitutional reform, a true democrat. His role in the reform movement, which preceded and gave birth to this Review Process, was truly monumental. He helped define the movement for Reform and to define the agenda that found its way into the Review Act and which has animated the work of the different Organs of Review (*ibid*).

Wamalwa had been a giant among the constitutional and political reform stalwarts in Kenya. Wamalwa had earlier in the year (April 30 2003), inspired the Delegates on the occasion of the official opening of the National Constitution Conference with these words:

> Distinguished Delegates, this is a momentous occasion in the life of the Kenyan nation. For today we are gathered here to redefine our political, cultural and social economic future through the process of crafting a new constitution. In the whole history of mankind, only a few generations have been given the privilege of rewriting the laws of their country and we are among them. Today we are ranged alongside Thomas Jefferson, Napoleon Bonaparte and other people who have made it their duty to define laws that would serve their countries for posterity. Constitution making in Kenya has been a long and rocky process. We have gone through hell and back, and to be here finally, we must thank the Almighty to have kept us alive and having given us this privilege. Ladies and gentlemen, we in this nation are of many tribes and many religions and many cultures. This is not a weakness. This is the strength of this Republic. In our efforts to write the supreme law of the land, we must go the extra mile to cater for every community however small, (applause) for every religious sect however small, for every Kenyan, who has a view. For the constitution is the defender of the weak, the protector of the mighty and the not so mighty, and the modern defender of the faiths in plural (Michael Christopher Wamalwa April 30, 2003 on the occasion of the official opening of the National Constitutional Conference).

The absence of Wamalwa's uniting and sobering influence on the Kenyan political scene was soon felt in the Constitutional Review Process as cabinet members of the ruling coalition started pulling in different directions, resulting in major conflicts over the content of the proposed constitution. Moreover, the state now seemed determined to renege on the promise of giving Kenyans a new constitution, a promise that the NARC Administration had been elected on.

The third death on the September 14 2003, six days after National Constitutional Conference had reconvened on its third session, shocked the country. This time, it was the murder of Dr. Chrispin Odhiambo Mbai at his home on a Sunday morning. Mbai had been elected the convenor of the contentious Technical Committee on Devolution. Mbai was a key intellectual protagonist who attacked the CKRC devolution proposal as well as another proposal on devolution proposed by Kibaki's Government. The key contention on devolution was that the Government wanted to retain the controversial centralised Provincial Administration which most delegates as well as views from the Kenyan public had wanted scrapped. Dr. Mbai had been advocating a quasi-federal model and his proposals found favour with most delegates. Lumumba writes that,

> Owing to the significance that Devolution had taken, when Mbai was gunned down, accusations of murder and assassination flew about. Two people were arrested and charged

> with murder but later acquitted. With his murder unresolved, Dr. Mbai became a martyr for the constitution. The impact of Dr. Mbai's death was enormous. It heightened tension and even raised ethnic sensibilities (Lumumba, 2008: 118).

With these polarities, the Ufungamano Initiative by the 2005 Referendum was no longer united and differed on the substance of the new constitution. It also no longer commanded a mass following. Ombok (interview, 24/10/2009) stated that 'the church had lost the moral legitimacy when they started identifying with the system.' Reflecting on this change of fortunes, Cottrell and Ghai (2007) argue that despite civil society's prominence in pushing for change and the political currency and popular support it enjoyed, there was limited success because of the co-optations and resource and structural constraints and manipulations by state and other vested interests. The observation by Cottrell and Ghai (2007) is particularly telling. It raises the question: what conditions allowed this promising case to turn into a classic story of limitations to social movements when they are absorbed into rigid power structures?

The discussion above has shown that one of the key reasons for the demise of the movement was that the merger was essentially co-optive. Ufungamano seemed to have treated the merger as an end in itself. Moreover, in the period post-2002 general election, different sections of civil society that had hitherto been united against Moi took different positions in their dealings with the state. The faultlines were predictably along ethnic lines (interviews: Ombok, 24/09/2009; Gitari, 21/09/2009; Omtatah, 31/03/2010). The opportunistic political vultures in political parties preyed on everyone else and blocked the realisation of a new constitution. The National Council of NGOs of Kenya was not spared of these deep tribal divisions. The NCCK and the Catholic Church also seemed to be imploding with different church leaders taking contradictory positions.

By the end of the National Constitutional Conference, these divisions had been so manifest that the NAK side of government supported by what remained of the Ufungamano Initiative (mainly clergy from the central region of the country) staged a boycott against the March 15 2004 final vote for the adoption of the draft constitution (interviews: Kaimba, 19/09/2009; Gitari, 21/09/2009; Njoya, 29/09/2009; Mwanyumba, 07/04/2010; Runguma, 13/03/2010; Odhiambo M., 01/04/2010; Athman, 12/10/2009). The final adoption of the proposed constitution was done only with the Attorney General as the representative of the Government.

The NAK faction of the Government was obviously unhappy with these developments. Thereafter, they attempted to introduce a separate constitution from the National Constitutional Conference Draft by asking the Attorney General, Amos Wako, to issue a contentious Draft to be subjected to a Referendum on November 21 2005 (Nyinguro and Otenyo, 2007). This further polarised the country into 'Kibaki's pro-constitution Government on the one hand and a loose coalition of elements in the NARC Government (from the partner Liberal Democratic Party) and former ruling party-Kenya African National Union on the other' (*ibid*) opposed to the draft constitution. In the months prior to the November 21, 2005 referendum, divisions within Kenyan society and specifically within the ruling coalition had rendered the NARC Government inoperative. The campaigns for or against the draft constitution were no longer based on the substance of the constitution but on personalities, broken promises of an MoU, to even outright lies on issues of land tenure,[39] position of the Islamic Kadhi courts and on issues of sexual and reproductive rights.

The rallying point for the NAK side of the NARC Coalition in the support for the constitution was that the proposed constitution, which had been adulterated by Members of Parliament and the Attorney General, was better than the one existing and therefore, Kenyans should support it. In so many ways, the words of the opening paragraph of one of the most famous Victorian authors, Charles Dickens in *A Tale of the Two Cities* (1859) captures the hyperbole of that moment:

> It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair,

[39] The same issue of land ownership was also contentions during the 2010 Constitutional Referendum. Committee of Experts that shepherded the realisation of the new constitution in August 2010 wrote in its report: 'Opposition to some of the provisions in the land ...was not unexpected. This is so particularly in respect to the provisions relating to illegally acquired property in the Bill of Rights (read grabbed land) and those authorizing the setting up of a maximum acreage for land holdings. Such opposition was to be expected from the owners of obscenely vast tracts of land and the beneficiaries of land acquired fraudulently and corruptly through abuse of office by previous regimes. The Committee will however never forget the unedifying and pitiable images of some of the poor and the landless Kenyans vigorously opposing these provisions based on distorted information peddled by some prominent opponents of the Proposed Constitution of Kenya. This spectacle clearly portrayed the kind of stranglehold, which the powerful have over the weak and how this relationship is exploited and abused. This particular deadlock was surprisingly resolved by enlightened land owners and entrepreneurs with the benefit of understanding that it is the delicate relationship between labour and capital which is the foundation of national stability. This understanding dictates that the better endowed members of our society must be allowed to create capital and wealth. However, their privileged survival is pegged on ensuring that the poor and the under privileged have the opportunity to mitigate their plight by being given a chance and through the provision of basic welfare facilities. In common analogy, this is the point, which Queen Marie Antoinette is said to have missed in provoking the French Revolution. In reality the survival of modern civilizations is grounded on this foundation' (CoE, 2010: 9-10).

> we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way - in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.

As Nyinguro and Otenyo (2007: 18) assert that while those opposed to the new Draft 'mobilized successfully to defeat the Kibaki-led supporters of the draft constitution…the No group framed their cause in terms of Kibaki, attempting to create a constitution that would give him (the President) excessive powers.' But none of the sides had national interests at heart as parochial partisan political and ethnic interests had once again taken centre stage.

A dream deferred?

In 1951, the famous Africa American poet, Langston Hughes in his famous poem, *A Dream Deferred* wrote:

> What happens to a dream deferred?
> Does it dry up
> Like a raisin in the sun?
> Or fester like a sore--
> And then run?
> Does it stink like rotten meat?
> Or crust and sugar over--
> like a syrupy sweet?
> Maybe it just sags
> like a heavy load.
> Or does it explode?

The poem helps frame the debate on whether, as a result of the abortion of the popular will, the Ufungamano Initiative as initially constituted ought to have regrouped. While this remains a debatable question, what is clear is that even as ethnic-political crocodiles with a monstrous appetite for power consumed both the Ufungamano Initiative and the realisation of a new constitution, their demise laid the ground for new waves of contention. The issues at the heart of the generation of the Ufungamano Initiative were now widely diffused among the Kenyan population. This helped to shift the hegemonic anti-reform ideology as more Kenyans outside elite formations kept on agitating for the need to change the constitution. That is why the entire constitutional reform process did not die (Lumumba, interview 01/10/2009).

According to Nyinguro and Otenyo (2007: 18), the first among these new waves of contention originated during the National Constitutional Conference deliberations through

> A series of meetings early in April 2004 at the National Constitutional Conference [that] resulted in the formation of an informal caucus, dubbed the Katiba Watch. Delegates and observers unhappy with the pace at which NARC was managing the constitutional Process formed a Coalition for Commonsense Constitution (CCC), later renamed Katiba Watch.... By the end of 2004 [it] had begun calling for mass action.... Katiba Watch activists denounced the government's tactics of reneging on the promise to deliver a new constitution to Kenya during its first year in power. Katiba Watch also challenged the government to implement other major political reforms to improve on the quality of life for Kenyans. The pressure group articulated the relationship between a new constitutional order and fair distribution of the country's wealth, thereby giving the pro-democracy movement much-needed appeal.

Another development was the formation of a new civil society coalition, the National Civil Society Congress as a platform for civil society organizations involved in pushing for social change (interviews: Odhiambo M., 01/04/2010; Churchill, 02/10/2009). The National Civil Society Congress through its *Katiba sasa* (constitution now) campaign, kept vigil and pushed for the realisation of a new constitution. Significantly, this new coalition drew most of its membership from the secular civil society groups who had been at the forefront of the constitutional reform struggles and were part of the Ufungamano Initiative (interviews: Odhiambo M., 01/04/2010; Wambua, 13/10/2009; Nduta, 08/04/2010; Apiyo, 21/03/2010; Mwachofi, 28/03/2010; Nyokabi, 31/03/2010; Omtatah, 31/03/2010).

The country did go back into mass action. But the ethnic polarisation of the country was a sure recipe for the vortex whose explosion into murderous protests and revolts after a disputed presidential vote in 2007 was the final wake-up call to the elites on the need to at least transform the State or the entire Kenya would implode. This was possible because ordinary citizens refused to let go off their struggles for transformation of the State. As the violence raged, the international community under the auspices of a Panel of Eminent Africans led by Dr. Kofi Annan intervened and brokered a peace deal. A retinue of conditions including comprehensive constitutional reforms were set for the ruling elites and especially for the new Coalition Government to meet. A clear timetable for the implementation of this was drawn and the Panel of Eminent African Persons continued monitoring progress towards its achievement.

Martin Luther King junior once said that, 'the arc of history is long, but it bends toward justice.' On august 4, 2010, Kenyans, in a constitutional referendum, finally overwhelmingly

voted by 67.25% in favour of the proposed constitution. This was a culmination of a two decade long struggle for a new constitution. The adoption of the new constitution in 2010 suggests that for the Kenyan constitutional reform struggles the ultimate success only came after the confluence of means and ends within the different elite formations. A key question then is, how can the reform struggles narrative inform the strategies for ensuring the new constitution is implemented in Kenya? The answer to this and many other questions are critical. They nonetheless should form the subject matter of a different research project because they are beyond the remit of the current one.

Conclusion

The discussion in this chapter has critically analysed the merger motivation, process and outcomes. It has shown that the movement resulted in a merger, though it was contested, because the most influential leadership saw opportunities for strategic interactions with the state led process, which was Ufungamano Initiative's primary competitor in the constitutional reform contention. The chapter has demonstrated that in this contention, the Ufungamano Initiative had managed to create some substantive challenge to the state-led process. The political power elites were somewhat forced to find a credible person to steer the process so that it would win Kenyans back to their side. This explains the search for and entry of Yash Pal Ghai as a new and trustworthy player in the process whose idea to push for a merger, became an attractive option for the most powerful element of the Ufungamano Initiative leadership as well as the state-led process. These leaders, identified as mainly from religious institutions, politicians, and the PCK became Ghai's allies in pushing for a merger, which though acrimonious, was achieved.

The chapter has shown that acrimony was a product of the multiplicity and diversity of actors in the movement, which, while a great source of strength, was also responsible for multiple fault lines. The chapter has discussed how, with so many fundamental differences, the movement ceased to be viable and ultimately disintegrated. In the process of the internal contentions as well as the strategic interactions between the movement leadership and the state, the chapter revealed that the different contenders in the Kenyan constitutional reform struggle managed to turn popular democratic demands into a terrain of intra-elite struggles, which somewhat frustrated the transformation of the state in the 2005 constitutional referendum. Nonetheless, it remained a contested terrain as the idea of a better constitution to serve all Kenyan's was widely diffused and new waves of contention started to build up. Its

high tide, the chapter argued, was the 2008 post-election violence, which forced a confluence of forces that compelled political elites to listen to Kenyans and deliver a new constitution in August of 2010. It was nonetheless not a tide without many barriers on the way. At this point, the critical questions are: what can we learn from the Ufungamano Initiative? Did the movement bequeath anything positive or negative to the constitutional reform project? These are the key questions addressed in the concluding chapter.

Chapter Eight

A Turning Point When History Failed to Turn? A Conclusion

> *Every so often, societies come to critical moments when their history could turn. Those who have seized the moment have transformed the destiny of their nations for the better. Those who let the moment to pass have lived to pass on to future generations narratives of missed opportunities. These are narratives of false dawns that did not blossom into mornings of salvation and fulfillment. The Kenyan nation has had its fair share of missed boats. […]In Kenya, we … steadily got it wrong from the moment we began meddling with the Independence Constitution in 1964. […] By 1991, the Constitution, Parliament and the Judiciary were instruments of command and control by the Executive. We have since been going through instalments of reform, when we have attempted to reverse the negations that our leaders sank us into in the first three decades of independence. But we have become adept at making one step forward and two steps backwards. Because of this, our history never turns, when it should be turning. We missed the boat in 1992, with the first multiparty elections since independence. We missed it again in 2003, after bringing a new regime to power the previous year. We repeated this in 2005, when we attempted to give the country a flawed new Constitution. Then in 2008 we set the country on fire (Barrack Muluka, June 10, 2011).*

Introduction

For the better part of the last two decades, the Kenyan socio-economic and political landscape has been a tumultuous one. There have been many political and social struggles centred on embedding a new constitutional order to check excessive political and economic encroachment on society by avaricious political and economic elites. Much of the scholarship on these struggles, with a few notable exceptions, pays little attention to the role of the encroachment of market forces on the lives of Kenyans as the fuel behind the discontent that led to the emergence of the various constitutional reform struggles. This thesis has attempted to address this gap by using an integrated analysis of the political, economic, and social factors behind the emergence of the constitutional reform struggles in Kenya. Specifically, it has addressed the question of *why* and *how* at least fifty-four different secular and religious civil society organisations and opposition political parties, with potentially conflicting interests, successfully joined hands, despite several past failed attempts, in a 'movement of movements' known as the Ufungamano Initiative to write a new constitution that would redefine the relationship between the Kenyan people and their rulers. The Ufungamano Initiative is an interesting case because it amplifies both the power and limits of social movements in challenging and re-ordering an African State.

This concluding chapter asks: what can we learn from the Ufungamano Initiative? Did the movement bequeath anything positive or negative for the constitutional reform project? Most

importantly, what can this movement bequeath contemporary scholarship of social movements especially on the African continent?

In an attempt to answer these questions, the chapter is divided into three main sections. The first section offers conclusions on forces that led to the emergence of the Ufungamano Initiative. The next section offers insights into what the Ufungamano Initiative was able to achieve. The section also speaks to what this study offers as a contribution to the study of social movements. The thesis concludes that the Ufungamano Initiative demonstrates that citizens acting collectively can create alternatives especially in situations of crises engineered by political elites. Moreover, it shows that change does not necessarily have to rely on the political elites for leadership. In particular, the thesis has shown that it is possible for citizens of socioeconomically and politically diverse backgrounds, to overcome existing societal cleavages (especially ethnicity, class, gender and generation) and collectively act in response to events and matters of national importance, outside of formal state instituted structures and force concessions from powerful elites. This collective action, I argue, is what resulted creation of counter-hegemony that allowed for direct citizen participation in making the constitution.

The thesis has also shown that the Ufungamano Initiative's merger with the State-run Process reflects strategic interactions that had consequences for the trajectory of the movement as well as the outcome of the constitutional reform struggles. This chapter also offers conclusions on the potency of the movement in establishing and building legitimacy and political currency for mass support through effective framing, to successfully challenge the state in a context of acute constraints.

Nonetheless, the thesis has also demonstrated that the Ufungamano Initiative manifested a familiar story of the limits to social struggles in Kenya where most movements die without achieving the aims and goals that inspire their formation. The study demonstrates that notwithstanding its promise, and success in creating sufficient challenges to force the Moi/KANU regime to seek ways to salvage itself in the face of a growing legitimacy crisis, the movement was beset with multiple contradictions that played out to arrest the transformations it had sought. The contradictions in the Ufungamano Initiative were nonetheless reflections of cleavages in the wider Kenyan society. Because of these cleavages, Cottrell and Ghai (2007: 1) observe that 'although civil society, with much popular support, was prominent in pushing for change … vested interests … frustrated a quick outcome.'

More specifically, the idea of a new constitution miscarried because the Ufungamano Initiative's merger with the state-led process was essentially an exclusive elite bargain that conspired to subordinate popular will.

This elite bargain, as the merger demonstrates, was possible because the religious, political and secular civil society elites at the leadership of the movement had deliberately ensured that structures for popular involvement of the under classes were stifled and critical decision-making roles remained in the hands of a few who wielded the levers to manipulate or determine outcomes. Furthermore, the donor dependency in the funding of this struggle, as shown in chapters six and seven, meant that the movement was also vulnerable to the whims (manipulative or strategic) of those who funded it. The implications of this are, I argue, that in the face of such contradictions, African social movements seeking radical transformations need to reconcile the cleavages that external funding brings by providing effective structures to broaden the breadth of public support from the various sections of society if they are to achieve transformations. Failing this, they remain oligarchical appendages of whoever pays them, and ultimately, this subordinates popular will.

Generative factors for the Ufungamano Initiative

In his dissertation, *Establishing a Culture of Resistance: The Struggle for Human Rights and Democracy in Authoritarian Kenya 1987-2002*, Robert Maxwell Press (2004: 50-51) revisits a classic sociological question of structure and agency in social action by asking the question whether 'social movements are more the result of structural circumstances or agency.' Introduced in sociology by Emile Durkheim, the structure and agency debate revolves around the determination of social action as a dynamic interplay of individual autonomous decisions to act (agency) and how such actions are also shaped by social environment (structure). In this regard, Press asks: 'is [wo]man basically at the mercy of larger forces surrounding [her/]him such as the economy, international relations, class structure, etc. Or is [wo]man able to rise up against the immediate repression [s/]he sees and challenge it in some way, either as an individual or as part of a group?' I borrow these questions from Press in an effort to offer conclusions on the motivations for the emergence of the Ufungamano Initiative. Some of my conclusions contest those offered by Press.[1] I argue that the Ufungamano

[1] Press's dissertation is concerned with the question of how protests started and established a culture of resistance in Kenya's generic democratization struggles while the current thesis is concerned with in-depth understanding of one of the most influential social movements to have pushed for constitutional reforms in Kenya. Press generates six key conclusions responding to these questions some of which require greater scrutiny. Press argues: (1) Contrary to the dominant social movement theories on political process, activism does not

Initiative as social action was a product of both agency and structure in both Kenyan domestic and international arena. For, as Giddens (2006: 78) points out, 'unlike objects in nature, humans are self-aware beings and confer sense and purpose on what they do.' In the discussion below, I offer evidence for this conclusion.

Political opportunities and leadership nexus

The Ufungamano Initiative, this thesis demonstrates, was a response to existing conditions and political opportunities. Specifically, chapters four and five highlight the fact that struggles emerged to apply pressure on the State. The State capitulated after a protracted confrontation. This capitulation then created new political opportunities around which new waves of struggles were built. It is also true, as Press (2004) argues, that individual activists and the organisations they belonged to or led, also created and utilised their own political opportunities.

With regard to the question of what specific opportunities and resources allowed the nascent pro-reform movements to flourish in a constrained environment, chapter four showed that there were a multiplicity of political opportunities and constraints provided by political and socio-economic developments in the country. The first of such opportunities and constraints highlighted in this thesis was the deteriorating socioeconomic and political conditions in the country. This was largely a result of at least four factors that included:

1) Changes in the global political economy after the end of the Cold War;
2) Rampant corruption by the ruling political and economic elites that led to increased dispossession of the poor specifically through land evictions especially in urban slum areas;
3) Excessive encroachment on society by neoliberal economic forces as a result of the forced implementation of the Structural Adjustment Programmes that led to massive loss of livelihood and decreasing state ability to meet basic economic and social services needs for the majority of the population;

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largely happen in response to external political opportunities; activists can make their own opportunities. The resistance in Kenya began with no discernable changes in adverse societal or international circumstances.... (2) Contrary to much of the literature on democratic transitions, a transition occurred without negotiations or pacts between elites in the regime and in the reform movement. (3) Individual activists, an under-studied force, not organizational activists started the resistance. (4) Informal organizations and networks are as important as formal ones, especially in the initial phases of resistance. (5) Principled ideas (e.g., justice, freedom) offer a better explanation of motivations than rational choice/self-interest for early activists, who took risks that far outweighed any personal benefits from their activism; (6) international donors played only a secondary role in helping bring about reforms; the primary pressure was domestic-based (Press, 2004: xv-xvi).

4) Increasing political intolerance and reneging on reforms promises by the Moi/KANU regime.

The above factors explain the motivations for the participation of the various socioeconomic formations, elite or otherwise, in contesting the state of socioeconomic and political governance, which had an impact on the daily lives of ordinary people. For instance, this thesis has revealed that runaway corruption in the country made things worse for poor slum dwellers as a culture of grabbing of public land had been bred and perfected by the economic and political elites in collusion with State bureaucracy. The elites used the State security agencies and hired thugs to evict people and demolish their shacks in the slums. Such evictions and demolitions had by mid-1990s, become a common occurrence in the slums (Wamucii and Idwasi, 2011; Kloop, 2008; Katumanga, 2005; Katumanga with Cliffe, 2005; Manundu, 1997; Exodus-Kutoka Network, 2005). As a result, Katumanga (2005: 510) concludes that 'for most urban lumpen elements, direct resistance was a function of the fact that they had no fall-back position and everything to lose' (see also Anderson, 2002; Kobiah, 1978).

The runaway corruption as highlighted in chapter four, did not spare even middle class professionals such as lawyers and their legal practice. Justice was commoditised. Besides, lawyers pursing any social justice cases were increasingly harassed. It was this encroachment on society by market forces through the Structural Adjustments as well as corruption that made people in the slums start organising, initially to protest against economic injustices and evictions. One such effort led to the birth of *Muungano wa Wanavijiji* cited in chapter four. Economic necessity was therefore a factor in explaining the outpouring of protest by citizens to wrestle themselves out of an avaricious state and the conditions it had created. This explains the strong participation of the urban middle class as well as the working class in the Ufungamano Initiative.

But also central to the emergence and operations of such protest movements, as argued in chapter six, was the role of leadership. To be specific, without looking at leadership as both agency as well as structure, it is difficult to understand how individual and collective grievances were channelled into collective action. It required agency on the part of activists to recognise, utilise as well as push the frontiers of existing opportunities for mobilisation. This thesis has also shown that it took courage, blood, persecution, and organisation for this to happen. This suggests that individual agency was an important variable in translating

grievances into social movement organisations to confront collective and individual oppression. This, as argued in chapter five corroborates McCarthy and Zald's (1977) argument that social movements emerge when individuals with grievances are able to mobilise sufficient resources (i.e. leadership, money, knowledge, political influence, access to media, labour, solidarity, legitimacy, and internal and external support from powerful elite) to take action.

Further, the Ufungamano Initiative narrative reveals that it is leadership by movement entrepreneurs, combining both agency and structure, which explains why discontented citizens were able to organise. This is because leaders, as Tilly (1977) and McAdam (1982) observe, catalysed and transformed collective discontent into social movements. Such 'entrepreneurs' were critical in bringing the disparate pro-reform groups including civil society, religious organisations, and opposition political parties together under the Ufungamano Initiative to push for constitutional reforms.

To reinforce the role of leadership, chapters five and six demonstrated that incubating and building of the movement was not an easy job especially in the context of competing interests and initiatives. Bringing the divergence actors together took more than the existence of a common adversary in the name of the Moi/KANU regime. There was deliberate horse-trading that resulted in certain positions of leadership in the movement being surrendered to certain leaders and their groups. One such group and its leader was the National Council of Churches of Kenya who were the last to join the Ufungamano Initiative only after being assured of a role in its stewardship. Here we clearly discern that the participation of NCCK and its General Secretary was pegged on his control of the process. This notwithstanding, the NCCK's General Secretary later became the engine that brought the movement to life and steered it during its most visible moment in the struggle. This suggests the centrality of leadership as a crucial variable in the emergence and operation of social movements. Further, it confirms that different leaders performed different leadership roles.

The thesis has also problematised the role of religious leaders in these struggles. The emergence of the Ufungamano Initiative was a reaction from religious leaders' own fears that the radical hard line stance adopted by some secular civil society groups, specifically by the NCEC, though promising greater transformations might plunge the country into turmoil. This was especially so as the Moi/KANU state was obstinately unwilling to deal with NCEC. In the face of high power games that Moi/KANU was playing, coupled with NCEC's own

stubbornness, it is not unimaginable that such violence was possible. In acting to avert such a crisis, the religious leaders' role in the Ufungamano Initiative was one of pacification. In classic Gramscian sense, by design or accident, the Ufungamano Initiative stabilised the situation and ensured popular consent to the hegemonic forces. This is specifically amplified in chapter seven where the thesis shows how part of the Ufungamano Initiative leadership (specifically the religious leadership) delivered the movement to its competitors through an acrimonious merger.

Role of elite pacts and fragmentations

In his study, Press (2004) concluded that the 2002 Kenyan political transition occurred without negotiations or pacts between elites in the regime and in the reform movement. This can only be true in the context of the actual 2002 general election and its outcomes. This conclusion ignores the elite bargains that happened immediately prior to the 2002 general election when a section of top KANU leadership left in a huff and formed the Liberal Democratic Party to join the opposition through the infamous Memorandum of Understanding to form the NARC that defeated KANU.

Moreover, Press's conclusion fails to see other forms of pacts between different elite formations especially those opposed to Moi as a great source of energy that drove the constitutional reform struggles. This thesis has shown that in the Ufungamano Initiative, an elite pact existed between secular civil society leaders, religious leaders, and opposition political parties. Indeed, the merger between the Ufungamano Initiative and the Parliament-led Constitution of Kenya Review Commission, as was the IPPG deal of 1997, as this study has shown, were also in many ways manifestations of elite bargains.

The historiography of social protests in Kenya in chapter four traced the key waves in the constitutional reform struggles that by 1990 had galvanised a majority of Kenyans in forcing political concessions through the repeal of Section 2A that had criminalised political opposition. The repeal of section 2A of the Kenyan constitution opened up some democratic space. However, the thesis has also argued that this did not necessarily translate into fair democratic political competition. This sowed the seeds for new forms of struggles especially in light of continued repression by the state.

Like Katumanga (1999: 8) I submit here that the Moi/KANU regime's response to contestations for an open associational space determined the nature of emergent social

movements and also the strategies they applied in their struggles against the state. In this regard, chapter four showed how for instance, from 1991, the Moi/KANU regime, in a desperate effort to remain in power, unleashed systematic violence on pro-opposition groups in many regions of the country (Kagwanja, 2003; 2006; Wamucii and Idwasi, 2011; Murunga 1999). As a result, some of the targeted ethnic groups resorted to establishing violent underground movements such as Mungiki, Kamjesh, Taliban, and Baghdad Boys among many others, to counter state violence. This violence effectively allowed the state 'not only [to] maintain control over the reins of power, but also sustain its nature. Consequently ... the state remained a contested space, [with a] leadership and captured institutions ... incapable of responding positively to social processes' (Katumanga, 1999: 8). Because of such contestation over the legitimacy of the state and its institutions, Wamucii and Idwasi (2011: 196) observe that some of the emergent violent underground groups 'became a preferred option to ineffective' state. But emergence of such vigilante groups must also be seen as a response to the infamous ruling party militia (KANU youth wingers) who used violence and intimidation to ensure KANU's continued hold on power.

Such confrontational relationships between the state and civil society have been theorised by Adil Najam (2000; 1996), Anthony Bebbington and John Farrington (1993), Jenny Pearce (1997), and Denis R. Young (2000), as resulting from situations in which both the state and civil society consider each other's goals and strategies to be antithetical. Such a relationship remained the hallmark of the Moi/KANU regime and precipitated several citizens' collective action responses to the state. One such response, the thesis has argued, was the Ufungamano Initiative.

Chapter five traced political developments from 1997 –a milestone year, that ultimately led to the emergence of the Ufungamano Initiative as cumulative pressures from citizen groups for comprehensive constitutional review spearheaded by burgeoning human rights NGOs, religious organisations and opposition parties, climaxed in the mass protests of 1997 that threatened to derail the general election. A reluctant President Moi conceded to minimum electoral law reforms through the infamous IPPG Agreements of 1997 between KANU and the opposition political parties. Instructively, the IPPG agreed to set up a Commission to review the constitution and subsequently, enacted the 1997 Constitution of Kenya Review Act formally ushering in the Review Process.

The IPPG deal deflated the vibrancy of the then largest constitutional reform movement, the National Convention Executive Council (NCEC). This laid the foundation for disagreements within opposition ranks as many secular civil society activists felt betrayed by the apparent closing of ranks of political elites to take charge, if not to arrest, the tide of reforms. The effects of these divisions as shown in chapter four were many. On the one hand, they gave rise to new contenders in these struggles. But it also shifted the support of an important component driving these struggles. Specifically, donor support shifted from the NCEC to the IPPG and the resultant 1997 Constitution of Kenya Review Act. State's intransigence in implementing the 1997 Review Act ultimately led to conditions for the emergence of a cooperation based on a mirage of congruence of means and ends between secular civil society, religious organisations and opposition political parties, making the emergence of the Ufungamano Initiative possible.

The specific triggers for the Ufungamano Initiative were revealed in chapter five to be responses to the post 1997 general election developments. In particular, a new alliance between the Moi/KANU regime and Raila Odinga's National Development Party (then the third largest political party), served as a wakeup call to those opposed to Moi and KANU. There was a sense of collective outrage and a common target that acted as a shared 'systems of reference' (Melucci, 1989) that enabled collective organising to confront shared problems because, as Aristotle once said, 'a common danger unites even the bitterest enemies.' The opposition therefore realised that if things were to change, unity of purpose was at least needed. The result of such awakening was the birth of a movement uniting different groups opposed to the Moi/KANU regime: a movement brought together by their opposition to Moi's rule. This corroborates Oliver and Meryer's (2003) postulation of co-evolution of movements and their antagonists, as each learns and adjusts in response to each other's actions and strategies.

To understand how this co-evolution occurred, chapter five showed how the enactment of the 1997 Review Act did not result in any agreement by different stakeholders on the Constitution Review Process. Religious groups and secular civil society organisations felt that the 1997 Review Act did not effectively encompass the diversity of interest groups, and that the process was captive to the narrow interests of the political class to the exclusion of the Kenyan people. However, Moi and Odinga's newfound unity, offered a rallying point for unity in opposing the regimes' opposition to change and therefore, an opportunity for the

emergence of the Ufungamano Initiative. This thesis has highlighted the fact that the Moi/KANU regime's attempt to eliminate the provisions for direct citizens' involvement in the process through amendments to 1997 Review Act and the 1998 Constitution of Kenya Review Commission Amendment Act, was the alarm that forced different cadres of oppositional activists to talk to each other and build consensus on the need to press for a people-centred process. These talks resulted in the birth of the Ufungamano Initiative on December 15, 1999 and subsequently the political movement of 2002 that routed KANU out of power.

The analysis in this thesis reveals that while the Ufungamano Initiative's language of reforms called for fundamental changes in the architecture of the state and its relationship with the people of Kenya, this was not fully achieved because of the fragmented nature of the struggles, and secondly, due to the dialectic nature of the elite fragmentation. Together, these factors created conditions favourable for elite pacts in the course of the various cycles of contention in these struggles.

The narrative in this thesis articulates how these factors have played out. Up to the end of the 1980s, the pro-reform voices were few and more or less, voices in the wilderness. The subaltern classes were rarely engaged. The prominent struggles mainly comprised of voices historically termed in Kenyan struggle scholarship as 'Left leaning' – intelligentsia, students, politicians, and to some degree, trade unions. These struggles were highly elitist and in many instances, clandestine. This is not to say that the under classes did not have their own struggles. Rather, their struggles were centred on bread and butter issues. They were also disorganised as much as they were uncoordinated. Many lacked connections with the on-going struggles at the national level.

The 1990s witnessed the coming together of the different struggles for changes in the Kenyan constitution. But these struggles were still elite-led, specifically by the political elite that had fallen out of favour with the then one party state. These elites were mainly seeking alternative avenues for their own political relevance. NGOs, social movements, and the new opposition parties were such avenues. Limited involvement of under classes in the nascent opposition political and social movements meant that no strong organisational bonds existed between elite and subaltern struggles. Even where efforts were made to accommodate popular participation as in the Ufungamano Initiative, such struggles failed to establish sufficient

structures for participation and mobilisation. This led to further cleavages as well as limitations in the Ufungamano Initiative.

The new vulnerabilities of the Moi/KANU regime resulted in new opportunities, not just for the pro-reform groups, but also for the conservative political and economic elites to reinvigorate their identity and remain relevant. A clear example of this is how some wealthy old conservative politicians decamped from KANU and formed the Democratic Party whose change agenda was never radical. This suggests that in forming opposition political parties, these leaders were concerned with preservation of the collective self-interest of the ruling elite, because, as Michels (1911: 98) observes, leadership ensures continued stay in office:

> With the institution of leadership there simultaneously begins, owing to the long tenure of office, the transformation of the leaders into a closed caste. Unless ... extreme individualism and fanatical political dogmatism stand in the way, the old leaders present themselves to the masses as a compact phalanx—at any rate whenever the masses are so much aroused as to endanger the position of the leaders.

For the Kenyan case, there has been little interrogation of the leadership and how close-knit the group has been despite the occasional portrayal of cleavages.

However occasional they were, such elite fragmentations played an important role in pushing the frontiers of reforms especially in mainstreaming constitutional reform struggles into the Kenyan socioeconomic and political struggles. But elite fragmentations had a dialectic effect on the effectiveness of these movements. Clearly, while elite fragmentation has offered vanguards to these struggles, further fragmentation within those elite vanguards has often been a cause for the derailing of the reform train. This is because change required sufficient unity of forces to sustain the push. Such unity within the Ufungamano Initiative was short lived. The Ufungamano Initiative, despite its great promise to break with the baggage of ethnicity and intra-class rivalries, and a widespread mass support in such a divisive environment, caved in due to the weight of the same diversity (including ethnic, religious, class, gender and generational) that had been the source of its strength. But the greatest contributing factor to the demise of the movement was ethnic and intra-elite rivalries. This is highlighted by the differences within the movement over the merger process and outcome. This made most secular civil society groups leave the movement. Further, after the 2002 general election, mistrust and contention between the different actors especially between the Christian and Muslim faith groups over the content of the proposed constitution forced the final breakup of the movement.

It is interesting to note that while some of the Ufungamano Initiative actors supported the proposed constitution, others ganged up with a section of the political elite and campaigned against it. The opposition to the draft constitution, as highlighted in chapter seven was based on a misinterpretation of contentious issues of reproductive health/rights (abortion) and the inclusion of the Kadhi courts in the Draft. This suggests that the position of religious leaders in these reforms changed depending on the balance of social forces. This validates Olukoshi's (1995: 246) argument that 'depending on the social context, the historical conjuncture and the intensity of class struggle, bourgeois social movements…could also join forces with other social groups for democratisation.' Nonetheless, the contradictions highlighted above, corroborate Gramsci's (1971) postulation that religious groups and their leadership are conservative forces that ensure the status quo. The limits of the Ufungamano Initiative therefore suggests that radical reforms in a multicultural secular society cannot be successfully steered by religious leaders and especially when, those who stand to lose most as a result of such changes, are key sponsors of the agitation.

The changing global political economy

It is not known how far the forces of change and specifically the Ufungamano Initiative would have gone without external support. The thesis has shown that changes in the global political economy played a role and especially with the end of the Cold War that was instrumental in the stifling support for authoritarian regimes world over. With aid priorities shifting to human rights work, pro-reform civil society and democratisation movements received a major boost. In this regard, Gitari's response to why Moi gave in, offers concluding insights when he stated:

> Moi and his people were against all that we were doing. But circumstances forced them to change. Like Saitoti [then finance minister] going to the Paris club and coming back empty handed and being told to change. International as well as internal pressure, contributed to making Moi challengeable. The economy had run down and a lot of projects he had started –the so-called *Nyayo* projects, had all become white elephants. I think a time came when he himself was convinced that he could not continue like that. He had to change (Gitari, interview 21/09/2009).

A participant from Tharaka, Kaimba (interview, 19/09/2009) gave a similar view indicating that Ufungamano Initiative succeeded because 'there was a lot of pressure, pressure from Ufungamano, pressure from the civil society, pressure from the world over.'

The Bretton Woods imposed Structural Adjustment Programmes that pushed for the embedding of neo-liberal fiscal austerity measures in the Kenyan economy therefore played a role. As part of these austerities, donors cut funding to the state while at the same time pushing the state to reduce expenditure on basic services and instead, introduce user fees and privatise public enterprises and services, and also cut down on the state wage bill. The reduced support, the thesis has shown, had numerous effects: the collapse of state's ability to deliver essential services; the erosion of basic social solidarity; increasing inequality, and massive labour layoff, which pushed many people out of employment. A majority of these unemployed working class and urban poor, ended up in the slums. The resulting socioeconomic and political malaise, the thesis has demonstrated, bred widespread Polanyi type responses against the Moi/KANU regime.

As studies of the effects of Structural Adjustment Programmes in Africa and the developing world attest, adverse effects and their responses were reported in many parts of the globe (see for example Stiglitz (2002) who gives examples of regime changes in Indonesia, Zambia, Malawi, Zaire, among other countries as motivated by impacts of SAPs). The game changer in Kenya, as was in most of these dictatorial regimes was that Structural Adjustment Programme stifled Moi's ability to continue his patronage system. This led to further political elite fragmentation in a political environment charged with high intolerance. The point here is that while internal pressures played a role, external forces especially driven by impacts of SAPs on society, were decisive in triggering Polanyi type double movement societal responses aimed at freeing society from the stranglehold of the economic and political forces.

Rational choice, principled ideas, or structural causes?

The Ufungamano Initiative case also sheds light on how diverse actors unite in the face of collective threats. The Ufungamano Initiative arose out of the confluence of interests and frustrations from betrayals by the political elites in the country. Chapter four of this thesis showed that the emergence of the Kenyan constitutional reform struggles, and the Ufungamano Initiative in particular, were part of the broader democratisation struggles and cannot be sufficiently explained by a single factor. As such, the analysis used a bridging approach building on the convergence of Karl Polanyi's 'double movement' and the political process model in explaining the emergence of the Ufungamano Initiative.

It is clear that the deleterious effects of a market economy played a central role in generating discontents that were channelled into collective actions and struggles against political and

economic neo-liberal elite. Taking cue from this, the thesis suggests that economic necessity was therefore, a factor in explaining the strong and protracted participation of the urban middle class as well as the working class in the Ufungamano Initiative. Indeed it was mainly those who had fallen out of favour with Moi and KANU who were at the heart of these struggles. While this suggests political reasons, when one looks at what economic impacts this had on these individuals, a clear picture of economic self-interests comes to the fore as motivators for protests against a State that rather than protecting society, was busy violating it. A leading figure in these struggles, Kivutha Kibwana, a constitutional law professor and leader of the then influential National Convention Executive Council that later became a constituent part of the Ufungamano Initiative, provided evidence for this when he argued:

> For quite some time people were abducted, many people were killed… colleagues died, others were imprisoned, and we suffered a lot. As lawyers, we got involved because there was no more law to practice. You could not practice any more in the courts. Your kids could not go to school - we had kids that dropped out of school. When the universities went on strike, they kicked you out of the house because it was rented. If you had loans especially from public banks they would take you in. In fact, you would be very vulnerable. So you decide to have another system where you would make a livelihood and free from this culture of both political and economic oppression (interview, 21/10/2009).

Along the same lines, a leading figure in one of the many subaltern struggles in the slums of Kenya (Muungano Wa Wanavijiji), showed why the urban poor joined the middle class formations in a common struggle for constitutional changes because of personal tribulations meted on them by state brutality and neoliberal free market fundamentals. Ong'ong'a (interview, 26/03/2010) affiliated to a Kisumu based Voice of Slum Dwellers Federation, for instance stated that the key concern that slum dwellers pushed for in the constitutional reform struggles was land reforms. This is essentially because slum dwellers do not have rights over the land they live on.[2] As such, slum dwellers have always been taken for granted and people are continuously evicted by a collusion of state and private interests. Another Kisumu resident, a tout who is a secondary school dropout, pointed to his being a victim of bad policies in the country that forced him to drop out of school because his parents could not afford school fees as a key motivation for taking part in these struggles in the hope that a new constitution would redeem him and such other people from the material conditions they faced. As such, while Press (2004: xvi) argues that 'principled ideas offer a better explanation

[2] As already highlighted, similar reasons (land dispossession) were given as motivations for involvement in protests actions in Taita Taveta where majority of residents are squatters.

of motivations than rational choice/self-interest' for the activism towards change, chapters four and five of this thesis showed that the emergence of the Ufungamano Initiative was driven by a combination of both self-interest (i.e. rational choice) and principled ideas. Specifically, it was a new wave of contention from earlier contentions for democratic change in Kenya, which emerged out of frustrations with KANU's refusal to agree on a people-centred and people-led process.

Considering all the above factors, it is clear that a mix of both structural and agency factors contributed to the emergence of the Ufungamano Initiative. Arguably, the words of Mwai Kibaki the Kenyan President on April 30, 2003 during the official opening of the National Constitutional Conference clearly denote the confluence of forces that pushed the country to seeking a new constitutional order:

> This Conference is the culmination of a long struggle by the people of Kenya. A struggle for justice and the recovery of their rights. A struggle for fair and efficient governance. A struggle for the reaffirmation of our destiny as the common political community of Kenyans. Over the last two decades, the freedom, which the people of Kenya fought and died for, was snatched from them. The people were deprived of their property and many were denied the opportunity to earn a livelihood. Corruption by leaders became commonplace. More than half of the entire population was condemned to absolute poverty. It was against this corruption and tyranny that many brave and patriotic Kenyans fought for their rights. Through their efforts, we came out of the dark days of one party rule. Detention without trial is no more. The Nyayo House torture chambers have been closed forever. Let us, today, remember those Kenyans who gave their lives, careers, and suffered torture so that we might, again, be free. And let us be proud of the indomitable spirit of the freedom fighters. It is, indeed, the *unbwogable*[3] spirit of Kenyans. I should…pay special tribute to civil society organisations, which played a leading role to bring us to this stage, in our Review Process. Their vigilance and research were essential. The Ufungamano Initiative has provided inspired leadership, and kept our hopes alive in difficult moments. By their own example of unity, in diversity, they showed Kenyans, the path to the future (cited in Lumumba, 2008: 93).

At this point, I turn to address the critical question: what exactly did Ufungamano Initiative achieve to deserve such special mention by the Head of State on such an important occasion, the state's opening of the National Constitutional Conference in April 2003?

[3] *Unbowgable* is a colloquial word of Dholuo origin that entered Kenyan political lexicon in 2002 after it was popularised by a famous Kenyan hip-hop group, Gidi Gidi Maji Maji in a song with the same title that became the signature tune of the NARC political rallies in the campaigns for the 2002 general election. It means immovable or cannot be swayed or intimidated.

Impacts of the Ufungamano Initiative to the reform process

Arguably, no single movement in Kenya's recent history achieved as much success in the constitution reform project, as did the Ufungamano Initiative. The mere emergence of the Ufungamano Initiative as a unified movement was itself, an achievement. Unity had eluded many socio-political struggles in Kenya because of the politics of ethnicity, religious and class interests. The Ufungamano Initiative emerged with great promise, epitomising a countermovement of multi-ethnic, religious, generational and class power politics that generated widespread mass support. It was also an amplification of a long history of counter hegemonic struggles and political contentions on unjust modes of Kenya's governance and dynamics of national wealth creation and distribution. It crystallised from recurrent episodes of protests against social, economic, and political marginalisation and suppression of citizens by political and economic elites. This countermovement posed a crisis of legitimacy to the political leadership, further fragmented elite political consensus, and, in turn, led to the decline of the state's capacity to suppress dissent, thereby widening political opportunities for the countermovement groups.

The Ufungamano Initiative had several impacts on the constitutional reform struggles. First, that it managed to bring together a great majority of forces fighting for constitutional change in Kenya, was a feat that preceding movements had failed to achieve for reasons of ethnic, political, ideological, and religious divisions in the country. A participant in this study, Zein (interview, 07/10/2009) gives credit for this success to the leadership of 'three different sectors: religious leaders; the People's Commission and the intellectuals around Ufungamano who managed to run a movement that allowed for interrogation of ideas and allowing for space for people who had very divergent views.'

Moreover, it managed to build a sense of 'one nation' and a faith in a better Kenya that overrode all diversities as the glue that held the various pro-reform struggles together. The Ufungamano Initiative's emergence challenges the prevailing social movement scholarship's emphasis on identity-based consciousness (culture, social status, ideology, generalised beliefs, values, ethnicity, gender, sexuality of actors) as the glue in the mobilisation of collectives. Specifically, it suggests that unity can be forged when vision or ideology resonates with different social forces in society or speaks to a majority because of effective framing, ultimately creating a (counter)hegemonic ideology.

The Ufungamano Initiative further suggests, in the words of Oduor Ong'wen (interview 09/10/2009), that Kenyans' 'polarization is only skin deep.' Ong'wen continued to argue that it is the political leadership in Kenya that has failed Kenya by 'appealing to negative emotions to achieve very narrow interests.' He cited the fact that the Ufungamano Initiative brought on board different groups and there was very little issue if any, of religious animosity at the start:

> We had Christians, we had Muslims, we had Hindus and they worked very well. We had almost all ethnic groups in this country and I never witnessed any serious ethnic manifestations of ethnic bigotry. It was when the process started in earnest especially in Bomas that politicians started manipulating people such that it began taking ethnic dimensions.

Second, the Ufungamano Initiative case is also a demonstration of the fact that an autocratic state is not omnipotent when the right external and internal conditions of both structure and agency converge at the right moment in time. Change happens with the right conditions. The fact that the Ufungamano Initiative managed to 'push' the government to start negotiations towards a merger, without decline into chaos as witnessed in 1997 under the NCEC led mass actions, is in itself telling of the power of a different kind of repertoire of contention-direct action by citizen groups to write a constitution they wished to have. It is such action that according to Cottrell and Ghai (2007: 12), dragged the 'Moi Government into a review that it did not want.' Nonetheless, I also submit here that the merger of the Ufungamano with the state was also inevitable because up to that point the constitutional reforms were firmly located within the state and as several participants indicated, the state, through Parliament would have to be involved in ratifying a Ufungamano Initiative drafted constitution if chaos was to be avoided. But this inevitability suggests structural limitations of a social movement to peacefully write and promulgate a constitution without overthrowing the regime in power. It may also point to limits of imagination on the part of the Ufungamano Initiative on what to do beyond the drafting process.

Third, the Ufungamano Initiative demonstrates how active citizenship shapes democracy. This is because through civic education, the Ufungamano Initiative managed to demystify the Constitution of Kenya Review Process. Such civic education contributed to citizens rising up to question the State on issues they did not agree to. Before the Ufungamano Initiative came into being to facilitate massive civic education, the Review Process had remained what Lumumba (2008: 52) describes though referring to CKRC, as 'an arcane science known by

its name and understood by a few.' However, the Ufungamano Initiative heightened public awareness and the linkages between the existing constitution and the material conditions in which people lived.

Most participants agreed that Ufungamano Initiative did indeed achieve much even if it never managed to deliver a new constitution for Kenyans. Reflecting on the question of the failure of the movement to remain united until the achievement of a new constitution, some participants of this study argued that the Ufungamano Initiative was not meant to be permanent. It had been designed to fill a void emanating from the failure of the government to appreciate that the constitution making process not only required but also demanded, that the citizens be intimately involved. For instance, Ndubi (interview, 24/09/2009) stated that

> The Ufungamano Initiative was not a movement that was supposed to be perpetual.... Even by the first basic notion we were looking for a new constitution, this presupposed that when we got that new constitution, it would then inherently redefine our relationships and our expectations later on. So that when the process for inclusive delivery of a new constitution came into place, many people who were in Ufungamano Initiative subsequently became actors in the delivery and midwifery of the constitution and therefore would not be on the part of agitation. Therefore, those who felt they were already represented stepped down their desires and demands for agitation.

This suggests, as shown in this thesis, that movements respond to the stimulus in their own environment. Such response can lead to new heightened tensions, diffusion, or even to the demise of a movement. The Ufungamano Initiative was one such movement that emerged out of heightened tensions and was therefore an agent of necessity whose mandate, some participants argued, was exhausted when what they were demanding – people's participation – was realised. The point then is that Ufungamano Initiative emerged to push for the Moi/KANU regime to remain faithful to the 1997 Review Act.

The Ufungamano Initiative through its opposition to the state, managed to put the Kenyan citizen in the driver's seat in the push and realisation of a democratic constitution making Process. Possibly, this was one of the most important contributions of the Ufungamano Initiative to the constitutional reform struggles in Kenya. Indeed, it was widely acknowledged by those interviewed that the Ufungamano Initiative managed to bring on board many ordinary people's groups into the constitution making process. This suggests that

democracy even in politically constricted environments is achievable if citizens partake of roles in pushing for what they desire.

But the proposition of the impermanence of this specific movement nonetheless raises a critical question: would it not be fair to say that Ufungamano Initiative was a failure because a new constitution was not achieved then? If the declared objective of the Ufungamano Initiative was to lead the people of Kenya into writing a constitution that would be people-driven, and yield widely acceptable results, was regrouping after the 2005 referendum, perhaps not a natural response? Lumumba (2008) does not think that it would have been natural to regroup especially given that ethnic political shenanigans and entrepreneurs had by then, gone into an overdrive to ensure that Kenya would not have a new constitution mirroring popular will. For Lumumba, after the merger of the two processes,

> Ufungamano Initiative became a victim of political shenanigans born out of mistrust because ethnicity and vested political interests played a part in it. Ultimately, when the Bomas Draft was produced and seemed to reflect largely the people's views, and had been subjected to debate at the National Constitution Conference, political elites took over and mutilated it in a manner that the people of Kenya did not like. Ultimately, the New Draft died at the altar of political wars (Lumumba, interview 01/10/2009).

The referendum itself was largely a victim of these political shenanigans, even though for some, the content of the proposed constitution may have contributed to its rejection. As such, the Ufungamano Initiative is also a reminder of the limitations of social movements in effecting fundamental changes in society.

While the Ufungamano Initiative reveals that religious leadership as well as other civil society groups can be custodians of people's confidence and trust, they can only remain so, as long as they are true to the calling and are sympathetic to the popular will. The moment actors within the Ufungamano Initiative started fighting among themselves, turned ethnic, and jostled for political power, they lost that conscience and instead turned to be the nerve centres of social political contentions and conflicts that in effect deferred the dream of a new constitution in 2005. As Dolan (2011a) observes, while religious leadership played significant roles in these struggles through inspiring, committed and courageous leadership, its failure to make the giant leap into the 21st century has seen justice being relegated to a sideshow in the ecclesiastical agenda. A participant from Kisumu seemed to echo this when

he dismissed the Ufungamano Initiative's impacts on the constitution making process arguing,

> Even without Ufungamano Initiative, Kenya would have reached where it is today. I would in fact blame the Ufungamano Initiative for taking sides. The NCCK became tribal because when Kibaki took over power they started supporting him and this is what cost us a new constitution. They also supported him to vie for a second term despite the fact that he had promised Kenyans that he would not do so. Then the Catholics and especially Njue has been misleading the public. Today churches are full of double-speak and only fighting for their own interests (Basole, interview 27/03/2010).

The thesis has also shown how, while some actors kept guard and new alliances emerged to keep the tide of contention high in the midst of the disintegration of older ones, a greater majority of actors especially those who joined the government through the 2002 general election, became turncoats and started opposing the very things they stood for prior to getting into government. This is what frustrated the realisation of a new constitution in 2005. But the failure to deliver a new constitution through the 2005 Constitutional Referendum did not necessarily lead to the death of the dreams for a new constitution. On the contrary, new alliances emerged from the ashes of the old ones to keep vigil in new waves or 'cycles of contention' (Tarrow, 1998) resulting in the realisation of a new constitution through the August 4, 2010 referendum. A leading alliance that continued the push for a new constitution was the Katiba Sasa Coalition, which was essentially composed of some of the former members of the Ufungamano Initiative who remained steadfast in pushing for a new constitution.

But an analysis of the constitutional Review Process post 2008 violence reveals that the realisation of a new constitution is a testament of the congruence of means and ends among the most powerful political elites in Kenya, particularly the forced marriage between the Orange Democratic Party (ODM) and the Party of National Unity. This forced some agreements among the elites to deliver a new constitution by these forces. Moreover, leaders allowed the 2007 violence to stop only when they realised that ordinary people were beginning to say: 'we are now done with fighting for our ethnic barons. Now we want to fight for ourselves, we want to go and get food.'

The realisation of a new constitution after the 2008 wave of violence suggests a couple of things. One, confluence of means and ends within the different elite formations are a *sine qua*

non for transforming the power relations in a polity. Two, the same elite cleavages that had fuelled ethnic tensions were critical in delivering a new constitution because the collective threat they faced from this violence especially through loss of property as a class, triggered bargains and concessions among themselves, and Kenyans in general. Three, the international community played a critical role, especially in mediating a truce by forming a government of national unity and imposing constitutional reforms as a key condition. Four, all these were only possible because of sustained pressures for reforms from civil society. Vigilance will therefore be instrumental in informing the strategies for ensuring that a new constitution is implemented in Kenya so that the old order can ultimately die.

It is also important to point out that the limitations of the Ufungamano Initiative also emanated from the contradictions that external funding and support gave it. Essentially, external funding dictated that its agenda would never be radical enough while it depended on funds from those posing as friends of Kenyan society, but who stood to lose should the current structures of society be transformed. The Ufungamano Initiative story suggests that such an agenda needed to be tempered. This is because the leadership of the movement as well as its Western donors were, in the words of one of the respondents, the same people with an 'interest in the neo-colony'. This suggests that a movement that is trying to radically redefine the relationship between the people and their governors as well as their relationship with external capital, cannot achieve its objectives while entangled in the intricate funding webs that dictate what use money can be put to. It is for this reasons that we have seen western ambassadors come out to warn the Kenyan state every time radical agendas that touch on land ownership and capital are broached. Some of the respondents argued that in fact, foreign funding waters down the radical agenda of these movements. As such, while the Ufungamano Initiative, just like many other pro-reform civil society initiatives in Kenya saw its role as rewriting the Kenyan people's relationship with their political leaders, it was riddled with many contradictions that fundamentally challenged its standing as a true mass movement.

The main contradiction in the Ufungamano Initiative as identified in this thesis was the gulf between stated objectives and strategies. Undeniably, the Ufungamano Initiative captured the popular Kenyan imagination and managed to challenge the state through a combination of strategies such as demonstrations, civic education, and collection of views from Kenyan

citizens. Its influence ultimately forced the state to concessions in light of a growing legitimacy crisis.

Key to the success of the Ufungamano Initiative was the way it framed constitution making. As shown in chapters five and six, the Ufungamano Initiative initially styled itself as a pressure group to force the state to acquiesce to what it framed as a people's fundamental and sovereign right to write their own constitution. In doing this, the movement first carried out massive civic education and sensitisation in the country, especially among the masses, in an effort to win the masses to their side. As a participant in this study indicated:

> In most villages in Kenya, people did not necessarily have the consciousness to have any issues with KANU and Moi. The local KANU leadership seemed to be good people in the eyes of the local person. The only issues they had with this leadership was when they would, together with the provincial administration, and using the notorious KANU Youth Wingers, go to people's homes demanding things that amounted to illegal taxes in the so called *Harambee* spirit. This is what made KANU a threat to people. Consequently, many people came to hate KANU without really hating the institutions and the system that allowed this to flourish. It was elites in the Ufungamano Initiative who made sense of such and framed things in perspectives as systemic problems with KANU and its leader Moi. In doing this, those in political opposition and in struggles such as the Ufungamano Initiative fashioned themselves as alternatives to transform the state to be of service to the masses (Runguma, interview 13/03/2010).

Second, the movement engaged in alternative analysis and interpretation of the law. It is through such analysis of the 1997 Constitution of Kenya Review Act that it identified political and legal opportunities it utilised as well as the 'flaws' it contested. Third, Ufungamano Initiative's key messaging capitalised on the anxieties created by Moi's refusal to accommodate other stakeholders' participation in the constitutional reforms. The Ufungamano Initiative argued that Kenyans had placed immense value on the envisaged process and in the event, the reneging on earlier promises by Moi and KANU would ignite chaos. Indeed, some participants, for example Mwalulu (interview, 01/04/2010) saw Ufungamano Initiative as having 'averted a political crisis in Kenya because, were it not for their challenge, it was likely that the regime would have instigated civil instability to keep themselves in power. But people were with the Ufungamano.' Fourth, the Ufungamano Initiative framed the constitution as a sacred covenant between the people and their rulers. As a covenant, it required input from both the ruled and the rulers. Fifth, the Ufungamano

Initiative formed The People's Commission of Kenya (PCK) in 1999 to lead the Kenyan People in writing their own constitution when it became apparent that KANU was never going to allow people's participation.

The PCK was the most potent of the movement's strategies and politics. The launch of the parallel Reform Process at a time when KANU's fidelity to the 1997 CKRA was in question, forced the greatest credibility and legitimacy challenge on the Parliamentary-led Process. Consequently, the Moi/KANU regime was forced to seek a more independent person–Yash Pal Ghai to lead the process. Ghai's influence in the process, as chapter seven has shown, was immense especially in pushing for a merger between the state-led process and that of the Ufungamano Initiative. The merger as argued in chapter seven was influenced by a number of factors. Chiefly, it was possible because Ufungamano Initiative managed to mobilise significant numbers of citizens to its side. As such, while Ufungamano Initiative arguably failed to create the necessary structures to enable popular participation, the movement sensitised and mobilised sufficient support for its cause.

This demonstrates the alternate power that the Ufungamano Initiative had over the state-led process. PLO Lumumba, who became the Secretary of the Constitution of Kenya Review Commission in the post-merger period, expressed the power that the Ufungamano Initiative wielded:

> When Prof. Ghai was appointed, sense really dictated that anybody who wanted to have a successful process must broker a merger of the two processes. Ghai, having been an outsider who had observed the goings on, it was quite clear to him that if he wanted to lead a process that would lead to something, it was only sensible that the two processes be merged. Otherwise, the activities of the CKRC would have been hamstrung at a certain stage so that even if it delivered a document, which had legislative and legal backing, it would lack the moral authority that was necessary, which did not rest with it. I think that in a sense is what must have persuaded him to broker this merger (interview, 01/10/2009).

In essence, as argued in chapter six, the Ufungamano Initiative and initiatives of a similar nature demonstrate that change happens due to constant struggle that enables citizens to collectively create a counter-hegemony ideology. Furthermore, State's opposition to popular demands by taking refuge in legal underpinnings, in and of itself, cannot immunize it. Moreover, Ufungamano Initiative shows that when a movement has moral authority on its side, the government ignores such at its own peril (Lumumba, interview, 01/10/2009). For as

Warah (2011), citing the Nigerian author, Chinua Achebe notes, should the ruling elite continue being 'incredibly blind' as to not bring about the required changes, or if they do not move, they shall be moved. This seems to have been the case in Kenya where constant struggle ultimately moved the state.

Despite the evidence of effective framing of contention, clear contradictions abounded in the movement. As argued in chapter six, the Ufungamano Initiative failed to establish elaborate participatory and emancipatory system and structures to ensure the general masses would participate effectively. Structures, strategies and resources are the levers that aid movements' work. As Tilly argues, a social struggle qualifies as a social movement if it has 'some degree of organisation...and active participation on the part of the followers or members' (Tilly 1978: 7). The choice of a movement's mobilising structure depends on the issue(s) as well as the diversity of its constituent parts.

The Ufungamano Initiative sought to utilise the infrastructure offered by religious institutions that spread across all parts of Kenya. This way, the Ufungamano Initiative was able to substantially rival the state's structures. But as chapter six showed, there were many problems with this strategy. This led to a disconnect between the rhetoric of a people-centred and people-led process and its internal practices, because existing structures were led and dominated by a conservative clergy and citizens' direct participation was not guaranteed. This in effect, led to further constraints especially on ordinary citizens to influence the direction of the movement. This is not to suggest that direct citizen participation would have yielded different results. Indeed, as Cottrell and Ghai (2007: 12) have argued, there are several countries in Africa including Kenya especially after the merger, whose constitution making have been highly participatory but their resultant constitutions have been 'frustrated, by governmental recalcitrance and obstruction, corruption and manipulation.'

The deficiencies of the structures utilised by the Ufungamano Initiative, were compounded by the looseness of its formal structure. Despite the presence of clear accountability lines between the different structures, some personalities were too overbearing. This resulted in contradictions between the rhetoric of a people-led process and the intra-elite contestation that the constitutional reform process became. While ordinary people's struggles were part of the Ufungamano Initiative, their token visibility betrayed the claim that the Ufungamano Initiative was a 'people's' struggle.

A reading of the Ufungamano Initiative must also be understood within the competition around class and ethnicity. The Ufungamano Initiative was by and large, an elite project and manifested itself as an intra-elite class struggle for the control of the minds and support of the masses. The project though, resonated well with public good. It is this broad appeal that enabled the movement to mobilise for support. This corroborates Downey, and Rohlinger's (2008: 4) observation that the breadth of appeal is a strategic dimension that helps social movement actors mobilise and cultivate a 'base of support (material and human).'

The question then is: how did Ufungamano Initiative benefit the general masses of the Kenyan people to gain their support? The answer lies in the fact that when the elites fought among themselves for the control of ideas, the subaltern was awakened through civic education. As such, the greater the mobilisations, the more the other sections of society were getting enlightened and in the process, also came to actively participate in that space. Moreover, there is need to appreciate the fact that the Ufungamano Initiative gave people the confidence to envisage an alternative. The question that remains is whether the purpose was really to awaken the people or the awakening was just one of the many unplanned outcomes of these struggles.

In the view of the Muungano wa Wanavijiji Convention president (Ezekiel Rema), it was also empowering to be with all the elites in these struggles for change. Another participant, Runguma stated that the collective harassments the masses suffered together with some middle class people epitomised by Rev. Timothy Njoya among others, as mentioned in chapter four, served to demystify the aura around the leadership. It became a right to demonstrate and an honour to suffer in the process, and this way, many people identified with the cause. Thus there was some awakening and even gluing of masses to these struggles. In effect, the Ufungamano Initiative seems to have given a voice to the other voiceless groups even though some participants may still have viewed that as a way of the elite mobilizing for support of what appeared to be a popular cause. Nonetheless, there is also evidence from the interviews and documents analysed, that ordinary citizens identified with the Ufungamano Initiative by romanticising its ability to challenge the State. Many of the respondents also saw the Ufungamano Initiative as a key driver responsible for the defeat of KANU in 2002.

Having said that, the strong centralisation of the movement in Nairobi left it essentially as a vehicle serving to win the control of the under classes as it was only the leadership of local grassroots movements who found a seat at the decision-making table. One is left with the

conclusion that the Ufungamano Initiative's key stakeholders were essentially advocating their own position at the table of the processes and decision-making in the constitutional reform agenda while arrogating themselves the representation of the Kenyan masses without any clear mandate from them. As Wandati (interview 17/09/2009) concludes, some of the contestations within the movement were therefore just between the elites and struggle for power and had nothing to do with the constitution.

This arrogation concurs with Tilly's (2004: 13) observations as highlighted in chapter six that representative claim making by social movement leadership is not necessarily a reflection of democratic practices in movements. As such, notwithstanding the claims that many of the actors within the Ufungamano Initiative had representations or a presence in all parts of the country and that this meant that it had people's legitimacy, this arrogation, as shown in chapter six, played a role in undermining the legitimacy of the Ufungamano Initiative in the eyes of even some of its supporters.

The Ufungamano Initiative therefore also highlights a major contradiction of how elite formations can masquerade as representing people. This confirms Downey and Rohlinger's (2008: 12) observations about the breadth of appeal as an important strategic dimension for constituting the support base because while

> Core activists are an essential component to any movement group [and make] the highest levels of commitment and … greatest sacrifices for the movement …movements also depend on members who have lower levels of involvement in and identification with a cause, including those who only intermittently participate and those who are members on paper alone.… It is also important for collective actors to appeal to supportive outsiders who are conceptualized as bystanders, conscience constituents…third parties … and the audiences who collectively comprise public opinion….

Clearly, the Ufungamano Initiative's lack of engagement with grassroots leadership robbed it of such third party support in some parts of the country. Nonetheless, even with these limitations, the Ufungamano Initiative did however establish the principles for transparent operations and engagement. These principles: openness and transparency, inclusivity, accessibility and non-discrimination, accountability, and cumulativeness and self-correction, were some of its enduring contributions to the constitution reform project in Kenya.

The third contradiction emanates from the role played by religious leaders at the helm of the Ufungamano Initiative. First, different Christian denominations' leadership has, at various times embodied different positions. For instance, while the mainstream churches (Catholics, Methodist, Anglicans, and Presbyterians) leadership were at the heart of struggles for change, the Evangelical Fellowship of Kenya affiliated churches supported Moi (Karanja, 2008). Muslims and the Hindus later joined the mainstream church groups in the Ufungamano Initiative. But despite apparent divisions within the clergy, there was still naïve faith that a religious leadership of the Ufungamano Initiative struggles was the best arrangement due to what some saw as their neutrality and objectivity. This explains the reasons why, despite protestations from some civil society groups (mainly NCEC and the National Youth Movement), the majority of Kenyans saw no problem with religious groups leading the process.

Looking forward

Despite these cleavages and the abortion of the popular will in 2005, pressures for change continued building up. These climaxed in another constitutional referendum on August 4, 2010. This time around, Kenyans overwhelmingly voted in favour of a proposed constitution. Finally, after two-decade long struggle punctuated by bitter and deep political, ethnic and religious divisions Kenyans got a new constitution. These divisions resulted as this study has shown, from a multiplicity of actors with competing interests in capturing, managing and utilising the post-colonial state.

The Ufungamano Initiative struggles and the abortion of the realisation of a new constitution in 2005 the thesis has argued, helps us understand the why Kenya imploded in 2008. Specifically, the pent-up anger with the NARC regime's failure to deliver a new constitution and redress multiple long standing issues that had driven the desire for a new constitution such as legal and institutional reforms, land reforms, unemployment particularly among the youth, poverty, inequity and regional development imbalances – found expression through ethnic demagogy that predetermined the trajectory of the 2007 electioneering.[4] The 2008 post-election ethnic bloodbath only stopped after a forced political marriage between the Orange Democratic Party Movement (ODM) and the Party of National Unity. This ethnic

[4] These were indeed the raft of issues identified as needing urgent attention under agenda 4 of February 2008 Kenyan National Dialogue and Reconciliation pact that ended the ethnic blood bath in the country. The total overhaul of the constitution was a key agreement of this pact.

bloodletting served as a wake-up call that forced different elite formations to agree to give Kenyans a new constitution.

Contrary to popular orthodoxy, therefore, pressure from social movements and other civil society formations was just one of the key ingredient to the achievement of a new constitution. The reform struggles narrative suggests, as pointed out in chapter seven, that a confluence of means and ends within the different elite formations were the *sine qua non* for transforming the power relations in a polity and it took a collective threat on the political and economic elite to agree to a new constitution as a form of concessions.

Nonetheless, the Ufungamano Initiative's contribution to the constitutional reform process in Kenya is undeniable. The Kenyan constitutional reform struggles case confirms Gramsci's (1971) conception of civil society as a sphere for (counter)hegemonic wars. Whoever wins this battle controls the country. From the explanations in the empirical chapters, this study concludes that these counter-hegemonic battles for the control of civil society essentially explain the paralysis of the society, state and civil society in Kenya as there has not been a clear winner in this war in the country. Analysis of the Ufungamano Initiative helps us understand the balance of power relations that need to be managed within Kenyan society's cleavages to ensure the new constitution is implemented. To ensure a new order spelt out in the new constitution matures, continued vigilance is necessary, because, as Muluka (2011a) (cited at the beginning of this chapter) observes, 'the Kenyan nation has had its fair share of missed boats.' The first of such missed transitions was at independence, which buried the independence fighters' dreams for the transformation of the post-colonial State (Currie & Ray, 1986; Lamb, 1982).

The second missed transition was the Nyayo era, which started with the death of Kenyatta in office and the ascendancy of Moi who continued the systematic assault of the constitution. According to Zein (interview, 07/10/2009), Moi made things so worse that by in early 1990s a wave of the so-called second liberation struggles emerged. But these struggles though managing to get section 2A repealed in 1991 did not translate into state transformations as Kenya missed the boat again in 1992, multiparty general election. It soon, became very clear to people that Kenya had undergone a transition without a transformation (Zein, interview 07/10/2009). Such was what led to a discourse as well as a push for a radical constitutional reform that the Ufungamano Initiative was at some point, its leading light.

But as highlighted in chapter seven, a merger between the Ufungamano Initiative and the state-led process based on a mirage of state's acquiescence to the Ufungamano Initiative's demands for popular democratic participation, resulted in the arrest of the realisation of a new constitution. Moreover, it led to neutering of the power of social movements, especially the key players within the Ufungamano Initiative after the 2002 general elections. This paralysis was further aided by the birth of the Third Republic in 2002, which had offered so much hope, resulting in the dropping of guard and co-optation of the leaders of these struggles into the new Government. The net effect, was the abortion of the popular will as the new elite in power began to entrench themselves at the expense of reforms, on whose banner they had been elected. The reasons for this, Nyinguro and Otenyo (2007: 5) observe, was because the window of opportunity that 'depended on elite responses to the opportunity pendulum' had been lost as the new power elite turned out to be opportunistic and exploitative. In the end, the promise of the Ufungamano Initiative was condemned into the basket of missed opportunities to transform the Kenyan State and the nature of its relations with the citizens.

I close this thesis with the words of American Slavery abolitionist Frederick Douglass (1857: 204) who wrote:

> ...The whole history of the progress of human liberty shows that all concessions ...made ... have been born of earnest struggle. The conflict has been exciting, agitating, all-absorbing, and for the time being, putting all other tumults to silence. It must do this or it does nothing. If there is no struggle there is no progress. Those who profess to favor freedom and yet depreciate agitation, are men who want crops without ploughing up the ground, they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters...Power concedes nothing without a demand. It never did and it never will.... The limits of tyrants are prescribed by the endurance of those whom they oppress.... Men may not get all they pay for in this world; but they must certainly pay for all they get. If we ever get free from the oppressions and wrongs heaped upon us, we must pay for their removal. We must do this by labor, by suffering, by sacrifice, and if needs be, by our lives and the lives of others.

Constant agitation is therefore needed, or otherwise, the new constitution will be, to borrow the words of George Macaulay Trevelyan (1923: 292) 'a turning point at which, modern history failed to turn.'

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Mashada,
Maps of the World: *World maps: http://www.worldofmaps.net/en/africa/map-kenya/political-map-kenya.htm*

Appendix I:

Participant list and categories

Participant Name	Category of interviewee	Date of interview	Place of interview
Lawrence Apiyo	Grassroots organiser/mobiliser; civil society activist	16/09/2009: 21/03/2010	Java house café, Adams/Kibera Nairobi
Abdiraham Wandati	Bomas constitutional conference delegate	17/09/2009	Jamia Mosque, Nairobi
Bruno Kaimba	Businessman/ODM party activist/ Bomas constitutional conference delegate	19/09/2009	Mukothima, Tharaka
Rev. Dr. David Gitari	Bomas constitutional conference delegate	21/09/2009	Philadelphia, Kirinyaga.
Gideon Ochada	Political analyst and consultant to NCCK, KEC and Ufungamano Initiative	22/09/2009	Fredrick Herbert Stiftung Nairobi
Wambui Ngugi	Civil servant	23/09/2009	Office of President, Nairobi
Hon. Wanyiri Kihoro	Ex-MP/ activist/ex-political prisoner	23/09/2009	Parliament Buildings, Nairobi
Haron Ndubi	Activist/ human rights lawyer	24/09/2009	Heron Court Hotel, Nairobi
Otieno Ombok	Activist/ex-student leader	24/09/2009	Waumini House, Nairobi
Stephen Musau	Activist/ex-student leader	24/09/2009	680 Hotel, Nairobi
Ochieng M. Khairallah	Activist/ex-student leader	26/09/2009	Young Muslim Alliance, Ngong Road, Nairobi
Dr. Kamau Kuria	Human activist/constitutional lawyer	26/09/2009	Chai House, Nairobi
Hon. Mashengu wa Mwachofi	Ex-MP/ Activist/community organiser	27/09/2009; 28/03/20010	Voi
Rev. Jeptha wa Gathaka	Activist/religious leader	29/09/2009	Ufungamano House, Nairobi
Boaz Waruku	Activist/ex student leader	29/09/2009	Madaraka, Nairobi
Hon. Moses Muihia	Ex-MP, activist/ex-political prisoner	29/09/2009	Waumini House, Nairobi
Rev. Dr. Timothy Njoya	Activist/religious leader	29/09/2009	Ngong
Ms. Beatrice	CSO/religious organisation employee	30/09/2009	Waumini House, Nairobi
Dr. PLO Lumumba	Activist/ex-student leader/secretary CKRC	01/10/2009	ACK Gardens, Nairobi
Ibrahim Lethome	Activist/religious leader/Islamic law expert	02/10/2009	Jamia Mosque, Nairobi
Suba Churchill	Activist/ex-student leader	02/10/2009	KNHRC, Nairobi
Justice Isaac Lenaola	PCK and later CKRC commissioner/ex-activist/ judge of the high court	03/10/2009	Karen Blixen, Nairobi
Peter Ocholla	CSO employee	06/10/2009	Mbaruk Road, Nairobi
Lumumba Odenda	Activist/former political prisoner	07/10/2009	Red Sea Restaurant, Nairobi

Abubakar Zein	PCK and later CKRC commissioner/activist/	07/10/2009	Uraia, Nairobi
Paddy Onyango	Activist	07/10/2009	4C, Nairobi
Charles Wambugu	Activist/ secretary of the Ufungamano multisectoral forum	09/10/2009	Ufungamano House, Nairobi
Oduor Ong'wen	Activist/ex-political prisoner	09/10/2009	MCK, Nairobi
Hon. Rev. Dr. Mutava Musyimi	Ufungamano Initiative co-convenor, ex-NCCK General secretary	09/10/2009	Nairobi via Phone
Dr. Rev. Peter Gichure	Advisor to the KEC	12/10/2009	CUEA, Nairobi
Said Athman	Ex-activist/PCK commissioner/Culture secretary (State employee)	12/10/2009	Ministry of Culture, Jogoo House A Nairobi
Rev. Jesse Kamau	Religious leader (former PCEA moderator)	13/10/2009	Jumuia, Limuru
Daniel Odhiambo	NCCK employee	13/10/2009	Limuru
Kawive Wambua	Activist	13/10/2009	CRECO, Upper hill Nairobi
Riunga Raiji	PCK and later CKRC commissioner/ex-activist/ lawyer	14/10/2009	Bharati House, Nairobi
Gichira Kibara	Ex-activist/ ex-chair of the NGO council, commissioner/constitutional affairs secretary (State employee)	15/10/2009	Ministry of Justice, Coop House, Nairobi
Commissioner Omar Hassan	Activist/ex-student leader	16/10/2009	KNHRC, Nairobi
Dr. Ekuru Aukot	Ex-activist (CSO leader/Director CoE (state employee)	19/10/2009	CoE, Delta House, Nairobi
Rashmin Chitnis	Chair of the Hindu Council of Kenya	20/10/2009	Parklands, Nairobi
Prof. Kivutha Kibwana	Ex-Activist/Ex-MP/advisor to the president/constitutional law scholar/expert	21/10/2009	Office of the president, Nairobi
Prof. Yash Pal Ghai	Law scholar/expert Chair of CKRC	23/10/2009	Muthaiga, Nairobi
Ngunjiri Wambugu	Activist	23/10/2009	Nairobi
Dr. Davinder Lamba	Activist	23/10/2009	Mazingira Institute, Westlands, Nairobi
Evanson Kariuki	Ordinary citizen	24/10/2009	Nairobi
Mutegi John	Ordinary citizen	24/10/2009	Ongata Rongai
Hon. Gitobu Imanyara	Activist, MP. Ex-political detainee	28/10/2009	Gallagher Estate, Midlands, South Africa
Sebastian Runguma	CSO employee	13/03/2010	Auckland Park, Johannesburg, South Africa
Alloys	Grassroots community organiser	21/03/2010	Kibera
Ezekiel Rema	Informal trader/evictee/Activist	22/03/2010	Toy market, Kibera, Nairobi
Clr. Samuel Nyabinda	Former councillor, ODM party activist	25/03/2010	Kisumu
Audi Oganda	Activist/ former head of a militia group	26/03/2010	Kisumu Bus park, Kisumu
Kwache Anthony	Informal trader/community organiser/Activist	26/03/2010	Kisumu

Beatrice Achieng'	Informal trader	26/03/2010	Kisumu
Daniel Owino	Informal trader	26/03/2010	Kisumu Bus park, Kisumu
Felix Odero Ongona	Community organiser/Activist	26/03/2010	Kisumu
Eba Eban	Businessman/PR consultant/Activist	26/03/2010	Kisumu Railways Club Kisumu
Ben Basole	Tout/ODM party Youth leaders and grassroots activist	27/03/2010	Kisumu Bus Park Kisumu
Okiya Omtatah	Political and civil society activist	31/03/2010	ACK Gardens, Nairobi
Priscilla Nyokabi	Civil society activist	31/03/2010	Mt. Kenya Safari Club, Nairobi
Morris Odhiambo	Civil society activist/journalist	01/04/2010	Nairobi
John Njiru	Civil society activist	01/04/2010	Nairobi
Hon Jackson Mwalulu	Former MP, Journalist, Activist	01/04/2010	Nairobi
Felix Mwagesha Mwanyumba	Grassroots organiser/Civil society activist	07/04/2010	Voi
Alfred Shereta	Grassroots community organiser	07/04/2010	Voi
Constantine Mwakio	Grassroots organiser	07/04/2010	Voi
Donald Maganga	Grassroots organiser	07/04/2010	Voi
Salome Nduta Gachie	Activist/community organiser	08/04/2010	Nairobi
Hezekiah Odongo	Ordinary citizen/Youth	08/04/2010	Kibera, Nairobi
Joshua Ochieng	Ordinary citizen/Youth	08/04/2010	Kibera
Caleb Wanga	Ordinary citizen	08/04/2010	Kibera
Julius Wadenya	Ordinary citizen	09/04/2010	Kibera
Owino Kotieno	Political activist/student	09/04/2010	Kibera
Dandora	Dandora Muungano wa Wanavijiji public forum on the proposed constitution	24/03/2010	Nairobi
Serena Hotel	Katiba Sasa media briefing	28/03/2010	Nairobi
Kibera Lindi Community Centre	Committee of Experts Civic education public forum	07/04/2010	Nairobi
Institute for Policy Analysis and Research (IPAR)	A presentation of preliminary findings of round one of data collection to IPAR staff	21/10/2009	Nairobi
ISTANBUL	A paper presentation at the Democracy and Governance in Africa: (Dis)enabling the public sphere (A ISTR/Trust Africa workshop)	07/07/2010	Istanbul, Turkey

Note: Most of participants interviewed had multiple identities.

Appendix II

Introduction and information about the researcher and the project

Dear _____

My name is Jacob Mwathi Mati, a PhD candidate at the School of Social Sciences of the University of Witwatersrand. As part of my studies, I am researching social movement in the political and constitutional reform process in Kenya. I am specifically looking at the role of the Ufungamano Initiative and its relationships and interactions with other actors in the constitutional reforms in Kenya.

I am interviewing religious, civil society, political leaders, members of parliament, and activists involved in these constitutional reforms in Kenya. I am also interviewing people, who were part of civil service and dealt directly with the constitutional reform activists, delegates of the constitutional conference (Bomas), members of Parliamentary Select Committee on the Constitutional Review, commissioners in the Constitution of Kenya Review Commission and members of Ufungamano Initiative's Peoples Commission of Kenya. While aware that Ufungamano Initiative formally started in late 1990's, the study also delves into the period preceding 1999 as it informs the issues at the heart of the Ufungamano Initiative. As such, I would be very grateful if you also offered your reflections on the constitutional reform struggles in Kenya prior to 1999.

I am aware that you were involved in the constitutional change process and/or struggles and therefore kindly seek your voluntary participation in this study through an interview that should take about 45 minutes. As this is an academic exercise, there are no commercial gains expected from such voluntary participation in this research and you may chose decline to participate in this study or withdraw at any time, without such a decision having any adverse consequences on your being and status in society.

For accuracy and reliability reasons, I will, with your consent, tape record the interview. Please feel free to decline to answer any questions that you may be uncomfortable with. You do not risk job loss or other institutional sanctions by participating in this study as all the information you provide to me will be treated confidentially and only used for the purposes

of this research. All field notes and taped records will be retained and safely stored using pseudonyms and will not be accessible to other parties. A transcript of the interview will be sent to you via email for clarification, at which point you may request to add or adjust the information to better reflect your view as well as aid this research.

Should you require any clarifications please feel free to contact my supervisor Prof. Michelle Williams on telephone number +27-11-717-4433 or on email: michelle.williams@wits.ac.za. You can also contact the University of the Witwatersrand Research Ethics Committee at +27-11-717-71234 if you have questions about your rights as a participant in this research. My own contact details are as follows: Telephone number: (Kenya) +254-0-710572838 (South Africa) + 27-76677243; Email: Jacobmati@gmail.com

If you voluntarily agree to participate in this study, please indicate to by signing the attached consent declaration forms.

Thank you very much!

Jacob Mwathi Mati

Appendix III:

Research study participant consent declaration

Project Topic: The power and limits of social movements in promoting fundamental political and constitutional change in Kenya: The case of the Ufungamano Initiative (1999-2005).

BY Jacob M. Mati

This research study, including the above information has been explained to me orally. I do understand what my involvement in the research means and I voluntarily agree to participate. I understand the procedures and I can choose to withdraw at any time or refuse to answer particular questions. I am willing to provide my experience and knowledge pertaining to this research through an in-depth interview, which will be tape-recorded and thereafter transcribed for purposes of accuracy and reliability of this study. I have also been assured by the researcher that all the information will be treated and kept confidentially.

I do not mind the thesis from this research using my real name/ I do not want the thesis from this research to use using my real name (*Please cross whichever does not apply*).

Name: _____

Signature of the participant_____ **Date_____**

Researcher's signature _____ **Date _____**

Place_____

Appendix IV:

Participant's consent for tape-recording of the interview

Research topic: The power and limits of social movements in promoting fundamental political and constitutional change in Kenya: The case of the Ufungamano Initiative (1999-2005).

BY Jacob M. Mati

I _____, hereby consent to be interviewed and tape-recorded. I have been informed that the purposes of tape-recording the interview are for accuracy and reliability reasons of this study. I have also been informed that the tape records will be retained and kept securely in the custody of the researcher and the information will remain confidential.

Participant's signature _____ Date _____

Participant's email: _____

Researcher's signature _____ Date _____

Place_____

Appendix V

Interview Guide/schedule

(*NB: Given the different biographies of the participants for this study, this is only a guide with a set of possible questions for different types of participants. Some of the questions in this interview guide will only apply to select type of participants. As such, the interview guide is organised into themes pursued in the interviews. All italicised question are probe questions and are adaptable depending on the amount of information the participants shall provide).*

I: PARTICIPANT BACKGROUND INFORMATION

Please provide the following details about yourself:

1. Name (Optional):
2. Age:
3. Sex:
4. Educational Background:
5. Professional Background:
6. Present Work:
7. Please indicate the name of the organization you work for.

II: PARTICIPATION IN THE CONSTITUTIONAL REFORM PROCESS

1. In what capacity were you involved or interact with the constitutional reform processes in Kenya? (*Capture all that apply*)

Employee of a Civil society organisation (name/specify)…….	Grassroots mobiliser
Convenor of the Ufungamano Initiative	Member of the Ufungamano Initiative
Activist	Member of CKRC (specify position)
Member of PCK (Specify Position)	Member of PCK and later CKRC (specify Position
Member of Parliament	Member of Parliamentary select committee on the constitutional review (from 1998).
Member of the Bomas Conference	Religious leader
State employee (specify)	Other (specify)

2. In what capacity were you involved with the Ufungamano Initiative?
3. What were the main reasons why you joined the Ufungamano Initiative constitutional review struggles/activities?

III: EMERGENCE OF THE UFUNGAMANO INITIATIVE

1) Why was the Ufungamano Initiative formed?

-Why was it formed in 1999 when the issues it set to address had been a part of Kenya for a long time?

-Why did the Ufungamano Initiative get involved in the constitutional Review Process while there were so many groups and organisations pushing for the same process to be inclusive?

2) What were the existing political conditions at the time of the emergence of the Ufungamano Initiative?

*-What **political opportunities** allowed the Ufungamano Initiative to emerge?*

*-What **new political opportunities** did the Ufungamano Initiative create and utilise in the course of its activities?*

3) Who specifically were the main drivers (**actors**) behind the establishment of the Ufungamano Initiative?

-What was common among the different actors involved in the formation of the Ufungamano initiative?

-How did the different actors in the Ufungamano Initiative relate to one another?

- How did Ufungamano Initiative relate to other pro-democracy and constitutional reform movements and activist groups in Kenya? What determined the nature of these relationships?

-How did the Ufungamano Initiative go about shaping a collective identity among the various organisations that were/are its members/ what type of framing did it use to appeal to a wide range of actors?

4) What type of response/reactions did the Ufungamano Initiative elicit from the ordinary members of society?

-Who was the Ufungamano Initiative representing? What were the social bases of the Ufungamano Initiative?

5) At the time of its formation, what did Ufungamano Initiative envision to do for the country?

IV: UFUNGAMANO INITIATIVE'S ARCHITECTURE AND RESOURCES

1) What institutional/organisational structures (architecture) were established to ensure that Ufungamano Initiative achieved what it set itself to do?

-How have these structures changed/evolved overtime?

-If there are any changes, what has been the determinant of the changes in structures?

2) How have these structures related to one another to ensure upward, horizontal and downward accountability between Ufungamano Initiative members/constituent groups?

-How have these structures contributed to, or hindered Ufungamano Initiative's work?

3) What capacities and resources were necessary to lead/steer Ufungamano Initiative in its pro-democracy and pro-constitution reform struggles in Kenya?

4) How did/has Ufungamano Initiative mobilized resources and capacities (human, financial, organisational) needed to undertake its work?

V: UFUNGAMANO INITIATIVE'S ACTIVITIES AND STRATEGIES

1) Who were Ufungamano Initiative's **key allies** (domestic and international)?
2) Who were Ufungamano Initiative's **key targets and adversaries**?
3) What strategies did the Ufungamano Initiative use in its engagement with its targets/adversaries or in the pursuit of its objectives?

   -What determined the nature of the interactions and strategies between the Ufungamano Initiative and its antagonists?

   -Did the strategies, targets and organizational forms of Ufungamano Initiative differ from those of previous pro-democracy and constitutional reform groups in Kenya? If so, what informed these changes in strategy?
4) What was the nature of the relationships between Ufungamano Initiative and the state on the constitutional reform struggles in Kenya pre and post 2002?
5) What were the outcomes of different types of engagements?
6) How did the state respond to the pressures from the Ufungamano Initiative?
7) What was the nature of the relationships between Ufungamano Initiative with other non-state actors in constitutional reform struggles in Kenya pre and post 2002?
8) What have been Ufungamano Initiative's main challenges (strategic as well as organizational i.e. internal) in their work?

   -How has Ufungamano Initiative dealt with such challenges?
9) Why did the Ufungamano Initiative resort to a rare form of direct social movement action (forming the Peoples Commission of Kenya) to mobilise, organise, and lead the people of Kenya to write the constitution they wanted instead of using the more orthodox actions and reactions like demonstrations, campaigns, strikes, petitions, or submissions to the relevant state institutions)?

   -From where did the Ufungamano Initiative borrow this model?

   -Was it possible for the Ufungamano Initiative to go on and come up with a constitution that would be acceptable to Kenyans?
10) How did the Ufungamano Initiative design its engagement strategy with the masses?
11) What trade-offs, tensions and challenges, has the Ufungamano Initiative experienced in mobilizing citizen action?

    -How have such tensions and challenges been managed?

VI: OPPORTUNITIES AND THREATS TO THE UFUNGAMANO INITIATIVE

1) What have been the main dynamics in the rise, the politics, the operations, and the challenges of the Ufungamano Initiative in the context of the constitutional Review Process in Kenya?
2) Some of the reactions of the state to the Ufungamano Initiative's actions to form a commission to write the Constitution that Kenyans wanted outside of the state established structures was for Moi's government as well as his allies in NPD to publicly condemn their activities and even threatening violence. Were there any other covert reactions/responses from the state and other players?
3) What were the Ufungamano Initiative's responses to state's continued repression?
4) What was the rationale for the Ufungamano Initiative to disband its PCK and merge with the CKRC while some groups within it e.g. *Muungano wa Mageuzi* were opposed to this fearing co-optation?

5) One of the main outcomes of the merger for the PCK and the CKRC for the Review Process was the dissolution of the PCK. What effects did this have on the Ufungamano initiative?
   -*Was the merger, part of the reason for the Ufungamano Initiative's loss of its mass appeal?*
   - *Did the state continue undermining the Ufungamano Initiative after the merger?*

6) What role, if any, did the heterogeneity of the actors (religious, ethnic, generational, class), in the Ufungamano Initiative contribute to its change of fortunes?

VII: UFUNGAMANO INITIATIVE'S IMPACT AND INFLUENCE ON THE CONSTITUTIONAL REFORM PROCESS IN KENYA

1) Generally, what have been the impacts of the Ufungamano Initiative on the constitutional making process and democratisation process in Kenya?
   -*In your opinion, how effective do you think Ufungamano Initiative has been in what is set to do?*
2) Did the Ufungamano Initiative have any significant influence on the state led process when the two bodies merged?
3) What were the main factors for the success or failure of Ufungamano Initiatives' work?
4) Did the Ufungamano Initiative create any substantive challenge to the constitutional making process that forced the Ghai led process to start merger processes?

VIII: LESSONS FROM THE UFUNGAMANO INITIATIVE EXPERIENCE

1) What lessons can be drawn on mass support social movement like the Ufungamano Initiative on the nature of mobilisations in social movements?
2) What important lessons can one derive from the efforts by state authorities to repress Ufungamano Initiative on its organisation and mobilisation?
3) What lessons can be drawn from the experience of the merger of the Ufungamano Initiative's PCK with the CKRC?
4) Some analysts argue that social movements and other civil society groups have been the nerve centres of contemporary social political contentions and conflicts in Kenya. What is you view on this?
5) Some analysts argue that the civil society and social movements undermine nascent democracy in many parts of the world. What is your view on the claim that Kenya's unfinished constitutional reforms as well as the current constitutional review stalemates are, in part, attributable to the intrusive activities of such groups as the Ufungamano Initiative?

-End-

Thank you very much for your time!