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## The State, Its Reform and the Question of Legitimacy in Kenya

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### Abstract

The paper discusses several missed opportunities at state-making in Kenya using four main instances. The first entailed failure to reform the colonial state at independence. I argue that independence in Kenya was crafted on state as opposed to popular nationalism. In turn, the Kenyatta state was constructed on state nationalism that came full with trappings of personal rule built on presidentialism, authoritarianism and manipulation of ethnicity. This second instance gave way to a third—the Moi state. The Moi state perpetuated and perfected tendencies derived from the Kenyatta state. Moi enjoyed the abusive privileges of presidentialism but simply re-directed his patronage from the Kikuyu to Kalenjin ethnic base. He supported this base by a clientele composed of ethnic bossmen from other small communities. The main undoing of the Moi state was mismanagement of the economy. This mismanagement unleashed the fourth instance that revolved around a constellation of forces all fighting for economic and political reform in the 1990s. However, this instance failed to engineer home grown solutions to the economic malaise afflicting Kenyans. It instead focused on structural adjustments whose assault on the state created higher levels of state decay that further intensified its illegitimacy and undermined prospects of nation-making.

### Résumé

Cette communication porte sur les nombreuses occasions manquées de construction de l'État au Kenya, en se basant essentiellement sur quatre d'entre elles. La première a empêché la réforme de l'État colonial, au moment de l'indépendance. Dans cet article, j'affirme qu'au Kenya, l'indépendance s'est construite suivant le modèle de l'État, par opposition au nationalisme populaire. Par la suite, l'État sous Kenyatta a été élaboré sur le modèle du nationalisme d'État, accompagné de tout le folklore du gouvernement individuel, basé sur le présidentielisme, l'autoritarisme et la manipulation de la question de l'ethnicité. Ce second élément en a induit un troisième : l'État sous Moi, qui a

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perpétué et parfait les tendances dérivant de l'État sous Kenyatta. Moi a joui des privilèges abusifs du présidentielisme, mais s'est contenté de rediriger la tendance népotiste des Kikuyus vers la base ethnique Kalenjin. Il a renforcé cette base à l'aide d'une « clientèle » composée de bossmen provenant d'autres communautés restreintes. C'est la mauvaise gestion de l'économie qui a causé la perte de l'État sous Moi. Cette mauvaise gestion a engendré le quatrième cas de figure, qui consiste en une constellation de forces luttant pour des réformes politiques et économiques dans les années 1990. Malheureusement, ce cas de figure n'a pas abouti à des solutions internes, censées amoindrir le malaise affectant les Kenyans. Au lieu de cela, cette situation a donné lieu à des ajustements structurels, qui ont accentué la déliquescence de l'État, accélérant ainsi sa délégitimation et remettant en cause les perspectives de construction nationale.

Since independence in 1963, Kenya has had three heads of state: Mzee Jomo Kenyatta (1963-1978), Daniel arap Moi (1978-2002), and Mwai Kibaki (2002—present). President Moi left power in January 2002 and his party KANU was massively voted out in a path-breaking general election. This paved the way for the first popularly elected government in Kenya's post-independence history. Yet, the questions of how successful the first two regimes were in nation making, in constituting a political community with its first loyalty and allegiance to Kenya, still remain. Though nation making involves the creation of a citizenry whose prime loyalty is to the Kenyan nation-state, it does not necessarily entail obliterating other loyalties. It involves the creation of legitimate leadership that encourages and respects pluralism while at the same time rallying the citizens towards common national ideas, values and aspirations. Government is critical to the project of nation-making, primarily because it is responsible for ensuring state legitimacy. This paper examines the governance record of the Kenyatta and Moi regimes in Kenya with a view to assessing their legitimacy and how their leadership has impacted on the process of nation making in Kenya. The study focuses on how the two regimes balanced competing loyalties to the nation-state and to other centres of identity validation. To do this, the paper tackles three related issues. First, it analyses the colonial legacy and its impact on the formation of the Kenyan nation-state. Second, it examines the governance record of the Kenyatta and Moi regimes and assess their legitimacy. We proceed by looking at the Cold War and post-Cold War eras to assess the changing global trends and their impact on governance in the Kenyatta and Moi eras. Third, the paper assesses the effect of sustained post-Cold War attempts to reform the state in Kenya and its relation to nation-making.

This paper hopes to make an overall intellectual intervention in the literature on state reform. Previously, some studies of Kenyan politics have preferred to contrast the Kenyatta and Moi regimes. Following this, they reach the obvious but unrewarding conclusion that the Kenyatta regime had a better governance record than the Moi regime. The analysis draws invidious boundaries between the two regimes as if there was any serious institutional break between the two regimes. For example, while employing the notion of governance realm, Joel D. Barkan argues that there was 'a measure of bargaining, compromise, and tolerance among competing interests, and between those who exercise political authority and those who are subject to it' in the Kenyatta as opposed to the Moi era.<sup>1</sup> Barkan's analysis focuses attention on the personal dispositions of Kenyatta and Moi and fails to perceive the overbearing

influence of presidentialism at the institutional level. More recently, Ajulu has refocused attention to what he termed 'institutional despotism' arguing that the crisis of democratisation in Kenya rests on the institutional basis on which Kenyatta and Moi built their personalised rule.<sup>2</sup> Ajulu's study is more historical, comprehensive and convincing. Building on his argument, this paper proposes a shift from the one-sided and unrewarding focus on the persons of Kenyatta and Moi to discuss the institutional basis of state illegitimacy of successive regimes in Kenya beginning with the colonial state. The paper emphasises the continuities in institutional despotism in explaining why previous attempts at nation-making have faltered.

### Conceptualising State Failure and Legitimacy

The study of state failure and collapse in Africa has grown over the last decade. A significant part of this literature draws up typologies of the process of collapse. State collapse, it argued 'is not a short-term phenomenon; not a crisis with a few early warnings; not simply a matter of a coup or a riot. State collapse is a long-term degenerative disease. However, it is also one whose outcome is not inevitable: cure and remission are possible' outcomes.<sup>3</sup> Zartman estimates that Kenya is one African state in serious, as opposed to maximum, danger of collapse. He offers little in terms of follow-up details to support this claim. To Zartman, loss of political legitimacy is a crucial indicator of potential state failure and collapse. State legitimacy is established when the functions of its existence are satisfactorily met and when the balance between the state's coercive and rewarding functions are maintained. 'When the state overplays its control functions, it loses the willing allegiance and legitimizing support of its population'.<sup>4</sup> This, in turn, may create alternative centres of power within the territorial space of the nation-state, and in view of breakdown of good governance, law and order and unsatisfied economic expectations, diverse categories of the population rise to challenge the political centre. This may occasion state collapse especially in cases where the branches of central government including the executive, legislature, judiciary and bureaucracy are compromised or emasculated. 'Collapse occurs when centralized institutions of penetration are unable to "tame" the contiguous periphery'.<sup>5</sup>

This partial typology of state collapse is relevant to our discussion of Kenya since it probes the issue of state legitimacy as an avenue to collapse. Strictly, Kenya has never been a collapsed state in the sense of complete breakdown of institutions, decay and total anarchy. On the contrary, Kenya has alternately trodden the two extremes of legitimacy and illegitimacy as a form of struggle pitting the state against popular voices from within the generality of the citizenry, civil society and opposition political society. While the state has occasionally reached dangerous levels of illegitimacy, 'cure and remission' have occurred precisely because of non-state initiatives and pressure against the state. The swing between legitimacy and illegitimacy has therefore characterised the history of the state in Kenya. At its most extreme, citizens have regularly questioned and challenged the state when it ignored popular voices, manipulated the mechanisms through which citizens exercise their freedom of choice, speech, movement and assembly and when the avenues for judicial redress were corrupted.

The balance between state legitimacy and illegitimacy due to diverse pressures has consequently had an impact on nation-making. It is this swing that attracts our attention.

### The Independent State in Kenya

In this section, we demonstrate that the state as it was constituted after independence moved from its nationalist legitimacy to new levels of illegitimacy occasioned first, by the concessions 'state nationalism' made to the colonial and local petty-bourgeoisie forces (especially the conservative wing of the ruling coalition), and second, by the failure of the independence leaders to effectively respond to the needs articulated by the majority of Kenyans during *uhuru* (independence). These failures form the backdrop against which the need for state reform was predicated in the late 1980s and early 1990s. It needs to be explained why, even in their harsh nature, reforms were enthusiastically received. The feasibility and impact of reform on nation-making can then be assessed.

The notion of 'state nationalism' provides a theoretical entry point into the discussion of the independent state in Kenya. This notion can be traced back to Mamdani who argued that in most of Africa, 'state nationalism of the 1960s cannot be considered as the flowering of the popular nationalism of the 1940s; rather, the former arose from the ashes of the latter'.<sup>6</sup> This argument implies that by 1960, popular nationalism of the 1940s was dead and instead was replaced by a form of nationalism that lacked popular voice and support. To Mamdani, state nationalism was in fact an ideology of colonial counter-attack designed to stabilise the control the colonial state was losing to the popular struggles waged in Africa for independence.

Nationalism as state ideology emanated from a stark reality within the colonial state that force alone was not an effective way of dealing with African political struggles. It was an ideology designed to respond to African pressures to democratise colonial state structures so that the reactionary African nationalists could be accommodated in the leadership structures in the construction of the neo-colonialist state. Basil Davidson locates the origin of nation-statism in this development which accepted the assumption that 'advancement toward the nation-state was the only feasible route to escape from the colonial condition'.<sup>7</sup> Nationalism as state ideology began by delegitimising popular local struggles by questioning the genuineness of its leaders, their maturity and the morality of their methods of struggle: the morality of violent resistance like Mau Mau. State nationalism was therefore a last minute attempt to face the popularity of nationalist resistance that was overwhelming colonial forces. Through state nationalism, the colonial state reconstituted itself in response to popular pressures; first, by 'detaching [nationalism] from any moorings in the popular struggles of the 1940s'<sup>8</sup> and criminalising all other struggles anchored in civil society as immoral, immature and divisive.

The need to guide African nationalism was best evident in British decolonisation policy. For one, the British maintained the belief that Africans were basically too immature to handle the requirements of independence. As Furedi argues:

The policy of decolonization did not imply a revision of the British view of African nationalism. The consensus was that African nationalism was still an immature movement, but a dangerous one that had to be met with guile and not just with force.

The policy was to guide it not just to fight it... The idea was to manage African nationalism by staying ahead, encouraging collaborators and retaining the initiative.<sup>9</sup>

As if to reinforce this position Lord Hailey had argued in 1937 on the need to interact with the aspirations of Africans in order to neutralise the danger posed by nationalism. 'Thwarted it can be dangerous; met in the right spirit; it can be guided into fruitful and constructive channels'.<sup>10</sup> But this process was only poised to succeed if concessions to the demand for self-government were granted. It is for this reason that the management of African nationalism was accompanied by a process of negotiation for political reform towards independence.

### Illegitimacy Under the Kenyatta State

In Kenya, delinking from popular nationalism was most evident in the manner in which Mau Mau was demonised first by the colonial state and later by Jomo Kenyatta, Kenya's first president, who was a member of the conservative wing of the nationalists. Mau Mau was the foremost expression of discontent with the policies of the colonial state. Its violence was indeed an expression of dissatisfaction with an illegitimate colonial state that had excluded the Kikuyu from a share of their ancestral land. Its driving forces were popular and were so articulated. Kenyatta was, or so it is assumed, the leading nationalist in Kenya who articulated popular demands against the colonial state. For this alleged role, he was described in colonial circles as a leader unto darkness and death'. The convergence between Mau Mau land struggles and Kenyatta's nationalist rhetoric seemed natural to the colonial state which assumed Kenyatta was the leader of Mau Mau. The colonial state responded to Mau Mau through excessive repressive force and psychological labeling. It dismissed Mau Mau as a savage and primitive reversion to traditional barbarism and argued that the people involved had failed to cope with the reality of modernisation introduced through colonialism. In pushing this argument, the state targeted Jomo Kenyatta, who was, for this reason, incarcerated in 1956. Phillip Mitchell described him as 'dangerous and corrupt'.<sup>11</sup>

However, the stability of the colonial state in Kenya was maintained in the turbulent years of the 1950s through nationalist conferences pitting co-opted elite negotiators of independence that constituted the nationalist coalition. This coalition intervened at a point when the radical Mau Mau adherents and its supporters in the city were mounting threatening attacks against the settlers and colonial state. Kenyatta was a key figure in the KANU elite camp while Ronald Ngala led the KADU camp. But these camps left out the masses constituted through the labour unions and other lumpens in the city, and the peasantry in the rural areas. This crowd resided in neglected African quarters and had a stake in the overall struggle for uhuru. They were demoralised and dehumanised African populations whose living conditions predisposed them to embrace any movement whose goal was to ameliorate their woes. Since state control in these quarters was almost completely absent, crime thrived in unimaginable ways. The quarters became apt sites for the sprouting of anti-colonial struggles in the town that linked with similar struggles in rural areas. Also occupying these quarters were highly placed Africans who worked for the colonial administration. Identified as the *asomi*, these elites

attracted resentment among African urban populations and soon became targets of harassment by the urban crowds.

While the *asomi* had been target of hate throughout the colonial period because some were loyalists who staffed part of the colonial administrative structures, a group of young educated Africans developed that 'sought reform within the colonial administration'.<sup>12</sup> This group came under the political influence of Jomo Kenyatta, the future leader of the independent state. As the radicals of the popular crowd tried to force total reform of the colonial state, their pressures conflicted with those of educated Africans. For instance, in 1947 when the African Workers Federation called a strike, Jomo Kenyatta in response called a mass meeting and disassociated his Kenya African Union (KAU) party from it. From then onwards, the educated leaders keenly struggled for incorporation into the structures of leadership but failed to address the faulty rules of the game that inhibited popular African reform of the colonial state. This delinking of political parties from the other popular avenues for mass participation in the independence struggle marked the start of the serious decline of popular nationalist struggles. It culminated in the defeat of Mau Mau and its demonisation by Kenyatta. But how was it possible for Kenyatta to denounce Mau Mau while at the same time being accused of being its leader?

For most of the colonial days, Kenyatta was an absentee hero of African nationalism. 'Absence from Kenya's political scene had been the most outstanding feature of Kenyatta's political career until 1961. From 1931 to 1946 he lived in England and from 1952 he was in detention'.<sup>13</sup> As a person, few Africans knew and inspected his beliefs and principles prior to his assumption of the presidency. This enhanced his heroism without any sustained scrutiny of his predisposition and capabilities, his vision and ideas. Throughout the colonial era, other nationalists sacrificed for his sake, stepped down to let him take the leadership and even postponed crucial political developments awaiting his release or using it as leverage to fight for his release. This led to an exaggerated version of Kenyatta's popularity in Kenya which, at independence, became the 'object of an official campaign of adulation'.<sup>14</sup> A form of emperor-worship engulfed the personality of Kenyatta such that even when in 1952 he denounced and condemned Mau Mau as having 'spoiled the country' this did not have any lasting negative effect on him and his political career. At Kiambu in August 1952, he asked those who were against Mau Mau to raise their hands and the 'response was immediate and unanimous'.<sup>15</sup>

But was Kenyatta the radical he was made to be? No so for many of his close associates during the struggle for independence. Evidence suggests that Kenyatta was not the radical pan-Africanist he was made out to be. Reports of Kenyatta's Moscow years indicate that he shunned revolutionary talk and was never convinced of the correctness of revolutionary struggle.<sup>16</sup> He seemed to have more respect for bourgeois habits and looked at the Soviet Union with cynicism. His comrades in London also doubted his commitment to the ideals of Pan-African brotherhood. He confessed his loneliness in the presence of local peasant life.<sup>17</sup> This means that his connection and leadership of the peasant movement is also questionable. As such, Kenyatta of the colonial era was a mythical creation, one whose claim to legitimacy was later clothed in the paternal metaphors of father of the nation. His true self began to emerge late into the colonial period. His undemocratic and dictatorial tendencies, for

instance, were first seriously hinted at by W. W. Awori, the Vice-President of KAU who resigned his position in August 1947, 'claiming that Kenyatta had become a dictatorial leader of the party'.<sup>18</sup>

As head of independent Kenya, Kenyatta instituted a personalised regime that rotated around himself and an inner cabinet popularly referred to as 'the family'. By 1978 when he died, the Kenyan state had been transformed and formed in his dictatorial and illegitimate image. The state was in most senses a Kenyatta state. Indeed, 'a lot of the politics in the country [came to] revolve around [Kenyatta's] political style'.<sup>19</sup> The stability of Kenya during the Kenyatta era lay not in the respect people accorded him but because of the coercive regime he built. The cornerstones of the state he built lay in the balance within the military, the centralisation of power within state structures and the neutralisation of potential foci of organised opposition.<sup>20</sup> Compared to Moi, Kenyatta would appear more organised and less authoritarian, but this misses the essential continuity between these two regimes. This continuity consists in the systematic imprint of the personality that Kenyatta left on the institution of the presidency at the expense of other arms of government. Moi replaced the person not the personality as he continued to use the structure Kenyatta bequeathed the institution to further plunder the country and render it largely illegitimate.

Thus, the problem with the state in Kenya is not one of either Kenyatta or Moi as individuals as some commentators have argued.<sup>21</sup> It is a systemic problem of how the presidency, not the president, constructed the state institutions and how these institutions promoted or inhibited nation-making. Kenyatta inherited oppressive and colonial state structures. He elaborated them and handed them over to Moi. These structures have, in turn, allowed both Kenyatta and Moi and their circumscribed circle of cronies to plunder, exploit and repress Kenyans into silence and muted submission.

First, the colonial state was never radically transformed to accommodate Africans of all social standing before the law. Rather the rules and structures of the colonial state were largely retained in the Kenyatta era and often proved very useful in the Moi era. Even some of the gains made with decolonisation were reversed in the interest of one-person rule that Kenyatta created in Kenya. These include the opening of space for popular expression and competitive electioneering. This space was steadily constricted as Kenyatta transformed himself from Prime Minister into executive president. He coerced the Kenya African Democratic Union (KADU) party into joining the Kenya African Nationalist Union (KANU) and instituted a de facto one-party rule. It is from the one party rule that one-man dictatorship grew. Attempts to form other parties were defeated by the executive powers of the president until 1991. Political competition in independent Kenya was construed to imply a challenge to the person of Kenyatta who was above the law. Kenyatta was not to be challenged by anyone given the official myth that lauded him as Mzee (the old man) whose wisdom was all encompassing and whose image of a father figure and as the founder of the nation gave him a paternal/familial sense of political legitimacy and reconceptualised the nation as a family under the loving care of Mzee.<sup>22</sup> Indeed, given the power of the presidency, Kenyatta became increasingly intolerant to criticism, a fact that made his leadership actions unaccountable but binding. As Throup and Hornsby demonstrate, 'Jomo Kenyatta was a symbol of Kenya's independence and

nationhood, a leader whom no one could criticize, the founding father of both nationalist politics and the nation'.<sup>23</sup>

But the above traits were not simply personal traits; they were institutionalised through the concentration of power in the presidency. The presidency became overwhelmingly powerful. The president had the powers not only to appoint vice-president, ministers, parastatal heads, chief military and police officers and the electoral commission but also the powers to fire them without recourse to anybody or any advice. The president was accountable to no one in particular. Kenyatta never failed to use these powers whenever he wanted. On some occasions, as if to demonstrate the extent of his power, Kenyatta publicly told ministers and members of parliament (MP) to keep quiet and toe the line. In March 1974 he reminded ministers that he had nominated them and instructed them that 'should any of them become disobedient I will kick them out'.<sup>24</sup> Later in 1975, it was MPs who were in the firing line following their outbursts concerning the state murder of J. M. Kariuki. Kenyatta warned those who did not toe the line that he would crush them 'like a hawk among the chickens'.<sup>25</sup> As if to make good his promise, within two years of Kariuki's death, Martin Shikuku, J. M. Seroney and George Anyona were arrested, some even within the precincts of parliament in complete contravention of the Parliamentary Powers and Privileges Act.<sup>26</sup> This action indicated the powers of the presidency vis-à-vis the legislature.

The powers of the legislature were compromised because some parliamentarians and members of the executive owed their positions to the president, not to any clear electoral mandate. To underline the irrelevance of the voters to the tenure of some MPs, Mbiyu Koinange, Kenyatta's brother-in-law and Minister of State in charge of security, used to tell the electorate in Kiambaa constituency that, after all, he did not need their votes to go to parliament. He needed only two voters: those of Kenyatta and his wife, Mama Ngina.<sup>27</sup> Thus, while it is true that a level of free competition for parliamentary office was maintained in Kenyatta's days as Barkan argues, this was only so if everyone recognised Kenyatta's unchallenged dominance. The plight of Oginga Odinga is enough to indicate the circumscribed context within which freedom could be exercised.<sup>28</sup> Parliamentarians dared not challenge Kenyatta on crucial issues for fear of losing their seats, political protection and the economic resources access to parliament assured. Indeed, the president also had powers to dissolve, summon and prorogue parliament just like he had powers over the cabinet.

But perhaps one of the main pillars of the Kenyatta state was the provincial administration and the bureaucracy. This administration and bureaucracy were colonial both in design and, to some degree, in content. Until 1975, the Africanisation policy had been carried out cautiously without seriously altering the basis on which the colonial state was built and maintained. For instance, the chief's act remained and was only partially reviewed in 1997. The provincial administration was a state agent in the provinces with devolution of their powers following very closely on the British colonial style. The province was headed by the Provincial Commissioner (PC), the District Commissioner in the district, the District Officer in the division, the Chief in the location, the Sub-chief in the sub-location and the Liguru in the village. This structure of state power was as colonial as it could be, getting worse in independent Kenya because the lower ranked officers were mainly poor old men (they were mostly men)

with little traditional customary authority. They also existed in a period when gerontocratic authority was becoming less recognised. As such, these officials invoked the force of state power to enforce and maintain compliance. The Liguru was, for instance, not a government officer with recognised remuneration. To fend for himself, he relied on crude, corrupt and illegal means to earn a living. Some of these crude means included confiscating valuables from poor and ignorant villagers when they failed to heed the call to pay tax, to contribute to harambee or when they were caught with traditional liquor, a product that ironically is illegal in Kenya. At other times, he extracted rewards from both willing and unwilling villagers using the threat of force. The Liguru was the overt sign of Kenyatta's or Moi's presence and power in the village while the sub-chiefs and chiefs assumed similar powers in their respective jurisdictions. Coupled with the fact that many of them rose to those positions through corrupt means and that there was no legitimating contract with the villagers over whom they ruled, they abused their positions with impunity. Consequently, 'the chief signified power that is total and absolute, unchecked and unrestrained'.<sup>29</sup> Like the abuse of presidential powers at the national level, that of the chief or sub-chief or Liguru was equally abused at the local level. Indeed, at the lower location, sub-location and village levels, the state was translated into an illegitimate structure of power that had to be dodged because of its oppressive, coercive, extractive and exploitative character.

Kenyatta also insisted that 'civil servants [cannot be] impartial. They are KANU civil servants'.<sup>30</sup> He demanded their loyalty and turned them into party organs. Both civil servants and provincial administration translated state policy into action at their respective levels. State security agents were attached to them to ensure not only compliance through the threat or use of force but also what happened at this lower level was keenly reported at the centre of state power. For their duties, they were heavily rewarded with the illegal allocation of state land and related economic rewards. Some held multiple state appointments, a fact that made their dedication to duty and service to citizens unsatisfactory. This was complicated by the ethnic composition of the bureaucracy. The provincial administration and strategic positions in the bureaucracy were heavily ethnically partial in favour of the Kikuyu. By the time of Kenyatta's death, four out of the eight PC's were Kikuyu.<sup>31</sup> In 1974, seven out of the twenty cabinet ministers were Kikuyu and five of these seven were from Kiambu, Kenyatta's home district. In the University of Nairobi, for example, then Kenya's only public University, 'all the top 10 administrative positions... were held by members of the Kikuyu community'.<sup>32</sup> While in colonial times the army was composed mainly of the Kamba and Kalenjin, by 1967, 22.7 percent of the officers were Kikuyu.<sup>33</sup> So ethnicised was the provincial administration and strategic positions in the civil service that even the permanent secretary in charge of provincial administration was a Kikuyu. There were in 1970 nine Kikuyu permanent secretaries out of the total twenty-two. Their selection and posting was so irregular that even illiterate ones would be posted to such crucial positions.

The ethnicisation of government institutions affected the sense of belonging to Kenya among groups and people who were excluded. A long lasting effect of this is that positions in the bureaucracy and provincial administration are now perceived and allocated using ethnic prisms. Holders of government positions are perceived as ethnic representatives. There were some presumed gains for the Kikuyu community when Kenyatta was the head of the state that

translated into non-Kikuyu resentment of the Kikuyu precisely because they felt marginalised from the very state that needed their allegiance. This resentment has been nurtured and allowed to grow especially during the Moi era. The state, in this ethnicised politics, was construed as benefiting the community from which the president hailed, in this case, the Kikuyu. Other communities, it was consequently assumed, had to wait for their turn to occupy the state and 'eat'. The truth of the matter is that the beneficial effects of an ethnicised state accrue to a few individuals within and beyond that community. This group then spins the generalising rhetoric in which the whole community is assumed to gain from an ethnic-partial programme of political appointment and reward. However, such a project of ethnic-partial appointment has had an emotional sway among the Kikuyu. In the context of Kenyatta's presidency, a feeling of attachment to a Kikuyu-controlled state developed to such unprecedented levels that 'most Kikuyu's... still regarded the presidency as their legitimate inheritance and guarantee to their privileged position'.<sup>34</sup>

Ethnicity has consequently developed into a crucial political resource that defines the state in Kenya and limits the sense of nationhood. The politicisation of ethnicity has risen to dangerous levels in which the stakes over historical incidents of injustice especially on land issues have been squared in the Moi era. Ethnicity has also become a basis of social exclusion since access to job opportunities, property, state contracts, etc. are determined in many instances on this basis. It is important to point out for example that as part of the state construction of patronage networks in the Kenyatta era, favoured people were pampered and rose through the ranks basically because of ethnic affiliations. The example of Waruhiu and Muite advocates, a firm owned jointly by Paul Muite and George Waruhiu, is apt for two reasons. One, it illustrates the ethnic posture of patronage in Kenya since these two lawyers are Kikuyu. But even more important for post-Moi era, it shows the extent to which the political opposition in Kenya today, like elsewhere in Africa, is constituted by 'democrats' who are guilty of flirting with KANU and helping to install the dictatorship and corruption they now claim to fight.<sup>35</sup>

### The Moi State and Further Slippage into Illegitimacy

If the strong imprint of the personality of the president characterised the state in the Kenyatta era, presidential powers were not reduced following Moi's ascension to power. Rather, the person of Moi took over that of Kenyatta in redefining state operations in Kenya. Moi was faced with the immediate challenge of consolidating his power. To do this, he needed an effective coalition to marshal support in his favour. The need for a new coalition was important given that the clique surrounding Kenyatta had tried to block Moi's ascension to power when they fronted the change-the-constitution movement.<sup>36</sup> But Moi faced one main obstacle in constructing this coalition. Unlike Kenyatta who had an economically strong Kikuyu coalition, Moi came from a region of low capitalist penetration and therefore had a weak economic class to start with. He needed first 'to construct a capital base for his coalition' before proceeding to use them as an alternative to the Kikuyu coalition. Since there were no fresh areas of accumulation, Ajulu rightly argues that 'Moi's embryonic accumulators were compelled to "loot" from the old accumulators'. In other words, the 'new coalition had to be constructed upon the

dissolution of the already entrenched Kikuyu capital'.<sup>37</sup> Predictably, the initial opposition to the Moi regime was also likely to emanate from these Kikuyu coalition that felt orphaned by the death of Kenyatta.

At a broader level, Moi looked for popular support from other regions that bore genuine grievances against the Kenyatta regime. He adopted a populist approach in reaching out to different groups within his first three years. He tried to legitimise his leadership and reconcile the numerous forces jostling for the presidency prior to Kenyatta's death. Between 1978 and 1982, Moi was very successful and made enormous gains in cementing unity and prosperity. He preached continuity which was captured in his Nyayo slogan—following in the footsteps of Kenyatta. Nyayo came to be elevated in daily political talk to a philosophy whose basic ingredients were peace, love, and unity. For some time, Moi achieved a feat that surprised those who imagined that he was 'a passing cloud' and, in the process, duped many analysts that he was set to improve on the path laid down by Kenyatta—that of 'one-party democracy'. But inherent in Moi's slogan of Nyayo was an element of change that few perceived early enough. As Morton has noted, 'while the country's new leader promised to follow in the footsteps of the late President, he implied that there would be change within that continuity'.<sup>38</sup> Moi was Kenyatta's vice-president for 12 years. He saw and learnt Kenyatta's leadership tactics. As Morton writes, 'his [Moi's] eleven-year [sic] apprenticeship as Vice-President was sufficient training, giving him an unparalleled insight into the realpolitik and personalities of Kenyatta's ruling elite'.<sup>39</sup> The years 1978 to 1982 therefore represented the populist phase of his rule within which he began to consolidate his personality within the Kenyan state and eliminate potential foci of opposition just like Kenyatta had done before him.

During these years (1978 and 1982) Moi emphasised the need to curb corruption, reallocate grabbed land, clean up the cabinet, serve wananchi (citizens) to their satisfaction and deal with tribalism. He restored the image of KANU as a party that fought and won independence. During the Kenyatta years, KANU was a dead party. In many of his endeavours, Moi enjoyed the goodwill of Kenyan masses especially those who had been marginalised by the Kenyatta government and who, therefore, bore legitimate grievances against the ethnicised Kenyatta regime. Indeed, Moi became very popular for lifting the harsh, criminal rule Kenyatta had installed. People identified with the state created in Moi's image. He announced free education at the primary school level and, to encourage those from disadvantaged backgrounds, provided free milk for primary school children. Soon, Moi's populist regime began to pander to the euphoria of the time to the detriment of the generality of the citizens.

The Moi regime started facing problems when evidence of failing economic management of state resources and their allocation became very clear. This was also followed up by serious governance problems. For instance, while Kenyatta left professionals relatively free to handle issues of national governance so long as they did not challenge his overwhelming powers, Moi was more intrusive in the overall running of government affairs. While the Kenyatta strategy left governance to a clique of corrupt Kiambu mafia, the Moi one coalesced around himself and a clique of corrupt Kalanjin mafia. Moi does not seem to have paid specific attention to people's specialties and qualifications before appointing them to technical positions. Thus, a professor of history once became a chairman of the Central Bank while an illiterate

politician chaired the national committee on environment. In the long run, the legislature, executive, judiciary and most importantly, the bureaucracy were staffed or led by ignorant, inept and, at times, illiterate officers. Many of them presided over high levels of primitive accumulation, public malfeasance and corruption. They constituted one reason for state illegitimacy since a poor economic performance and questionable delivery of public services was traced to such inept officers. However, one cannot overlook Lonsdale's plausible argument that 'Kenyatta was a lucky President in terms of the World economy, Moi unlucky'.<sup>40</sup>

The international economy in the Kenyatta days favoured a welfarist state that intruded in the daily running of public affairs and allocation of resources. This was part of the Keynesian economic thinking that developed after the end of the World War II. Such economic thinking prevailed until the 1970s when the oil shocks and rising rates of inflation shattered it. The oil shocks occurred at a time when conservative regimes in Britain (Margaret Thatcher), Germany (Helmut Kohl), America (Ronald Reagan) and Canada (Joe Clark) were about to assume power. This configuration of forces led to a new form of neo-liberalism that was anti-statist in orientation and emphasised market forces in the allocation of resources.<sup>41</sup> It should be observed that trends towards a world economic recession were already evident by the early 1970s. By the time Moi took over power, these trends were already negatively impacting on the local Kenyan economy. According to Holmquist et. al., the economy slowed down in the late 1970s. The oil shocks of 1973 and the growing inflation led to lower growth rates than in the 1960s. But, being in the thick of the Cold War, 'foreign aid [continued to generously flow] from western donors who saw Kenya as an anti-Communist bulwark in the uncertain political and strategic arenas of East and Central Africa'. As late as 1972, British support of the regime was still a crucial component of foreign policy and this cushioned the Kenyatta regime from the harsh economic realities that were gathering storm towards 1978. 'The oil shocks of 1973 and 1978, soft foreign markets for exports, inflation in the West raising the cost of imports, declining inflows of foreign private capital, growing foreign debt, and high interest rates, all made it increasingly difficult to maintain a large state sector and juggle political tensions generated by the economic sectors and ethnic calculations as a strategy of rule'.<sup>42</sup> It is in this context that Moi began to construct his coalition and consolidate his rule.

By 1982 the fragility of the state in Kenya was increasingly becoming apparent as the attempted coup d'état of that year revealed. Political tensions were contained in the rising direct and indirect opposition to the Moi regime. Opposition was motivated by several factors. A major factor was the increase in presidential despotism associated with the change from a de facto to a de jure one party system. Things were also complicated in the 1980s by the poor economic performance coupled with clear indications that, rather than depart from the cliquish rule of the Kenyatta era, Moi was constructing a Kalenjin alternative to the Kikuyu clique. The Moi regime was saddled with pressures resulting from its politicisation of ethnicity, ethnicisation of politics, corruption and malfeasance. Not surprisingly, the new opposition came from the old Kikuyu elite that Moi was seriously dismantling. This opposition fed into other popular (or not so popular) movements like Mwakenya. It combined with high levels of corruption in the bureaucracy, land grabbing in strategic areas, subversion of popular policies and a general inefficiency that illustrated that the state was either losing control or becoming captive to an inner kitchen cabinet to undermine a sense of belonging to the state. Moi has

acknowledged this in his biography when he stated that his trusted technocrats and politicians let him down on numerous occasions. But instead of entrusting better and well-meaning officers and leaders, Moi embarked on a greater personalisation of power in his own hands after 1982.

The 1982 coup attempt ended the populist phase of Moi's rule and intensified the personalisation of power and ethnicisation of the provincial administration and bureaucracy. According to a biographer, Moi felt that 'his magnanimity had not been reciprocated by his colleagues'.<sup>43</sup> Following the coup attempt, 'the conflicting advice he had received from experts taught him to trust such counsel less and listen harder to the mood of the country. Moi came to admit that he had allowed others, notably Charles Njonjo, G. G. Kariuki and other State House insiders, to establish a cordon sanitaire around him which had left many influential voices, particularly from Luoland, out in the cold'. Thus, politically, the 'days of easygoing camaraderie and collective decision-making... abruptly ended.'<sup>44</sup> Unfortunately, trust seems to have been replaced by loyalty to the person of the president and collective decision-making replaced by individual decision-making. These trends certainly eroded the legitimacy of the Moi state.

For a start, one-person rule intensified to levels previously unknown in Kenya. This began with the introduction of a bill in parliament that made Kenya a de jure one-party state in 1982. The bill was drafted by Paul Muite, then Njonjo's lawyer, and unprocedurally moved by Mwai Kibaki, then leader of government business in the national assembly, and passed into law in a record forty-five minutes. The first casualties of this bill were Oginga Odinga and George Anyona who were detained for attempting to form a rival party to KANU. In detaining them, the state used the Preventive Detention Act, a 1966 relic of the Kenyatta regime. From then onwards, numerous people were either detained without trial or forced into exile. This further constricted the space for free expression, speech and assembly. Any challenge to the government was viewed as a personal challenge to Moi. In response the state devised numerous mechanisms for punishing real or perceived offenders given its monopoly of sanctions and economic rewards. These ranged from detention without trial to suspension from the ruling single party. Towards this end, the KANU Disciplinary Committee (KDC) was formed in January 1986 and became the most notorious mechanism of excluding non-conformists.

Unlike Kenyatta, Moi reconstructed KANU into the most powerful organ of his regime declaring in 1986 that 'the party is supreme' over parliament and the High Court.<sup>45</sup> He then shifted the avenue of decision-making from the executive and the legislature to KANU. In doing this, Moi was supporting Shariff Nassir's recommendation that 'if members of parliament talk loosely and at whim, the party should be empowered to discipline them'.<sup>46</sup> He gained several advantages by reconstructing KANU as supreme over parliament. First, KANU was the only party whose sponsorship was required to vie for an electoral mandate. As such it vetted and controlled access to parliament. Second, it was an informal non-state grouping effectively controlled by Moi and an inner core of loyalists whose support Moi used to purge radical politicians from the party. Through KANU, Moi could vet and control access to parliament for those politicians who failed the party 'loyalty test.' Indeed, it was towards achieving this goal that Moi revamped KANU with the aim of achieving what the *Weekly*

*Review* called the 'party's precedence over parliament in national political matters'.<sup>47</sup> Moi enlisted the help of an inner core of KANU loyalists including the former cabinet Minister Shariff Nassir who were at hand to support moves towards establishing KANU as the supreme organ of Moi's regime. This core dominated the KDC and perfected a procedure of witch-hunting and punishing politicians considered less loyal to Moi.

The KDC played a significant role in spreading fear, self-censorship, and despondency as can be seen in its index of measuring loyalty to the president. Its main agenda was to discipline errant members. But it soon became a forum for witch-hunting where members were suspended for merely associating with the former powerful Attorney-General Charles Njonjo, for showing disrespect and contempt for district KANU leaders (Joseph Munyao), for disloyalty to the party president (Kimani wa Nyoike), etc. Given the overbearing presence of Moi and his inner circle of ethnically selected politicians in KANU, its reconstitution effectively closed the space for autonomous political organisation and action while the KDC circumscribed all political actors. Between 1982 and 1988, due to the witch-hunting and competition over who was most loyal to the KANU president, fear and self-censorship spread not just across the party line but across the country. The network of state special branch police spying also spread wide until it covered each local market and village. By 1989, expulsions from KANU prevented many people from seeking electoral mandate since only one mandated party, KANU, provided a ticket for election to parliament. Fear and exclusion became synonymous with the Moi state.

By shifting supremacy from parliament to the party, Moi by implication concentrated extra-legal power in the presidency. This became a reality when on November 21st 1986, the Attorney-General introduced a Constitution of Kenya Amendment Bill (1986) which abolished the office of Chief Secretary, lessened the security of tenure for the Attorney-General, the Auditor-General, and of High Court Judges. The amendments were meant to put the judiciary at the mercy of the president in the event of disobedience to state (read presidential) orders. The judiciary was extensively affected because, from then onwards, it has never been impartial in politically sensitive cases. At some point, foreign judges were employed and, given the contractual basis of their terms, they became outrightly partial. These issues are documented fully in the *Nairobi Law Monthly*. The abuse of the judicial system peaked in the era of Chief Justice Allan Hancox in 1989. Hancox was partisan and on occasions condemned lawyers especially the Law Society of Kenya (LSK) for being anti-government. He asked them to be loyal to the president as opposed to the LSK which claimed loyalty to the constitution.<sup>48</sup>

Democracy is operationalised differently in diverse contexts, but it has certain general critical tenets. These are the 'basic principles of inclusion, participation, freedom, justice and equity for all who find themselves in any of our African countries at any given time'.<sup>49</sup> Allowing aggrieved parties to seek redress on issues over which they feel justice has either been delayed or denied ensures fairness. By compromising the judiciary, the overt authoritarianism of the Moi state emerged, sealing all channels of redress over injustice while it perpetuated corruption in high places and placed a premium on mediocrity and malfeasance. The state and its selected agents became the creator, dispenser and guarantor of justice. By closing down avenues of impartial arbitration over political and economic disputes, the Moi

government, in a manner akin to the Banda regime in Malawi, began to constantly monitor, manipulate and mutilate words, to impose silence and built a nation where, to paraphrase and quote Zeleza, only the monotonous story of Nyayo's achievements was told and retold. Kenya became 'a state of dull uniformity that criminalised difference, ambiguity, and creativity, an omniscient regime with a divine right to nationalise time and thought, history and popular will'.<sup>50</sup> KANU was deified as songs were composed specifically and exclusively for the president while religious songs were adopted as military marching tunes in praise of the regime.<sup>51</sup> State agents like the PC's, DC's DO's and chiefs accumulated enough extralegal extortionist powers that made the state of questionable relevance at the grassroots.

Such constricted political space intensified the plunder of the economy since patronage supported inefficiency and plunder. State corporations were put under the control of unqualified heads as part of the patronage reward system. Agriculture was seriously affected since the National Cereals and Produce Board, the state corporation dealing with buying and marketing cereals, especially maize and wheat, made significant losses during the years 1978 and 1979. According to one anonymous writer, the board had poor storage facilities, expensive middlemen, and a virtual monopoly over the movement of Kenya's staple cereal—maize—from the producer to the market.<sup>52</sup> Between February 1978 and July 1979, nearly 200,000 tons of maize was exported at a loss of Kshs.165 million. This was at the crucial time when drought and economic crisis were looming. Other state marketing boards also did not fare well during the same era. They included the Kenya Meat Commission, the Kenya Co-operative Creameries, the Coffee Board of Kenya to name only these few.

Not all the economic crises especially in agriculture can be objectively blamed exclusively on the government of President Moi. As already indicated earlier, the Nyayo era was ushered in amidst 'significant economic constraints'. Kenya's rate of GDP growth had dropped from 6.5 percent average for the period 1964-72 to 4.7 percent for the period 1972-77.<sup>53</sup> Both internal and external factors decelerated the rate of growth in Kenya. The oil shocks of 1973 and 1979 led to a general world recession that had its negative impact on the Kenyan economy. Internally, the 1979-80 drought, the growing national population and the inability to convert the large arable land into productive use plus the poor translation of projected policy initiatives into actual results all worked to provoke economic crisis. The Kenyan economy was also extroverted, relying mainly on multinationals and a large holder export sector of which the state was the creator and protector.<sup>54</sup> In consequence, the Kenyan government came to rely much more on external aid, a fact which opened it further to external manipulation and economic problems.

The political and economic crises climaxed in the infamous 1988 general elections. During these elections, undemocratic party procedures were employed to work out popular leaders both in the party primaries and in the national elections. The elections were conducted in an atmosphere of state repression, suspicion, and enforced silence. KANU adopted not only the queue voting method but also allowed all those who got over 70 percent of the total votes in the party primaries to go to parliament unopposed. During the primaries, many popular leaders were pushed out through unscrupulous means. The elections witnessed massive rigging as the provincial administration was deployed against candidates disliked by the state. The

provincial administration oversaw and stage managed this rigging. Moi's biographer, Andrew Morton, blames this rigging on the provincial administration and feigns ignorance on the part of the president. But it is doubtful that Moi was ignorant of this widespread malfeasance.

### Consequences

The consequence of all these developments was that the state became ineffective and illegitimate in a number of quarters, especially in its role of fairly redistributing and allocating resources and in its maintenance of a fair and just system of governance. Its major legitimating arms were under the direct control of the president and were used to rubber stamp decisions arbitrarily made by Moi's kitchen cabinet. The eighth parliament lacked credibility and a popular mandate. These elections in effect pushed out of the legal political space many popular leaders and in their place installed stooges. In terms of competitive politicking, the new parliamentarians could not compete with popular leaders outside parliament. As a result, a popular constituency was created out of the 'legal' political space that questioned state legitimacy. In particular, the legal profession and the church played such a role.

The church created protected space for questioning and challenging state legitimacy. Church leaders challenged Moi's human rights record and failing economic policies. They criticised outdated laws like the Preventive Detention Act of 1966 and the colonial Public Order Act from the safe though politically 'illegal' space of the church. Churches, funerals and the matatus were for some time popular sites of challenging the state. These spaces were important because, in other places, license had to be obtained in order to hold a political gathering and the license was acquired from respective officers within the provincial administration who were loyal to Moi. Given that politicians considered to be anti-government could not obtain a license and that the police were always at hand to unleash terror against unlicensed rallies, it was prudent to run away from state terror by holding rallies in safe locations such as funerals or in church.

By the beginning of the 1990s non-state forces had the popular support of a majority of Kenyans. The collapse of the Soviet Union and changes in Eastern Europe ushered in new international thinking that could no longer tolerate illegitimate regimes like the Moi one. Also, new coalitions came up with the formation of pressure groups that demanded political pluralism and democracy. The government was challenged on many fronts to account for its actions, to be transparent and to demonstrate strong commitment to inclusive economic and political policies. It was criticised for its non-participatory and intrusive nature which was clearly at odds with local and international developments based on neo-liberalism. Behind this development came the call for state reform.

### State Reform After the Cold War

During the early 1990s, political and economic reform was high on Africa's agenda. Much of this agenda focused on economic reforms and political liberalisation. It came from two sour-

ces: the local struggle for democracy and the international donor demand for economic reform. From the African perspective, the reform process was expected to engineer the destructive transformation of the state and to usher in emancipative politics. It was to enable the masses to develop not only a capacity for self-control but also control of their leaders and make leaders responsive to the needs and aspirations of the masses.<sup>55</sup> In Kenya, the criterion for successful reform was the destructive transformation of the state and a thorough overhaul of the networks that sustained illegitimacy in the Kenyatta and Moi eras, not 'the excessive personalization of politics and abnormal fixation on the incumbent leaders' that had dominated the political reform agenda.<sup>56</sup> The donor perspective was more focused on economic reform and political reform and governance came to them as a mere afterthought. This donor reform movement showed little interest in the mass of Kenyans. It narrowly focused on piecemeal reform and was not sustainable enough to ensure the destructive transformation of the state. It was concerned with what Olukoshi calls the 'technocratic-managerial' aspects of governance.<sup>57</sup>

The reform process in Kenya missed the goal of total state reform as a way of renewing the relevance of the state and marshalling popular and trans-ethnic identification with its ideals, values and aspirations. The process was personalised, piecemeal, and disempowering, and enabled Moi to engage in a protracted game of procrastination over reform. Between 1981 and 1991, Moi was either given a clean bill in economic management or the benefit of the doubt even though his human rights record was appalling and the management of the economy out of hand. Moi played both local pro-reformists and the donor community off against each other with the aim of postponing implementation of key reform measures and frustrating local pressures for democracy. A lack of a clear consensus on the reform agenda and strategies among local sectors and between them and the donors facilitated this endless game of procrastination. Indeed, the very definition of what needed to be reformed was contested. Thus, 'a pattern emerged whereby Kenya would agree to conditionalities, bank the resulting flows of programme aid and then find reasons for non-compliance'.<sup>58</sup>

In Kenya, as in the rest of Africa, the reform debate revolved around the perceived failure of state to ensure sustained economic progress. However, this failure was interpreted differently by different sectors. Locally, it was attributed to bad leadership, poor planning, corruption, natural disasters, state repression, and Kenya's susceptibility to external shocks through foreign currency exchange instability and fluctuations in export prices. But within this broad interpretation, different sectors adopted different approaches of dealing with these problems. The difference was more in emphasis than in content, however. Some local constituencies, including the urban middle class and a section of the largely Kikuyu bourgeoisie, assumed that competitive politics and even a change in leadership would bring to the table fresh ideas, priorities and a reliable government. As such, they focused their criticism on the incumbent president and his ethnic clique and emphasised 'democracy-of-procedure' (i.e. focused on state structure and political process) as the alternative.<sup>59</sup> That is why the World Bank/IMF argument favouring the 'shrinking of the state' was a palatable option for these classes. This alternative to the Moi state accounts for the 'abnormal fixation' on the incumbent leader expressed through the slogan 'Moi Must Go.' But the intrinsic support these groups lent to externally designed structural adjustment was tenuous at best because it was not predicated

on a sustainable consensus on how to reform the state. Nor did it engage with the hopes of the majority of poor Kenyans whose basic concern was everyday survival.

Other sections of the local constituency preferred a total overhaul of the institutions of governance in order to create new institutions and regulations that would then guide the reform process. Attention could then be given to basic issues like escalating poverty, disease and health problems, decreasing levels of literacy and school enrollment, and rising unemployment and underemployment. But this grouping eventually focused on esoteric concerns relating to a constitutional review and rejected the piecemeal review strategy that Moi preferred. In doing so they downplayed the basic issues and concerns highlighted above.<sup>60</sup> Though the actors in these two camps interacted and exchanged views, they emphasised different aspects of the reform programme. This is how civil society organisations (CSOs) tended to co-operate with forces within the political opposition although, at critical junctures in the reform process, forces in political society ganged up together against these very CSOs. But none of them paid consistent attention to the rural poor who were also the voting majority. The latter remained Moi's captive vote that he manipulated by a careful campaign fronted by the controlled state media. The division between opposition political society and the CSOs, their inability to rally the rural people behind them, and the advantages of Moi's incumbency that enabled him to manipulate electoral processes and repress the political opposition, were critical to Moi's re-election in the 1992 and 1997 general elections. But equally important was the role of donors.

Donors framed their reform discourse with a focus on Africa and sought indiscriminately to foist a generalised reform agenda on a specific historical and local situation in Kenya. Generally, they stated their faith in the role of the market in resource allocation and called for the rolling back the state. In its place, they attempted to invigorate CSOs through whom many donors began to channel foreign aid. In roundly condemning the state in Kenya, they began to conceptualise civil society as the bastion of liberty and democracy and failed to examine the indistinguishable characteristics of these two.<sup>61</sup> Donors had one effective, though not decisive, advantage over the local pro-reform groups—the debt and balance-of-payment deficit crisis enveloping Kenya at the time—an advantage which they proceeded to deploy in the form of conditionalities. To force state reform in Kenya, donors demanded reforms in exchange for the further disbursement of aid. Thus, they called for the privatisation of state enterprises, liberalisation, and retrenchment of the bloated and underperforming public sector workforce—all these being reforms that hit the poor particularly hard.

But on many of these demands, donors had their conceptual and empirical facts wrong. Rather than improving the situation, they contributed to its worsening. Their onslaught on the state was particularly hazardous in the long run. For instance, donors wrongly assumed that 'the African state in the development process was wholly dysfunctional and only unremitting stagnation characterised African economies under the regime of state intervention'.<sup>62</sup> Secondly, they defined the problem of state failure as largely internal and overlooked the interacting external constraints on internal mismanagement.<sup>63</sup> This failure obstructed them from recognising that 'no sustained resolution of the current African crisis is conceivable unless it addresses at the same time the roots of the crisis in the international capitalist

order'.<sup>64</sup> Thirdly, the donor community insisted on cutting back the state as the main alternative for future development yet state intervention in the economy is what they had encouraged under Kenyatta. To the donor community, the state was not just intrusive, it was actually captive to an urban based clientele who directed attention away from productive rural enterprises. There was no empirical basis for this urban bias thesis in Kenya since (i) it was this very ruling elite that had their primary interests in the large-scale agriculture sector of the rural area and who in turn fleeced rural peasant farmers through unfair monopsonistic controls on cereal production and marketing and (ii) the rural and urban sectors in Kenya interpenetrate and overlap to the extent that poverty cuts across this terrain. The donor onslaught on the state further undermined the state's capacity to deliver services since it was exposed to more predatory acts. As it has been argued, the African state needed strengthening, not cutting back. The 'state remains, even as it changes its form and confronts new situations, one of the most important features of contemporary political organization'.<sup>65</sup> How was this broad scenario played out in Kenya?

Kenya received its first structural adjustment loan in 1980 for balance-of-payments support following the oil shock. The Bank loan was directed at a new industrialisation strategy contained in Kenya's Fourth Development Plan of 1979-1983. In 1982, the Bank negotiated another, more comprehensive, loan, this time focusing its main attention on the agricultural sector, trade policy, parastatals and interest rates reform. The Bank emphasised reform in the agricultural sector, including a vaguely stated proposal for land reform and the privatisation of maize marketing which had been publicly controlled since colonial times. By 1983, however, Kenya had not met the key condition of the 1982 lending—maize decontrol—and the Bank delayed the release of the second tranche of structural adjustment lending. Between 1984 and 1985, relations between the Bank and Kenya worsened but the Bank was still willing to enter into dialogue. Indeed, in 1985, the Bank shifted its attention to sectoral lending and started negotiations towards credit for the Agricultural Finance Corporation (AFC). In same year, Kenya tactically issued *Sessional Paper No. 1 of 1986 on Economic Management for Renewed Growth*. This document anticipated the new lending priorities of the Bank such as the increasing the use of fertilizers to smallholders, tightening the financial regulation of the AFC, and intensifying greater financial and operational responsibility in parastatals. To placate the Bank, the government even announced prior to negotiations that 'maize farmer were now to be allowed to sell direct to millers'.<sup>66</sup> The announcement facilitated the settlement of a US \$60 million loan in June 1986 which Kenya banked and then reneged on complete decontrol of the maize marketing sector.

Kenya did not meet most of the conditions on structural adjustment lending in the 1980s. Local impediments and elite political reservations which the Bank officials knew prior to negotiating the loans limited instituting fiscal responsibility and discipline in state-run parastatals. The Bank's privatisation and liberalisation regime was impractical at a time when Kenya was facing a serious balance-of-payment deficit. The Bank's lending strategy was built around its confidence in a triumvirate of civil servants like Philip Ndegwa, governor of the central bank, Harris Mule, permanent secretary in the treasury, and Simeon Nyachae, the head of the civil service. It ignored the requisite support for and ownership of the reform package by the generality of Kenyans and the vested interests of Moi's new coalition. It is no

wonder that the government did not meet the conditionalities. For instance, actors within the Moi coalition drew what Mosley describes as 'oligopoly rents' from maize controls and could therefore not be expected to implement a reform policy that directly short-circuited their sources of wealth.<sup>67</sup> Indeed, the irony of reform is that the Bank expected the very people running and benefiting from the state to implement drastic cuts in their power and in the sources of their rents. No wonder the Moi coalition perfected a game where they announced drastic changes in the country at the time when the next tranche of lending was due and rescinded or reneged on it immediately the funds were received. This is what Moi did with regard to the privatisation of state parastatals like the Kenya Post and Telecommunication Services. Mosley further points to the Bank's culpability in the phoney war with the Kenyan government. The Bank was pliant with the Moi regime even when outright state deception encouraged the growth of economically stifling corruption, as the Goldenberg case revealed. It allowed slippage on conditionalities to go unpunished in a manner that betrayed its complicity in Moi's misdemeanor. In fact, the Bank anticipated areas of conflict when drafting lending agreement and imaginatively 'used ambiguity as an instrument of resolving potential conflict'.<sup>68</sup> Thus, in areas of institutional reform, very little or no change came about during the Moi era. The Kenyan government failed to deal with liberalisation and privatisation issues, fearing a mass local backlash. Instead protection continued and resulted, most of the time, in government inefficiency, and the alienation of critical segments of the middle class and bourgeoisie. Such levels of protection could only be maintained by an authoritarian and kleptocratic state—the Moi regime. The behaviour of the Bank cannot be surprising given its promotion of democracy as imperialist policy.

The bilateral and multilateral donor community was not united on the reform agenda. Precisely when World Bank relations with Kenya in the 1980s sank, Kenya's relations with the International Monetary Fund (IMF) improved. At the bilateral level, Smith Hempstone's racist study documents the divisions within the diplomatic sector that prevented the adoption of a consistent response to the excesses of the Moi regime. Bilateral support for fiscal responsibility, human rights and democratisation was tempered by fear of 'things running out of hand' and affecting their investments in Kenya. With an investment of over \$1 billion, British interests and therefore British fears were enormous compared to the \$200 million US investment.<sup>69</sup> Britain was especially suspicious of mass action in the street and 'preferred order to freedom'.<sup>70</sup> Bilateral donors wanted piecemeal and staggered reforms. Since major bilateral donors occupied central positions in the Bank and IMF, these organisations also adopted a cautious stand towards Kenya until the end of the Cold War. Only then did they begin gradually to include human rights and good governance as conditions.

Thus, the alliances and coalitions for reform within Kenya and between them and external donors lacked a consistent rallying point for unity. Though the donors supported reform, they preferred to speak with the state and were willing to ignore concerns about democratisation, human rights, and governance in favour of economic reform. Yet these were the basic concerns that animated the opposition in Kenya. On the other hand, the internal opposition was a tenuous amalgam of actors and groups that were united by a commonality of grievances against Moi. They coalesced around a fragile platform united only by the mere need to remove Moi from office. At rallies, in conferences, during street demonstrations, at

press conferences and even deputations to metropolitan countries, this abnormal fixation on the incumbent president was wrongly equated to state reform. Moi's removal was seen not only as a precondition for reform but in most cases as reform itself. The two and a half year old Kibaki regime shows just how misleading this assumption is.

Smith Hempstone introduced the donor concern with human rights, graft, competitive multi-party elections and a new pluralist dispensation. Like the multilateral donors, Hempstone strove to impose ideas of market reform and good governance. He attached stringent conditionalities for further aid disbursement as cardinal ingredients of post-Cold War state reform. While addressing Kenyan businessmen in May 1990, Hempstone stated that 'the US would give preference in its grants of foreign aid to those countries which nourished democratic institutions, defended human rights and practiced multiparty politics'.<sup>71</sup> In the same year, the US Congress asked the Bush administration to defer US \$7 million in economic support and US \$8 million in military support. In September 1991, Denmark froze all new aid to Kenya while, in November 1991, the Paris Club which includes most donor countries deferred for six months the commitment of aid to Kenya for the 1992 calendar year, 'pending progress on political and economic reforms in the country'.<sup>72</sup> This incited unrestrained genuflection among sections of the opposition elite in Kenya who beckoned on donors to use these conditions to kick Moi's authoritarian and kleptocratic rule out. Consequently, both donors and the internal opposition focused on political pluralism and failed to see the broader institutional context where ultimate success for the reform process rested. In the words and deeds of the foreign stakeholders, the message was to 'open up the political space for more parties and the economy for private investors' and everything else would be fine.

The donor commitment to complete state reform has recently been doubted and suggestions that they helped reinforce authoritarianism have been made. This inconsistency fed Moi's intransigence and reinforced state illegitimacy. By focusing on the anti-democratic effect of donor intervention in Kenya, Stephen Brown argues that donors repeatedly undermined domestic efforts to secure far-reaching political reforms in Kenya by supporting only minimal reforms to the constitution, discouraging measures that could have led to more comprehensive democratisation, rewarding the Moi regime 'for modest achievements in economic governance', and providing a disincentive to increased political liberalisation. Donors accepted sub-optimal standards in their evaluation of election results and 'deliberately suppressed evidence that KANU has not legitimately won a majority in parliament'.<sup>73</sup> Thus, the rigged general elections of 1992 and 1997 were awarded the semblance of legitimacy even when donors were aware of 'Moi's flawed mandate'. Donors, Brown argues, worried about popular anti-regime mobilisation fearing that this would degenerate into chaos and disorder that would affect their local investments. They avoided 'any path that could lead to a breakdown of the political and economic order even if it meant legitimizing and prolonging the regime's authoritarian rule'.<sup>74</sup> They were ready for a trade-off with Moi, a trade-off that eventually affected the generality of Kenyans who found this regime largely illegitimate. That explains why, between 1991 and 1997, donor aid was alternately suspended and reinstated even before the government met basic conditions on privatisation, the fight against graft, an improvement in fiscal responsibility and the observance of human

rights. As graft and fiscal irresponsibility increased and the state capacity was reduced, ordinary Kenyans were seriously affected.

For instance, requirements concerning the downsizing of the civil service, the reduction of expenditures on services like education and health, and the introduction of cost sharing were all punitive remedies that affected low-income earners. Fiscal irresponsibility combined with liberalisation to increase the prices of basic items. The new concern about a consistently supportive environment for private investment has appeared more like a euphemism for recolonisation than a way of introducing reform for the benefit of Kenyans, since there is no local private sector to write home about. The net result of the reform process has been to facilitate the takeover of the Kenyan economy by a minority elite who, in the first instance, were responsible for the destruction of the economy.

### Conclusion: Making the State Relevant

This article has argued that since independence, the Kenyan state has witnessed a growing authoritarian leadership and sharp economic deceleration. Such tendencies have spawned human rights abuse, infrastructural and institutional decay, increased social pathologies, especially in urban areas, poverty, disease, illiteracy, inefficiency, ethnicity, and nepotism. Under the circumstances, it has been difficult to create a sense of belonging to the nation-state given that it has promoted an exclusivist rather than inclusivist logic. Rather than make the nation, the Kenyatta and Moi governments fostered political tribalism. To suggest means to reform and ensure state relevance requires, first, that we acknowledge the enormity of the problem and secondly, acknowledge that though state reform is already underway it is deeply flawed. Thus, the challenge is not simply nation-making, but destroying the ethnicised fabric upon which the illegitimacy of the previous regimes rested. Further, the reform initiative is flawed because a core donor force whose perception of the crisis is ahistorical and economic has assumed control of the process. These donors have arrogated themselves the prerogative of designing the reform package in secrecy and implementing it with or without consultation with local players. They have consequently insisted that local agencies account directly to them. The source of the flaw in their reform package lies in the insistence that a certain kind of reform is the only feasible one—the one they suggest. All these factors suggest that the initiative for state reform and the project of nation-making is held by forces whose historical role in Africa has been an imperialist one.

Governments are responsible for state legitimacy. They are central to the process of nation-making because governments mediate the daily process of state legitimacy and nation-building. The distinction between nation and nation-state is basically one between a largely ethno-cultural community (nation) as opposed to a political community (state).<sup>75</sup> The work of nation-building involves the political undertaking to weld the different parts (nations) into one multi-ethnic nation. This is a project of transferring the allegiance of the ethnocultural community to the nation-state without destroying the former. It involves constructing 'a political community with a culturally homogeneous citizenry and a sovereign power concentrated at the center to which all the citizens are subject and owe loyalty'. Since ethnocultural communities are not always coextensive with the nation-state, Gyekye correctly

argues that the focus for a successful project of nation-making always rests on 'the kind of politics that will be practiced at the nation-state level, how, that is, political power is to be shared or used'. For Gyekye, the political behaviour of government and public officials is critical to the smooth running of the nation-state. 'Bad policies of the government may lead to the separation of the nations and, ultimately, the collapse and possible demise of the nation-state'. The government is therefore central to the process of welding together the nation-state because it bears the allocative and redistributive responsibility that is critical to the sustainability of solidarity and allegiance among the plural entities that constitute the nation-state. In Africa nation-making is complicated by the fact that the nation-states were the product of imperial domination. Although everywhere the nation-state has an element of artificiality precisely because, historically, they were welded together from ethnic characteristics, in the context of imperial invasion in Africa, the 'chronological order' of state and nation has been reversed. 'States made nations. Contemporary claims reverse that order'.<sup>76</sup> This reversal of chronological sequence places a responsibility on the sovereign to govern in a manner that welds the nation-state together.

Gyekye suggests that the creation of nationhood require the creation of an open society. This is a democratic society in which the interests of every citizen, irrespective of ethnocultural background, are expected to be given equal consideration; a society in which merit, achievement, and credentials, rather than ethnocultural background, are considered the basis for the offer of a job or a rank; a society in which the idea of the equality of opportunity is appreciated by all and is given practical translation in the allocation of awards, public offices, and educational facilities ... and, thus, gives no cause to an individual to feel cheated because of her ethnocultural affiliation. A society that ... avoids tyranny, ... cherishes not only open government and public accountability but also consensual politics.<sup>77</sup>

Gauged against these criteria, it is clear that the Kenyatta and Moi regimes flouted the nationalist social contract that bound the leaders to the led. Both regimes were authoritarian, corrupt, ethnocentred and nepotistic. They concentrated power in the presidency and allowed a level of institutional decay that promoted inefficiency, corruption, and kleptocracy, all with negative consequences, with particular impact on the poor. In an attempt to make the nation-state out of the fragile situation of the 1970s and 1980s, these regimes 'increasingly resorted to protecting [themselves] against the populace'.<sup>78</sup> In the end, repression and coercion substituted the initial unity project with a unitary project underpinned by a state-driven logic of homogeneity. The recent massive vote against KANU was a direct response to this state-driven logic. This vote has ushered in a new era full of expectations. The vote showed the passion for Kenya and the aspirations for a fresh start. The unity and peace that occasioned the elections was testimony that previous acts of violence were state sponsored. With the massive vote for the NARC government, Kenyans demanded and installed a responsible government that is expected to be attentive to pluralism and diversity in the process of creating a sense of belonging to the nation, a sense that both the Kenyatta and Moi regimes squandered.

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