

## **The role of political institutions – A Case study of Kenya in reference to the Constitution of Kenya 2010**

*By: Wausi Walya\**

### **Acronyms**

AG – Attorney General

CKRC - Constitution of Kenya Review Commission

DPP – Director of Public Prosecution

EACC - Ethics and Anti-Corruption Commission

JSC – Judicial Service Commission

KADU - Kenya African Democratic Union

KANU - Kenya African National Union

KPU - Kenya People's Union

IEBC - Independent Electoral and Boundaries Commission

IOs – International Organizations

NLC – National Land Commission

NGOs - Non-Governmental Organizations

UN – United Nations

### ***Abstract***

*This paper delves into the role of political institutions in democratization and particularly brings out their role in Kenya focusing on post 2010 constitution period. Evolution of democracy in Kenya has received varied support from political institutions based on factors like the changes in the law and the leadership of the day. While it is key that some of the institutions operate independently in order to reap the best of democratization, it is evident that their entrenchment into the constitution is an advantage to keep them away from manipulation. The Presidency, an expanded legislature through*

---

*\* PhD Cand (International Relations), United States International University; LL.M (International Studies) UON; LL.M (Linguistics) KU; Post graduate Diploma (Public Relations) KU; B.Ed., English Language and Literature, KU. Head of Public Relations and Corporate Communications at the Kenya Tourism Board(KTB).*

*representation in two houses (senate and national assembly) at the national level and additional representation at the county level and an independent judiciary form the anchor political institutions that are key in enhancing governance in Kenya. The future of these institutions is strengthened through the entrenchment in the law even though the specific leadership at the executive may interfere with delivery especially where power is under threat.*

**Key Words:** *Political Institutions, democracy, constitution, governance*

## **1.0 Introduction**

Over time, political institutions have been associated with the success of both economic growth and cultural evolution with the relationship of the two evolving over time. While the economy depends on market institutions, it also hinges on legislation which is guided by the constitution, a key political tool. The diverse dimensions of political institutions include the exercising of rights mainly delegated to leaders through political processes like elections.<sup>2</sup> In addition, the trust in these political institutions by the public is a key element of progressive democracy. Trust serves as an enabler to government decision making as well as establishing relations with civil society, an important connection of the people with the government.<sup>3</sup> Politics is a game of winners and losers and political institutions will evolve to accommodate the interest of either divide depending on who is in power as part of<sup>4</sup> the political system within which they operate. The institutions credited for grounding these political systems under which they operate in foster development, play a role in averting possible political upheavals and have a bearing on the strength of the government of the day in achieving the synergies required to achieve the strategies of the government. As a creation of political actors to maintain

---

<sup>2</sup> Jakob de Haan. (2007) *Political institutions and economic growth reconsidered Public Choice*. 131: 281–292

<sup>3</sup> Mishler William & Rose Richard (1997) *Trust, Distrust and Skepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies*. *The journal of politics*, vol. 59, no. 2, pp. 418-51

<sup>4</sup> Swank Duane (2002) *Global Capital, Political Institutions, and Policy Change in Developed welfare states*. Cambridge University Press pp 33 - 40

power, the political institutions continue to evolve making a deliberate response to both domestic and international forces that the states experience. They support welfare and economic policies while shaping power.<sup>5</sup>

Political institutions are therefore structured officially to accommodate their crucial role in the political system of a country for example the legislature. The classification of constitutions has defined various systems of governance like democracy, oligarchy and tyranny among others and thus the role of political institutions defined by the system. The institutions' roles in some of the political systems are guided by the constitution. Democracy has been defined by various scholars as a structure that allows for individual participation in political decisions through defined institutions that exercise their power. It is strongly associated with the freedom of the electorate to add their voice into the preferred way of governance. This process enables political decisions through the competing for the electorates' votes<sup>6</sup>. The participation of these individuals must be regulated even though their space as expected in democracies is one of competition and to an extent the exercising of executive limitations. The three variables of regulation, competition and executive constraint demonstrated in democracy therefore take lead in political institutions. When there are structures in place, there is guarantee of a degree of order in the various ways that political freedom is exercised.<sup>7</sup>

There are various traditions associated with political institutions. These include the Modernist-empiricist, the formal-legal, Idealist and the Socialist. The modern empiricist is associated with formal structures and formally direct

---

<sup>5</sup> Mishler William & Rose Richard (1997) *Trust, Distrust and Skepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies*. *The journal of politics*, vol. 59, no. 2, pp. 418-51

<sup>6</sup> Siddhartha Baviskar and Mary Fran T. Malone (2004) *What Democracy Means to Citizens — and Why It Matters*. *European Review of Latin American and Caribbean Studies / Revista Europea de Estudios Latinoamericanos y del Caribe*, No. 76, pp. 3-23

<sup>7</sup> Sandberg Mikael and Lundberg Per (2012). *Political Institutions and Their Historical Dynamics*. *Theoretical Population Ecology and Evolution Group*. (7) 10

the relationship between individuals and the political systems that are in while the formal legal are concerned with public laws. Idealists concern themselves with managing relations between the citizen and the government and the socialist express issues based on the 'class struggle.' Political Institutions have the direct and indirect participation of the citizen and this can be in the formation of the law and its enforcement among other aspects. The main political institution in democracies include legislative bodies like a parliament, congress, or the senate. This is central in the law-making process thus guarding the welfare of the citizens. The executive in return is associated with enforcing the law, ensuring that it is adhered to. These key institutions and other organs within the political system are kept in check by the judiciary. There may be other secondary political institutions within the political system that are all part of a structure that is meant to enhance democracy.<sup>8</sup>

Political institutions involve a set of rules in which the society is expected to adhere thus contributing to the stability of a country and serving as a guide in decision making. The main purpose of a political institutions is to create and maintain stability. That purpose is made viable by what American political scientist George Tsebelis calls "veto players." Tsebelis (1995) argues that the number of veto players defined as the people who must agree on a change before it can go forward make a significant difference in how easily changes are made. The dynamics of the separate political institutions are critical in their contribution to nation – building processes and transitions that lead to other political happenings like democratization and revolutions. George Tsebelis classifies political institutions as 'veto players' citing that they are key in influencing policy due to their various capacities to exercise power. Political institutions are geared towards resolving issues in political systems through collaboration. Furthermore, they are perceived as the institutions that ensure the effective application of policies by government, allowing for states to map out their priorities as well as keep a check on the fulfillment of any international commitments that have been made in both trade and security. States execute the roles of political institutions differently based on their own

---

<sup>8</sup> Rhodes, R.A.W. (2011) *Old Institutionalisms: An Overview. The Oxford Handbook of Political Science* Edited by Robert E. Goodin, *Political Science, Public Policy, Political Institutions* p 2

circumstances but are all keen on how this converts to economic growth and minimizing of conflict. It is the correlation between political institutions and political policies that coalitions for example are able to negotiate. formed through negotiations.

Historical analysis has been a great way in which political institutions have benefited in their evolvement with different political systems adapting based on the different transitional periods of democracy. In the early 1800s, there are no details on political institutions that reflect how political systems were organized thus there may be no modelling on how they have changed over time.<sup>9</sup>

## **2.0 On Democratization**

Democratization is a process that allows for the participation of citizens in the political system, giving them room to be part of the institutions and structures that manage political power in a less authoritarian environment. Schumpeter further defines democracy as an opportunity where individual become part of decision making as representatives of the citizens through competitive elections.<sup>10</sup> Democratization has been historically accredited with economic growth especially in less privileged countries a debate that has prevailed from the days of Plato and Aristotle and is still alive to date .Their study delves into the relation between democratization and <sup>11</sup> The priority and timing of democratization across different states differ but over the years it has been observed as impactful in enhancing governance. International Organizations (IOs) like the United Nations (UN) play a key role in information gathering and raising awareness to their member states to enable them make decisions on the various democratization stages when they are ready. According to the UN, democratic institutions and processes enhance peace within states and facilitate ease in respect across states during negotiations as well as

---

<sup>9</sup> Max Rånge and Mikael Sandberg (2017) *Political Institutions and Regimes since 1600: A New Historical Data Set.* *Journal of Interdisciplinary History*, XLVII:4 p495–520.

<sup>10</sup> Schumpeter, Joseph A. (1976) [1942]. *Capitalism, Socialism and Democracy.* With a new introduction by Tom Bottomore. New York: Harper and Row.

<sup>11</sup> Elias Papaioannou and Gregorios Siourounis (2008) *Democratization and Growth* ): *Elias* Volume 118, Issue 532 pp 1520 - 1551

transparency especially in both bilateral and multilateral agreements . The perceived transparency and accountability that these institutions bring in the negotiations tables ideally contribute to cohesion. A key brief of UN missions to conflict areas like has been in Congo and Haiti includes the pursuit of overall good governance that includes dialogue in resolving conflict., The recommended democratic institutions must however be customized to suit the law of the particular country. .<sup>12</sup> This also comes with added accountability of states to their citizens. The UN over time has evolved in its role on the support for democratization and played a crucial role especially in the electoral process across many states. The effects of elections that are not free and fair are adverse and where elections are flawed, there is likely to be conflict affecting not only the governance of that country but also neighboring states. The UN's desired position would be to achieve a culture of democratization internationally but that is still a challenge given the varied actors that are involved in the global scene. There are many regional intergovernmental organizations that continue to support the process of democratization and other institutions in development like the Non-Governmental Organizations (NGOs), business groups, institutions of learning and the media among others. Ultimately the success of democratization lies in the commitment of the individuals in the specific states<sup>13</sup>. Democracy is a system of government which embodies, in a variety of institutions and mechanisms, the ideal of political power based on the will of the people and accountable for their collective decision and ideally translating into freedom for all the set of rules within the democracy also create power system observed by all.<sup>14</sup> Political institutions are tools of collectively mitigating issues that are a challenge to the general populace.<sup>15</sup>

---

<sup>12</sup> UN (2010) *Democracy , Peace and Security : The Role of the UN*. p42 – 58

<sup>13</sup> Boutros Boutros-Ghali . (1996) *An Agenda for Democratization*. United Nations p 1 – 2, 18 – 19, 54 – 55

<sup>14</sup> Bassiouni Cherif et al. ( 1998 ) *Democracy: Its Principles and Achievements . Inter – Parliamentary Union*. Geneva

<sup>15</sup> Moe Terry. (1990). *Political Institutions: The Neglected Side of the Story*. *Journal of Law, Economics, & Organization*, Vol. 6 (1990), pp. 213-214

Political processes that create political institutions have closely been linked to governance. Africa has been particularly in focus among many scholars who have sighted various reasons why the continent's growth is poor.

The management of natural resources, the continents standing in the global arena, the fragmentation in the population arising from ethnic interests and the quality of governance are some of the key factors singled out. Africa colonial history and the tendency to continue depending on the west yet it is the preference for private benefit as opposed to addressing public needs that derails the economic agenda. The capture of governments by the political elite and the lack of accountability has led to huge national debts although many Africa countries have moved from single party and dictatorships to democratically elected governments that have put in place political institutions envisaged as an anchor to good governance. The Bretton wood institutions that have invested heavily in Africa underestimated the impact of external factors like drought and changing fortunes in the global markets and instead focused on determining the extend of political goodwill and existing policies. The role of regional organizations like the Organization of Africa Union in the 80s where leaders who came into power through a coup were banned was key in ensuring that democratic processes were not flawed.<sup>16</sup>

### **3.0 The History of Democratization in Kenya**

Early democracies traced to Athens instituted political institutions through formal and informal rules engaged to determine the constraints and incentives faced by key players in a society. Given the endogenous feature of political institutions, there has been the need to strategically allocate powers that can stimulate appropriately chosen institutions to help develop political systems. Political institutions are therefore an integral part of civilization as they

---

<sup>16</sup> Humphreys, M. and Bates, R (2005). *Political Institutions and Economic Policies: Lessons from Africa*, *British Journal of Political Science*. Vol. 35, No. 3 pp. 403-428 Cambridge University Press Stable

demonstrate the power of the community in law enforcement through those that they elect to represent them.<sup>17</sup>

The quest for a review of the constitution in Kenya that led to a new one promulgated in 2010 was driven by the urge for the need to transit into a new level of democracy that would introduce checks and balances and especially in the executive which over time was regarded as too powerful and thus prone to abuse. The search for a new constitution was also driven by the yearning to establish two levels of government, at the national level and at the county level that was envisaged to be a gateway to economic benefits that come with decentralization. The transfer of authority and resources to regional areas was envisaged to accelerate development in all parts of the country by allowing accountability through actors elected at that level without over relying on the national government. The success of the constitution is pegged largely on a vigilant populace but more also on the strength of the political institutions set up by the constitution. Kenya's constitution came through a structured and peaceful referendum held in August 2010. For the political institutions to play their role, the values and the principles of the constitution must be safeguarded. Key was to promote the participation of citizens in the political affairs of the country, allowing them the freedom especially in the electoral process.

Kenya's democracy journey since independence in 1964 has evolved, beginning with the merger of Kenya African National Union (KANU) and Kenya African Democratic Union (KADU) which effectively depressed the possible emergence of regional powers. The 1960 Lancaster house conference that was aimed at the transfer of power, the larger nationalist movement saw a division into Kenya African National Union (KANU) and Kenya African Democratic Union (KADU). Later those politicians who were disgruntled in government tried to begin a new political party, Kenya People's Union (KPU) but with the ban of opposition parties in 1969, KANU consolidated power.

---

<sup>17</sup> Low Polly (2002). *Cavalry Identity and Democratic Ideology in Early Fourth Century Athens. Proceedings of the Cambridge Philological Society, 2002, No. 48, pp. 102- 122*



KANU won the pre independence elections and within a year of rule , most of the opposition members of Parliament in KADU has rejoined the ruling party.<sup>18</sup> After the attempted coup in 1982, the constitution was amended to allow for a one-party state only for the government to succumb to the pressure of the growing demand for democracy and reverse the same in 1991 introducing civil and political freedoms in line with what was happening in the rest of the world as part of the third wave.<sup>19</sup>

The colonial times leveraged on ethnicity to consolidate power, strengthening it as an informal institution thus stagnated the possibility of formal political institutions. These led to regional powers that were later to work against Kenya's first president Jomo Kenyatta as regional chiefs began to use the same tactic to threaten his rule. His call for 'harambee' and the firm implementation of a one – party rule was his beginning point and what later presidents after him used to build on the political institutions of their time.<sup>20</sup>

Over the years of the process of democratization , the civil society has played a key role . However , in the period that called for change from the long rule of Moi, the civil society can be faulted for having focused too much on the personality - Moi and lost the firm leadership to punch on the ideologies that would be embraced and understood by the public. Instead , the key focus was to get Moi out of power without necessarily offering any alternative policies. Existing vices like corruption for example did not end as soon as Moi was out of power and there was evidently a jostle over power by the opposition.

---

<sup>18</sup> Throup David (1993). *Elections and Political Legitimacy in Kenya. Africa: Journal of the International African Institute* , 1993, Vol. 63, No. 3, *Understanding Elections in Africa* , pp. 371-378

<sup>19</sup> Kanyinga Karuti (2014) 'A review by AfriMAP, Open Society Initiative for Eastern Africa and the Institute for Development Studies (IDS), University of Nairobi Democracy and Political Participation. p xiv, 4

<sup>20</sup> Orvis, Stephen. (2006). *Conclusion: Bringing Institutions Back into the Study of Kenya and Africa. Africa Today*, (53) 2 *Creating the Kenya Post-Colony*. p. 107

<sup>21</sup>The democratic principles that the new Kenyan constitution focuses on include the separation of powers, financial and decision-making independence through an elective process to enable effective service delivery and inclusion of the two thirds gender rule in representative organs. These principles are tied to the national values that the constitution raises in article 10 beckoning Kenyans to adhere to transparency and accountability. The constitution introduces two levels of government, promotes, and protects citizen rights, encourages citizen participation<sup>22</sup> and the strengthening of political parties<sup>22</sup>.

#### **4.0 A Case Study of Kenya**

Colomer 2011 defines institutions as structures or a set of guidelines that give people in the way they operate within a certain environment. Political institutions, which can be formal or informal within and outside of government have different features that enable manage the actions of political leaders. The institutions must continually demonstrate their power in managing the survival and advancement of the electorate. Their structures should enable political leaders to have the means to access resources and align these within systems that provide for the citizens. The political institutions entrenched in the constitution are geared towards making the state more effective alongside other key support organs like commissions that play like the judiciary. Additionally, these institutions support decided on the economy, human rights and other regulations that enhance governance <sup>23</sup>.

Kenya over the years continues to build on some of the colonial institutional legacies as a way of sustaining political institutions as part of governance. Strong leadership and linkage between these political institutions have been key for leaders in achieving control and mobilizing power across the different parts of the country. The role played by the provincial administration before the new constitution came in to place for example was one of the strong

---

<sup>21</sup>Murunga, R. Godwin and Nasong'o W. Shadrack ed (2007). *Kenya: The Struggle for Democracy. Codesria books*

<sup>22</sup>Murray, Christina (2013). *Kenya's 2010 Constitution Christina Murray. 61 Neue Folge Band Jahrbuch des öffentlichen Rechts. P 34 – 36*

<sup>23</sup> Colomer, J. M. (2011) *Comparative Constitution. The Oxford Handbook of Political Science (Edited by Robert E. Goodin) p 11 - 12*

political systems that had served the presidency. The demand for democracy arising from the international pressure to enhance democratization in the early 90s caught up with President Moi . This was part of the international shift towards aligning democratic arrangements to create the necessary synergies brought about by enhanced globalization part of the gains being exposure to international markets.<sup>24</sup>

#### **4.1 The constitution of Kenya**

Kenya's constitution promulgated in 2010 was the end of a long journey of a controversial constitution making process that began way back in 1991. This was after the declaration of the end of the single-party system, a demonstration of the importance of democracy to Kenya as a developing state. The first formal attempt to come up with a new constitution was through the Constitution of Kenya Review Commission (CKRC) established in 2001 and envisaged to address Kenya's political challenges through a constitution review. and whose product was rejected through a referendum in 2005. The contest for power culminated in the 2007 – 2008 post electoral violence, a result of long-term ethnic tensions that existed since independence. The product of this process was largely achieved through public consultation.<sup>25</sup> Its rejection was followed by the sacking of cabinet members who had supported the constitutional change thus the beginning of the tension between government and the leading political parties. This section includes various institutions established by the Constitution of Kenya 2010 to support the democratization process and ways in which they are connected to democracy.

The Key institutions in the constitution include the presidency also referred to as the executive, the legislature, and the Judiciary. There are various other support institutions that were introduced and some enhanced to ensure the support of an enhanced democratization process with good governance. The

---

<sup>24</sup> Rundra Nita ( 2005) *Globalization and the Strengthening of Democracy in the Developing World. Journal of Political Science, Vol. 49, No. 4. pp. 704-73*

<sup>25</sup> Diepeveen, Stephanie. ( 2010) '*The Kenyas we don't want'* : popular thought over constitutional review in Kenya. *The Journal of Modern African Studies* , Vol. 48, No. 2 , pp. 231-258

growth of civil society, professional bodies and mushrooming of NGOs began at this time as it availed avenues for alternative voice to government. The strengthening of the electoral system was a key benefit of the democratic space availed at the time. Additionally, the strengthening of the civil society saw enhanced capacity in individuals to enable them to engage with government, stronger political parties, judicial reforms and a more liberal media.

#### **4.2 Political Institutions entrenched in the 2010 constitution**

The constitutional structures that are entrusted with sovereign power are the parliament and the legislative assemblies in the county governments, the national executive and the executive structures in the county governments, the Judiciary and independent tribunals and the sovereign power of the people at both the national and county level. Dahl 2002 lists elected officials as a key political institution. It is the demonstration of a representation of the people thus democracy at display. Since the Middle Ages, representation has served a purpose in allowing governments to get consent for key decisions that affect the electorate and especially legislation <sup>26</sup>

*The Executive* is the central political institution that derives its power from the people of Kenya and comprises of the president, his deputy and the cabinet secretaries. They exercise their power as a service to the people with the president as head of both state and government. The executive is expected to respect the constitution, be custodian of the state sovereignty and promote good governance including respect for human rights. He has the responsibility to inform the citizens through a parliamentary address on the progress made in line with national values. Other key roles include the nomination to office of the cabinet and other key government officers. He takes full charge of ensuring all international obligations are met. The President comes power through an election process through which he earns more than half of all the votes cast in the election and of these twenty-five per cent of the votes from more than half of the counties. <sup>27</sup>

---

<sup>26</sup> Dahl A Robert. (2005) *What Political Institutions Does Large-Scale Democracy Require?* Source: *Political Quarterly*, Vol. 120, No. 2 . pp. 187-197

<sup>27</sup> *The Constitution of Kenya, 2010*.p 77 - 78

**The legislature** is a key political institution in Kenya and its role is elaborated in article 93. (1) .Persson (2002) argues that there is an overwhelming concentration of power in parliament , a factor that implies that they can easily collude at the expense of voters and especially in the environment where the government needs them as a majority to deliberate on legislation. The ruling party and /or the party with the most seats in parliament wields a lot of power in decisions making.<sup>28</sup> The 2010 constitution introduced a second house, the senate in addition to the National Assembly which was the only institution in legislature based on the previous constitution. Parliament, through these two arms is a representation of the people through the election process thus demonstrating sovereignty and the people's will. This is a key institution in safeguarding the constitution and can make amends for the same if need be. Parliament is also entirely responsible for manifesting the diversity of the nation, represents the will of the people, and exercises their sovereignty. The people at the constituencies are represented at the National Assembly which directly involves itself in resolving the issues of the electorate, in annual budget allocations and an overall oversight role including review of the dealings of the President, the Deputy President and other State officers.

The Senate not only ensures Political representation of County Governments, but also serves to monitor the exercise of power by the parliament. The senate represents the electorate at the county level and therefore is tasked with managing the interests of the devolved government. In addition to legislation, the senate oversees revenue allocation in counties as well as oversight on key state officers including the president and the deputy president and cross checking on the role of the national assembly.

There have been arguments that the legislature needs to be incentivized due to the strong position that they hold in policy making that can hold government

---

<sup>28</sup> Persson Torsten and Tabellini Guido (2002 ) *Political Economics: Explaining Economic Policy*. MIT Press

at ransom. With election cycles predictable in most countries, the role of the legislature is crucial.<sup>29</sup>

**The Judiciary** is an independent state organ that implements its mandate through courts and tribunals. It is supported by various other offices including the Attorney General (AG), Director of Public Prosecution (DPP) and the Judicial Service Commission (JSC). The overall mandate of the Judiciary and its auxiliary institutions is to ensure that justice is executed without delay and any possible alternative methods of resolution like mediation and arbitration are applied where needed.

### **4.3 Supporting institutions**

The *Kenya National Human Rights and Equality Commission* (KNHRC) was specifically established to ensure compliance in promotion of human rights as well as promote gender equality and equity source. This applies to both public and private institutions acting on behalf of the state where there are agreements on human rights. The National Land Commission (NLC) oversees the management of public land at both the national and county levels and overall oversight of all matters related to land. The Independent Electoral and Boundaries Commission (IEBC) takes responsibility for the electoral process and referenda, ensuring registration and education of voters is effectively carried out.<sup>30</sup> Persson argues that most world governments will carry our elections with an intention to allocate both political and legislative control and this is especially so in a case where the executive power relies heavily on legislature for its survival<sup>31</sup>

**The Ethics and Anti-Corruption Commission (EACC)** referenced in chapter 6 article 79 is a public body established under an act of parliament with the

---

<sup>29</sup> Ferraz Claudio & Finnan Frederico (2008) *Motivating Politicians: The Impacts of Monetary Incentives on Quality and Performance*. Discussion Paper No. 3411. Institute for the Study of Labor

<sup>30</sup> *The Constitution of Kenya, 2010 P 40 – 41, 45, 53*

<sup>31</sup> *Persson p 898*

responsibility to fight and prevent corruption while ensuring that the general populace is well appraised with public education that promotes integrity.<sup>32</sup>

The ***Political Parties*** Act also provides for the regulation of political parties and how political parties should be regulated and governed. Political parties are the vehicles of representative democracy through representing the interests of society and committing their leaders to democratic participation. Their capacity to mobilize the electorate is a demonstration of their strength in aggregating diverse groups as part of strengthening national cohesion.

They are ideally expected to promote socio-economic growth as part of political socialization and policy formulation.<sup>33</sup> Other support institutions include the commission for revenue allocation, the salaries and remunerations commission, the public service and the national police service among others that contribute to enhanced governance.

## **5.0 The future of Political institutions**

While there are many long-term gains that can be associated with political institutions, some governments may miss out on these due to their focus on short term goals thus jeopardizing the gains of generations to come. It is key that legislators transform law into policies that serve governments in the long term. Some of the proposals made to ensure safeguarding of political institutions include political manifestos, parliamentary committees, future country specific visions, independent councils as well as performance indicators that keep governments on check. These collectively respond to anticipated issues in the future in key areas like the economic, social and environmental aspects. There is also a deliberate effort to keep the government on check through committee reporting while aligning governments to global issues like climate change in their foreign policies. The gains of preserving political institutions include political stability, moral legitimacy in governance and enhanced political access by the citizens. Some of the interferences in

---

<sup>32</sup> *Ibid*, p 50

<sup>33</sup> *Friedrich Ebert Stiftung (FES) (2010) Institutionalizing Political Parties in Kenya. P v - 2<sup>33</sup> The Constitution of Kenya 2010 p 59 - 60*

achieving stable political institutions include media reporting, a weak economy that may introduce dependence on other states, electoral cycles that have no firm structures, and poor auditing procedures of the government structure. In highlighting these areas, Caney (2016) concludes that self-interest and self-preservation of the political class will determine how successful political institution can be.<sup>34</sup>

There is an element of neglect that is associated with political institutions. While in their role they serve to mitigate on overall political challenges and as well to coerce and redistribute government information, they pitch political losers against the winners. The capacity for political institutions to influence political and social behaviors cannot be ignored. The presidency and all the bureaucracies that come with legislation of both mainstream political institutions and other support institutions is key for every political system. It is however questionable if these political institutions give room for public authority. Through the perception of political parties that lose elections, it can be argued, that winners are likely to manipulate the role of the public. Political institutions provide solutions to collective challenges be they economic or social.

Legislators are the main actors through collective decisions that enact political institutions, and the key question would be if they act in the interest of the effectiveness of these institutions. The uncertainty that comes with politics however tends to see the same politicians keen on control thus threatening the very structures that they have been put in place. There may be interference with the interests of legislators in pursuit of their own interests based on their preferences as they pursue different structures in politics. If we are to appreciate why political institutions look and perform as they do, we need to pay attention to the interests they are intended to serve, and thus to the roles that different types of actors play.<sup>35</sup>

---

<sup>34</sup>Caney, Simon (2016) *Political Institutions for the Future: A Five-Fold Package. Institutions for Future Generations* (Ed. Inigo Gonzalez and Axel Gosseries)

<sup>35</sup>Moe, T. M. (1990). *Political institutions: The neglected side of the story. Journal of Law, Economics, and Organization*, 6(Special Issue), p 214, 221, 223 - 224 , 236



Presidents are singled out as the most powerful players in the politics as they are not only overall authority but they have veto powers over the legislature. Their interests are much more complex than those of the legislators as their responsibilities investigate the bigger picture. Kenya has entrenched political institutions thus they are formalized through legislation. However, across different regimes, it is possible that the same laws may not be honored to favour those in power. Kenya's official opposition role now seems compromised by the 'handshake' between the president and the leader of official opposition Hon. Raila Odinga. They have made a peaceful agreement that opened doors to a working relationship between government and opposition. This is part of conflict transformation as witnessed in resolving the 2008 disputed elections. The 'handshake' extended an opportunity to peacefully neutralize the election crisis of 2017.<sup>36</sup> Some of the official opposition members have since taken up formal positions to serve in government. This has effectively weakened the 'watch – dog' role that the opposition plays. This can be termed as deceptive to the voters who have supported the opposition as their interests are no longer prioritized. Therefore, it appears that personal interests among politicians weaken and can wipe off strong political institutions. The key political institutions in Kenya to an extent have been destabilized and as a result compromised the political stability. Since the multi-party era in 1992, political parties for example have been effective in closely monitoring government deliverables.

The control of the presidency and the legislature by the majority party may also have far reaching effects on political institutions as majority party agenda may clash with the intended deliverables of the key political institutions especially closer to election periods. In the year 2017 Kenya witnessed a show down between the leading party politicians and the opposition in a disputed presidential election where the judiciary as a key political institution played a role in determining the same. The opposition remained unconvinced about the ruling party's win thus an element of no confidence in a key political institution, the judiciary. Due to the controversial election results, the legislature at the onset of the new electoral cycle was already agitated based on the ruling. It is possible that when winners in elections impose what is

---

<sup>36</sup> *Horn Policy Brief (2018). Conflict Transformation in Kenya: What Raila Odinga-Uhuru Kenyatta Handshake Should Mean. No .5*

perceived as unfair measures to the losers, when these losers gain power in the next elections, they avenge on the same.

While the future of the state is known as it depends on the existence and survival of political institutions that are created to act on behalf of the sovereign, the commissions and independent offices created are aimed at checking that the key institutions exercise their powers for good governance and maintain accountability of the acts and the omission of the state. These institutions are not independent of the state thus the overall stability of the state will determine the future of the institutions. The electorate remain the biggest threat to the future of these institutions through exercising their power that they delegate to the legislature who must keep the state on check. Parliament may not necessary be effective at checking the executive arm most likely to overreach the legislature without serious consequences.

## **6.0 Conclusion**

Some of the credible ways to manage the risks possibly associated with the opportunistic behaviors found on political systems is having these political institutions firmly entrenched in the constitution. This ensures continuity in maintaining the balance of power as part of the democratization process. There have been arguments for political institutions that point towards an association between the role of political institutions and growth, and most consolidated democracies can attest to the positive outcomes<sup>37</sup>. The underlying issues include questions on whether political institutions have the capacity to produce change in any country, the more the veto powers, the higher the possibility for collaboration and cohesion, the better for the democratization process and an assurance of good governance. Kenya has had one of the most robust constitutional journeys that has resulted to political institutions strongly embodied in law , however , there must be a deliberate effort by all organs pf government to guard against any retrogression of this key political instruments. A threat to the constitution is a threat to the very core of the progressive sovereign state and its people that it is designed to protect.

---

<sup>37</sup> Moe, T. M. (1990). *Political institutions: The neglected side of the story*. *Journal of Law, Economics, and Organization*, 6(Special Issue), p 213-254.

Competitive political institutions are likely to influence the country's economy positively arising from the stability that will attract more investors. When democratic processes put in place political institutions that keep the government on check accountability is enhanced leading to more gains in public good. While political processes may be viewed as self-regulating, if there is no enhanced accountability, the same institutions created by the processes will be open to abuse and fail. A study to establish the level of trust in political institutions would inform Kenya more as democratic state on the attitudes of the citizenry towards political institutions.

## References

Barro, J. (1999) Determinants of Democracy *Journal of Political Economy*, Vol. 107, No. S6 pp. S158-S183

Bassiouni Cherif, Cherif Bassiouni (General Rapporteur), David Beetham, Justice M. Fathima Beevi (Ms.), Abd-El Kader Boye, Awad El Mor, Hieronim Kubiak, Victor Massuh, Cyril Ramaphosa, Juwono Sudarsono, Alain Touraine, Luis Villoro (1998) *Democracy: Its Principles and Achievements*. Inter – Parliamentary Union. Geneva

Boutros-Ghali, B. (1996). *An Agenda for Democratization*. United Nations. 1 – 2, 18 – 19, 54 – 55.

Caney, S. (2016). *Political Institutions for the Future: A Five-Fold Package. Institutions for Future Generations* (Ed. Inigo Gonzalez and Axel Gosseries).

Colomer, J. M. (2011). *Comparative Constitution. The Oxford Handbook of Political Science*. (Edited by Robert E. Goodin), 11 – 12.

Everts, P. (2002). *Democracy and War*. In: *Democracy and Military Force*. Palgrave Macmillan, London.

Jakob de Haan. (2007) *Political institutions and economic growth reconsidered Public Choice*. 131: 281–292

Humphreys, M. and Bates, R (2005). *Political Institutions and Economic Policies: Lessons from Africa*, *British Journal of Political Science*. Vol. 35, No. 3 pp. 403-428 Cambridge University Press Stable

Kanyinga, K. (2014). ‘A review by AfriMAP, Open Society Initiative for Eastern Africa and the Institute for Development Studies (IDS), University of Nairobi *Democracy and Political Participation*. xiv, 4.

Kessler, Christl, Rüländ Jürgen and Stefan Rother. (2009). *Democratization through International Migration? Explorative Thoughts on a Novel Research Agenda. European Journal of East Asian Studies*, 2(8), 161–179.

<sup>1</sup> Throup David (1993). *Elections and Political Legitimacy in Kenya*. Africa: Journal of the International African Institute, 1993, Vol. 63, No. 3, Understanding Elections in Africa, pp. 371-396 Mikael, S. and Per, L. (2012). *Political Institutions and Their Historical Dynamics. Theoretical Population Ecology and Evolution Group*. (7) 10

Mishler William & Rose Richard (1997) *Trust, Distrust and Skepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies*. *The journal of politics*, vol. 59, no. 2, pp. 418-51

Moe, T. M. (1990). Political institutions: The neglected side of the story. *Journal of Law, Economics, and Organization*. 6(Special Issue), 213-254.

Murray, C. (2013). Kenya's 2010 Constitution Christina Murray. 61 Neue Folge Band Jahrbuch des öffentlichen Rechts. p747 - 788.

Orvis, S. (2006). Conclusion: Bringing Institutions Back into the Study of Kenya and Africa. 107. *Africa Today*, 53(2), Creating the Kenya Post-Colony, 95-110.

Pereira, C. and Teles, V. (2008). *Political Institutions as Substitute for Democracy: A Political Economy Analysis of Economic Growth*.

Rundra Nita ( 2005) Globalization and the Strengthening of Democracy in the Developing World. *Journal of Political Science*, Vol. 49, No. 4. pp. 704-73

Rustow, A. (1970). Transitions to Democracy: Toward a Dynamic Model. *Comparative Politics*. (2) 3, 337 – 363.

Stiftung, F. (2010). *Institutionalizing Political Parties in Kenya*. p v.

Swank Duane (2002) Global Capital, Political Institutions, and Policy Change in Developed welfare states . Cambridge University Press pp 33 - 40

Persson Torsten and Tabellini Guido (2002 ) *Political Economics: Explaining Economic Policy*. MIT Press

Tsebelis, G. (1995). Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multilateralism and Multipartyism. *British Journal of Political Science*. 25 (3), 289-325.

Wiredu, K. (2001). Democracy by Consensus: Some Conceptual Considerations. *Philosophical Papers*. 3(30), p. 227-244.

*Econometrica*, Vol. 70, No. 3 (May, 2002), 883–905

DO POLITICAL INSTITUTIONS SHAPE ECONOMIC POLICY?

By Torsten Persson