



## **Kenya: Political Parties in the New Constitutional Order**

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**By PETER KAGWANJA**

# Kenya: Political Parties in the New Constitutional Order

Peter Kagwanja <sup>1</sup>

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*The new legal regime, ushered in by the successful August 2010 referendum on a new constitution demands more structured, effective and democratic parties. While the future of party democracy in Kenya's second republic looks more certain than before, the manifestly dysfunctional, top-heavy and fragmented political parties face a stark choice: Democratize or perish. They must forge strong alliances to meet the challenge of nominating aspirants for a six-tier leadership structure: Presidential, Senatorial, gubernatorial, parliamentary, civic and mayoral positions.*

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On the road to the watershed General Election in 2012, the choices for Kenya's political parties are stark: democratize or perish.

The need to steer clear of the chaotic elections that brought Kenya to a tipping-point in 2007, the imperatives of the new Constitution and the impact of the recent by-elections have sounded the death knell for the country's manifestly dysfunctional, top-heavy and fragmented political parties.

With Kenya's return to multi-party system in 1991, the numbers of political parties rose meteorically from one (KANU) to over 160 registered parties by November 2007.

This signified the wave of democratisation that washed over Kenya from the early 1990s, which has culminated in the triumph of a new Constitution in August 2010.

## **Parties Act**

Following the coming into effect of the Political Parties Act on December 31, 2008, this number fell to 38, but political parties have remained the last space to be won for democracy.

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<sup>1</sup> Prof Peter Kagwanja is the President of the Africa Policy Institute, a Kenyan academic and a governance consultant: [pkagwanja@africapi.org](mailto:pkagwanja@africapi.org)

Indeed, in the 2007-2008 stint, the two main political formations served more as “war fronts” in the post-election conflict than political parties, putting the country at the risk of state failure.

The new Constitution has not only created a new framework for political stabilisation, but is also poised to transform political parties into veritable “election machines” to fill numerous positions it has created. But as for now, Kenyan parties are a pale shadow of the well-oiled and powerful “election machines” in advanced democracies.

In addition to their weak structures, personality cults, power tussles, ethnic divisions, financial instability and dependence on external (largely donor) resources, extant parties have rarely adhered to any principles, guidelines or ethical codes governing democratic elections.

They now face the maturity test to carry out democratic primaries in the upcoming by-elections and the General Election. The new Constitution has irreversibly re-engineered Kenya’s party system as witnessed in the continuing debates on the country’s political future.

Even as Kenya remains a de facto multi-party state, the new Constitution appears to have, in reality, ushered in a two-party state ala America. This transformation has created a marketplace of contending ideas on the future of political parties in Kenya.

Four sets of ideas on how to align party politics to the unfolding order are discernible, fuelled by the losses by the dominant parties in the Juja and Makadara by-elections.

Foremost is the “centrifugal thesis” espoused by those favouring the breakdown of coalitions like PNU, with its 23 affiliated parties, into separate parties garnering for power in the state and devolved structures.

This idea has been bolstered by Narc-K’s unprecedented victory in Juja and Makadara. It also underpins the fratricidal contest between ODM-K and KANU in Wajir South by-election slated for October 13.

The second set of ideas is the “run-off thesis”, which has been given impetus by the failure of PNU coalition to unite.

Those cuddling this thought call for the strengthening of separate affiliate parties to sponsor presidential candidates in 2012 as a way of using the run-off provisions in the new Constitution to resolve the long-running power tussles.

### **Third set**

The third set of ideas is the “dominant-party-in-the-county” theory, inspired by the creation of counties as the centerpieces of devolution. This line of thinking is identifiable with the Grand National Unity (GNU) initiative as one of the parties laying claim to the populous central Kenya region, and a response to the state of flux within the PNU coalition.

Finally is the “centripetal” thesis espoused by intellectuals like Prof Makau Mutua (Sunday Nation, October 3, 2010), strategists and voices in Kenya’s public sphere calling for the active re-engineering of the PNU and ODM formations into organic alliances in the wake of their crushing losses in recent by-elections.

As such, the urgency to re-engineer these alliances into cohesive, effective and democratic structures way ahead of the 2012 elections is spawning a flurry of high-level consultations and retreats now, causing strains in the Grand Coalition government.

Be that as it may, the new legal regime is forcing parties to be more structured, effective and more democratic, but also posing new challenges. Kenya needs strong alliances to meet the challenge of nominating aspirants for a six-tier leadership structure. Previously, parties had only to pick candidates for the President, Parliament, and civic positions.

This has now changed. Parties have now to nominate six categories of leaders: President and Deputy President; Governors and Deputy Governors; Senators; Members of Parliament; and Civic Leaders. Moreover, the provision for direct election of mayors in Nairobi and other major cities, demands parties to nominate candidates for mayoral seats.

The future of political parties looks more certain today than yesterday. The 2008 Political Parties Act proviso that a candidate can only leave or join a party after giving the Registrar of Political Parties a 14-day notice of their intention to do so has potentially fortified party democracy.

It puts to an end the ruinous trend by leaders to willy-nilly jettison one party and seek the ticket of another when they lose elections or feel aggrieved or simply lost an election.

### **Settling disputes**

The increasingly youthful and enlightened voter is now predisposed to reject a candidate awarded direct nomination from party headquarters or through elite wheeler-dealer ploys.

The creation of an Independent Electoral and Boundaries Commission with a free hand to ensure that parties adhere to democratic processes and, if required to do so, to even supervise or conduct party primaries, ushers in a new era of party democracy.

While parties may develop internal capacity to stage free and fair nominations, the mandate of the Independent Electoral Commission should be expanded to address party democracy.

Parties should create mechanisms for timely settling of disputes arising from nominations. The high cost to print ballot papers, pay for returning officers, presiding officers, counting clerks and security agents has made party democracy expensive. However, as one Ghanaian expert recently quipped, “If you think democracy is expensive, try autocracy, one party state, or totalitarian regimes.”

Failure to hold competitive primaries is tantamount to “pushing athletes to the Olympics without conducting national trials”. In the past, this cost-cutting devise has spelt doom for

parties like PNU, which garnered only 43 seats when research has shown it could have secured at least 104 seats in the 2007 parliamentary elections.

The new leadership structures have imposed a heavy financial burden on smaller political parties – many of which will wind up or wither away. But these changes have created impetus for larger, cohesive and effective party alliance as the cornerstone of democracy.

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