

**THE STRUGGLE FOR DEMOCRACY IN KENYA THROUGH THE
ELECTORAL PROCESS**

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KOKI MULI¹

Introduction

It is a great honour and privilege to get this opportunity to share our thoughts and experiences from Kenya with you. I had been asked to write and make a presentation on “Presidentialism and Constitutionalism in Africa: ‘Third Term’ Phenomenon/Extension of Tenure: The Kenyan Experience.” I wrote back and I said, strictly speaking we have not experienced this phenomenon, at least not in the manner in which you know about! So I thought to write about another phenomenon that we hardly link to our struggle for democracy and which continues to undermine the democratisation process, I am sure in other African countries, but certainly I know in Kenya. This is the phenomenon of our history of deeply embedded authoritarianism which presents serious challenges to our struggle for democracy and good governance.

The quest for democracy and good governance in Kenya has always been closely linked with the struggle for a home-grown comprehensive Constitution. Kenya inherited a Westminster Constitution which was negotiated and written in England. Even though a few Kenyans were invited to the Lancaster House talks on the independent Constitution many argue circumstances have fundamentally changed necessitating an overhaul of the current Constitution.

The Constitution creates all the key institutions, provides for a Bill of Rights and creates structures and systems which facilitate equitable distribution of national resources; justice; democracy; accountability and the respect of the rule of law. Democracy is not just about regular elections but genuine participation of the people in decision making, governance and development of their country in an atmosphere that enables people to set and realize their own priorities.

The struggle for a new Constitution is closely associated with the struggle for political participation and the quest to level the political playing field. Since independence, political leaders continue to sabotage the process to overhaul the Constitution to safeguard their individual interests and perpetuate incumbency. Past presidents of Kenya have mainly proposed amendments to the Constitution which enhance the powers of the Presidency and protect the interests of that office.

Therefore the struggle for democracy and for a new Constitution has been the struggle against authoritarianism in Kenya. This struggle is closely associated with the quest to improve the legal and administrative framework of the electoral system and process in order to secure the election of good leaders who will facilitate and lead a process that would give us the Constitution that we desire.

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This paper traces for discussion, the history of the struggle for democracy through electoral process focusing on the experience of Kenya in order to understand the challenges we need to address as we prepare for the general elections expected later this year (2007). The paper is divided in three general sections:

1. The origin and the history of authoritarianism and the struggle for democracy in Kenya
2. An introduction to Kenya's electoral legal and administrative framework
3. The roles and functions of the ECK

1. THE ORIGIN AND THE HISTORY OF AUTHORITARIANISM² AND THE STRUGGLE FOR DEMOCRACY³ IN KENYA

1963

Kenya became independent on the basis of a Constitution providing for a multi-party, quasi-federal system of government (known locally as majimbo and which never quite took off as a system of government).

There were two political parties, which were both founded in 1960: The Kenya African National Union (KANU) – the party that formed the Government (headed by Mzee Jomo Kenyatta) and the Kenya African Democratic Union (KADU), the opposition.

The quasi-federal system had an elective bi-cameral Legislature: A Senate comprising Single District Representatives and a Lower House of Representatives elected on Constituency basis.

According to Prof Oyugi,⁴ ‘it was a system devised by the out-going colonial authorities to take care of apprehensions of the so-called minority ethnic groups regarding the future security of the land in particular.’”

He further notes in his paper that the two large ethnic communities in Kenya – the Kikuyu and the Luo were in control of KANU while the minority ethnic groups controlled KADU

² Authoritarianism is the opposite of democracy and is described using other terms such as ‘totalitarianism, despotism, fascism, dictatorship, repression, oppression, domination, suppression, tyranny, etc.’

³ Democracy denotes a government that is periodically and regularly elected in a free and fair electoral process by the eligible voters in order to represent and address the needs and the interests of the voters – a government of the people by the people for the people. It denotes structured participation in governance and decision-making processes of the government; constant and structured consultation of the people by the government and constant accountability to the people by the government for its actions. Democracy presupposes social equality (equitable distribution and use of national resources), justice, equality, egalitarianism and processes that foster consensus for the good of all the citizens. Democracy however universal must be adapted to the circumstances, histories, experiences and the situations of every country, there should not be prescriptive, one-size-fits-all democracy.

⁴ Prof. Walter O. Oyugi, “Ethnic Relations and the Democratization Process in Kenya, 1990 – 1997,” in Walter O. Oyugi (Ed), *Ethnicity and Democratization in Africa (Dakar: CODESRIA Book Series)*, p 2.

which they formed to use in the struggle for a constitution during the transitional period that would protect them from the Kikuyu and the Luo.

According to Prof. Oyugi, the white settlers had no confidence in the Kikuyu and the Luo so they introduced the concept of neo-federalism to protect their interests of land ownership and occupation.

As a result, a combination of ethnic, racial and material considerations emerged as key determinants of the political process, quite far apart from the notion of democracy.

The Provincial Administration (the PA) (this system include Provincial Commissioners - PCs, District Commissioners - DCs, District Officers - DOs, Chiefs and Assistant Chiefs) supported by a Police Force known as Administrative Police was retained from the colonial period as the prerogative of Executive Authority and power.

The PA was utilised by the Colonial Government to control the movement of people, public gatherings and mobilisation of free labour and to compel natives to attend government meetings.

1964

Through intimidation and enticement by the government KADU Members of Parliament were forced to abandon their party within the first year of independence (Oyugi). Kenya emerged as a *de facto* one-party State under KANU.

President Kenyatta and his supporters were alarmed by an army mutiny at Lanet Barracks near Nakuru which was associated with Mr. Odinga thus making him defensive from then on until his death in 1994. He was always associated with opposition politics, the doyen of opposition of Kenya.

1965

The President's men were pushing towards a capitalist economy with the support from the West while the supporters of Mr. Odinga were pushing for a socialist economy.

The President began to focus and utilise the Provincial Administration as the major link between the Executive and the people in which from then on political activities, licensing, cancelling of political meetings and determining speakers in political meetings were controlled and determined by the PA.

The institution of the political party began to lose its purpose and control

1966

The rebels in KANU (also referred to as the socialists) coalesced around the then Vice-President of Kenya and of KANU, Jaramogi Oginga Odinga while the President's men coalesced around Thomas Joseph Mboya who was then the Secretary General of KANU.

The ultimate objective, however, was the control of the State and the patronage associated with it with each group struggling to capture and promote its interests and support their factional struggles (Oyugi).

The KANU government caused a series of Constitutional amendments which finally defeated and removed the quasi-federal system of government leaving only a central government which was easily controlled and manipulated from the Centre.

The collapse of the quasi-federalism and the defeat of KADU led to power struggles in KANU over ideological differences (capitalism/conservatism and socialism/rebels) and control.

In order to completely remove the rebels from KANU, the government stage-managed KANU elections in Limuru in which all the rebels/socialists were removed from KANU positions.

Odinga resigned as Vice President of both Kenya and KANU and founded the Kenya People's Union (KPU).

Kenyatta moved fast to contain what he felt was a personal challenge from Odinga by alienating Odinga through KANU elections and pushing his supporters from the centre of power marking the beginning of enhanced authoritarianism in the Kenyan body politic (Oyugi).

This was then followed by the so-called mini-elections (by-elections) in Kenya, since the MPs aligned to Odinga had joined the KPU abandoning KANU which had sponsored them to Parliament thereby necessitating by-elections. These by-elections saw those MPs aligned to Odinga retain their parliamentary positions after elections thereby returning to Parliament.

Upon the departure of Odinga as Vice-President, Daniel arap Moi was appointed as the Vice-President of Kenya, resulting in the complete merger of KANU and KADU (Moi was one of the key leaders of KADU and came from an ethnic minority community from the Rift Valley Province).

The Executive continued to amass and consolidate political power through patronage and constitutional amendments to the extent that it became more powerful than the Judiciary and the Parliament. Parliament lost its right to elect the 12 special Members of Parliament (MPs) to the President who assumed the sole right to nominate them.

The Constitution was further changed to give the President the power to summon, prorogue and dissolve Parliament. The President also got the powers of setting the Calendar of Parliament.

Both the Speaker and the Clerk of the Assembly had to be acceptable to the Executive or they would not be "elected" and appointed respectively.

The appointment, promotion and removal of judges (through a Tribunal appointed by the President) became the prerogative of the President.

All registered Trade Unions were required to affiliate with the State established Central Organisation of Trade Unions (COTU) and the president had even the power to choose its Secretary General from a list of three forwarded to him by the Unions.

1969

Thomas Joseph Mboya, the powerful KANU S-G and consummate trade unionist, was assassinated, sparking serious protests and tensions. His tribe, the Luo reacted violently, even stoning Kenyatta's vehicle in a church service in Kisumu.

1963 – 1973 decade saw the establishment and growth of authoritarian infrastructure of government embedded in the Constitution and the Laws of Kenya. Indeed, the remaining 5 years of the life of Kenyatta witnessed further consolidation of authoritarian power through the Parliament (Constitutional amendments and enactment of requisite legislation) and the Judiciary (through interpretation and application of laws by the Judiciary to favour the Executive).

Kenyatta used the PA to ensure any other emerging politician who would question his authority was denied the opportunity to mobilise support from their ethnic communities.

To react to this suppression a Luo - AKamba (another key ethnic community who felt marginalised by the Kenyatta regime) attempted a small coup against the Kenyatta regime

1973

A tribal association Gikuyu, Embu and Meru Association (GEMA) dominated by the Kikuyu was established to safeguard the interests of the Kikuyu and those other tribes closely linked with them. GEMA was formed to silence the Luo – Akamba axis and to amass economic wealth at the expense of the obliging poor (Oyugi).

1975

James Kariuki, a powerful Kikuyu Member of Parliament perceived to be against GEMA and the Kikuyu unity was assassinated. A Parliamentary Committee associated his assassination with the regime.

1978

In August, Kenyatta died

Daniel arap Moi took over as the president of Kenya having inherited his predecessor's governance structures and frameworks of power and authority.

Moi was able to use the Constitutional and legal framework to call for elections of KANU and of Kenya in an acting capacity and was able to get himself elected as the leader of the

Party and the President of Kenya. It is believed that he managed to have most of the MPs opposed to him not returned in Parliament.

1979 – 1981

Within a year Moi managed to replace most of Kenyatta's senior civil servants especially within the Provincial administration, which he continued to use for political mobilisation.

Significant changes were also made in the Judiciary and even in Parliament as Moi ensured that politicians who supported him got elected to Parliament.

The system of governance he inherited from Kenyatta remained largely undisturbed

However Moi began a system of rewarding personal loyalty to him with access to appointive positions, land and other national resources and indeed only regions that supported Moi benefited from State patronage.

Politicians were rewarded and rehabilitated depending on their personal loyalty to Moi

1982 – 1992

Following an aborted coup d'état in 1982 a Constitutional amendment was introduced in Parliament which made Kenya a *de jure* one party State.

It is said that after the failed coup d'état Moi's regime became more repressive and intolerant of any form of criticism especially political criticisms.

Any politician who fell out of favour was expelled from the sole party KANU. KANU became baba (father) and mama (mother) to the extent that the KANU was government and the government was KANU.

During this period movements like Central Organisation of Trade Unions, the women's movement (Maendeleo ya wanawake) all became affiliated to KANU and were controlled by the President of KANU who was also the President of Kenya, Moi.

There was no structured civil society – groupings which criticised the Moi regime were declared clandestine and underground. Most of these including individuals (religious, professionals, media, and civil society) were either detained without trial or charged with sedition or treason when they criticised Moi.

Moi gained total control over the Judiciary and Parliament and was able to pass any laws he liked. Indeed, even the Attorney-General managed to pass an amendment removing the security of tenure of some constitutional offices including his.

Moi also changed the electoral system from secret ballot into queue-voting. The 1988 general elections were conducted through queue-voting whereby in some cases, the shortest queues of candidates who were supported by Moi won the elections.

Prior to 1992 general elections were conducted by the all-powerful provincial administration, who were also used to campaign for KANU!

Hon. Kenneth Matiba resigned his Cabinet position following the elections of 1988 and went on to become one of the rallying points of opposition to Moi's regime, the other being Odinga Odinga who was the first Kenyan to resign as Vice-President.

The clergy, professionals and civil society with international support intensified the pressure on Moi for reforms especially constitutional reforms to facilitate political changes.

Rev. Timothy Njoya of the PCEA Church in his New Year sermon (1.1.1990) urged African one-party-States like Kenya to change with the wave of change that was then sweeping Eastern Europe.

Three months later he was supported by the ACK clergy-man Bishop Okullu who began the agitation for constitutional change to limit the term of the presidency to ten years.

March 1990 there was an alleged political assassination in which the then foreign affairs minister disappeared and was found murdered a short while later.

A Commission of inquiry later implicated senior government officials with his disappearance and subsequent murder.

Students, professional, clergy and civil society members took to the streets to agitate for the return of multi-parties and constitutional change.

Moi completely refused to bulge and had those leading the agitation for reforms, Odinga Odinga, Kenneth Matiba and Charles Rubia arrested ahead of a political rally they had organised for July 7th 1990 to agitate for reforms.

February 1991 Odinga announced the formation of the National Democratic Party which was denied registration since Kenya was still a one-party-state

By August 1990 the Forum for Restoration of Democracy (FORD) party was formed and it was registered in January 1992 after the repeal of the section 2A of the Constitution in November 1991 which had made Kenya a one-party-State.

This resulted in a number of constitutional changes including limiting of presidential term to two five-year terms paving the way for the December 1992 multi-parties general elections.

1993-2002

Although the-change-the-constitution wave and "no-reforms, no-elections" crusade was quite strong, opposition political parties and candidates were convinced that because of the mood and the wave for reforms in the country, even without constitutional reforms, they believed they would remove Moi and KANU from power during the 1992 general elections.

Moi easily won the 1992 general elections because the opposition was divided and in spite of them garnering a lot more votes on aggregate.

Between 1993 and 1997 there were over 20 by-elections most of them resulting from defections by MPs from the Opposition political parties back to KANU. Most of the MPs who defected went ahead to win the by-elections with support from Moi.

The constitutional reforms agenda gathered momentum once again around 1996 in preparation for the 1997 general elections.

Once again in 1997 the politicians calling for constitutional reforms abandoned the civil society, professionals, and the religious organisations and went ahead to strike an inter-Parliamentary Political Parties Group deal for minimum reforms to the constitution with KANU aimed at levelling the political playing field.

However, the 1997 general elections were held in an atmosphere of disinterest from most Kenyans and voters who believed that no substantial changes were likely to happen as a result of the general elections and many voters did not even bother to vote.

1998-2002 saw intensified pressure for constitutional review resulting in the establishment of the Constitution of Kenya Review Act and the Commission in 2000.

2000-2002 the process of consolidating the constitutional review initiatives in Kenya concluded and just before Moi dissolved Parliament the Draft Constitution of Kenya was ready for debate and adoption.

The Constitution of Kenya Review process was accompanied by massive civic education which coupled with the existing voter and civic education resulted in heightening levels of civic awareness to the levels where political participation was very high and informed in 2002.

Although Moi had conceded the end of his 10 years (two terms from 1992 to 2002) as per the Constitution, he still believed KANU; his party would win and that he could influence voters by choosing his heir, which he did by choosing Uhuru Kenyatta.

Although many people didn't quite know Hon. Kenyatta very well, the campaign against him was really a campaign against Moi and KANU. People mainly paid little attention to what the NARC Government would do and how they would do it in order to change the lives of Kenyans.

It was not clear how the new government would constitute or structure itself with structures such as the Summit and positions that were not reflected in the Constitution such as a coalition government. People therefore did not really vote for NARC they voted against KANU.

2003-2007

The euphoria that gripped Kenyans because of the success in removing Moi and KANU were remarkable heightening Kenyans expectations of their new government resulting in pressure on the new government to out-perform its predecessor.

The new president Kibaki did not convene a meeting of the Summit which was constituted during the campaigns for his election with representatives from almost all the regions of Kenya with a promise that the Summit would be an important organ of government of Kibaki.

Indeed, soon after the Kibaki constituted his Cabinet wrangles in the ruling party NARC begun with the other partners in the “informal” coalition claiming that Kibaki had reneged on his promises to share appointive positions equitably.

Soon the acrimony was so bad that it spilled over in the National Constitutional Conference (NCC) which begun in the 2nd quarter of 2003.

By the end of 2003 and the 1st quarter of 2004 the political parties in NARC had all but dispersed and the constitutional review process had taken on ethnic lines.

Kibaki continued to make constitutional and other appointments (allegedly mainly from his tribe and the Mount Kenya region) without any reference to the other parties in NARC.

In March 2004 the “government,” which was not a party to the NCC purportedly walked out of the review process but other members of the NARC government remained with the opposition and other NCC delegates and adopted the Draft Constitution with consensus.

The adoption led to further cracks within the ruling “coalition” NARC resulting with the eventual official departure of the Liberal Democratic Party from Government.

In June 2004 Kibaki appointed Members of Parliament from the Opposition into his Cabinet prompting a court case from KANU and widespread opposition and criticisms.

The MPs allied to Kibaki and the Attorney-General amended the Draft Constitution to their liking and in November 2005 subjected it to a Referendum.

The Kibaki government led side of the Referendum lost prompting Kibaki to dissolve his Cabinet and remove MPs of LDP from his Cabinet.

The political tensions continued to heighten

The General Elections will be held in 2007, this year towards the end, the date and month of the election remains the secret weapon of President Kibaki.

2. AN INTRODUCTION TO KENYA'S ELECTORAL LEGAL AND ADMINISTRATIVE FRAMEWORK

Many countries in Africa have consolidated elections laws that govern the management and administration of the electoral processes in those countries. Most countries in Africa have National Elections Management Bodies (EMBs) established by their Constitutions and some governed and operating within specific legislation.

The Operations of the Electoral Commission of Kenya (ECK) are not governed by a specific legislation such as the ECK Act. The ECK is not completely independent of the Executive or of the government. Its finances are determined and dependent on the Exchequer and it is not funded from the Consolidated Fund.

A. The Legal framework

The laws governing elections in Kenya are currently many and not consolidated in one document. These are the following:

1. The Constitution (of Kenya)

- Its section 41 creates the ECK and its composition and gives ECK Commissioners security of tenure in the discharge of their duties.
- Section 42, 42A and 43 assigns the ECK roles, functions, responsibilities and certain powers.

2. The National Assembly and Presidential Elections Act (Cap 7)

- Provides for the procedure and process of elections
- Gives the ECK the power to make Regulations governing the electoral process; appointment of its staff; nominations; campaigns; polling and election petitions. It also establishes language boards to carry out language proficiency tests for candidates for the NA elections and provides for schedules and relevant forms and documents.
- It provides for the Electoral Code of Conduct which all political parties and their candidates must sign and adhere to.

3. The Local Government Act (Cap 265)

- Gives directions on the establishment of Local Authorities (LA) and defines their functions
- Empowers the ECK to determine the numbers, names and boundaries of LA
- Provides for the LA Rules which provide for detailed procedures for LA elections

4. The Election Offences Act (Cap 66)

- This Act was enacted in 1958 before Kenya got independence! It is still in operation. It criminalises certain electoral conduct and behaviour by candidates, voters, election officials and other stakeholders involved in the electoral process.

5. **The Kenya Broadcasting Corporation (Cap 221)**

- It defines the “campaign period” and provides for fair and balanced allocation of broadcasting hours between different political viewpoints.
- It provides for collaboration between the KBC and the ECK in time allocation etc.

6. **The Public Order and the Preservation of the Public Security Act (Cap 56)**

- It prescribes that those intending to hold a political rally inform the Officers Commanding Police Stations (of the location where the rally is to be held) not less than 3 days and not more than 14 days before the rally is held.
- This is to ensure the security, law and order of the participants and that no other political rally has taken up the venue

7. **The Penal Code (Cap 63)**

- Provides for criminal offences and penalties
- Most illegal acts and election offences committed during elections are also prohibited by the Penal Code

8. **The Societies Act (Cap 108)**

- It regulates the registration and de-registration of Societies.
- Political parties fall under the Societies Act in Kenya.

9. **The Political Parties Bill, 2006**

The Political Parties Bill was published in the Kenya Gazette Supplement in 2006 and deals with issues pertaining to political parties within the following five substantive parts aimed at addressing the challenges that political parties experience and which undermine the democratization process in Kenya, as follows:

- **Registrar of political parties** office created within the ECK shall register and keep a register of political parties and related records
- **The section on Formation, Registration and Regulation of political parties** deals with a variety of issues relating the qualifications and disqualifications; prohibitions, conditions; contents of Party Constitutions, Rules etc; status and cancellation process of registration of Parties

- **The section on Funding and Accounts of political parties** establishes the Political Parties Fund; purposes and management of the Fund; sources of funding of political parties – private and public; keeping of financial and other records of Parties, financial audits and accounts etc.
- **General Provisions section** deals with maintenance of register of members of political parties, keeping of Party records, assets registers and other records; requirements or duty to keep the Registrar of Parties informed of Party affairs; provisions relating to public meetings; penalties; Making of Regulations by ECK to give effect to the Bill; winding up of Parties etc.
- **Transitional Provisions** relating to existing political parties and how they shall be brought within the proposed legal and administrative framework.

10. The Elections Bill (drafted)

- The drafting of this Bill is in its final stages and will be presented to the stakeholders for discussion before June 2007 so that it may be discussed, gazetted and hopefully enacted before the elections.
- This Bill seeks to consolidate all the laws regarding and relating to the electoral process into one piece of legislation for ease of reference, implementation and enforcement.
- It also seeks to apportion responsibility and functions of the electoral process and related matters within the administrative framework of the Electoral Commission of Kenya.
- This will not only ensure accountability it will rest the responsibility of electoral matters to one body.

B. The Administrative Framework: The Electoral Commission of Kenya (ECK)

Section 41 of the Constitution establishes the ECK and gives the President the sole authority to appoint ECK Commissioners but it does not provide the method or procedure of appointment. The section also makes no provision regarding whether or not the President need or should consult any one in making these appointments. The ECK currently has twenty two Commissioners.

It is critical note that by 1st December 2007 if the terms of the old Commissioners which will expire then are not renewed ECK will have commissioners who have never conducted elections before. There is likely to be a serious problem because the experience of conducting and supervising an election is mandatory and it is not possible to learn the art of conducting an election from theory!

On 11th January 2007, President Kibaki made nine appointments of members to the ECK to replace those who had died or whose terms had ended at the ECK. He did not consult political parties as had been expected. Many people severely criticised the President for his single-hand in the appointments.

The President did not honour the 1997 Inter Parliamentary Political Parties Group (repealed and amended certain laws, including the Constitution to level the Political playing field). The IPPG as it relates to ECK gave the then parliamentary opposition political parties 10 slots for ECK Commissioners to share amongst themselves, adding members of the Commission to 21 and the chairperson. Although the IPPG as it relates to the ECK was not entrenched in law, it was the basis upon which the 1997 Commissioners were appointed (Kibaki's opposition party then was a key beneficiary).

Consultations in appointment of ECK Commissioners are not new. In 1992, the former President accepted the late Jaramogi Oginga Odinga's nominees to the ECK, so Ford Kenya actually had Commissioners in that Commission.

People expected the President to respect the IPPG Agreement which he was a part of and would have preferred that he gives Parliamentary opposition political parties the opportunity to nominate their candidates to ECK. Those opposed to the president's action felt that the action undermined democracy and fair-play because;

- i). Democracy requires participation and involvement of interested parties in key appointments of this nature. Although Kenyans have struggled to change their Constitution unsuccessfully, certain practices and amendments to the constitution have enabled the expansion of the democratic space. Good Democratic practice requires criteria and qualification of ECK Commissioners is set to guarantee appointments on merit, experience, gender, regional and political balances and parity and intergenerational considerations. The process of application and vetting through Parliament should also be set out by the law to guarantee professionalism, independence and non-partisanship.
- ii). President Kibaki is going to be a Presidential candidate in the 2007 general elections. His act of appointing ECK Commissioners unilaterally may undermine the image, credibility of the ECK and remove the confidence people have in ECK. Opponents allege that being the incumbent President, he also has added advantage through access to state resources, which may be misused to rig the elections in his favour. There are eye-witness accounts and statements regarding alleged abuse of office, corruption and misuse of public resources, during by-elections and during the 2005 Referendum on the proposed Constitution.⁵ The President's position, demands that he be beyond reproach and act in a manner that fosters democracy and enhances the credibility, confidence and professionalism in the ECK.

Although in many cases it does not matter who is the appointing authority of the ECK Commissioners, representation from all the key Political Parties helps to minimise negative perceptions. Therefore, although President Kibaki acted within the law by appointing

⁵ Also observation reports are available from IED, the Kenya National Commission of Human Rights, from the ECK and from all the main media houses. The most blatant use of public resources was witnessed in the five by-elections conducted in July 2006 in Saku, Laisamis, North Horr, Moyale and Nakuru town constituencies.

Commissioners to the ECK as required by the Constitution, by not consulting and including others in the appointment process, many felt he set our democratisation process back.

C. Roles and functions of ECK

- Registration of voters and the maintenance and revision of Voters' Register;
- Directing and supervising the Presidential, National Assembly and Local Government elections;
- Electoral boundary delimitation;
- Promoting free and fair elections;
- Promoting voter education throughout Kenya
- Such other functions as may be directed by law.

The following is a brief explanation of some of the key roles of the ECK which have an impact on the on-going preparations for the 2007 general elections and which raise issues and concerns requiring specific solutions.

- **Electoral boundary delimitation;**

One of the functions of the ECK is the delimitation of the electoral boundaries. The Constitution provides the number of constituencies Kenya should have. Currently we have the maximum number (210) of constituencies provided by the Constitution. Parliament has to amend the Constitution in order to increase the number of constituencies.

Although the ECK has offices in 72 districts (it is yet to appoint staff in the new 33 districts awarded for political reasons by the President) these offices are not very well resourced. Many of these offices have a District Election Coordinator, a Registration / election Officer, and 2 or 3 support staff.

Most districts in Kenya have an average of three or four constituencies. Some districts have more while a few have less, one or two. In excess of 33 districts have been created by the Office of the President without consultation with the ECK yet these new districts greatly impact on Constituency boundaries.

The alignment of new districts with constituencies will most definitely affect the demarcation of constituencies and polling stations and therefore require re-coding of constituencies and polling stations. This means registered voters in the affected districts and constituencies and polling stations must surrender their voters' cards and be re-issued with new ones with the new codes, otherwise they will not be able to vote.

- **Registration of voters**

Every Kenya citizen of 18 years and above is eligible to register as a voter. They require a national identity card or a passport (if that document is what they will use to vote) in order

to get a voter's card. A voter can only be registered in one polling/registration centre which is also the place where that voter will cast his or her ballot. Double or multiple registrations is an election offence.

A lot of voter education is required to inform voters and potential voters what is required by the law of them, including the necessity to register as a voter; to inspect the voters' register to ensure their particulars have been captured correctly and accurately; to vote or present themselves as candidates and how they should conduct themselves throughout the electoral process.

The miscellaneous amendment to the constitution of June 2002 made the registration of voters continuous. However, because of very limited resources the ECK can not employ many full-time registration clerks to register voters at the level of polling/registration stations on a continuous basis. Therefore, although registration is on-going at the District ECK offices, special country-wide registration drives at registration centres are organised once or twice a year for a period of one month. One such a drive begun on March 1st and will continue until March 30th and a similar one may take place in May 2007 depending on availability of resources. After these intensive voter registration drives, the ECK will then open the National Voters' Register for inspection by the voters.

CONCLUSION – WHAT NEEDS TO BE DONE

In conclusion, it is noteworthy that some issues and concerns relating to ECK's preparedness, the legal and administrative framework for the 2007 general elections need to be addressed conclusively to pave the way for the general elections in Kenya.

1. Conclusion and enactment of the Political Parties and Elections Bills
2. Revision and enactment of essential amendments to the Constitution aimed at further leveling the political field
3. Finalization of registration of voters and revision of the voters' register
4. Possible delimitation of boundaries – creation of new constituencies – which will require further revision of voters' register and new registrations to replace voters cards in the new constituencies
5. Employment, training and deployment of new ECK staff to the new districts and for the general elections later in the year
6. Massive Voter education
7. Nominations, regulation and oversight over campaigns
8. Conducting and managing the 2007 general elections.

THANK YOU FOR YOUR ATTENTION