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2005

sous la direction de

H. CHARTON

et

C. MÉDARD

L'Harmattan

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LA RÉFORME DE L'ADMINISTRATION TERRITORIALE N'AURA PAS LIEU AU KENYA

par Claire Médard

L'année 2005 ne devait pas être, au Kenya, à la différence de l'Ouganda et de la Tanzanie, une année de campagne électorale. Pourtant, l'organisation d'un référendum sur la nouvelle constitution, en novembre 2005, y fait figure de véritable évènement politique et électoral. Au travers de ce référendum, le gouvernement Kibaki espère un plébiscite en sa faveur. En préconisant l'adoption de la nouvelle constitution, il veut passer pour un défenseur du changement et un rénovateur des institutions politiques du pays. Pourtant, la nouvelle constitution qu'il défend est une version largement amendée du projet initial qui, même s'il était par ailleurs controversé, était issu d'une large consultation régionale et nationale, le *Bomas Draft*. Sur le plan formel, la nouvelle version du projet de constitution, revue et corrigée par le pouvoir exécutif, a perdu toute légitimité¹. Le vote négatif obtenu s'apparente à une défaite électorale pour le président Kibaki qui reste cependant au pouvoir. Le désenchantement face au régime Kibaki doit se comprendre dans la perspective de l'espoir fondé sur une réforme légale du pouvoir. Est-il possible de réformer le régime politique kenyan ? Cette question ne cesse d'être posée depuis la transition politique entre les régimes de Moi et de Kibaki, fin 2002. Dans cette volonté de réforme, la mesure des pratiques néo-patrimoniales du pouvoir n'a pas été prise. Constitutives du fonctionnement de l'État, elles ne reposent pas sur la légalité. Elles se fondent à la fois sur un pouvoir institutionnalisé, administratif, bureaucratique et territorial, et sur des formes de pouvoir personnalisé, avec toujours cette possibilité d'une dérive autoritaire. La première bataille ne se situe pas sur le plan de la légalité mais plutôt sur celui du passage à la légalité. Si la nature néo-patrimoniale

¹ Voir dans cet annuaire: MAINA, L.W., WASWA, F., WAIYEGO, S. 'Pitfalls in Constitution-making in Kenya: from Lancaster to Bomas and post-Bomas', pp 105-130.

du pouvoir est largement sous-estimée, les manifestations de cette pratique du pouvoir, elles, sont vivement ressenties : qu'il s'agisse des abus liés au contrôle territorial, à l'affairisme ou à la corruption.

Le projet de constitution est innovant, par certains aspects, et moins, par d'autres. D'après bon nombre de spécialistes, son point fort, c'est sa charte de droits de l'homme (*The Bill of Rights*) avec les principes de liberté et d'égalité qu'elle énonce. Il traduit une défiance à l'égard de la centralisation des pouvoirs : le projet de supprimer l'administration territoriale est tout à fait révolutionnaire. En revanche, la question de l'appartenance à une communauté infra-nationale est traitée de manière plus conventionnelle par une négociation autour du territoire et la redéfinition de régions.

1. LA PROPOSITION DE SUPPRESSION DE L'ADMINISTRATION TERRITORIALE

Il ne paraît pas surprenant qu'au Kenya, le débat sur la réforme du régime se cristallise sur le rôle de l'administration territoriale. Il existe une forme de continuité dans les pratiques de contrôle territorial, malgré la transition politique de l'indépendance. De manière paradoxale, des périodes de contrôle musclé alternent avec des périodes de relâchement. Elles contribuent à donner une matérialité à de nombreuses frontières internes (limite de réserve naturelle, de région administrative, emprises routières ou ferroviaires, limites urbaines). Les années 1990, sous Moi, avaient été caractérisées par le retour en force de l'idée de réserve ethnique, reprenant le contour de certaines limites administratives. L'arrivée au pouvoir de Kibaki est marquée par une volonté de faire respecter un ordre territorial, également fondé sur des frontières, caractérisé cette fois-ci, par la priorité donnée à la restauration des domaines publics forestiers ou urbains. Les frontières des réserves forestières avaient été particulièrement malmenées durant régime précédent². Les forêts ne sont pas les seuls domaines visés. A Nairobi, les revendeurs à la sauvette sont chassés du centre ville et les bâtiments construits sur les emprises routières, le long des axes principaux, sont voués à la destruction. Toutes les personnes qui

² *Daily Nation*, 12 mai 2005.

vivent aux marges de la légalité sont rendues plus vulnérables encore dans leur négociation quotidienne avec les autorités administratives (renforcement du rôle intermédiaire dans la « négociation » des gangs ou milices).

Dans le système de pouvoir au Kenya, l'administration territoriale occupe une place centrale. Son action, qui s'apparente bien souvent à des opérations de contrôle territorial, est perçue à bien des égards comme arbitraire. L'un des rôles les plus controversés de l'administration territoriale touche à la question de la terre. Dans la gestion locale de l'accès à la terre, toute la hiérarchie du personnel administratif, les *Chiefs*, *District Officers* (DO), *District Commissioners* (DC), *Provincial Commissioners* (PC), sont souvent accusés d'être au cœur d'un système de détournement de la terre, au lieu d'exercer un rôle modérateur. L'aspiration à un pouvoir dévolu et qui doit répondre de ses actes localement trouve également ses racines dans cette défiance vis-à-vis de l'administration territoriale, de sa gestion du foncier et des relations inter-ethniques. A différents moments de l'histoire coloniale et post-coloniale du Kenya, elle a fait partie du dispositif de pouvoir qui a permis le maintien par la force de régimes autoritaires. Le projet des *Bomas* remet en question l'existence même d'une administration territoriale de façon radicale : « *The system of administration comprising Assistant Chiefs, Chiefs, District Officers, District Commissioners and Provincial Commissioners commonly known as the Provincial Administration shall stand dissolved and the government shall re-deploy all public officers serving under that system*³. »

Dans le projet de constitution des *Bomas*, quatre niveaux de gouvernement élus sont distingués : location, district, région, Etat-nation. L'échelon du district est considéré comme le pivot du système⁴. Son gouverneur est élu, à la différence marquée du système actuel où le *District Commissioner* est nommé par le gouvernement central et relève de l'administration territoriale. L'intention manifeste est de supprimer l'administration territoriale et de le remplacer par un système de pouvoir dévolu et élu. Le

³ *The proposed new constitution of Kenya*, 2005, 6th Schedule. Part II Devolution. Provincial Administration.

⁴ *The proposed new constitution of Kenya* 2005, Part III District Government 211 (1) (c).

projet remet en cause l'un des piliers du pouvoir au Kenya : l'administration territoriale placée, depuis le régime Moi, sous la tutelle directe du président. Dans la même veine de défiance à un pouvoir institué, susceptible d'abuser de ses pouvoirs, il est fait mention spécifique au droit de refus d'obéissance à des instructions illégales dans le *Bomas Draft* (71). Cette mention explicite au devoir de désobéissance est supprimée dans la version révisée de la constitution.

Le *Bomas Draft* revu et corrigé par l'exécutif ne conserve que deux niveaux de pouvoir : l'échelon du district et l'échelon national. Les quatre niveaux qui comprenaient chacun une assemblée et un exécutif ont été présentés comme trop coûteux à mettre en place. L'esprit du *Bomas Draft* est malgré tout préservé dans la mesure où subsiste, du moins sur le papier, l'idée de se défaire d'une administration territoriale centralisée et d'élire un gouverneur du district. Le régime de Kibaki semble s'apercevoir trop tard que cette disposition le met en péril et de façon immédiate : qui va organiser le référendum en faveur du oui à la constitution et soutenir le régime ? Il est d'usage, pour le régime en place au Kenya, de s'appuyer plus ou moins discrètement sur l'administration territoriale pour faire campagne. La constitution révisée semble menacer directement l'existence de l'administration territoriale, dont la suppression est annoncée, qui n'a aucune raison de faire campagne en faveur du oui. Toute une série de mesures sont entreprises pour rectifier cette impression, « fausse », d'après le gouvernement. Difficile de mesurer, à ce stade, si l'administration territoriale peut réellement être réformée. A la suite du rejet de la constitution révisée, le régime de Kibaki conserve son bras territorial. Il cherchera à mettre en place des mesures pour revaloriser, dans l'opinion, l'administration territoriale : attention au recrutement des échelons inférieurs avec réévaluation des salaires et également introduction de *performance contracts* pour les échelons supérieurs. Dans l'esprit de certains proches de Kibaki, à l'exemple de Michuki, souvent désigné comme un ancien chef colonial, il est inconcevable de se défaire d'un outil aussi puissant que ce système d'administration territoriale centralisé. L'appareil politico-administratif au Kenya symbolise davantage la contrainte que l'autorité légitime au Kenya.

2. LA QUESTION DES DOMAINES ETHNIQUES RÉSERVÉS

La question de domaines ethniques réservés, au Kenya, se rapporte à l'histoire administrative du pays. L'héritage des réserves coloniales a été revisité à plusieurs reprises durant ces quarante dernières années, en particulier durant les années 1960 et durant les années 1990 où une conception exclusive de l'appartenance de la terre, définie territorialement par rapport à des limites administratives, assimilées à des frontières, s'est traduite par des tensions « inter-ethniques ». Le projet de révision de la constitution est examiné dans cette perspective. Adopté en mars 2004 par l'assemblée constituante des *Bomas*, il donne une place importante à la représentation régionale et à la décentralisation : il reflète la manière dont l'assemblée a été constituée par des délégués en provenance de toutes les régions du Kenya avec une sous-représentation des grandes villes comme Nairobi⁵. Il traduit un courant d'opinion, au Kenya, qui se situe dans la tradition de l'idéologie *majimbo*, du nom de la constitution fédérale, adoptée à l'indépendance, puis vidée de son sens par la centralisation du pouvoir sous le président Kenyatta. Sans revenir sur l'origine du projet de nouvelle constitution, il convient de souligner que le projet est initié sous le régime du Président Moi, dont l'entourage, durant les années 1990, présente l'idéologie *majimbo* comme une alternative au multipartisme et comme le seul moyen de sauvegarder les droits des communautés dites minoritaires au Kenya. Dans cette assemblée constituante, une large place est laissée à l'expression d'une diversité culturelle, comprise comme ethnique, religieuse, etc. Si les critères de sélection qui ont présidé au choix des délégués peuvent être contestés, le projet de constitution n'en est pas moins présenté comme à ce titre issu du peuple. Les changements unilatéraux, introduits pas le gouvernement Kibaki, ne se situent pas dans le prolongement du processus négocié qui a précédé.

Dans le projet de constitution des *Bomas*, la définition des unités de pouvoir dévolu a été placée au cœur des négociations. Cette approche a trouvé un soutien auprès des communautés qualifiées de « minoritaires » au Kenya (en particulier les différents

⁵ *East African Standard*, 10 mai 2005.

sous-groupes kalenjin, rassemblés un temps autour du pouvoir de l'ancien président Moi). Comme à l'indépendance, elles ont mis beaucoup d'espoir dans la redéfinition de régions (entretien avec Wilberforce Kisiero, 2005). Dans la constitution révisée, la liste des régions a été supprimée. Il est annoncé que la question de la définition des districts fera l'objet d'une nouvelle consultation. Que la négociation autour de la création de nouvelles régions constitue une étape importante du processus de négociation autour de la nouvelle constitution, n'a rien de surprenant dans la perspective de l'idéologie *majimbo*, où définir une région revient à définir l'appartenance de la terre ou, d'une façon plus générale, l'accès aux ressources locales et le partage des ressources nationales. Difficile de se défaire de l'héritage colonial, de cette idée de « réserve » ethnique : la nouvelle constitution, tout comme l'ancienne, contient des éléments contradictoires concernant l'appartenance régionale et ethnique de la terre dans un contexte de privatisation foncière.

En premier lieu, le droit pour tout Kenyan de résider n'importe où au Kenya est réitéré : « *Every citizen has the right to enter into, remain in and reside anywhere in Kenya* ». Cette disposition est déjà contenue dans la constitution actuelle, mais l'insistance sur la liberté de mouvement est importante dans un contexte où l'État lui-même est au cœur de ce processus d'identification d'une personne à une région d'origine. La mémoire des conflits territoriaux des années 1990 où le droit de résidence a été défini en des termes ethniques est encore vive. De manière associée, une personne ne peut être contrainte à décliner son identité ethnique : « *A person may not be compelled to indicate or define that person's ethnicity or race* ». Déjà, en 2001, la décision de mettre fin à l'énonciation par catégorie ethnique dans les recensements constituait une petite révolution. Et pourtant, au cours du recensement qui a donné lieu à cette décision, certaines communautés avaient obtenues d'être énumérées dans des catégories à part et considéraient cela comme une victoire sur le plan d'une reconnaissance officielle (l'exemple de Sengwer).

⁶ *The proposed new constitution of Kenya, 2005*. Article 55 (3). Chapter 6. The Bill of Rights.

⁷ *The proposed new constitution of Kenya, 2005*. Article 37 (3) Chapter 6. The Bill of Rights.

L'identité ethnique réapparaît de façon insidieuse en relation au statut foncier : les catégories foncières reprennent des catégories existantes issues de la colonisation : la catégorie terre communautaire reprend l'ancienne catégorie *trustland* et subsiste aux côtés des catégories terres privées et terre publiques⁸ : « *Community land shall vest in and be held by communities identified on the basis of ethnicity, culture, or community of interest*⁹ ». Le projet de constitution traduit un effort pour faire reconnaître le droit spécifique de certaines communautés sur des domaines fonciers. Il vise en particulier les patrimoines forestiers de certains groupes, comme les communautés de chasseurs-cueilleurs et d'autres encore : « *Land lawfully held, managed or used by specific communities as community forests, grazing areas or shrines*¹⁰ ». « *Ancestral lands traditionally occupied by hunter-gatherer communities*¹¹ ».

À l'heure où le processus de privatisation foncière semble largement dominer toutes les logiques, l'énonciation de revendications communautaires masque des manipulations politiques et, dans la plupart des cas, des prises d'intérêt très individuelles, de la part de puissants du régime, dans des domaines fonciers. Le régime actuel ne cherche pas à jouer la carte minoritaire comme le précédent et c'est sans doute la raison pour laquelle la mention explicite du respect des droits des minorités et populations marginalisées a par ailleurs été supprimée du projet révisé de constitution¹². La tolérance zéro vis-à-vis des « conflits ethniques » et de l'expression de particularismes ethniques comme stratégie d'accès à des ressources, a été prononcée par le pouvoir central. Sous le régime de Moi, durant les années 1990, certaines revendications de ce type recevaient un soutien direct ou indirect du centre. Sous le régime Kibaki, le pouvoir central ne joue pas

⁸ *The proposed new constitution of Kenya, 2005*. Article 79 (1) et (2) Chapter 7. Land and property.

⁹ *The proposed new constitution of Kenya, 2005*. Article 81 (1). Chapter 7. Land and property.

¹⁰ *The proposed new constitution of Kenya, 2005*. Article 81 (2) (c). Chapter 7. Land and property.

¹¹ *The proposed new constitution of Kenya, 2005*. Article 81 (2) (e). Chapter 7. Land and property.

¹² *Bomas Draft*. Article 43. Bill of Rights.

cette carte, mais les systèmes de pouvoirs locaux qui se greffent sur l'État continuent à user des mêmes stratégies de mobilisation ethnique et, malgré le changement de pouvoir, on déplore des conflits ethniques en 2005¹³.

Conclusion

La bataille du référendum est en elle-même une trahison du projet constitutionnel, celui dont l'objectif était de placer la légalité au cœur d'une réforme du pouvoir. Dans les deux camps, les positions en faveur du oui au référendum (le pouvoir : symbolisé par la banane) et du non (l'opposition : symbolisée par l'orange) sont stratégiques avant d'être critiques. La campagne se fait davantage sur un contenu imaginé, fantasmé, de la constitution, parfois sans rapport avec son contenu réel, comme la promotion de l'homosexualité ou de l'avortement¹⁴. Un autre exemple concerne l'héritage de la terre par les femmes, au même titre que les hommes. Il se trouve des politiciens dans le camp du oui pour affirmer que cette disposition, contenue dans la constitution révisée, ne prendra pas effet. Cette mobilisation autour de la question de la « famille » porte la marque de conservatismes en tous genres, religieux ou néo-traditionnels, avec cette préférence marquée pour les questions morales afin d'éviter de poser les questions qui fâchent et risquent de déstabiliser ou porter atteinte aux pouvoirs établis. Il convient de se demander dans quelle mesure il s'agit d'une stratégie délibérée de la part des dirigeants politiques de faire en sorte que la constitution soit rejetée sous de faux prétextes. Certaines dispositions du projet de constitution remettent en cause de façon radicale la conception du pouvoir se mesurant par la capacité à s'enrichir et à abuser de sa fonction. Ainsi la déclaration de richesse, pour un dirigeant politique et pour ses proches, à intervalles réguliers, ne reçoit aucune publicité¹⁵. Le déroulement de la campagne en lui-même souligne le décalage entre les aspirations à plus de transparence

¹³ *Daily Nation*, 5 février 2005 ; 18 juillet 2005.

¹⁴ Pourtant, il convient de le noter, la disposition qui rendait possible l'avortement thérapeutique ne figure plus dans la version révisée de la constitution.

¹⁵ *The proposed new constitution of Kenya, 2005*. Article 97, Chapter 9. Leadership and Integrity.

démocratique et les ambitions politiques des uns et des autres. Les stratégies électorales déployées par le pouvoir pour gagner la bataille du référendum ne sont pas sans rappeler celles du gouvernement précédent : tournée du président avec promesse de nouveaux districts, de terres ou de titres fonciers¹⁶. La campagne grève le budget et est rendue responsable du manque de prévoyance, alors qu'une famine s'annonce dès la fin de l'année dans certaines régions du Kenya, et également d'un appel à la corruption pour financer les campagnes politiques au-delà de l'enrichissement personnel des dirigeants politiques.

La plus grande déception pour les personnes qui ont participé au processus d'élaboration juridique de la constitution, c'est en fin de compte cette impression que le processus de négociation a été court-circuité, que la légalité ne compte pas pour l'exercice du pouvoir au Kenya et que la constitution ne sera pas examinée de manière critique et le débat élargi à tous.

L'ambition du projet de renouvellement constitutionnel au Kenya visait à empêcher toute dérive autoritaire par une rénovation structurelle du pouvoir et par le règne de la légalité. Certains éléments structurants du pouvoir ne reposent pas sur la légalité, ils sont déterminants et bloquent les efforts de changement. Une révolution légale suppose bien plus qu'une rénovation des institutions, elle se situe davantage dans un changement des pratiques et des perceptions du pouvoir.

¹⁶ *Sunday Standard*, 13 novembre 2005.

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Journaux

Daily Nation

The East African Standard

Sunday Standard

UGANDA IN 2005: POLITICAL, ECONOMIC AND SOCIAL TRENDS

by Frederick Golooba-Mutebi

Up until 1986 when the National Resistance Army seized power, Uganda's post-colonial history had been characterised by overly powerful and seemingly omni-potent presidents wielding enormous powers over decision making. Far more powerful than Milton Obote, his predecessor and successor, President Idi Amin wielded powers of life and death, virtually unencumbered by a cowed and cautious judiciary¹, or by parliament which had been done away with. On seizing power, President Museveni promised 'fundamental change'. Over the years, however, President Museveni has come to wield enormous powers despite the formal decentralisation of power and decision making. One of the major aspects characterising the growth of an authoritarian regime in Uganda by 2005 was disregard and lack of respect for processes and procedures in government institutions. Museveni's regime is a mix between personalised and institutional forms of power with far-reaching consequences for the economy.

Despite lifting the 20-year ban on political parties and allowing them to hold delegates' conferences to elect leaders, re-organise themselves, and recruit members, the National Resistance Movement (NRM) government and its leadership remained averse to political competition (1). Reliance on the armed forces to assert government authority all over the country might be viewed within this context as a threat to political freedom (2). By the end of 2005 the country was facing a serious threat from major donors who had already withheld aid due to the government's mismanagement of the transition from Movement (single-party) politics to multiparty politics, and were, or so it seemed, poised to implement more cuts in the future (3).

¹ See, for example, ALLEN, P.J. (1987). *Days of Judgment: A Judge in Idi Amin's Uganda*. London, Kimber.

1. MUSEVENI FOR PRESIDENT

The year 2005 started amidst heady expectations of a successful, if troubled transition from single-party (Movement) to multiparty politics. Nearly two decades after the National Resistance Movement seized power, Uganda was on the way to holding its first multiparty politics in 25 years (held on 23 February 2006). The president, Yoweri Kaguta Museveni, who had been the first to condemn old-style African politics and despotic rulers, did not want to leave power and succeeded at getting parliament to remove the two-term limit on presidential terms. He was poised to contest for elections again and presided over a government that criminalised opposition and generally harassed its political opponents, at the same time adopting a populist stance.

1.1. Abolition of presidential term limits and reintroduction of multiparty politics

The transition to multiparty politics was mired in controversy surrounding the push by the Movement government to open the way for unlimited presidential terms. Manoeuvres to remove term limits were seen by many as intended to allow President Museveni to contest for election again after the expiry of his second elected term in office. The two-term limit had been set by the 1995 constitution whose enactment had been preceded by wide-ranging and far-reaching public consultations. The participatory constitution-making process had at the time been seen as a guarantor of popular ownership of, and support for, the constitution, as well as its legitimacy and therefore durability. In recent years, however, the process has come under criticism as having been merely a tool for legitimating official positions².

The motion to lift presidential term limits and change the constitution was debated and passed on 28 June and 12 July 2005. It received majority support in parliament after a controversial handing out of cash to many MPs in what seemed like a cash-for-

² See, for example, MOEHLER, D.C. (n.d.) 'Distrusting Democrats: Outcomes of Participatory Constitution-Making'. Unpublished manuscript: Department of Government, Cornell University. Also, TRIPP, A.M, n.d. 'The Politics of Constitution-Making in Uganda'. Unpublished manuscript.

votes inducement³. By this time, two years after he had urged the Movement's National Executive Committee (NEC) to support constitutional changes that would allow this to happen, President Museveni had not publicly declared his intention not to retire after the expiry in 2006, of his second elected term. He had, however, retired from the army in 2004 to lead the newly-created National Resistance Movement (NRM) party after the leadership of the then National Resistance Movement, the broad-based no-party system he had founded decided to register it as a political party. When the NRM party held its first national delegates conference in November 2005, in what was widely seen as a mere formality, he was elected its leader and presidential candidate.

Political parties in Uganda have been widely seen, though wrongly⁴, as having been the prime cause of violent divisions and upheavals in the country. Partisan politics was banned until July 2005 when a controversial referendum to decide whether or not to re-introduce multiparty politics was held. Either way, Museveni had nothing to lose, as he was poised to become his party's candidate for the first multiparty elections. Local and foreign observers claimed that the referendum had been widely boycotted, with a low turn-out of 18% of the electorate, claims contested by the Electoral Commission which declared a 42% participation rate. The referendum was preceded by an agreement in principle by the government and political parties that restrictions on political party activity be lifted. The ruling Movement and a group of new parties then went on to register, a condition imposed on all parties wishing to participate in the political transition and the general elections in early 2006. Meanwhile the old parties, the Democratic Party (DP), the Uganda People's Congress (UPC) and the Conservative Party (CP), refused to register on the grounds that they were long-standing organisations whose existence was beyond dispute.

³ Over 200 MPs received sums ranging from 3,000 US dollars. A handful rejected the cash, while only one returned it after the incident sparked off a widespread public outcry and was publicly denounced by, among others, a number of Movement stalwarts, some of whom have since left the Movement.

⁴ *The New Vision*, 1 August 2005, 'No Party is guilty of causing turmoil'.

Following the decision to free them to engage in political activity, 2005 saw political parties hold delegates conferences for the first time in 25 years. Elections were held by most parties, new and old, to fill leadership positions. Remarkably, in all parties, including the NRM, elections to elect leaders were marred by accusations of rigging and bribery and denounced by some members as intended to privilege certain candidates.

Among the new parties was the Forum for Democratic Change (FDC), widely seen as presenting the most credible threat to the Movement's and President Yoweri Museveni's hold on power. The FDC was the outcome of a merger between the Parliamentary Advocacy Forum (PAFO), formerly an informal grouping of pro-democracy young parliamentarians, and Reform Agenda (RA), a pressure group formed to organise and run the presidential campaign of Dr. Kiiza Besigye, Museveni's challenger in the 2001 presidential race.

In January 2005, prior to its official launch the following month, the FDC chose Dr. Besigye, by then in self-imposed exile in South Africa, as its leader and *de facto* presidential candidate for the 2006 elections. Dr. Besigye returned to Uganda in October, amidst fanfare from thousands of his supporters and rumours fuelled partly by a letter President Museveni had written to members of the cabinet, that he might be arrested and charged with a number of offences. Besigye flew into the country at short notice in order to register as a voter and participate in the FDC's internal elections which were expected to see him formally elected party president and presidential candidate. Besigye's return sparked off great excitement and led to a rush by people who had hitherto chosen not to register to vote, to do so. Media reports claimed that the multitudes rushing to register were FDC supporters, reports that seemed to trigger fear in the minds of President Museveni and the NRM's leadership. Perhaps as a consequence of the public's reaction to Dr Besigye's return, President Museveni cut short a visit to the UK to return to Uganda to take personal charge of the situation.

1.2. Threatening the country with chaos

During the campaigns for the 2006 presidential elections, President Museveni maintained his approach of threatening not to

accept the outcome of elections⁵. Threats not to relinquish power if voted out were accompanied by a tactic he has put to use in previous elections, which is to scare the public into voting for him to avoid trouble: “*If government goes into the hands of people without experience that is when there will be trouble*”⁶. In 2001, he had categorically stated that he would not hand over power if defeated: “*I’m not ready to hand over power to people or groups of people who have no ability to manage a nation ... Why should I sentence Ugandans to suicide by handing over power to people we fought and defeated? It is dangerous despite the fact that the constitution allows them to run against me ... At times the constitution may not be the best tool to direct us politically for it allows wrong and doubtful people to contest for power*”⁷. These statements came in the wake of an undertaking (only four days) earlier, that he would retire if defeated: “*I will give out the keys (to State House) officially when elections are well conducted and I lose. I will even support the winner*”⁸.

As the campaigns kicked off, it was evident, if the size of crowds turning up to listen to their representatives and candidates are sufficient criteria by which to judge, that, despite 20 years of inactivity and anti-party propaganda by Museveni and his associates in the Movement, opposition parties had recaptured the public’s imagination. It seems, therefore, that Museveni’s mixed signals regarding whether or not he would hand over power if defeated, were in response to the unexpectedly stiff challenge from the opposition in general, and the FDC’s (also widely seen as the opposition’s) candidate, Dr. Besigye.

Museveni switched tactics and started speaking in bellicose tones, in the process re-creating the hostile divisions he had once claimed he sought to heal. Before Besigye returned, Museveni hinted at the possibility that he would be prosecuted in connection with unspecified charges. Not long after his return, he was arrested and charged with terrorism, concealment of treason, illegal possession of weapons, and rape. The rape, it transpired, had allegedly been committed in 1997 when he was still serving in the

⁵ *Daily Monitor*, 9 January 2006, ‘I will not go easily, says President Museveni’.

⁶ *Daily Monitor* 6 January 2006, ‘I will quit if defeated – Museveni?’.

⁷ *Ibid.*

⁸ *Ibid.*

Movement government. His arraignment before civilian courts and a military tribunal simultaneously on charges based on the same facts⁹ caused deep anger and divided the country at a time when many looked forward to stepped-up efforts at national reconciliation, a goal Museveni had set himself following the death in exile of former president Milton Obote.

Following Besigye's arrest and the violent reaction by the public, the government resorted to deploying the military alongside regular police to patrol urban areas and the countryside. While on the surface it seemed like they were there to safeguard public order, their presence intimidated members of the public and seemed to lend credence to the view, popular among the largely uninformed rural public that without Museveni at the helm, there would be chaos and disorder in the country. Evidence of the partisan behaviour of the military, police, and security agencies comes from public statements made by senior officers about the judiciary which they criticised for 'siding with law breakers', and their refusal to honour court orders granting bail to the government's political opponents accused of terrorism and weapons offences.

As had happened in previous elections, especially in 2001, the military, security agencies and the police took sides and engaged in acts of harassment against opposition candidates and their supporters. For example, the police had been dispersing opposition rallies and meetings right from way before the campaigns, supposedly because they had not secured permission for them. When it was eventually declared by the government that no permission was required by political parties to hold public events, the police started insisting on being informed in advance, ostensibly

⁹ Besigye is jointly accused with 22 other persons, allegedly supporters and combatants of a shadowy rebel group, the People's Redemption Army (PRA) which he is accused of being the political leader. When his co-accused were granted bail by a High Court judge on 16 November, the court premises were stormed by a section of the military, the Black Mambas Urban Hit Squad, with a view to re-arresting them and bringing them before a military tribunal on similar charges. The incident which was widely condemned in Uganda and abroad and it forced the presiding judge to ask to be removed from the trial, and the prisoners to decline to complete the bail formalities and ask to be returned to prison. When Besigye himself was granted bail by the High Court on 26 November, he could not be released because the military court martial had also remanded him.

so they could provide security. In reality, however, disruption of opposition meetings and rallies was intended to deny them access to the public and an opportunity to campaign.

1.3. Popularity contest

As he has become increasingly deeply entrenched and as opposition to his rule has grown, Museveni has gradually taken to fomenting more divisions and resorting to populist measures like the creation of new district or restricting taxation. The decision to allow a State funeral for former president Milton Obote might also be understood as part of the quest for popularity.

When Obote died in exile 20 years after he had been ousted, for a short while Museveni spoke the language of reconciliation, accompanied by gestures such as the return of the former president's body to Uganda at State expense, allowing it to lie in state in parliament, and granting it a State funeral. Perhaps carried away by the mood throughout the country for reconciliation, he even hinted at the possibility of returning the remains of Idi Amin, which had been buried in Saudi Arabia after he publicly criticised attempts to return them to Uganda. The reconciliatory mood was not to last.

Bellicose statements about opposition figures were accompanied by populist measures intended to win or bolster support. The creation of 24 new districts in 2005 was one such measure, even as it threatened local harmony in some places. Styling himself as a champion of cultural liberation, Museveni allowed a number of new districts to be created solely on the basis of pressure from ethnic groups which sought to cut themselves off from others they accused, opportunistically, of dominating them. Dividing people along cultural axes and creating new territorial units to separate groups of people that had all along lived peacefully side by side might encourage ethnic animosity, with administrative boundaries acquiring a new meaning as ethnic borders. There is a possibility that the new districts, given the enormous resource constraints many face, might remain ethnic enclaves, instruments of cultural self-expression without the ability to foster development.

The scrapping of graduated tax effective from 1 July 2005 was also seen as a major populist move. It was criticised by the

country's major donors. The criticism was underlain by concern at getting rid of a major local source of revenue for local governments, including the new districts, most with doubtful revenue-raising capacity, given limited local productivity. The abolition of graduated tax meant that the government, presumably with the assistance of donors, would have to replace the US\$ 44 million (Ushs 80 billion) in government revenue that would be lost as a consequence¹⁰.

In another recorded instance, in August 2005, Museveni stopped Makerere University, the biggest and oldest State university, from increasing student fees, a move the university claimed was necessary to enable it to run its operations on a basis that would enable it to compete favourably with its private competitors. In September 2005, after the cabinet had met and approved a plan to levy television tax and a South African company had been contracted to implement the plans, the president reversed the decision without reference to cabinet. Prior to running for the presidency in 2005/2006, he went about abolishing and suspending some forms of taxation without reference to parliament or cabinet—as had been the case with the creation of new districts—and in the process jeopardising revenue collection and raising the cost of public administration for a country that depends on donors for financing 48% of its budget.

In these cases of interference in the working of government bodies, President Museveni hid behind populist arguments such as the need to attract foreign investment and the desire to protect 'my people' from, for example, 'unfair taxation'.

2. WAR, STATE SECURITY AND HUMAN RIGHTS ABUSE

Once lauded for its respect for human rights, the Museveni government's record on human rights is now at best mixed. Increasingly common instances of arrest, incarceration and torture by the police, the army and numerous security agencies of civilians,

¹⁰ *The East African*, January 9–15 2006. 'Ugandan ministers to pay for own travel'.

some of them political opponents of the regime, on various charges, including terrorism, are not restricted anymore to the war-torn northern and north-eastern regions. The army is a central institution in government in Uganda. War brought Museveni to power 20 years ago and, since then, wars have been led on several fronts, mostly in the northern and north-eastern region but also in the Democratic Republic of Congo, by the Uganda People's Defence Forces (UPDF), the successor to the National Resistance Army (NRA) which installed Museveni.

2.1. War-torn northern and north-eastern regions

Whilst many insurgent groups have arisen and been defeated over the last 20 years, the Lords Resistance Army (LRA) has defied determination by the UPDF and the government to defeat it militarily, and remains a major menace to security in the north and north-east of the country. 2005 ended with both the president (not the government) and the army still committed to ending the conflict through war. Attempts at peace negotiations encouraged by the donor community and acquiesced to by the rebels ended in failure once again, as they did in 1994. Still at the centre of the negotiations was former minister for the pacification of the North, Betty Bigombe, whose efforts in 1994 had ended in failure and frustration.

Just as the negotiations seemed destined for success, the president issued an ultimatum to the LRA to surrender (to gather in a specific location) while the talks continued, from where the government would provide them with food, medical services, and other requirements. Twenty years of war and mutual demonisation and recrimination, together with the mistrust created by the failure of the 1994 talks, meant the LRA could not do as Museveni directed and risk self-exposure to attack by government forces.

Predictably, the president's ultimatum was rejected and the talks failed. While the government continues with its past pronouncements about the LRA being 'finished', the rebels maintain a presence in the countryside where both civilians and military personnel face constant risk of attack. While the frequency and scale of attacks diminished considerably in 2005, the threat to peace and stability in the country and to the general well-being of the people of the north and north-east remain significant, as from

time to time rebels are able to launch deadly attacks on civilian and military targets.

The situation has been complicated somewhat by the decision by the International criminal court (ICC). In its bid to have them arrested and prosecuted for crimes against humanity, the Court has placed a bounty on the heads of the LRA's leadership. These manoeuvres seem to have served only to harden the attitudes of the rebel leadership who have vowed to fight on to the end. At the close of 2005, the LRA was reported to be active in three countries: Uganda, (parts of Southern) Sudan, and the Democratic Republic of Congo.

In parts of the north and north-east, local media and national as well as international human rights organisations report widespread human rights abuses. For example, in March 2005 a report by the US State Department accused the security forces of gross human rights abuses, including recruitment of child soldiers and illegal detention. In September, Human Rights Watch released a scathing report implicating Uganda People's Defence Forces soldiers in atrocities against civilians in the north of the country.

2.2. The role of the military

The Uganda People's Defence Forces (UPDF), behaves like the party militia of Museveni's National Resistance Movement, paying allegiance to him as its leader, rather than to the State and the national constitution¹¹. In addition to officers and men openly castigating and sometimes assaulting opposition politicians—including members of parliament—and their supporters, they routinely make pronouncements in support of the president or the regime¹².

¹¹ This view was recently echoed by none other than the Head of Military Intelligence, Col. Leopold Kyanda, who called the UPDF "*the military arm of the NRA*". Interestingly, this particular officer was promoted by President Museveni in October 2005, by then Commandant of the Presidential Guard Brigade (PGB) from Lieutenant Colonel to Colonel and then deployed to head the Chieftaincy of Military Intelligence (see *The Weekly Observer*, 23–29 March 2006, 'CMI campaigned for NRM').

¹² See, for example, *The Weekly Observer*, 23–29 March 2006 'Kyanda's document: "The achievements of the NRM since 1986" in full'.

The law bars soldiers and security officials from canvassing support for any political party and speaking in public or publishing anything politically controversial. Partisanship which is expressly prohibited by the 1995 constitution¹³ and other legislation¹⁴, is exhibited by officers as high up in the ranks as the Chief of Defence Forces who in late 2005 promised 'terrible consequences' to retired army officers turned opposition politicians, who 'turn against the Commander-in-Chief'¹⁵. This is the kind of conduct that has created the impression in the public mind that whatever happens at elections the army will support Museveni to hang on to power illegally. In 2005 these fears were compounded by the army's decision, through its representatives in parliament, to support the controversial motion to lift presidential term limits from the constitution, and to 'discipline' one officer who abstained from voting on June 28 and July 12.

These controversial acts by members of the army came on the heels of the arrest, incarceration and replacement of one of the army MPs, Brigadier Henry Tumukunde. Convinced that it was wrong for President Museveni to want to stay in power beyond the two-term constitutional limit, the brigadier had, in a radio interview, vowed to vote against the motion and criticised the president for wanting to overstay in power. Brigadier Tumukunde's conduct as well as that of Colonel Fred Bogere who had abstained from voting, confirmed rumours that, despite the impression promoted by the army that it was united behind the incumbent, they, including some of the President's close confidantes¹⁶, were divided on this and other issues. The post-election period has further

¹³ Article 208 (2) states: "*The Uganda People's Defence Forces shall be non-partisan, national in character, patriotic, professional, disciplined...*".

¹⁴ The Political Parties and Organisations Act 2005 (section 16).

¹⁵ *Daily Monitor*, 1 November 2005.

¹⁶ For example, Brigadier Tumukunde, a relative of Janet Museveni, the president's wife, is a former head of the Chieftaincy of Military Intelligence (CMI) and Director-General of the Internal Security Organisation (ISO), both key props of the regime, as well as commander of the army's Fourth Division which for many years has borne the brunt of fighting the LRA insurgency, and has in the past played critical roles, overt and covert, in president Museveni's presidential campaigns, contrary to legislation that requires serving military officers to be politically non-partisan.

proved that all is not well within the military. Press reports suggest that, despite attempts by the military top brass to keep the army fully behind President Museveni, some personnel rebelled¹⁷.

Besides use of the army to bolster its positions in parliament, the regime has been adept at circumventing the law that outlaws participation by serving soldiers in partisan politics. This has been achieved via appointing senior (and still serving) army officers to civilian positions as presidential advisors. In this position, they claim immunity from legislation barring them from expressing opinion openly on controversial issues. Officers occupying such positions routinely criticise and attack the opposition, claiming that, as presidential advisors, they are mandated to speak on behalf of the President¹⁸.

2.3. Media freedom

Uganda scores 5 on the Freedom House Index for free and democratic countries, and is characterised as 'partly free'. In the context of developments during 2005, the description cannot be inaccurate. Both print and broadcast media enjoy a measure of freedom. Newspapers generally publish freely and, particularly in the case of independent media, often carry reports and opinions that are sharply critical of the regime and its main personalities. Of the more than 100 radio stations in the country, the vast majority are privately owned and on the whole broadcast without hindrance, including exposing embarrassing corruption scandals.

From time to time, however, the government has used the law (of sedition) to harass the media. On many occasions journalists have been arraigned before court on charges of publishing false news, or committing the crime of sedition. On other occasions

¹⁷ *Sunday Monitor*, 19 March 2006, 'The army rigged for Museveni – soldier'.

¹⁸ An example is that of General David Tinyefuza, currently Senior Presidential Advisor on security matters and coordinator of security agencies, who while appearing on a political talk-show, *Tonight with Andrew Mwenda* on Kfm radio, liberally engaged in attacking the record of the Uganda People's Congress while in power. The party is currently participating in presidential campaigns. Asked by show host, Andrew Mwenda, whether he was allowed to engage in partisan debates, he pointed that, as Presidential Advisor, he was (*Tonight with Andrew Mwenda*, Monday, 9 January 2006).

private radio stations have been closed, for short periods of time in all cases, because of broadcasting reports pronounced by the army or the government to constitute a threat to national security or detrimental to the government's image. Journalists have not been spared the wrath of the army or powerful individuals offended by their reporting and writing.

For example, in August 2005, following the death in a Ugandan military helicopter accident of Dr John Garang of the SPLM, the *Daily Monitor* and *Weekly Observer* newspapers published stories about the circumstances surrounding it that angered President Museveni. He threatened to ban the papers, claiming that they were 'compromising regional security'. On 11 August the government shut down Kfm radio station, the *Daily Monitor's* sister radio¹⁹, and on 12 August, the paper's political editor and Kfm Talk Show host, Andrew Mwenda, was arrested, detained, and on 15 August, charged with sedition.

On 18 November police raided the *Daily Monitor's* offices following production of posters soliciting for funds from the public to finance the legal defence of opposition presidential candidate, Dr. Kiiza Besigye, then in detention. The police suspected that the posters had been printed by the *Daily Monitor*, an act which, even if proved, would have broken no law. The police, however, argued that it was against the law to fundraise without permission, a view contested by members of the legal fraternity. Although two people were subsequently arrested for trying to pin up the posters in the city, they were later released without charge. This and other forms of harassment of the opposition point to the partisanship of yet another security arm of the State and lack of respect for media freedom.

3. CONTROL OVER STATE APPARATUS AND THE ECONOMY

The growth of an authoritarian regime has brought about major concerns in terms of service delivery by the State.

¹⁹ It stayed shut until 18 August.

3.1. Corruption

Even though corruption is a generalised phenomenon worldwide, it is made worse when political leaders are not held to account and when the State apparatus is controlled by unaccountable leaders. Positions of power might be used as sources of private wealth accumulation as well as of political financing. In the case of Uganda, as might be the case elsewhere, a small group of powerful people control many aspects of the economy. Fraudulent procurement is also a common resource for powerful people. Given the involvement in corrupt practices of some of its most powerful members, the State's willingness to combat malfeasance is being questioned.

There are, also, longstanding rumours that relatives, friends and in-laws of individuals within the highest echelons of the government are involved in various forms of financial impropriety. Some of the evidence for these allegations came from the International Court of Justice when it ruled that Uganda was guilty of looting and plundering the Democratic Republic of Congo following the illegal occupation by the UPDF of its eastern regions, allegedly to fight insurgents hiding there.

Among individuals accused of taking part in the looting were senior military and civilian officials and their relatives. Indeed, the government's apparent lack of will to fight corruption is often attributed to the existence of a corrupt inner circle of untouchable relatives, friends and in-laws of senior politicians and military officers. That this circle is not imaginary was confirmed by the Vice President, Professor Gilbert Bukenya, when on 22 May he expressed worry about 'a mafia clique' within government, which was undermining his authority, although later on, following a meeting with the president and senior political figures rumoured to constitute the said mafia, he retracted the on-the-record statement he had made to a journalist. The statement however, confirmed what had long been the subject of innuendo and gossip within elite circles.

As in past years, there were many reports of corruption, misappropriation and theft of public funds and assets throughout the government, especially in the ministries of health and defence in 2005. The Ministry of Defence was rocked by a scandal involving the loss of millions of dollars in a scam perpetrated by senior army

officers who claimed and pocketed the salaries of dead soldiers and those who had deserted or were missing in action. The scandal exploded in the wake of others in recent years, which have resulted in the loss of millions of dollars through fraudulent procurement deals in which top military and civilian officials have been implicated. During the dying months of the year, the Ministry of Health was caught up in a corruption scandal involving mismanagement and misappropriation of financial grants from the Global Fund for HIV/AIDS, malaria and tuberculosis.

As far back as June 2005, AIDS activists had made allegations about funds intended for anti-HIV/AIDS, malaria and tuberculosis activities being diverted to activities connected with the President's push for lifting term limits and informal campaign for a the third term in office. The activists had gone on and petitioned parliament. In August, citing mismanagement²⁰, the Global Fund suspended its funding to the government. The government responded by appointing a Commission of Inquiry headed by a High Court Judge. By the end of 2005, the Commission was yet to conclude its work. Meanwhile the Fund demanded that monies which had been misused be refunded. From early on the Commission discovered far-reaching evidence of malfeasance. Many of those implicated in wrong-doing have strong connections to the ruling National Resistance Movement. Among them were the Minister of Health and his three deputies as well as organisations founded and at times headed by Members of Parliament, Ministers and other public figures. Remarkably, the government's reaction to scandals of this kind has been to institute commissions of inquiry that invariably end up without prosecutions that might deter similar misconduct in the future.

This is a curious occurrence given that over the last 20 years the government has created organs and instituted mechanisms to fight corruption. They, nonetheless, are widely believed to be for public relations purposes, designed to prove to increasingly critical donors and a once credulous public that something is being done, well as there is neither the commitment nor the political will to

²⁰ The suspension was lifted early November after the Fund and the government had reached an understanding concerning the manner in which funds were to be managed in future.

fight corruption. In the rare event that individuals accused of graft are prosecuted and found culpable, punishment is the exception rather than the rule. As if to prove its unwillingness to act against corrupt officials, the government usually leaves its officials, civilian and military, who are accused of malfeasance in their positions and, from time to time, promotes them. The view that the government condones and in a sense encourages corruption was compounded by, among other things, the decision to pay sums of money to Members of Parliament in an act widely interpreted as seeking to influence voting to lift presidential term limits. More generally, presidential campaigning has been viewed as diverting money from service delivery.

3.2. Service delivery

Corruption is widely seen as affecting service delivery by the State. On the economic front, the State is seen as having to fight several battles, not least because of its worrying population growth rate. In spite of its poor political record, Uganda has officially recorded impressive growth in human development. The UNDP's 2005 Human Development Report showed that Uganda had risen by two places (146 to 144) on the Human Development Index²¹. The Report attributes the progress to improvement in literacy levels, and that in life expectancy from 43 years in 2000 to 45.7 years in 2004.

Universal primary education (UPE) remained both a flagship policy of the NRM government as well as a great source of controversy. While enrolment numbers grew from 2.5 in 1997 when it was introduced to 7.5 by end of 2005, the impact of the policy on the quality of education overall and the benefit children derive from it remain subjects of intense debate. Drop-out rates are high, with large numbers of children who do not drop out completing primary school education without the ability to read and write. In the midst of the debates about UPE, President Museveni, in a bid seen as primarily intended to boost his electoral chances, promised to introduce universal secondary education (USE). The

²¹ UNDP (2005). *Human Development Report International cooperation at a crossroads: Aid, trade and security in an unequal world*. New York, United Nations Development Programme.

details of that policy and how it is to be implemented are still unavailable, but already questions are being asked about how it will be paid for, given that the government is weighed down by high costs of public administration, low export earnings from poor primary commodity prices, and the seeming determination by the donor community to cut foreign assistance. Significantly, teachers' salaries remain low, as does their morale.

As in the case of education, physical access to health facilities has increased and remained high in 2005, with continued construction of health facilities across the country. Nonetheless, even here there is intense debate about the quality of services offered especially in rural clinics. Press reports and academic research suggest that, despite improvements in recent years, the quality of services remains poor, with supplies, equipment and personnel lacking in most of the facilities, especially in rural areas. Lack of supplies and equipment is the outcome of inadequate financial resources, while absence of personnel has to do with the government's continuing inability to pay a living wage to its employees. The limited supplies are also routinely misused or stolen by poorly-paid health workers, some of whom own private clinics in the same localities where they work, and the inability of the health ministry to provide adequate supervision of personnel and inspection of facilities²². The government's reliance on foreign aid in the health sector is threatened by the recent political turn of events.

3.3. Suspension of foreign aid

Donors suspended aid²³ over a number of issues: delays in the implementation of the political transition timetable from Movement to multiparty politics; the arrest of opposition leader Kiiza Besigye and his arraignment before both civilian and military courts on similar charges; interference by the military in judicial matters; concerns about press freedom and freedom of association;

²² See, GOLOOBA-MUTEBI, F. (2005). 'When Popular Participation Won't Improve Service Provision: Primary Health Care in Uganda', *Development Policy Review*, 23/2: 165-182.

²³ In total donors withheld 73 million US dollars in aid (UK \$ 35, Sweden \$ 8, Ireland \$ 4, Norway \$ 4, Netherlands \$ 7, and the World Bank \$ 15.

and the huge rise in expenditure on public administration following the political creation of 24 new districts and the removal of local revenue sources such as graduated tax.

Meanwhile, following the withholding of 5 million sterling in aid by the British government citing concerns about the country's political transition, Museveni went on to maintain that his government had the ability to do without foreign aid. The president's pronouncements are based on the assumption that the Uganda Revenue Authority, following far-reaching internal reforms that have curtailed corruption and increased efficiency and effectiveness in tax collection, can cover a significant part of the gap left by withdrawn donor funding.

It is widely believed and indeed it was stated by Britain's Secretary for International Development in the case of his own country, that donors might release the money withheld if the 2006 elections were conducted free of controversy and malpractice, the results were seen to reflect the broad spectrum of public opinion, and Uganda's transition to democratic rule was placed on the right footing again. If this were to happen, the impact of withholding funds would only be short-term. If not, the impact on the economy—inflation, exchange rates, interest rates, domestic savings and private sector investment—is likely to be serious. By end of 2005, the cutback in aid had already led to a partial shutdown of some government functions. In addition to ministers being told to meet their official travel expenses, a ban had been imposed on trips outside the country; government activities requiring the holding of meetings outside ministry premises grounded; and an end put to the purchase of stationery, with ministers being advised to use electronic communication instead²⁴. Cutbacks in aid came alongside rises in the cost of public administration referred to above, and a large build-up in outstanding domestic arrears amounting to US\$ 263 million, 30% of the annual budget²⁵.

²⁴ These measures were necessitated by the withdrawal of US\$ 5.2 million from the US\$ 10.2 million discretionary budget of the 2005/06 national budget, which had been allocated for fuel, transport and stationery.

²⁵ *The East African*, 9–15 January, 2006, 'Ugandan ministers to pay for own travel'.

Despite its poor political record, which led Uganda to drop eight places (79 to 87) in the global competitiveness rankings in 2005, trade and investment registered tremendous success. Investments in tourism and production and export of coffee, tea, fish and horticultural products boosted the country's export base. To widen the market for its products and boost collective bargaining in international organisations such as the WTO, Uganda is pushing for East African integration²⁶.

Conclusions

The year 2005 saw Uganda face the most sustained criticism since president Museveni's ascendancy to power. Criticism was over the country's troubled transition to multiparty rule; escalating levels of corruption throughout government; violation of human rights in Congo and plundering of its assets; recruitment of child soldiers; interference by the military in judicial matters; arrest, incarceration (sometimes in un-gazetted 'safe houses') and torture of political dissidents. Stung by the criticism and worried by the effect it was having on its image abroad, the government swung into action. It hired CNN to the tune of US\$ 1 million to mount an advertising campaign to spruce up its image. Later it was revealed that the president's son-in-law had made a large commission off the deal, through TERP Consult, his Public Relations firm, in a contract won allegedly through influence peddling. The once internationally popular Museveni, in years past counted among the continent's 'new breed' of leaders, is now compared to old-style despots such as Robert Mugabe of Zimbabwe and Mobutu Sese Seko of former Zaire. At home, too, the image of freedom fighter that he has cultivated for himself for so long has come into question, not least from life-long associates and former comrades²⁷. There is a feeling within sections of the population that Museveni is planning to stay in power indefinitely, and that the objective can only be achieved through reliance on the military which shows signs of being loyal to him as an individual rather than to the State.

²⁶ *Sunday Vision*, 26 March 2006, 'On the Road to EA federation'.

²⁷ See, for example, KATEGAYA, E.T. (2006). *Impassioned for Freedom*. Kampala, Wavah Books Limited.

On 29 September 2005, a new annual Failed States Index compiled by the American Fund for Peace assigned Uganda 27th position among the most hapless nations facing 'some risk of collapse'. This would have been impossible to imagine 10 years after Museveni ascended to power. By that time Uganda was being feted as a successful story not only in the field of HIV/AIDS control, but also in the political and economic arenas. In the political sphere it had devised a 'unique system' of home-grown no-party democracy with emphasis on grassroots participation. In the economic sphere, it had embraced IMF structural adjustment policies and been among its most successful implementers on the African continent. Uganda was riding on a high. As 2005 closed and 2006 started, Uganda seemed destined for an uncertain future in which neither civil conflict nor continued but uneasy stability could be completely ruled out.

Postscriptum

The 23 February 2006 elections, as many expected, seem to have compounded already sharp political divisions. Before they were held, a large portion of the population (51%) believed the elections would not be free and fair²⁸. Museveni was eventually declared the winner, by just over 59%, in a poll contested by the opposition FDC whose candidate, retired colonel Kiiza Besigye, came second with 37%. Citing widespread malpractice in which it accuses the Electoral Commission to have colluded, the FDC went on to lodge a petition at the Supreme Court, seeking to have the elections annulled.

²⁸ The figure comes from an opinion survey conducted by a leading Kampala-based research firm, Wilsken Agencies on behalf of the *Daily Monitor*, between December 16 and 19, 2005, soon after presidential candidates were nominated and the Attorney General attempted to block Kiiza Besigye's nomination contrary to the law, and weeks after Museveni's main challenger, Dr. Kiiza Besigye, had been arrested and remanded (5 January 2006, *Daily Monitor*).

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THE LEGACY OF J.K. NYERERE AND THE TANZANIAN ELECTIONS OF OCTOBER–DECEMBER 2005

by Marie-Aude Fouéré

In present-day Tanzania, the first president of Tanzania, Julius Kambarage Nyerere, is a major reference in political and social life. Six years have passed since he died on 14 October 1999 but his memory is still very much alive. He is presented by journalists as well as politicians as a national hero deprived of any drawbacks, liberating the country from colonial domination, unifying the various peoples of Tanzania into a single nation and promoting peace, justice and equality for all, without any religious, ethnical or racial distinctions. Among the population, the evocation of his name is generally followed by laudatory comments on his personality and the moral values he defended during his life.

This general consensus of opinions on J.K. Nyerere is evident at the time of the annual commemoration of his death in October. This commemoration constitutes a significant event in Tanzanian political life during which the 'founding father' (*Baba wa Taifa* in Swahili, literally 'the father of the nation') of the nation-state of Tanzania is praised by the media and by politicians. In the same vein, the presidential and parliamentary elections of October and December 2005 proved that J.K. Nyerere was still part and parcel of Tanzanian political life. The moral principles he advocated during his life and his social and political achievements were mobilized by politicians to assert the value of their political agenda.

This essay addresses the relation between the unchallenged official memory of J.K. Nyerere and its use in the political sphere, especially during the electoral campaign of October and December 2005. We will draw on a previous work unveiling the rhetorical strategies upon which the production of an unequivocal legacy of

J.K. Nyerere relies upon¹ to investigate the logics underlying the recurrent reference to his life and personality. The central hypothesis is that the memory of Nyerere is mainly used by the political party in power to legitimate its monopolistic position in the political field and to attack opposition parties, whereby questioning the relevance of multiparty democracy.

1. THE MEMORY OF JULIUS KAMBARAGE NYERERE IN TANZANIA

1.1. J.K. Nyerere and Tanzania: a short biography

We cannot begin to underline the construction of J.K. Nyerere's legacy without first starting with a short review of his biography². Born in 1922 in Butiama, a village situated on the eastern shore of Lake Victoria in North West Tanganyika, Nyerere was the son of one of the leaders of an ethnic group called the Zanaki. As he proved himself a good pupil at Primary School, he was sent to Secondary School in Tabora Region in 1935 and then went on to train as a teacher at Makerere University in Kampala (Uganda). He became a member of the *Tanganyika African Association* (TAA), a nationalist movement created in 1929 by Tanzanian elite of townsmen and civil servants that assumed a greater political role as Tanganyika moved closer to its independence from British colonial rule.

After being a teacher for a couple of years, Nyerere was granted a government scholarship to study history and political economy for his Master of Arts at the University of Edinburgh in

¹ Fouéré, M.A. (forthcoming). 'J.K. Nyerere entre mythe et histoire: analyse de la production d'une culture politique nationale en postcolonie'.

² We draw on a great deal of scholar works published on Nyerere's life, mainly ASSENSOH, A.B. (1998). *African Political Leadership: Jomo Kenyatta, Kwame Nkrumah and Julius K. Nyerere*. New York, Krieger Publishing Co.; COULSON, A. (1979). *African Socialism in practice : The Tanzanian Experience*. Nottingham, Spokesman; DUGGAN, W.R. and CIVILLE, J.R. (1976). *Tanzania and Nyerere. A Study of Ujamaa and Nationhood*. Maryknoll, Orbis Books; LÉGUM, C. and MMARI, G. (1995). *Mwalimu: The Influence of Nyerere*. London, Africa World Press; MWENEGOHA, H.A.K. (1976). *Mwalimu Julius Nyerere. A Bio-bibliography*. Dar es Salaam, Foundation Books; SMITH, W.E. (1973). *Nyerere of Tanzania*. London, Victor Gollanez.

Scotland until 1952. He then wrote his first essay entitled *The Race Problem in East Africa*. On his return to Tanganyika, he taught in one of Tanganyika's prestigious schools in the area of Dar es Salaam and was getting involved in politics. In 1953, he was elected president of TAA, which were soon converted into a political party called the *Tanganyika African National Union* (TANU). But as the colonial administration banned the participation of administration workers into politics, he chose to quit his job in 1955 and dedicate himself to the liberation movement.

TANU mission was to prepare Tanganyika for an independence that would benefit all the Africans of the territory without any ethnic discrimination. If Nyerere's apparent moderate political positions and call for racial parity were first approved by the British Colonial Office, his claim for a genuine African leadership—that was running counter to the supposedly multi-racial but actually white-dominated rule promoted by British Governors³—caused his disgrace. TANU as well as Nyerere himself were accused to be “*fundamentally racialist and not nationalist*” by the British Governor Sir Edward Twining⁴. Nevertheless, after TANU launched a countrywide sensitization campaign in 1958 to promote the independence of Tanganyika, it was granted a sweeping victory in the country first elections in 1958-59. The colonial power had no choice but support Nyerere, whose moderate positions were recognized by various British administrators and observers. One year later, Nyerere was nominated prime minister and formed his first ministry. Full independence came in December 1961 and Nyerere was elected President of Tanganyika in 1962. It is only after Nyerere negotiated with the leaders of Zanzibar⁵ and agreed to absorb them into a

³ In a speech delivered in 1957, Nyerere told the crowd that: “*In Tanganyika, Government intended to rule on multi-racial lines, but this was a myth. Multi-racialism meant government for the good of Europeans and Indians and eventually only for Europeans. There were only 3000 Europeans and settlers in Tanganyika, but they intended to rule the country and exhorted all the inhabitants to live quietly together*”, cited in MADDOX, G.H. and GIBLIN, J.L. (2005). *In Search of a Nation. Histories of Authority & Dissidence in Tanzania*. Oxford, James Currey (p. 175).

⁴ Cited in MADDOX, G.H. and GIBLIN, J.L. (2005), *ibid*, p. 177.

⁵ The Union was made possible after Zanzibar Revolution of 1964 when African leadership replaced the Arab ruling minority.

Union Government that he became the first president of the United Republic of Tanzania.

Starting from that period, Nyerere's biography merges into the building of Tanzania as an independent nation state. The nationalist ideology formulated by Nyerere in his first book and at the time of the liberation of the territory came into being in 1967 under the name of *Arusha Declaration*. This document proclaimed Tanzania a socialist state in which all citizens, whatever their tribe, religion or race, had equal rights. It also called for a new programme of development depending neither on foreign capital nor on industries but on a specific "African" socialism⁶ resorting to the collectivization of agriculture (*villagisation* programme) and the creation of a vast state-owned sector. In various essays and speeches⁷, Nyerere developed in great length his representations of "traditional" African families as egalitarian and communal organisations that tended to achieve both personal and collective development⁸. He forged a term, *ujamaa* in Swahili, meaning 'familyhood'⁹, to designate this former African ethic of social living that the newly-created state of Tanzania should strive for through collectivisation of land and nationalisation of enterprises. The educational system was conceived as a popular and non-elitist tool

⁶ "The objective of socialism in the United Republic of Tanzania is to build a society in which all members have equal rights and equal opportunities; in which all can live in peace with their neighbours without suffering or imposing injustice, being exploited, or exploiting; and in which all have a gradually increasing basic level of material welfare before any individual lives in luxury" (NYERERE, J.K. 1968: 340).

⁷ He published many books to mobilize citizens, explain his political choices, assert his views or express his regrets and hopes. See *Freedom and Unity, Uburu na Umoja. A Selection from Writings and Speeches 1952-1965* (1967); *Uburu na Ujamaa: Freedom and Socialism* (1970); *Freedom and development, Uburu na Maendeleo, A Selection from Writings and Speeches 1968-1973* (1973); *The Arusha Declaration Ten Years Later* (1977).

⁸ For the development of a mythical representation of pre-colonial African societies in Nyerere's thoughts, see MUSHI, S.S. (1971). 'Modernization by traditionalization: Ujamaa Principles revisited', *Taamuli*, 1 (2), March, 13-29 or MARTIN, D.-C. (1988). *Tanzanie, L'invention d'une culture politique*. Paris, Presses de la fondation des sciences de l'homme/Karthala.

⁹ Concerning the use of Swahili in the construction of the nation state, see MARTIN, D.-C. (1988), *ibid.* or WHITELEY, W.H. (1969). *Swahili. The Rise of a National Language*. London, Methuen.

to build a self-reliant socialist society. Its main objective was to transmit skills and knowledge regarding everyday activities in *ujamaa* villages. According to Nyerere, African socialism was not a Tanzanian-centred way of development. It implied a pan-africanist vision of the continent whereby newly independent countries would work hand in hand to fight against white minority governments as in South Africa or against colonial influence in general. In 1963, he participated actively in the creation of the Organization of African Unity. Nyerere's government provided refuge for several liberation movements, especially those having socialist sympathies (e.g. Mozambique).

As Martin¹⁰ argues, given their universal appeal, the moral principles (equality, justice, unity, independence) publicly advocated by the new president were easily adopted by the population. At the end of the 1960s, Nyerere's popularity was equal to Tanzanians' expectations for a fair social and economic development¹¹. But the discrepancy between the announcement about the respect of a set of moral guidelines and the reality of the implementation of specific policies led to a growing disillusion. Despite decent results in health and education, violent relocations of farmers in *ujamaa* villages in 1973–75¹², administration arbitrariness and growing inequalities between rural and urban life were irremediable proof of the failure of Nyerere's *ujamaa* programme in its ethical dimension. What is more, the president's manoeuvres towards the concentration of power (Tanzania was declared a single-party state as soon as 1965¹³, civil associations were dependent on TANU and all dissident opinions censored) showed that the socialist objective of "the

¹⁰ MARTIN, D.-C. (1988), *op. cit.*

¹¹ Except for many Asians (people originating from the whole Indian sub-continent) who were scared of forthcoming large-scale nationalisations.

¹² The use of violence runs counter to what was said by Nyerere in the Arusha Declaration: "*Ujamaa villages are intended to be socialist organizations created by the people, and governed by those who live and work in them. They cannot be created from outside, nor governed from outside. No one can be forced into an Ujamaa village, and no official — at any level — can go and tell the members of an Ujamaa village what they should do together (...)*" (NYERERE, J.K. 1973).

¹³ In 1977, TANU merged with the Afro-Shirazi Party (ASP) of Zanzibar to form the Chama cha Mapinduzi (CCM)—the Party of the Revolution. This new step strengthened the monopolistic position of the party.

government of the people and by the people” was simply out of reach. As Martin puts it, « *c'est donc un Etat puissant qui a été érigé en Tanzanie, un Etat aux ramifications administratives profondes, un Etat monopolisant le contrôle de l'activité économique, un Etat qui, par la suite de ses relations symbiotiques avec le parti lui-même coiffant des organisations spécialisées (syndicats, femmes, jeunes, parents d'élèves, Anciens, coopératives jusqu'en 1975), détient également des moyens formidables d'encadrement et de contrainte sociaux*¹⁴. »

It is said that Nyerere decided not to run for re-election in 1985 after the socialist programme was pilloried as a utopian if not dangerous paradigm. There is no doubt that the pressures exerted on Tanzania by international organisations such as the *International Monetary Fund* and the *World Bank* to adopt Adjustment Plan have played a significant role as well in the retirement of Nyerere¹⁷. After the election of Ali Hassan Mwinyi as president, Nyerere gradually withdrew from active politics but his influence was still noticeable in internal affairs¹⁸. He took part in the advent of a multiparty democracy in Tanzania in 1992, first implemented in the general 1995 elections. In international affairs, he travelled across the African continent as a mediator in civil wars (Burundi, 1996). He was 77 years old when he died of leukaemia at St. Thomas hospital in London on 14 October 1999.

¹⁴ “*It is therefore a powerful state that was built in Tanzania, a state having deep administrative ramifications, a state controlling the whole economic sphere, a state that, due to its symbiotic relations to the party itself, encompassing specialized organizations (trade unions, women, youth, pupils' parents, cooperatives up to 1975), also holds incredible means of control and social constraint*” (author's translation), (MARTIN, D.-C. 1988, p. 111).

¹⁷ In 1986, one year after President Mwinyi was elected, the government opted for adjustment plans.

¹⁸ He advocated multipartyism in 1990–92, held a speech about the importance of the union between Zanzibar and the Mainland in 1995 and stated firmly that he was in favour of the candidate Benjamin Mkapa during the internal elections of the CCM candidate for the presidential elections of 1995.

1.2. The 'invention of J.K. Nyerere'

The expression 'invention of Nyerere' in present-day Tanzania¹⁹, refers to the fact that present-day representations of Nyerere's personality as well as of the values he defended during his life and the political paths he followed are built upon the multifaceted historical reality into a single and idealized image. The gap is huge between the complexity of the past and the simplification it has undergone. Historical facts selected by journalists and politicians to describe the first president and his work are those appealing to the population, that is to say all that refers to freedom, unity, justice and equality for all. On the contrary, contradictory facets of his personality and controversial aspects of his presidency are glossed over or, if not, merely considered as anecdotic features.

In a previous analysis of the articles published during the fifth commemoration of his death in October 1994, we provided new insights into the construction of an uncontroversial memory of the former president by unveiling the rhetorical strategies these articles rest on. All these articles provide information on Nyerere's personal qualities as well as on his political activities and influence in Tanzanian society. But a close examination of most of them clearly indicates how biased they are. Titles usually give evidence of the hagiographical approach adopted: "*Nyerere: a human star that twinkles since childhood*", "*Let's honour J.K. Nyerere*", "*Nyerere: a glimmer of hope that left us in darkness*"²⁰. When looking closely at the content of the articles, a full picture of the rhetorical strategies used by journalists to praise the first president of Tanzania can be drawn.

First of all, it is noticeable that all the articles published at the time of the commemoration of his death focus more on the man than on the politician. For example, Nyerere's personal qualities are

¹⁹ We refer to HOBBSAWM, E.J. and RANGER, T.O. (1983). *The Invention of Tradition*. Cambridge, Cambridge University Press or MUDIMBE, V.Y. (1988). *The Invention of Africa*. Bloomington, Indiana University Press, and (1994). *The Idea of Africa*, Bloomington, Indiana University Press. We want to make it clear that present-day construction of the memory of Nyerere rests on historical reality and millions of personal memories to propose an over-simplified image of the man and the policies implemented.

²⁰ *Nipashe*, 13 October 2004, 'Nyerere: Nyota ya utu iliyong'ara tangu utotoni'; *Mtanzania*, 14 October 2004, 'Tumuenzi Mwalimu J.K Nyerere'; *Majira*, 14 October 2004, 'Nyerere: Mwanga wa matumaini ulioacha kiza kinene,

dealt with in length. Drawing on his attitudes and choices of life style, journalists show that simplicity, absence of ostentation, honesty and generosity best describe his personality. The food he liked, *ugali*²¹, the way he used to dress or to talk²², the places where he used to live²³ are presented to the reader as illustration of these qualities. For the author of the article 'Mwalimu Nyerere: A simple president who believed in Tanzanians²⁴', Nyerere's nickname *Mwalimu*, meaning 'teacher' in Kiswahili, accounts for his modesty and his ideas of what a good leader should be: a man able to explain things simply and clearly to people. In an article entitled 'What gave authority to Nyerere?²⁵', the general opinion of the founding father of Tanzania expressed by journalists is stated with an obvious concision: "*He was a simple man leaving a simple life*". Similarly, the moral values he promoted during his life are described in full detail. 'Freedom', 'justice', 'unity' or 'equality' are recurrent from one article to the other. The first two terms refer to Nyerere's opposition to colonial rule and his major role in the independence of the country. The notion of 'unity' appears when talking about the construction of a country composed of more than a hundred ethnic groups into a steady nation state. Thus, as the article entitled 'Mwalimu miscalculations, mistakes of a pathfinder' puts it, "*using his charisma, [Nyerere] glued the whole nation into a steadfast unity that even today, still stands firm*²⁷". As for 'equality', it clearly hints at the socialist program the president developed for Tanzanian society. The Arusha Declaration of 1967 promised to build a society where "*there won't be any employers having a rest while the others get hurt in working*

²¹ *Ugali* is a thick porridge-paste made of maize flour that comes with cooked vegetables, beans or meat.

²² Different periods of dressing can be picked out (Nkrumah's khaki suit, communist Chou-En-Lai vest, safari costume) but they share the common features of simplicity and absence of ostentation.

²³ He used to live in a modest house built in the area of Masaki instead of spending his time in the huge and beautiful presidential palace situated by the Indian Ocean.

²⁴ *The Guardian*, 14 October 2004.

²⁵ *Ibid.*

²⁷ *The Guardian*, *op. cit.*

*in the field or in the factory*²⁸. But if journalists present these four main values in their relation to politics, they considered them a transposition of Nyerere's personality into the social, political and economic sphere: socialism is said to be the material form taken by his thirst for equality, unity and justice. This emphasis on the personality of the former president of Tanzania rather than on his political life turns him into a close friend or even a relative³⁰.

A second point to stress is that the construction of an uncontroversial and uncritical image of Nyerere does not stop with the repetitive praise of his qualities and achievements. It also resorts to emotions and faith. On reading articles published at the time of the fifth commemoration of Nyerere's death, it is striking to see that *predestination* is presented as the hiding force governing the former president's life. Journalists seem to search for events occurring during his childhood that could be interpreted as 'signs' of his future career: as he was a good-tempered child, he was ready for his stressful position as the country leader ; his hard-working attitude related to socialist policies whose implementation had to rely on a communal but steady work ; and his presumed innate generosity was the sign of his future personal involvement as a leader and his adoption of socialist ideas aiming at equality and justice for all. School is compared to an initiation rite successfully overcome to enter the age of wisdom. As for Nyerere's decision to stop working as a teacher and instead get involved in the liberation movement, it is regarded as a turning point in his life, a kind of symbolical 'rebirth' into the field of politics. As Memel-Foté³¹ shows in his comparative analysis of the construction of the founding fathers of post-independence African countries, the emphasis on predestination, initiation and symbolical rebirth

²⁸ *Majira*, 14 October 2004, "*Hakutakuwa na mabwana wanaokaa buku wengine wakiunia kwa kufanya kazi katika mashamba au viwandani*".

³⁰ In Kiswahili, *ndugu* (a relative) was the official term used to translate the socialist appellation of 'comrade'.

³¹ See MEMEL-FOTÉ, H. (1991). 'Des ancêtres fondateurs aux Pères de la nation. Introduction à une anthropologie de la démocratie'. *Cahiers d'Etudes Africaines* 123 (XXXI-3).

constitutes a recurrent rhetorical strategy in the process of legitimizing a national leader. In Tanzania, this process is completed by the reference to the educational level Nyerere had reached. Being not only a teacher but *the* teacher, his intelligence combined to his knowledge are presented as personal features that complete his predestinated life. Nyerere's own insistence to be officially called 'Mwalimu', instead of 'Mheshimiwa Rais' (Honorable President) or 'Mtukufu Rais' (His Excellency the President) clearly indicates his awareness of the symbolical impact of his profession. But if Nyerere epitomizes wisdom, it has to be noticed that the insistence of the media on predestination turns him into something more than just a wise old man. The recurrent use of the image of light ("Nyerere, a human *star* that *twinkles* since childhood", "Nyerere: a *glimmer* of hope that left us in *darkness*", "he was like the *torch* that was directing [the] lives [of Tanzanians] in an unified manner"³²), the suggestion that Nyerere was able to foresee the future of the nation and that his words could prevent the worst to happen ("he would foresee dangers like divisions among Tanzanians. He would speak against it with such strong words and the dangers would melt away") or the sacrifice of his personal life to the nation are evidence that the founding father of Tanzania is implicitly compared to a divine guide. If not God as such, he is not far from being a prophet³³ or a saint³⁴. Being an object of veneration, Nyerere would therefore be out of reach of the search for historical reality.

What also appears clearly is that journalists play on people's emotions. Newspapers abounded with photographs of crowds in

³² The torch (*mwenge* in Swahili) is a very strong political symbol in Tanzania. It was lighted at the time of independence (*uburu*) and has been carried by groups of young Tanzanians all around the country. It is supposed to bring light and hope to the people of Tanzania, MBISE, I. (1989). 'L'invention des symboles d'une éthique nationale', in D.-C. MARTIN and H. BATIBO (ed), *Tanzanie. L'Ujamaa face aux réalités*. Paris, Editions Recherche sur les Civilisations.

³³ The first year of the commemoration of Nyerere's death in 2000, an article published in *The Guardian* made a comparison between Nyerere's and Moses' lives (*The Guardian*, 24 October 2000, 'Mwalimu Nyerere was Tanzanians' Moses').

³⁴ At the end of this article, we will provide an insight into current attempts to equate Nyerere with a saint.

tears and reports of a great sorrow after Nyerere's body was sent back to the village of Butiama for national funerals. If the reality of a deep and reverent sadness cannot be denied, it is striking to see that, at the time of the annual commemoration of his death, the media recall with a clear tendency to exaggeration the wide-spread outburst of emotions surrounding the burial of Nyerere. Sorrow then becomes the expression of an intense communion that encompasses Tanzanian society as a whole, whatever people's ethnic, racial, religious or generational characteristics. In other words, Tanzanian society is depicted as a coherent unity without any divisions, disagreements or contradictions³⁵. In emphasising the intensity of past feelings, the media persuade people to live the annual commemoration as an emotional rather than a historical event. Even the reference to speeches pronounced by numerous heads of state at the time of the national funerals or a couple of days after serves an emotion-related commemoration. Indeed, phrases and expressions selected are those that stress Nyerere's qualities and political achievements: he was a "hero", a "great man", an "example to follow", a "child of Africa", "our father"; "without him, we would be far below", "he taught us that the quality of a leader has nothing to do with the number of Mercedes Benz he owns", "he insisted that what counts is to provide education, drinking water and reliable health services to people"³⁶. Given that the selection of past events and narratives referring to emotions and veneration generates an endless reproduction of sorrow, it leaves very little room to a critical analysis of the role played by the former president in the process of Tanzanian nation-building. The use of reason and understanding of political issues are discarded in order to have sentiments and faith prevail.

³⁵ *Mtanzania*, 14 October 2004 "Haukuwa msiba wa familia ya Nyerere, haukuwa msiba wa Wakatoliki, haukuwa wa Wazanaki, haukuwa msiba wa Chama cha Mapinduzi, haukuwa wa serikali ya CCM, ulikuwa ni msiba wa Watanzania wote", ("It was not the funeral of Nyerere's family alone, it was not the funeral of the Catholics, it was not that of the Wazanaki [Nyerere's ethnic group], it was not the funeral of the Chama Cha Mapinduzi, it was not that of the government of CCM, it was the funeral of all Tanzanians").

³⁶ *Mtanzania*, *op. cit.*; *Majira*, 14 October 2004.

³⁸ TRIPP, A.M. (1997). *Changing the Rules: the politics of liberalization and the urban informal economy in Tanzania*. Berkeley, University of California Press.

1.3. The production of a “national culture” in present-day Tanzania

In 1986 agreements with the International Monetary Fund and the World Bank were achieved and the transformation of the state-controlled economy into a market economy was started. This radical shift from the *ujamaa* socialist era (1964–1985) gave way to new social values, such as free enterprise and competition, and made it possible for foreign firms to establish freely in Tanzania. The adoption of multipartyism in 1992 put an end to the monopoly of the single party and allowed alternative voices to be heard. Since these changes, the social and economic situation of Tanzania has deeply changed. If the introduction of a market economy contributed to the improvement of living conditions, the gap between the rich and the poor increased and private accumulation of wealth is now a general trend among the urban elite³⁸. In other words, the mechanisms that worked to maintain a relative equality within the population in the socialist era, which was one of Nyerere's achievements³⁹, have disappeared. The new visibility of wealth, often perceived as illegal, and the feeling that the majority of the population is left aside are factors of increasing social tensions⁴⁰.

In this new context where the unity of the country is jeopardized, the logics underlying the incessant call for Nyerere's legacy become evident. Turning back to the post-independence process of nation-building, the references to past objectives of peace and social justice through the promotion of an idealised image of the personality and the political leadership of the first president of the country serve the objectives of preventing the development of divisions and conflicts⁴¹. The never-ending process of building the nation as an “*imagined community*”⁴², that is to say a collection of individuals who share common values and a common

³⁹ Accumulation existed during the socialist period but was limited by several laws and the poor state of the national economy (MARTIN, D.-C., *op.cit.*)

⁴⁰ HIRSCHLER, K. (2004). *Tanzania in Transition – violent conflicts as a result of political and economic reform* (Internet document).

⁴¹ RENAN, E. (1997). *Qu'est-ce qu'une nation?* Paris, Mill et Une Nuit [1882].

⁴² ANDERSON, B. (1983). *Imagined Communities. Reflections on the Origin and Spread of Nationalism*. London, Verso.

history, is at the core of the production of an official memory of Nyerere. The annual commemoration of his death works as a ritual of reiteration in which all that can bind people together is asserted⁴³. But if the reproduction of this national myth aims to build a wide-spread national culture, it is also used for personal and political purposes. The following pages propose an insight in politicians' assertions that they can prove to be the heirs of Nyerere's principles. They also highlight the strategies of the party in power to disqualify opposition parties.

2. NYERERE IN THE OCTOBER–NOVEMBER 2005 TANZANIAN ELECTIONS

Whereas the annual commemoration of the death of Nyerere made it possible to unveil the process of idealisation of the first president of Tanzania, the presidential and parliamentary electoral campaign that started at the end of August 2005 gives a good opportunity to investigate the political strategies underlying the recurrent reference to the univocal legacy of Nyerere's values and achievements in present-day Tanzania.

2.1. A brief review of the 2005 elections

At the end of the year 2005, the third multiparty presidential and parliamentary elections took place in Tanzania. Originally scheduled to be held on 30 October 2005 both in the archipelago of Zanzibar and in Tanzania Mainland⁴⁴, the elections were delayed following the death of Jumbe Rajab Jumbe, the running mate of the presidential aspirant of one opposition party, called *Chama cha*

⁴³ In this endless process of nation building, dissident memories of Nyerere's presidency are simply dismissed. For example, the Asian point of view on the policies implemented during the socialist era is passed over in silence. Even scholar works dedicated to historical veracity of the socialist period are completely ignored by politicians and the media (FOUÉRÉ, forthcoming).

⁴⁴ The United Republic of Tanzania is composed of the archipelago of Zanzibar (with the two main islands of Unguja and Pemba) and the ex-Tanganyika territory, commonly referred today as the Mainland.

Demokrasia na Maendeleo (CHADEMA⁴⁵). If the elections were maintained in Zanzibar, they were postponed until 14 December on the Mainland so that CHADEMA could designate a new running mate. The electoral campaign that had started on 21 August therefore lasted one and a half month more than first planned.

Since the introduction of pluralism in Tanzania in 1992, the former single party renamed *Chama cha Mapinduzi* (CCM) in 1977 have won landslide victories against opposition parties. The CCM presidential candidate Benjamin Mkapa was credited of 61.8% votes in 1995 and 71.7% in 2000 while in parliamentary elections CCM got respectively 163 seats out of 183 and 199 out of 213. As for the year 2005, it was a resounding victory for the CCM candidate Jakaya Mrisho Kikwete (80.25% votes) as well as for CCM Members of Parliament who swept to victory with 206 seats out of 232⁴⁶.

On the one hand, the strength of the control on voters by the single party in power since independence, the large amount of financial supports given to its candidates allowing practices of petty corruption⁴⁷ (consisting in presents to voters, from t-shirts and

⁴⁵ *Chama cha Demokrasia na Maendeleo* means the 'Party for Democracy and Progress'. Its presidential candidate was Freeman Aikaeli Mbowe. He represented Hai constituency in Kilimanjaro region in the previous Parliament. He is a businessman and holds a diploma in education from the University of Dar es Salaam.

⁴⁶ The Tanzanian Parliament is composed of a majority of elected Members of Parliament (232 in 2005), 5 Members of the House of Representatives of Zanzibar, 1 Attorney General *ex-officio*, 10 Presidential Appointees (only 6 have been designated, all of them being CCM politicians) and 75 Special Women Seats (these seats were created to implement the "Declaration on Gender Development" of the Southern African Development Community or SADC, requiring 30% of women in Parliament). This makes a total of 323 MPs in the 2005 Parliament.

⁴⁷ In 1995, the Election Act was modified to allow *takrima*, 'traditional hospitality'. In practice, it means that "*corruption is slowly being given a respectful definition*" (MAUPEU, H. (2001). 'Comment apprivoiser le multipartisme ? Les élections de l'an 2000 en Tanzanie continentale', in H. MAUPEU (dir), *L'Afrique Orientale, Annuaire 2001*. Paris, L'Harmattan (p. 88, citing a journalist).

*khanga*⁴⁸ to bikes, cars or even money), musical propaganda and payment of party agitators during political meetings, patronage practices and occasional use of violence⁴⁹ account for voters loyalty to CCM. On the other hand, the multiplication of opposition parties⁵⁰, the absence of any alternative clear-cut political agenda, the lack of public visibility and financial means as well as the evident opportunist attitude of some of the opposition leaders seeking fame and money obviously participate in a general bad opinion of opposition parties. According to a majority of citizens, the only credible party is the Civic United Front (CUF). His mainland leader, Prof. Ibrahim Lipumba, who stood as the CUF candidate in the 1995 and 2000 elections, is seen as a trustworthy and competent politician—he holds a PhD in Economics from Stanford University in the United States and served as Economic Reform Adviser (1991–1993) to President Ali Hassan Mwinyi⁵¹. But the party reputation suffers from its originally strong implantation in the islands of Zanzibar, making it a Muslim and isles-oriented party in the eyes of many voters of the Mainland. What is more, incessant accusations and critics of CCM members, if sometimes well founded, are often perceived to be mere slandering, thus participating in its reputation of a violent and anti-democratic party.

2.2. Personal search for legitimacy

In the political sphere, attitudes and words of consideration, admiration or even veneration for the first president of Tanzania frequently turn out to be mere strategies devoted to legitimize

⁴⁸ *Khanga* are pieces of printed cotton cloth that women wrap around their waist and their shoulders.

⁴⁹ In the first multiparty elections of 1995, the main organization for the observation of voting procedures, TEMCO, declared that on the Mainland the elections were “*not fair*” after violent acts on sympathizers of opposition parties by the Police. It was worse in Zanzibar where TEMCO spoke of “*a sad story of aborted elections?*” (MAUPEU, H. 2001: 75–76). In the 2005 elections, similar troubles were denounced in Zanzibar.

⁵⁰ For the 2005 elections, 18 political parties were registered. Among them, 10 parties put up a candidate for the presidential elections.

⁵¹ Ibrahim Lipumba is also a professor in economics (Dar es Salaam University, 1989–1996) and a researcher. He has advised several African countries on economic policy.

politicians' abilities and programmes. The following examples illustrate legitimizing tactics adopted by presidential and parliamentary candidates in the 2005 general elections.

The CCM politician and ex-minister of Water, Energy and Minerals (1990) Finances (1994), Foreign Affairs and International Cooperation (2000) as well as ex-deputy of Chalinze district in Coast Region, Jakaya Mrisho Kikwete did not wait for the official launch of the electoral campaign at the end of August 2005 to engage in the promotion of his candidacy. Even before he was elected as the presidential CCM candidate for the coming elections, his increasing visibility in the media was evident. In May 2005, his meeting with the widow of the late Nyerere, Maria Nyerere, constituted a turning point in his personal campaign. Even if the actual content of the meeting was not released to the media, what has been abundantly recounted and discussed was Nyerere's widow giving present of a Bible to Kikwete. The event was first praised as a deferent way to pay tribute to the first president of the Republic of Tanzania, for the visit of Kikwete to Nyerere's widow implicitly meant that he was keen to follow in his footsteps. But being a Muslim, Kikwete was also much applauded for building bridges between Islam and Christianity, thus showing that different confessions can leave together in peace. Doing so, he was again proving himself the heir of Nyerere's principles. Last but not least, meeting Maria Nyerere had a special significance for a man who did not have such good relations with the former president. In Tanzania, everybody remembers that during the presidential elections of 1995, Nyerere had openly declared that he did not approve the candidacy of Kikwete, preferring to give his support to Benjamin Mkapa. Therefore, to pay a visit to the family of Nyerere, officially presented as a matter of common courtesy, turned out to be a powerful strategy in legitimizing the pretension of the presidential aspirant to be the new head of State. On May 13th, a made-up article published in the form of a letter and entitled 'Letter from paradise: Julius Nyerere writes to Jakaya Kikwete'⁵² showed

⁵² *The Guardian*, 13 May 2005.

⁵⁴ *Nipashe*, 5 October 2005, "*Wanaokuja kuomba dua kaburini (...) wanafanya hivyo siyo maalum kwa ajili ya kumuenzi. Wanavuta ushawishi wa kisiasa ili wapate faida za*

that some members of the media were deeply convinced or keen to persuade their readers of Kikwete's filial sentiment. Indeed, in this made-up letter, Nyerere indifferently calls Kikwete "*dear Jakaya*", "*young man*" and three times "*my son*" while he is given advice about political tactics and moral concerns. At one point, Nyerere is made to say that: "*If I were still living there, I would have supported you simply because your age now allows you to be president. In fact you are the best candidate of your party*", and then "*You know I never had grudges against you*". The letter therefore hints at the past contentions existing between the two men to better defuse them. The result is that Kikwete fully appears as the direct moral descendant of the founding father of Tanzania.

A second event related to Nyerere's legacy gave rise to a couple of comments in the press. The last weeks of the electoral campaign, many politicians turned up in the village of Butiama to visit the grave of the late president. Their official purpose was to come and meditate at his grave. Some journalists caustically noted that the respect for Nyerere so suddenly displayed during the electoral campaign was not strong enough to make politicians go all the way from Dar es Salaam, where they all live, to the shores of Lake Victoria on no specific occasions. What is more, the real objective of the visit was difficult to hide: politicians were simply in search of political legitimacy. As one journalist puts it: "*those who come to pray at Nyerere's grave (...) don't do it only to show respect. They draw on political persuasion to get greater political benefits*".⁵⁶ And this presumed respect was considered all the more shocking that political agendas of 2005 presidential and parliamentary candidates and Nyerere's past policies are completely opposed. After noting the hypocritical promises of one politician who declared that people would be the owners of the benefit made on agriculture and mining in Kilimanjaro region, the journalist questioned the process by which an MP is brought to show reverence for a man whose memory is ignored every time a new law towards the liberalisation

kisiasa", "*Dua kwenye kaburi la Nyerere wakati huu kuna maana gani?*" ("What does it mean to meditate at Nyerere's grave at that time [of elections]?").

⁵⁶ *The Guardian*, 3 February 2006, 'Nyerere shouldn't be declared a saint'.

of the economy is passed. Let's note that CCM candidate Jakaya Kikwete was one of the politicians who paid a visit to Nyerere's grave at the end of September 2005.

It is worth bringing to light that paying homage to Nyerere at the same place where he was buried heavily draw on the quasi-divine status he was granted by politicians and by most of the media, as we have seen before in this paper. We do not mean here that politicians believe in the fact that Nyerere could realize their wishes, but that meditating at his grave reinforces the idealized and even mythical image most people have of Nyerere today as well as it gives room for speculation about the true nature of the old man's powers. It is evident that the process of canonisation of Nyerere recently undertaken by the Catholic Church of Tanzania that has been given approval by the Vatican mid-January 2006 gives credit to the superhuman nature of Nyerere. Of course, the question of sainthood is hotly debated in Tanzania today. Many people asserted that the evidence of human qualities and involvement in the amelioration of living conditions through the fight against colonialism and for equality and justice is not sufficient to make a saint of Nyerere. Some journalists even jumped on the occasion to attack Nyerere, saying explicitly that his personal qualities might not have been as honourable as usually depicted (*"There is nothing special in Nyerere's life to admire or emulate"*, *"Nyerere had no heroic virtue or extraordinary spiritual life at all"*⁶⁶). Nevertheless, the positive answer of the Vatican substantiates the claims of the Tanzanian clergy that Nyerere stands apart from the rest of humanity. Such a religious stand, that strengthens the national cult of the first president of Tanzania, can easily be exploited by politicians. From now on, political legitimacy may be gained by pretending to act in keeping with the way showed by a man who, far from being only a clever and inspired politician, had strong connections with the divine world. In a country where it is inconceivable that people could not

be affiliated to any religion, this powerful argument may prove to be effective.

2.3. The Mbowe vs CCM controversy: who is the guardian of Nyerere?

From October to December 2005, a controversy emerged between CCM and opposition parties, especially CHADEMA, over the use of the memory of Nyerere. During campaign meetings and rallies, the presidential aspirant on the CHADEMA ticket, Freeman Aikaeli Mbowe, had reasserted his past close relations with the former president Nyerere. What is more, he would mention that CCM “*died with Nyerere*”, meaning that the spirit of socialism and the values of social justice and equality had deserted the party. What remained was a party that gathered people with the sole aim “*to exploit the wealth of their country to get rich while the rest of the population was stuck in abject poverty*”⁵⁹. He even did not hesitate to explicitly attribute these changes to the former president Benjamin Mkapa.

Had these claims not become a matter of public debate—be they wrong or not—they would have proved to be another personal search for political legitimacy comparable to that of many presidential candidates, as seen above. But Mbowe’s repeated claims seem to have deeply annoyed CCM members. The Chief CCM Campaign Strategist for the 2005 elections and current Chief Political Advisor to President, Kingunge Ngombale-Mwiru, turned away Mbowe’s pretensions to be a good friend of Nyerere, simply saying he was lying. He declared that although Mbowe had known

⁵⁹ *Taiifa Letu*, 5 September 2005, ‘CCM hapo, ilikufa na Nyerere – Mbowe’, (‘Today’s CCM died with Nyerere’): “*CCM ilishazikwa na Nyerere, CCM iliyopo hivi sasa ni genge la watu wanaokitumia chama hicho kujineemesha kwa kuunyonya utajiri wa nchi, buku wananchi wakisidi kuzama kwenye tope la umaskini wa kutupwa*”.

Nyerere, like in fact any ex-CCM politician in Tanzania⁶⁰, it does not allow him to pretend that he had created stronger ties with him than people who worked with him directly⁶¹. He went on saying that presidential and parliamentary candidates of the opposition, among them Mbowe, were using Nyerere's name as a means of endearing themselves to the electorate, "*although their calibre and integrity [were] nowhere near Mwalimu's*⁶²". As a counter-example, he mentioned that he personally used to be a close confidant of Mwalimu Nyerere but "*never used his name for selfish political reasons*". He then added that the CCM's presidential candidate, Jakaya Kikwete, who was the only person entitled to mention Nyerere in his campaigns because he used to be close to Tanzania's founding father in addition to being appointed by the ruling party, had "*never used Mwalimu Nyerere's name to earn cheap publicity*". Some journalists took part in the debate, saying that incessant recriminations at CCM past and present policies were not acceptable from a man who used to be a CCM member and would not have become the politician he was now had he not got trained and gained experience within CCM⁶³.

The reply to Ngombale-Mwiru came from the CHADEMA spokesman, Mwisiga Baregu, a political scientist from Dar es Salaam University, who stated that Nyerere was neither personal property nor the property of any political party⁶⁴. Consequently, there should be no monopoly on the use of the values and principles he defended during his life. It turns out clearly that the issue lying at the core of the *Mbowe versus CCM* controversy resolves

⁶⁰ As Tanzania was a single-party country until 1992, politicians had no choice but to be members of CCM. Only members entered in politics after the abolition of the single-party system are not a product of CCM.

⁶¹ *Majira*, 2 December 2005, 'Kingunge awajia juu ya akina Mbowe', (Kingunge returns to the suggestions of Mbowe and company): "*Si vema wakatumia jina la Mwalimu ili kuingia madarakani kwa kuwa si wanafunzi wa Mwalimu na wala hawakufanya kazi na Mwalimu*".

⁶² *The Guardian*, 2 December 2005, 'Don't misuse Mwalimu's name, opposition warned'.

⁶³ *Majira*, 20 October 2005, 'Mbowe amuenzi kwa chuki', ('Mbowe honours him with despise').

⁶⁴ *Majira*, 5 December 2005, 'CCM yaonywa Mwalimu Nyerere si mali ya mtu', ('CCM warns that Mwalimu Nyerere is not personal property').

around the question: *Who can claim to be the guardian of Nyerere?* As far as the CCM main direction is concerned, there is no doubt that Nyerere being the man who created TANU, led the country to independence and ruled it until 1985, he is first and foremost the property of the party. On the contrary, what opposition parties claim is that Nyerere is more than just the member of a political party. He is a national figure, property of the nation, and of all citizens. But it is striking to see that in such a debate, CCM is the most contradictory party. As we have seen above, the construction of an official memory of the former president that gets rid of controversial aspects of his personality and his presidency to bring to light only consensual values and positive political achievements is part of a good deal of strategies used by CCM to promote national unity. But when the instrument CCM politicians strove to create turns against them, the latter are bound to diffuse the situation in asserting the superiority of their legitimacy to honour the memory of Nyerere. As the now retired president Benjamin Mkapa made it clear in supporting his party in the 2005 elections, *“no one can claim to respect Nyerere more than Chama Cha Mapinduzi”⁶⁵*.

2.4. Multipartyism in Tanzania

In the official memory advertised by politicians and the media, Nyerere epitomizes the values of justice, unity and equality. It is therefore not surprising to see that during the 2005 elections, CCM politicians who consider themselves as the official depositaries of the first president of Tanzania made abundant references to him in order to promote a peaceful electoral climate. For example, mid-October, President Benjamin Mkapa hold a speech where he insisted on the necessity to preserve peace and unity with words he had been repeating on and on in various places: having peaceful elections *“will be the best way to honour our father of the nation, who always advocated for national unity, love and brotherhood. As we are about to go to polls, let’s show our true honour and respect to our dear father of the nation by exercising pacific competition”⁶⁷*.

⁶⁵ *Mtanzania*, 21 October 2005, ‘Mkapa awashambulia wapinzani’; ‘Hakuna anayeweza kusema anamuenzi Baba wa Taifa kuliko Chama Cha Mapinduzi’.

⁶⁷ *Daily Nation*, 14 October 2005, ‘Tanzania remembers Nyerere’.

⁶⁹ *The Guardian*, 20 October 2005, ‘Tanzanians will always be peaceful’.

What is worth emphasizing here is the sentence that followed, when he added that people must “*hold up under the strong foundations of multiparty politics that he [Nyerere] had laid*”. In other words, the president called for the respect of the rules of pluralism in memory of Nyerere.

Analyzed in itself, the insistence of CCM politicians on the preservation of peace and unity in the frame of multiparty democracy is nothing more than a legitimate rhetorical means to maintain order within national borders. Maintaining the integrity of the nation is the *raison d'être* of the state. There is also no doubt that the pressure exerted by donor countries and international organisations so that Tanzania applies to the rule of ‘good governance’ if it wants to keep on receiving foreign aid plays a great part in official calls for national peace and the respect of multipartyism. But one has to take into account the fact that the recurrent call for a peaceful political climate is generally followed by denigrations of the opposition parties. All major opposition parties, such as CUF, CHADEMA and TLP (*Tanzanian Labour Party*) that may threaten the monopoly of CCM in politics, are accused to play on religious, ethnical and racial divides to attract voters. In CCM worst projections of a country led by one of the opposition parties, general unrest if not civil war becomes the main threat to national unity. The examples of civil wars in neighbouring countries such as Burundi, Rwanda or Democratic Republic of Congo are brandished to divert voters from opposition parties⁶⁹. Incessant critics directed at the opposition bring discredit upon their pretensions to lead the country.

Obviously, such statements are used to legitimize the monopolistic position of CCM in the political field and the policies implemented since the liberalisation of the economy in 1985. Of course, this legitimizing tactics are not the privilege of CCM. Opposition parties as well resort to denigrations and calumnies to discredit the former single-party and assert the necessity of a changeover of political power. Corruption, waste of money, preferential treatments and trivial gossips about party member constitute favourite targets of both CCM and opposition parties to attack each other. But as far as CCM is concerned, its recurrent accusations that opposition parties are undemocratic implicitly question its actual approval of the multiparty system in Tanzania.

Discarding other political parties in such a way obviously implies that pluralism is accepted on the condition that it does not jeopardize the party in power. CCM nostalgia for the single-party period described by Maupeu (2001), where unity and security were imposed by an authoritarian political system, is supported by actual practices of political monopoly. Among these practices of monopoly, we find the discredit of opposition parties on behalf of their undemocratic agendas. It is worth noticing that, if pluralism is never officially contested, it is regularly put into question by some CCM members. For example, right in the middle of the 2005 electoral campaign, the CCM Chief Minister Shamsi Vuai Nahodha stated that pluralism had been an impediment to the development of Zanzibar for it stirred up division among the population instead of generating a sense of unity⁷⁰. In other words, under the official call for the respect of the values of peace and unity inherited from Nyerere, as well as for the multiparty system he helped to introduce in 1992, lays the concern of a changeover of political power. The contradiction between the explicit and the implicit positions of the CCM towards multipartyism has to be understood in regard to the fear to be ousted from power.

The third multiparty elections of October and December 2005 showed that the founding father of Tanzania, Julius K. Nyerere, has not yet vanished from the political sphere. As the election of the new president Jakaya Kikwete indicates—he had been turned down as a potential CCM aspirant in the 1995 elections—Nyerere's direct influence on the choice of presidential candidates, through his past commitments and positions, is now weak. But what remains vivid in present-day Tanzania is the legacy he left. This legacy, not only well kept but even largely produced by a coalition between the media and the political world, consists of a pool of humanist values, moral principles and political ideals in which the party in power picks up what can serve its interests in a given political situation. During the 2005 electoral campaign, many presidential candidates draw on these values and principles to legitimize their claims to rise to power. Paying homage to Nyerere and claiming that one will follow in his footsteps were parts of political strategies to seduce voters. The controversy which arose

⁷⁰ *The Guardian*, 16 November 2005, 'Nahodha: Pluralism has not helped us'.

between the opposition parties and the politicians of the party in power, the *Chama Cha Mapinduzi*, rests on the latter's pretension to be the only legitimate depositories of Nyerere. But their constant references to the current situation of peace and unity of the country, considered as Nyerere's main political achievement, generally turn out to serve the purpose of discrediting the claim of opposition parties to be democratic parties—accusing them of promoting ethnic, racial and religious divisions of the society. Doing so, it appears that the nostalgia for the period of the single-party system, in which the monopoly of CCM was simply uncontested, is still strong. It even seems to prove that the relevance of the adoption of multipartyism in Tanzania has not yet been fully admitted by the party in power, whose official declarations in its favour mainly aim to please foreign donors. As far as CCM is concerned, the time is not yet ripe for a changeover of political power.

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CONTESTED TERRAIN: THE POLITICS OF CITIZENSHIP AND CONSTITUTIONALISM IN KENYA

by Adams Oloo

Introduction

Constitutions all over the world are regarded as the supreme law of the land on whose premise the government of the State is organised. A constitution regulates the exercise of political power as well as the relationship between political entities. Fundamental in this context is the embodiment of the rights and duties of the citizens and the mechanisms, which enable them to protect their interest. The constitution is therefore expected to regulate the common will of the people thus preventing any abuse of power, which in turn leads to stability.

However, the experience of African states has been appalling. Here, the constitutions have neither been the embodiment of the common will of the people nor has it prevented the abuse of political power. Kenya, as other Commonwealth countries in Africa, started with the Westminster model drafted by the Colonial Office and which embodied a whole set of democratic principles. But there was little or no opportunity for public debate on the document and the nationalist leaders themselves really had no say concerning its structure and content. It was out of this reality that soon after independence, the Kenyan leadership started to shift away from the Westminster model, but the shift was not in any way designed to incorporate the perceptions of the citizens, rather it was to strengthen the office of the presidency. Thus, four decades after independence Kenyans are still struggling to have a genuine debate and write a constitution, which is owned by the citizens who are the stakeholders.

In Africa, as elsewhere, citizenship is a crucial variable in political contests involving freedom and justice which constitution-making is part and parcel of. In the history of political thought, the concept of citizenship emerged with the development of moral

being, identified with a community broader than one based on lineage. Ideologies fostered by the idea of citizenship, imply that the life of the individual and that of the state should be conjoined. Citizenship can thus be usefully analysed in a broader relational context governed by power and identity. As a concept in social theory, citizenship embraces crucial issues associated with political and social identity. Much like the concept of civil society, "*citizenship is enjoying a renaissance and emerging as a significant focus of theoretical and empirical investigation mainly as a result of the global resurgence of democracy and sub-national conflict*." Citizenship identifies those who are and who are not members of a common society. It expresses a set of normative expectations specifying the relationship between the Nation-state and its individual members, which procedurally establish the rights and obligations of members, and set of practices by which these expectations are realised and this is where a country's constitution comes in. This article highlights the process which constitution-making in Kenya has undergone since independence. It analyses the tumultuous engagement between State, civil society and individual citizens since independence to 2005.

I argue that constitution-making in Kenya since independence lacked citizen participation until the enactment of an act establishing the Constitution of Kenya Review Commission (CKRC) in 1998. But that even after the CKRC collected and collated views from the public, political elites had the final word via the Wako Draft that citizens rejected during the referendum. The article also presents evidence that the consequences of political elite power struggles has manifested itself both through political parties and ethnic mobilisation that has hindered impartial constitution-making that is devoid of partisan politics. This by itself undermined citizen participation in constitution-making as individual citizens got supped up in the power politics of elites that were expressed via group interests.

¹ HALISI, C.R.D., PAUL, J.K. and NDEGWA, S.N. (1998). 'Rethinking Citizenship in Africa', *Africa Today*, 45 (3-4): 338.

1. CONSTITUTIONALISM AND CITIZENSHIP IN KENYA: 1960–1991

1.1. The crises of constitutionalism and citizenship in Kenya

The concepts of democracy and constitutionalism are in most cases treated hand in hand. This is basically out of the fact that a constitution is thought of as an instrument by which government can be controlled. Constitutions thus arise out of the need for limited government. Central to this conception is the question of legitimacy; and herein lies the requirement that a constitution must command loyalty, obedience and confidence of the people.

There is no doubt that the independence constitutions of the Anglophone and Francophone states in Africa were embodied with a whole set of democratic principles from which African countries shifted away not long after independence. The founding fathers had barely been in office when they embarked on the subordination of democratic ideals and constitutional principles to suit their own political ambitions. This they did through a series of amendments to the constitutions, which were basically meant to strengthen the executive at the expense of other governing institutions. The transformation from multipartyism to one-partyism also had a lot of impact in undermining democracy and constitutionalism in Africa. The one-party systems acted as an avenue through which state power was concentrated in the person of the president².

The constitutional crisis in Africa can be widely attributed to the State, which has always been perceived as the key player in African development. The State achieved this centrality in Africa because there was no realistic alternative to it as a mobiliser, organiser and manager of resources. And on the political level it was regarded as crucial to the task of national integration and the maintenance of law and order. Hence in this sense very little regard was paid to constitutions as projectors of democratic ideals as the law was viewed instrumentally as an adjunct of economic modernisation³.

² MEYNS, P. and NABUDERE, D.W. (eds.). (1989) 'Introduction,' in P. MEYNS and D.W. NABUDERE (eds.), *Democracy and the One-Party State in Africa*. Hamburg, Institut für Afrika-kunde.

³ GHAI, Y. (1992). *Constitutionalism and Policy-Making*. Nairobi, unpublished.

Although a number of African countries have written new constitutions in the 1990s with relative involvement of their citizens such as South Africa, Ethiopia and Uganda among others, many regimes including Kenya are still embroiled in the constitutional debate.

The present political conflict in Kenya indicates a competition between numerous groups to stake out claims to rights in a liberal polity. The contentiousness of the current political transition reflects a debate between two sides, one which seeks to retain only minimal citizens rights and another side that seeks not only to expand these rights but also emphasise that they are inherent in the individual (and therefore cannot be withdrawn at will) as well as group. Indeed, the numerous conflicts over the constitution and power in Kenya since independence are attributable to what Ndegwa refers to as the “*duality of citizenship*” that individuals hold in their ethnic community and in the Nation-state and the conflictive relationship that this duality engenders, especially in the context of competitive electoral politics⁴, and as we now witness in the constitutional review process.

In post-colonial Kenya, the socially enacted relationship between ethnic identities, authority and legitimacy competes with the legally sanctioned membership, authority, and legitimacy of the Nation-state. Since neither has erased the other, most individuals assume contingent and hierarchical allegiances depending on the arena of competition in which they find themselves⁵. This duality is complicated further by the fact that it is conceived differently in the post-colonial state and in the ethnic communities. In the communal realm, citizenship takes an active civic-republican form, while in the modern state it is defined in liberal terms deemed appropriate for constitutional democracy. Liberal citizenship qualifies one to participate in the inclusive national community, while in the ethnic community republican citizenship requires members to participate in group's preservation, especially in competition against other

⁴ NDEGWA, S.N. (1998). 'Citizenship amid Economic and Political Change in Kenya,' *Africa Today* 45 (3-4): 351-367.

⁵ NDEGWA, S.N. (1997). 'Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics,' *American Political Science Review*. 91 (3): 601.

communities and against national community—unless the State is enrolled by fellow community members⁶. The divided loyalty that this duality results in is consequently transferred into issues of national concern and in our specific case, constitution-making.

In Kenya, as in many other African countries, citizenship developed in the modern state in ways that reflect both the colonial heritage and the hasty transition to post-colonial state society relations. Current forms of citizenship retain some structures of colonial society and continue to confer privilege on the State rather than the society. An evolving discourse between the State and the civil society has recently challenged this status quo, asserting the centrality of individual rights, including the right to restrain the State from trampling on them⁷.

The rights and liberty that were promised at independence were essentially negotiated among politicians drawn from the stratum of colonial African society that Mahmood Mamdani refers to as ‘citizens’ (namely, the educated, the urbanised political classes) as distinguished from ‘subjects’ (the largely uneducated rural dwellers operating outside the regime of rights but within the regime of obligations imposed by the colonialists and their intermediaries⁸).

1.2. Debating the Independence Constitution: 1960–1963

The need for a constitutional conference became more apparent in 1959 when the state of emergency was lifted. In 1960, the further removal of restrictions on the colony resulted in Africans forming wide political organisations. This led to the formation of the Kenya African National Union (KANU) in March 1960 and the Kenya African Democratic Union (KADU) in June 1960. It was these two main African political parties in Kenya that became the mouthpiece of Africans in the ensuing constitutional conference in London. This paved the way for the Secretary of State to hold a series of discussions with the African elected

⁶ NDEGWA, S.N. (1997), *op.cit.*, p. 602.

⁷ NDEGWA, S.N. (1998), *op.cit.*

⁸ MAMDANI, M. (1996). *Citizen and Subject: Contemporary Africa and the legacy of late Colonialism*. Princeton, Princeton University Press.

members and other groups in the Legislative Council. These discussions bore fruit when the first Lancaster House Conference was held in 1960.

This conference presented the first opportunity for the Africans to have an input in the decision-making process on the future of the country. However, the inputs could only be incorporated if they met the following conditions set by the British government. First, was the need to build a nation based on parliamentary supremacy as in the Westminster model and enjoying responsible self-government under certain traditional conditions. And second, to achieve a general acceptance by all on the rights of each community to remain in Kenya and play a part in public life⁹.

At this time of transition to independence there was intense political conflict between not only the African nationalists and the colonial state but also between the African political parties. At the centre of this conflict were multiple interests in land, which were expressed in the form of ethnic interests¹⁰. Such interests informed the debate on constitutional and economic arrangements that the country were to assume after obtaining independence. The constitutional debate revolved around whether Kenya should adopt a unitary or federal form of government. The economic one centred around issues of whether markets or political processes should determine the allocation of basic resources.

The main parties debating the constitution were the Kenya African National Union (KANU) comprising mainly the Kikuyu-Luo alliance; Kenya African Democratic Union (KADU)

⁹ GICHERU, N. (1976). *Parliamentary Practice in Kenya*. Nairobi, Transafrica Publishers.

¹⁰ BATES, R. (1989). *Beyond the Miracle of the Market: The Political Economy of Agrarian Development in Kenya*. Cambridge, Cambridge University Press. See also NGUNYI, M. (1996). 'Resuscitating the Majimbo Project: The Politics of Deconstructing the Unitary State in Kenya,' in A. OLUKOSHI and L. LAAKSO (eds.), *Challenges to the Nation-State in Africa*. Uppsala, Nordiska Afrikainstitutet (pp. 187-188); KANYINGA, K. (1998). 'Contestation over Political Space: The State and the Demobilisation of Opposition Politics in Kenya,' in A. OLUKOSHI (ed.), *The Politics of Opposition in Contemporary Africa*. Uppsala, Nordiska Afrikainstitutet (pp. 46-49).

comprising the KAMUTUSA¹¹, Coast people and Luhya groups; New Kenya Party for the settlers; and several other parties representing smaller groups and interests. The parties were divided on the national political question. On the one hand, KANU preferred a unitary form of government and a moratorium on further land reforms until political independence was obtained. On the other hand, KADU, because of the fear of domination by the Kikuyu and the Luo, preferred a federal system of government (Majimbo) with regional assemblies, which KADU saw as a check on the land hungry Kikuyu squatters who were already settled in the KAMATUSA areas¹².

Internally, both parties were also deeply divided over the land reforms. In KANU, a radical faction rooted in the nationalists' position on land championed '*nyakua*' (a Kiswahili word meaning seizure)—in this context meaning wholesale seizure of stolen land in the White highlands to settle the landless and squatters who had lived in Rift Valley for decades. This group appeared to have been 'constructed from below': it was allied to the Mau Mau group and furthered the latter's interests upon the granting of independence. Those in this radical wing included Oginga Odinga (a Luo), who later became the country's vice president, and Bildad Kaggia (a Kikuyu), among others.

Opposed to the radical wing was a group 'constructed from above': a group of liberals and proto-capitalists¹³, who sought, first, land reforms aimed at economic growth rather than equity, and second, especially the proto-capitalists, to have more new land holdings and security for their property wherever held.

KADU comprised numerically small pastoralists groups who wanted as much land as possible. It also comprised of groups whose interests were driven not necessarily by the desire for more land but a desire to be at the State centre if independence was

¹¹ Name of agro-pastoralist communities, namely, the Kalenjin, the Maasai and related Turkana and Samburu pastoralists (KAMATUSA group).

¹² HARBERSON, J.W. (1973). *Nation Building in Kenya: The Role of Land Reform*. Evanston, North-Western European Press; BATES, R. (1989), *op. cit.*

¹³ THROUP, D.W. (1987). 'The Construction and Deconstruction of the Kenyatta State,' in M. SCHATZBERG (ed.), *The Political Economy of Kenya*. New York, Praeger, p. 37.

obtained. Like the KAMATUSA groups in KADU, the Luhya and the Coastal groups rallied behind KADU for the fear of the Kikuyu-Luo alliance. In light of this, KADU leaders sensed that the small ethnic groups which they represented might be in danger of domination by the larger alliance and opted to underwrite a federal system of government (*Majimbo*) with regional assemblies: a plausible defense against KANU. Led by Ronald Ngala and Daniel arap Moi, they made it clear that they wanted a constitutional provision that guaranteed their ethnic groups fair compensation for the expropriated land. They also emphasised that respect for property rights in land should apply to individuals as well as ethnic communities¹⁴. They got support from the settler's New Kenya Party, which made their bargaining position even stronger. Consequently, in the pre-independence constitutional deliberations at Lancaster House Conference—KADU secured the federal system of government with regions whose boundaries were identified with each of the major ethnic groups. Following such concessions KADU politicians in the regional assemblies became increasingly aggressive in pushing for the land claims of their constituents against those of outsiders by which they meant the Kikuyu. But KADU won these concessions not because of the virtues of *Majimbo* but because KANU was reluctant to have independence delayed any further.

Thus, the 1962 Constitutional Conference which took place in London under the chairmanship of the then Colonial Secretary Mr. Maulding was primarily concerned with the choice between regionalism (semi-federalism), supported by KADU and the strong unitary government favoured by KANU. At the end of the conference most of KADU's proposals were incorporated into the constitution and they included: specially entrenched provisions requiring 90% approval of the Senate and 75% of the Lower House to amend the constitution; a multiparty system of government and a Bill of Rights guaranteeing civil and political liberties which also protected the property and citizenship of the Europeans and Asians.

The rest of 1962 and the early part of 1963 were taken up with the drafting of the constitution and the preparation for

¹⁴ THROUP, D.W. (1987), *op. cit.*, p. 115.

elections. The constitution was published in April 1963. KANU won the 1963 elections and led the country into independence. The independence constitution was structured in the spirit of the Westminster model. It had institutional provisions for 'checks and balances' on the executive complete with an independent judiciary, and an independent electoral commission, a bicameral parliament, a Bill of Rights guaranteeing civil and political liberties and a multiparty system of government. For the first time also, the elections in 1963 were conducted on a universal franchise.

1.3. Constitution-making in post-colonial Kenya

Kenya achieved independence under the Westminster mode of constitution with liberal democratic principles and with provisions which made the legislature the guardian and protector of the constitution. But soon after independence, the ruling party KANU parted ways with the Westminster model.

1.3.1. *The Kenyatta regime: constitutional engineering without citizen participation*

The independence constitution was a compromise document, which resulted from a consensus between the various interest groups at Lancaster House Conferences. All the political groups viewed issues dear to them as necessitating constitutional settlements, which therefore resulted into a complex and elaborate constitution.

The independence constitution however did not reflect the views of the citizens for at no point during the negotiation process were they consulted nor their approval sought. Furthermore, the fact that KANU accepted the constitutional framework albeit with some reservations indicated the fragility of the independence constitution. Thus soon as political power was granted to KANU, the ruling party embarked on the process of dismantling regionalism, which was the cornerstone of the *Majimbo* constitution.

The *Majimbo* constitution, which was supposed to come into force at independence, contained entrenched clauses and provisions, which stipulated the nature of power sharing between the central government and the regional (*Majimbo*) authorities. Maintenance of

law and order was a shared responsibility; so were legislative authority, power of taxation, development, public service recruitment and training among others. However, in practice, very little was done by the centre to implement the provisions of the *Majimbo* constitution. Indeed, the centre's major preoccupation during the first year was on the mechanisms of destroying the *Majimbo* system with the goal of returning the country to its former unitary status¹⁵.

The first series of amendments to the Kenyan constitution were therefore geared towards phasing out regionalism. The Amendment Act No 28 of 1964, radically altered the position of the executive, henceforth providing for a President who is both Head of State and Head of Government. Executive authority in Kenya was thus vested in the president. This set the stage for the centralisation of power in the executive head of State. Prior to this, KANU had engaged in behind-the-scenes machinations, which resulted in a steady defection from KADU to KANU. And on 10th November 1964 the leader of KADU, Ronald Ngala, announced the dissolution of KADU on the floor of the House.

The Kenyatta regime thereafter embarked on a series of constitutional amendments alongside administrative and political practices, which were geared towards whittling down the controlling function of the legislature and the judiciary and to curb their political effectiveness as well as those of the civil society forces. The required majority for constitutional amendment was lowered from 90% in the Senate and 75% in parliament to 65% in both Houses before the Senate was finally abolished¹⁶.

¹⁵ OYUGI, W.O. (2004). 'The Search for an Appropriate Decentralisation Scheme in Kenya: Historical and Comparative Perspective,' in K. KINDIKI and O. AMBANI (eds.), *The Anatomy of Bomas: Selected Analyses of the 2004 Draft Constitution of Kenya*. Nairobi, Clarion and Claripress; GHAI, Y.P. and MCAUSLAN, J.P.W.B. (1970). *Political Law and Political Change in Kenya: A Study of the Legal framework of Government from Colonial Times to the Present*. Nairobi, Oxford University Press.

¹⁶ OKOTH-OGENDO, H.W.O. (1972). 'The politics of constitutionalism in Kenya since independence, 1963–69,' *African Affairs*, 71: 283; MUIGAI, G. (1993). 'Amendments the Constitution: Lessons from History,' *The Advocate Journal of the Law Society of Kenya*, 2 (31).

Between 1964 and 1969 there were ten constitutional amendments, which were made on the constitution, and which were later incorporated in a new revised constitution. The cumulative effect of these amendments had been to radically empower the executive at the expense of other organs of governance. The end result was that the political space for popular participation by citizens became thin and the ruling elites ended up monopolising power¹⁷.

As regionalism was being phased out, the deconstruction of the civil society was at the same time being undertaken. The most vibrant civil society organisation at independence was the labour movement. The labour movement had been an active player in the struggle for independence and its strengths were still formidable in the immediate post-independence period. The Kenyatta regime was thus not comfortable with the potential power of the labour union and therefore devised a strategy to neutralise it in the same way that opposition parties were then being neutralised. Hence in 1964, the Federation of Progressive Trade Unions (KFPTU), which later changed its name to Kenya African Worker's Congress (KAWC), was formed to oppose the Kenya Federation of Labour (KFL), which had a monopoly over the expression of workers rights. This move not only fragmented the labour movement but also ensured that in future the labour movement would not be able to work in unison¹⁸. A final assault on the labour union followed a year later, after the June Mombasa riots which saw the deregistration of the two unions and their placement under an umbrella labour union, the Central Organisation of Trade Unions (COTU)¹⁹. Other civil society forces with potential for political power such as the religious sect '*Dini ya Msambwa*' were banned while welfare organisations were co-opted into development programs.

Meanwhile on the political front, the simmering differences within KANU between the moderates fronted by Tom Mboya and the radicals fronted by Oginga Odinga finally came to a boiling point when Odinga (the vice president of the State and party)

¹⁷ GHAI, Y.P. and MCAUSLAN, J.P.W.B. (1970), *op. cit.*

¹⁸ NGUNYI, M. (1996), *op. cit.*, KANYINGA, K. (1998), *op. cit.*

¹⁹ SANDBROOK, R. (1985). *The Politics of Africa's Economic Stagnation*. Cambridge, Cambridge University Press, p. 281.

defected from KANU and formed a new opposition political party, the Kenya People's Union (KPU). The incidence occurred in Limuru in May 1966 during party elections when the 'moderates' in the party outwitted the radicals and their key supporters and voted them out of their positions in the party. KPU thereafter operated in an environment of state intimidation and harassment until it was proscribed in 1969²⁰.

The banning of KPU in 1969 further showed the extent to which the Kenyatta regime was disdainful of criticism. The implication of the ban was that the leadership and philosophies of the ruling party became a cardinal factor in the operation of the constitution. The ruling party KANU and parliament became conterminous and the principle of separation of power, which is the basis for the checks and balances, was lost.

Subsequently in the early 1970s, ethnic based associations especially the Gikuyu, Embu, Meru Association (GEMA), started to challenge and undermine the standing of the sole political party KANU in society. GEMA emerged as a major formation around which pro-regime politicians among them Kikuyu-Embu-Meru groups organised political support. Indeed, the political activities of GEMA were such that at some point the organisation had to be reminded by Mzee Kenyatta that it could not be a substitution for KANU. Powerful politicians had begun to use GEMA for manifestly political ends²¹. By 1976, GEMA had seized complete political initiative as exemplified by the public rallies it organised in the Rift Valley, Central and Eastern Provinces in which they called for the change the constitution movement. This move was aimed at Section 6 (2) of the constitution which provides that the vice president should automatically succeed the president for a period of 90 days in case of a vacancy in the office before elections may be held.

The GEMA leaders saw this constitutional position as a hindrance to their presidential ambitions since Daniel Moi, the then vice president, was a Kalenjin. However, the 'Change the Constitution' movement failed largely due to apparent division

²⁰ GERTZEL, C.J. (1970) *The Politics of Independent Kenya*. Nairobi, East African Publishing House; GHAI, Y.P. and MCAUSLAN, J.P.W.B. (1970), *op. cit.*

²¹ OYUGI, W.O. (1992), *op. cit.*, p. 171.

among the Kikuyu leaders. The then Attorney-General, Charles Njonjo, brought an end to the debate when he warned those proposing changes to the constitution that it was a treasonable offence to contemplate the death of the president. This position was reiterated at a Cabinet meeting and thus the debate came to a halt. It is worthy to note, that the change the constitution debate provided an opportunity for citizens to be consulted directly for the first time on the working of a constitution. Although the move was engineered from above, it provided a forum for popular debate coming at a time when the ruling party was ineffective²².

Overall, state consultation was quite minimal during the Kenyatta regime. Political decisions were made by Kenyatta's inner cabal comprising of elites from his Kikuyu ethnic group. All avenues for citizen participation were clogged as the government sought to direct and supervise citizen activities in all spheres.

1.3.2. The Moi regime: enhancement of personal rule at the expense of citizens

Moi ascended to power in August 1978 in a smooth transition. Within a few months of his ascendancy to the presidency, Moi held the long-awaited KANU party elections, the first since 1966. His concern with ethnic balance as a way of broadening his own base of support forced him to adopt a Majimbo formula for the allocation of party posts and henceforth this remained a permanent feature of party elections throughout the life of the one-party state. This enabled Moi to form his own team for the first time while avoiding antagonising the Kikuyu immediately. He nonetheless gave signals that he was intent on broadening his power base by bringing into the Cabinet a significant number of hitherto marginalised communities (the Luhya, the Maasai, the Somali, etc.). But even for the Kikuyu, his strategy was to bring in those that had been his close allies during the Kenyatta regime, while carefully distancing himself from his former adversaries within the establishment²³.

²² KARIMI, J. and OCHIENG, P. (1980). *The Kenyatta Succession*. Nairobi, East African Educational Publishers.

²³ OYUGI, W.O. (1994), *op. cit.*

President Moi's own strategy after 1978 when he came to power was to follow in the footsteps of his predecessor as his 'Nyayo Philosophy' conveniently put it, and to use constitutional amendments to transfer more power to the presidency and thus immobilise the other state organs.

The primary concern of Moi during his first two years in office was the neutralisation of the Kikuyu hegemony in the system. To shake the foundation of Kikuyu unity, Moi launched an assault on GEMA. A resolution passed in July 1980 at a leaders' conference at the Kenya Institution of Administration near Nairobi dissolved all tribal associations²⁴. The dissolution of GEMA was followed by the dismantling of its vast economic empire, which was the source of its power and influence over the GEMA communities²⁵.

In his quest to entrench himself in power and also strengthen the ruling party KANU, Moi made moves which clearly illustrated that he was not going to tolerate criticism on his government. For instance, it became mandatory for all civil servants to be members of KANU, although constitutionally they were expected to be impartial. Moi also set out on an intimidation trail, which saw him, destroy the universities by constant detention of lecturers and student leaders with views contrary to the establishment. Prior to this the government had banned the Kenya Civil Servants Union and the University Staff Union. He also deregistered the Matatu Vehicle Owners Association (MVOA), which was seen as potentially volatile.

But it was in 1982, that the government made the most contentious amendment to the constitution making Kenya a *de jure* one-party state. The government, by this action, closed all avenues through which citizens could express their views or democratic rights other than through the ruling party.

Subsequently, by the mid-1980s, Moi had emerged as an effective personal ruler as he had the ability to condemn and recycle the once powerful politicians. This was more evident after the 1983 elections when Moi attempted to infiltrate institutions and coerce

²⁴ *Daily Nation*, 24 July 1980, p. 1.

²⁵ OYUGI, W.O. (1994), *op. cit.*

individuals into having direct loyalty to him. The ruling party KANU was made more powerful and surpassed even parliament as an institution of governance in the country. This era also saw the destruction of parastatals with impunity as merit and efficiency were ignored at the expense of ethnicity and loyalty. The ruling party also went ahead and affiliated civil society organizations such as COTU and Maendeleo ya Wanawake organisations (MYWO). This enabled the party to monitor development in both social and economic sphere of life notwithstanding the fact that it was already in control of the political sphere by virtue of being the sole legal party²⁶.

However, the Moi regime did not succeed in muting the mainstream churches under the umbrella of National Council of Churches of Kenya (NCCCK) as well as Law Society of Kenya (LSK). The LSK's survival was based on the fact that it was constituted by an Act of Parliament and therefore could not be easily banned. But this did not stop the Moi regime from engaging in destabilisation efforts and on a number of occasions it managed to sneak in pro-establishment lawyers into the leadership of LSK, while the same efforts saw Africa Inland Church pulled out of NCCCK²⁷.

In the mid-1980s, Moi turned his attention to constitutional offices with security of tenure. In 1986 and 1988 respectively, two constitutional amendments were passed whose target was the Controller and Auditor-General whose constitutional offices guaranteed tenures were scrapped all together²⁸. The tenure of the Attorney-General, judges of the High Court and the Appeals Court and the members of the Public Service Commission were likewise dispensed with by the Constitution of Kenya (Amendment) 1988²⁹. These amendments attracted criticism both locally and internationally as their effects were to vest in the president an

²⁶ OYUGI, W.O. (2004). 'Political Culture and Liberalisation in Kenya, 1986–1999,' in S. MUSHI, R. MUKANDALA and S. YAHYA-OTHMAN (eds.), *Democracy and Social Transformation in East Africa*. Nairobi, East African Educational Publishers.

²⁷ NGUNYI, M. (1996), *op. cit.*

²⁸ *Weekly Review*, August 1986.

²⁹ *Weekly Review*, August 1988.

unqualified discretion in relation to the appointment and tenure of the most crucial offices in the Public Service. However, the Bills were passed in parliament without much opposition. This can be explained by the fact that KANU had become more authoritative than parliament. The end result was that decisions were being made outside the House and then being ratified in parliament. This spelt doom for popular participation because most parliamentarians now sought to be accountable in their actions to the president and not to the citizens who had elected them. The state was President Moi himself and his inner court comprised his Kalenjin tribesmen and their Maasai allies³⁰.

2. CONSTITUTIONALISM AND CITIZENSHIP IN THE MULTIPARTY ERA

2.1. Popular demands: debate for multipartyism, 1990–1991

During the 1990s, pressures for political liberalisation and democracy were sweeping throughout Africa, Kenya included. The demands in Kenya followed a period of over two decades of one-party dictatorship, which was characterised by political oppression of those opposed to the ruling groups—first, the Kenyatta Kiambu Group and then Moi's clique drawn from the KAMATUSA groups. Pressure for democratic change started earnestly in early 1990 and coincided with the end of the Cold War pressure was thus mounted on the Moi regime from both external and internal forces. Internally, the pressure came from both individuals and civic organisations and included leading clergymen who agitated for the political space to be widened.

2.1.1. *Constitutional engineering from below*

In July 1990, Kenya experienced unprecedented civil and political upheaval. The civic energy was activated by the campaign for pluralism that resulted in two opposing blocks—one a coalescence of forces committed to preserving the status quo and the other comprising those committed to fundamental reforms.

³⁰ HIMBARA, D. (1994). *Kenya Capitalist State*. Nairobi, East African Educational Publishers, p. 120.

The Moi regime responded by unveiling the KANU Review Committee in order to bridge the gap between the opposing groups. The Committee was formed in June 1990 and chaired by Vice President George Saitoti. The committee took 16 days going around the country to collect and collate views of citizens regarding the party's code of discipline. Although, the terms of reference of the committee were too narrow in scope and did not satisfy the majority of the citizens, the citizens were determined and did speak out on diverse opinions and issues aimed at strengthening democratic institutions, improvement of public accountability, restoration of faith in the electoral process and strengthening commitment to the rule of law and the respect for human rights.

The KANU Review Committee up to that point represented within independent Kenya, the only occasion when citizens were afforded an opportunity to re-assess the social contract put in place at independence. During both the Kenyatta and Moi era up to 1990 constitutional engineering had less or no popular participation from citizens. The two regimes had been intolerant of any criticism and readily used detention and sedition laws to curb any protests against the incumbents. If the view and opinions expressed orally and in writing were to be incorporated into a constitutional document, then Kenyans constitution would be legitimate³¹. However, the final report by the committee either ignored or intentionally omitted the very issues that Kenyans had suggested demanded urgent attention. These partial reforms by the ruling party in 1990 did not satisfy the citizens. Subsequently, under the guidance of opposition activists they sought other avenues to get their grievances addressed. It was against this background that Oginga Odinga, a leading opposition figure, in February 1991, formed the National Democratic Party (NDP) and sought its registration. He was however denied registration. This did not deter civil society groups and by mid-1991, the pressure for democratisation was accelerating. The church and the opposition activists took the lead in demanding for change. The church their part unveiled the Justice and Peace Convention-Kenya (JPC-K), while the opposition

³¹ KIBWANA, K. (1993). 'Unfinished Business: The Transition to Multiparty Democracy and Kenya's Post-December 1991 Electoral Law Reforms,' unpublished paper presented at a workshop on Transition to Multiparty Politics in Kenya: Nairobi, Kenya, 19-20 August 1993.

activists formed a pressure group known as the Forum for the Restoration of Democracy (FORD). These two bodies were a direct response to denials by both the registrar of society and the High Court to authenticate the existence of the NDP³².

The twin assault of the JPC-K and FORD among other local pressure groups and the external forces spearheaded by donor countries who were accusing the Moi regime of human rights abuses, corruption and lack of democracy, finally compelled the KANU National Governing Council to recommend that Section 2A of the constitution which made Kenya a *de jure* one-party state be repealed. Thus, on 10th December 1991, Section 2A was repealed therefore paving way for the December 1992 multiparty elections. KANU won the 1992 multiparty elections but left behind a highly ethnically divided political landscape as political realignments unravelled amongst different political parties on ethnic lines. The introduction of multipartyism was accompanied by a revival of calls for regionalism which rekindled the contentious land question in the Rift Valley. Those allied to KANU, especially the KAMATUSA, mooted violent ethnic clashes to expel 'foreigners' from the Rift Valley. Additionally, they stressed that only a *Majimbo* form of constitution would guarantee them an existence. The unitary constitutional system was favoured by Kenyatta and his Kikuyu allies until his death in 1978. But under Moi and his KAMATUSA allies, there was great scepticism about the unitary system from the outset. KANU under Moi was thus ready to maintain the revised version of the unitary system as long as the authority of the incumbent president was not threatened. However, the threat came in the wake of multiparty politics at the beginning of the 1990s. Accordingly, KANU abandoned whatever unitarist sympathies they had and opted for *Majimbo*-ism. They thus played the *Majimbo* card every time opposition and civil society forces demanded for constitutional review.

³² *Nairobi Law Monthly*, 1991. Issue No. 37.

2.2. The second liberation: in search of a constitutional order

Constitutional reform has been a constant source of dispute since the 1992 multiparty elections. It has provided the most riveting source of controversy in the multiparty era. The opposition parties, religious bodies and civil society forces have been at the forefront in making demands for constitutional reforms as opposed to the ruling parties KANU and NARC which have been reluctant to effect changes on the constitution. Thus, while the elites outside state power have viewed constitutional reforms as the only avenue through which they can ascend to power, the ruling elites, on the other hand, see constitutional reforms as a framework of surrendering state power. They have thus vigorously resisted any attempts at constitutional review. The need for constitutional review before the 1992 elections was proposed by pro-democracy civil society forces as early as mid-1992. However, this quest was derailed by key opposition actors who were then convinced that they were capable of winning power within the existing constitutional framework. It can thus be argued that both the ruling party elites and their opposition counterparts were bedfellows as both viewed the existing constitutional framework as befitting their interests³³.

In the meantime, the constitutional reforms debate was to gain momentum in 1993 when KANU stalwarts who also happened to be staunch *Majimbo* proponents came out in the open and declared that they had a draft constitution, which they would table in parliament. This elicited prompt reactions with the church being the first to react to the *Majimbo*-ists when in March 1994 the 18 Bishops of Roman Catholic Church released a pastoral letter in which they called for among other things “*complete revision of the constitution*” by a large constituent body of experienced and competent citizens representing all shreds of society and not just a

³³ MUSAMBAYI, K. and NGETHE, N. (2003). ‘Transition and the Politics of Constitution-Making: A Comparative Study of Uganda, South Africa and Kenya,’ in W.O. OYUGI, P. WANYANDE, C. ODHIAMBO MBAI (eds.), *The Politics of Transition: From KANU to NARC*. Nairobi, Heinrich Boll Foundation, p. 333.

small group of politicians³⁴. However, no meaningful response to this demand came from the state. Thus, in November 1994, the debate was revisited when the LSK, the Kenya Human Rights Commission (KHRC) and the Kenya Chapter of the International Commission of Jurists (ICJ) unveiled a proposal for a model constitution. The model constitution was unveiled after discussions and consultations with scholars from different backgrounds as well as constitutional experts. The model constitution was supposed to serve as a base from which debate could be extended to the whole society.

2.2.1. 1995: *False hopes on constitutional reform*

The state at once realised that the civil society forces had taken the initiative to manage the constitutional review process and was now on the verge of mobilising the masses. The government's reaction was therefore to institute measures that would enable it to regain control and steer the constitutional review process. To this end, Moi in his New Year message of 1995 assured Kenyans that the constitution would be reviewed. Kenyans seemed to have finally found common ground on the single issue they had long disagreed upon. In his message, Moi announced that he planned to invite foreign constitutional lawyers and experts to the country to embark on the process of gathering views from Kenyans and which would form a basis for reforms on the constitution. By putting constitutional reforms on the national agenda and in all probability declaring 1995 the year of constitutional reforms, Moi appeared to be confirming that the KANU government was willing to undertake a serious review of the constitution. Moi's announcement thus assuaged the civil society forces who now rested on their laurels and waited for the president to initiate the constitutional review process.

Although, the initial reaction to Moi's message indicated that Kenyans were ready for constitutional change, subsequent reactions saw Cabinet Ministers and KANU hardliners such as Shariff Nassir, Nicholas Biwott and William ole Ntimama and other prominent members of the KAMATUSA group insisting that the constitution would only be changed if it accommodated the *Majimbo* system of

³⁴ *Daily Nation*, 16 March 1994.

government. What followed then was an acrimonious debate with both pro- and anti-*Majimbo* activists restating their positions.

The mood for constitutional reforms set up by Moi in his 1995 New Year message was however to change drastically in June of the same year. While ruling out radical constitutional changes Moi also made it clear that he had changed his mind about inviting foreign experts. Without being specific, Moi said that some events had taken place in the country which clearly indicated that those advocating for constitutional reform were not altogether sincere, and on the same note emphasised that any administrative reforms would have to be carried out through parliament. Opposition parties and civil society forces immediately issued statements accusing the president of renegeing on his earlier promise to give Kenyans an opportunity to participate in the country's reform process. They thus demanded that constitutional changes should first be discussed by all Kenyans and that parliament should only be called to ratify what Kenyans had agreed on³⁵. This trend continued in August 1995 when the ruling party further made drastic decisions on constitutional reform. After a closed door meeting of the top organs of the ruling party, KANU sent a message that it would not agree to be intimidated into implementing constitutional reforms. The ruling party also took a tough stand on its future dealings with the opposition parties and non-governmental organisations (NGOs). The ruling party indicated that henceforth it would no longer be liberal in registering new opposition parties and on the same note clearly stated that it would be uncompromising with NGOs and diplomats who engage in politics³⁶.

2.2.2. *The battle for the control of the constitutional review process*

In a bid to regain the lost initiative, the civil society forces through the Kenya Human Rights Commission (KHRC) initiated a popularisation process through the solicitation of comments, seminars and submissions, on the model constitution draft. This continued to attract trade unions, women groups, NGOs, religious

³⁵ *Weekly Review*, 9 June 1995, p. 9.

³⁶ *Weekly Review*, 25 August 1995, p. 4.

groups and the media. It also lobbied foreign missions, political parties and constitutional experts. At the same time, a closer cooperation was developing between other civil society organisations and the mainstream churches. The joint strategy at this stage was to translate the model constitution into several vernacular languages and its transmission to the rural areas by various NGOs for discussion with citizens in civic education forums. However, the process of drafting the model constitution was mainly confined to the middle class hence earning itself the condemnation that it was mainly an elite fronted project with little input from other sectors of the societies³⁷. The civil society forces went ahead and founded the Citizen Coalition for Constitutional Change (4Cs)³⁸. They subsequently set up a secretariat and a steering committee of 42 members representing various organisations within the civil society movement. The 4Cs in turn demanded fundamental constitutional reforms in the country proposing that the process be via a national convention. The proposal was based on the fact that conventions not only facilitate a wider level of political participation but also renders itself to popular ownership. It was also argued that such a convention would assume the role of a referendum and hence represent the will of the citizens. However, the 4Cs at this point in time failed to capture the majority of the masses hence remaining mostly confined to the English speaking urban civil society in Nairobi. Its inability to mobilise civic disobedience against the state made the government to ignore its calls for constitutional change³⁹.

Although, the civil society forces and opposition political parties were unanimous on the need for a constitutional convention, the same bodies ultimately disagreed over who should initiate the talks. The civil society forces continued to wrangle over the control and leadership of the process of convening a National Constitutional Conference. Three groups emerged out of these wrangles. First, was the National Opposition Alliance (NOA) which was formed by Messrs Mwai Kibaki (DP), the late Kijana

³⁷ ICJ-K, LSK, and KHRC. (1994). *Model Constitution*. Nairobi, ICJ-K, LSK, and KHRC; MUSAMBAYI, K; and NGETHE, N. (2003). *op. cit.*

³⁸ NGUNYI, M. (1996), *op. cit.*, p. 208.

³⁹ MUSAMBAYI, K. and NGETHE, N. (2003), *op. cit.*

Wamalwa (FORD-K), and Martin Shikuku (FORD-A). The second group was the Opposition Solidarity comprising of Messrs Kenneth Matiba (then of FORD-A) and Raila Odinga (then of FORD-K). The third group was the civil society forces which comprised religious groups, NGOs and professional bodies. The debate thus became a contest between the various opposition groups. The NOA was the first to call for the convening of a National Constitutional Conference. However, such calls did not bother the state, as there was a lot of disunity and acrimony within the opposition ranks. But the constitutional debate was to take a dramatic turn when Kenneth Matiba and Raila Odinga called a press conference in May 1996 to announce that they would commence plans towards convening a conference to review the country's constitution.

In reaction, the non-grassroots oriented factions led by Kijana Wamalwa (FORD-K), Mwai Kibaki (DP) and Martin Shikuku (FORD-A) opted to transfer the process to parliament. It can be argued that by taking the process to parliament they hoped to win concessions from KANU that would hopefully enhance their positions *vis-à-vis* that of their opponents. The grassroots oriented faction led by Kenneth Matiba and Raila Odinga opted to stay out of the parliamentary model. While the ruling party, on the other hand, seemed to favour this parliamentary model. However, this was not as a result of their interest in reforms but rather as a mean to determine the nature and pace of reforms if need be and also to isolate the moderates from the radicals. In parliament, the NOA sought the enactment of minimum constitutional reforms which they envisaged would facilitate free and fair elections. In this regard they were supported by the 4Cs which presented a set of minimum reforms to be put in place before the 1997 General Elections. The 4Cs was supported by the church which contended that this was the only way by which the goal of free and fair elections could be attained.

The KANU government however seemed undeterred by the opposition strategies. The Attorney-General's announcement in June 1996 that constitutional changes would not be effected until after the 1997 elections catapulted the NCEC into action⁴⁰. As a

⁴⁰ *Daily Nation*, 25 June 1996.

counter to KANU's intransigent attitude, the opposition united and formed the National Convention Planning Committee (NCPC), which was to act as the umbrella body representing all the factional interests in both the opposition parties and the civil society on constitutional matters. It grew out of the partnership between the Inter-Party Parliamentary Committee, the 4Cs as well as the civil society forces. The NCPC after its formation called the delegates conference on 5 April 1997, where the National Convention Assembly (NCA) was established and on 6 April 1997 the NCA resolved that the former NCPC together with 16 provincial delegates and the representatives of the Youth Movement would serve as the National Conventional Executive Council (NCEC), which was to be the executive organ of the NCA.

The measures which the NCEC subsequently took to pressurise the government to effect reforms bore fruit on 17 July 1997 when the government announced that it would effect reforms before the general elections. This was preceded by President Moi's initiation of dialogue when he met religious leaders from the Christian and Muslim sectors on 15 July 1997. With the prospects of reform talks on course, the tension in the country eased and the opposition front started to disintegrate. This first became obvious when the nationwide strike of 8 August 1997, called by the NCEC failed to make any impact. The NCEC even lost some moral ground as a police officer in plain clothes, who was among the crowd at an undisrupted rally in Nairobi, was identified and killed by the demonstrators in Nairobi⁴¹.

Despite the NCEC's hardline position, the negotiation process acquired a new lease of life when both the NCEC and KANU consented to constitutional reform mediation by the religious community. By asking the religious community to mediate, Moi succeeded in neutralising their partisanship in collaboration with the opposition in the quest for constitutional reforms. After neutralizing the religious community, the Moi regime went a step

⁴¹ OLOO, A. and OYUGI, W.O. (2002). 'Pluralist Politics and Democratisation in Kenya: Prospects and Obstacles,' in A. BUJRA and S. ADEJUMBI (eds.), *Breaking Barriers, Creating New Hopes: Democracy, Civil Society and Good Governance in Africa*. Addis Ababa, Development Policy Management Forum.

further and cunningly drove a wedge between the opposition parties and the civil society forces.

It was against this background that the events of the last week of August broke the short-lived unity between the civil society forces and the opposition parties. While the NCEC chose the radical path, the opposition parties went for the softer option and became moderate. The civil society forces in disregard of their imminent fall out with opposition parties went ahead with the Limuru II Convention at Ufungamano House, during which a resolution was arrived at after three days of deliberations, mandating the NCA to transform itself into a constituent assembly should the government fail to enact minimum constitutional legal and administrative reforms before the 1997 general elections. In the meantime, on the 28th of August, which was the closing day of the Limuru II-Ufungamano Second Plenary Session, a meeting of KANU and opposition MPs was called by George Saitoti, the vice president at the time, to discuss ways of averting a crisis. It was under then that the Inter-Parties Parliamentary Group (IPPG) was born. The IPPG rendered the NCEC irrelevant as it restricted the reform discussions to parliamentarians. Most opposition MPs abandoned the NCEC and decided to participate in the IPPG reform discussions. However, about 12 radical MPs stuck with the NCEC and refused to participate in the IPPG talks. After several days of deliberations, the IPPG came up with three technical committees as follows:

- the Committee on Constitutional, Legal and Administrative Reforms;
- Electoral Code Committee;
- Peace and Security Committee.

The IPPG, comprising most opposition MPs and the KANU parliamentarians, finally agreed on a wide range of reforms.

In view of the previous intransigence by the KANU government, the public was baffled by the extent of the proposals from the three committees. The government it appears had accepted that the charged situation could easily escalate into widespread civil strife. The government, thus, conceded to most of the proposals in order to defuse the situation and appease the opposition before the crisis got out of hand. Apparently, a sizeable

segment of opposition MPs also feared the consequences of further escalation of the conflict as did religious leaders. KANU leaders on their part chose to make concessions as it provided an opportunity to drive a wedge between the 'moderates' and the 'radicals' in the opposition both in the civil society and the National Assembly. Furthermore, some opposition MPs were not comfortable with the fact that the NCEC initiative had been seized by extra-parliamentary forces who were setting the pace⁴².

A major component of the IPPG proposals was the proposed establishment of a Constitutional Review Commission to be answerable to a select committee of parliament and to work under a set time schedule so as to prevent the exercise from stalling. The Constitution Review Commission Act was subsequently passed before the dissolution of parliament. However, the Act had a number of shortcomings. First, was the question on how the 29 Commissioners would be appointed. The Act provided that the president would appoint the Commissioners from a list of nominees submitted by political parties represented in parliament and a variety of representative bodies in civil society taking into account the country's ethnic, regional, cultural, religious, political, social and economic diversity. The president would also appoint the Chairman of the Commission. Critics felt that this provision gave a lot of latitude to the sitting president. Apart from appointing a Chairman of his choice, he would also have a wider leverage of choosing Commission members from nominees. The end result was that he would determine the identity of the Commissioners and even be able to determine their destiny since the Bill was silent on their security of tenure. Reacting to the IPPG resolutions, the NCEC in its 11 September 1997 statement was dismissive of the whole exercise. However, the NCEC could only have regained its strength if the negotiations between KANU and the opposition parties had failed, which was not the case. Nevertheless, their agitation for constitutional change did not go in vain. The minimum constitutional reforms were finally enacted into law. Since 1997 was an election year, the opposition parties and civil

⁴² TOSTENSEN, A., ANDREASSEN, B.-A. and TRONVOLL, K. (1998). *Kenya's Hobbled Democracy Revisited: The 1997 General Elections in Retrospect and Prospect*. Oslo, Norwegian Institute of Human Rights, p. 35.

society organisations had a common interest of ensuring that there was a level playing ground by removing the restrictive and repressive laws from the electoral process.

2.3. The Constitutional Review Commission

The Constitutional Review Commission was enacted while the country was preparing for the 1997 general elections. It therefore attracted little debate or discussion as all attention was on the ensuing elections. But this turned out to be simply a stopgap measure as debate on the Act resumed with vigour in January 1998. Civic organisations grouped under the NCEC voiced the need for a constitutional conference as opposed to the yet to be established Constitutional Review Commission. Also giving support to the idea of a constitutional conference was the leader of the unregistered Saba Saba Asili Party, Kenneth Matiba, who had unilaterally opted out of the 1997 polls. The need for a constitutional conference gathered more momentum when the mainstream Christian churches and clergymen in mid-February voiced their support. In a statement read by the Bishop of the Mt. Kenya South Diocese of the Anglican Church of Kenya, the Rt. Rev. Peter Njenga, the church called for the convening of a multiparty conference called Conference for a Democratic Kenya, not only as an alternative to what they considered as a fundamentally flawed Kenya Constitutional Review Commission, but also as the only democratic way forward⁴³.

Parallel to these civil society organizations, informal consultations between a few opposition leaders had been taking place at the residence of the German Ambassador to Kenya, Michael Gertz. This happened while a German minister was visiting Kenya in March 1998. After the initial discussions, it was agreed that a second informal meeting be held and the Attorney-General and KANU be invited. At the second meeting, opposition and KANU leaders held detailed discussions as to whether what was appropriate for the country was a constitutional conference or the proposed Constitutional Commission. The consensus at the meeting was that there was need for a forum that would address the

⁴³ *Weekly Review*, 27 February 1998, p. 5.

fears that had been expressed by civic groups about the inadequacies of the Constitution of Kenya Review Commission Act. Wako was asked to facilitate the process of the establishment of a forum to allow fresh debate and discussion on the Constitution of Kenya Review Commission Act. Thus, the Inter-Parties Consultative Forum was born⁴⁴. The Inter-Parties Committee (IPC) formed by the Eighth Parliament had 25 members and was chaired by the Attorney-General Amos Wako. Its membership included all the ten parliamentary parties. Its mandate was to suggest changes and amendments to the Constitution of Kenya Review Commission Act which was passed by the IPPG process. Thus, once more the Moi regime was conceding to an IPPG-like forum to defuse political tensions that were already building up. The IPC was mandated to receive views from stakeholders on the necessary changes on the Constitution of Kenya Review Commission Act 97. Subsequently, workshops were held at the Bomas of Kenya at which all stakeholders including the NCEC was given a chance to air its views. The deliberations that were initially held at Bomas were characterised by acrimony between the two extremist groups from KANU and the civil society. Thereafter meetings were moved to Safari Park Hotel which produced rapid results.

In July 1998 at Safari Park I, a Committee of 12 members was appointed to draft amendments to the Constitution of Kenya Review Act of 1997. And during the Safari Park II meeting the various parties reached a consensus on some of the key modalities to guide the Constitution Review Process.

The Safari Park II meeting resolved to have a three-tier structure of the constitutional review process, with the national consultative forum as the supreme decision-making organ in the process, a constitutional review commission and district committees. But the meeting did not agree on many of the contentious details of the three-tier structure and how its membership would be appointed. There was still a rift between those who favoured district and ethnic representation in both the national consultative forum and the review commission and those who advocated representation through interest groups. The resolution of the above dispute met another hitch when President

⁴⁴ *Weekly Review*, 17 April 1998, p. 4.

Moi and the KANU Parliamentary Group insisted that representation in the constitutional review body must be district based. Moi said that apart from the district representation only religious bodies, Catholic, Protestants and Muslims should be represented⁴⁵.

In the meantime, against all expectations, Safari Park II provided a breakthrough to the constitutional review process in Kenya. The meeting which was graced by the attendance of the president, saw the Head of State catch extremists on both sides unawares when he delivered the conciliatory address. The meeting had been charged with both KANU and NCEC ready to stick to their hard-line positions. The president who had earlier appeared to side with KANU hardliners in his public stance even talked of the need to curb presidential powers in any new constitutional arrangements. By this action, the president diffused the tension, which was once again building up.

The final forum Safari Park IV adopted the Draft of the Constitution of Kenya Review Act of 1997 with some moderations as presented by the Sulumeti Committee. The committee recommended that 25 persons be nominated by the Inter-Parties Parliamentary Committee of whom at least two would be women; three persons from the religious sector—one each from the Muslim Consultative Council, the Kenya Episcopal Conference and the NCKK; one person from NCEC; five persons nominated by women organisations through the Kenya Women Political Caucus; and four persons nominated by the civil society through the National Council of NGOs of whom at least one would be a woman⁴⁶. The Sulumeti Committee also adopted the three-tier structure comprising the Commission, the District Forums and the National Forums. The District Forums were to be composed as follows: three elected representatives from each location; elected representative from major religious organisations; and all MPs and all Councillors from local authorities in the district; and two coordinators elected by the locational and religious representatives. The National Consultative Forum on the other hand would

⁴⁵ *Weekly Review*, 24 July 1998. p. 15.

⁴⁶ REPUBLIC OF KENYA (1997). *Constitution of Kenya Review Act, (I)be* 1997. Nairobi, Government Printer; *Kenya Gazette Supplement*, 30 December 1998.

comprise of all MPs, all Commissioners and representatives from the District Forums⁴⁷.

The recommendations were translated into a Bill, which was debated and passed in parliament with the president giving his assent towards the end of December 1998. But even as the process began in earnest, the Moi regime continued to put obstacles before the Commission. It sought to use state friendly commissioners to derail the process. The wrangles which developed and that have always impeded the formulation of far-reaching political and legal reforms would soon find expression in the CKRC with the merger of the two bodies, though later on the polarisation would take new re-alignments—fuelling the belief that the commissioners had become captive to the political elite. These infightings and polarisation later affected the smooth running of the constitutional review process. There was also a lot of infighting among the commissioners with most of them ganging up against the Chairman, Yash Pal Ghai, who seemed to want the process completed in time and also because of his strictness to financial probity. Most of the other commissioners appeared to be keen on dragging the process over a long period of time to guarantee themselves continual financial remuneration. It is such forces that the Moi regime used in its attempts to sabotage the process.

Despite several other attempts to discredit the review process, the Ghai Commission did release a Draft Constitution in September 2002. The process suffered an additional setback when the President dissolved the Commission on 17 October 2002. This was despite the fact that delegates to the constitutional conference had already converged at the conference venue ready to debate the Draft Constitution. In anticipation that the National Constitutional Conference (NCC) delegates would defy the order to disperse and proceed with the conference, the regime sent the police to seal off the venue of the conference at the Bomas of Kenya. The disruption of the review process was followed closely by the dissolution of Parliament on 25 October 2002.

⁴⁷ *Kenya Gazette Supplement*, 30 December 1998.

3. THE REVIEW PROCESS UNDER THE NARC REGIME

The National Rainbow Coalition (NARC) came to power with an overwhelming support from Kenyans. The masses were unmistakably relieved and full of hope that a new democratic chapter had dawned on Kenya. Many believed that the bottlenecks that had dogged political and legal reforms would be a thing of the past and that the review process would be jumpstarted to give Kenyans a new constitution within 100 days as NARC had promised. During the campaigns NARC gave the constitutional review issue top priority, but three years later the review process's future remains uncertain. This uncertainty has mainly been a result of wrangles within the ruling coalition. The review process has divided the government with the coalition partners National Alliance (Party) of Kenya (NAK) and Liberal Democratic Party (LDP) taking different positions mainly due to the fallout that resulted from the unimplemented memorandum of understanding that gave birth to NARC. The review process also experienced a change in roles of sorts with the former obstinate KANU supporting a people driven process while NAK especially its DP wing which had been pro-reform while in the opposition has gone a full circle and is now intent on derailing and sabotaging the process after ascending to power.

This became evident when President Mwai Kibaki, who is also the chairman of DP, while attending a NARC Parliamentary Group meeting and later a mass at St. Stephen's Church in Nairobi stated emphatically, that the government could not have two centres of powers⁴⁸. This position was later on to be adopted publicly by some of his key Cabinet members who were allied to the NAK faction of NARC. These sentiments were in reaction to the Draft Constitution that had made provisions for an Executive Prime Minister (PM) who would have more powers than the President. In the Memorandum of Understanding between the two partners that was mostly tailored to reflect the Draft Constitution, LDP had been promised the post of PM which was specifically supposed to go to Raila Odinga. The NAK seemed to have all

⁴⁸ *Daily Nation*, 19 August 2003, p. 1 and 8 September 2003, p. 1; see also the *East African Standard*, 19 August 2003, p. 1 and 8 September 2003; p. 1.

along been uncomfortable with the said agreement and hence the acrimony between the two factions. At Bomas it appeared that the delegates supported the draft's provisions and hence the LDP position which went further to harden hostilities between the two factions. It has thus become apparent that the absolute power that the current constitution bestows on the president and therefore to his lieutenants is a major determinant of the interests and views that accrue from them. This is the only valid explanation that one can use to explain the wrangling among the Kenyan elites. It is under these circumstances that the NARC government and specifically the NAK faction, just like its predecessor KANU, strove to water down the content of the changes being sought and opt for retaining the status quo to a large extent. This clearly demonstrates that the culture of authoritarian centralism is deeply ingrained in the body politic to the extent that regardless of which party finds itself in government, the authoritarian behaviour remains unchanged.

3.1. The Bomas acrimony

The struggle for the control of the ongoing constitution-making process appears reminiscent of the pre-independence constitution-making process, where the constitution became a weapon in the power struggle⁴⁹. The constitution to this end is a 'power map' and it is for this reason that many want their 'ideas' to find expression in it—as this will enable them to either retain power or capture power⁵⁰. This was evident in the developments that characterised Bomas III in which positions hardened along two camps, one allied to NAK and the other to LDP. The acrimony experienced at the Bomas talks took a dramatic turn when the then Minister for Justice and Constitutional Affairs, Kiraitu Murungi, told the Bomas delegates to either form a second consensus-building group (after the proposals of the first consensus building talks were rejected) or have the government pull out of the conference. The government subsequently came up with what were dubbed 'consensus' resolutions on contentious chapters that were rejected by the delegates. This led to a government walkout from

⁴⁹ GHAI, Y.P. and MCAUSLAN, J.P.W.B. (1970), *op. cit.*

⁵⁰ DUCHACHEK, I.D. (1973). *Power Maps: Comparative Politics of Constitutions*. Santa Barbara, California and Oxford, ABC-Clio.

the conference. The government claimed that the proposals on devolution, the executive and transitional arrangements as contained in the Draft Constitution could plunge the country into chaos and that the government had serious reservations about them.

After the government walkout the delegates went ahead and passed all the chapters on the contentious issue with little or no debate. The remaining delegates—constituting a quorum (327 out of the 629 full house)—went ahead and adopted the Zero Draft. This move was termed by KANU Secretary General Julius Sunkuli among others as a ‘protest vote’ against the government, especially the NAK. Thereafter, more than 113 of the MPs issued a statement in which they gave their unreserved support to the Draft Constitution and also vowed to shoot down the two government Bills seeking to give parliament more control over the review process. But as the country prepared to witness the handing of the Zero Draft to the Attorney-General, three delegates went to court challenging the validity of the draft. In a majority judgment, the court ruled that parliament as currently constituted could not adopt a new constitution and that there was need for Section 47 to be amended. It also ruled that it was only the Kenyan people that could midwife the constitution and, thus, instructed parliament to amend the CKRC Act to cater for a referendum. As expected, the judgment drew the ire of both parliamentarians and legal practitioners and scholars. The review process thus gave the Kenyan Judiciary a litmus test over their independence and integrity as the whole country focused on more judgments in the review process. In the meantime the president felt obliged to step in and resolve the wrangles in his coalition ahead of the opening of parliament. He not only reached out to his warring factions but also to the official opposition party KANU as well as Ford People who he incorporated in his government to neutralise the LDP faction. In a series of meetings the president preached reconciliation, a plea that seemed to soften the hard-stance of some NAK-allied Cabinet Ministers.

3.2. The pre-referendum legal and political manoeuvres

The post-Bomas III outcome saw the ‘government’ undertake various political and legal manoeuvres in a bid to bring

back the control of the review process to its ambit. Separate legal huddles by individuals, political parties and civil society organisations also stood on the way of the review process. The constitution review process suffered a setback with a High Court ruling that parliament had no powers to replace the present constitution with a new one. Differences arising from Bomas continued to play out as the government spiritedly moved to amend the Bomas draft leading to a new battlefield as the opponents hardened their stand. The two feuding groups were personified in Kiraitu Murungi, the then Justice and Constitutional Affairs Minister, on the government side and Raila Odinga, the then Minister for Roads and Public Works, on the opposing side. As the acrimony over the constitution intensified, moves were made to harmonise the two groups, through the Naivasha retreat supported by the president and attended in a good will gesture by Raila and Kiraitu Murungi. Indeed, this was seen as a break through as it emerged that the PSC on constitution unanimously agreed to retain an executive presidency as both head of state and government and a PM in charge of coordination and implementation of government business and programmes. The PM was to be appointed from the leader of the party with majority seats in the house. Also agreed was a two-tier devolution of power to the district level and merger of small and economically unviable districts. It likewise recommended the scraping of the Provincial Administration. The Naivasha retreat which was attended by 22 of the 27 members saw the members agree that although the president appoints the PM he would have no power to sack him/her, this would require a 50% vote in parliament for his/her dismissal.

It did not, however, take long before the differences emerged again. The government soon backtracked on the agreement in a show of lack of trust, where Murungi over-ruled the Attorney-General who had taken to the Government Printer a Bill that incorporated the Naivasha Accord; the constitutional review process thus hit another stalemate. The two NARC factions—NAK and LDP—decided to back different Bills to jump-start the process. Subsequently, the Government announced that it would not publish a Bill that proposed two-thirds requirement to alter the Bomas Draft, whereas LDP and KANU said they would not

negotiate to change their position on the Bomas draft⁵¹. Kiraitu Murungi in a surprise move also said that the Government would not support the agreement reached during a retreat in Naivasha by the PSC on the constitution. By June 2005, the government had succeeded in forcing through amendments to the draft by the Parliamentary Consensus Group, a government friendly team of 35 MPs led by Jimmy Angwenyi and John Koech, endorsing the revised Naivasha Accord which favoured a powerful presidency and a non-executive PM.

The government consequently moved to take control of the PSC under the chairmanship of the government friendly Ford-P leader Simeon Nyachae. Consequently, the KANU and LDP members of the PSC, immediately withdrew, leaving the PSC exclusively as a committee of government friendly MPs. This further eroded public trust on the committee and the documents it produced. This was the culmination of various attempts at consensus building on the so-called contentious issues arising from the Bomas process⁵². However, as the debate progressed and with the continued adulteration of the Bomas draft, other areas such as the transition and Kadhi's Court became increasingly contentious. All through, these processes were seen as government underhand dealings aimed at mutilating the Bomas draft to suite their interest and force the emergent document down the throat of Kenyans against their wishes. The only plausible way forward binding to all the warring factions it appears was the referendum.

The other issues that generated legal and political debate in the countdown to the referendum was the deepening stalemate over the enactment of a new constitution given that the existing Section 47 of the current constitution and the lack of a referendum law. Samuel Kivuitu, chairman of the Electoral Commission of Kenya, noted that the absence of a Referendum Act would expose the new constitution to protracted legal tussles by people unhappy with the referendum outcome under the existing law. But this was never addressed and in his statement on declaring the referendum results in November 2005, Mr. Kivuitu further underscored the

⁵¹ *Daily Nation*, 11 November 2004, p. 3.

⁵² Note that these two MPs were largely seen as government friendly and there was very little trust on their efforts at building consensus.

urgent need for a Referendum Act. Opponents of the Wako Draft, a product of the manipulated Bomas Draft by government friendly MPs which was adopted at a meeting in Kilifi and subsequently passed in parliament and approved by the president, also tried to stop its publication by legal means. The LDP and KANU cases seeking to stop the Attorney-General from publishing the Draft Constitution Bill and the referendum also were filed, though, eventually overtaken by events as the ruling in any case was pro-referendum. The civil society under the umbrella of 'Yellow Movement' likewise moved to court to stop the referendum, a case that was to drag until two days to the referendum when the court decided otherwise on public interest. The overall implication in this politico-legal battle was that the government had effectively ignored the peoples' views by radically changing the Bomas Draft. However, all was not lost as re-assuringly, the people were to have the final say on the document through the referendum and for the first time in Kenya, had the power to either accept or reject the document.

3.3. The referendum: the epitome of citizen participation

Constitution-making is an inalienable right of the people both through their representatives and the totality of their individuality. Inherent here is the sovereign power of the people to determine how they are to be governed through a supreme law of the land—the constitution. The people of Kenya were finally going to offer their verdict directly in the constitution through the referendum.

The ECK declared the date of the plebiscite—21st November, 2005. The stage was thus set for the people to decide. The referendum saw a historical campaign period characterised by both camps (YES and NO) sparing nothing to win the confidence of the people. Convincing the people now became important for both protagonists including the government (YES) that had promised to shake all corners of the country with the immense state resources and machinery at its disposal. As the campaigns progressed it became more and more clear that this was not just a referendum but also a vote of confidence or lack of it on the government. The then Justice and Constitutional Affairs Minister Kiraitu Murungi had on many occasions declared that the Draft

Constitution was a government project and that the government could not afford to lose the referendum. These sentiments were to be later echoed by various other YES government ministers and government friendly MPs across the country including the vice president. Indeed, the president's public support of the Draft Constitution demonstrated the government's commitment to have the draft passed in spite of the many contentious issue and glaring flaws. This was further vindicated by the president's generosity with public resources such as land, national parks, districts, etc, that were given on request by all who paid the president pre-arranged courtesy calls at State Houses across the country. The inevitable conclusion was the misuse of public resources and executive powers to buy the support of the people for the draft constitution.

For the NO supporters, their public pitch was that it was necessary to reduce presidential powers and that the Draft Constitution had not achieved this goal which had been the central issue that necessitated the review process. Indeed, by the president continuing to blatantly and publicly abuse and misuse executive powers in this way, he effectively campaigned against the draft since the people were wise enough to see the dangers inherent in the draft. Other areas that raised eyebrows were the unplanned salary increments especially for councillors and chiefs. When the citizens of the republic voted a resounding NO to the proposed constitution it became clear to the government that no amount of inducement, favours and intimidation would deprive them of their right to make choices conscientiously. For the second time in three years, Kenyans spoke decisively in disregard of government influence. Apparently the manoeuvres to deprive the people of their power and right to decide by the political elite failed.

The referendum was particularly important because as much as it was a vote on the Draft Constitution, it was also largely a vote of lack of confidence in the way state and government was being run. Indeed, issues of corruption, unemployment, poor infrastructure, mismanagement of state affairs, the dictatorial and arrogant nature of certain government ministers, tribalism and nepotism in key state jobs, general disillusionment with the government were the undercurrents that endeared people to reject the proposed constitution that was publicly declared a government project. In the end, most people never read the Draft Constitution

but voted against it on the basis of their disaffection against the government. Likewise, those who voted for it did not do so out of their support for the government based on its performance rather on their ethnic leaders' affiliation. This explains the overwhelming 'Yes' vote from the GEMA community to ostensibly protect the presidency.

In total disregard of other stakeholders in the review process, the government recently constituted a 15-member committee to undertake an evaluation of the constitution review process and provide a roadmap for the conclusion of the process. The committee is tasked to facilitate completion of the constitution review process in terms of what they consider weaknesses, strengths, successes or failure of the process and make proposals on the way forward. The committee has since been dismissed by the political opposition and civil society leaders who have argued that it lacked a popular mandate. Several parallel initiatives have also been unveiled by the civil society. These include those working under the auspices of the Law Society Kenya (LSK), the Orange Democratic Movement and the Syari team, which have all been mandated by the said organizations to chart the way forward in the review process.

Conclusion

In 1963, when Kenya attained Independence, it adopted a constitution based on liberal democratic practices that recognised democratic pluralism as an important tool for enhancing and fostering political participation in public affairs. But after 27 amendments, later in 1991 it became clear that whereas the constitution was designated as the fundamental law of the land at independence, the amendments showed that the constitution was never perceived as such by the ruling elite. Instead the elites used the constitution as a weapon in power politics to subdue or eliminate any form of opposition. In addition, the substance of most amendments created an edifice of an unaccountable executive at the expense of the other arms of government, namely, the judiciary and parliament⁵³. The amendments to the constitution

⁵³ See MUIGAI, G. (1993), *op. cit.*

during both the Kenyatta and Moi era entrenched the one-party state in Kenya under which the economy and politics became increasingly intertwined. The end result was that the executive subjugated not only the judiciary and parliament but also the civil society. To this end, citizen participation was rendered irrelevant.

Likewise, State control of both the political and the economic realm facilitated the development of authoritarian tendencies. It also promoted political patronage as an important tool of governance and allocation of resources. Corruption consequently became a conspicuous feature of the public sector. The other glaring manifestation of authoritarianism was the centralisation of power in the presidency⁵⁴. With powers to reward loyalty and punish dissent, the president was revered by loyal constituencies and reviled by those who lost out from political competition. Political patronage evolved as an important tool of governance. Patronage networks placed the president and senior political elite at the centre of policy making. This meant that patronage spread from the centre to the periphery, to the districts, divisions and locations, following the hierarchy of the Provincial Administration⁵⁵.

The state and politically powerful individuals dominated both the political and socio-economic space. They gave little space for citizen participation in political affairs. And with the increase of political patronage in the management of public affairs, corruption evolved as a mechanism of accessing justice. Access to justice by ordinary and poor citizens became very difficult; only the wealthy were protected by the law. The process to concentrate power in the executive also led to erosion of the supremacy of parliament⁵⁶. It is these autocratic tendencies that the quest for a new constitutional dispensation in Kenya has sought to address. Although citizen participation was minimal before the 1997 elections, their participation was enhanced subsequently as evidenced in the masses

⁵⁴ ANYANG-NYONGO, P. (1989). 'State and Society in Kenya: The Disintegration of the Nationalist Coalitions and the Rise of Presidential Authoritarianism in Kenya, 1963-78,' *African Affairs*, 88 (351).

⁵⁵ UNDP (2003), *op. cit.*

⁵⁶ *Ibid.*

views that were collated by the CKRC and later there impressive turnout during the referendum.

The 2002 general elections supposedly resulted in the collapse of the autocratic state, but it also prepared fertile ground for sprouting new seeds of autocracy in the country. Barely three months into NARC's reign, certain autocratic tendencies begun to emerge in the Kibaki government. A group of self-seekers had already gathered around Kibaki and were promoting narrow ethnic and regional interests. The whole process it appeared was geared towards 'owning' the presidency with the ultimate aim of promoting patron-client politics, which is one of the hallmarks of an autocratic state⁵⁷, and which it has to be noted is an impediment to citizen participation in their governance. Autocracy in Kenya and elsewhere has been personified by the excesses of the executive and if the pre-referendum events are anything to go by, then it is inherent in the NARC regime.

Generally, it can be observed that since the NARC regime took power, the constitutional review process has had the following general characteristics. First, the constitution-making process has had no support from the ruling elite, just as was the case under KANU. Second, that the pre-2002 opposition political elite's support and interest in the process was not driven by commitment to genuine reform, but rather by the need to facilitate the evolution of a coalition that could be used to capture power from KANU. Third, elite political interests continue to block the advancement of the reform process much to the chagrin of citizens.

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⁵⁷ ODHIAMBO-MBAI, C. (2003). 'The Rise and Fall of the Autocratic State,' in W.O. OYUGI, P. WANYANDE and C.O. MBAI (eds.), *The Politics of Transition: From KANU to NARC*. Nairobi, Heinrich Boll Foundation.

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PITFALLS IN CONSTITUTION-MAKING IN KENYA: EXPERIENCES FROM BOMAS AND THE 2005 NATIONAL REFERENDUM

by Lucy W. Maina, Fuchaka Waswa and Susan Waiyego

Introduction

Kenya is currently lurching from a highly contested, spirited and acrimonious process of constitutional review which climaxed with a widely publicized referendum at which a draft constitution was rejected by a majority vote. The culmination of events reflected a diversity of interests and opinions that lacked synthesis and amalgamation. Nowhere in the world does the process of constitution making proceed unchallenged or without its fair share of variation of opinion and controversy. However, the very essence of endorsing a new constitution requires a high degree of consensus, readiness to trade off gains for losses and a fusion of opinion cultivated through widespread, conscious and concrete consultation and opinion building.

As Kenya recovers from the throngs of the referendum without a new constitution to govern it, the questions arising centre on why the reform process failed to deliver a new constitution thereby leaving the future of Kenya hanging in the balance. It is important to document those opinions that lacked synchronization and what lessons can be learnt from this process as a new way forward is charted. While the rule of law stipulated in Section 4 of the Kenyan Constitution was somehow followed in the entire process, the overriding principle of participation and legitimisation appears to have missed its mark. Kenyans wanted a constitution that is *Wanjiku*¹-driven, distributes power and supportive of posterity.

¹ *Wanjiku*, a Kikuyu female name, is now used to denote the masses, the ruled or majority opinion after popularisation by former President Daniel arap Moi in a rally at the onset of the constitution review process.

From the onset of a process spanning close to five years and two government regimes, contestations and personal interests were evident, firstly drawing from the heads of State themselves, government, parliament, civil society and other interest groups. Despite points of departure being many and varied, in the final analysis, they polarized into two opposing camps of interest especially because the referendum vote increasingly acquired the shape of a do or die. In the light of the above discussion, this paper seeks to interrogate the process of constitution making in Kenya against the backdrop of constitutional amendments since the 1960s and the pertinent issue of gains and loses made by *Wanjiku*, the main stakeholder in the process. The paper also attempts a critical analysis of attendant contestations in constitution making in Kenya and their connection to the governance process. The paper finally suggests a way forward for Kenya in the pursuit of giving herself a fair and workable constitution.

1. THE CONSTITUTION DILEMMA IN KENYA

A constitution, being a contract between the citizens and its rulers, should embody the political will of its people. It declares the organs of governance and their relationships; the supervisory role of the citizens in relation to the rulers; the mutual relationship of citizens in a policy; the rights of citizens and general principles of democratic governance². Constitutions also define the form and content of government and legitimize the State's principal institution and procedures. This is to ensure the sustenance of a lawful democratic and peaceful government. A constitution ought to be a people's document rather than a few peoples affair. These principles of a constitution have continually eluded constitution making in Kenya.

1.1. A chronology of undemocratic amendments

During the Lancaster House Conference of 1960 and the two other conferences held in 1962 and 1963, indigenous Kenyans

² KIBWANA, K. (1996). *Law and the status of women in Kenya*. Nairobi, Claripress.

were not well represented even though they comprised the majority of those who the new constitution was to govern. The conferences' main agenda were to debate a constitution for Kenyans of all races. Indeed, even the laws that were drawn during this time fell short of portraying the realities in Kenya. This reality was later to bear profound impact since it was the basis on which widespread constitutional amendments were made right after the attainment of self-government in Kenya. Notably, the Kenyan majority was negatively opinioned towards their British counterparts and instantly regarded the Lancaster Constitution as an imposition upon them.

Nevertheless, the independence constitution had provisions for both institutional and functional structures of upholding the principles of separation of powers and the rule of law³. This presupposed a marginally limited role for the president or the chief executive in his/her exercise of public power. It also laid down the premium of strict adherence to constitutional procedures, which further upheld the rule of law. Unfortunately, these positive aspects of the Lancaster Constitution were however altered by the first generation independent leaders on the principle of requiring a constitution made by Kenyans for Kenyans.

The effect of most constitutional amendments of the 1960s and beyond was the strengthening of presidential powers⁴. Ironically, many amendments negated the very concept of constitutionalism by allowing for manipulation and weakening the rule of law. The 1965 Amendment of Act 14 for instance effectively gave the president considerable law making, appointive and dismissal powers. This further entrenched political patronage of the executive over the major political organs; the judiciary, legislature and the judiciary.

Although the citizen gives or lends power to the ruler through the constitution, s/he still remains the ultimate ruler⁵.

³ OJWANG, J.B. (1976). *Executive Power in Independent Kenya's Constitutional Context*. University of Nairobi, LLM Thesis.

⁴ OJWANG, J.B. (1976), *op. cit.*; KIBWANA, K. (1996), *op. cit.*; MUTE, L.M. and WANJALA, S. (2002). *When the constitution begins to flower. Paradigms for constitutional change in Kenya*. Nairobi, Claripress.

⁵ KIBWANA, K. (1996), *op. cit.*

Kenya's independence constitution has, however, been manipulated by a few individuals without due consideration of the citizens. The death of Jomo Kenyatta in 1978 and subsequent enthronement of Moi marked a considerable break in terms of citizen silence.

The immediate years following the death of the first president witnessed little socio-economic and political reforms. Leaders and citizens alike initially watched with expectation unable to discern what leadership style Moi was to adopt. Some allied to the former president continued to mourn his death while inwardly nursing a doze of defiance to the new regime. Coupled with this confusion was the fact that the incumbent president had to familiarize and endear himself with the masses in order to win their support. Thus, it took him five years to make the first constitutional amendment which became the single most controversial amendment of its time.

The Amendment Act n° 7 of 1982 made Kenya a *de jure* one-party State. KANU became the single unchallenged party in Kenya. With this, executive powers were strengthened further, as the citizens became more and more alienated from the governing process. From then onwards, the president blocked any attempts by opposition leaders to register any other political parties. Intimidating measures such as imprisonment and detention without trial became rampant. In extreme cases, dissidents were forced into exile as the citizenry went into obligatory silence. At the same time, government force was employed in almost all party activities including campaign and elections. In 1988, for instance, a massively rigged election was conducted. The 1988 general elections coincided with a global cry for good governance and democracy. Internal government critics together with foreign sympathizers lobbied the masses and other non-State actors to further agitate for change in the constitution in order to allow for multiparty democracy. Meanwhile, Moi further tightened his grip on power in the hope that government critics agitating for a change in the constitution would be silenced.

At the hierarchy was such that political elites amassed more and more power while the masses became more and more manipulated. Kenya had become a State where personal expediency dictated the direction of events and power consolidation was the

sole business of government. Democracy was thus grossly undermined.

A salient component of democracy in any given country is the mutual relationship among citizens, values and leaders. The three should be in such a way that there is shared agreement regarding how each should be articulated and aggregated. There should be shared understanding and agreement regarding how much power and authority the government should hold, how and when it should exercise it. National values indicate those ideals that should be upheld by both the leaders and the citizens. The citizens should on the other hand be accorded enough room and respect to participate in shaping their own destiny. The 1982 constitutional amendment lacked most if not all of these values and by 1990 there was great mass disaffection in Kenya.

1.2. Multipartyism and constitutionalism

The concerted efforts by non-State actors did not go unheard and at the beginning of the 1990s, Section 2A of the constitution was repealed to allow for multipartyism. Later in 1992, Act n° 6 of 1992 was amended to secure broad national acceptance of a successful presidential candidate with the requirement that such a candidate must garner at least 25% of the votes cast in at least five of the eight provinces in Kenya. This was designed to ensure that the president had a wide base of popular support⁶. At the time, the feeling was that Moi had through divide and rule secured his position and other aspiring presidential candidates would be severely disadvantaged in achieving popularity across the provinces. This amendment also limited the president's tenure to two terms of five years span but as ruled by the high court, this limitation did not affect the incumbent president's candidature.

Pressure for constitutional review continued to mount after 1992 consistent with the suppression of citizen opinion and abuse of the rule of law. Though Moi promised to steer constitution reforms and reiterated the same in 1995, little was undertaken in this direction till 1997. It was obvious that the lethargic nature with which the government was treating the matter required a firm and

⁶ MUTE, L.M. (2002), *op. cit.*

incessant push. Several initiatives to this direction were formed in the late years of the decade: Firstly, the Citizen Coalition for Constitutional Change initiative was constituted in 1997 with the sole purpose of pressing for reforms. Later, the National Convention Planning Committee composed of religious organizations, political parties and the civil society was formed. Another crucial body formed at the time was the National Convention Assembly, which argued for comprehensive reforms to take place before the 1997 elections. Reluctance from the government further derailed the process and only minimal amendments to the constitution were made, mainly to allow level playing field for all parties in the 1997 elections. This development was particularly steered by the Inter Parties Parliamentary Group (IPPG) formed in July 1997.

Hence, the late 1990s saw increased involvement and participation of the citizenry mainly due to concerted global concern and the euphoria for good governance that swept virtually all parts of Africa. In Kenya, economic crises and poverty were blamed on the president's system of governance, patronage and corruption. When Moi made a return to power in 1997, the battle became intensely protracted and public attention was turned full throttle to the role of the constitution in curtailing the abuse of power. The awareness-raising campaigns through writings and public fora further sensitized the citizens on their rights as the principal actors in governance. By the close of the decade, Moi's government was becoming increasingly rickety as the general populace sought to remove Moi from the helm of power.

After recovering from the 1997 elections, the major reform institutions continued to demand constitutional review. The IPPG for instance, is largely responsible for the establishment of the Constitution of Kenya Review Commission (CKRC) through an Act of Parliament in 1997 and the review of the same Act in 1998. This CKRC Act endorsed a people driven constitution review rather than a parliament-driven one. In 1999, another body, the People's Commission of Kenya was formed which later became the Ufungamano Commission. Finally, the CKRC amendment Act of 2000 occasioned the naissance of the review process with Yash Pal

⁷ MUTE, L.M. (2002), *op. cit.*

Ghai being appointed its head. Later, the Ufungamano Commission would merge with the CKRC and become integrated into the Ghai commission. Henceforth, the CKRC began its planning phase for a people-driven constitution and by 2001, the process was well under way. There was expectation that the review process would end before the next general elections scheduled for 2002 but this became increasingly difficult owing to the slow pace of the review.

Politically, the great break for Kenyans appeared to come in 2002 when key leaders amalgamated in the form of the National Rainbow Coalition (NARC)⁸ to oust President Moi from power. President Kibaki, who took over was elected on a platform of instituting good governance, eradication of corruption and delivering a new constitution. Accordingly, a new constitution was to be ready within the first 100 days of NARC's reign but this was not to be.

1.3. Legitimising and institutionalising constitution-making in Kenya

A constitution derives its legitimacy and legality from several tenets one of which is popular participation rather than the wisdom of lawyers. This legitimacy from the people appears clearly entrenched in the Kenyan constitution. Though amendments to the constitution and other laws in Kenya have been entirely undertaken by parliament, constitution making is a multi-threaded operation and can be done in a number of ways. To achieve a greater measure of legitimacy, the Kenya constitution provides for a Law Reform Commission (LRC), which is required to make recommendations and forward them to parliament for debate. A ruling party may propose particular laws or changes which can also be debated in parliament⁹. A more representational model involves the appointment by government of a commission from among interest groups of independent nature. Accordingly, the constitutional review Act states in Section 4 that constitutional reform will be undertaken by way of a Constitutional Review Commission which

⁸ NARC is a coalition of several political parties, the main ones being the Democratic Party of Kenya, Liberal Democratic Party, FORD-Kenya party and the National Party of Kenya.

⁹ KIBWANA, K. (1996), *op. cit.*

is mandated to collect views from the general public and synthesise them.

The other instrument is the constituent assembly which may comprise elected members such as parliamentarians or other representatives elected in the same way as legislators who give their proposals which are then subjected to a referendum. Another instrument in the process of review is the National Constitution Conference consisting of representatives from different interest groups drawn from the major institutions of society. The delegates elected to this forum represent the various regions and sectors of a country and convene to deliberate on the views collected from the wider public.

Lastly, the review process also requires but not of necessity that once the views are collected and synthesised into a draft constitution be exposed to public scrutiny by way of a referendum. All registered voters may cast their vote of a 'NO' or 'YES'. If by way of a simple majority, the draft constitution is supported by a larger vote, the draft goes to parliament for endorsement and enactment.

In the recently completed constitutional review process, participatory principles were enhanced through various procedures that gave the citizenry or their representatives an opportunity to express their views and aspirations regarding the main issues of governance. The organs utilized in the review were mainly the Review Commission, the Constituency Constitutional Forum, The National Constitutional forum, the Referendum and The National Assembly. During the review process, inclusiveness and accountability were fairly evident and a conscious effort was made to include all stakeholders irrespective of race, gender, socio-economic status, age, creed and others. This was until the first draft—the Bomas¹⁰ Draft—was released to the Attorney General.

1.4. From Bomas to Wako's Draft

In Kenya, the subject of constitution making and reform has been severely overshadowed by the magnitude of powers accorded

¹⁰ Name derived from the Bomas Conference Centre, which was the official venue of the constitutional conference.

to the head of State and also by the sovereignty of parliament. At the same time, the cracks in the practice of the rule of law largely contribute to the breakdown of any meaningful constitutional agenda and may be said to have contributed widely to the disparity of opinion witnessed in the recent review process. In Kenya, scanty law understanding together with the widespread use of law jargon in official documents does not help the case.

In September 2002, the constitutional conference constituted from the people of Kenya to write the new constitution completed and presented to the Attorney General the Bomas Draft. As already discussed, the document was largely informed by views collected from the citizenry. These views show that the Kenyan citizenry was deeply dissatisfied by among others the powers accorded to the presidency in the existing constitution and the absence of checks and balances to tame this power. Other areas of discontent arose from the conduct of parliamentarians as representatives of the people, abuse of office by civil servants, human rights atrocities, the structure of government, misuse of power by government, land tenure problems and issues to do with national resource allocation.

On the official voting day where the conference delegates finally endorsed the document, the government side on sensing defeat, left the conference venue in a huff. The walk-out was a reflection of failure to reach consensus on especially the trimming of executive powers and to a lesser extent, the devolvement of government. The factions in government thereafter openly disowned the Bomas Draft and cited manipulation by delegates as their reasons for leaving. Later, this document was to be presented to parliament, which through the use of government manipulation of a simple majority vote, obtained the mandate to alter it. Controversy heightened again with the opposition and pro-Bomas Members of Parliament walking out. This was the second walk-out. Afterwards, the draft was taken through various cosmetic consensus-building retreats largely attended by pro-government members of parliament. The first such retreat 'produced' what is now known as the Naivasha accord that trimmed considerably, the Prime Minister's powers provided in the Bomas Draft.

To gain the support of the Christian churches who initially opposed the draft on the basis of the preference accorded to the

Muslim based *Kadhi* courts¹¹, further consultations spearheaded by government saw the addition of Christian, Hindu and other religious courts as alternative provisions for the exercise of personal law. The changes were effected and finally sealed at Kilifi. The Kilifi document thus became known as Wako Draft following its official release by the Attorney General. It no longer represented the wishes of Wanjiku. Instead, it sought to protect the interests of the powerful elites, leading to a marginalization of Wanjiku. These last developments defeated the logic of Bomas and took the country back to the days when amendments in parliament were made to preserve the *status quo* oblivious of the wishes of the majority.

In close succession, the pro-government elites had thus managed to thoroughly adulterate the Bomas Draft behind closed doors and through manipulation, exclusivity and use of government machinery. This was orchestrated to suit the existing regime and maintain the *status quo* as far as executive power was concerned. Hence, the whims of a few replaced the will of the majority. Constitutionalism provides the means for curbing arbitrariness in discretion¹². The foregoing events were definite manifestations of the appearance of constitutions without constitutionalism, a common feature in Africa¹³. But the battle was far from over and on the 21 July 2005, the altered/Wako Draft was finally endorsed by a majority in parliament and a referendum was announced.

The two walks-outs are significant in Kenya's history because they represent a drawback in participation and consensus-seeking and also the birth of highly polarized views that saw politics in the country take an ugly twist with personalities rather than the documents becoming the objects of constitution making. This shift severely curtailed quality of discussion, debate and dialogue which

¹¹ These are religious courts based on the *Sharia*/Muslim law and are usually administered by a Muslim cleric.

¹² ASEKA, E.M. (2005). *Pitfalls of ideology, social policy and leadership in Africa. Instincts of predatorial leadership*. Nairobi, New EME Research Initiatives and Publishers.

¹³ OKOTH-OGENDO, H.W. (1991). 'Constitutions without constitutionalism: Reflections on an African paradox', in I.G. SHIVJI (ed.), *State and constitutionalism: an African debate on democracy*. Harare, SAPES books.

are themselves the ideals of democracy. Democracy also encapsulates tolerance of opposing views and the government was obviously ill advised to walk out on what was otherwise a maturing process. Sooner, rather than later, Wanjiku would also have her opportunity to walk out.

Apart from the current government's interest in the draft constitution, another parallel document presented to the people as an alternative to the Bomas Draft was the Ufungamano Initiative Draft. The Ufungamano Initiative was born through the coming together of the different Christian faiths to form what is now known as the Ufungamano Initiative for Constitutional Reform. It will be remembered that previously, Ufungamano was a lobby group spearheading the birth of a people-driven review process and was eventually absorbed into the CKRC. Its breakaway from Bomas at this later stage was unkindly received and in some quarters interpreted as stimulated by government stakeholders.

The Ufungamano Draft presented to the head of the CKRC was faulted on several grounds. One of the major reasons was the deletion of the *Kadhi* courts from its contents. This action was perceived as a vindictive and conscious effort to marginalise the Muslim community. The *Kadhi* courts have been ingrained in the constitution since 1964 and provide a system of arbitration in matters of personal law for those professing Islam. The second contention with the Ufungamano Draft was based on its rebuttal of a parliamentary system which according to CKRC was the expressed wish of the majority. In the Ufungamano Draft, the proposal was to have a centralised presidential system not significantly different from the existing structure. Third, the draft was criticised as a drawback on equitable resource accessibility in that it protected the property of present holders of large chunks of land. The draft was also condemned for proposing a centralised government with strong provincial administration, not much different from the current structure.

Further contentions with the draft emanated from its treatment of the issues of social justice and that were downplayed through absolving the State from total responsibility in such matters. This was seen as tantamount to ignoring the plight of the minorities, the poor and disadvantaged. The draft also appeared to entrench the existing divide-and-rule politics by transferring power

to parliament and to the judiciary without putting in place checks and to curtail compromise especially on matters of national interest. Further, the draft seemed to give much leeway to parliament by not attempting to hold it accountable.

On the other hand, the Wako Draft, though posing as representing the wishes of the people, was carefully planned to protect the presidency from becoming stripped of power and to produce a likeness of a 'new order', while in effect preserving an older one. It is no wonder then, that when the time came for opinion to be tested, very few cared for what was in the Wako Draft since the battle was long lost. Propaganda and mayhem replaced reason and all manner of opinions were peddled so that in the end, it was difficult to really know what the referendum vote was about. Hence, diverse issues emerged to shape the opinions leading to the support and rejection of the draft. Whether these issues were products of ignorance, misinformation or misinterpretations, they form the backbone upon which the draft constitution was rejected.

2. THE REFERENDUM

The referendum events must be viewed from the backdrop of the history of constitutionalism in Kenya. The key thrust here is that the manipulation of the Lancaster document by power elitists has hampered democracy and free choice. The NARC government, drawing from the lessons of the past, anticipated that past manipulations could shape or restrain opinions. It failed miserably by not recognising the mileage made by the people through the 1990s as detailed earlier in the chapter. It was foolhardy to imagine that Kenyans could do with minimum reforms after a battle spanning close to 15 years.

The Bomas process had proceeded smoothly with Wanjiku in command but the public was angered by the pseudo-reformists¹⁴ and their attempt to change course especially with regard to the devolution of power. Their position was not helped by the fact that

¹⁴ Politicians who initially, while in the opposition, favoured devolved government with reduced presidential powers.

most of them were allied to the president and were also from the GEMA¹⁵ community. By expunging and denying Wanjiku her right to chart her own future, constitution-making once again became élitist-driven and this was to have grave impacts in the process of conducting the referendum.

2.1. Underlying controversies in the 2005 national referendum

Most interest groups and even the general citizenry agreed that the proposed constitution was by and large a good one, in that 70–80% of its content was in line with the views of most Kenyans. However, there was a general feeling that the issues of discontent were of great importance and to ignore them would have detrimental effects both to the future and welfare of the nation as a whole. Some of the controversial issues in the draft constitution are as given below:

2.1.1. Executive powers

The Wako Draft appeared to undermine the views on the executive arising from the National Constitutional Conference. The conference had suggested a strong prime minister and a president with limited executive roles. In Articles 142–144, the executive powers of the Head of State are detailed. According to these Sections, the authority of the president include heading the government, being the Commander-in-Chief of the Armed Forces, chairing the National Security Council, appointing the Deputy President, the Prime Minister, two Deputy Ministers, Ministers, State and Public Officers and others. Most critics felt that such overwhelming powers would:

- Compromise the loyalty of the government to citizens, as they would first and foremost be loyal to the president.
- Permit the president to appoint as many ministers as he wished
- Give the president opportunity to appoint ministers from any side of the house to his advantage. Furthermore, the draft gives the president the mandate to appoint at least 20%

¹⁵ GEMA is an acronym for Gikuyu, Embu and Meru ethnic groups.

of his ministers from outside elected members of parliament which many perceived as subject to abuse.

- Present the opportunity for a dictatorial president since the presidential powers touch on every significant arm of government.

2.1.2. Devolvement of government

The other contention for anti-supporters of the draft centred around the role and sovereignty of the district governments and their legislative authority detailed in Article 208 Sections 1 and 2. Though regional governments were proposed as means to devolving power, critics feared that district government power to pass legislation on some matters might discriminate against minorities. The general feeling was that proper checks and balances were not provided for.

Furthermore, sub-section (d) and (f) of Article 221 Section 1, specified that district governments would be responsible for the development, operation and maintenance of district infrastructure and services and that the central government would not compensate district governments that fail to meet their fiscal obligations from their tax base. This particular clause would leave at own peril poor districts and amounts to a contradiction of Article 8 Section (a) which promised equitable access to national resources and services by all citizens. Additionally, the discretion to district governments to hire their own staff left room for sectionalism and tribalism to thrive.

2.1.3. Issues regarding the rights of citizens

There was a feeling that in the Bill of Rights which applies to one and all, right to life (Article 35, Section 1) has a pre-condition where prescription by an Act of Parliament is cited meaning that parliament could utilize that clause to curtail a life. In the same Article, Section 3, abortion is prohibited except by an Act of Parliament. This again means that parliament would have the last word and it would be at liberty (not medical doctors) to allow abortion. Furthermore, the Article on Right to Health (61) accords one and all the right to reproductive health care. Sections of critics allied to the church considered this clause as sneaking the right to

abortion into the constitution. It was felt that a precise definition of reproductive health ought to have been provided to avoid misinterpretation.

Further, Article 33, Section 2 gives parliament the mandate to enact legislation according jurisdiction to subordinate courts to hear applications in cases of contravention of the Bill of Rights. This particular Article was perceived as tantamount to allowing religious courts to deal with matters of very serious nature.

Critics also felt that the right to found a family contained in Article 42 Section 1, 2, 3 allowed a misnomer since the rejoinder after: “...*Every adult has the right to...*” is followed by two independent statements a) and b) thereby leaving the right to found a family as an independent clause without qualifying the essence of sex partners. This gave the impression to some that the clause allows one and all to found a family and silently endorses homosexual marriages.

2.1.4. The distinction between religion and State

Majority of critics allied to the church felt that the separation of religion and State cited in Article 10 was contradicted by Article 34 Section 4. The Bomas Draft had retained Islamic/*Kadhi* courts but to quell protests from Christian leaders, amendments were made in the Wako Draft to include other types of religious courts, namely Christian, Hindu and others.

Secondly, Section 10 is also contradicted by Article 179 Section 1, where *Kadhi* and other religious courts are given mandate to decide over issues of personal nature. This was seen as tantamount to bringing religion into State issues. Furthermore, the Article only mentions by name *Kadhi*, Christian and Hindu courts and gives the ‘other’ category to include any other religiously constituted courts. This was seen as synonymous with establishing a *laissez-faire* attitude where anyone wishing to start a sect and establish within it a system of courts to arbitrate in personal matters would be free to do so. In essence, the burden of supporting and maintaining religious courts of whatever nature and number would fall on the citizenry as according to Article 178 Section 5 which states: “*The State shall provide adequate resources and opportunities to members of the judiciary to enable them to deliver justice to the highest standards*”.

2.1.5. General elections

In the Wako Constitution, Article 118, Section 1, parliamentary and presidential elections are to be held 28 days before the expiration of the term of parliament. Article 6 Section 1 states that those occupying the offices of the president and the vice-president immediately before the effective date shall continue to serve until the first elections held under the new constitution. Section 8 specifies that such officers shall be required to take an oath of affirmation once the new constitution is enacted. The clauses were largely interpreted to mean that the next general election would be delayed if the new constitutional dispensation took effect. When the two Articles are jointly interpreted, many feared that the next general elections could occur in either 2010 or 2012. Moreover, it was feared that the enactment of the new constitution would give the incumbent president another two terms of office, as well as give all other tenured public officers a fresh mandate for appointment.

2.1.6. Contentions in land and property distribution

Article 78, Section 2 (f), which proposed elimination of gender discrimination in laws, regulations, customs and practices pertaining to land ownership and distribution was perceived as undermining cultures in communities where land ownership is solely a preserve of men. As such, the Section was contradicting the promotion and protection of culture cited in Article 27. Likewise, the Wako Draft called for radical land reform which stirred anxiety among owners of large tracts of land, especially in the fertile Rift Valley region. Needless to say, much of this land was illegally obtained through historical advantage yet the squatter problem continues to escalate.

2.1.7. Amendment of the constitution once enacted

Article 2, Section 2 declares that the constitution once passed cannot be contested by any court or State organ. Article 281 sets the condition for any amendment which requires among others, the collection of one million signatures, the endorsement of parliament and the president himself. Reservations arising from this Article centre on the difficulty of acquiring one million signatures and the

possibility of manipulation through religion, ethnicity and political patronage.

2.2. Dynamics of the pre-referendum debate

The main stakeholders in the referendum debate were essentially government, opposition parties, Wanjiku, civil society, religious groups, the Electoral Commission of Kenya (ECK) and to some extent, the international community. Because of deep-seated and divergent opinions, government split in the middle with pro-reformers defiantly denouncing the Wako Draft and the pseudo-reformists digging in for the flawed constitution. The constitution antagonists in government coalesced around the Orange Democratic Movement. Given the nature of competitive politics and the mistrust that had been created immediately following the inauguration of the NARC government, it became apparent that the referendum would not only be an opinion poll on the draft constitution, but also a vote of confidence or of no confidence in the government of the day. This change of focus may well have been introduced by the supporters of the Wako Draft (YES camp). The president himself declared his support for the document while his supporters declared openly that the Wako Draft was a government project warranting the marshalling of national resources to ensure the YES side carried the day.

As the facilitating institution, the ECK designated two signs that were to be used by the two sides with the Banana sign going to the YES camp while the Orange went to the opposing side (NO camp). It also set up mechanisms for civic education to enlighten the masses on the substance of the draft constitution. This last effort seems to have achieved very little as power politics had already poisoned the voters' objective thinking. The only immediate tangible benefit to Wanjiku was a sudden upsurge in the sales of bananas and oranges. Driven by both real and imaginary fears, all manner of propaganda and vulgarity from both camps were employed in a bid to sway the votes. Displays of political arrogance and police brutality were also often displayed. With political tension at peak levels, terms such as traitors, sycophants, tribalists, old guards, home-guards, loyalists and propagandists resurfaced in Kenyan history.

A rather interesting development was the formation of the 'middle ground' group, who were in favour of the postponement of the referendum until the contentious issues were ironed out. When government stuck to its position to push the referendum through despite the heat raised by these contentions, all except one member of the middle group defected to the YES camp, thus reinforcing the significance of survival politics. In the case above, good sense would have meant settling for the NO vote, as this would in principle give Kenyans another legal chance to reconvene and negotiate a new constitution. On the contrary, a YES win would have automatically sealed this possibility since constitutional provisions for amendment were in practice, impractical.

Unfortunately, key church institutions also appeared to fail the test of leadership by not providing guidance to the polarised citizens. This approach was unfortunately the position of the Kenya Law Society (KLS) as well as other major institutions. As it turned out, Wanjiku would vote in the historic referendum, influenced and guided largely by ethnicity and sycophancy.

2.3. The referendum outcome

On 21 November 2005, Wanjiku made her choice, handing government a humiliating, resounding and convincing defeat where the 'NO' side garnered 57% of the votes against 43% for the 'YES' side. This translated into 3.5 million votes against 2.5 million respectively (Table 1). As already indicated, a peculiar observation of the voting pattern was the tribal angle it assumed. Since independence, administrative boundaries in Kenya tend to represent the spatial location of the 'big tribes'. For instance, Central Province is largely occupied by the Kikuyu, Western by the Luhya, Nyanza by the Luo and Rift Valley by the Kalenjin.

Table 1: *Countrywide voting patterns at the referendum*

Province	Registered voters	YES	NO	% YES		% Voter turnout ¹⁶
				YES	NO	
Nairobi	961,295	161,344	212,070	42	56	38.84
Coast	967,518	64,432	269,655	19	80	34.53
N. Eastern	237,321	12,401	39,028	24	75	21.67
Eastern	1,977,480	485,282	494,624	49	50	49.55
Central	1,795,277	1,023,219	74,394	92	07	61.14
Rift Valley	2,668,981	395,943	1,218,805	24	75	60.50
Western	1,322,604	240,582	358,343	39	59	45.28
Nyanza	1,664,401	114,077	822,188	12	87	56.25
Total	11,594,877	2,532,918	3,548,477	43	57	52.45

Source: Electoral Commission of Kenya, 2005

Ethnicity seemed to play a larger part in voting patterns since only one out of the eight provinces voted overwhelmingly in favour of the Wako Draft. Given the political angle that this referendum had assumed, coupled with post independence stereotype attitudes, it may not be far from the truth to conclude that people from Central Province (the president's home turf) voted with the hope of protecting what they perceived as their 'presidency', and not because the draft was appropriate for the country. Voting in Nyanza Province is mostly likely to have been driven by similar ethnic politics. In the other six provinces, voting seems to reflect some tendencies towards tolerance of divergent opinion.

Another key observation was the rather low voter turnout countrywide. Surprisingly, provinces with larger political stakeholding in the process such as Central and Rift Valley and Nyanza had a somewhat higher turn out of above 55%. This is also reflective of the battle for ethnic-political supremacy. The low turn out for the other provinces may be explained by the poor timing of the referendum and perhaps a general apathy on the part of the voter. This apathy together with the low levels of education still prevailing in most parts of the country renders most Kenyans vulnerable to political manipulation. In more than 40 years, punctuated by national elections every five years, the living standards of the ordinary citizen have not improved much.

¹⁶ Column added by authors.

Statistics suggest that poverty remains endemic in most areas (Table 2). Poverty levels countrywide seem to suggest a correlation with the patterns of political patronage. In the three different regimes after independence, accessing national resources has been closely tied to political alignment. The tendency to concentrate power and hence propensity for development in a single region closely ties with ethnicity. For instance, in the year 2000, an estimated 73% of the total population in North Eastern Province was living below the poverty line, a condition that could be attributed to among others its political marginalization. This compared to about 35% in Central Province reflects a certain pattern in political and economic dominance (see Table 2).

Table 2: *Socio-economic indicators by region (%)*

Province	Poverty	Human Development (2001)			
	Income poverty, 2000	Human poverty index (HPI) 2003	Human development index (HDI)	Gender-related development index	Life expectancy in years, 1999
Nairobi	–	29.7	0.758	0.626	61.6
Central	35.3	31.6	0.467	0.597	63.7
Coast	69.9	37.3	0.413	0.464	52.2
Eastern	65.9	43.1	0.525	0.512	62.8
N. Eastern	73.1	41.9	0.413	0.454	51.8
Nyanza	70.9	42.8	0.44	0.429	47.7
Rift Valley	56.4	35.6	0.51	0.526	59.5
Western	66.1	38.5	0.449	0.446	53.5
Kenya	52.6	34.1	0.55	0.521	54.7

Source: SOCIETY FOR INTERNATIONAL DEVELOPMENT (2004).

Pulling apart: facts and figures on inequality in Kenya. Rome, SID (p. 24).

The trend is similar when it comes to other socio-economic indicators like the Human Poverty Index, Human Development Index and life expectancy. With the lowest life expectancy of 47.7 in Kenya, the case of Nyanza province though endowed with substantial natural capital is perhaps more compelling. This could be explained by decades of political marginalization. The obvious association of political victory and economic resource allocation is

also highly responsible for voting behaviour and post-voting atrocities committed mainly by political leaders.

2.4. Diverse interests

Although over three million Kenyans voted 'No' to the Wako Draft, the results represented a myriad of interests rather than a rejection of the document. More than ever before, Kenyans wallowed in disaffection over the way the new regime abdicated its mandate to the people by intensifying power to itself and allowing corruption to thrive. The referendum thus provided an opportune moment for the expression of these divergent interests which can be categorised into at least five namely, aspirations of minority and ethnic groups', faith groups' interests, personal political mileage, opposition parties' dominance, and the NAK/LDP supremacy interests. Underlying all these was the government's failure to honour the memorandum of understanding brokered among the coalition partners at the onset to the 2002 general elections.

With regard to minority and ethnic aspirations, the key constitution contesters appealed heavily to primordial ethnic sentiments. Hence, politicians fanned ethnic hostility against each other using ethnicity as a platform for securing support. Ethnic minorities were threatened with possible exclusion from government and further economic marginalization should they vote for the Wako Draft. The masses were told that the GEMA ethnic groups planned to secure a firm grip on power through the Wako Draft to ensure that no other group would ever reign. At the end of the day, the daggers were drawn between mainly the GEMA community on one side and the rest of Kenyans on the other.

Regarding the religious groups, the battle mainly concerned the Christians and the Muslims with the sole basis being the presence of the religious courts. With the enshrinement of other religious courts in the Wako Draft, there was expectation that Christians would be pacified and won over to the draft. However, although mainstream Churches displayed a modicum of satisfaction with the amendment, most other denominations remained staunchly opposed to the inclusion of any religious courts especially because they do not reflect their prevailing beliefs. It was the feeling of the wider majority that the inclusion of the Christian and Hindu courts was in effect meant to serve the interests of the Muslims by

enabling the retention of the *Kadhi* courts and eventually, the establishment of the *Sharia* law in Kenya.

Personal political aspirations were by and large the most conspicuous of all the diverse interests that were manifested. At the surface level, the battle appeared cut out between the head of State and the leader of the Orange Democratic Movement (ODM), a non-registered body formed after a historic anti-Wako Draft rally in Kisumu. For most Kenyans, it was a case of president Kibaki versus Raila Odinga and no amount of civil and constitutional education could sway this arising fixation. Other groups with vested personal interests were the members of the legislature themselves who swayed with the current to what side each perceived as likely to win. Several 'defections' from pro-government group characterised the countdown to the referendum.

To some extent, opposition parties represented an obvious interest since the success of the Bomas constitution was closely associated with levelling the playing field for all political players and would be key to determining the direction of change in the 2007 elections. At the middle of this campaign were the key party players namely National Alliance Party of Kenya (NAK) and the Liberal Democratic Party (LDP). Due to the failure of NARC to meet the obligations of the memorandum of understanding, LDP which has so far been considered the senior partner in the coalition left no stone unturned in expressing its disappointment with being short-charged. The fact that the position of prime minister was earmarked for Raila Odinga if the Bomas Draft came to force meant that the party could not support a process where the powers of the prime minister were thoroughly severed.

2.5. Post-referendum adjustments

Despite its dogmatic support for the Wako Draft, government promptly acknowledged Wanjiku's decision, but stopped short of conceding defeat. The immediate response from the pseudo-reformists was to assert their position, negate the lack of confidence by the people expressed in the review process and reinforce their constitutionally derived control over the masses. A key post referendum adjustment was the historic sacking of the whole cabinet, re-constituted two weeks later minus the pro-reformist coalition partners. For the first time in the history of the

nation, a significant number of appointees to cabinet positions declined these offers on account of unwillingness to work with a government perceived to be antagonistic to its very citizenry which in the historical context was a slap in the face of the 'Chief'. On the other hand, it was indicative of the unstoppable and increasing democratic space that Kenyans continues to nurture. The peaceful climate within the turmoil of the review process is also suggestive of political maturity taking root in the country. Kenyans do widely acknowledge that the government of the day may be "legally" in power but widely feel that it continues to stay in power without the people's mandate. Generally, the current cabinet no longer represents the NARC coalition that won the 2002 general elections.

Controversy still reigns supreme with government being perceived as skewed in favour of the GEMA community and as reluctant to fight corruption. It may be widely acknowledged that the government continues to largely ignore emerging political lessons and appears to instead lean on traditional experiences. That explains why the subsequent political mood in the country is one of uncertainty, confusion and anxiety. Political arrangements after the referendum appear to complicate the possibility for a vote of no confidence in the government and do not leave much chance for a snap election. An evaluation of the lessons learned from the national referendum is most likely to come in the next general election, which like the referendum is expected to be historic.

Conclusion

For a long time, there has been widespread disenchantment over the pace of democratic progression in Africa. The masses have often cried foul whether in times of the general elections, electoral campaigns, government appointments and constitution making. This is because at such times, patronage and *clientilism* (authors' emphasis) amplify and acquire gain momentum. In both *clientilism* and patronage, the ruling elites rely on awards of personal favours to secure their power base. The whims of those in power are protected through manipulation of the very instruments supposed to protect the people.

In Kenya, the rules of the game apply, only made easier by the salient ethnic divisions already existing and the low level of political awareness among the populace. Thus, a small section of

the populace becomes the stakeholder of all political process replacing the masses in a game largely regulated by patrimonialism. Constitutionalism and constitution making have also been dotted with neo-patrimonial tendencies, where the model of rule revolves around three main systems namely *presidentialism*, *clientilism* and misappropriation of State resources for personal advances. In the case of *presidentialism*, the chief executive will portray himself as a father figure whose counsel must be followed. Many a times, his image is deliberately entrenched in the minds of the general populace. He thus becomes the main driver of change (or no change) and his word often attains the standard of gospel truth.

Since independence, Kenyans have tirelessly agitated for a new constitution. They have desired to own a constitution representing their deep cherished values but also protecting their interests as a people. Their passion has not been undermined by subterfuge, intimidation or shrewdness. However, as posited in this chapter, their realization of this dream continues to be elusive. It becomes imperative for a way forward to be charted taking into consideration the tendency for especially a few neo-patrimonial elites to hijack the process and to sacrifice public good on the altar of personal loyalties and advancement. The major lesson to be learnt is that the nature of leadership in Africa continues to be heavily bent on personal gratification rather than a mandate to deliver the fruits of development to one and all.

Still, the power of the vote is now more than ever evident for the majority who now know for sure that destiny and the possibility of influencing it rests in their hands. Clearly, the pitfalls in the constitution making in Kenya will continue to reflect the wishes of a more enlightened majority against a self-preserving political elites.

For the rulers, several lessons ought to be learnt from the national referendum process. First, unlike the yester years, the masses are wiser. Secondly, there is now an abundance of watchdogs whether in form of the media, academician or civil society. Thirdly, hand-outs and empty promises will no longer work to allow clientilism. The government of the day must hence uphold the ideals of democratic governance through the respect of the masses. Finally, the viability of undemocratic governance practices is short lived and indeed outdated. The emerging political dispensation in Kenya thus calls for integrity, accountability and

broader thinking in not only constitution-making but also in the entire spectrum of leadership and governance.

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LES MÉDIAS APRÈS MOI

par André-Jean Tudesq et Brice Rambaud

L'agression par une unité spéciale de la police contre le Standard Group, le 2 mars 2006 à Nairobi, a provoqué des manifestations qui témoignent du malaise politique de l'après-Daniel arap Moi mais aussi de l'importance des médias dans la société kenyane.

L'ère Moi était caractérisée par un monopole gouvernemental fort sur l'audiovisuel, qui a pris fin tardivement, en 1996, et par la perpétuation d'une presse privée de qualité, de tradition ancienne, qui n'a pu véritablement critiquer le régime qu'à partir de l'arrivée du multipartisme. Lors de la campagne électorale de décembre 2002, les médias ont été des acteurs phares de la chute du régime KANU (*Kenya African National Union*). Critiques politiques et sociaux, ils ont joué le rôle de forum démocratique en donnant aux opposants plus de visibilité qu'ils n'en avaient eue pour les élections précédentes — une nouveauté possible grâce à l'arrivée d'entreprises privées dans le paysage radiophonique. Acteurs politiques à part entière, ils sont entrés dans la campagne avec vigueur. La presse, à l'exception de *The East African Standard* et de *Kenya Times*, a fait campagne pour le changement tandis que la radio-télévision nationale Kenya Broadcasting Corporation (KBC) a supporté Uhuru Kenyatta, le candidat KANU¹. Les différentes radios ont couvert meetings et déclarations de tous bords politiques. La radio commerciale *Citizen FM* s'est distinguée en intervenant directement dans le déroulement du scrutin : des dizaines de correspondants locaux, présents dans les principaux bureaux de vote du pays, ont diffusé en direct les résultats des

¹ À l'approche de l'élection présidentielle du 27 décembre 2002, les médias d'État ont fait campagne pour Uhuru Kenyatta. Hommes politiques de la KANU et de l'opposition, Églises anglicanes et catholiques ont dénoncé la couverture partisane de la KBC. La commission électorale a même menacé en septembre la radio-télévision nationale d'une action en justice si elle ne rétablissait pas l'équilibre dans la couverture de la campagne.

circonscriptions, rendant difficile une fraude électorale redoutée par la population.

Nous voudrions analyser les effets de l'arrivée du pouvoir NARC (*National Rainbow Coalition*) sur le champ médiatique, dans ses relations avec le politique, sur le traitement de l'information. La victoire de Mwai Kibaki a impulsé un nouveau souffle au paysage médiatique kenyan. Dès le début de l'année 2003, on a assisté à la redéfinition de ce paysage et de certaines lignes éditoriales d'organes de presse, qui se permettaient plus de libertés face à un pouvoir qu'ils avaient soutenu ou, au contraire, qui craignaient un pouvoir nouveau et hostile. Le nombre de radios privées s'est accru, leur audience aussi. Dans le contenu, l'euphorie due au changement a rapidement tourné à la désillusion. Devant le blocage de réformes importantes comme celle de la constitution, les querelles internes à la NARC et la permanence des pratiques des hommes politiques, les médias — presse écrite en tête — sont devenus très critiques envers le nouveau gouvernement. Ce dernier a alors repris la méthode de l'intimidation qu'utilisait Moi dans les années 1990. Ce basculement s'est effectué dans un contexte économique très favorable pour les entreprises — nombre de médias, public et revenus publicitaires en hausse, concentration en grands groupes et expansion vers les pays voisins — faisant des médias kenyans un secteur au carrefour du pouvoir économique et du contre-pouvoir politique.

1. EUPHORIE ET CHANGEMENTS

1.1. L'euphorie médiatique

Le Kenya exulte après la victoire écrasante de la NARC aux élections de décembre 2002. L'euphorie née du changement de régime est présente dans toutes les strates de la société. La fin des vingt-quatre années de présidence de Moi signifie de grandes attentes de la part de la population, notamment une meilleure gouvernance passant par la lutte contre la corruption, la création d'emplois et l'endigement de la criminalité. Les promesses de la NARC durant la campagne électorale sont allées dans le sens de ces

attentes populaires². L'espoir de changement se vérifie pleinement dans les médias : l'euphorie sociale gagne les médias privés, qui voient dans la fin du régime KANU une ouverture vers de nouveaux possibles et, peut-être trop naïvement, une issue rapide aux problèmes du pays. Ainsi, fait révélateur, *The Daily Nation* n'hésite pas à créer une rubrique « *A new beginning*³ » pour la couverture de la victoire de Kibaki tandis que *The East African Standard* préfère titrer « *A new era*⁴ », en rappelant la corrélation entre l'urgence de l'amélioration socioéconomique du Kenya et les attentes populaires en matière de gouvernance par une métaphore : « *The mandate Kibaki has been given is like that given to a surgeon to perform emergency life-saving surgery*⁵ ».

Au début de l'année 2003, en plein basculement politique, le vocabulaire de la majorité des médias privés est très positif envers le nouveau pouvoir NARC. Des quotidiens *The Daily Nation* et *The People Daily* aux radios commerciales, on constate juste après l'élection un consensus général de la profession, qui laisse le nouveau pouvoir s'installer. Ces mêmes médias privés n'avaient cessé durant la campagne électorale d'appeler au changement de régime et de culture politique ; il n'est pas étonnant de les voir satisfaits après les élections. Joseph Olweny, responsable d'édition du *Daily Nation* reconnaît cet enchantement : « *There was huge good will in the first 90 days of Kibaki's government. We had come out of a system of 25 years of dictatorship and everyone thought "things are going to be good", even reporters. [...] In January and February, criticism was nearly impossible. We would have said : "this government is so good !" and nobody would have complained about it*⁶ ». Parfaits reflets de la société dans laquelle ils s'inscrivent, les médias kenyans captent l'euphorie populaire et la médiatisent.

² Sans véritable programme politique précis, la coalition NARC a multiplié les promesses durant la campagne électorale de 2002. En 2005, trois ans après, la presse ne cesse de les rappeler dans ses colonnes.

³ *The Daily Nation*, 30 décembre 2002.

⁴ *The East African Standard*, 31 décembre 2002.

⁵ *Ibid.*

⁶ Entretien avec Joseph Olweny, responsable d'édition du *Daily Nation*, 19 novembre 2004, Nairobi.

Cette équation se vérifie lorsque le programme *Free Primary Education* est lancé en début d'année 2003. Concrétisation rapide d'une promesse électorale, cette mesure instaurée la scolarisation primaire gratuite et obligatoire à partir de 6 ans. Elle est encensée par les médias. Des centaines de milliers d'enfants arrivent dans les salles de classes. Les problèmes liés à cet afflux massif — classes surchargées, nombre insuffisants de maîtres et de manuels scolaires, etc. — ne sont que peu évoqués par les médias.

Dans la presse écrite quotidienne, l'heure est aussi au bilan de la présidence Moi. À la radio, les *talk shows* donnent la parole à un public très critique, qui peut s'exprimer sur le pouvoir (ancien et nouveau) sans peur. Dans les deux cas, la dénonciation des pratiques de l'ancien régime se confond avec des mises en garde au nouveau. Moi reste cependant traité avec respect : son départ pacifique, son ancien statut et son âge avancé le rendent presque intouchable. La presse quotidienne a même défendu l'ancien président lors de la publication de ses conditions de retraite, mettant en avant son train de vie passé de président.

Seuls quelques organes restent sceptiques quant au pouvoir NARC, comme le quotidien *The East African Standard* et la chaîne de télévision KTN, tous deux propriétés de proches de la famille Moi, ou encore *Kenya Times*, ancien quotidien du parti unique appartenant à des caciques de la KANU. Cette méfiance vis à vis du nouveau gouvernement est partagée par la KBC, qui redoute que le gouvernement ne lui fasse payer son rôle de propagandiste du régime Moi.

1.2. 2003 ou la redéfinition du système médiatique

L'élection de 2002 marque une rupture pour les médias kenyans, très politisés dans leur contenu et dans leur actionnariat. La radio-télévision nationale KBC, aux mains de la KANU depuis l'indépendance, tombe entre celles des anciens opposants et les médias privés proches de l'ancien parti unique deviennent des médias d'opposition ! A l'inverse, les médias ayant dénoncé les excès du régime depuis la libéralisation ont atteint leur « objectif » : le départ de Moi. Les lignes éditoriales des principaux médias doivent être redessinées en 2003.

La presse écrite est en quête d'une nouvelle identité après décembre 2002. Les changements éditoriaux sont en premier lieu perceptibles dans la presse proche de la KANU. Ainsi *Kenya Times* est contraint de changer de ligne éditoriale, ne pouvant plus soutenir le pouvoir et, inversement, n'étant plus soutenu par lui. Plus indépendante, la rédaction parle enfin des problèmes politiques et sociaux du pays. Elle adopte une ligne moins partisane, moins unilatérale, et critique pour la première fois l'action gouvernementale. Cette nouvelle autonomie relative, positive pour le journal, a toutefois un coût. Pour Chris Odueso, rédacteur en chef du *Kenya Times* : « *In this election, we did support the KANU candidate. [...] Looking back, it operated negative. When you support a losing candidate, you lose as they lose* ». Le journal a surtout perdu des revenus publicitaires. L'État-KANU diffusait ses publicités ou annonces officielles dans le *Kenya Times*. Aujourd'hui, le gouvernement NARC les publie également dans les autres quotidiens (essentiellement *The East African Standard* et *The Daily Nation*).

Autre redéfinition éditoriale, celle de l'*East African Standard*. Lui aussi a fait campagne pour Uhuru Kenyatta, même s'il avait laissé une place à l'opposition dans ses colonnes. Lui aussi a perdu beaucoup de crédit et de pouvoir avec l'arrivée d'une nouvelle équipe dirigeante, au profit de son concurrent direct *The Daily Nation*, qui surfe sur la vague d'euphorie suscitée par l'avènement d'un changement politique qu'il a encouragé. L'*East African Standard* doit changer. Ses actionnaires le savent. L'érosion des ventes est lente mais continue depuis les années 1990 ; elle s'est accélérée après l'élection de 2002. Des problèmes de management et de contenu trop souvent identifiés à la classe économique dirigeante en sont la cause. Au milieu de l'année 2003, le directeur général du Standard Group⁸ Wachira Wururu est remplacé par Tom Mshindi, venu du *Daily Nation*. Les objectifs sont clairs : relancer les ventes quotidiennes du journal et redynamiser le groupe sur un marché des médias dominé par le Nation Media Group (NMG). Mshindi

⁷ Entretien avec Chris Odueso, rédacteur en chef du *Kenya Times*, Nairobi, 24 novembre 2004.

⁸ Le Standard Group, filiale de Baraza Limited depuis 1997, comprend le quotidien *The East African Standard*, la chaîne de télévision KTN et le réseau de distribution PDS (*Publishers Distribution Service*).

s'entoure rapidement d'une nouvelle équipe plus jeune et moins orientée politiquement, pour redéfinir la ligne éditoriale du journal. Il « débauche » sept journalistes reconnus du *Daily Nation* pour travailler avec lui. Il engage David Makali, jusque là directeur de publication d'*Expression Today* — mensuel qui s'est battu pour la démocratisation et la liberté de la presse dans les années 1990 — comme rédacteur en chef du *Sunday Standard*, la version dominicale du quotidien. Makali accepte car il désire depuis longtemps créer un concurrent sérieux à l'institution qu'est devenu *The Daily Nation*, qui caracole en tête dans les ventes et dans le cœur des lecteurs kenyans⁹, tout en bousculant une presse écrite qui a connu peu de changements profonds ces dernières années.

Le journal est le premier à critiquer le nouveau pouvoir, mais aussi la nouvelle opposition. Percutant, avec des manchettes accrocheuses, il multiplie les reportages et les investigations sur des faits de corruption. La rédaction emménage en plein centre ville, dans l'immeuble ultra moderne I&M Bank Tower. Une nouvelle formule est lancée le 1^{er} octobre 2004 : une mise en page moderne, avec une multiplication des cahiers centraux à destination des jeunes urbains, et plus seulement des hommes d'affaires, vient accompagner un contenu qui, de l'avis général de la profession, s'est beaucoup amélioré. À cette même date, son nom change : *The East African Standard* redevient *The Standard*. Cette restructuration est une réussite éditoriale et économique. Avec un lectorat en constante hausse, le quotidien prend des parts de marché au *Daily Nation*¹⁰. Le groupe désire maintenant combler une lacune : investir les ondes radiophoniques. Contre toute attente, la chute de la KANU a eu des effets bénéfiques sur le *Standard* en obligeant l'entreprise à se restructurer.

L'ex-directeur du Standard Group, Wachira Wururu, est quant à lui depuis 2003 à la tête de la KBC, en tant que directeur général. La radio-télévision kenyane a également beaucoup changé

⁹ Leader incontestable de la presse kenyane, *The Daily Nation* jouit d'une forte popularité dans les centres urbains.

¹⁰ Wangethi Mwangi, directeur éditorial du *Daily Nation*, le reconnaît : « *The Standard has taken a bit of our market share. During a long time, the Standard was selling between 39 000 and 45 000 copies; now they are able to sell something like 53 000 and when they are on a good day, they do 75 000 copies a day* ». Entretien avec Wangethi Mwangi, Nairobi, 6 décembre 2004.

depuis le départ de Daniel arap Moi. Elle n'est plus aussi partisane qu'avant. Si son contenu n'est plus pro-KANU, il n'est pas pour autant devenu pro-NARC. L'information est plus équilibrée, et cela se voit particulièrement à la télévision. L'archétype du journal « journée de Moi / journée du vice-président / informations en fin de journal », qui a prévalu pendant de nombreuses années, n'est plus. La couverture de l'actualité gouvernementale et de celle de l'opposition est maintenant assez bien répartie et plutôt consensuelle, l'investigation restant l'apanage de la presse.

La KBC doit faire face à une crise économique majeure. Comme le gouvernement se désengage progressivement dans son fonctionnement et dans son financement, elle ne peut plus compter que sur les revenus tirés de la publicité. Mais ces derniers sont en forte baisse depuis quelques années du fait de la multiplication de la concurrence des radios et des télévisions privées. En 2003, les recettes publicitaires ne couvraient plus que la moitié de son budget annuel de 500 millions de shillings. Selon la *Lettre du Continent*, « Cette situation fait que la KBC a des difficultés pour payer ses employés à la date normale et manque même de carburant pour envoyer des correspondants couvrir certains événements en province. La KBC en est réduite parfois à demander de l'argent pour acheter du carburant aux politiciens désireux de voir leurs activités couvertes par ses journalistes ¹¹ ».

Dans le domaine audiovisuel, peu de créations de médias sont à signaler depuis 2002. Aucune pour la télévision. Quelques-unes pour la radio, comme les radios chrétiennes *Hope FM* en avril 2003 et *Waumimi FM* en juillet 2003¹² ou encore *Inooro FM* et *Ramogi FM* en août de la même année. Ces deux dernières radios diffusent respectivement en Gikuyu et en Dholuo. Elles ont été lancées par le Royal Media Group, propriété de l'homme d'affaires S.K. Macharia, qui a également créé *YFM 96* (ou *Youth FM*) en octobre 2004. Cette radio commerciale cible les jeunes de 13 à 25 ans, avec une offre de programmes constituée essentiellement de musique et de *talk shows* en *sheng*, mélange de kiswahili, d'anglais et de mots d'autres langues kenyanes. La libéralisation des ondes radiophoniques se poursuit

¹¹ *La Lettre du Continent* n° 1075, 7 février 2004 : « Vaches maigres pour la *Kenyan Broadcasting Corporation* ».

¹² *Waumimi FM* est une radio catholique de la Kenya Episcopal Conference – Catholics Bishops of Kenya, émettant à 150 kilomètres autour de Nairobi.

même si KBC reste la seule radio à couvrir l'ensemble du territoire national.

1.3. La fin de l'état de grâce

On constate un repositionnement éditorial pour les médias qui avaient comme leitmotiv la dénonciation des dérives du régime Moi. Pour certains, la chute de la KANU a signifié l'arrêt de l'activité journalistique. Ainsi, l'*advocacy journalism*, ce journalisme engagé dès la fin des années 1980 pour la démocratisation, s'est éteint au Kenya en 2004. Consacré à la défense des droits de l'homme, de la liberté d'expression et aux revendications démocratiques, l'*advocacy journalism* était représenté pendant la période électorale de 2002 par *The Nairobi Law Monthly*, publié par le juriste Gitobu Imanyara, et par *Expression Today*, mensuel publié par le Media Institute, dirigé par David Makali. Après son départ pour le *Sunday Standard*, aucun remplaçant sérieux n'a été trouvé pour faire fonctionner l'institut et tenir le journal. *The Nairobi Law Monthly*, mensuel phare de la lutte contre le régime Moi, a lui aussi fermé boutique en 2004, comme si ces journaux avaient atteint leur objectif principal...

Il est vrai que la situation est difficile pour la presse de l'après Moi. Comment se positionner dans ce renversement de la donne politique ? Beaucoup se félicitent de la chute d'un président autoritaire, profitent d'un consensus né du contentement populaire mais restent dans le flou quant au positionnement éditorial. C'est le cas du *Daily Nation*, dans une moindre mesure du *People Daily* et de la presse alternative — presse hebdomadaire d'opinion qui, à l'instar de *The Citizen Weekly*, a beaucoup dénoncé les pratiques de la KANU à la fin des années 1990. David Aduda, responsable de la rubrique 'Education' au quotidien *The Daily Nation*, résume la situation : « *In 2003, the media had a problem. They didn't know which side to go after KANU lost and NARC came into power. [...] When NARC came into power — NARC that people were championing — the question was : how to start to criticize them ? There was that problem, it was very hard to criticize that government. Nation suffered a lot from this situation... But Nation has taken its identity, which is to side with the people. It means to be critical every*

*time. And when you are critical, you get more readers!*¹³». Ses propos confirment ceux de son supérieur direct Joseph Olweny, qui parlait des quatre-vingt-dix premiers jours de pouvoir de Mwai Kibaki comme une période d'impossible critique du gouvernement. Mais l'état de grâce ne dure pas, le pouvoir tend, en effet, le bâton pour se faire battre.

Selon Joseph Olweny : « *Looking critically at things, we quickly realized that if we're identified with government, we shall corrupt. And someone else would come into this market to take our position very easily. We did numerous meetings, reporters were briefed, editors were talked to at a very high level. In the fourth month, suddenly, things changed. Very quickly. In fact, the government itself was disappointing and opened to criticism*¹⁴ ». L'impératif de marché du *Daily Nation* — ne pas perdre de lecteurs en les lassant avec un contenu consensuel — coïncide donc avec les premiers ratés du gouvernement Kibaki. Pour le *Daily Nation* comme pour les autres médias, l'euphorie fait vite place au désenchantement, le consensus à la critique.

2. DÉSENCHANTEMENT ET ATTEINTES À LA LIBERTÉ D'EXPRESSION

2.1. La déception

La réforme de l'éducation a été bien accueillie par la population et par les médias, malgré les problèmes structurels déjà évoqués, mais la réalisation des autres promesses électorales de la NARC s'effectue avec lenteur. L'impasse de la réforme constitutionnelle, puis le rejet du projet de constitution lors du référendum de novembre 2005, le manque d'efficacité de la lutte anti-corruption au plus haut niveau ainsi que les incessantes querelles des ministres font rapidement les gros titres des médias.

2.1.1. La question constitutionnelle

La révision d'une constitution dépassée, d'inspiration coloniale, et qui profite au parti au pouvoir, est au centre de la

¹³ Entretien avec David Aduda, *Education Editor* au *Daily Nation*, Nairobi, 16 novembre 2004.

¹⁴ Entretien avec Joseph Olweny, *op. cit.*

campagne électorale de la NARC. Le candidat Kibaki avait promis un nouveau texte fondamental dans les 100 jours suivant son élection. Après quelques reports, la conférence constitutionnelle se tient finalement fin avril 2003 au Bomas of Kenya¹⁵ : 600 délégués issus du parlement, du monde scène politique, de la société civile sont réunis pour l'occasion. Les discussions sont laborieuses. Bomas of Kenya I, II et III sont des échecs et la révision constitutionnelle est dans l'impasse, ce qui : « *paralyse le dynamisme gouvernemental* ¹⁶ ».

Devant le blocage de la révision et les dissensions des factions composant le gouvernement de coalition et les médias critiquent le président. C'est la fin du consensus, Mwai Kibaki est attaqué. Les éditoriaux amers se succèdent. *The Daily Nation* et *The Standard* ne cachent pas leur exaspération devant les luttes politiques des rivaux au pouvoir. Les radios privées donnent l'antenne à des citoyens échaudés par le revirement de Kibaki. Pendant deux ans, les reports successifs pour l'adoption d'une nouvelle constitution provoquent l'agacement des médias, qui se sentent trahis par l'équipe qu'ils avaient soutenue en 2002.

En 2005, une nouvelle étape est franchie quand le projet présenté par l'Assemblée constituante est écarté et révisé par le pouvoir pour être soumis à la population par référendum. Le nouveau texte présenté par Amos Wako limite les pouvoirs du Premier ministre et efface les dispositions relatives à la décentralisation. Ce projet déchaîne tout de suite les passions : les manifestations devant le Parlement sont violemment réprimées par la police en juillet 2005. Cet événement constitue le début d'une compétition électorale aussi virulente que manichéenne.

Le projet de constitution est vivement débattu dans tous les médias. Les meetings des partisans du 'oui' et du 'non' sont couverts de façon équilibrée dans la capitale et dans les provinces. La radio et la télévision informent la population sur les arguments de chacun. Les *talk shows* représentent un important lieu de débat. Les journaux ont également bien couvert la campagne et fait de

¹⁵ Country-club dans la banlieue de Nairobi qui a servi de lieu de réunion à la conférence.

¹⁶ MAUPEU, H. (2004). « Kenya. Le régime Kibaki — An I » in H. MAUPEU, (dir.), *L'Afrique orientale, annuaire 2003*. Paris, L'Harmattan, p. 187.

pertinentes analyses. Certaines rédactions ont cependant choisi leur camp : la KBC a ainsi défendu le oui, comme *Citizen FM* et *Citizen TV*, dont le propriétaire est proche de Kibaki.

La tournure que prennent les discussions politiques est par la suite condamnée par la quasi totalité des médias : la tribalisation du débat, impulsée par des hommes politiques de premier plan¹⁷, est ardemment dénoncée — selon les éditorialistes, elle ne fait que diviser la population et escamoter le vrai débat sur le document soumis au vote —, tout comme l'exacerbation des rancœurs du passé et les profondes divisions du gouvernement sur la question. Devant la violence et la tension de la population, les commentaires moralisateurs des grands médias appellent au calme et à plus de responsabilité des citoyens et des hommes politiques¹⁸.

Si les médias ont condamné le manichéisme des débats politiques, qui ont conduit à de violents affrontements, force est de constater que les discours d'intolérance sont aussi passés par eux. Ils ont diffusé les petites phrases assassines de partisans des deux camps et ont participé à leur niveau à la tribalisation du référendum : les radios diffusant en langues nationales, très influentes auprès de leur communauté linguistique, comme *Kameme FM* (Kikuyu et pro-oui) ou *Kass FM* (Kalenjin et pro-non), ont focalisé le débat sur des questions ethniques. *Kass FM* a d'ailleurs été interdite de diffusion pendant sept jours, une semaine avant le vote, par décision du gouvernement, pour désinformation et appel à la violence ethnique¹⁹.

Durant les deux dernières semaines de novembre 2005, le référendum a monopolisé les médias. Tous les journalistes des différentes rédactions ont été mobilisés pour une couverture nationale de qualité. Le jour J, le 21 novembre, les médias

¹⁷ Cette ethnicisation représente un moyen de mobiliser rapidement et d'instrumentaliser un électorat, aussi bien pour la campagne référendaire que dans la perspective de la présidentielle de 2007.

¹⁸ Ainsi, on peut retenir un long éditorial du *Daily Nation*, qui fait suite aux violences policières à Thika et à Garissa en septembre 2005, dont le titre témoigne de la peur des observateurs devant les passions que déchaîne la campagne : « Let's save our country ». *The Daily Nation*, 23 septembre 2005.

¹⁹ Cette décision gouvernementale a été largement perçue comme la punition d'une radio ayant fait campagne pour le 'non'. *Kass FM* est revenue sur les ondes kenyanes deux jours après son interdiction.

audiovisuels ont été très suivis : le vote, les incidents, les résultats partiels ont été retransmis en direct, avec des commentaires d'experts, d'avocats, de journalistes, etc. Radio, presse et télévision ont diffusé le soir même les résultats officiels qu'ils avaient, circonscription par circonscription. Ils ont rapidement donné le camp du 'non' vainqueur²⁰, dès l'annonce faite par la Commission électorale du Kenya (ECK). La victoire du non, à 58 %, a été saluée comme un scrutin historique : les médias ont mis l'accent sur la maturité démocratique des Kenyans qui, malgré les divisions encouragées lors de la campagne, ont voté massivement et dans le calme.

Les analyses de l'échec référendaire de Kibaki ont été assez consensuelles. Pour les quotidiens, le rejet n'est pas étonnant car la révision du projet de la *Constitution of Kenya Review Commission* par Amos Wako a été perçue comme le sabotage d'une certaine élite intéressée. Plus qu'une compétition, le référendum était un appel au gouvernement pour qu'il tienne compte du peuple et de la façon dont celui-ci veut être gouverné. Les éditorialistes soutiennent de plus que la vieille *Lancaster House Constitution* doit être défaire et proposent de reprendre le débat sur l'avant-projet des Bomas, d'améliorer ce texte, et de le renégocier²¹. Enfin, la victoire du 'non' place Kibaki dans une situation délicate. Ce vote est la conséquence directe de la non-réalisation des promesses électorales de 2002 : le projet de constitution a été biaisé, il n'y a eu aucune baisse des inégalités ni d'action significative dans la lutte contre la corruption.

2.1.2. *Les médias contre la corruption*

Dès 2003, les médias ont fortement critiqué les lenteurs de la lutte anti-corruption du premier gouvernement Kibaki. Au Kenya, la corruption touche tous les pans de la société. La vénalité quotidienne à laquelle doivent faire face les Kenyans côtoie la

²⁰ Exception notable : alors que les chaînes de télévision ont fait un traitement assez juste de la victoire du 'non' le soir de l'élection (même la KBC), *Citizen TV* continuait à nier les résultats partiels et mettait en exergue, au bas de l'écran, les résultats de la province centrale, où le 'oui' l'emportait largement. Le lendemain, alors que tous les médias retransmettaient le meeting de la victoire du 'non', *Citizen TV* diffusait un *talk show* en studio...

²¹ *The Daily Nation*, 23 novembre 2005 : « *Heed the people's wishes* ».

corruption au plus haut sommet de l'État. Érigé au fil des années en culture nationale, le *magendo* gangrène l'économie du pays. Conscient du problème, Kibaki avait fait de la lutte contre la corruption et les crimes économiques son cheval de bataille lors de la campagne électorale. Il proposait alors une législation anti-corruption, un code d'éthique publique et une indépendance accrue de l'institution judiciaire.

Dans la réalité post électorale, cette lutte voit le jour et s'organise progressivement, notamment par la création de la *Kenya Anti-Corruption Commission* (KACC) par un acte du Parlement en 2003²². Les actions de cette commission sont très médiatisées. D'un côté, le gouvernement a besoin de faire savoir au public que la lutte contre le *magendo* devient une réalité pour asseoir sa légitimité et pour initier un changement de mentalité. De l'autre, les médias profitent de cette occasion pour publier et dénoncer inlassablement des affaires de corruption qui ressortent au grand jour. Ils élargissent progressivement leur champ des possibles, leur espace de liberté. Les investigations de la presse sont plus libres ; les médias n'hésitent plus à diffuser des révélations sur des anciens caciques du pouvoir. La presse fait ses gros titres sur des affaires étouffées sous Moi, sur des personnalités convaincues de corruption, de détournement de fonds publics ou d'exacerbation des rivalités ethniques. Plusieurs personnalités citées dans ces affaires passées sont toujours membres du gouvernement ; cela ternit l'image du pouvoir en place. Toutes les dénonciations des médias sonnent aussi comme des avertissements à la classe politique : les journalistes veillent à l'action gouvernementale et à la transparence des activités publiques. Ils ont appelé depuis la libéralisation de 1992 à une meilleure gouvernance et comptent maintenant jouer pleinement leur rôle de chien de garde.

Fin 2003, des procès retentissants, très médiatisés, et des enquêtes accusatrices de la presse touchent des ministres en exercice, ce qui affecte profondément la crédibilité du gouvernement dans sa lutte contre la corruption. La nouvelle

²² La KACC a pour objectifs officiels de lutter contre la corruption dans le privé et le public, d'investiguer pour retrouver des fonds publics disparus et de proposer des programmes d'éducation à grande échelle pour changer les mentalités.

instruction de l'affaire Goldenberg²³ se veut spectaculaire et exemplaire. Les quotidiens lui consacrent une ou deux pages par jour ; les radios retransmettent abondamment les débats. George Saitoti, alors ministre de l'Éducation et ancien ministre des Finances de Moi au moment des faits, a d'abord été cité au cours du procès puis accusé. Ces affaires rappellent qu'une grande partie du nouveau gouvernement est composée d'anciens membres de la KANU. Elles traduisent les difficultés de changement de la culture politique au sommet de l'État.

En 2004, de graves soupçons de corruption pèsent sur le gouvernement. *The Daily Nation* révèle le scandale Anglo-Leasing, affaire de corruption relative à un appel d'offre frauduleux pour du matériel de sécurité qui implique Chris Murungaru, ministre d'État pour la sécurité nationale, et David Mwiraria, ministre des Finances. La multiplication des articles, des éditoriaux, des reportages télévisés et radiodiffusés oblige Kibaki à intervenir et à annuler le contrat.

Les affaires continuent alors de se succéder. John Michuki, alors ministre des Transports est ainsi impliqué dans des affaires de marchés truqués ; Raphael Tuju, ministre du Tourisme et de l'information, est mis en cause dans les modalités clientélistes de recrutement du Kenya Wildlife Service (KWS) ; en novembre 2004, c'est au tour de Chris Murungaru d'être cité, tandis que le ministre de l'Agriculture, Kiprutto arap Kirwa est interpellé sur l'opacité des modalités d'importation du maïs ; Charity Ngilu, ministre de la Santé, doit s'expliquer sur la manière dont 30 millions de shillings ont été dépensés pour organiser une conférence sur le Sida en 2003. En février 2005, *The Daily Nation* publie en « une » un reportage récapitulatif de deux années de gouvernance de la NARC intitulé « *Kibaki's headache : half the Cabinet is not clean*²⁴ ». L'article montre que la moitié des trente membres du Cabinet pourraient être démis de leurs fonctions si Kibaki décidait de suspendre tous ses collaborateurs impliqués ou mentionnés dans des affaires de corruption. Un état de fait problématique pour un chef d'État qui

²³ Scandale de détournement massif de fonds publics, impliquant les plus hauts personnages de l'État, qui a révélé, en 1993, l'ampleur de la corruption au sommet de la pyramide du pouvoir.

²⁴ *The Daily Nation*, 13 février 2005.

avait promis la tolérance zéro ! Beaucoup de médias durcissent alors le ton envers la NARC : ils considèrent que l'État perd la bataille contre la corruption et ne cachent pas leur déception face à la lenteur des changements socioéconomiques — la fonction publique demeure prédatrice et inefficace, les réformes économiques restent molles.

Cette surmédiation de la corruption peut cependant avoir des effets pervers. Pour Aaron Ringera, directeur de la KACC, l'inlassable dénonciation de la corruption dans les médias a fait perdre aux Kenyans l'enthousiasme de la bataille et du changement de mentalités, la couverture médiatique stigmatisant un « haut » qui ne monte pas l'exemple au « bas »²⁵.

2.1.3. *Retard des réformes et querelles internes*

Un autre objet de critique des médias provient des querelles incessantes des ministres, qui empêchent certaines réformes importantes. La *National Social Health Insurance Fund Bill* portée en novembre 2004 par la ministre de la Santé Charity Ngilu, censée réformer le financement et l'accès aux soins, n'a pu être adoptée en l'état, en raison de l'opposition de David Mwiraria, alors ministre des Finances. Celui-ci protestait contre l'incohérence du budget présenté. Il s'agissait en réalité autant d'un problème de budget que d'une rivalité entre deux politiciens venus de factions différentes de la NARC. Les insultes ont fusé par déclarations interposées dans les médias durant quelques semaines. Les guerres internes à la NARC, relayées par les médias, rappellent que le parti au pouvoir est une coalition de milieux politiques hétéroclites qui ont du mal à s'entendre — opposants de la première ou de la dernière heure, cadres de la KANU frustrés par le choix d'Uhuru Kenyatta comme successeur de Moi. L'échiquier politique actuel semble moins divisé par une fracture classique gouvernement–opposition que par des divisions entre les différentes factions qui forment la coalition NARC : *Democratic Party* (DP), *National Alliance Party of Kenya* (NAK), et *Liberal Democratic Party* (LDP). Ces divisions sont aiguës par la course à l'élection présidentielle de 2007 et sont fréquemment

²⁵ Voir le rapport 2005 de la Kenya National Commission on Human Rights (KNHCR).

ridiculisées par les deux caricaturistes vedettes du Kenya, Gado du *Daily Nation* et Kham du *Standard*.

Enfin, ajoutons que Kibaki avait promis, lors de la campagne électorale de 2002, des changements conséquents dans la législation relative aux médias. Ces derniers sont toujours régis par des lois contraignantes, héritées de la colonisation et des années Moi²⁶, qui autorisent certains abus et la protection de l'information officielle. Les professionnels des médias ont du attendre la tenue du Congrès annuel de l'International Press Institute (IPI) à Nairobi, en mai 2005, pour entendre Kibaki leur annoncer officiellement un projet de loi sur les médias. Lors du discours d'ouverture du congrès, le chef de l'État a appelé les professionnels des médias à travailler avec lui pour proposer un *Freedom of Information Act* (FOIA), qui assurerait la liberté d'expression, protégerait la liberté de presse et faciliterait l'accès des citoyens à l'information officielle. Le FOIA devrait harmoniser les lois existantes, et non les changer, tout en permettant au citoyen de disposer de l'information qu'il désire dans toute administration par simple demande écrite.

Cette annonce a été bien accueillie par les journalistes kenyans, qui luttent depuis des années pour cet accès facilité à l'information officielle. Elle a été perçue comme une réponse à une critique formulée par la presse selon laquelle la culture du secret du sommet de l'État et des administrations cache la « corruption publique officielle ». Les journalistes restent cependant prudents et veulent voir la réalité de cette loi. Esther Kamweru, directrice du Media Council, organe de régulation des médias kenyans, a immédiatement prévenu : « *We just hope the Government is serious about what it has promised and that it will not be just another directive without meaning*²⁷ ».

2.2. Une liberté précaire

L'ère Moi était caractérisée par de nombreuses atteintes à la liberté de presse. Moi s'appuyait sur une législation dure et un système judiciaire à ses ordres pour contrôler la presse, tout en

²⁶ Notamment les lois passées après le coup d'État manqué de 1982, après l'arrivée du multipartisme en 1992 et avant les élections de 2002.

²⁷ *The East African Standard*, 24 mai 2005.

conservant pendant longtemps un monopole de l'audiovisuel partisan.

Kibaki a été élu en 2002 sur la base d'une volonté de meilleure gouvernance, de respect des droits de l'homme et de la liberté d'expression. Avec son arrivée au pouvoir, les médias kenyans jouissent d'une liberté qu'ils n'avaient pas sous Moi. Cette assertion est corroborée par la très grande majorité des journalistes rencontrés lors de notre enquête : sur 30 journalistes kenyans interrogés en novembre 2004, 22 trouvaient que la presse était bien plus libre sous Kibaki tandis que 8 ne voyaient aucun changement, considérant la législation toujours contraignante pour les médias comme un obstacle à la liberté de presse. Wangethi Mwangi, directeur éditorial du Nation Media Group (NMG), a lui peu de doutes : « *The press is a lot freer now than during Moi era. A lot freer. That is a question that I haven't any doubt in mind when I'm saying as strongly it has changed a lot: there is much more freedom, the space is much wider. We are able to criticize the government and individual politicians and say a lot of what we never had before*²⁸ ».

Les médias de l'après Moi sont vibrants ; leur contenu est pertinent et audacieux. Les journaux télévisés sont bien plus pluralistes qu'avant, plus honnêtes. La KBC a beaucoup amélioré la qualité de son information politique. Les journaux des multiples radios — publiques, commerciales, religieuses — sont très écoutés. La presse, investigatrice, fait prendre conscience à ses lecteurs des problèmes du pays. Les médias sont des acteurs et des relais d'une société civile influente et dynamique. Ce positionnement charnière en fait un contre-pouvoir important. La liberté d'expression est une réalité au Kenya : les associations militantes émanant de la société civile sont nombreuses ; le Parlement est de plus en plus actif et ouvert ; une presse d'information quotidienne de qualité coexiste avec une presse hebdomadaire d'opinion ; le débat d'idées existe grâce aux innombrables *talk shows* et émissions donnant la parole aux auditeurs dans les médias audiovisuels, surtout à la radio, qui peut maintenant diffuser en langues nationales.

Le tableau n'est cependant pas idéal et certaines dérives entament sérieusement la liberté d'expression. Bien que l'environnement médiatique se soit amélioré en 2003, de nombreux

²⁸ Entretien avec Wangethi Mwangi, *op. cit.*

signes ont montré en 2004 et en 2005 que l'engagement démocratique de respect de la liberté de presse avait beaucoup de difficultés à être honoré. Kibaki avait promis de garantir cette liberté mais son gouvernement n'a pas remis en cause le *Media Bill* et n'hésite pas à recourir à la force pour régler les conflits avec les médias.

2.2.1. *Le maintien du Media Bill répressif*

Le *Media Bill* est une loi répressive sur les médias, présentée au Parlement par le Ministre de la Justice Amos Wako et signée par Moi en juin 2002, avant la campagne électorale²⁹. Elle oblige en premier lieu l'éditeur de toute publication écrite à envoyer, à ses frais, deux exemplaires avant publication au Registre des Livres et des Journaux, sous la coupe de l'*Attorney General*³⁰. Elle multiplie par cent la somme que les directeurs de publication doivent payer pour avoir le droit de publier ; cette redevance passent ainsi de 10 000 shillings (somme importante mais gérable pour les petites publications) à un million de shillings (impossible à réunir pour beaucoup)³¹. Tout éditeur qui manque à cette obligation est coupable de délit et risque une amende pouvant atteindre un million de shillings (amende également centuplée) ou une peine de prison de trois ans (multipliée par trois), voire les deux³². Nouveauté : le récidiviste risque, à la deuxième inculpation, cinq ans de prison et l'interdiction de publier sur le sol kenyan. Enfin, les distributeurs et vendeurs de publications qui ne se sont pas acquittés de la redevance peuvent être frappés d'une amende de 20 000 shillings ou d'une peine de prison pouvant aller jusqu'à six mois, ou les deux, et peuvent voir les exemplaires des publications saisis.

En introduisant une forte hausse de la redevance et un durcissement des peines, ces amendements visaient à décourager la

²⁹ *The Books and Newspapers Act* régit la publication de journaux et de livres au Kenya depuis 1960. Des modifications ont été apportées plusieurs fois, essentiellement dans les années 1960.

³⁰ Laws of Kenya, Chapter 111, *The Books and Newspapers Act*, Part II, art. 7 (1).

³¹ Laws of Kenya, Chapter 111, *The Books and Newspapers Act*, Part III, art. 11 (1).

³² *Ibid.*, art. 14.

création de journaux d'opinion éphémères — généralement hostiles à la KANU — avant les élections multipartites et de porter un sérieux coup d'arrêt à la *gutter press*, la presse de caniveau kenyane qui condamne continuellement la corruption de la classe politique kenyane et sombre régulièrement dans la diffamation. La plupart des journaux « *gutter* » ne peuvent pas payer la redevance obligatoire pour publier à cause d'une situation financière fragile³³. Le *Media Bill* est également très critiqué car il fait le jeu des journaux bien établis, en rendant difficile la création de nouveaux concurrents.

Malgré les vives protestations du syndicat Kenyan Union of Journalists (KUJ), le tollé suscité par ce *Media Bill* n'a pas suffi à le faire supprimer en 2002. Lors de la campagne électorale, Mwai Kibaki avait promis de le faire et de moderniser les lois sur les médias jugées archaïques par la profession *via* la réforme de la constitution. Mais la promesse n'a pas été tenue. Pis, le gouvernement Kibaki se sert du *Media Bill* de façon abusive pour attaquer la *gutter press*.

2.2.2. La répression

La *gutter press* est ainsi la première à subir les abus de pratique du *Media Bill*. Détestée par les politiciens, elle se trouve en 2003 dans le collimateur du ministre de l'Information et du Tourisme, Raphael Tuju. Le 12 décembre 2003, celui-ci met en garde les directeurs des journaux qui ne respectent pas les principes déontologiques d'honnêteté. Un mois plus tard, le 10 janvier 2004, la police kenyane effectue un raid musclé contre les revendeurs de journaux pour confisquer les exemplaires de *The Independent*, *Kenya Confidential*, *Weekly Citizen*, *Dispatch*, *News Post*, *Weekly Wembe*, *Summi*, etc. Ce raid a rappelé à la profession les méthodes de l'ancien régime³⁴. La police est également allée dans l'imprimerie *Immediate Press* pour saisir les exemplaires à paraître de *The Independent* et a

³³ La *gutter press* est une presse d'opinion périodique, hebdomadaire, qui tend au tabloïd à scandales. La douzaine de journaux de la *gutter press* fait ses gros titres avec des affaires de corruption et de mœurs concernant les hommes publics. Ses tirages sont beaucoup plus faibles que les quotidiens (de 3000 à 30 000 exemplaires hebdomadaires) et elle n'attire pas du tout les annonceurs, qui préfèrent les journaux d'information que sont *The Daily Nation* ou *The Standard*.

³⁴ *Sunday Nation*, 11 janvier 2004, 'Crackdown on Press'.

arrêté le directeur de publication de *News Post*, Ndirangu Kariuki, pour le relâcher quelques heures plus tard. On retrouve le même type d'action en province. À Mombasa, des exemplaires de *CoastExpress*, hebdomadaire appartenant au NMG, ont été saisis. À Kisumu, *The People Daily* a été confisqué. Le ministre a déclaré au *Sunday Nation* que le but de cette attaque était de se débarrasser des journaux, qui n'étaient pas en règle avec la loi sur l'enregistrement et la redevance³⁵. Problème majeur : presque tous les journaux saisis étaient enregistrés et avaient payé la taxe de publication. Le pouvoir s'est donc servi de la situation illégale de quelques-uns pour s'attaquer à toute la profession, à un moment où le gouvernement était de plus en plus en proie à la critique. Ainsi, pour Blamuel Njururi, directeur du *Kenya Confidential*, son journal a été visé parce qu'il titrait « *Why the Kibaki government is losing popularity* ». Les journalistes dénoncent cette attaque visant la liberté d'expression. Wilfred Kiboro, président directeur général du NMG, résume leur état d'esprit : « *While we abhor some of the excesses of the alternative Press, the Government's crackdown is not the way to go about it* »³⁶.

Les faits se reproduisent en juillet 2004 — quarante vendeurs arrêtés, des milliers de journaux saisis — et le 24 septembre de la même année *The Independent* et *The Weekly Citizen* subissent une destruction du matériel de production (informatique surtout) et la confiscation des journaux à paraître. Un éditorial du *Sunday Nation* qualifie ces attaques de « *Heinous raid on newspapers* »³⁷. Déçus par ces intimidations, les directeurs de publication de la *gutter press* sont amers envers le nouveau pouvoir. Blamuel Njururi ironise sur la situation de la presse de l'après décembre 2002 : « *The players have changed... but the game is the same* »³⁸.

Les radios aussi sont soumises à une interprétation abusive de la loi quand leur contenu déplait au gouvernement. La radio

³⁵ *Ibid.*

³⁶ *The Daily Nation*, 14 janvier 2004, 'What led to crackdown on alternative press'.

³⁷ *Sunday Nation*, 26 septembre 2004. La condamnation du géant médiatique est claire : même s'il critique la déontologie de ce type de presse, il n'admet pas les méthodes autoritaires utilisées par le pouvoir contre la liberté de presse.

³⁸ Entretien avec Blamuel Njururi, directeur de publication du *Kenya Confidential*, 10 novembre 2004.

commerciale *Kiss FM* a ainsi été victime d'un acharnement de la part d'une ministre. Acharnement qualifié de « vendetta virtuelle » par l'International Press Institute (IPI)³⁹. En avril 2004, une émission matinale de *Kiss FM* — *The Big Breakfast* — est accusée d'avoir critiqué de façon vulgaire Martha Karua, ministre du Développement et de la gestion des ressources en eau, car celle-ci avait refusé d'accorder une interview à la radio. Karua attaque la radio en justice tandis que le gouvernement réunit un comité d'experts⁴⁰ pour juger l'affaire et statuer sur le sort de la radio. Mais les membres du comité partent un à un, laissant l'organisation *ad hoc* sans jugement définitif. Le syndicat KUJ demande à la ministre de cesser les poursuites judiciaires à l'encontre de *Kiss FM*, accusant le gouvernement de chercher à mettre en échec la liberté de presse. En réponse, Karua menace d'envoyer le syndicat devant les tribunaux. La ministre se met définitivement les médias à dos lorsqu'elle interdit à *Kiss FM* l'entrée d'un atelier de réflexion sur la réforme de l'eau qu'elle dirigeait. Finalement, en 2005, *Kiss FM* diffuse toujours.

2.2.3. Les attaques contre les journalistes

Dès la fin de l'année 2003, les attaques contre les médias prennent la forme d'agressions physiques et d'arrestations de journalistes. La nouvelle équipe du *Standard* en fait les frais deux fois.

Le 29 septembre 2003, Tom Mshindi, directeur général de *The East African Standard*, David Makali, rédacteur en chef du *Sunday Standard* et Kwamchetsi Makokha, son assistant, sont arrêtés et placés en détention provisoire dans les locaux du Criminal Investigations Department (CID) de Nairobi. Ils sont accusés d'avoir violé la loi en diffusant un document de police confidentiel : la veille, ils avaient publié le verbatim de l'interrogatoire de deux des assassins présumés de Crispin Odhiambo Mbai, professeur en sciences politiques à l'Université de Nairobi tué lors de la Conférence constitutionnelle nationale⁴¹. La police désire surtout

³⁹ IPI, 2004 *World Press Freedom Review*, Vienne, 2005.

⁴⁰ Comité composé de patrons de presse, de membres du syndicat KUJ, de représentants religieux, d'avocats et d'hommes politiques.

⁴¹ Crispin Odhiambo Mbai a été tué par balle, chez lui, le 14 septembre 2003.

savoir comment ils ont réussi à se procurer l'enregistrement de cet interrogatoire. Ce qu'ils refusent de révéler.

Outre les confessions des tueurs présumés, l'article incriminé donnait des informations précises sur la scène du crime et accusait, sans le nommer, un homme politique influent de la NARC comme commanditaire de l'assassinat⁴². Makali, auteur de l'enquête, reste emprisonné jusqu'au 1^{er} octobre. Mshindi, directeur du groupe, est relâché le soir même, comme Makokha, qui avait pourtant co-signé le papier. Makali raconte plus tard, le 11 octobre, dans son journal, son point de vue sur l'affaire et ses nuits en prison. Amusé, il explique sa surprise de se voir incarcéré avec l'un des meurtriers présumés de Mbai — « *I leave it to you to imagine what we talked about, but for me, it was a pleasure beyond compare*⁴³ » — et son incompréhension quant aux accusations dont il fait l'objet. Il est vrai que l'ancien directeur du *Media Institute* subit un acharnement judiciaire peu cohérent. D'abord incarcéré pour « délit pour publication de reportage falsifié et alarmant, en contravention de la section 106 du code pénal », il est ensuite accusé de « conspiration pour entrave au bon fonctionnement de la justice, en contravention de la section 114 du *Laws of Kenya* », puis, le jour du procès, de « vol de vidéo-cassette appartenant au gouvernement du Kenya ». Makali plaide non-coupable, arguant qu'il n'a jamais eu de vidéo-cassette en sa possession mais que les informations publiées provenaient de la transcription de l'enregistrement de l'interrogatoire. Il est acquitté le 4 avril 2005. Le juge Aggrey Muchelule considère que, dans un tel cas, les fruits de toute investigation qui sont en possession de la police ne sont pas la propriété de celle-ci mais du public.

The Standard est visé une deuxième fois, au début de l'année 2005, dans une affaire de « publication d'article diffamatoire » unique en son genre. Le 8 janvier, le journaliste d'investigation Kamau Ngotho signe un papier sur la petite élite économique qui continue de s'enrichir en entretenant des liens de connivence avec certains membres du gouvernement et des hauts cadres de sociétés kenyanes. Le titre de l'article est sans appel : « *Mr Moneybags : big money games that run Kenya's politics* ». Très rapidement, des personnes citées dans l'article portent plainte. Le 11 janvier, le rédacteur en

⁴² *The Sunday Standard*, 28 septembre 2003.

⁴³ *The East African Standard*, 11 octobre 2003.

chef adjoint du quotidien, Kwamchetsi Makokha, est convoqué dans les locaux de la police criminelle à Nairobi : l'interrogatoire est ordonné en vertu de l'article 194 du code pénal portant sur la « diffamation criminelle », un article datant de l'époque coloniale qui n'a jamais été appliqué depuis l'indépendance ! La protestation de plusieurs ambassades occidentales pousse le procureur général du Kenya à mettre fin aux poursuites le 17 janvier.

2.2.4. *Les Kibaki et les médias*

Enfin, la relation entre le sommet de l'État et les médias est détériorée par les rapports tumultueux que la Première dame du Kenya entretient avec les journalistes. Lucy Kibaki n'hésite pas à abuser de son statut quand une information la concernant lui déplait. Cela rejaille sur la crédibilité du président, dans un pays où un homme incapable de tenir son foyer ne peut gérer la vie de la cité. Ainsi, le 2 mai 2005 — la veille de la journée de la liberté de la presse —, Lucy Kibaki se rend dans les locaux de la rédaction du *Daily Nation*, accompagnée de six gardes du corps et du commandant de la police de Nairobi, Kingori Mwangi, pour protester pendant cinq heures contre la couverture médiatique jugée « injuste » dont elle avait fait l'objet le week-end précédent⁴⁴. Elle injurie les journalistes et fait confisquer les caméras, les carnets de notes et les téléphones mobiles. Elle déclare ne pas vouloir quitter les lieux tant que les auteurs des articles incriminés ne sont pas arrêtés. Clifford Derrick Otieno, cameraman de la télévision KTN, filme la scène. Lucy Kibaki se jette sur lui, le gifle violemment et essaie vainement de lui arracher sa caméra. Le lendemain, la télévision kenyane passe la scène en boucle, provoquant le rire ou l'indignation du public. Le Kenya n'a pas eu de Première dame pendant 24 ans — Moi était veuf —, Lucy

⁴⁴ Dans leur édition du 2 mai 2005, plusieurs journaux écrits et télévisés (*The Daily Nation* et *The Standard*, *Nation TV* et *KTN* notamment) ont relaté les tentatives de la *First Lady*, dans la nuit du 30 avril, de faire cesser le tapage nocturne provoqué par la fête de départ de son voisin, Makhtar Diop, directeur de la Banque mondiale au Kenya. N'obtenant pas l'atténuation du volume de la musique, elle s'était rendue au poste de police de Muthaiga pour porter plainte contre M. Diop. Les journalistes précisaient qu'elle y était allée en pyjama. Ce qui lui déplût fortement.

Kibaki attire l'attention des médias, qui s'interrogent fréquemment sur son rôle précis dans l'action gouvernementale.

Cet épisode est le dernier d'une série qui a affecté les relations entre le monde politique et les médias, dès la fin de l'année 2003. Les cas d'atteintes à la liberté de presse se sont multipliés, provoquant un paradoxe dans la situation politico-médiatique kenyane de l'après Moi : ces attaques interviennent à un moment où, de l'avis général, les médias n'ont jamais été aussi libres. Que nous enseigne ce paradoxe sur la vie politique kenyane ? Tout d'abord, la situation des médias kenyans est révélatrice de l'état du processus démocratique sous Kibaki, qui maîtrise de moins en moins la situation. Les ministres, attaqués par les médias, n'hésitent pas à employer des méthodes autoritaires. L'augmentation de la critique s'effectue dans un État qui change difficilement : la plupart des hommes politiques et des hauts fonctionnaires de la période Moi sont restés après l'arrivée de Kibaki à la tête du pays — beaucoup n'ont fait que changer d'étiquette politique — et la permanence d'une certaine culture politique au sommet de l'État, médiatisée par les affaires de corruption et l'impasse de la révision constitutionnelle, fragilise un gouvernement dont l'efficacité à réformer et à sortir le pays d'une situation socioéconomique difficile est interrogée. Enfin, le désenchantement vécu et exprimé par les médias reflète bien la déception de la population qui ne perçoit que peu d'amélioration de ses conditions de vie. Le constat d'échec du gouvernement est de plus en plus « banal » et sévère dans les principaux médias. Publiant un sondage d'opinion en mai 2005, *The Daily Nation* analyse : « *In 2003, a global opinion poll found that Kenyans were the most optimistic people in the world about the future of their country. It also recorded one of the most dramatic improvements in Press freedom. Barely two years later, local polls find Kenyans more pessimistic than they were in the days Daniel arap Moi was president* ⁴⁵ ».

⁴⁵ *The Daily Nation*, 25 mai 2005.

3. LES MÉDIAS KENYANS AUJOURD'HUI

3.1. L'expansion économique

La période de l'après Moi ne constitue pas seulement une période de bouillonnement politique pour les médias kenyans. L'heure est aussi à la croissance économique. La hausse des revenus publicitaires, spectaculaire dans l'audiovisuel, contribue fortement à la bonne santé des médias. On assiste actuellement à un phénomène de diversification et de constitution de grands groupes de communication, qui n'hésitent pas à investir les marchés voisins, notamment tanzanien et ougandais.

3.1.1. La prospérité financière

Le secteur des médias kenyans se porte très bien économiquement. La croissance est impressionnante depuis la libéralisation, tant au niveau du volume de publicités que du budget. La fin du monopole audiovisuel de la KBC en 1996, avec la création de *Metro FM*, a permis l'explosion du marché publicitaire avec la création de nombreuses radios commerciales et la multiplication des chaînes de télévision privées. La période de l'après Moi confirme cette tendance, comme le montre le tableau suivant :

Evolution des dépenses publicitaires dans les médias kenyans depuis 1992 (en milliards de Ksh)

Dépenses publicitaires	1992	1995	1998	2002	2003
Médias imprimés (avec publicités sur bus)	0,336	0,897	1,3	2,2	2,3
Médias audiovisuels	0,276	0,936	1,8	3,8	4,4
Total	0,612	1,833	3,1	6	6,7

Source : Steadman and Associates, *The advertisers' guide to Kenya 2004*, Nairobi, Steadman 2004.

Ce tableau révèle l'ampleur du développement du secteur publicitaire dans les médias : en onze ans, de 1992 à 2003, c'est-à-

dire de l'arrivée du multipartisme au départ de Moi, la croissance est de 1094 % ! Les sommes sont désormais très importantes ; on comprend que la constitution des grands groupes de communication kenyans s'appuie sur la manne publicitaire, surtout à partir des recettes audiovisuelles (radio et télévision). En 2003, par exemple, la chaîne de télévision KTN, propriété du Standard Group, absorbait 17 % des dépenses publicitaires effectuées dans les médias audiovisuels (soit environ 748 millions de shillings pour une moyenne de 183 spots quotidiens) tandis que *Nation TV* en absorbait 9 % (soit 396 millions de shillings pour une moyenne de 185 spots quotidiens) et *Nation FM* 7 % (soit 308 millions de shillings). En 2003, les médias audiovisuels absorbaient 65 % des dépenses publicitaires totales effectuées dans les médias — 40% pour la radio et 25 % pour la télévision, confirmant la place de média de masse numéro un pour la radio —, tandis que les médias imprimés attiraient 35 % des mêmes dépenses. Dans ce dernier secteur, toujours en 2003, les quotidiens absorbaient 70 % de la publicité consacrée aux médias imprimés, contre 20 % aux hebdomadaires et 10 % aux magazines. La presse, qui attirait traditionnellement la majorité de la publicité, a perdu sa puissance auprès des annonceurs en 1993. Ce changement correspond à la montée en puissance de la première chaîne de télévision privée, KTN, créée en 1990, qui captait une part importante de la publicité dans un paysage audiovisuel monopolisé par l'État. La position prédominante de l'audiovisuel dans le secteur publicitaire a par la suite été renforcée par l'apparition de cinq autres chaînes de télévision — STV en 1996, Family TV, Citizen TV et Nation TV en 1999 ainsi que Metro TV en 2000 — et d'une vingtaine de radios privées à partir de 1996. Les radios commerciales *Kiss FM*, *Capital FM* et *East FM* représentent le trio de tête pour les recettes publicitaires des ondes radiophoniques en 2004. Leurs programmes essentiellement composés d'émissions musicales et de *talk shows* attirent donc massivement le public et les annonceurs. Les principaux annonceurs sont des opérateurs de téléphonie mobile : *Kencell Communications* (devenu *Celtel* en 2004) et *Safaricom*.

3.1.2. Les grands groupes médias

Cette prospérité des entreprises médiatiques kenyans favorise la constitution de grands groupes de communication (côtés

à la bourse de Nairobi), dont les plus importants diversifient leurs supports.

En 2005, The Standard Group se porte au mieux. Le bénéfice net avant impôt du groupe — composé de la télévision KTN, de la division Standard Newspapers qui publie le quotidien *The Standard* et du réseau de distribution Publishers Distribution Service — est passé de 75,1 millions de shillings en 2003 à 121,9 millions de shillings en 2004, soit une augmentation de 61 % en une année d'exercice⁴⁶. Grâce aux bénéfices du leader du marché télévisuel KTN et à la croissance du lectorat du quotidien *The Standard*, The Standard Group veut investir les ondes radiophoniques.

Le succès de Citizen TV et de *Citizen FM* (lancées en août 1999) permet au groupe Royal Media Services, propriété de l'homme d'affaires S.K. Macharia, de conquérir le marché des radios en langues locales. Le groupe n'hésite pas à adopter une stratégie assez violente pour imposer sa nouvelle radio *Y-FM 96*, destinée à un public jeune, face à *Kiss FM*, leader du créneau. La puissance de son équipement lui permet d'empêcher sa rivale d'émettre pendant quelques jours en provoquant des interférences. Macharia prévoit aussi de lancer une radio émettant en luhyia, sous le nom de *Mulembe FM*. Opportuniste, il profite pleinement de l'accession au pouvoir de Kibaki, qu'il a soutenu lors de la campagne électorale de 2002, pour accroître son influence dans le paysage médiatique kenyan.

The Nation Media Group (NMG) continue son ascension et la constitution d'un empire multimédia est-africain. Leader dans les quotidiens en anglais et en swahili (*The Daily Nation*, *Taifa Leo*), dans les hebdomadaires gratuits d'annonces (*The Weekly Advertiser*), dans les hebdomadaires d'informations internationales (*The EastAfrican*) et provinciales (*CoastExpress* à Mombasa), dans la messagerie des publications internationales sur le sol kenyan, dans les sites Internet d'information (www.nationmedia.com), présent dans l'audiovisuel (*Nation FM* et *Nation TV* depuis octobre 1999) et dans le service

⁴⁶ *The Standard*, 5 avril 2005, « Standard Group unveils expansion plans ».

postal privé (Courier Service), le groupe NMG continue de dominer outrageusement le marché des médias kenyans⁴⁷.

Il poursuit actuellement sa diversification et se lance à l'assaut des pays voisins, membres de l'*East African Community* (EAC). En septembre 2004, il s'attaque aux magazines. Le NMG fait renaître, par l'intermédiaire de sa filiale Nation Publishing and Marketing et en collaboration avec l'éditeur sud-africain *Media24Magazine*, les légendaires *True Love* et *Drum*. « *Lifestyle papers* », ces deux mensuels ciblent les jeunes urbains⁴⁸ et sont diffusés dans les trois pays de l'EAC. *Media24Magazine* distribue la version sud-africaine dans sa zone. À l'occasion de ce double lancement, la joint venture East Africa Magazines a été créée entre *Media24Magazine* et le NMG. Cette alliance entre deux géants va dans le sens d'un rapprochement économique entre deux marchés porteurs anglophones.

Enfin, alors que le NMG est présent depuis 2000 en Ouganda où il est actionnaire principal du quotidien *Monitor*, de sa déclinaison dominicale *Sunday Monitor* et de la radio *Monitor FM*, il passe à l'offensive en Tanzanie. Il rachète *Radio Uhuru* et acquiert 60 % du groupe Mwananchi Communications Ltd⁴⁹ par l'intermédiaire duquel il lance en septembre 2004 *The Citizen*, quotidien d'information en langue anglaise.

La Nation Broadcasting Division réalise de très bonnes performances grâce à des stratégies payantes. L'élargissement de la zone de diffusion de *Nation FM* a permis une augmentation des recettes publicitaires de cette radio commerciale de 17 % lors du premier semestre 2005, par rapport aux chiffres du premier semestre 2004, tandis que le lancement d'un nouveau design pour *Nation TV* a permis une hausse de 25 % des recettes publicitaires

⁴⁷ Pour plus de détails sur la constitution des groupes multimédia, notamment le NMG : BART, A., RAMBAUD, B. (2005). « Traditions libérales des médias au Kenya. Deux Nations à la destinée commune », *Politique africaine*, 97 : 82–98.

⁴⁸ *True Love* cible « la femme africaine moderne » tandis que *Drum* vise surtout le public masculin urbain. *The Daily Nation*, 30 septembre 2004.

⁴⁹ Groupe de presse qui diffuse deux titres en Tanzanie en swahili : *Mwananchi* et *Mwanaspoti*.

de cette télévision pour la même période⁵⁰. L'augmentation des téléspectateurs est notamment perceptible lors des journaux télévisés de 19 h et 21 h. Preuve du dynamisme incontestable des médias audiovisuels au Kenya, la concurrence des télévisions pour capter public et annonceurs se réalise de plus en plus dans la bataille des JT⁵¹.

3.2. Le système médiatique kenyan en 2005

Le Kenya a vu fleurir tout au long du XX^{ième} siècle une presse privée très diversifiée que l'on peut classer en trois grandes catégories : la *mainstream press*, l'*alternative press* et la *gutter press*.

Les cinq grands quotidiens d'information du pays forment la *mainstream press*. *The Daily Nation* est toujours le leader de cette catégorie. Il tire, en novembre 2004, à une moyenne de 180 000 exemplaires par jour et de 230 000 pour son édition du dimanche, *The Sunday Nation*⁵². Imprimées en quadrichromie, les 52 pages du journal comptent de nombreuses publicités, qui lui assurent 40 % de ses revenus⁵³. *Taifa Leo*, sa traduction en swahili, tire environ à 30 000 exemplaires par jour, avec un nombre de pages plus réduit. *The Standard* imprime, toujours en 2004, 65 000 exemplaires pour sa nouvelle édition quotidienne qui utilise le format tabloïd. *The People*, hebdomadaire devenu quotidien en 1998, connaît un succès grandissant auprès du public. Il tire à 53 000 exemplaires tandis que *Kenya Times*, en perte de vitesse, atteint difficilement les 25 000 exemplaires.

La presse dite « *alternative* » est composée de périodiques spécialisés. Il existe plus de 70 magazines kenyans, allant des nombreux magazines économiques (*East African Trends*, *Africa*

⁵⁰ *The Daily Nation*, 27 mai 2005.

⁵¹ En voulant concurrencer le leader KTN, *Nation TV* fait un pas de plus dans la rivalité croissante qui oppose les deux puissants groupes multimédias Standard Media Group et Nation Media Group. Rivalité que l'on constate déjà dans la presse et dans la distribution des journaux internationaux sur le sol kenyan. Acteurs principaux de la scène médiatique kenyane, les deux groupes se connaissent bien.

⁵² Entretien avec M. Mungai, service de distribution du NMG, Nairobi, 19 novembre 2004.

⁵³ Entretien avec Wangethi Mwangi, NMG.

Business par exemple) aux féminins (*Parents*, qui publie 40 000 exemplaires mensuels) en passant par les magazines sportifs, dont les couvertures sont monopolisées par les coureurs de l'équipe nationale d'athlétisme. Il existe peu de publications produites en province, si ce n'est les hebdomadaires *CoastWeek* et *CoastExpress* à Mombasa et quelques publications locales, en swahili ou en langues locales, encouragées par l'UNESCO.

La presse confessionnelle est abondante. *Wathiomo Mukinyu*, publié par l'archevêché de Nyeri depuis 1916, reste le plus vieux journal catholique du Kenya. *Mwihoko* est le plus lu, surtout dans la province du centre, et le plus influent au niveau politique. Publié par le diocèse de Murang'a, il a repris le flambeau d'*Inooro*, interdit par Moi en 1995 en raison de ses critiques du régime KANU. Ces deux mensuels, de format A4, sont en langue gikuyu. Ils permettent à de nombreux ruraux d'être informés. Parallèlement, on assiste à une prolifération de journaux liés à des Églises pentecôtistes, qui créent un hebdomadaire ou un mensuel pour être visibles dans l'espace public et attirer de nouveaux fidèles. On remarque une certaine compétition entre ces Églises dans les kiosques de Nairobi.

Enfin, la presse kenyane est marquée par la coexistence d'une presse d'information de qualité et d'une presse d'opinion « de caniveau », la *gutter press*, qui compte une dizaine de journaux d'opinion, essentiellement des hebdomadaires créés lors des élections de 1992 et de 1997. Beaucoup sont dans une situation financière instable et ne disposent d'aucun siège. Sensationnalistes, ils dénoncent certains cas réels de corruption mais ne respectent pas vraiment les règles élémentaires de déontologie. *Weekly Citizen* (30 000 exemplaires hebdomadaires), *The Independent* (15 000 exemplaires hebdomadaires), *Kenya Confidential* (3000 exemplaires) sont les plus lus. Reprenant le modèle de la presse à scandales anglaise, leur fonction principale est de condamner les dérives des hommes politiques kenyans — liaisons extraconjugales, corruption, etc. — et d'appeler à plus de moralité.

Le paysage radiophonique a connu quelques modifications mais pas de bouleversement. La radio publique KBC a pris ses distances par rapport à la politique gouvernementale et son financement public a baissé. Elle recherche désormais davantage les recettes de la publicité. Bien qu'elle ne soit plus la seule à diffuser dans les langues locales, elle continue de monopoliser la couverture

nationale avec la diffusion en ondes moyennes ou en ondes courtes et tout un réseau d'émetteurs de 50 à 100 KW. Son service en kiswahili couvre 98 % du territoire kenyan et son service en anglais 95 %. Quant au service régional, réparti en trois secteurs, il utilise quinze langues locales diffusées par tranches horaires. En outre, la KBC a lancé des radios FM de style plus moderne : *Metro FM* à Nairobi et dans les grandes villes dès 1996, *Coro FM* en 2001 à Nairobi et dans la région du mont Kenya, *Pwani FM* en novembre 2001 sur la côte.

La libéralisation de la radio n'a commencé qu'en 1996. Les influences politiques ont toujours joué dans les autorisations et attributions de licences. La première radio privée était *Capital FM*, appartenant à un groupe proche d'un fils de Moi. D'autres radios, présentes dans plusieurs villes, appartiennent aux trois groupes kenyans multimédias cités plus haut. Royal Media Service, qui avait appuyé la NARC dans les élections de 2002, obtint, en 2003, vingt-cinq licences pour sa station *Citizen FM*, le rendant présent à Nairobi, Mombasa, Kisumu, Nakuru, Timboroa, Meru, Kitui et dans d'autres villes. Le groupe NMG a obtenu 6 licences pour sa radio et *RadioAfrica* propriétaire de *Kiss FM*, 5.

Après la suspension de fréquences qui n'étaient pas encore utilisées, 50 ont été attribuées à une vingtaine de radios privées FM établies à Nairobi et dans onze autres villes. Il y a également des radios étrangères comme la *BBC* à Nairobi et à Mombasa, la *VOA* à Nairobi, *RFI* à Mombasa et à Nairobi ; depuis juin 2005, *Radio One*, appartenant à un groupe tanzanien, diffuse à Nairobi. En 2005, *Mang'elele*, basée en Ukambani était toujours la seule radio communautaire.

Le parc de téléviseurs progresse lentement, à cause de la stagnation de la croissance. La télévision KBC diffuse sur 40 % du territoire, surtout dans les grandes villes. Six autres télévisions commerciales privées existent, créées entre 1990 (KTN) et 2000 (*Metro TV*, appartenant à la KBC), principalement à Nairobi et dans les grandes villes. *Citizen TV* et *Nation TV* appartiennent à des groupes multimédias. Il n'y a pas eu de nouvelles chaînes depuis le changement de gouvernement. KTN, qui reprend des bulletins d'information de CNN, diffuse en anglais et en swahili. STV, qui diffuse beaucoup de musique, retransmet les nouvelles

internationales de *Sky News*. *Family TV* est une chaîne chrétienne avec beaucoup d'émissions sur la santé.

3.3. Les publics des médias

Deux enquêtes permettent de définir le profil du public des médias : l'enquête menée par le Media Institute entre le 20 et 25 mars 2003, portant sur un échantillon représentatif de 2852 personnes de douze ans et plus répartis dans les huit provinces du pays ; celle de Steadman and Associates Ltd (qui publie le guide des annonceurs du Kenya) qui couvre la période 2002 – 2003. Par ailleurs, une enquête menée entre décembre 1995 et janvier 1996 auprès de 2000 personnes de 15 ans et plus (1000 citadins et 1000 ruraux) permet quelques comparaisons, même si les méthodes de sondage ne sont pas les mêmes.

Entre ces deux dates (1995 et 2004), la population urbaine a progressé de 20 % à 35 % selon les zones. En 2004, Nairobi a une population estimée à 2,691 millions d'habitants ; Mombasa est passée de 594 000 à 733 000 habitants. L'augmentation de la population urbaine et la libéralisation de la radio — surtout avec le changement politique — ont contribué à développer l'audience des médias.

Dans le sondage de mars 2003 du Media Institute, la radio, qui est le média le plus accessible aux populations rurales (ces derniers représentent 65 % de la population), apparaît comme la principale source d'information (pour 54,8 %) suivie par la presse écrite (18,5 %) et la télévision (18,1 %). Les conversations avec la famille et les amis ne sont la principale source d'information que pour 5,7 % des personnes interrogées. La prépondérance de la radio s'accroît même pour les informations politiques (69,3 %). Les disparités géographiques restent cependant importantes. Pour la région de Nairobi, qui a le choix entre plusieurs chaînes de télévision, la télévision est la première source d'information pour 43,5 % contre la radio (28,4 %) et les quotidiens (25,9 %). À l'inverse, la radio prédomine partout ailleurs, surtout dans les régions les plus rurales : 70,5 % dans la Rift Valley, 62,7 % dans l'Est. Une autre originalité de la région de Nairobi est la très faible présence des parents et amis comme source première d'information (1,2 %) alors qu'elle représente 10 % sur la côte et 10,3 % dans la province du nord-est.

Si l'on considère l'importance par type d'information, l'information politique est prédominante pour 42 % de l'échantillon de 2003, suivie par l'éducation (16 %) puis la musique et le divertissement (15 %). Mais cette dernière est prioritaire chez les jeunes de 12 à 20 ans (26,1 %), avant l'éducation (24,5 %) et la politique. L'intérêt prioritaire pour l'information politique s'accroît avec l'âge, dépassant 52 % pour les plus de 50 ans ; il est plus important pour les hommes que pour les femmes. L'information internationale est rarement prioritaire (pour 6,5 % seulement), un peu plus chez les 31 à 40 ans.

La situation par média est conditionnée par l'accès plus ou moins possible à ces médias. La radio est le plus accessible. Tout le monde écoute plus ou moins la radio. Le nombre des récepteurs a augmenté encore en dix ans. En 1995, les trois quarts des adultes (74 %) avaient un poste récepteur, 88 % à Nairobi et 72 % chez les ruraux. Entre 1998 et 2002 le nombre des foyers équipés d'un poste est passé de 5,4 millions à 6,4 millions, soit 95 %.

L'écoute de la radio s'est généralisée en 2003. L'écoute en 1995 – 1996 à la veille de l'enquête était de 59 % de l'échantillon (72 % à Nairobi, 56 % chez les ruraux). À la fin de 2003, cette même écoute est de 97 % d'après l'enquête Steadman. L'accès à la radio est général. Un peu moins dans la province du nord est où cependant 84,4 % de l'échantillon l'écoute selon l'enquête du Media Institute. La minorité qui ne possède pas un poste récepteur l'écoute chez des voisins, chez des amis ou dans des lieux publics. Mais il semble que l'écoute collective des nouvelles ait la préférence du public, d'après le sondage de mars 2003 ; ils sont plus nombreux à écouter les nouvelles chez un ami ou un voisin (40 %) que chez eux (27 %). Cette généralisation a pu être accentuée par le changement de dirigeants, suscitant une plus grande attente de nouvelles. Mais l'accès aux différentes stations de radio est très inégal selon les régions, les villes ou les campagnes.

Dans la semaine précédant l'enquête, le taux d'écoute de la KBC était de 79 % (90 % à Nairobi, 77 % chez les ruraux) mais en 2003, il est passé à 92 % (97 % à Nairobi, 90 % chez les ruraux). Le tableau suivant souligne les préférences des Kenyans et des habitants de Nairobi.

Radios préférées au Kenya et à Nairobi en 2003 (en %)

	KENYA	NAIROBI
KBC swahili	21	3,2
KBC anglais	17	10,2
KBC vernaculaire	3	—
Kiss FM	20	39
Nation FM	5	15,7
Citizen FM	12	5,8
Metro FM	8	6,4
Capital FM	3	9,3

Source : The Media Institute, *Print and electronic media audience survey*, Nairobi June 2003.

L'écoute de la KBC est plus importante au niveau de l'ensemble du Kenya qu'à Nairobi, où la diversité des stations favorise l'écoute de stations plus divertissantes comme *Kiss FM* ou plus indépendantes comme *Nation FM*. Cette diversité se retrouvait dans l'enquête de 2003 de Steadman, portant sur une écoute régulière, sur toute l'année 2003. Les radios les plus divertissantes et musicales comme *Kiss FM* et *Metro FM* et celles donnant le plus d'informations ont le plus bénéficié de la progression de l'audience.

Au niveau des différents types d'émissions, le contraste est saisissant entre l'ensemble du Kenya, où la KBC en swahili arrive en tête pour toutes les catégories (surtout les nouvelles politiques et régionales), et Nairobi, où la KBC en anglais et *Nation FM* prédominent pour les nouvelles et *Kiss FM*, *Nation FM* puis *Capital FM* pour le divertissement.

Dans l'ensemble du Kenya, 75 % de l'échantillon écoute les nouvelles sur la KBC, mais seulement 50,5 % à Nairobi, 62,2 % dans la province centrale, contre 90,4 % dans la région de Nyanza et 89,5 % dans l'Ouest selon le Media Institute. Les différences d'audience sont sensibles — au niveau national — selon les catégories sociales : l'élite n'écoute les nouvelles de la KBC qu'à 64,1 % (et 39,29 % les apprécient), contre 74,5 % des démunis et 80,4 % des ruraux (pour eux, 59,9 % les aiment).

Nairobi – Auditeurs réguliers des radios pendant les quatre trimestres de 2003 (en %)

Trimestre	1 ^{er}	2 ^{ème}	3 ^{ème}	4 ^{ème}
Radio				
Kiss FM	78	65	68	92
Nation FM	58	48	57	64
KBC en kiswahili	61	45	54	37
KBC en anglais	52	42	54	62
Metro FM	47	29	38	59
Kameme FM	42	25	38	39
Capital FM	36	24	30	66
Citizen FM	22	21	24	51

Source : Steadman and associates, *The advertisers' guide to Kenya 2004*, Nairobi, 2004.

La possession d'un téléviseur restait encore très minoritaire en 1995, avec 11 % de l'échantillon (47 % Nairobi, 7 % chez les ruraux). En 1998, 29 % des foyers étaient équipés et 38,3 % en 2002 d'après l'enquête Steadman, avec toujours un écart sensible entre les urbains et les ruraux. Mais comme la télévision est souvent regardée chez des voisins ou des parents par ceux qui ne possèdent pas un téléviseur, les téléspectateurs sont bien plus nombreux que les seuls propriétaires d'un poste.

Les écarts entre les zones géographiques sont plus importants pour la télévision. En mars 2003, la moyenne nationale d'audience est de 75,3 %, 96,9 % dans la province de Nairobi contre 49,2% celle du nord-est. En 1995, elle était de 64 %. Si 90 % des plus riches regardent la télévision, ce ne sont que 64,7 % des plus démunis et 72,4 % des ruraux. Une part importante cette catégorie regarde la télévision chez les voisins ou dans les lieux publics.

Les ruraux n'ont pour la plupart accès qu'à la télévision publique. Nairobi ainsi que quelques villes reçoivent plusieurs chaînes de télévision ; aussi la KBC a une audience plus importante chez les ruraux qu'en ville. Au niveau des préférences, KTN arrive en tête avec 38 %, dépassant la KBC (35 %) suivie par *Nation TV* (14,8 %). Les préférences pour KTN sont moins fortes chez les ruraux qui mettent en tête la KBC (41,2 % contre 34 %). De même,

12,5 % des ruraux donnent la préférence à *Nation TV* contre 20,3 % des plus riches, qui sont aussi moins amateurs de la KBC (21,6 %). À Nairobi, KTN est la chaîne préférée par 50,2 % des habitants, suivie par *Nation FM* (31 %) puis par la KBC (7,2 %) ; de plus, la majorité de ceux qui regardent les nouvelles de la KBC ne les apprécient pas.

La presse écrite bénéficie au Kenya d'une pénétration plus importante que dans la plupart des autres pays de l'Afrique subsaharienne, liée à un taux élevé d'alphabétisation et à un meilleur système de distribution. L'enquête de mars 2003 estime à 79,3 % de l'échantillon les lecteurs de quotidiens, avec des différences régionales sensibles, allant de 93,5 % à Nairobi à 53,8 % dans la province de nord-est. Les différences entre les classes sociales étaient moins sensibles : les ruraux avec 77,7 % étaient plus lecteurs que la catégorie des citadins les plus démunis (66 %). Cette enquête fait aussi ressortir la prépondérance du *Daily Nation*, qui attire 71,6 % des lecteurs, suivi du *Standard* (19,7 %) puis de *Taiifa Leo* (4,9 %), *The People* (4,1 %) et *Kenya Times* (à peine 1 %). C'est à Nairobi que *The Daily Nation* a le plus fort taux de préférence (91,7 % contre 78,6 % en moyenne). *The Standard* a son plus fort taux de préférence dans la Rift Valley.

Conclusion

Après de nombreuses années d'attente, la libéralisation des ondes puis le départ du président Moi ont permis aux médias de devenir de plus en plus puissants économiquement et politiquement. La constitution de grands groupes multimédias reflète un libéralisme anglo-saxon qui contraste avec de nombreux pays d'Afrique subsaharienne où la situation des médias reste très difficile. L'expansion économique des médias commencée sous Moi se poursuit sans que les retombées sociales soient évidentes pour l'homme de la rue. Devant le marasme de la situation politique, leur bonne santé montre que, au Kenya, cette pratique reste un *business*.

La situation des médias, qui vivent et expriment un certain désenchantement vis-à-vis du pouvoir NARC, reflète parfaitement la déception de la population quant à la perpétuation des pratiques des hommes politiques kenyans. Les médias ont salué le changement de dirigeant marqué par l'élection de Kibaki. Ils ont profité dans un premier temps d'une plus grande liberté, et sont apparus comme

des acteurs du changement. C'est une situation que l'on trouve dans d'autres pays africains ayant connu une alternance démocratique, par exemple au Sénégal après l'élection d'Abdoulaye Wade. Cette relative liberté les a conduit à mettre l'accent sur la nécessité de réformes et à critiquer leur absence au bout de quelques mois. Les médias étendent alors leurs critiques tandis que le gouvernement se n'hésite pas à recourir à la répression en utilisant une législation répressive, au risque de dérapages. Le durcissement de l'attitude du gouvernement est parfois parallèle à une diversification croissante des médias.

La dégradation de la liberté de presse au Kenya a éclaté au grand jour le 2 mars 2006, avec une descente de police musclée contre le groupe Standard, en réaction à un article publié le 25 février dans le quotidien éponyme alléguant une rencontre secrète entre Kibaki et un ancien ministre, aujourd'hui dans l'opposition, Kalonzo Musyoka. Le matériel de production a été confisqué, le personnel agressé, la KTN a cessé d'émettre pendant quelques heures et les exemplaires imprimés du *Standard* ont été brûlés. Cette attaque a provoqué une onde de choc dans la société kenyane, cristallisant le mécontentement populaire. La population s'est fortement mobilisée pour défendre sa liberté d'expression ; de nombreuses manifestations ont eu lieu dans les principales villes du pays. L'émotion provoquée a montré que les médias sont devenus des acteurs de la société civile susceptibles d'influencer le corps social et par conséquent, le pouvoir.

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VESTED INTERESTS AND NATURAL RESOURCE GOVERNANCE IN KENYA

by Joseph Kariuki

The election of Mwai Kibaki as the president of Kenya and the National Rainbow Coalition (NARC) into government in 2002 was characterised by promises of reforms in all sectors of the Kenyan society. Analysts of the performance of the NARC government have always noted that had it not been for these reform promises, neither Kibaki nor his coalition would have won the elections. Failures in the government have resulted with reminders that it was elected on a platform of one kind of reform or another. The natural resource sector was one that had suffered terribly from political interference under the previous regimes and the new administration had also promised to reform it. The sector had suffered from politically motivated land allocations, forest excisions and from management interference in conservation institutions. Hence, many people were expecting swift reform actions upon the installation of the new administration into power. In general these interferences boiled down to the question of governance that had affected the sector for a long time.

There is a history to the natural resource governance style prevailing today in Kenya that can be traced back to the colonial administration. The question is: how different is the Kibaki administration and what actions has it taken to reform the natural resource sector. In other words, what kind of reforms, if any, have been put in place to right the wrongs of yester year? This article examines the question of natural resources (wildlife, forests and land) governance in Kenya, now and in the past, and how the natural resource management has offered an arena for policy debates, how vested interests, especially political ones, have influenced natural resource management and the quest for reforms spearheaded by the civil society. The paper ends on the dilemma of reforms promised by the Kibaki administration. The paper thus adopts a historical perspective in order to capture the governance

continuum that has been the experience of the Kenya natural resource sector.

1. HISTORICAL PERSPECTIVES

In order to understand Kenya's natural resource governance style over time, it is necessary to adopt a historical perspective as the current management and governance practices have been shaped a lot by historical influences that started in the colonial period. For instance, most of the laws that govern the natural resource sector are colonial and they have been very crucial in shaping much of the current management practices as there has been no major change to the laws and policies in successive administrations. In instances where changes have been instituted, they have mostly served selfish interests of the political class other than serving the larger public good.

1.1. Customary natural resource management

Recent adoption of grassroots and participatory practices has rekindled a lot of interests in customary natural resource management that existed before colonialism. Customary natural resource management style in Kenya, like in many parts of Africa, was communal and have been hailed as having developed institutions that prevented degradation of the resources and thus been suggested as better options for African natural resources that continue to be degraded. The degradation has been occasioned by the over dependence on natural resources by most African populations of which over 80% live in the rural areas.

In the traditional set up, most of these natural resources especially land and forests were communally owned by social entities such as the clan and their leaders for decentralised communities or were influenced a lot by institutions such as those of chiefs for centralised communities. The system of governance thus varied from community to community. In terms of governance, management of these resources were decentralised and

were generally governed by a set of common institutions¹ (rules and regulations) and community groups had co-equal rights of access and use. In other words, they were owned by the community whose members had rights of using them by virtue of their belonging to the community. They were governed by what is called 'common property regimes' (CPRs) which is a concept that arose from natural resource debates generated by 1968 "*tragedy of the commons*" assertion by Garret Hardin that users of commons (e.g. forests, land, water, etc) are inevitably faced with the danger of degradation and eventually destruction as users pursue individual interests². However, seen from the governance perspective that underscores the principle of inclusion, the performance of traditional natural resource institutions were seen to be more efficient. The institutions apportioned powers of regulation and control of natural resources to a system of customary tenure and laws vested in traditional authorities like clan heads or special guardians, such as *aramati* among the Kikuyu. Adjudication relating to land and forest resource use was based on consultation and consensus particularly through the use of clan representatives³.

Even with these fairly well functioning arrangements, some historical researches have noted that there was land degradation and deforestation in the late pre-colonial era especially in Central Kenya, but it was largely influenced by external changes in trade caused by rising demands for wood in regional and long distance trade to the Kenyan coast⁴. On the other hand, some agrarian practices such as shifting cultivation and forest clearing for new farming lands among the Kikuyu were also thought to be contributing to land degradation. Kikuyu shifting cultivation practices were thus used as an excuse for the introduction of

1 OSTROM, E. (1990). *Governing the commons: the evolution of institutions for collective Action*. Cambridge, Cambridge University Press. This provides an elaboration of role of institutions in the governing of common pool resources (CPRs).

2 ARNOLD, J.E.M. (1998). *Managing forests as common property*. FAO Forestry Paper n° 136. Rome, Food and Agricultural Organization of the United Nations.

3 ARNOLD, J.E.M. (1998), *ibidem*.

4 CASTRO, P.A. (1995). *Facing Kirinyaga: a social history of forest commons in southern Mount Kenya*. London, Intermediate Technology Publications (pp. 36–37).

colonial natural resources regulations such as the creation of forest reserves under State control and introduction of individualisation of natural resources such as land which was previously communally owned. The individualisation policy of land has been the basis for the rush for accumulation of land at independence reaching the highest point in the 1990s where the culture of grabbing public land was the order of the day.

1.2. Colonial legacy and post-independent natural resource management

Governance of natural resources in the colonial period was characterised by coercion and control. This colonial experience has continued to shape the post-colonial natural resource governance. The progressive deterioration of natural resource governance since independence was facilitated by the colonial laws and policies that were inherited by the independent government in 1963 with little attempts to conform to the changing times and modern management approaches. The present natural resource management policies and practices in Kenya are thus a continuation of the colonial ones which were highly centralised and vested the State with enormous powers to control the management of the various resources. The arrival of the colonialists in Kenya in the late 19th century thus saw a shift in the decentralised clan based management of trees and forests to a more centralised approach that gave the State unfettered powers on policy and legislation with little or no regard to the opinion of other actors. For instance, the colonial government unilaterally carved out forest reserves and placed them under the Forest Department to enable them to be easily controlled and manage forest resources. Kenyan communities' knowledge of forest management and protection was ignored and was replaced with what the colonialist thought to be the more "scientific" approaches prevailing today. However, these approaches have not yielded into sustainable natural resource management. The result was appropriation of huge chunks of forestlands which was put in the hands of the State as the colonial State saw community-based management of forest as a threat to its management on a sustainable basis⁵.

⁵ CASTRO, P.A. (1995), *op. cit.*

At independence, the main focus of the Kenyatta government was on the land question, the most topical issue at the time. Comparatively, little attention was given to matters of other key resources such as forests and wildlife. In the forest sector for instance, the first major statement on forest policy for independent Kenya was contained in Sessional Paper no. 1 of 1968, which at that time was designed to modify the forest policy inherited from the colonial government to reflect the aspirations of the independent nation. Much of that policy did not impact much on the management of the forest as the structures especially of the Forest Department set up by the colonial government remained intact. In the wildlife sector, the first major policy was in 1975, Sessional Paper no. 5, which set the basis for the introduction of 1976 wildlife conservation and management Act⁶. This policy and legislative action, coming more than a decade after independence, however, was not radical enough in terms of streamlining the governance and management of wildlife resources as it retained control of wildlife resources within the powers of the government.

The concentration on land matters by the independent administration was due to the concerns of the time where land was at the centre of the fight for independence following alienation of the most fertile lands, the so called white highlands in favour of the colonial white settlers. This concern over land matters was captured by the president himself when he noted in 1964 that: "*Our greatest asset in Kenya is our land. This is the heritage we received from our forefathers. In land lies our salvation and survival*". The attachment and interest in land continued even in the second (Moi) administration, but with increased interest in the other sub-sectors (wildlife and forest) whose management has closely been related to manipulation of land policies and laws in the country. In the Moi administration, as is shown later, it was the height of privatisation of public land (even

⁶ KAMERI-MBOTE, P. (2002). *Property rights and biodiversity management in Kenya: the case of land tenure and wildlife*. Nairobi, Acts Press.

⁷ HARBESON, J.W. (1971). 'Land reforms and politics in Kenya, 1954-70', *Journal of Modern African Studies* 2: 231-251.

land for conservation of wildlife and forest) through political patronage in what came to known as “*land grabbing mania*”⁸.

Kenya today retains a vertical and centralised management of its natural resources. In the forest sector for instance, the management hierarchy is quite apparent. At the top level is the chief conservator of forests who is supported under him by four deputy directors who perform extension services, industrial development, natural forest management and finance and planning duties related to forest⁹. Below the provincial and district officers are foresters working as heads in each of the forest blocks. This highly hierarchical structure gives forest officers too many ways to influence the goings-on in their areas of jurisdiction and recent deforestation and forest corruption in the 1990s has been blamed on the power they wield. Forest management has therefore not been decentralised despite many changes taking place in many parts of the world and local communities who are regarded as the custodians of forest have no power or say over management of the forests. Power lay with the central government through the Forest Department and other agencies like the Kenya Wildlife Service (KWS), and local authorities through county councils. There are also privately run forest plantations such as the Kakuzi plantations in Makuyu, Thika district.

Documented evidence indicates only three cases where communities are engaged actively in forest management¹⁰. These are Arabuko-Sokoke forest and Golini-Mulanganji reserve at the coast and Loita trust in Narok district. The principle of community involvement however continues to be adopted in many conservation areas especially through the work of community-

⁸ KLOPP, J. (2000). ‘Pilfering the public: the problem of land grabbing in contemporary Kenya’, *Africa Today* 47 (1): 7–26.

⁹ RHEKER, J.R. (1992). ‘Forest management and timber industry at Mt. Kenya, Laikipia Research Programme’, *Laikipia-Mt. Kenya, Reports No 16.*, University of Berne, Group for Development Studies and Environment and Institute of Geography.

¹⁰ KIGENYI, F., GONDO, P. and MUGABE, J. (2002). ‘Practice before policy: an analysis of policy and institutional change enabling community involvement in forest management in Eastern and Southern Africa’, *Forest and Social Perspectives in Conservation N° 10*. Nairobi, IUCN Eastern Africa Programme.

based organisations, non-governmental organisations and international development organisations.

On the other hand, forests found in trust land are managed by the local authorities or county councils but they have not been able to stay away from the influence of the central government. Trust lands were created by the colonial authorities and are assumed to be held in trust for the local people by county councils¹¹. The State thus continues to dominate in forest management as in the past but there are slow changes towards the involvement of stakeholders especially grassroots communities. Through the efforts of civil society organisations suggestions for collaborative management that includes effective community participation and other forest users has been in the offing since the 1990s with lobbying for a forest bill that provides for decentralised and participatory forest management¹².

In the wildlife sector, the same scenario as in the forest sector applies. A strong influence of the central government has shaped wildlife conservation and management in the country. But there have been a few changes to the laws governing wildlife conservation and management institutions starting in 1976 when the Wildlife Conservation and Management Act was passed. This Act changed some of the colonial wildlife conservation and management practices by merging the National Park Organisation with the Game Department hence creating the Wildlife Conservation and Management Department¹³. These changes however did little to affect the governance style of the wildlife conservation sector as the State retained influence through appointments to the new department. More changes came in 1989 with the establishment of KWS under the Wildlife Conservation and Management Act as a parastatal entrusted with the responsibilities of conserving wildlife and protecting people from damage and injuries caused by the animals. The established of KWS was important because it enabled the wildlife conservation body to reach out to other actors in the sector especially the local

¹¹ KAMERI-MBOTE, P. (2002), *op. cit.*

¹² GOVERNMENT OF KENYA (2004) *Forest Bill, 2004*. Nairobi, Government Printer.

¹³ KAMERI-MBOTE, P. (2002), *op. cit.*

communities as it facilitated “*the integration of local communities to conservation and using wildlife resources for national development*”¹⁴. However, as is shown later in the recent attempts to reform the wildlife sector, governance rules of KWS are far from being realised.

2. RESOURCE DEGRADATION, POLITICS AND CLAMOUR FOR REFORMS

Kenya has been facing serious environmental problems such as land degradation, deforestation, loss of biodiversity and adverse destruction of water catchment areas. Most of these started at independence but escalated in the 1980s and 1990s and can be linked to mismanagement and lack of good governance where corruption has been rife in allocation of public resources which has consequently exposed the various natural resources to degradation. This has been a result of the practice where a defective legislative framework has given the State an important role in determining resource allocations where for instance the president could just declare a public land a private property. These autocratic and exclusionary legislations have been subject of debate to reform and synchronise the various laws touching on specific natural resources like land, wildlife or forests in the country. The legal provision that vests the president with these enormous powers has been used by the past presidents who worked in uncompetitive democratic environment with little public participation in decision making with enormous environmental impacts. These included settlement of people in forest lands and other conservation areas.

2.1. Doing politics with natural resources

Land is one of the key resources which have been at the core of doing political business in post independent Kenya. At independence, the first (Kenyatta) administration had many opportunities to allocate land left by departing settlers to build political support. This opportunity was used by Kenyatta to settle thousands of Central Kenya residents in various parts of the

¹⁴ *Ibid*, p. 105.

country, especially in the Rift Valley and in the process building and extending his political influence beyond Central Kenya through land buying companies and settlement schemes. However, in the second (Moi) administration, with little land to allocate and hence reward political supporters, the administration resorted to public land grabbing and plundering of institutions to reward political supporters.

The Moi regime was also associated with manipulating the sensitive land issue across the country for its own political benefits. For instance, land related conflicts in the Rift Valley and at the Coast had been politically instigated in an attempt to create KANU electoral zones in ethnically cosmopolitan areas in order to create fear among perceived 'aliens communities' in these areas.¹⁵ All conflicts or clashes happened either in the run up to elections or shortly after election. In the south coast during the Likoni clashes, the target were on *watu wa bara* a Swahili reference to up country people. These occurred in 1994 after the 1992 elections. But the example that best illustrates land concerns, politics and ethnicity are those that hit Molo constituency during and after 1992 elections and Laikipia west constituency in the 1997 elections. It is notable that the violence occurred in areas thought to be sympathetic to the opposition particularly in the case of violence in the Rift Valley in what came to be variously called 'land clashes', 'ethnic clashes' or 'political clashes'. The clashes mainly displaced opposition party supporters and their land was taken up by supporters of the government of the time.

Molo and Laikipia East and West constituencies where these clashes hit most were strong opposition strongholds and voted for Democratic Party of Kenya then lead by Mwai Kibaki the current president of Kenya. Most of the residents in these areas were Kikuyu and settled after independence in 1963 benefiting from land buying companies and settlement schemes initiated by the independent government of President Kenyatta. The settlement of the Kikuyu in the Rift Valley brought them in closer social, economic and political interactions with the pre-dominant Kalenjin

¹⁵ For an understanding of causes and nature ethnic clashes in Kenya, see GOVERNMENT OF KENYA (2002). *Report of the Judicial Commission appointed to Inquire into Tribal Clashes in Kenya*. Nairobi, Government Printer.

communities like the Kipsigis in areas like Molo and it is these contacts that were manipulated under the guise of protecting KANU political zones to bring tensions overland. KANU politicians thus ignited these clashes with promises to the KANU supporting communities that elections would install 'majimbo-ism' or federalism, an arrangement that would ensure that land is allocated on the basis of ethnic origin. This is the basis of the political target of ethnic groups outside the Rift Valley like the Kisii, Luhya, Luo, but above all, the Kikuyu who were clearer the majority of those living in land that settled people after independence especially in Nakuru and Laikipia districts.

However, forest excision and illegal/irregular allocation of public land also best captures how natural resources were used to meet political objectives during the Moi era. Starting from the 1980s and extending to the 1990s, Kenya witnessed extensive illegal and irregular allocation of forestland. The irregular privatisation was so widespread and demonstrated political greed for land¹⁶. According to the Ndung'u report on illegal and irregular allocation of public land to individuals, most of the allocation was done for political patronage purposes¹⁷. Public land was given out by the president to political supporters as reward or gift in exchange for loyalty. Forestland across the country was excised and allocated to individuals or companies who were supporting the political projects of the ruling party KANU and its leaders without following the allocation procedures. For instance, most of the forestland was allocated without first degazetting the allocations as the law required and this loophole was used by the NARC government to force evictions of people living in forestland in Mau forest. Most of the irregular or illegal allocations occurred immediately after general elections in 1992 and 1997 thus giving credence to the view that they were intended to reward individuals who had supported the ruling class during the electoral campaigns.

The Ndung'u Commission findings on the excision of forestland show how expansive the irregular allocation of land was.

¹⁶ KLOPP, J. (2000), *op. cit.*

¹⁷ GOVERNMENT OF KENYA. (2004). *Report of the Commission of Inquiry into illegal/irregular allocation of public land*. Nairobi, Government Printer, p. 9. This report is popularly known as the Ndung'u report.

There are virtually no environmentally important areas like the country's key water towers that were not affected, from Mt. Kenya, Mt. Elgon and Mau complex, to other major forests like Karura and Ngong Road forests in Nairobi. For example, the report found that in Karura, 155 plots were irregularly allocated and in Ngong, 207 were allocated¹⁸. Most of the beneficiaries were Asian companies and members of the high echelons of the Moi government like J.J. Kamotho who was mentioned in the report. But it is the excision and allocation of Karura Forest that elicited the greatest public outcry perhaps because it is at the heart of Nairobi and is important in modifying the city's climate. Mobilisation against its individualisation was headed by leading civil society groups and the internationally renowned environmentalist, Prof. Wangari Maathai.

The Karura Forest saga brought into sharp focus the politics of corruption in forest management in Kenya. The controversy showed how natural resources management is affected by politics. Equally important is the manner in which the Karura saga elicited civic response with churches, opposition politicians, students, conservation groups and professional bodies like the Architectural Association of Kenya, the Law Society of Kenya, Kenya Human Rights Commission taking up the challenge of resisting and challenging the allocation and pressurising for its revocation. The opposition to the excision and allocation to individuals was a public empowering exercise which gave citizens a sense of ownership on the forest. On the other hand, the allocation of the land to political friends of the ruling regime and the break-up of public resistance exposed the dark side of an unaccountable and corrupt government. At the same time, it gave the civil society strength to mobilise against State corruption.

2.2. Whistle blowing: civil society and wake up call for natural resource reforms

In the early years of Moi's tenure as president, the government worked closely with civil society organisations. In the

¹⁸ GOVERNMENT OF KENYA (2004). *Report of the Commission of Inquiry into illegal/irregular allocation of public land, annexes volume II*. Nairobi, Government Printer.

environment sector for instance, Moi had cordial relations with the Green Belt Movement and collaborated in tree planting activities¹⁹. His tree planting policy of *Kata moja, panda mbili* (cut one, plant two) and construction of gabions “*kuzuia munyonyoko wa udongo*” (to prevent soil erosion) went in tandem with the reafforestation philosophy and practices of the Green Belt Movement. However, in the late 1980s and the entire 1990s Moi’s State was constantly at loggerheads with the civil society²⁰ in general and environmental NGOs in particular with Wangari Maathai spearheading many of the government planned projects such as the construction of a 60-storey building at Nairobi’s Central Park. For the better part of the 1980s, the Moi State sought to control the civil society as he embarked on strengthening his government and party, KANU. At the same time, this was the period when there were increased incidences of land grabbing, forest excision and allocation of forestlands to political friends, as the Karura Forest case has shown. The late 1990s saw increased destruction of forests in Kenya which accelerated the reduction in forest cover which currently stands at 1.7% of Kenya landmass, far short of the internationally recognised standard of 10% forest cover to the total land mass. The destruction also coincided with a period of politicisation of forest management with politically correct individuals being allocated forestland, issues that elicited civic concern and response.

The situation in this period shows State dominance and interference in natural resource management. There was a total absence of active involvement, major stakeholders especially grass root custodians of the local forest to check the excesses of the State. In early 2001 for instance the government singularly declared in a gazette its intention to excise 167,000 hectares of forestland in the country. This action set the stage for an aggressive standoff with various civil society organisations from the national level to

¹⁹ NDEGWA, S.N. (1996). *Two faces of civil society: NGOs and politics in Africa*. Connecticut, Kumarian Press.

²⁰ KANYINGA, K. (1995). ‘The politics of development space in Kenya: the State and voluntary organisations in the delivery of basic services’, in J. SEMBOJA and O. THERKILSEN (eds.), *Service provision under stress in East Africa: the State, NGOs & people’s organisations in Kenya, Tanzania and Uganda*. London, James Currey.

the local level thus offering for the first time opposition to the State excesses in the forest sector. In the forefront were conservationists and human rights groups such as Forest Action Network, The Green Belt Movement, Kenya Human Rights Commission and Mazingira Institute who also sued the government over the same issue. The sustained action of non-State actors has recently seen proposals and discussions suggesting co-management of natural resources that includes effective community participation as well as other stakeholders thus reducing the influence of the State in forest management issues through legislation as the Forest Bill 2004 showed.

In the 1990s and 2000s a number of initiatives were started by the civil societies to oppose government actions and policies that continued to pose a threat to natural resource management. The civil society actions ranged from seeking legal redress to taking protest marches in affected areas such as Karura and Mt. Kenya. In the Mt. Kenya Sagana settlement scheme, local community resistance to excision of part of Hombe forest showed how far at the grassroots the disgust over destruction of natural resources had gone²¹. This resistance was helped a great deal by mobilisation assistance that came from national NGOs such as the Forest Action Network and the Kenya Human Rights Commission among others.

Civic protests against illegal and irregular acquisition of public land saw a lot of unity by civil society organisation. This ensured that there would be a strong confrontation of citizens against a government that had turned a deaf ear to the public outcry on destruction of natural resources. The unity shown by civil society was also demonstrated by the work of Operation Firimbi²², an anti-land grabbing project of the national council of NGOs that spearheaded public complaints on grabbed land across the country.

²¹ KARIUKI, J. (2004). 'Towards co-management of forests: the dynamics of collaborative forest governance around Mount Kenya', *Les Cahiers d'Afrique de l'Est* 26:1–38, gives an analysis of the resistance against excision of the in the western Mt. Kenya forest blocks.

²² *Firimbi* is the Kiswahili word for whistle. Operation Firimbi in the literal sense of the word created attention or blew. The whistle against cases of known public land irregularly taken with the aim of having the land returned to the public.

Through assistance of the member NGOs, they were also able to take cases of grabbed land to court in spite of the fact that chances of expeditious handling of the cases were greatly hampered by the fact the government also had a lot of influence on the courts. But even with these fears, they were able to sustain public awareness on land grabbing.

3. NARC'S DILEMMA AND REFORM CHALLENGES

With the formation of government by National Rainbow Coalition (NARC), many people saw a real chance of undertaking reforms in all areas touching on natural resources following the precise elucidation of these policies in the election campaigns. This was made to appear more real in the inclusion into government of newly elected MPs who were coming from the civil society sector and had been involved in spearheading the clamour for governance reforms in general and some in the natural resource sector in the country during the Moi era. Kibaki, the newly elected president embraced civil society players in the government, having been on the same side with them in the clamour for reforms in the country for ten years from 1992 to 2002. Kenyans thus saw a real chance for the State-civil society collaboration in building the country with the inclusion of civil society actors in government unlike in the past where the State and society were constantly at logger heads.

Some of the leading lights who were coming from the civil society sector include Prof. Wangari Maathai who was in the forefront against forest excision and culture of land grabbing. Other elected to parliament included Kivutha Kibwana²³, whose National Convention Executive Council had spearheaded constitutional reforms campaigned through out the country. But even more significant were the appointments of other civil society players in key governance bodies in the government such as John Githong'o who was appointed Permanent Secretary in charge of governance and ethics in the Office of the President and Maina

²³ Kibutha Kibwana is today (2006) the Minister for Environment and Natural Resources following the reconstitution of the cabinet in December 2005 after the government defeat in the constitutional referendum. Prof. Wangari Maathai was appointed the assistant minister but has declined to be sworn in.

Kiai who was appointed the director of Kenya National Commission on Human Rights (KNCHR). Both of them had been in the past involved in exposing failure in natural resource governance especially land grabbing and forest excision.

In spite of elevation of these reform advocates and the governments own declaration of intentions to reform the natural resource sector, little has been forthcoming by way of reforms. The few reforms started have been very unsatisfactory. Among the natural resource reform promises made by NARC against which its performance could be evaluated, include promises of decentralising management of natural resources, probing and revoking illegal land allocation and initiating a national land policy, and curbing natural resource based corruption especially that which was related to land allocation. Today these promises have been met with a varying degree of success and as has been usual in Kenya, politics and other vested interests have played an upper hand in the quest for reforms.

3.1. Reforms initiatives in the forest sector

The NARC manifesto laid clearly, its policy guidelines to follow in reforming the forest sector. The relevant sections on forest reforms are contained in the sub-sections on environment and land²⁴. Among the key highlights that touched on governance of the forest sector included coming up with a comprehensive land policy, pursuit of a “no land-grabbing” policy and investigating all cases of public land that has been allocated to individuals, proposing a review of hitherto institutional arrangements for *shamba* system²⁵ non-residential cultivation (NRC) in the forest, and designing a policy based on partnerships with communities to enhance sustainable utilization of forests. These policy guidelines, touching on forest governance, also shaped the subsequent action and development in attempts to reform the sector.

²⁴ NARC (2002). *Manifesto of the National Rainbow Coalition*. Nairobi, National Rainbow Coalition.

²⁵ *Shamba* system is a form of agro-forestry practice that allows forest adjoining communities to practice food crop farming while taking care of forestland and the trees growing in a particular section of a forest at a specific period of time.

Although the expectations of many Kenyans on the allocation of ministries was that a person familiar with the problems facing the forest sector would be named as head of the ministry of environment and natural resources to spearhead the forest reforms, they were taken aback with the appointment of Newton Kulundu, a medical doctor to head the ministry. The expectation of many was that Prof. Wangari Maathai, the founder and co-ordinator of the Green Belt Movement would be made the minister, but instead she got the assistant minister portfolio. These were the people to spearhead the implementation of the suggested proposals found in the NARC manifesto.

The first major action taken by the new team was the suspension of forest officers country wide, a drastic measure that affected all officers from assistant forest officer to the chief conservator of forest. This action was widely criticized as it was feared that logging and other illegal activities would heighten as district security teams and newly recruited National Youth Service officers could not measure up to the challenge of the work done by forest officers. However, the role of the security teams was clarified as they were only providing security and not managing the forests²⁶. But there were those in favour of the suspension as it was widely believed especially by forest adjacent communities that forest officers were leading in abetting in forest related corruption such as logging and in allocation of *shamba* system plots²⁷. Three years on, there are no forest reforms achieved by the government other than policy directives on *shamba* system. The forest reforms have been plagued by various challenges with the most apparent being vested political interests and competing forest conservation philosophies.

3.1.1. *Vested political interests*

Politics has influenced natural resource management a lot in Kenya affecting mostly the forest and land sectors which are so much intertwined. Worse has been the fact that petty party politics have affected policy and legislative reforms under the NARC regime

²⁶ Communication from Dominic Walubengo, Kenya Forest Working Group monthly meeting, Minute 768/10/2003, 'Suspension of forest officers', 28/11/2003.

²⁷ KARIUKI, J. (2004), *op. cit.*

as was seen in the case of the debate on the Forest Bill 2004 in parliament. The bill which had proposed far reaching reforms in the Forest Act to ensure better governance of the forest resources consisted of negotiated proposal by various stakeholders in the forest sector and aimed at introducing participatory management practices in Kenya²⁸. However, the discussion of the bill in parliament coincided with the intensification of divisions by the various factions of the ruling NARC (the Liberal Democratic Party, LDP and National Alliance Party of Kenya, NAK) with the LDP gunning up with the opposition Kenya African National Union, KANU to defeat the bill, not because of the merit or demerit of bill, but as a way to humiliate the NAK faction that was supportive of the government. This Bill was presented in parliament for debate in June 2004, and as a result of its defeat it was redrafted and enacted into law in 2005. The defeat of the Bill in parliament indicates the manner in which the management of natural resources is politicized in Kenya.

The other manifestation of political interests was the eviction of squatters from forestland especially in the Mau complex as one of the recommendation of the Ndung'u Report. As has been noted above, the decision by the KANU government to excise large tracks for forestland was seen as a way of rewarding political supporters and unlike in Ngong and Karura forests where a few influential individuals had benefited, in the Mau forest, big people benefited as well as large populations of their supporters who were sold forest plots by their leaders. Most of those settled in the forest came from the Kericho and Bomet districts which were key districts in the heart of the Rift Valley where strongest KANU support came from in the Moi era. Attempts by the NARC government to evict the people who were allocated the land were faced with opposition especially from KANU MPs from the Rift Valley province whose politicians had initially acquired the land.

In the Mau forest eviction, political and environmental issues also came up. The government argued that the eviction intended to revert the forestland to its former protected areas status thus preventing further degradation through encroaching and destruction by the farming communities settled in it and

²⁸ GOVERNMENT OF KENYA (2004), *op. cit.*

consequently protecting the endangered forest complex as a key water catchment area in the country. On the other hand, political consideration came into play. Politicians protested against the evictions fearing that most of them would have been exposed as having benefited in the initial allocation and subsequent sale of the forest to unsuspecting people. Influential people and politicians who had benefited from the forestland were hiding behind their ethnic communities to cover their actions of initially irregularly acquiring and selling it to their people. The government had threatened to expose the high ranking officials in the previous government who had received large amount of money in exchange for public land²⁹. The legality of the eviction was also questioned by some lawyers and politicians who blamed the government of ignoring the 'sanctity of the title deed'³⁰. Lawyers particularly urged on the need to compensate and resettle elsewhere those poor people who had found themselves in the eviction predicament.

In sum, environmental concerns, ethnic and political considerations underscore the dilemma that faces forest reforms in the country today. While there is urgent need to hasten environmental protection all over the country, quite often political and even ethnic interests take an upper hand. For politicians and those who champion ethnic interest, environmental protection plays second fiddle to individual and local interests. The consequence of the Mau forest destruction is becoming a reality and the effects of human activity have caused reduction in water levels in many of the rivers that support people and wildlife. Many of these rivers also feed other important natural assets like national parks such as the Maasai Mara and Lake Nakuru and during the dry seasons, people, their cattle and wildlife are severely affected.

3.1.2. *Competing conservation philosophies*

One other factor that has hindered forest reforms has been competing forest conservation philosophies. The *shamba* system best illustrates this observation with various actors sharing different points of view regarding it. The system has generated controversies

²⁹ *Daily Nation*, 1 August 2005.

³⁰ *Daily Nation*, 17 July 2005.

among scientists, politicians (as it was a point of concern in the NARC manifesto) and local populations in Kenya. The debate on the system touches on how best to use land meant for plantation forestry with opinion divided on whether to allow farming adjoining communities to continue farming in the land while protecting young trees or doing away with them.

A small holder agro-forestry system in forest reserves, the *shamba* system also known as *taungya* was borrowed from Burma and introduced on the idea that farmers could inter-crop tree seedlings with food crops inside the forest reserves. The idea worked by allowing farmers to cultivate newly harvested plots as long as they would replant the forest trees and after some time, about three years of cultivation, the trees would be big enough to prevent further food crop growing and so the farmer would move out of the plot to other allocated forest plot. This was a practice that was very popular with squatter communities living around forests as they were assured of forestland to raise food crops for their families. The *shamba* system has been supported by some conservation NGOs such the Forest Action Network and Kenya Forest Working Group while being opposed by others like the Green Belt Movement of Wangari Maathai.

Those who support the system argue that it is a cost effective method of running plantation forestry as people farming in the forest also take care of the young tree plantations, work that would involve employment of additional people at extra cost to the government. They have thus hailed the system as subsidizing the running costs of plantations forestry by a Forest Department that suffers from serious financial problems and as the best way to increase plantation forest in the country as the costs are shared by the Forest Department and the local farming populations.

The system has also been supported by arguments that it enhances food security by allowing farmers adjoining the forest to grow food crops such as beans, maize, cabbages, and potatoes. In most government forests in Kenya, most of the farming communities and forest squatters have depended on the system to earn their livelihoods³¹. The system has thus been able to support many families with food requirements and also providing enough

³¹ KARIUKI, J. (2004), *op. cit.*

supplies for the local market thus generating enough income to meet other social economic needs of these rural households.

Those in favour of the system have also argued that the *shamba* system has established good relations between local populations besides instilling conservation values to local communities. By allowing local communities to access and use the forestlands, they are able to conserve and better manage land as they know they also derive livelihoods from these forestlands. The supporters of the system have also argued it is a good method of involving local populations in forest management in the absence of such mechanisms in the existing policies and laws. The advocates of the system argue that the problem with the *shamba* system is that it has been misused and mismanaged. The same line of argument is used by the critics of the system to discredit it. Foremost in criticizing the *shamba* system has been the Green Belt Movement who argues that by allowing local populations to farm in the forest, the economic motives override those of conservation thus threatening the forest biodiversity by constantly encroaching into indigenous forest areas in the search for more fertile land within the forest for farming. Most of the squatters and local populations have been in favour of the *shamba* system thus coming into conflict with the Green Belt Movement.

The squatters' problem can be seen as a consequence of the unclear and inconsistent government policy on public forests. By the end the 1980s when the government disallowed resident cultivation in the forest by banning forest villages, many of the people who lived in these villages were rendered homeless and have been living as squatters on the edges of the forest surviving on the *shamba* system. This is the category of people who are thought to offer serious threats to the conservation of the mountain by those criticizing the *shamba* system. In areas like Mt. Kenya forest, the squatters are mainly those who did not benefit from the government resettlement scheme in the early 1990s or belonged to the category of land speculators who have come from other places hoping to benefit from another resettlement plan³². The squatters thus form a sizeable number of the interest groups in the Kenyan

³² KARIUKI, J. (2004), *op. cit.*

forests especially in Mt. Kenya forest which has one of the largest forests squatting communities in the country.

3.2. Wildlife management reforms

In the wildlife sector, not much has been noted in terms of deliberate efforts or actions by the NARC government to initiate reforms. This is despite the sector continuing to be governed by laws that were carried forward from the colonial era. Instead, the main initiative for legislative reforms in the sector came in June 2004, when the Hon. G.G. Kariuki, the Member for Parliament for Laikipia West constituency in the Rift Valley presented a private member's bill to the Kenya Parliament on laws governing the running of wildlife conservation and management. The introduction of the bill by a private member could be seen as a response to a government that was dragging its feet on urgent legislative reforms addressing pertinent issues affected people who had elected on the platform on some of the very reforms the government was elected. The interest in the bill and the debate in parliament was thus closely followed by the people especially in area adjoining conservation areas which are characterised by human-wildlife conflicts.

The bill sought to amend the Wildlife Conservation and Management Act of 1976, set to up to govern conservation and management of the country's wildlife resources. The 1976 Act has failed to conserve Kenya's wildlife resources largely due to the fact that it still has colonial provisions that are not at par with current wildlife resource conservation. G.G. Kariuki's bill had two objectives; to reform the Kenya Wildlife Service (KWS) in order to give better services and come up with better compensation for people who suffered damage and/or loss from wildlife thus attempting to solve human wildlife conflicts which had characterised relations between wildlife and communities living adjacent to conservation areas throughout the country. In the course of working on the bill in parliament, the second objective was confused with an interest to "*introduce game hunting*" as claims by some conservation groups and activists showed thus bringing a whole new controversy that eventually provided the basis upon

which the bill was denied presidential assent³³, even after having been passed overwhelmingly by parliament. This failure to assent to the bill demonstrated the high stakes that natural resources generate in Kenya.

The primary motivation of the bill was to address the problem of wildlife human conflict which is common in many wildlife areas as well address reforms to KWS³⁴. This as an underlying motive is what conservation groups and animal rights lobbies interpreted as a way of re-introducing killing of animals straying in private land, a practice that was banned in 1977. In many conservation areas in Kenya, people suffer deaths, injuries and crops loss from straying animals with little provisions for compensation from the KWS and county councils who are the main managers of wildlife in protected areas. The bill suggested better compensation from the current Ksh 30,000 to Ksh 1,000,000.

Conservation groups, such as the Kenyan Coalition for Wildlife Conservation Management, argued that with the passage of the bill, private property and sport hunting would triumph over wildlife conservation thus exposing Kenya to poaching which was very widespread in the 1970s and which led to concerted campaigns to ban sports hunting. This concern is what had led the conservation groups to lobby against the assenting to the bill by the president. Even with this opposition to the bill, there were also other interests that were pushing for its enactment with a particular interest in game hunting. Safari Club International (SCI), an international hunting club had already started a pilot project on game hunting with support from the World Conservation Union (IUCN) in collaboration with Kenya Wildlife Working Group (KWWG) an umbrella body for major wildlife forums in Kenya³⁵.

³³ This bill was among four other bills that the president refused to assent to. The constitution of Kenya requires that bills passed by parliament be assented to by the president before being promulgated into law (See Constitution of Kenya, section 46 [2]). But if the president is convinced the bills are not in line with public interest, he can refuse to assent and return the bill to parliament with reasons for his refusal for a fresh look by parliament.

³⁴ PARKER, I. (2005). 'No progress in Kenya', *African Indaba* e-newsletter 3 (1).

³⁵ *The East African*, 10 January 2005.

These competing interests could have led the president to refuse to assent to the bill and to return the bill back to parliament for fresh look.

But the GG bill, as it came to be called, was not about competing conservation stakes alone, but rather had also offered a number of alternatives to the current management of KWS as an institution in particular and the wildlife sector in general. Some analysts³⁶ have been of the opinion that the bill was intended to introduce good governance to the KWS management, a shift from the past practice where KWS was under manipulation from the president and politicians, especially ministers appointed to run the ministry of tourism and wildlife. Although KWS has had success in undertaking natural resource conservation reforms since its formation in 1990³⁷, it had been working under very shaky governance foundations. This was apparent right from its beginning when its first director Richard Leakey resigned after interference of his work and criticism from politicians³⁸. He was reinstated after tourist industry representatives, local and international wildlife and conservation groups and donors who were funding it urged President Moi to do so.

Some of the successful changes into KWS have been to encourage and introduce community involvement in conservation activities especially among communities living adjacent to wildlife conservation areas³⁹. However, in terms of its internal governance, it has been weak and amenable to manipulation to serve individual instead of public interest. This weakness has been enabled due to existence of laws that have given the State especially through the president wide ranging powers to influence the running of KWS.

³⁶ PARKER, I. (2005), *op. cit.*

³⁷ Kenya Wildlife Service (KWS) was formed in 1990 after the Wildlife (Conservation and Management) (Amendment) Act no. 16 of 1989 changed the 1976 Wildlife Conservation and Management Act. It created the KWS as a semi autonomous parastatal thus replacing the Wildlife Conservation and Management Department which was then operating under the ministry of tourism and wildlife.

³⁸ *Daily Nation*, 29 January 1994; 29 March 1994.

³⁹ Not all wildlife is managed from protected areas. A fairly good number of them especially in Laikipia district are kept in privately owned ranches and sanctuaries.

This has been the case as with the laws governing the appointment of the minister in charge of wildlife and natural resources, KWS chairman, board of directors and the director, all of whom are appointees of the president⁴⁰. This interference has also been witnessed where directors at KWS are relieved of their jobs at the whim of the president⁴¹. The result has been that there has been a very high turn over of directors at KWS since its formation in 1990 with 11 occupants of the position by 2005, a period of 15 years.

The GG bill sought to reduce the powers of president and the minister to make any appointments to the KWS. First, the bill gave the trustees and Public Service Commission powers to appoint the chairman of the board and the director respectively, powers that were previously held by the president. It also removed the minister's powers to constitute the board of trustees, a responsibility given to wildlife forums across the country⁴². Besides, the bill proposed the appointment to the board of four professionals who included a biologist, a lawyer, a businessman and representative from the tourist industry, all appointed by their respective bodies. In this way, the bill set an atmosphere for an accountable and professional running of the KWS which was based on the enlisting of the various stakeholders in these key

⁴⁰ KAMERI-MBOTE, P. (2002), *op. cit.*; PARKER, I. (2005), *op. cit.*

⁴¹ KAMERI-MBOTE, P. (2002), p. 108, points out that President Moi relieved Dr. David Western of his duties as the Director of KWS in 1998 after he failed to heed requests for allowing mining in protected areas. Western also refused to cede alienate KWS land to powerful individuals in the government.

⁴² The appointment to the KWS board of trustees by the minister was blocked as it was feared that the minister would infiltrate it with his own cronies serving selfish interests of the politicians (read minister). By changing mode of filling the board trusteeship from the appointing authority of the minister to election by the nine wildlife forums in the country, this was thought to make the running of KWS more participative and democratic. The nine wildlife forums located in key wildlife areas include Laikipia, Samburu, Nakuru, Narok, Kajiado, Machakos, Taita-Taveta, Kwale and the Kenya marine forum. They are brought together by the Kenya Wildlife Working Group (KWWG) which together with the Kenya Forest Working Group (KFWG), are housed by the East Africa Wildlife Society.

appointments and away from the authority of the president and the influence of those who fund it⁴³.

3.3. Land reforms

Among the reforms promised by NARC regarding land was inquiring into illegally allocated and grabbed land, restoring recovered land back to the public and undertaking the preparation of a comprehensive land policy. The setting up of the Ndung'u Land Commission was seen as the realisation of these promises. But because of the sensitive and emotive nature of the land question in Kenya which is intricately associated with the social-cultural, economic and political life of Kenyans, the effective realisation of these promises were hard to come by.

One of the earliest actions taken by the government to institute changes in the governance of land was to undertake an evaluation of the illegal and irregular allocation of public land in Kenya since independence. This was done by the establishment of a commission whose terms of reference were to inquire into allocation of public land to individuals, determination of the nature and extent of the illegal or irregular allocation, identification of persons and companies that were unlawfully allocated public land, identification of the public officials involved and recommendations on how to restore the land to the public, criminal prosecution of those involved and how to prevent such allocation in the future. These terms of reference captured the essence of what the Kenyan public was expecting given the experiences they had gone through especially in the 1990s seeing political cohorts steal public land without abandon.

The findings of the Commission equally captured the essence of what hurts natural resources governance in general and land as a social economic and political asset in particular. The Commission established that the land grabbing phenomenon, the epitome of corruption in the country has its roots in the powers

⁴³ KWS is heavily dependent on donor funding (KAMERI-MBOTE, P. *op. cit.*, p. 108). According to its website (<http://www.kws.org/supporters.html>) it is funded by influential donor groups and organisations like the World Conservation Union (IUCN), European Union, Wild Wide Fund (WWF) and bi-lateral donors.

given to the president where he can dish out public land as he wishes. These presidential powers were used by presidents Kenyatta and Moi, but were misused in the 1980s through to the 1990s when most of the illegal and irregular allocations took place⁴⁴. According to the report, about 200,000 allocations have taken place since independence in 1963. The Commission also pointed out that presidential powers delegated to the Commissioner of Lands were misused them especially in allocating public land to individuals. Under the Kenyan law, only the president has powers to allocate unalienated government lands but can delegate these powers to the Commissioner of Lands. It is these delegated powers that made the commissioner amenable to manipulation by politicians especially in the ruling party KANU in allocating themselves public land. This fact is corroborated by the statement by Hon. J.J. Kamotho, one of the people who had been mentioned by the report as having benefited from the illegal allocation of forestland in Karura, where in his defence he said that the President and the Commissioner of Lands were legally empowered to give out land. The Ndung'u Commission thus underlined the fact former presidents (Kenyatta and Moi) and the Commissioner of Lands had abused the powers vested in them by allocating land in utter disregard for the public good. The Commission noted that the Commissioner of Lands has in law actually no powers to allocate land and that successive commissioners have usurped the powers of the president to allocate land.

Other findings of the Ndung'u Commission highlights the corruption that marked the process of illegally acquiring land such as alteration and destruction of records at the Ministry of Lands headquarters, use of forged letters and documents as authority to allocate land in collaboration with professionals in the land sector such as lawyers, surveyors, planners, land registrars, etc in the land sector and above all that State corporations and private companies were used as conduits in illegal land allocations that cost the public millions of shillings. The Commission noted that the main method of grabbing land was taking State corporations' land and allocating it to influential individuals or companies and then selling the same land at exorbitant prices to State corporations thus completing a

⁴⁴ Ndung'u Report, p. 8, *op. cit.*

cycle of land selling through corruption. In well known cases such as the Karura forestland allocation, politically correct individuals got land directly through the Commissioner of Lands and then sold them to companies.

The main recommendation of the Commission on illegally and/or irregularly allocated land was revocation and placing the lands back into the public hands and setting up of tribunals to investigate fake titles. But because of the sensitive nature of land in the country, the implementation of the recommendations were bound to face resistance as the case of evictions of people living in Mau forest, one of the areas that the Commission found evidence of irregular allocation of land and issue of fake title deeds demonstrated. In the Rift Valley leaders led by the former president Moi and Rift Valley MPs expressed concern over the government eviction plans. The former president warned the government to “*tread carefully on matters of land*” while the MPs accused the minister of carrying out the implementation of the recommendation of the Commission by starting with the Mau area as “*callous, tribal and selective*”⁴⁵.

These responses underscore the difficulties of addressing the land question in Kenya. The trouble with the land issues is that they have been so much intertwined with political interests. The tragedy is that, today, all political grouping in the country have so much interest in land matters that it is difficult to right the wrongs committed by grabbing of public land. Expectations were high, for instance, that NARC would have set up a Truth and Justice Commission to address all historical injustices many of which are related to land. Three years later, there seems to be no willingness on the part of the government which is itself made up of people who would find it difficult to come out unscathed through investigation of such a commission. This realisation has left the Kenyan public with no hope of having a just land allocation policy.

⁴⁵ *Daily Nation*, 17 July 2005.

3.4. Business as usual? 2005 referendum and disillusionment over reforms

The 2005 constitutional review referendum⁴⁶ offered Kenyans a window of opportunity to observe how president Kibaki, a decade long crusader for reforms and advocate of reduction of presidential powers especially in allocation of natural resources would behave with the same powers at his disposal. It indicated how different his administration was from the past ones in commitment to natural resources governance. But his action and use of the same tactics the former presidents used to seek votes using inducements through such things as resettlement of people and issue of title deeds proved to be difficult.

One of the things President Kibaki did during the referendum campaign that was seen as using inducement for votes was resettlement of squatters and issuance of title deeds in the Rift Valley. On 15 October 2005, at the height of the referendum campaigns, he gave out 12,000 land titles to members of Ogiek community despite a court order issued against the issuing of the title deeds⁴⁷. This action was a breach of the rule of law and a perpetuation of the methods and tricks that had been used by the former president Moi to woo voters. It demonstrated misuse of presidential powers that were responsible for the many illegal and irregular allocation of public land in the past. It was thus seen as a perpetuation of the practice where former presidents used the power to allocate land for political favours pointing out that Kibaki or any other president for that matter would misuse these powers for their own political gains if they were not checked.

President Kibaki also elicited debate in conservation cycles by taking the decision to downgrade the Amboseli National Park to a game reserve thus enabling the Olkejuado County Council to manage it. The president ordered that a legal notice be issued to

⁴⁶ The referendum on a proposed new constitution for Kenya was carried out on 21 November 2005. Some of the key proposals in the draft law that was eventually rejected were radical land reforms. Though natural resources issues were not as hotly contested and argued about in the earlier discussion stage of the draft, they emerged as serious political issues in the referendum campaign especially in the Rift Valley and at the Coast areas with some of the most serious land distribution and allocation concerns.

⁴⁷ *Daily Nation*, 16 October 2005.

have the park returned to the community as trust land⁴⁸. The government's argument in taking that action was that by changing the park's status to a reserve and placing it under the olkejuado county council, the Maasai would have a chance to take part in the management of wildlife as one of their key resource thus benefiting from it. However, this was contested by conservation groups who argued that the local population would not be able to manage the wildlife resources on their own and that putting the park under the local people would increase bush meat trade, overgrazing, and insecurity⁴⁹. The move in the opinion of many conservation groups would increase the consumptive use of wildlife which is currently banned. The groups also went to court to block the decision by the government⁵⁰.

In its previous status as a national park, the park was managed by the Kenya Wildlife Services, but with its changed status as a national reserve⁵¹, it would be similar to that of the other well known and better performing Maasai Mara which is managed by the Narok County Council. The national reserve status enables the local council to collect revenue generated by tourism and sharing it

⁴⁸ *Daily Nation*, 10 November 2005.

⁴⁹ *East African Standard*, 1 November 2005.

⁵⁰ *Daily Nation*, 14 October 2005.

⁵¹ A distinction exists between national park and game or national reserve status. National park status makes a conservation area exclusively wildlife habitats with no human activity at all. On the hand, game reserves and national reserves status allows limited human activities in the park such as collection of fire woods and grazing by adjacent communities. In terms of management, national parks are managed exclusively by the KWS who collect revenues usually for conservation for the park. KWS also usually shares part of the revenue with local communities especially in Maasai areas (Amboseli) by way of supporting social projects like education. In the case of national/game reserve, they are under county councils and are regarded as trust lands held by the council on behalf of the local people. Councils, though they may have their own officers like wardens, they still liaise with KWS especially on matters of conservation. Otherwise, they collect revenues and in the Maasai Mara, Narok county council has contracted SOMAK limited, a tour company to collect revenues on its behalf. 19% of all revenue generated through tourism in Maasai Mara is distributed to the group ranches while the rest is located for other development such as infrastructure. (Source: KARIUKI, J. 'Maasai Mara–Amboseli Jan–Feb 2006 field notes file').

with adjacent communities⁵². The move to degazette Amboseli antagonized conservation groups opposed to the move with the local community who were obviously for the government action.

Despite these divided conservation opinions, the overall question asked by the public was not on the merit or the pros and cons of the government move, but on its timing which came during the referendum campaign. It is worth noting that at this point in time, leading Maasai politicians such as William ole Ntimama had already declared their stand in the referendum, going on the campaign trail for the 'NO' side which was opposed to the enactment of the new constitutions. By downgrading the park from a national park to game reserve thus enabling Olkejuado County Council to manage it and facilitating the ability of the local Maasai people to access the proceeds from the park, Kibaki's move was seen as trying to bribe and influence the Maasai to vote 'YES' for the proposed constitution.

Conclusion

Natural resource governance in Kenya is clouded by vested conservation, economic and socio-political interests. Although there are some genuine players interested in working to ensure that natural resources are used for the development of the Kenyan nation, they are quite often faced with the challenge of political interests at the national and local levels that override them. The scenario is even made worse when politician seek political office so as to enrich themselves and seek political support using natural resources. This situation has led civil society leaders to indulge in elective politics in the belief that they will be able to change the governance style from within government. But experience has shown that this is a daunting task as they play second fiddle to the accustomed politicians. Kibaki for instance has never recognised the contribution of these civil society actors like Wangari Maathai

⁵² KARIUKI, J. (2005), *op. cit.* (p. 47). Some local authorities like that of Nyeri County Council that have national parks within their areas of jurisdiction are fighting for changes in the laws to allow them manage national parks and reserves on behalf of the local people. Such examples are adopted following success of many community based conservation projects such as the CAMPFIRE (Communal Area Management Programme for Indigenous Resources) in Zimbabwe.

and Kibutha Kibwana in shaping policy in their respective fields. In the three times he has reshuffled his cabinet, he has given them assistant ministerial positions which are often confined to answering questions in parliament. Instead he has preferred to further his political interests by appointing his friends and his business and political associates. This has perpetuated the culture of political patronage.

At another level, vested interests have prevented the establishment of institutions that would ensure sustainable management of these resources in the country as they have ensured the retention of colonial institutions that are not receptive to contemporary development changes. The political class has always wanted the situation this way because they are able to use the laws to further their interests with little regards to the larger public good. This is why most of the reform initiatives started by the NARC administration has failed to mature with recommendations from investigations in past injustices further creating disillusionment among the public.

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THE PROMISES OF PARTICIPATORY FOREST MANAGEMENT IN FOREST CONSERVATION AND POVERTY ALLEVIATION: THE CASE OF TANZANIA

by Jens Friis Lund and Øystein Juul Nielsen

Introduction

Recognising the increasing pressure on the forest resource from agricultural expansion, livestock grazing, fire, woodfuel extraction, and human settlements, the government of Tanzania has, in pursuit of the overall objectives of arresting forest degradation, furthering rural development and alleviating poverty, embarked on a process of devolving forest resources' management rights and responsibilities to local communities under the heading Participatory Forest Management (PFM)¹.

Generally speaking, PFM denotes the involvement of local communities in forest management². From a theoretical point of view, PFM may be seen as an alternative solution to the "tragedy of the commons", as described by Hardin³. Hardin suggested state involvement to solve problems associated with poorly defined property rights. In developing countries, however, state management has generally been ineffective in arresting degradation of forest resources, which has led a number of scholars to suggest that management be left to local communities⁴. In 1992, the Rio Declaration and Agenda 21 called for participatory natural resource management strategies as means for increasing efficiency and equity

¹ MINISTRY OF NATURAL RESOURCES AND TOURISM (1998). *National Forest Policy*. Dar es Salaam, Government Printer.

² DAVIES, J. and RICHARDS, M. (1999). *The Use of Economics to Assess Stakeholder Incentives in Participatory Forest Management: A Review*. European Union Tropical Forestry Paper 5. London, Overseas Development Institute.

³ HARDIN, G. (1968). 'The Tragedy of the Commons', *Science* 162: 1243-1248.

⁴ OSTROM, E. (1999). *Self-governance and forest resources*. Occasional Paper No. 20. Bogor, Centre for International Forestry Research.

in natural resource management and use. Thus it has been increasingly recognised that, rather than focusing on conservation alone, natural resource management should be able to accommodate priorities in relation to both conservation and poverty alleviation. Following this shift in paradigm, governments, donors and international NGOs have shown increasing commitment to natural resource management strategies involving local communities⁵. Accordingly, PFM has received broad and increasing support and has been adopted in a large number of developing countries, and with notable success among other places in Nepal and India⁶. In its essence, PFM is decentralisation of forest management to local communities. Thus, the concept of PFM implies the promotion of participation in public decision making by moving the decision making process closer to people where it is assumed to be more transparent, flexible, and responsive. Participation is believed to help improve equitable management of forest resources because people are enabled to articulate their own interests and affect policy processes accordingly. Increased participation is associated with efficiency among other reasons, because people are more likely to respect decisions when they have had a stake in their formulation⁷.

There are potential drawbacks of PFM. Even perfectly representative and downward accountable local authorities may over-exploit forest resources and ignore minority interests⁸. Conversely, local authorities may have difficulties withstanding demands for increased access to resource utilisation from their local constituencies leading to over-exploitation and may be inclined to

⁵ RIBOT, J.C. (2002). *Democratic Decentralization of Natural Resources. Institutionalizing Popular Participation*. Washington D.C., World Resources Institute.

⁶ HOBLEY, M. (1996). *Participatory forestry: The process of change in India and Nepal*. Rural Development Forestry Study Guide 3. Rural Development Forestry Network. London, Overseas Development Institute.

⁷ CHAMBERS, R. (1994). 'Paradigm shifts and the practice of participatory research and development', in N. NELSON and S. WRIGHT (eds.) *Power and participatory development. Theory and practice*. London, Intermediate Technology Publications.

⁸ WUNDER, S. (2001). 'Poverty Alleviation and Tropical Forests—What Scope for Synergies?' *World Development* 29: 1817–1833.

exploit rather than conserve forest resources on their own account if alternative development opportunities are not presented⁹. Further, PFM may risk achieving little but shifting nodes of informal flows of resources and money from higher to lower levels of government¹⁰. In addition, PFM is concerned with defining exclusive rights to, and thus restricting access to, forest resources. The introduction of PFM implies that rights to forest resources become either activity based, i.e. based upon membership of a user group or residence based, i.e. based upon residence within a local community. In this process, there is a risk of exclusion of people who are poorly represented in local public bodies, such as ethnic minorities, immigrants, and groups with a migratory livelihood, e.g. pastoralists. The critiques of PFM are thus concerned with the concept of exclusion that is fundamental to PFM. Concerns about the capacity of local management bodies to manage PFM according to its overall objectives have been raised.

The Tanzanian forest resource is large and varied. Although *miombo* woodland comprises approximately 90% of the estimated 32 million hectares of forest area, the country has montane rainforests and mangroves that draw international attention for their biodiversity. With regard to official status, forests in Tanzania are divided into unreserved and reserved forests¹¹. The former are forests on village or general land, not formally gazetted as forest reserves, comprising approximately 19 million hectares or 57% of the total forest area. The more than 600 reserved forests cover about 12.5 million hectares, of which approximately 90% are National Forest Reserves and the remaining Local Authority Forest

⁹ NATHAN, I., GAUSSET, Q., KOCH-ANDERSEN, S. and LUND, J.F. (in preparation). 'On the Promises of Devolution – A Case Study of Village Council as Manager of Common Lands in Majawange, a Village in Tanzania'. *Journal of Transdisciplinary Environmental Studies*.

¹⁰ BLAIR, H. (2000). 'Participation and accountability at the periphery: Democratic local governance in six countries', *World Development* 28: 21–39. FRANCIS, P. and JAMES, R. (2003). 'Balancing rural poverty reduction and citizen participation: The contradictions of Uganda's decentralization program', *World Development* 31: 325–337.

¹¹ UNITED REPUBLIC OF TANZANIA (2002). *The New Forest Act: No. 7 of 7th June 2002*. Dar es Salaam, Government Printer.

Reserves¹². The majority of the 12.5 million hectares reserved forests are production forests the rest being protected areas, e.g. catchments forests and mangroves.

In Tanzania, PFM has tried to address the issue of poor incentives for local communities to protect forests and trees. Under the previous Forest Ordinance of 1957 local communities had no rights to adjacent forest resources or trees on farmland and central government could issue harvesting licenses without consulting or informing the affected communities. Poor incentives for local communities to protect the resources undoubtedly played a role in the degradation of Tanzanian forests and woodlands. During the early 1990s, PFM was initiated in areas of unreserved land with village communities gaining jurisdiction over forest resources through declaration of village land forest reserves¹³. These few catalytic cases sparked a large number of donor and NGO supported projects in various parts of the country, supported by the governments of the Netherlands, Finland, Norway, Denmark, and Sweden. In this process, a large number village land forest reserves have been established and several thousands of private forest reserves (*ngitiri*) have been declared¹⁴. In reserved forests, PFM has been promoted through the establishment of joint management agreements dividing the rights and responsibilities of forest management between government authorities and local communities. Alongside the process on the ground, a massive body of progressive policies and legislation has been passed in support of the process. This encompasses new land and forest policies as well as acts, all enacted from 1995 to 2003. Currently, the total area under PFM is estimated at 2 million hectares, and, with funding from the governments of Tanzania, Finland, Norway, and Denmark as well as the World Bank, the Tanzanian Forestry and Beekeeping Division under the Ministry of Natural Resources and Tourism now seeks to utilise the experiences from the project

¹² MINISTRY OF NATURAL RESOURCES AND TOURISM (1998), *op. cit.*

¹³ WILY, L.A. and DEWEES, P.A. (2001). *From users to custodians: Changing relations between people and the state in forest management in Tanzania*. Policy Research Working Paper 2569. Washington, World Bank.

¹⁴ WILY, L.A. and DEWEES, P.A. (2001), *ibid.*

phase to promote a nation-wide implementation of the concept¹⁵. The efforts to implement PFM on a national scale are currently pursued in 50 of Tanzania's approximately 115 districts. Thus, both in terms of supporting legislation and implementation on the ground, the Tanzanian PFM process has come a long way and is acknowledged as being one of the most advanced and progressive on the African continent.

This paper is concerned with the process of scaling up PFM in Tanzania. Drawing from personal experiences¹⁶ and a literature review, we will seek to identify a number of issues that, in our opinion, are critical to the continued success of PFM in Tanzania. Firstly, we start by reviewing the legal provisions, which set the overall limits for PFM designs and are decisive for the security of rights obtained through PFM. Secondly, we look at the distribution of costs and benefits in Tanzanian PFM. This is a critical issue in relation to both the incentives for local communities to engage in PFM and the effects of PFM in relation to poverty. Then, we investigate the experiences in relation to achieving the overall PFM objective of resource sustainability and biodiversity conservation. Finally, we review experiences in relation to the implementation of PFM in Tanzania in order to draw lessons on how to achieve a national implementation. This will lead us to define a number of cross-cutting issues which, in our opinion, are of particular importance to the Tanzanian PFM process, in relation both to the prospects of achieving a national coverage and to the likelihood that PFM will fulfil the stated policy objectives of improvement of rural livelihoods and conservation of forest resources and biodiversity.

1. LEGAL PROVISIONS

In Tanzania, the legal status of forests is linked to the status of the land, on which the forest is situated. The Land Act 1999

¹⁵ BLOMLEY, T. and RAMADHANI, H. (2004). *Going to Scale with Participatory Forest Management: Early Lessons from Tanzania*. Unpublished.

¹⁶ From 2002 onwards, the authors have done research and consultancies on PFM in Tanzania. This encompasses more than 20 months of fieldwork in various regions of the country.

recognises three different land management categories, i.e. village, general, and reserved land¹⁷. These categories are not tenure regimes but rather management regimes, as the state maintains the ownership of land [section 3 (1a)]¹⁸.

In relation to village land, the Local Government (District Authority) Act 1982, in conjunction with the Village Land Act 1999, provides the village council with legal authority to manage village land through the formulation of village by-laws¹⁹. The Village Land Act 1999 gives equal notice to statutory and customary rights [section 18 (1)] and provides for a variety of tenure arrangements, e.g. management of forest resources by a group or an entire village community. Thus, the act provides local communities with a legal framework for management of forest resources on village land, making it an important tool in relation to PFM, as the majority of Tanzanian forests and woodlands are located in unreserved areas—most of which is *de facto* village land, although land tenure is poorly defined in many areas. The village council may, through the Local Government Finances Act of 1982²⁰, retain any income from fines, licenses, and permits obtained in accordance with the village by-laws. In relation to forest products, village councils are required to pay central government royalties, as set out in the Forest Act 2002²¹, for products harvested from unreserved forests leaving them with less opportunities to collect forest taxes (as compared to tax collection in village forest reserves). To sum up, legal provisions in relation to forest management are catered for by the Local Government Act 1982

¹⁷ In Tanzania, all land is public land. Land which is not village or reserved land is defined as general land.

¹⁸ UNITED REPUBLIC OF TANZANIA (1999a). *The Land Act 1999: No. 4 of 15th May 1999*. Dar es Salaam, Government Printer.

¹⁹ UNITED REPUBLIC OF TANZANIA (1982a). *The Local Government (District Authorities) Act, No. 7 of 1982*. Dar es Salaam, Government Printer; UNITED REPUBLIC OF TANZANIA (1999b). *The Village Land Act 1999: No. 5 of 15th May 1999*. Dar es Salaam, Government Printer.

²⁰ UNITED REPUBLIC OF TANZANIA (1982b). *The Local Government Finances Act, No. 9 of 1982*. Dar es Salaam, Government Printer.

²¹ UNITED REPUBLIC OF TANZANIA (2002), *op. cit.*

and the Village Land Act 1999 when by-laws are formulated and approved by both the village assembly and district council.

Up to date only a minority of villages have approved by-laws in relation to forest management owing to delays at the ward and district levels²². A few cases in relation to natural resources management illustrate that village councils' enforcement of by-laws that have not been approved by district councils may be overruled by higher authorities²³, thus inhibiting the incentives for village councils to engage in forest management. Finally, issues concerning boundary settling may become a liability to the PFM process. As set out in the Village Land Act 1999, the village council has full authority to manage village land and may settle village land boundaries in agreement with authorities having jurisdiction over neighbouring lands [section 7 (d)]. Upon agreement of boundaries, village land is formally registered through the issuing of a Certificate of Village Land [section 7 (6)]²⁴. The majority of unreserved forests are *de facto* situated on village land. These areas are, however, plagued by unclear land status as only a minor proportion of the more than 9000 villages have formalised their boundaries²⁵. No formal procedures are specified in the Village Land Act as to how the boundary of a village land area is to be defined²⁶. Thus, the provisions in the act do not automatically ensure the village exclusive jurisdiction over forest resources located in its proximity, as this may depend on the judgement of neighbouring villages, district authorities, or central government²⁷. The issues outlined here are of serious concern as the majority of PFM arrangements on *de facto* village land are on lands with *de jure*

22 Personal observations by Lund, J.F. and Bruce, J.W. (1999). *Legal basis for the management of forest resources as common property*. Community Forestry Note No. 14. Rome. Food and Agriculture Organization of the United Nations.

23 BRUCE, J.W. (1999), *ibid.* NATHAN, I. *et al.* (in prep.), *op. cit.*

24 UNITED REPUBLIC OF TANZANIA (1999b), *op. cit.*

25 BRUCE, J.W. (1999), *op. cit.*

26 WILY, L. and DEWEES, P.A. (2001), *op. cit.*

27 WILY, L. (1997). *Finding the right institutional and legal framework for community-based natural forest management: the Tanzanian case*. CIFOR special publication. Bogor, Centre for International Forestry Research.

unclear tenure. If not attended to, the issue of land tenure could become a major problem for the PFM process.

The Forest Act 2002²⁸ provides for a range of opportunities in relation to PFM on registered village land, allowing local communities to autonomously declare and register forest reserves [section 33 (1)]. The only prerequisite for declaring a forest reserve on village land is the formulation of a management plan that is accepted by the entire community. The Forest Act allows for different forms of management regimes, as the entire village, groups or individuals may be granted management authority by the village council. Thus, the Forest Act is flexible to accommodate a wide range of local forest management situations, and further provides for financing forest management at the village level, as payment of central government royalties are waived for products harvested in reserves declared under the Act. In areas with a good production potential, this may provide local communities with a substantial forest taxation revenue base. However, the Act also contains regulative instruments for the district council and Director of Forestry to assume control of the management if, in their opinion, the local community has failed to manage the forest reserve in accordance with either the management plan or the principles set out in the Forest Act [section 8 (3) and (7)]. Thus, the jurisdiction of local communities over forest resources on registered village land, as provided by the Village Land Act, is actually weakened by the declaration of a reserve, as local communities are obliged to abide to general management principles set forth in the Act. Accordingly, the autonomy of village councils depends to a large degree on the interpretation of the Act by the government body overseeing the villages' management.

On areas other than village land, the Forest Act 2002²⁹, provides for joint management agreements between forest authorities and one or more village councils or community groups [section 16 (1)]. In these agreements, the rights and duties of the involved parties are formulated through a negotiation process [section 16 (2) and (3)]. At the village level, the rights are formalised and legally secured through passing of by-laws. As such, legal

²⁸ UNITED REPUBLIC OF TANZANIA (2002), *op. cit.*

²⁹ *Ibid.*

provisions to devolve management authority to the village level are in place in reserved forest areas. The crucial issue in relation to this is the negotiation process that leads to joint management agreements. Although the Act describes the duties and rights that must be negotiated in detail, neither it nor the rules and regulations appended to the Act provide procedures to assure that the negotiation process includes participatory approaches, information sharing, and fair negotiations. Thus, there is a risk that forest authorities (perhaps unknowingly) capture the process at the expense of local communities. In relation to this, arbitration becomes crucial. Currently, the Forest and Beekeeping Division or District Council is both party and arbitrator to the joint management agreements. This situation calls upon a third party arbitrator or alternatively the establishment of a fund to finance arbitration and legal council for the local communities engaged in joint management. With regard to the actual outcomes of the negotiation processes, the experiences from Tanzania so far show that joint management agreements are usually restrictive with regard to access to forest resources³⁰. In many areas, only minor forest products may be extracted and the tree species demanded by local communities are often protected under the Forest Order of 1995³¹. For unprotected species, the Forest Act 2002 allows the sharing of royalties from government reserves, but the problem is that the current rules and regulations do not spell out any guidelines in this respect. These benefits have often been marginal. In the Rufiji delta, for example, the main issue with regard to joint management

³⁰ NIELSEN, Ø.J., CARLSEN, K., and OLSEN, C.S. (2002). 'The future of local forest management in reserved forest in Tanzania', *Scandinavian forest economics* 39: 158–168; BLOMLEY, T. and RAMADHANI, H. (2004), *op. cit.* KOPPERS, B., MARIKA, S., SHAURI, V. and VIGNON, C. (2004). *Development of guidelines and regulations regarding sharing of costs and forest revenues/benefits in participatory forest management in Tanzania – Review of participatory forest management related legislation in Tanzania*. HTSPE Development, unpublished. TOPP-JØRGENSEN, E., POULSEN, M.K., LUND, J.F. and MASSAO, J.F. (2005). 'Community-based monitoring of natural resource use and forest quality in montane forests and miombo woodlands in Iringa District, Tanzania', *Biodiversity and Conservation* 14: 2653–2677.

³¹ UNITED REPUBLIC OF TANZANIA (1995). *The Forests Order of 1995: Government notice No. 507 on the Forest Ordinance (Cap. 389) under section 30*. Dar es Salaam, Government Printer.

of the delta's vast mangroves has been the sharing of royalties. Local communities felt they benefited too little from collecting royalties, which in turn provided a strong incentive to disregard the rules governing collection and distribution of royalty revenue³².

The Forest Act 2002, provides the option to revoke a government forest reserve for the purpose of declaring village land forest reserves [section 29 (1)]. This option offers an opportunity to the Forest and Beekeeping Division and District Councils to relieve itself of some of its management responsibilities while at the same time providing incentives for local communities to assume some management responsibilities. This could prove a viable option for forest reserves without important values in relation to catchments or biodiversity. However, as yet this option has not been utilised.

2. DISTRIBUTION OF COSTS AND BENEFITS

The process of implementation of PFM is strongly facilitated when local communities perceive added tangible benefits from taking on responsibilities and duties associated with forest management³³. In addition, improving the livelihoods of forest dependent communities is an overall policy objective of PFM³⁴, just as the alleviation of rural poverty is an overall objective of the Government of Tanzania in general³⁵. The distribution of costs and benefits in PFM is thus highly important both to secure a successful implementation and to fulfil the policy objectives.

The distributional effects of PFM should be evaluated both at the community and household levels, as community benefits are important to regional development and poverty alleviation, but might be attained at the expense of the poorest within the

³² KOPPERS, B., *et al.* (2004), *op. cit.*

³³ PETERSEN, L. and SANDHÖVEL, A. (2001). 'Forestry policy reform and the role of incentives in Tanzania', *Forest Policy and Economics* 2: 39–55.

³⁴ BLOMLEY, T. and RAMADHANI, H. (2004), *op. cit.* DANIDA (2002). *Participatory forest management (2003–2007): Tanzania. Environment Support Programme (ESP). Environment, Peace and Stability Facility (MIFRESTA)*. Copenhagen, Danish Ministry of Foreign Affairs.

³⁵ UNITED REPUBLIC OF TANZANIA (2000). *Poverty Reduction Strategy Paper (PRSP)*. Dar es Salaam, Government Printer.

community. In addition, it is important to distinguish between managers and forest users, as for managers costs are imposed in the form of management responsibilities, while for forest users costs appear in the form of regulations, i.e. taxation and use restrictions. In general, the effects of PFM with regard to distributional issues are ambiguous. A few studies have shown that care must be taken in implementation of PFM for it not to adversely affect poor, marginalised, and forest dependent groups within rural communities³⁶. Particularly with regard to Tanzania, the evidence in relation to distributional effects of PFM is very scarce, and there exists a profound need for further research on this crucial issue.

As regards the distributional effect of PFM, it is important to recognise that forest resources provide a number of different services to rural households. Several studies have shown that the share of forest-derived income is highest among the poorest households but that the forest income increases in absolute terms with the total income³⁷. The higher absolute resource use by wealthy households suggests that there is a scope for redistributing wealth within communities through PFM. With regard to poverty alleviation, however, there is scepticism about the role and potential role of forest resources. Frequently commercial forest activities provide a low return to labour – implying that mainly the poorest households that are engaged in these activities³⁸, and an increasing

³⁶ AGRAWAL, A. and GIBSON, C.C. (1999). 'Enchantment and disenchantment: The role of the community in natural resource conservation', *World Development* 27: 629–649. KUMAR, S. (2002). 'Does "participation" in common pool resource management help the poor? A social cost-benefit analysis of joint forest management in Jharkhand, India', *World Development* 30: 763–782. MESHACK, C.K. (2004). 'Transaction costs of Participatory Forest Management: empirical evidence from Tanzania', *The Arc Journal* 16: 6–9.

³⁷ CAVENDISH, W. (2000), *op. cit.* CAMPBELL, B.M., JEFFREY, S., KOZANAYI, W., LUCKERT, M., MUTAMBA, M. and ZINDI, C. (2002). *Household Livelihoods in Semi-Arid Regions. Options and Constraints*. Jakarta, Center for International Forestry Research. NARAIN, U., GUPTA, S., and VAN'T VELD, K. (2005). *Poverty and Environment: Exploring the Relationship between Household incomes, Private Assets, and Natural Assets*. Discussion Paper 05–18. Washington D.C., Resources for the Future.

³⁸ ANGELSEN, A. and WUNDER, S. (2003), *op. cit.* FISHER, M. (2004). 'Household welfare and forest dependence in Southern Malawi', *Environment and Development Economics* 9: 135–154.

body of literature is beginning to appreciate the role of forest resources in providing safety nets, income shock mitigation, and gap filling functions in times of hardship³⁹. In addition, Fisher and Shively⁴⁰ find evidence that households experiencing a positive income shock, in the form of an agricultural starter package, are less dependent on forest products than households not receiving the starter package, indicating that households experiencing increasing cash incomes from alternative sources tend to move away from low-income activities such as forestry. Thus, the role of forests, as suggested by this literature, is not to lift people out of poverty but rather mediate the effects of poverty and sustain the livelihood security of the poorest through provision of insurance against income shocks and as an income source in slack seasons. Thus, rather than contribute to poverty alleviation PFM can assist in maintaining and enhancing these functions of forest resources. Following this, PFM should cater for forest conservation, while preserving access to forest resources for the poorest households and redistributing wealth through taxation of forest utilisation. Furthermore, an important implication is that, in areas where resource dependency is high and rural poverty alleviation is of prime concern, PFM should be accompanied by other measures to assist poverty alleviation.

A significant distinguishing factor of PFM implemented in Tanzanian montane forests and *miombo* woodlands, respectively, is the very limited possibilities for providing immediate tangible benefits to forest users in montane forests. Since forest uses are restricted, no income is raised from forest management, which impedes the incentives for both managers and users to sustain the regime. Different options for providing incentives to local users

³⁹ ANGELSEN, A. and WUNDER, S. (2003), *op. cit.*; PATTANAYAK, S.K. and SILLS, E.O. (2001). 'Do tropical forests provide natural insurance? The microeconomics of non-timber forest product collection in the Brazilian Amazon', *Land Economics* 77: 595–612. MCSWEENEY, K. (2005). 'Natural insurance, forest access, and compounded misfortune: forest resources in smallholder coping strategies before and after Hurricane Mitch, Northeastern Honduras', *World Development* 33: 1453–1471.

⁴⁰ FISHER, M. and SHIVELY, G. (2005). 'Can Income Programs Reduce Tropical Forest Pressure? Income Shocks and Forest Use in Malawi', *World Development* 33: 1115–1128.

and managers have been forwarded, such as controlled timber and wildlife harvesting, water taxes, and tourism. With regard to timber harvesting and water taxes, there currently does not seem to be political willingness, although these options have been forwarded in the debate. Allowing controlled logging would also have adverse consequences in those montane forest reserves with unique biodiversity values. With regard to hunting, a recent case study from the Udzungwa Mountains showed that revenue from hunting licenses in that area cannot cover costs for compensating village forest managers at the sustainable harvest levels⁴¹. Thus, it appears that only in montane forest with potentials for ecotourism or other non-extractive income-generating activities may communities obtain tangible benefits from implementing PFM⁴². Unfortunately, such potentials are hardly present in more than a few of the montane forests in Tanzania. In the Numbe Valley Forest Reserve of Makete District, the perceived lack of benefits in joint forest management led to a situation in which members of the local communities were cooperating against district authorities when performing illegal timber harvesting in the forest reserve⁴³. In Iringa District, the support by the implementing forest administration, including support to alternative income generating activities, has so far been enough to sustain the local momentum in the villages joint managing the West Kilombero and New Dabaga/Ulongambi Central Government Forest Reserves⁴⁴, but there are indications that the support by the villagers rests on expectations of increased access to timber resources in the future⁴⁵. In the Usambara Mountains the NGO Tanzanian Forest Conservation Group has sought to provide alternative income sources for villagers implementing joint management, through establishment of butterfly farms. The support to such alternative income generating opportunities has so far been confined to donor-led initiatives in

41 NIELSEN, M.R. (2006). 'Importance, Cause, and Effect of Bushmeat Hunting in the Udzungwa Mountains, Tanzania: Implications for Community Based Wildlife Management', *Biological Conservation* 128: 509–516.

42 TOPP-JØRGENSEN, E. *et al.* (2005), *op. cit.*

43 NIELSEN, Ø.J. *et al.* (2002), *op. cit.*

44 TOPP-JØRGENSEN, E. *et al.* (2005), *op. cit.*

45 KOPPERS, B. *et al.* (2004), *op. cit.*

project areas. This indicates that a large task lies ahead to ensure that such support becomes institutionalised in the PFM programme. Furthermore, unless the support is tied to the conservation of the forest resource, it may have little effect upon the incentives for local communities to support PFM.

In *miombo* woodlands the potential for assuring added benefits is much larger—at least for managers. In Iringa District, 15 villages implementing PFM in non-depleted *miombo* woodlands⁴⁶ collected an average of US\$ 618 during their first year of forest taxation⁴⁷. Although large variations exist between villages in the amounts collected, the results indicate that immediate tangible benefits may be assured for local forest managers in such areas. In the 15 villages, forest users pay taxes on commercial forest uses, but experience shows that it is mostly traders in sawn timber, charcoal and firewood coming from Iringa town who contribute⁴⁸. Thus, forest users only bear a share of the cost, while the community receives a net income. With regard to efficiency of taxation, the annual amount of registered revenue collection by the 15 villages in total equals the past ten years' average annual district forest revenue collection from the entire district comprising 183 villages. This indication of gains in the efficiency of forest taxation can, of course, be explained by other factors than the devolution of management rights and responsibilities to community level, such as donor supported extension services. Nonetheless, the result provides lessons that significant improvements in forest taxation can be obtained through PFM. Other examples of the large potential in some woodland and coastal forest areas are the Suledo (Kiketo District) and Angai (Liwale District) village forest reserves, respectively. Preliminary assessments from these forests estimate the potential annual revenue from timber licenses under sustainable

⁴⁶ By non-depleted woodlands is meant dry woodlands in which valuable timber species in large dimensions have been removed, while charcoal, firewood, and sawn timber of less valuable species is still available and extracted by small-scale village entrepreneurs.

⁴⁷ LUND, J.F. (2004). *Participatory Forest Management and Poverty – Distributional Effects of Participatory Forest Management in Tanzanian Miombo Woodlands*. Forestry Discussion Paper 45. Copenhagen, Royal Veterinary and Agricultural University.

⁴⁸ LUND, J.F. (2004), *ibid.*

harvest levels to US\$ 140,000 (Suledo) and US\$ 775,000 (Angai), which is to be shared between nine and thirteen villages, respectively⁴⁹.

With regard to individual forest users, the issue of tangible benefits is less clear-cut. In many cases, the devolution of management rights and responsibilities associated with PFM leads to higher transaction costs and decreasing *de facto* access to forest resources, as locally vested management succeeds open access government regimes⁵⁰. It is also the case with PFM in Tanzania, where local communities have responded by leaving intended management strategies to return to old practices⁵¹. Therefore, securing immediate tangible benefits that outweigh or at least counteract the costs associated with implementation of PFM should be a major issue of concern in the implementation process. Such benefits may be difficult to assure, as PFM is inherently concerned with restricting utilisation of forest resources. And unless the majority of resource users is from outside the implementing community, the implementation will inevitably involve restrictions on the community. It appears, however, that users' attitude towards the more strict management and taxation is highly dependent upon the perception of the integrity of the managers. The users' perception of the cost-benefit ratio seems to depend on whether they perceive managers to be transparent and fair, and whether the funds raised from forest taxation are used to finance village development. This result is in accordance with findings on general taxation issues in Tanzania⁵² and elsewhere⁵³. Empirical evidence from the general decentralisation process in

⁴⁹ BLOMLEY, T. and RAMADHANI, H.. (2004), *op. cit.*

⁵⁰ HOBLEY, M. (1996), *op. cit.*

⁵¹ WHITE, P. and MUSTALAHTI, I. (2005). *Finnish Forestry Assistance: Success story or failure? – Analysis of case studies from Sub-Saharan Africa and their possible impacts on Poverty Reduction*. Silva Carelica 48. Finland, University of Joensuu.

⁵² FJELDSTAD, O.-H. and SEMBOJA, J. (2000). 'Dilemmas of Fiscal Decentralisation—A Study of Local Government Taxation in Tanzania', *Forum for Development Studies* 27: 7–41; FJELDSTAD, O.-H. and SEMBOJA, J. (2001). 'Why People Pay Taxes: The Case of the Development Levy in Tanzania', *World Development* 29: 2059–2074.

⁵³ FRANCIS, P. and JAMES, R. (2003), *op. cit.*

Tanzania suggests that securing a healthy *quid pro quo* relationship between the state (represented by the village council) and citizen is a crucial issue, also in PFM⁵⁴. In terms of distribution of forest taxation revenue, a study from the 15 villages in Iringa District showed that forest taxation revenue was distributed mainly amongst the village leaders, leaving only a mere 4% of registered expenditures to finance public goods, such as school desks, repairing the village tractor, training in agricultural practices, a water pipe connecting two villages, and transport of food aid⁵⁵. The implications of this are a deterioration of the cost-benefit ratio of PFM from the perspective of the forest users. Unfortunately, similar symptoms of poor governance have been documented in a number of studies on local government in Tanzania⁵⁶, suggesting that transparency and accountability with regard to forest taxation must be strongly emphasised in the implementation of PFM.

In areas of degraded woodlands the cost-benefit ratio for villagers may appear even less attractive. Those areas are often characterised by land scarcity and diminishing soil fertility, and the remaining woodland areas have high opportunity values as agricultural land⁵⁷. Especially for the poor, as these have the least access to substitution of clearing of fertile land, such as cattle manure and fertilizer. In addition, villagers (especially large landowners, being rich and influential) in such areas have often substituted towards private tree planting, indicating that their interests in establishing and sustaining a management regime for the woodland areas might be limited⁵⁸. If such a regime is initiated,

⁵⁴ BROCKINGTON, D. (2004). *Local government, taxation and natural resource management. Corruption, accountability and democratic performance in Tanzania*. Unpublished; FJELDSTAD, O.-H. and SEMBOJA, J. (2001), *op. cit.*

⁵⁵ LUND, J.F. (2004), *op. cit.*

⁵⁶ BROCKINGTON, D. (2004), *op. cit.* ELLIS, F. and MDOE, N. (2003). 'Livelihoods and rural poverty reduction in Tanzania', *World Development* 31: 1367-1384; FJELDSTAD, O.-H. and SEMBOJA, J. (2000), *op. cit.* FJELDSTAD, O.-H. and SEMBOJA, J. (2001), *op. cit.*

⁵⁷ NATHAN, I., *et al.* (in prep.), *op. cit.*

⁵⁸ GAUSSET, Q., ANDERSEN, S.K., HANSEN, H., LUND, J.F., MUGASHA, A.G., NATHAN, I., NGAGA, Y. NIELSEN, S.T. and THEILADE, I. (in preparation). 'Opportunities and Constraints for Private

the associated regulations in subsistence use of forest products may adversely affect the poor, as they usually have the least access to trees on private land⁵⁹ and rely upon forest resources for a larger share of their income⁶⁰. On the other hand the salient nature of forest resources for the poor and its insurance value might actually strengthen the argument in favour of PFM ensuring the continued existence of forest resources. The argument is valid, but we argue that in the majority of cases the opportunity value of degraded woodlands outweighs the present and future benefits that could be obtained from allowing it to regenerate. This is especially true, considering that other development activities bring about substitutes to forest products, such as: dispensaries substituting medicinal plants (many of which thrive on farmland and fallow anyway, and the ones that do not are collected mainly by herbalists who often walk afar to find the trees and plants⁶¹); private tree plantings substituting firewood and construction materials from woodlands; improved agricultural techniques and storage facilities removing the need for wild foods during the dry season (many of which also thrive on farmland and fallow) and so on. At least, the continued access to non-extractive and low-impact uses should be secured in the rules and regulations to the Forest Act 2002, to assure that poor people are not unnecessarily put to disadvantage by PFM.

and Communal Tree Management in Majawanga (Gairo, Tanzania)', *The Transdisciplinary Journal of Environmental Studies*.

- ⁵⁹ AALBAEK, A. (2001). *Access to planting material as a major constraint to farmer tree planting: A national investigation of farmer tree planting and nursery production in Tanzania*. Ph.D.-dissertation. Copenhagen, The Royal Veterinary and Agricultural University. Unpublished; NDUWAMUNGU, J., KAJEMBE, G.C., MALIMBWI, R.E., MBILINYI, B.P. and LUOGA, E.J. (2003). 'Household Tree Planting in Kilosa District, Tanzania.', *Tanzanian Journal of Forestry and Nature Conservation* 75: 99–108. NIELSEN, Ø.J., et al. (2002), *op. cit.*
- ⁶⁰ CAVENDISH, W. (2000). 'Empirical regularities in the poverty-environment relationship of African rural households: Evidence from Zimbabwe', *World Development* 28: 1979–2003.
- ⁶¹ ERRBOE, G.B. (2005). *The Importance of Medicinal Plants for Rural Communities in Iringa District Tanzania*. BSc-thesis. Copenhagen. Danish Centre for Forest, Landscape and Planning, The Royal Veterinary and Agricultural University. Unpublished.

In relation to the strengthening of forest taxation associated with PFM, the distributional effects depend on revenue spending and the income status of households which suffer from additional restrictions or taxation as a consequence of PFM. Currently in Iringa District, mainly commercial forest uses are restricted or taxed under PFM, implying that firewood sellers, charcoal traders, tobacco producers, brick burners and pit sawyers experience increased costs of production when traders do not pay the extra cost of taxes. Some of these activities, e.g. tobacco production, are also performed by more wealthy households in village communities, implying that taxation of forest products may lead towards a more equitable distribution of benefits within the community. There are, however, also studies showing that firewood and charcoal producers belong to the poor segment of rural communities⁶², indicating that caution must be taken in implementation of the taxation. In addition, the enforcement by village councils of license-tax systems creates entry-costs to the production of especially charcoal and sawn timber. In Iringa district, this has led to an increased dependency of the poorest villagers upon customers with enough financial capital to pay licenses for timber and charcoal beforehand. Thus, the relatively wealthy customers may sell the products with a good profit, while the previously independent poorer villagers now work as lowly paid casual labourers⁶³.

Another change associated with PFM is restrictions on levels of forest use. In Iringa District, village councils managing *miombo* woodlands on village land set annual quotas for the production of charcoal. Mainly local farmers produce charcoal as a supplement to income from farming and other small businesses, especially in years with agricultural harvest failure due to drought when farmers turn to the forest for income smoothing. In such years, the demand for licenses to produce charcoal rises steeply implying that the quota and entry-costs induced by licenses hurt the poor in particular, as they generally depend most on the forests and have the least

⁶² FISHER, M. (2004), *op. cit.*

⁶³ Personal observations by J.F. Lund.

alternative income sources⁶⁴. In addition, the issuing of licenses in such years is crucial to the people depending upon charcoal, inducing high demands upon the integrity and responsiveness of local managers to distribute them in a fair manner. Furthermore, the village councils have adopted a policy of closing the forest every year from 1st of December until 1st of May to induce people to concentrate on farming. The problem is, however, that this season is also the “hungry” season where households are in need of cash to buy food and farming implements.

3. RESOURCE SUSTAINABILITY, BIODIVERSITY CONSERVATION AND IMPLEMENTATION

Attainment of resource sustainability is the prime objective of PFM in Tanzania⁶⁵. Unfortunately, the concept of sustainability is neither defined nor put into goals and indicators in the context of Tanzanian PFM⁶⁶. This is unfortunate, since resource sustainability may be interpreted quite differently by the different stakeholders involved in PFM. A prominent example of potential conflicts is the demarcation and registration of village land forest reserves. If District Councils perceive forest resource sustainability as keeping the forest area and condition unchanged, the future needs of villagers for land for agriculture and other purposes may be compromised. The question here is; what is sustainable and for whom? Obviously, there are numerous other potential conflicts between the PFM objectives of resource sustainability and poverty alleviation. Accordingly, there seems to be a dire need to clarify the concept of resource sustainability in relation to the Tanzanian process.

The currently available evidence that PFM results in conservation of forest resources and biodiversity is scarce and

⁶⁴ FISHER, M. (2004). *ibid.*; START, D. and JOHNSON, C. (2004). *Livelihood Options? The Political Economy of Access, Opportunity and Diversification*. Working Paper 223. London, Overseas Development Institute; MCSWEENEY, K. (2005), *op. cit.* Personal observations by J.F. Lund.

⁶⁵ MINISTRY OF NATURAL RESOURCES AND TOURISM (1998), *op. cit.*

⁶⁶ HANSEN, N.J. and ØSTERGAARD, J. (2004), *op. cit.*

anecdotal, and primarily consists of rural communities' claims that the forests are regenerating and the wildlife returning⁶⁷. Thus there exists a profound need for PFM impact studies in relation to this overall objective of the concept. Some general features of the Tanzanian PFM concept may create problems in relation to the issue of resource sustainability—by affecting the opportunities for local communities to assess and monitor their forest resources. The choice of the village as an administrative unit for the implementation of PFM often implies that rather large forest areas are managed by large, socio-economically heterogeneous, and geographically dispersed communities. Institutional theories on collective management predict problems in such large settings⁶⁸. In Iringa District, village land forest reserves covering more than 6000 hectares and supporting the livelihoods of a large number of households, dispersed in several sub-villages, resulted in problems of monitoring both user behaviour and the state of the resource⁶⁹. With regard to monitoring the resource, the capabilities of local forest managers to obtain accurate knowledge of the state and development of large forest areas is constrained by poor transport and communication technologies⁷⁰. Problems of users not abiding to the management rules further aggravate difficulties of monitoring the state and development of the resource, as illegal extraction activities are often scattered and/or take place in remote parts of the forest⁷¹. This may undermine the entire PFM concept, as achievement of resource sustainability may fail. Fortunately, the

67 BLOMLEY, T. and RAMADHANI, H. (2004), *op. cit.*

68 OSTROM, E. (1998). 'A behavioral approach to the rational choice theory of collective action', *American Political Science Review* 92: 1–22; PRETTY, J. and WARD, H. (2001). 'Social capital and the environment', *World Development* 29: 209–227.

69 BOIESEN, J.H. and LUND, J.F. (2003). *Participatory Forest Management in Tanzania – A Socio-Economic Study on the Implementation of PFM in Iringa District*. MSc-thesis. Copenhagen, Department of Economics and Natural Resources. The Royal Veterinary and Agricultural University, Unpublished. TOPP-JØRGENSEN, E. *et al.* (2005), *op. cit.*

70 CARTER, J. (ed.) (1996). *Recent Approaches to Participatory Forest Resource Assessment*. Rural Development Forestry Study Guide 2. London, Overseas Development Institute.

71 BOIESEN, J.H. and LUND, J.F. (2003), *op. cit.*

Forest and Village Land Acts offer opportunities for a wide variety of PFM designs, whereby groups and individuals within the village community may assume management responsibilities and rights over a certain tract of forest. When implementing PFM, forest authorities should facilitate that these opportunities are utilised, as to ensure that user interests coincide with management boundaries and that managers are not required to monitor and manage too large forest areas.

In addition to the aforementioned concerns, neighbouring villages experience interdependence in relation to natural resources. Flows of resources do not respect administrative boundaries, and villagers may thus find it difficult to restrict the access of outsiders to their forest resource if they depend upon neighbouring villages for access to cattle grazing or watering. In such situations the process of PFM may require substantial facilitation and coordination. In relation to this, the implementing District Councils have an important role to play in planning the conservation and development of forest resources on the supra-village level. Instead of implementing PFM in all villages, District Councils should plan for current and future desired land uses for all villages so as to assure; (i) a suitable distribution of grazing areas and woodlands, and (ii) that pastoralists and other migratory groups are not deprived of their livelihood.

With regard to the technical aspects of resource sustainability—resource assessment and monitoring—the management of woodland resources should not require techniques that are too sophisticated for village councils. Rather than investment intensive and time consuming inventories, villages in charge of the management of not too large forest areas can do with very simple techniques for assessment and monitoring. In a study covering four PFM project areas, the findings in relation to assessment and monitoring were that simple techniques suffice, and that focus should rather be on knowledge dissemination and sharing as to assure a broad knowledge base about forest management at the village level⁷². In relation to large forest tracts of

⁷² HANSEN, N.J. and ØSTERGAARD, J. (2004). *Participatory Forest Resource Assessment in Tanzania*. MSc-thesis. Copenhagen, Danish Centre for Forest, Landscape and Planning. The Royal Veterinary and Agricultural University. Unpublished.

several thousands hectares local communities might benefit from assistance in assessment and monitoring of the resource, as ideas and hunches based on casual assessments easily can undermine the forest resource base leading to problems of unforeseen future resource scarcities. The same goes for areas with high value timber resources, such as the aforementioned Suledo and Angai village forest reserves, as mistakes in such areas may be very costly in terms of lost revenue.

Another issue in relation to forest resources is the monitoring of status and development of biodiversity in montane forests with high value in relation to biodiversity. In Iringa district, joint management agreements were made for two Central Government Forest Reserves, part of the Udzungwa Mountains forest range which is acknowledged as unique on a global scale for its biodiversity. A locally based monitoring system was developed and implemented through donor support in eight villages as part of the joint management agreement, but the ability of this system to evaluate changes in biodiversity status of the forests has been questioned⁷³. Thus, in relation to such fragile ecosystems with internationally recognised value, PFM might not be the best management solution, and it should at least be accompanied by continued outside support and monitoring.

A major constraint to the process of implementation is the scarcity of financial resources within the public sector. Even the Iringa District Forest Office, having received project support from Danida between 1999 and 2003 is seriously strained in relation to financial resources, and cannot regularly send extension officers to all of the approximately 50 villages in which PFM is currently implemented. The resulting lack of follow-up presents several problems. Firstly, in areas with few incentives in the form of forest taxation revenues, village councils loose momentum in management. Secondly, solving issues concerning poor governance often requires the support from higher authorities, as villagers face difficulties in addressing such issues on their own. Thus, villages often turn to the Ward Executive Officer, the Ward Development Committee, the Divisional Forest Officer or other authorities to oversee and assist in the process of solving internal conflicts.

⁷³ TOPP-JØRGENSEN, E. *et al.* (2005), *op. cit.*

Thirdly, in villages where the forest management leadership has been displaced, the newly elected managers face difficulties in managing, as the information is not passed on. These new managers need support, but fail to receive it, as the district forest office is either unaware of the changes or unable to send assistance. Finally, the lack of oversight allows problems of poor governance to continue unchecked for much longer than if adequate resources had been available, destroying the villagers' trust and faith in the PFM idea. The problems presented here are well known and hardly confined to issues concerning forest management. The very same constraints are faced in relation to agriculture, health, and local government in general. Thus, there is substantial scope for alleviating the problems through better coordination and cooperation between the different levels and departments within the local government system. In relation to governance, the ward development committees have played a significant role in Iringa District overseeing and supporting the development of good governance in relation to the forest management.

The current donor support to the Forest and Beekeeping Division is supposed to result in a higher degree of financial sustainability through increased levels of revenue collection. Thus donors expect (i) a redistribution of power over and renewed control with an important natural resource and (ii) a vast improvement in royalty collection from use of this resource⁷⁴. Seemingly, real progress has already been made by the Forest and Beekeeping Division in this area. It is estimated that the revenue generated by the Forest and Beekeeping Division increased from US\$ 500,000 in the year 1990/1991 to US\$ 3.8 million in 2000/2001⁷⁵. Still, forest resource utilisation and taxation in Tanzania is characterised by entrenched systems of informality⁷⁶. In a study on the formation of the Tanzanian Revenue Authority, Odd-Helge Fjeldstad demonstrates the viability and resilience to

⁷⁴ WORLD BANK (2001). *Tanzania Forest Conservation and Management Project, Project Information Document*. Report No. PID8931. Washington D.C., World Bank.

⁷⁵ DANIDA (2002), *op. cit.*

⁷⁶ BROCKINGTON, D. (2004), *op. cit.*; FJELDSTAD, O.-H. and SEMBOJA, J. (2001), *op. cit.* TOPP-JØRGENSEN, E., *et al.* (2005), *op. cit.*

reforms of such informality⁷⁷. Probably, the deterioration, in real terms, of salaries within the public service, pushed through by the structural adjustment programmes in the 1980s, has added to the situation⁷⁸. Concurrently the Tanzanian forest administration faces problems of inefficiency, informal structures, and rent-seeking behaviour within the organisation, caused by complex administrative procedures, lacking economic resources, and poor incentive structures⁷⁹. A recent example is a scandal concerning the exportation of logs with illegally issued permits, which received massive press coverage in national media in June–July 2004, and resulted in the dismissal of two high ranked officers within the Forest and Beekeeping Division. Evidently, such issues create a challenge for PFM, as the financial and democratic decentralisation associated with the concept induces changes, which may come across vested interests within the forest administration. The resulting problems have been observed in PFM processes⁸⁰ and in decentralisation processes in general⁸¹ in many parts of the world.

The question is whether donors dare confront these issues openly or whether they fear losing the support of the Forest and Beekeeping Division should they do so. On the side of the donors, it would be a defeat to lose the support of the Forest and Beekeeping Division, while at least some within the division have obvious reasons not to face the problem. Thus, the division and donors to a certain degree share an interest in not addressing the

77 FJELDSTAD, O.-H. (2003). 'Fighting Fiscal Corruption: Lessons from the Tanzanian Revenue Authority', *Public Administration and Development* 23: 165–175.

78 MAX, J.A.O. (1991). *The Development of Local Government in Tanzania*. Dar es Salaam, Educational Publishers and Distributors Ltd.

79 IDDI, S. and SJÖHOLM, H. (1997). *Managing natural forests at the village level: Reaching the ultimate development goal*. Paper presented at the XI World Forestry Congress, Antalya, October 13–22; PETERSEN, L. and SANDHÖVEL, A. (2001), *op. cit.*; YLHÄISI, J. (2003). 'Forest privatisation and the role of community in forests and nature protection in Tanzania', *Environmental Science and Policy* 6: 279–290.

80 HOBLEY, M. (1996), *op. cit.*

81 BLAIR, H. (2000), *op. cit.*; ELLIS, F. and BAHIGWA, G. (2003). 'Livelihoods and rural poverty reduction in Uganda', *World Development* 31: 997–1013; ELLIS, F. and MDOE, N. (2003), *op. cit.*

issues. In a paper focusing on the contradictions between policy and practice in aid programmes, David Mosse⁸² refers to this paradox as “*common narratives that serve a diversity of contradictory interests*”. Unfortunately, the common interest in not addressing this issue could become a liability in relation to fulfilment of the assumption stated in program descriptions that the Forest and Beekeeping Division will achieve a high degree of financial sustainability through increased efficiency in revenue collection and retention⁸³. The question is, however, whether PFM in Tanzania will be judged by achievement of objectives. As David Mosse⁸⁴ argues further on, the success of a program is often more likely to be affected by the way in which its objectives and approach are perceived, than by the actual results achieved. Thus, as long as PFM is in favour with the donor community, the program is likely to be deemed a success, which might also be the underlying cause of the silent consensus between donors and the Forest and Beekeeping Division. The question then is, however, who will eventually loose in this game of keeping up with appearances. One could fear that local communities implementing PFM will be left in a vacuum when the interests of the donor community sway toward new state of the art objectives and approaches. The problems described here are fundamental to the aid business⁸⁵ and thus to some degree out of the hands of the people concerned with Tanzanian PFM, but eventually crucial to that process.

4. EMERGING AND CROSS-CUTTING ISSUES

The review presented above underlines that PFM in Tanzania faces a number of challenges. Drawing from the review, we dwell on a number of cross-cutting issues inflicting upon the implementation, distribution of costs and benefits, and resource assessment and monitoring.

⁸² MOSSE, D. (2004). ‘Is Good Policy Unimplementable? Reflections on the Ethnography of Aid Policy and Practice’, *Development and Change* 35: 639–671.

⁸³ DANIDA (2002), *op. cit.*; WORLD BANK (2001), *op. cit.*

⁸⁴ MOSSE, D. (2004), *op. cit.*

⁸⁵ BOYCE, J. (2002). ‘Unpacking Aid’, *Development and Change* 33: 239–246.

4.1. The unresolved land issue

A major issue underlying the challenges described in this paper is land. The changes in forest tenure induced by PFM have vast consequences for land tenure. First, the PFM process cannot lead to security of forest tenure for local communities unless the surveying and registration of village lands is completed. Second, the general land use planning of the village must be taken into consideration during implementation, as the demarcation of forest reserves precludes alternative land uses. Third, the large geographical distances between sub-villages, a common feature of Tanzanian villages, can lead to situations in which forest dependent and geographically isolated sub-villages are deprived of their access to forest resources due to inconsiderate demarcation of protection zones. There are examples from the Danida supported project areas in Lindi and Iringa Districts of such sub-villages situated close to the forest and geographically isolated from the 'main' village being deprived of access both to utilise forest resources near to their homes and to fertile land for agricultural expansion⁸⁶ and of conflicts concerning geographically isolated and forest dependent sub-villages seeking independence from the mother village becoming more outspoken, as the forest resource suddenly becomes an important asset for the village⁸⁷.

The question is whether PFM can and should proceed in areas where land tenure and village boundaries are poorly defined and/or disputed. We argue that it should not. Plenty of examples from both within⁸⁸ and outside of Tanzania⁸⁹ illustrate that land tenure is crucial to PFM. Accordingly, the Tanzanian PFM process must await and perhaps support the efforts to implement participatory land use planning in villages and districts. Such a process has been underway since the late 1990s, and has been introduced to a number of districts in which interdisciplinary teams

⁸⁶ Personal observations by J.F. Lund.

⁸⁷ Personal observations by Lund, J.F., Maganga, F.P. and Odgaard, R. (2002). *Planning and implementing community based forest management in Kihwa and Lindi Districts: Report on the results of socio-economic studies of selected pilot areas in Lindi Region*. Ornis Consult A/S. Unpublished. Cited from: DANIDA (2002), *ibid*.

⁸⁸ GAUSSET, Q., *et al.* (in prep.), *op. cit.*

⁸⁹ BRUCE, J.W. (1999), *op. cit.*

comprising district officers from the offices of land, agriculture and livestock, water, natural resources, community development, and social services and economic planning have been formed and trained in participatory land use planning. In Iringa District, one of these interdisciplinary teams is actively involved in the implementation of PFM. One cannot, however, expect that all districts will achieve this level of coordination and cooperation without outside assistance. The Iringa District Council has for many years received massive support from various donor funded projects. We do, however, argue that these teams should be actively engaged in the PFM process to ensure sustainable land use planning, and that land titles are issued and boundary issues solved in the early stages of implementation of PFM. In relation to this, the current trend towards providing private land titles in rural areas for farmers to use as collateral must be noted, as this involves a re-surveying and re-registration of village lands⁹⁰. Thus, there are many interests and ongoing initiatives in relation to land use planning and land titling at the village level, which again provides ample scope for synergies through cooperation.

4.2. The village as management locus

In spite of the high degree of flexibility with regard to PFM models in the Forest Act 2002, the village plays the central role as an administrative unit for the implementation of PFM⁹¹. Established as a legal entity in the early 1970s, the village has existed as an administrative unit for around thirty years, implying that PFM is vested in an established and recognised administrative system. Accordingly, the choice seems justified on grounds of efficiency and the urgent need for simple and replicable implementation procedures. The disadvantages of choosing the village structure are, however, hardly negligible. In the theoretical PFM literature, large, socio-economically heterogeneous, and geographically dispersed communities managing large tracts of forests is a recipe for institutional failure⁹². Empirical experiences

⁹⁰ UNITED REPUBLIC OF TANZANIA (2005). *National Strategy for Growth and Reduction of Poverty*. Vice President's Office.

⁹¹ DANIDA (2002), *op. cit.*; WILY, L. (1997), *op. cit.*

⁹² OSTROM, E. (1999), *op. cit.*

from Nepal and Zimbabwe show that vesting PFM in existing local administrative systems may create problems, as such structures do not necessarily coincide with forest user groups, the preferences of which the management decisions should reflect⁹³. These conditions strongly suggest that dissimilarities in interests between specialised forest user groups and wealth groups need to be carefully considered in PFM—and especially in the Tanzanian model, as their representation in management is not guaranteed under the current implementation strategy.

Another consequence of implementing through the village council is that rights to forest resources become residence based. In combination with the interdependency of villages with regard to natural resources this implies a risk of exclusion of groups that depend on the resources within a village that they do not belong to. Furthermore, the livelihoods of migratory groups, such as pastoralists, are increasingly threatened by the definition of rights to common resources and their needs and priorities should be considered and planned for at the appropriate levels.

4.3. Governance at the local level

Governance issues affect distributional effects of PFM through the village council's enactment, implementation, and enforcement of rules at the local level. A supportive legal framework and extension service is worth little if the management of local leaders is characterised by lack of responsiveness, transparency, and accountability towards the local community. Thus, getting governance right is crucial to attain and sustain the necessary levels of trust and reciprocity at the local level. As described by Elinor Ostrom⁹⁴, collective management of forest resources presupposes all users and managers to trust and

⁹³ CAMPBELL, B., MANDODO, A., NEMARUNDWE, N., SITHOLE, B., DEJONG, W., LUCKERT, M. and MATOSE, F. (2001). 'Challenges to proponents of common property resource systems: Despairing voices from the social forests of Zimbabwe', *World Development* 29 (4): 589–600. HOBLEY, M. (1996), *op. cit.*; LINDSAY, J.M. (1999). 'Creating a legal framework for community-based management: Principles and dilemmas', *Unasylva* 50 (4): 28–34.

⁹⁴ OSTROM, E. (1998), *op. cit.*

reciprocate one another to act according to overall community interests. Maintaining a collective management regime is especially difficult in situations characterised by large gains from defaulting with low risks of getting caught. Such situations prevail where PFM is implemented in large *miombo* woodlands within market distance for woodfuel products, and experiences from the Tanzanian PFM projects indicate the risk of developing a situation of negative reciprocity due to systems of informal payments and rent seeking⁹⁵.

As described above, an issue derived from vesting PFM within the village administrative structure, is that designated forest managers will often be people other than the majority of forest users. There is thus a tendency that the village government positions are dominated by the richest people in the villages, while often, the people depending more upon the forest resources are the poorest. This setting carries an inherent risk of a lack of responsiveness and accountability in management caused by the potential asymmetric distribution of interests arising when users and managers do not share livelihood strategies. Iringa District provides an example of this, as adverse relations between rent-seeking local forest managers and forest users were destroying the build-up of reciprocity and cooperation. In some villages, however, managers had sought to increase social acceptability of management rules by waiving taxation of minor forest products mainly used by poor people and lowering taxation of grazing after negotiating a patrolling agreement with migrating pastoralists⁹⁶. Still, in the current setup, users have little direct influence on management, as they are few compared to the village assembly majority and thus cannot easily assert their rights through democratic means. Thus, forest users have to rely on less formalised channels of influence, i.e. advocacy and exercising social pressure. This, however, may not work, as forest dependent people are often found among the poor and politically marginalised groups in rural communities⁹⁷.

The issue of governance is, however, not confined to the village level. The Government of Tanzania must ensure higher

⁹⁵ TOPP-JØRGENSEN, E. *et al.* (2005), *op. cit.*; WHITE, P and MUSTALAHTI, I. (2004), *op. cit.*

⁹⁶ TOPP-JØRGENSEN, E. *et al.* (2005), *ibid.*

⁹⁷ CAVENDISH, W. (2000), *op. cit.*; FISHER, M. (2004), *op. cit.*

levels of transparency and sound incentive structures at all levels of the Tanzanian public administration. This is necessary, as village leaders often draw their power from higher levels of local government. Thus, as described earlier on, for villagers to be able to assert their rights towards village leaders, they must be able to get assistance from higher levels. Only then will the process of implementing PFM stand a good chance of being successful. Although essential for the progress towards PFM in Tanzania, implementation of such measures demands a high degree of commitment by the Government of Tanzania and donors. Whether such commitment can be attained in the current policy, environment remains an open question.

4.4. Prioritising implementation

Considering the limited resources of the Government of Tanzania, there seems to be a need to identify, at a national scale, the areas in which implementation of PFM is most pressing. The criteria for such identification could be (i) areas in which there is a need to implement PFM to stop forest degradation, (ii) areas in which self-originated systems of PFM are functioning, and (iii) areas where there is no threat to the forests or where implementation of PFM is deemed difficult and resource demanding.

In relation to (i), areas experiencing strong market demand for forest products should be targeted for PFM. Some argue that PFM might not succeed in such areas of Tanzania, as the strong market demand will lead to the destruction of the forest⁹⁸. Even so, PFM should be implemented to allow local communities to reap the benefits from the forest, in the form of forest taxes. The Iringa District example of 15 villages collecting forest taxation revenue indicates that PFM can bring about significant benefits in relation to local public finances. The fact that the annual registered collection by 15 villages corresponded to the level of registered revenue collection from the entire district further indicates that village councils are very capable of managing the demand from traders in firewood, charcoal, and timber. Thus, concerns about the

⁹⁸ BLOMLEY, T. and RAMADHANI, H. (2004), *op. cit.*

capacity of local managers to withstand the strong forces of commercial market actors should not be allowed to stop the implementation of PFM. In relation to (ii) village level management of common lands seems to be widespread in Tanzania, although inhibited by unclear legal statuses and other problems⁹⁹. The presence of such locally originated management systems should be investigated and, if confirmed, utilised in the efforts to prioritise and plan the implementation of PFM. In relation to (iii) we argue that areas in which forests are yet intact and non-threatened should be left out in the early efforts to implement PFM. Although one may argue that it would be beneficial to get PFM started before the market forces start rolling in, we argue such concerns are outweighed by the combination of the risk of losing villager commitment due to a lack of benefits and that implementation in such areas will draw resources and attention from other areas facing environmental degradation.

In relation to the joint management of government reserves, we argue that the manifold problems facing montane forest reserves, as far as providing benefits to the managing communities, securing, monitoring and managing the biodiversity is concerned, should lead to new approaches in these areas. Where local involvement in monitoring and management is deemed beneficial, local communities should be paid for their services in securing nationally and internationally acknowledged values.

4.5. A holistic approach to implementation

The experiences indicate that preferences of local users must be respected when implementing PFM. If, however, PFM is to be widely implemented on a national scale, identification of such local preferences on a case-to-case basis is unrealistic considering the scarce resources of the Tanzanian central and local governments. To achieve a strong local initiative, district and other local government bodies should refrain from detailed regulations regarding forest uses, as the variability of resource-user relationships excludes these authorities from designing generally applicable rules. Instead, focus should be on more general and

⁹⁹ NATHAN, I., *et al.* (in prep), *op. cit.*; BRUCE, J.W. (1999), *op. cit.*

equally important aspects of PFM, ensuring manager and user incentives, democracy, transparency and accountability in the process. This support should preferably be provided through genuine participatory approaches, to facilitate a fair and equitable distribution of benefits, and strengthen the local initiative towards PFM.

As regards governance issues, district forest authorities should focus on transparent and democratic procedures that enable all groups within a local community to influence decisions concerning use rules and the spending of forest revenue. This should, however, proceed in accordance with the general initiatives within the Local Government Reform Programme¹⁰⁰ by the Government of Tanzania, rather than resulting in dual efforts to achieve one objective. And it should be investigated whether the issue of high manager compensations from Iringa District is a problem in other areas. If so, the national efforts in PFM should seek to address this, so as to avoid a (further) deterioration of the *quid pro quo* relationship between village councils and their constituencies.

With regard to the policy objective of poverty alleviation and improvement of rural livelihoods, the evidence suggests that PFM cannot stand alone. In areas where resource dependency is high and opportunities for alternative income generating activities are few, implementation of PFM should be accompanied by efforts to support alternatives. This requires that District Forest Offices and the Forest and Beekeeping Division look beyond the borders of the forest and their own professional fields and engage agricultural extension officers, NGOs, and others working in the sector of rural development.

Conclusion: will PFM deliver its promises?

The findings indicate that in unreserved woodlands, PFM holds the greatest potential for successful implementation. Woodland resources are highly salient to local communities and there seems to be political understanding for high degrees of

¹⁰⁰ UNITED REPUBLIC OF TANZANIA (1998). *Local Government Reform programme, Policy Paper on Local Government Reform*. Ministry of Regional Administration and Local Government. Dar es Salaam, Government Printer.

autonomy, which provides opportunities for local communities to obtain benefits according to their demands and implement management rules that are adapted to local conditions. The uncertainties regarding land and rights to forest resources in the Forest and Village Land Acts constitute a major drawback. As both Acts are relatively new, future administrative practices will reveal whether the autonomy of villages to manage forest resources is challenged by higher authorities. In relation to joint management of montane forest reserves, there are presently very few possibilities for securing incentives given the restrictions on use. The options of revoking reserves or creating production zones within existing reserves provided by the Forest Act 2002 should be utilised to support local initiatives in all areas where biodiversity concerns are not compromised. In relation to this, measures should be taken to assure that the processes of negotiation and arbitration of joint management agreements are strengthened. In areas with unique biodiversity values or large catchments values state management seems to present the best solution, given the limited options for legal tangible benefits to local communities, the issue of biodiversity monitoring, and the ethical problem of asking local communities to take on the costs of preserving nationally and internationally important values.

Whether PFM can deliver its promises remains an open question. In relation to resource sustainability and biodiversity conservation the evidence is very scarce. Although the PFM approach has been implemented with success in other places in the world, there is no guarantee that the concept will work in Tanzania when implemented through the village structure and with large management units. In addition, the concept of resource sustainability needs to be further clarified to avoid confusion about the objectives and alleviate the risk that the process leads to outcomes which are deemed unsustainable by some stakeholders. It is also reasonable to question the potential of PFM in alleviating poverty. There is no doubt that forest resources play an important role in rural livelihood strategies, especially when other income opportunities are lacking or when households are facing serious times of hardship. Although the evidence concerning distributional effects of PFM in Tanzania is very scarce, examples of households being excluded from commercial forest activities because they

cannot afford paying the fees indicate that care must be taken when imposing license-tax systems on forest uses. Frequently, the poorest households engage in forest activities and depend on forest resources in providing safety nets and gap filling functions in times of hardship. These functions of forests are challenged by PFM. In summary, there are many indications that the poorest in rural communities of Tanzania may not be benefiting from the implementation of PFM. The message conveyed by this is not that PFM is a poor policy tool—rural households from all income groups are dependent on the services provided by forests and may benefit from being responsible for their continued existence - but rather that PFM does not automatically improve the livelihoods of the poor. Thus there is a need to consider appropriate implementation measures to guarantee that the needs and preferences of the poorest are heard and considered. Accordingly, PFM should focus on sustaining the forest resources insurance and income smoothing functions, and in areas where forest dependency is high and poverty alleviation mandatory, PFM should be accompanied by other initiatives to provide alternative income-generating opportunities.

The need for such careful and appropriate implementation calls for a high degree of commitment within the implementing Forest and Beekeeping Division and District Councils. And, not least, from the donor community, which will have to provide long-term funding as it seems unrealistically optimistic to expect that a financially independent public forest service will emerge within the next few years and will be able to lift this large task on its own. One can only hope that donors, constantly in the process of renewing themselves and looking towards new objectives and approaches, will display real long-term commitment to this task.

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L'AFRIQUE DE L'EST ET LA QUESTION DU NIL

par Bernard Charlery de la Masselière

L'année 2005 a vu la sortie en salles du film de Hubert Sauper « Le Cauchemar de Darwin ». L'introduction de la perche du Nil dans le lac Victoria, avec toutes ses conséquences, sert d'exemple concret ou de métaphore, selon la lecture que l'on veut en avoir, à ce que le réalisateur considère comme les formes prédatrices de la gestion des ressources dans le cadre du développement mondialisé. On n'entrera pas ici dans la controverse qui s'est manifestée autour de ce film, mais on retiendra le fait qu'elle a tourné en partie autour de l'image de l'Afrique et du développement que le réalisateur véhicule, propose ou impose entre fiction et documentaire : une image politiquement correcte — celle attendue par l'opinion occidentale — qui expliquerait le succès du film et les récompenses reçues. Il est intéressant de noter que ce débat autour de la représentation de l'Afrique — qui avait aussi agité les passions lors de la sortie du livre de Stephen Smith « *Négrologies* » — vient en préalable à tout argumentaire — et d'ailleurs lui résiste ou le parasite — comme si s'affrontaient d'abord et de façon irréductible à propos de l'Afrique non plus comme autrefois de grandes idéologies explicites mais des systèmes de représentation plus ou moins masqués¹. La question est de savoir pourquoi ce débat surgit *hic et nunc* en ce début de 21^{ème} siècle et sous cette forme.

Prenons un exemple apparemment anodin : le journal *Le Monde* des 16 et 17 avril 2006 relate l'aventure qualifiée de « moderne » de quatre explorateurs (dont un devait périr au cours de l'expédition) qui ont remonté le cours du Nil à la recherche de « la » source, qu'ils auraient finalement localisée au sud du Rwanda dans la forêt de Nyungwe. Bien qu'une telle expédition relève de la réactivation d'un très vieux rêve et que, en permettant au Rwanda,

¹ Réduits dans leurs versions populaires à une vision pessimiste ou optimiste des évolutions du continent.

comme c'est le cas depuis longtemps pour le Burundi voisin, d'avoir officieusement — c'est-à-dire scientifiquement sur la base du calcul des débits — « sa » source du Nil², elle se réfère à un vieux schéma d'appropriation sinon du fleuve, du moins de son image, elle porterait « le coup de grâce à l'axiome très « *british et très impérialiste faisant du lac Victoria l'origine du Nil* », selon Bernard Nantet, journaliste et archéologue, cité dans l'article. La remarque pourrait être folklorique, quarante et cinquante ans après les indépendances des pays riverains, et cent cinquante ans après la controverse qui a animé la Royal Geographical Society of Great Britain à travers le conflit ouvert entre Speke et Burton et l'acharnement linguistique et géographique avec lequel ce dernier dans « *The Lake Regions of Central Africa* » tente en vain de réfuter la « découverte » du premier, à savoir que le lac Victoria, ou plutôt Nyanza selon le nom local, est aux chutes d'Owen et de Rippon la source du Nil blanc. Et pourtant, une grande partie de la littérature qui, depuis ou deux ou trois ans, rend compte des débats actuels sur la gestion des eaux du Nil, identifie le lac comme « la source majeure du fleuve ». On verra un peu plus loin que concrètement les choses sont un peu plus compliquées, mais ce qui nous intéresse pour le moment ce sont les conséquences d'une telle affirmation : l'hypothèse axiomatique coloniale et impérialiste serait-elle toujours vivante et ferait-elle toujours « système » ? Au profit de qui ou de quoi ?

Le Nil, fleuve mythique, et les monts de la Lune d'Afrique de l'Est se prêtent bien à ce jeu de représentations, en particulier dans le débat déjà ancien sur le partage des eaux, qui fait l'objet de cet article. On pourrait dire que l'image du Nil coule de source ou de l'idée que l'on a de la source. Des auteurs comme Frédéric Lasserre ou Alain Gascon³, qui ont travaillé sur la question à travers les relations entre l'Égypte et l'Éthiopie, parlent de « fantasmes » ou de « mythe hydrologique », pour dire qu'on reste bien dans un certain

² Cependant on y connaissait déjà la source la plus éloignée de l'embouchure, sur la rivière Rukarara. GOUROU, P. (1970). *L'Afrique*. Paris, Hachette (p. 416).

³ GASCON, A. (2003). *Le partage des eaux du Nil et les politiques éthiopiennes. Le Nil est un don de l'Éthiopie. Un mythe hydrologique*. LASSERRE, F. (2003). *Les enjeux actuels du partage du Nil entre craintes égyptiennes et rancœur éthiopienne*. Festival International de Géographie, Saint-Dié, 2003 (<http://fig-st-die.education.fr>).

ordre du discours. Même si depuis les années soixante plusieurs tentatives de coopération ont ouvert le dialogue entre les pays riverains, la tension entre l'Égypte, principal bénéficiaire des vieux accords de l'époque coloniale, et les pays situés en amont s'est aggravée depuis deux ou trois ans et les dernières discussions à Entebbe ou à Nairobi dans le cadre de la *Nile Basin Initiative* (NBI) n'ont apporté aucune avancée significative. On n'abordera la question ici que du point de vue des pays d'Afrique de l'Est, c'est-à-dire de ceux qui partagent le sous-ensemble du bassin du Nil qu'est le bassin du lac Victoria, qui fait lui aussi l'objet d'une « initiative » (*Lake Victoria Basin Initiative*, LVBI). Les inquiétudes récentes sur le niveau et la qualité des eaux du lac déplacent le problème de la question purement juridique vers celle de la gestion des ressources. La position des différents protagonistes révèle une indétermination entre au moins deux systèmes de représentations : une représentation coloniale et néocoloniale développementaliste, archaïque au sens où les conditions de sa mise en œuvre n'existent plus, et une autre plus nationale et « environnementaliste », mais qui a du mal à se situer vis-à-vis de la première et à définir ses propres références théoriques dans la mesure où elle reste implicitement tributaire du « développement » dans l'énoncé des stratégies.

1. LA QUESTION DU NIL COULE-T-ELLE DE SOURCES ?

« *L'utilisation des eaux du Nil dépend jusqu'à présent de deux traités controversés signés par la Grande Bretagne avant la décolonisation, et qui offre à l'Égypte la quasi-totalité des ressources du Nil aux dépens d'autres États en particulier l'Éthiopie* » (G. Kahn [www.rfi.fr]). Ainsi commence une des nombreuses couvertures du conflit actuel et des discussions internationales en cours sur la gestion du bassin du Nil. Dire que les traités de références donnent à l'Égypte « la quasi-totalité des ressources » du fleuve, même si on réduit les ressources aux volumes d'eau, traduit bien la prégnance de cet axiome colonial dont il est fait référence plus haut. D'un côté, les ressources du fleuve sont multiples et la plupart sont hors de contrôle de l'Égypte ; d'un autre la complexité des bilans hydriques des sous bassins du Nil — en particulier ceux qui sont à l'amont du fleuve — et leur dépendance vis-à-vis de conditions naturelles qui

varient d'une année à l'autre, interdisent toute projection univoque des intérêts égyptiens sur la gestion des eaux.

1.1. La complexité du bassin

Le discours commun porte invariablement sur le singulier du fleuve : *le Nil*, *le bassin du Nil*, etc. Cette vision globale du bassin date du 19^{ème} siècle et se réfère essentiellement au rôle qu'il joue en Egypte : « l'Egypte, un don du Nil ». C'est évidemment une vision plus politique que scientifique sur laquelle on reviendra. Pour comprendre le régime des eaux, il faut par contre se référer à la complexité du bassin dont déjà la longueur (6671 km, que les calculs de nos aventuriers plus haut auraient porté à 6718, ce qui a peu d'importance) et la superficie (près de 3 millions de km²) suffisent à donner la mesure. Deux grands bastions montagneux dont la moyenne annuelle des précipitations est comprise selon les lieux entre 1000 et 2000 mm servent de réservoirs aux deux grandes branches du fleuve : la branche équatoriale ou Nil blanc et la branche éthiopienne ou Nil Bleu — auquel il faut adjoindre la Sobat au sud et l'Atbara au nord — qui se rencontrent à hauteur de Karthoum avant d'affronter la longue traversée du désert. Nil blanc et Nil bleu ont des régimes annuels de débit très différents : régulier pour le premier, irrégulier pour le second. On n'entrera pas dans la complexité technique des relations, à différents niveaux du cours du Nil, entre les apports en eau (des pluies, des affluents, des bassins en amont...), les pertes (évaporation) et les décharges, relations qui ont fait l'objet de modèles mathématiques complexes. Il paraît toutefois nécessaire, pour comprendre le niveau des enjeux dans les discussions actuelles sur le partage des eaux, d'avoir quelques chiffres de référence (ceux qui sont couramment utilisés et reproduits⁴) et d'établir quelques relations simples, sachant que la question qui nous intéresse ici plus particulièrement est la contribution du bassin du lac Victoria et du Nil blanc à l'approvisionnement du lac d'Assouan (puisqu'il paraît entendu que

⁴ La manipulation des chiffres est assez délicate dans la mesure où, malgré une certaine concordance, les références restent floues (mesures concrètes, estimations théoriques ?...) et les lieux exacts de la mesure parfois peu précis (surtout quand on évoque la décharge d'un « bassin »).

par la construction du barrage, l'Égypte a « déplacé » la « source » du Nil au cœur de son territoire).

Le barrage d'Assouan a une capacité de stockage de 90 km³ — qui se réduit au fil des ans en fonction de l'engorgement du barrage par les limons arrachés en amont — et une déperdition propre liée à l'évaporation à la surface des eaux de 10 km³/an. On admet que l'apport moyen au barrage est de 84 km³ par an⁵, avec cependant des variations enregistrées entre 34 et 120 km³; 72 km³ viendraient d'Éthiopie (Nil bleu + Atbara) et 23 km³ seulement du Sud. Encore faut-il ajouter que, étant donné la déperdition liée à la traversée du désert, « à l'état naturel, on ne mesurerait que 63 km³ à l'apex du delta »⁶. Si on remonte vers l'amont, et en raisonnant à l'échelle du pays, ici le Soudan, l'Éthiopie (Nil Bleu, Atbara et Sobat) y déverserait 90 km³ et le Nil Albert et l'Aswa, qui forment le Nil blanc, entre 22 et 27 km³ selon les auteurs, avec une déperdition de plus de la moitié de cet apport dans les vastes marais du Bahr-el-Ghazal (ou marais du Sudd). Il faut cependant souligner que la contribution du Nil blanc, aussi maigre soit-elle, joue un rôle important entre les mois de janvier et juin (jusqu'à 80 % des apports à Karthoum), étant donné le régime annuel des pluies sur les hauts plateaux d'Éthiopie et d'Erythrée et la grande irrégularité de celui du fleuve, qui en découle. Des études ont par ailleurs montré qu'entre 1962 et 1985 les écoulements du Nil Blanc ont augmenté de 32% soit 8 km³ au dessus de la moyenne de 1912 à 1961, alors que dans le même temps ceux du Nil Bleu diminuait de 9 km³, la relation entre les deux phénomènes restant aléatoire⁷. En Ouganda enfin, le débit de référence aux Owen Falls est de 38 km³, supposé maintenir l'équilibre du niveau des eaux du Lac Victoria⁸.

⁵ C'était déjà le chiffre de Gourou (*op. cit.*), utilisé encore dans les études les plus récentes. Il s'agit en fait de simples valeurs de référence car « le régime 'naturel' du fleuve ne constitue qu'une référence théorique depuis la construction du premier barrage d'Assouan en 1902 » BETHMONT, J. (2003) 'Le Nil, l'Égypte et les Autres', *VertigO – La revue en sciences de l'environnement sur le WEB* 4 (3). En 1984, par exemple, l'apport naturel enregistré au lac Nasser n'a été que de 59 km³.

⁶ BETHMONT, J. (2003), *op. cit.*

⁷ www.fao.org/docrep/W5183F.

⁸ La référence est l'« *Agreed Curve* » qui relève des accords de 1949, de 1953 et plus récemment de 1991 entre l'Ouganda et l'Égypte. Elle sert de référence à

On notera que, en novembre 2005, avec la sécheresse qui sévissait dans la région, les lâchers d'eau journaliers n'auraient pas dû dépasser une valeur équivalente à 16,8 km³ par an. À la sortie du lac Kyoga en aval, le débit n'est plus que de 21 km³ et le lac Albert déverse moins d'eau qu'il n'en reçoit (24 contre 30 km³).

Il faut ici tirer de ces chiffres quelques enseignements simples : d'une part la complexité et l'extrême diversité des composantes du bassin ; d'autre part, les irrégularités annuelles (en particulier dans le régime du Nil bleu en aval de Khartoum) et les variations interannuelles qui n'ont pas les mêmes occurrences dans les différents bassins de collecte des eaux ; on retiendra enfin le rôle essentiel joué par les déperditions dues en grande partie à l'évaporation : on aura ainsi noté que celle du lac Nasser correspond à l'apport théorique du Nil blanc (10 à 12 km³) ; on sait par ailleurs que le canal de Junglei au Sud Soudan devait détourner le cours du Nil des marais du Sudd où il perd par évaporation la moitié de son débit, mais son caractère éminemment géopolitique, qui visait un meilleur contrôle des populations par assèchement des marais, et les conséquences écologiques incertaines ont fait capoter le projet. Tout cela va à l'encontre d'une perception trop unitaire du bassin et requiert au minimum l'articulation de deux échelles d'analyse et de gestion de la situation, régionale et subcontinentale.

1.2. L'artificialisation du cours du Nil et la dépendance de l'Égypte

Depuis la construction du premier barrage d'Assouan en 1902, de multiples ouvrages de stockage ont été réalisés avec, notamment, le réservoir de Sennar et les barrages de Roseires et de Khashm el Girba au Soudan et le barrage de Nalubaale (Ouganda) qui a entraîné le relèvement de un mètre du seuil à la sortie du lac Victoria, et d'autres sont en projet concernant le lac Tana (Éthiopie) et la Quatrième cataracte (Soudan). Comme l'écrit Jacques Bethemont (p. 2) « *Dans ce contexte, l'ouvrage d'Assouan constitue le dernier maillon d'une chaîne commandée par les États riverains*

une politique de lâchage des eaux qui garantisse un équilibre entre le niveau du lac et le flux du Nil en aval, équivalent à ce qu'il fût avant la construction du barrage. Les normes concernant les lâchers d'eau sont reconsidérées tous les dix ans.

d'amont. Cette situation de dépendance est à l'origine d'un 'complexe d'aval' souvent évoqué par les Egyptiens »⁹.

La tension actuelle sur la gestion transfrontalière des eaux du Nil relève de façon sinon exclusive du moins première de la politique de développement menée par l'Égypte sans aucune considération des intérêts des pays de l'amont. Frédéric Lasserre situe l'avènement d'une vision globale du bassin du Nil selon la perspective égyptienne à la modernisation du pays menée par Mohamed Ali au début du 19^e siècle selon la logique de l'agriculture exportatrice (ici, le coton) qui forgera le paradigme de la conquête coloniale de l'Afrique par les pays occidentaux¹⁰. Le développement d'un système de barrages, de digues et de canaux a permis la mise en valeur systématique des ressources en eau du Nil et le passage de une à deux voire trois récoltes par an, d'où la nécessité de contrôler de façon plus étroite l'amont du fleuve. Cette vision géopolitique, celle d'un « empire du Nil » incluant le Soudan, sera logiquement reprise par les Britanniques quand ils s'empareront des deux pays à la fin du siècle : le traité anglo-égyptien de 1929, qui fait l'objet du débat actuel, et qui partageait les eaux du fleuve entre l'Égypte (48 km³) et le Soudan (4 km³) a matérialisé cette vision. Lasserre¹¹ parle d'une « nouvelle représentation » du positionnement géopolitique de l'Égypte quand Nasser dans les années 50, s'éloignant de l'idée d'un État africain centré sur l'unité de la vallée du Nil, redéfinit l'Égypte comme un État arabe orienté sur le Proche Orient. Le Haut barrage d'Assouan (1963), devait permettre à l'Égypte de ne plus être l'otage des pays situés à l'amont du Nil, et d'engager, jusqu'à ce jour, une politique de développement autonome en considérant que la source du Nil a ainsi été déplacée à l'entrée du territoire égyptien. La construction du Haut barrage autorise en effet la régulation complète de la crue du Nil et un stockage interannuel suffisant pour approvisionner la part de l'Égypte de 55 km³ suivant l'accord égypto soudanien de 1959 — qui fait aussi l'objet du conflit actuel — avec un niveau de fiabilité très élevé (96 %) ¹²: l'Égypte a pu rester ainsi indemne des sécheresses au

⁹ BETHMONT, J. (2003), *op. cit.*

¹⁰ LASSERRE, F. (2003), *op. cit.*

¹¹ *Ibid.*

¹² www.fao.org/docrep/W5183F.

Sahel grâce à ce stockage, même si par ailleurs le niveau exceptionnellement haut du lac Victoria dans la deuxième moitié du 20^{ème} siècle (1960–2000) a aidé à maintenir des débits plus élevés du Nil blanc.

Le Haut barrage d'Assouan a permis d'étendre les superficies cultivées et, par la réforme agraire, de satisfaire les aspirations foncières de la paysannerie et d'améliorer la productivité de la terre, ce qui devait garantir l'autonomie alimentaire du pays. L'ouvrage a créé ses propres dérives, environnementales d'une part (blocage des limons, salinisation des eaux, érosion des sols...) mais aussi idéologiques dans la mesure où il détermine un processus de développement extensif, relativement classique, fondé sur la conquête à grands frais de nouvelles terres et la surexploitation mal contrôlée des ressources naturelles (ici l'eau). Aujourd'hui l'Égypte fait face au défi de sa croissance démographique : avec 77,5 millions d'habitants en 2005 et, malgré une baisse du taux de croissance, des prévisions à 100 millions d'habitants en 2025, soit dix fois la population de 1900, les objectifs de la réforme agraire deviennent inaccessibles. On estime les besoins en eau à environ 188 km³ en 2025 dont 95 km³ pour le secteur agricole contre 56 km³ en 1975¹³. Les grands projets de mise en valeur des terres, selon toujours la même logique de développement, viennent renforcer la pression sur la ressource: le canal Bahr-el-Bagar (4 km³), qui passe sous le canal de Suez, devrait desservir 168 000 hectares à l'est et desservir de futurs centres urbains dans la province du Sināï ; à l'ouest du Nil, dans la Nouvelle Vallée, il est prévu d'irriguer entre 210 000 et 1 250 000 hectares (5 km³). L'Égypte poursuit donc une politique d'expansion au détriment d'une rationalisation de l'usage agricole de l'eau dont le rendement reste médiocre : d'après la FAO (cité par Bethemont) pour un volume prélevé de l'ordre de 48 km³ en 1996, 28 km³ environ ont été effectivement utilisés ; la perte d'eau correspond à deux fois l'apport théorique du Nil blanc au barrage d'Assouan.

L'Égypte accroît donc sa dépendance vis-à-vis des eaux du Nil apparemment sans schéma alternatif, d'où la pression exercée sur les pays de l'amont que les médias appellent déjà la « guerre du

¹³ BETHEMONT, J. (2003), *op. cit.*, p. 4.

Nil », guerre verbale qui pourrait selon le propos souvent rapporté de Boutros Boutros-Ghali conduire à un conflit militaire.

Le problème du Nil est donc bien d'abord celui de l'Égypte et de son mode d'exploitation de la ressource, et on voit que l'approvisionnement en amont, aux sources du fleuve, n'en est qu'un élément parmi d'autres. Par ailleurs, estimer le flux du Nil en fonction du cubage qui atteint le Soudan ou l'Égypte reproduit le « paradigme colonial » qui veut que la seule fonction du Nil est d'approvisionner ces deux pays en eau. Reproduire sans discernement le « mythe hydropolique » sur lequel l'Égypte appuie sa stratégie, relèverait d'un même réflexe idéologique. « *Le mythe est une parole choisie par l'histoire : il ne saurait surgir de la 'nature des choses'* »¹⁴. En conséquence, une meilleure compréhension des bilans hydriques de chaque sous-bassin et de leur contribution réelle aux débits du fleuve en aval, mais aussi des effets de l'incertitude climatique paraît indispensable dans la recherche d'un nouveau cadre de référence et/ou de solidarité pour une gestion transfrontalière de l'ensemble du bassin du Nil. Ceci est valable à tous les niveaux. Pour prendre un exemple, les données de la FAO sur les écoulements et l'évolution des ressources en eau par habitant des États riverains du Nil¹⁵ laissent supposer que la situation est aussi, sinon plus, sérieuse au Rwanda, Burundi et Kenya qu'en Égypte, mais elles restent partielles dans la mesure où elles ne tiennent pas compte de l'apport pluvial qui permet au moins deux récoltes par an sur les hautes terres. Les pays d'amont, en particulier en amont du Nil Albert — que l'on peut considérer comme l'émissaire du bassin des hautes terres d'Afrique de l'Est — sont confrontés eux aussi à une forte croissance démographique et aux effets de sécheresses consécutives, et leur légitimité à utiliser la ressource est incontestable. Comme on le verra, les volumes d'eau qui pourraient être prélevés par des différents projets actuellement à l'étude par ces États, ont été estimés et les mêmes estimations, dans les débats actuels, s'appliquent aux retenues sur les débits en aval. Or, la relation entre les deux relèvent déjà de modèles mathématiques complexes — donc théoriques — qui de plus reposent sur de nombreuses inconnues ou de nombreuses

¹⁴ BARTHES, R. (1957). *Mythologies*. Paris, Seuil.

¹⁵ BETHEMONT, J. (2003), *op. cit.*, p. 7.

incertitudes. La comparaison de l'apport théorique au barrage d'Assouan du Nil Albert avec d'autres variables (évaporation, faible rendement de l'eau dans son usage agricole,...) montre sa faible incidence relative sur le système global de l'aval du fleuve. En conséquence, pour les pays d'Afrique de l'Est, la « guerre du Nil » actuelle peut paraître exagérée en regard des difficultés qu'ils rencontrent dans la gestion de leur propre sous-bassin, à savoir celui du Lac Victoria.

2. LE LAC VICTORIA : RETENUES À LA SOURCE OU RESSOURCES AFFECTÉES ?

Perché à 1 135 mètres d'altitude, du fait du soulèvement du vieux socle précambrien lors des grands mouvements tectoniques qui ont formé les deux branches de la Rift Vallée, le lac Victoria, ou lac Nyanza ou lac Ukerewe, est une « *pellicule d'eau* »¹⁶ d'environ 69 000 km², dont la profondeur moyenne est de l'ordre de 40 m. et la profondeur maximale de 84 m. Il est le produit du gauchissement du réseau hydrographique lié aux déformations du socle, du blocage historique partiel de l'écoulement vers son émissaire, le Nil, par des barres de roches dures, et aujourd'hui de la régulation du débit par le barrage de Nalubaale. La surface des eaux est partagée principalement entre la Tanzanie (49 % ou 51 %¹⁷) et l'Ouganda (45 % ou 43 %), le Kenya disposant du faible reste (6 %). Son aire de drainage couvre 181 000 km² sur cinq pays (les pays cités, plus le Rwanda et le Burundi).

Le lac Victoria est l'un des plus grands lacs d'eau douce du monde, et forme un complexe en tout point remarquable. Au sein du grand bassin du Nil, il constitue un sous-ensemble fragile qui requiert de la part des États riverains et des institutions internationales une attention aussi particulière que celle portée au delta égyptien. Son état actuel est la conséquence à la fois de décisions et de politiques souvent étrangères, qu'elles relèvent autrefois du pouvoir colonial ou aujourd'hui de la « globalisation » des structures économiques, de la croissance démographique dans

¹⁶ GOUROU, P. (1970), *op. cit.*, p. 224.

¹⁷ selon les sources.

l'aire du bassin de drainage et des changements climatiques. Si la gestion des ressources en eau de l'ensemble du bassin et ses effets sur le débit en aval apparaissent suffisamment sensibles à l'échelle sub-continentale pour que les Egyptiens aient obtenu un droit de surveillance au déversoir, l'équilibre de son propre écosystème interne, objet du *Lake Victoria Basin Initiative* (LVBI), est un enjeu spécifique qui ne doit pas être déterminé par les pressions exercées en aval. La volonté des États riverains de reprendre le contrôle de la ressource passe obligatoirement par une renégociation des accords de l'époque coloniale et, en conséquence, par une meilleure prise en compte des 30 millions de personnes qui en dépendent directement ou indirectement.

2.1. Un écosystème fragile

Le bilan hydrologique théorique du lac Victoria révèle un équilibre relativement fragile et incertain. Les données de la FAO¹⁸ pour la période 1965–1990 donnent les composantes suivantes : le lac recevrait de son bassin de drainage 23 km³ par an correspondant à un apport pluvial brut de 293 km³ soit une pluviométrie moyenne régulière de 1619 mm par an. La contribution des pluies sur la surface du lac lui-même serait de 125 km³ (pour une évaporation de 100 km³), correspondant à un isohyète de 1811 mm. Cette moyenne est déjà très supérieure aux précipitations enregistrées sur les villes côtières du lac : Kisumu (1149 mm), Entebbe (1146 mm) et Mwanza (1140 mm)¹⁹. Toutefois, des mesures²⁰ ont montré que la pluviométrie sur le lac est 30 à 35 % supérieure à celle des terres avoisinantes, ce qui donnerait une moyenne de 1550 mm. La circulation atmosphérique sur le bassin du lac Victoria est la résultante de très nombreux systèmes combinant toutes les échelles géographiques. Les facteurs influençant le climat régional incluent

¹⁸ Voir KLOHN, W. et ANDJELIC, M. (1997). *Lake Victoria: A Case in International Cooperation*. Rome, Food and Agricultural Organization of the United Nations, qui cite BULLOCK *et al* (1995). *Report on LVEMP tasks*, 11, 16, 17. (www.fao.org/AGL/AGLW/webpub/lakevic/LAKEVIC4.htm).

¹⁹ Kenya, *Secondary school Atlas*, MacMillan 1990.

²⁰ ANYAH, R.O., SEMAZZI, F.H.M., XIE, L. (2006). *Physical mechanisms associated with the variability of Lake Victoria Basin Climate*. Rutgers University, New Brunswick, p. 3.

la topographie et les fortes pentes en particulier sur le versant kenyan, les multiples variations de la couverture végétale, les moussons océaniques et l'influence des masses d'air issues de la forêt équatoriale congolaise.

Le lac recevrait donc un apport global de 37,5 km³ qui, comparé à la décharge théorique du lac au Owen Falls (38 km³), donne un bilan légèrement négatif de -0,5 km³. Toutes les analyses climatiques insistent sur la variabilité des précipitations en Afrique de l'Est, liée en grande partie à l'influence indirecte de l'oscillation australe El Nino (ENSO). En 1970, Pierre Gourou écrivait déjà : « *Devant les irrégularités qui affligent la pluviosité de l'Afrique orientale, il est curieux que les colons européens se soient leurrés d'une légende de régularité climatique qui a enfanté une seconde légende, celle de la détérioration du climat* »²¹. Les grandes sécheresses qui ont affecté la région à la fin du 19^{ème} siècle sont pourtant bien connues. Il apparaît également que la distribution des zones de sécheresses ou de pluies abondantes en Afrique de l'Est est assez inégale. Dans les dix dernières années, l'alternance des phénomènes El Nino (pluies dévastatrices de 1998) et El Nina (sécheresse 2004 – 2005) s'inscrit dans la mémoire climatique au moins centenaire de la variation interannuelle des précipitations. Il paraît donc déjà étonnant que les discussions sur les apports, décharges et débits hydrologiques se contentent de données théoriques fondées sur des moyennes qui n'ont pas beaucoup de sens en terme de gestion de la ressource au quotidien. On rappellera le chiffre donné précédemment à propos de la décharge du mois de novembre 2005 (correspondant à la petite saison des pluies pendant laquelle le lac se recharge en partie) qui, pour maintenir le niveau du lac Victoria selon la « *Agreed Curve* », n'aurait pas dû dépasser 0,046 km³ par jour soit, même si l'application de ce quota à l'ensemble de l'année est quelque peu abusive, une décharge annuelle de 16,8 km³.

Les déséquilibres de la pluviométrie, auxquelles s'ajoutent depuis leur construction les décharges aux barrages de Nabulaale (1954) et de Kiira (2000), ont affecté directement le niveau du lac Victoria, qui apparaît extrêmement sensible à des changements climatiques même modérés. Les données fournies depuis 1900 sur la hauteur du lac à Jinja montrent d'importantes variations

²¹ GOUROU, P. (1970), *op. cit.*, p. 227.

décennales entre 1900 et 1920 (entre +1 et -1 mètre) et une certaine stabilité sur le moyen terme malgré des oscillations irrégulières entre 1920 et 1960.²² En 1961 – 1962, qui n'était pourtant pas une année El Nino²³, le niveau du lac s'est élevé de 2,5 mètres suite à des pluies exceptionnelles. Cette pluviométrie s'est maintenue entre 1961 et 1964 et a déterminé l'ajustement de la hauteur de référence du lac (*Agreed Curve*) à 11,9 mètres. Depuis 1964, le niveau du lac s'est maintenu au dessus de cette valeur de référence malgré une tendance régulière à la baisse jusqu'au milieu des années 1980 et une oscillation de quelques dizaines de centimètres entre 1985 et 2000 (sauf 1998, année de la forte amplitude d'El Nino). Il apparaît clairement que l'extension du barrage de Nabulaale vers le nouveau barrage de Kiira situé à 1 km a augmenté la décharge en eau²⁴ ; le lac a connu une baisse significative de son niveau²⁵, qui est descendu à 10,89 mètres, mesure faite au mois de septembre 2005 après deux années de déficit pluviométrique. Au début de la saison pluvieuse d'avril – mai 2006, le lac avait atteint son niveau le plus bas (soit 1,5 m en dessous du niveau de référence) depuis le record de 1923. Si les pluies récentes ont permis une élévation de ce niveau de 26 cm, il faudra plusieurs saisons de bonne pluviométrie avant de revenir à un niveau normal.

La question environnementale ne se réduit pas à celle du stockage des eaux. On estime à 30 millions de personnes la population vivant sur les rives du lac et dépendant de ses ressources, avec une densité de 1200 personnes au km². La pollution urbaine et industrielle est visible dans de nombreuses

²² www.fas.usda.gov.

²³ Les mesures des températures océaniques de surface du Pacifique, qui déterminent le phénomène ENSO, montrent le déclin de l'intensité et de la fréquence des épisodes El Nino entre 1925 et 1958, et progressivement une reprise des fréquences et une aggravation de l'intensité entre 1963 et 2000 (DAVIS, M. (2003). *Génocides tropicaux*. Paris, La Découverte, p. 255).

²⁴ Le barrage a été financé par la Banque mondiale et conçu par la firme canadienne Acres International sur la base d'analyses hydrologiques considérées aujourd'hui comme trop optimistes.

²⁵ On estime que cette baisse est due à 45 % au déficit pluviométrique et à 55 % aux décharges excessives des barrages KULL, D. (2006). *Connections Between Recent Water Level Drops in Lake Victoria, Dam Operations and Drought*, (www.irin.org/programs/nile/pdf/060208vic.pdf).

rivières alimentant le lac et le long des rives, en particulier aux abords des principales villes comme Kisumu, Kampala et Mwanza où l'on trouve brasseries, tanneries, usines de traitement du poisson, abattoirs et unités de transformation des produits agricoles. Les petites mines d'or de Tanzanie contaminent les rivières par le mercure. Les eaux usées en provenance des villages et principaux centres urbains entrent dans le lac souvent non traitées. La concentration en phosphores et en nitrates a atteint un niveau cinq fois supérieur à celui des années 1960²⁶. Depuis la fin des années 1980, le lac a du faire face à une invasion par la jacinthe d'eau à partir de la rivière Kagera, favorisée par l'abondance des nutriments, et qui a été jusqu'à bloquer l'étroit golfe de Winam près de Kisumu réduisant de 70 % les activités du port. Sous les auspices du *Global Environment Facility* (GEF), a été lancé par les trois pays riverains le Plan de Gestion Environnemental du Lac Victoria (LVEMP), pour la gestion des pêcheries et le contrôle de la jacinthe d'eau²⁷. Cependant la baisse continue du niveau de lac pose aujourd'hui un problème majeur : « *Le lac meurt sous nos yeux* », selon le Dr Manda²⁸.

De nombreux facteurs influencent l'écosystème, ou les écosystèmes, du lac Victoria et de son bassin. Pendant longtemps on a traité chaque secteur indépendamment des interactions complexes qui créent, comme dans tous les grands ensembles naturels, un équilibre toujours éphémère : d'un côté le stockage et les lâchers d'eau, d'un autre les pêches (la fameuse perche du Nil) ou la jacinthe, d'un autre encore la production énergétique, etc. Le modèle du développement a toujours été fondé sur cette surexploitation et cette sectorisation de la ressource. L'adjonction contemporaine de l'épithète « durable » atténue sans doute la force du paradigme mais n'enlève rien à la façon dont on le décline. D'où l'ambiguïté à laquelle doivent faire face les pays riverains confrontés à une pression accrue sur les multiples usages de la ressource — toujours justifiés par le « développement » et dont certains sont contradictoires — et à la dégradation de son environnement.

²⁶ www.fao.org.

²⁷ Le contrôle biologique par l'introduction de charançons prédateurs de la jacinthe peut être aujourd'hui considéré comme un succès.

²⁸ *Marchés Tropicaux*, 24 mars 2006, p. 9.

2.2. La pression accrue sur la ressource en eau

Comme l'Égypte, les pays d'Afrique de l'Est du bassin du lac Victoria ont vu leurs besoins en eau augmenter fortement. On en retiendra ici que les activités qui entraînent un prélèvement brut sur la ressource et/ou qui sont directement affectées par la baisse du niveau du lac. Cela concerne surtout la production hydro-électrique, l'irrigation et la mise en valeur des terres humides (*wetlands*) aux abords du lac, le transport lacustre et dans une moindre mesure l'approvisionnement urbain.

La production d'électricité est sans doute la question la plus sensible et elle est au cœur de la polémique actuelle. L'hydroélectricité est la principale source d'énergie de la région. Le Kenya, qui a une capacité installée de 945 MWs (megawatts / seconde) en reste dépendant à un niveau qui va de 62 % à 70 % selon les sources : une compagnie comme la KenGen (*Kenya Electricity Generating Company*) à travers laquelle les Producteurs indépendants (*Independent Power Producers, IPPs*) fournissent de l'électricité au pays a réduit dans les cinq dernières années sa propre dépendance de 13 % mais elle reste encore à 67 %²⁹. La Tanzanie est liée à 67 % à l'hydroélectricité pour ses besoins : on évalue son potentiel à 4,7 GWs (gigawatts / seconde) dont 5 % seulement a été installés, principalement sur la Rufiji, en dehors donc du bassin du lac Victoria. L'Ouganda dépend presque entièrement de l'hydroélectricité sur le bassin du Nil (380 des 397 MW installés) avec un potentiel évalué à 2,6 GW. On estime que la demande régionale dans les prochaines années devrait croître de 7 à 8 % par an alors que la récente sécheresse a entraîné une vraie crise d'approvisionnement. Il a manqué ainsi au Kenya 180 MW soit très exactement la capacité de production du barrage de Nabulaale, ce qui a contraint le Gouvernement à prendre des mesures d'urgence. Au 6 mai 2006, le journal *New Vision* (Kampala) signale que la capacité de production d'hydroélectricité au deux barrages du Nil est passée de 380 MW installés à 135 MW³⁰ ; déjà en janvier 2005 le Kenya avait exporté 10 MW en Ouganda inversant ainsi la relation historique d'approvisionnement. La ville de Dar es Saalam

²⁹ La KenGen a succédé à la Kenya Power Company (KPC) créée en 1954 principalement pour importer l'électricité de l'Ouganda.

³⁰ Suite aux décisions prises par le Ministre de l'Eau de réduire les décharges.

a connu rationnement et longues périodes sans électricité au début de l'année 2006. Dans ces conditions on comprend d'une part la volonté des trois États d'intégrer leurs réseaux d'approvisionnement et de l'interconnecter aux réseaux sud-africains ou d'exploiter le *Western Corridor Project* en Angola qui devrait produire 3000 MW³¹, et d'autre part les projets plus anciens d'exploitation du potentiel du Nil par le barrage de Bujagali (290 MW) au nord de Jinja et de Karuma (100–200 MW) en aval du lac Kyoga. La construction du barrage de Bujagali devait se faire entre 2002 et 2005 mais de nombreuses oppositions au projet ont entraîné un retard dans son exécution d'au moins six ans. Le niveau actuel du lac Victoria, dont tous ces projets dépendent plus ou moins, devrait entraîner une révision à la baisse des estimations du potentiel et de la rentabilité des ouvrages, fondées sur la moyenne la plus élevée du niveau du lac des années 1960–2000³². On remarquera au passage que, dans le conflit actuel qui oppose l'Égypte aux pays d'Afrique de l'Est, l'exploitation de la ressource hydroélectrique est plutôt favorable aux flux vers l'aval et met la pression sur le stockage en amont.

L'agriculture ponctionne la plus grande part de la consommation en eau des pays d'Afrique de l'Est³³ : en Tanzanie 4,6 km³, soit 90 % de la consommation totale, dont 4,4 pour l'irrigation et 0,2 pour le bétail; au Kenya 80 % d'une consommation totale de 2,7 km³ ; l'Ouganda a la plus faible consommation, soit 0,3 km³ dont 0,12 pour l'agriculture. Cependant, étant donné les conditions climatiques, l'essentiel des cultures se fait sous pluie, bien que les populations locales aient développé depuis longtemps des systèmes traditionnels d'irrigation, souvent par gravitation, qui permettaient de gérer le stress hydrique en cas d'irrégularités ou de retard dans les pluies. Ces formes

³¹ *The East African Special supplement* « Power generation and transmission », 17–26 avril 2006.

³² Un rapport de la Banque mondiale de 1991 signalait à propos du barrage de Kiira que « *le seul risque significatif à la faisabilité économique surviendrait si on constatait un régime hydrologique de la magnitude des années d'avant 1960. Dans ce cas l'extension ne serait pas rentable* » (cité par Daniel Kull, www.irin.org).

³³ La plupart des informations concernant l'irrigation sont tirées de: FOOD AND AGRICULTURE ORGANISATION (2005). *Irrigation in Africa in figures*. Aquastat Survey, FAO Water Reports n°29. Rome, FAO.

d'irrigation traditionnelle, gérées par les fermiers eux-mêmes, sont très présentes en Tanzanie (67 %) ou au Kenya (47 %) mais doivent faire face à des problèmes multiples liés aux changements climatiques, à la sédimentation des canaux, à la dégradation des aires de captages, etc. Des projets plus importants se sont développés avec la colonisation voire plus tard au moment de indépendances ; irrigation en majorité de surface pour l'Ouganda (96 %) qui bénéficie de très nombreux lacs et rivières ou pour la Tanzanie (99 %), alors qu le Kenya utilise plus des systèmes par aspersion (60 %). Les principales cultures irriguées sont traditionnellement le riz et le maïs, le café, l'ananas (Kenya), la canne à sucre et le coton (Tanzanie), et plus récemment les cultures maraîchères et les fleurs (Kenya surtout). Le potentiel de terres irrigables est estimé relativement important³⁴ : plus de deux millions d'hectares en Tanzanie, mais largement hors du bassin du Nil, 90 000 hectares en Ouganda principalement autour du Lac Kyoga, dans les régions de l'Ouest et le long du Nil Albert, et à plus de 350 000 hectares au Kenya dont 217 925 ha dans le bassin du lac Victoria³⁵. L'usage de ce potentiel reste très limité : en Tanzanie 184 000 ha sont équipés, soit moins de 10 %, et le *National Irrigation Master Plan* (NIMP) a identifié plus de 90 % des secteurs comme devant être réhabilités ; en Ouganda 5600 ha sont irrigués en 1998 soit 6 % ; seul le Kenya avec 103 000 ha (doublement de la surface en 20 ans) utilise son potentiel à plus d'un quart (28 %) en 2003, mais de nombreux périmètres publics ne sont pas opérationnels.

On constate donc que la marge de progression est relativement importante et que, avec l'augmentation de la population, le succès de secteurs agricoles consommateurs en eau comme la floriculture ou le maraîchage, voire la relance de filières comme le coton en Tanzanie, et les irrégularités plus accentuées des

³⁴ On prendra toutefois ces chiffres de « potentiel » avec circonspection. Les critères d'évaluation reposent sur les ressources en eau — dont on a vu le caractère sinon aléatoire du moins incertain — en terres — mais il s'agit là dans les trois pays d'une question très sensible-, et le potentiel socio-économique — qui relève aussi de la volonté politique et des capacités d'investissement.

³⁵ Ce qui entraînerait une ponction nouvelle de 2,2 km³. WMO / MWRMD / APFM (2004). *Strategy for flood management for Lake Victoria Basin, Kenya* septembre(www.apfm.info/pdf/strategy_kenya_e.pdf).

précipitations, il y a une volonté générale des pays d'Afrique de l'Est de mieux utiliser leur potentiel en particulier celui du bassin du lac Victoria. Sur ce bassin, les ponctions sont relativement faibles comparées au flux en aval : la Tanzanie utilise uniquement 0,25 km³, essentiellement pour la boisson (59 %), l'approvisionnement urbain (21 %) et l'irrigation (20 %), le Kenya de 0,3 à 0,5 km³³⁶ et l'Ouganda ponctionne 0,8 km³. Les chiffres donnés ici ou là divergent trop pour que l'on puisse se faire une idée de l'augmentation de la demande qui pourrait à terme cependant avoir un impact significatif sur les débits en aval.

La baisse des eaux du lac a évidemment un impact direct sur le transport fluvial et les conditions de la pêche. En certains endroits le lac a reculé de plus de 200 mètres. Des anciens lieux de pêche font office de pâturage pour les animaux domestiques, et des zones protégées qui servaient de lieux de reproduction sont aujourd'hui à sec. Le faible niveau de l'eau a également touché le trafic sur le lac avec des bateaux forcés de revoir à la baisse leur tonnage de peur de s'enliser et des infrastructures portuaires qui ne sont plus adaptées. *Marchés Tropicaux*³⁷ rapporte qu'« À Ggaba dans la périphérie de Kampala, les bateaux de plus de 18 mètres sont ensablés et inutilisables. Les pêcheurs, condamnés au chômage, se livrent parfois à des activités illégales ».

On ne peut dénier aux populations locales et aux États riverains le droit d'améliorer leur situation économique et d'utiliser à cet effet les ressources de leur environnement. Cependant, comme on le voit les besoins sont souvent contradictoires et la nature ne se soumet pas forcément aux exigences humaines. Les populations riveraines du lac Victoria sont très dépendantes de leurs écosystèmes, dont l'artificialisation d'un élément (l'eau par exemple) ne suffit pas ou ne suffirait pas à garantir une certaine autonomie vis-à-vis des « caprices de la nature ». On est bien dans un système complexe, où la matière (l'eau encore, pour rester dans le sujet) est transformée en ressource (c'est-à-dire prend de la

³⁶ Le West Kano Irrigation Scheme prend l'eau directement dans le lac, alors que celui de Bunyala dépend du flux de la rivière Nzoia. GICHUKI, N. (2003). *Wetlands Research in the Lake Victoria Basin, Kenya Part*. Kampala, VicRes Initiative.

³⁷ N° 3145 du 24 mars 2006.

valeur) au terme d'un processus social au sens large, lui-même complexe et inégal. L'analyse classique du développement évacue ce processus de transformation et considère une « ressource naturelle » *per se*, c'est-à-dire préexistante à la venue des hommes, et immédiatement disponible à qui sait la prendre ou la consommer. L'approche « conservationniste » s'inscrit au revers de la même logique : la « ressource naturelle » est inviolable. L'une et l'autre créent l'affrontement entre des intérêts contradictoires et des images dogmatiques par définition non négociables. On en revient d'une certaine façon au « Cauchemar de Darwin ». Reprendre et comprendre les procédures, les replacer dans le temps long, faire droit à l'incertitude et à la complexité, tels sont sans doute, au-delà des questions de droit international, les enjeux des négociations en cours.

3. LA GUERRE DU NIL AURA-T-ELLE LIEU ?

Le mot « guerre » n'est pas utilisé ici dans un simple exercice de style. Il existe dans le Haut commandement égyptien des plans d'intervention dans chaque pays du bassin en cas de menace directe sur le flux du Nil, plans connus sous le nom de *Waraa-el-bidoud* (*Au-delà des frontières*)³⁸. Les plus anciens remontent au 19^{ème} siècle et sont régulièrement mis à jour, même s'il ne s'agit là d'abord que de dissuasion. La question n'est donc pas nouvelle mais la situation difficile qu'affrontent, en particulier depuis le retour des sécheresses en 2004, les pays situés à l'amont du bassin du Nil, a avivé les tensions et conduit à une multiplication des réclamations pour que soient renégociés les pactes de 1929 et de 1959. Les efforts déployés par les différents États du bassin du Nil — ou par leur ancienne colonie respective — ont abouti à la conclusion de multiples accords, dont les premiers ont suivi une inclinaison politique en faveur des pays de l'aval du fleuve, protégés par la domination coloniale britannique : depuis le protocole de Rome signé en 1892 sur le fleuve Atbara entre la Grande Bretagne et l'Italie jusqu'aux négociations actuelles dans le cadre de la *Nile Basin Initiative* (NBI) lancée à Arusha (Tanzanie) en février 1999 afin

³⁸ YACOB, Y. (2004). *From Undugu to the Nile Basin Initiative : an Enduring Exercise of Futility* (www.addistribune.com).

d'éviter un conflit ouvert. On peut considérer qu'entre 1925 et 1960, le paradigme « hydraulique » (gestion des débits) s'est imposé selon le modèle d'une abondance de la ressource en amont qui établirait les droits historiques de l'aval à en profiter, et que par la suite, entre 1994 et 2003, face à la raréfaction de la ressource, les traités portent plus sur la gestion des environnements. Ce glissement de sens donné aux négociations ne suffit sans doute pas à éviter l'affrontement : les disparités entre les pays riverains à tous les niveaux, économique, politique, social, rendent les traités et les institutions de régulation souvent inefficients, voire créant de nouvelles tensions, d'autant plus qu'il n'existe aucune agence internationale ayant dans son mandat des mécanismes de résolution des conflits relatifs à la gestion transfrontalière des ressources en eau³⁹.

3.1. Les accords⁴⁰

Le Nil est un fleuve à dimension inter- ou trans-nationale. En tant que tel, le développement, l'utilisation et la gestion des eaux relèveraient d'une loi, d'un traité ou d'une convention internationale sur les ressources en eau. Il n'existe aucune convention de ce type applicable au Nil et même la *United Nations Convention on the Law of the Non-Navigational uses of International watercourses* de 1997 n'a pas de caractère obligatoire. En conséquence le régime juridique de l'utilisation et de la gestion du Nil consiste en traités bilatéraux conclus entre les pays riverains. Arthur Okoth-Owiro classent les traités et autres accords en quatre catégories : les traités entre la Grande Bretagne et les pouvoirs contrôlant les terres de l'amont au tournant du 20^{ème} siècle ; l'accord de 1929 ; les accords et mesures consolidant l'accord de 1929 et les traités et autres accords post-coloniaux. On n'entrera pas dans le détail de ses multiples négociations, et pour en rendre compte on préférera à cette classification chronologique l'opposition entre deux paradigmes

³⁹ WOLF, A.T. (2001). *Transboundary Waters: sharing benefits, Lessons learned*. Thematic Background Paper, International Conference on Freshwater, Bonn.

⁴⁰ On peut se référer pour de plus amples détails à OKOTH-OWIRO, A. (2004) *op. cit.* ; EL DAHSHAN, M. (2004). *La Coopération régionale dans le Bassin du Nil. Entre théorie et Réalité*. Mémoire de DEA, IEP Paris, 82 p.

évoqués plus haut : le paradigme hydraulique et le paradigme environnemental.

Les principaux accords qui sont aujourd'hui objet de la controverse relèvent du premier paradigme : on l'a déjà signalé, ces accords ont pour objectif principal de garantir un certain niveau d'approvisionnement de l'Égypte, ou de l'Égypte et du Soudan, en déniaut le droit aux autres régions ou États d'interférer avec les flux du Nil. C'est le cas des échanges de notes entre la Grande Bretagne et l'Italie à propos de l'Atbara (article 3 du protocole de 1892), entre les mêmes à propos du Nil bleu (accord d'Addis-Abeba de mai 1902), entre la Grande Bretagne et la Belgique à propos des fleuves El-Smekili et Iago (convention de Londres de mai 1906), entre la Grande Bretagne (« représentant » le Soudan et les colonies ou protectorats d'Afrique de l'Est, hors Ruanda-Urundi) et l'Égypte sur l'utilisation des eaux du Nil ayant pour objectif l'irrigation (« *The 1929 Nile Waters Agreement* »), ou l'accord entre l'Égypte et le Soudan de 1959 qui n'a impliqué aucun pays de l'amont, sinon indirectement. Le dernier traité de l'ère coloniale est l'accord conclu par des échanges de notes entre l'Égypte et le Royaume Uni (au nom de l'Ouganda) entre 1949 et 1953 concernant la construction du barrage des Owen Falls : là encore la question principale porte sur la régulation des débits et l'accord donne à l'Égypte un droit de contrôle et même de décision⁴¹, rendant tributaire de ses intérêts et de ses droits la souveraineté de l'Ouganda dans ce domaine. Le traité de 1929 attribuait 48 km³ d'eau à l'Égypte et 4 km³ au Soudan ; celui de 1959 55,5 km³ à l'Égypte et 18,5 au Soudan, sans référence aucune aux pays de l'amont.

L'« axiome britannique et impérial » qui marquait ces accords, a vécu, même s'il reste présent de façon archaïque dans les représentations. Dès les années 60, une approche plus coopérative et environnementale tente de se substituer à la vision purement hydraulique qui conserve pourtant sa capacité de mobilisation des esprits. En 1967, suite à l'élévation du niveau du lac Victoria et les dommages créés sur les populations du bassin du Sudd⁴², les trois

⁴¹ *The Uganda Electricity Board* : « will regulate the discharges to be passed through the dam on the instructions of the Egyptian Government... ».

⁴² 120 000 têtes de bétail et 10 000 personnes auraient péri. YACOB, Y. (2004), *op. cit.*

pays riverains, l'Égypte et le Soudan ont lancé, avec l'aide du PNUD et de l'Organisation Météorologique Mondiale, un projet de relevés hydro-météorologiques (Hydromet), devenu un premier forum de coopération, dans la région des Grands Lacs et sur les flux d'aval. Le projet s'est terminé en 1992. L'Égypte et le Soudan avaient lancé dès 1968 l'idée d'une commission d'aménagement du bassin du Nil, sans succès, et avaient réitéré leur offre en 1977. Craignant la mainmise de l'Égypte sur cette commission, les États du bassin du Nil blanc, mais hors Tanzanie et Kenya, ont avec l'Égypte fini par créer le groupe UNDUGU qui s'est perdu en conférences et rencontres ministérielles improductives. Le groupe a été aboli en 1993 par le Conseil des ministres (Nile-COM) de l'eau qui a relancé l'initiative de coopération et de développement dans le bassin : six pays riverains (Congo, Égypte, Rwanda, Soudan, Tanzanie et Ouganda) ont formé alors le *Technical Cooperation Committee for the Promotion of the Development and Environmental Protection of the Nile Basin* (TECCONILE) : un plan d'action pour le Bassin du Nil (NRBAP) a été établi en 1994 comprenant la planification et la gestion intégrée des ressources en eau, le renforcement des institutions et le développement des ressources humaines, une coopération régionale afin d'établir un cadre juridique et institutionnel acceptable par tous les pays du bassin, et la protection et l'amélioration de l'environnement. Ce plan a été discuté et révisé au cours de nombreuses réunions tenues entre 1994 et 1998, qui ont conduit à la création en 1999 d'une structure de transition, *Nile Basin Initiative* (NBI), dont le secrétariat, basé à Entebbe (Ouganda) s'est substitué au TECCONILE. Cette « Initiative » intègre de nombreux projets, qui concernent soit tout le bassin soit les sous-bassins des Nil blanc et bleu. La Banque mondiale coordonne les financements à travers le *Consortium International pour la Coopération sur le Nil* (ICCON) créé en 2001 à Genève. Malgré la volonté de coopération, les pays membres continuent d'avoir leurs propres projets. C'est dans ce cadre qu'à partir de 2004 a été relancée la controverse à propos des droits sur le Nil.

On pourrait considérer que les discussions des dernières décennies traduisent le passage d'une vision impériale, simpliste, minière et archaïque de la ressource à une conception coopérative, globale, durable et contemporaine. En fait les deux représentations coexistent dans un cadre qui reste conflictuel, et l'une marque les

limites de l'autre et réciproquement. Il manque vraisemblablement un cadre théorique de référence, sur la notion de ressource, sur la question de la propriété, sur les rapports entre nature et développement, etc., autant de questions que l'ont peut traquer dans les débats qui, depuis 2004, ont relancé ce que les médias appellent la « guerre du Nil ».

3.2. Débats actuels et questions sous-jacentes⁴³

Dès juillet 2003, les demandes de renégociation du traité de 1929 sont venues de Tanzanie et du Kenya. La position du Kenya a été considérée par le ministre égyptien de l'Irrigation et des Ressources en eau comme « un acte de guerre ! » et des mesures de rétorsion ont été appliquées sur les importations de thé kenyan. Le Kenya qui, du temps de la colonisation, avait déjà dû demander l'accord de l'Égypte pour lancer des périmètres rizicoles irrigués dans la région de Nyanza, souhaite exploiter les ressources en eau des huit rivières de l'Ouest qui se jettent dans le lac Victoria. Un parlementaire kenyan a même émis l'idée de vendre les eaux du Nil à l'Égypte et au Soudan contre du pétrole⁴⁴. Début février 2004, de son côté, la Tanzanie a lancé le projet de puiser l'eau du lac Victoria afin de pourvoir aux besoins de la région de Shinyanga au sud, incluant les villes de Kahama et de Shinyanga et une cinquantaine de villages, ce qui supposait la construction d'une conduite de 170 kms dont le contrat a été donné à une société chinoise (*China Civil Engineering Construction Cooperation*). La Tanzanie a pris soin de signaler que ce projet concernait l'adduction d'eau potable de plus de 400 000 personnes et non l'irrigation⁴⁵. L'Égypte a réagi vivement à ce projet. On a vu enfin les projets de l'Ouganda pour la production de l'électricité en aval du lac, projets qui requièrent des financements internationaux qui ne peuvent être dégagés que dans un cadre légal clair. Une première réunion a eu lieu à Entebbe en juin 2004, précédée par une intense activité diplomatique à la recherche d'un consensus général que requièrent la gestion et le

⁴³ Comme on l'a déjà signalé, on ne traitera ici que des pays d'Afrique de l'Est.

⁴⁴ RAPHAELI, N. (2004). *Tensions croissantes au sujet du Nil*. MEMRI, Enquêtes et analyses n°165, mars (www.memri.org).

⁴⁵ *The East African*, 9 – 15 février 2004.

développement d'un espace aussi essentiel que le bassin du Nil. Aucun accord n'est sorti de cette réunion, la question étant encore débattue dans les médias de façon ostentatoire et sur la base des mêmes informations au cours de l'année 2005.

De façon succincte, on peut relever quelques questions d'intérêt général.

- le statut juridique des accords

La question principale est de savoir si un nouvel État est lié par les engagements pris par celui auquel il succède. Cette question de la continuité de l'État est dans le cas présent fortement biaisée par l'épisode de la colonisation : valider aujourd'hui les traités du Nil c'est légitimer l'ordre imposé par le colonisateur. La question du statut légal de ces accords est un contentieux depuis les années 50. Devenu indépendant en 1960, le Tanganyika a aussitôt refusé d'être lié par les accords passés en son nom par la Grande Bretagne, et déclaré sa volonté de renégocier sur la base de la réciprocité. Cette position claire a été partagée par le Burundi, l'Éthiopie et le Soudan (pour le traité de 1929). La position du Kenya est restée longtemps plus ambiguë. La position de l'Égypte est opportuniste dans la mesure où elle a tenté de faire en sorte que cet accord « colonial » devienne « *customarily binding* », c'est-à-dire une sorte de droit de fait ou de droit coutumier du fait de son application pendant des décennies et de l'usage encore plus ancien de l'eau du Nil par les Égyptiens, qui conforterait leurs « droits 'naturels' et historiques ». Un tel argument pourrait éventuellement garantir l'approvisionnement de l'Égypte à la hauteur des débits actuels mais non en fonction de ses nouveaux projets de développement. On ne peut comprendre la pérennité de cette vision impériale du Nil sans évaluer la position stratégique que l'Égypte occupe depuis longtemps dans les conflits du Proche-Orient. On est bien placé ici dans un rapport de forces qui s'explique aussi par l'impossible réciprocité entre pays d'amont et pays d'aval si l'on s'en tient à la simple mathématique du partage des débits: l'eau ne remonte pas le cours du fleuve. D'après Arthur Okoth-Owiro, la loi internationale connaît deux théories à propos des droits sur l'eau : la théorie de la « souveraineté territoriale absolue » et son contraire celle de « l'intégrité territorial absolue » ; la première donne le droit absolu à un État d'utiliser l'eau qui traverse son pays, sans autre considération ; la seconde lui interdit d'interférer avec le flux

naturel qui sort de son territoire. Sous cette forme, l'approche purement juridique conduit à l'impasse.

- la propriété de la ressource

La question de la propriété des ressources ne permet pas de sortir de l'affrontement, en particulier quand il s'agit d'une matière aussi fluide que l'eau courante, qui comme chacun le sait ignore les frontières. Certes, il est possible de la stocker par la construction de grands ouvrages mais, outre le fait que ceux-ci posent bien d'autres problèmes, la complexité des systèmes hydrologiques ne pourrait aboutir qu'à des calculs théoriques sujets à d'interminables controverses. On sait par ailleurs que l'appropriation de l'eau va à l'encontre des principes de l'Islam, et de façon plus générale, heurte le sens commun. Cela supposerait également qu'il existe un marché. La raréfaction de la ressource à l'échelle mondiale contribue à promouvoir cette option mercantile comme régulateur de l'offre et de la demande. L'Égypte subventionne largement l'irrigation ce qui contribue à la très faible rentabilité du secteur ; fixer le prix de l'eau au prix du marché (!) permettrait de mettre en place des techniques de conservation. Cependant on sait que les lois du marché sont d'abord inégalitaires et que, souvent, elles contribuent à interdire l'accès des ressources aux plus pauvres. Définir la propriété de la ressource ne règle donc pas la question de l'accès qui ne peut être appréhendée que par la définition d'un patrimoine commun.

- Le Nil, un patrimoine commun ?

L'Initiative du Bassin du Nil s'appuie sur la volonté des pays concernés de « promouvoir un développement économique durable pour une utilisation équitable des eaux du bassin du Nil, avec une juste répartition de cette ressource commune ». Les objectifs sont le développement des ressources devant assurer la prospérité, la sécurité et la paix, la garantie d'une gestion efficace, l'assurance de la coopération et de l'action conjointe, la lutte contre la pauvreté et la réalisation de l'intégration économique des partenaires⁴⁶. Par delà la bonne volonté des partenaires et les déclarations d'intention, la réalité est évidemment plus modeste. Il n'est pas sûr que les termes

⁴⁶ On ne fera pas de commentaires sur ce dernier point, en rappelant simplement que les pays riverains du Nil sont engagés déjà dans de multiples institutions d'intégration régionale dont certaines se recoupent et qui, après des années d'existence, sont loin d'avoir achever leurs objectifs.

de références (juste, équitable, durable) soient très opérationnels. Le Nil est-t-il un patrimoine commun et sa gestion peut-elle relever d'un intérêt commun ? Commun à qui ? Aux États, aux populations riveraines ? Sur quelle base fonder la solidarité ? Qui peut en être le garant ? Les flux des rivières et des fleuves étant unidirectionnels, il ne peut y avoir de « justice » sans transferts, sans échanges. Les disparités majeures entre les pays du bassin du Nil interdisent d'imaginer que la réponse à ces questions puisse se faire dans ce grand cadre géographique. Le sous bassin, du lac Victoria, paraît mieux approprié, d'autant plus qu'il s'accorde avec d'autres efforts d'intégration comme l'*East African Community*, dont la représentation reste cependant encore floue au niveau des communautés locales. Or c'est bien à ce niveau que s'exercent, nous l'avons vu, les pressions encore très fragmentaires voire contradictoires pour un meilleur accès à la ressource en eau. Dans le contexte actuel de grande vulnérabilité des populations, de dépendances financières et techniques vis-à-vis de l'étranger, et par ailleurs de grande incertitude sur la ressource elle-même, la capacité des populations à intégrer une notion d'intérêt ou de patrimoine commun reste encore très aléatoire. Il paraît donc difficile d'envisager à terme un changement dans le status quo actuel.

L'approche pragmatique que suivent les différentes initiatives sur le bassin et sous bassins du Nil met l'accent sur les acteurs, leurs actions et leurs intentionnalités dans la définition même de la ressource. La valeur, qui définit la ressource, n'est donc pas intrinsèque à la matière elle-même, ici l'eau. Elle s'élabore ou doit s'élaborer, de façon contradictoire et renouvelable, dans la négociation et la confrontation d'intérêts multiples qui témoignent de la complexité du problème que nul ne peut dénouer. En ce sens, et malgré les faibles avancées voire les impasses dont témoignent les commentaires sur la situation actuelle (*Moving beyond gridlock, An enduring exercise in futility,...*), les initiatives qui rassemblent tous les États riverains, contribuent à ne plus se satisfaire d'une vision unilatérale et sectorielle du Nil, mais à prendre en compte les singularités et les incertitudes qui en composent le système, et ainsi à ouvrir la voie, sans aucune garantie de succès mais il n'y a pas d'alternative, à de nouvelles conceptions, on pourrait dire à une nouvelle intelligence de la ressource.

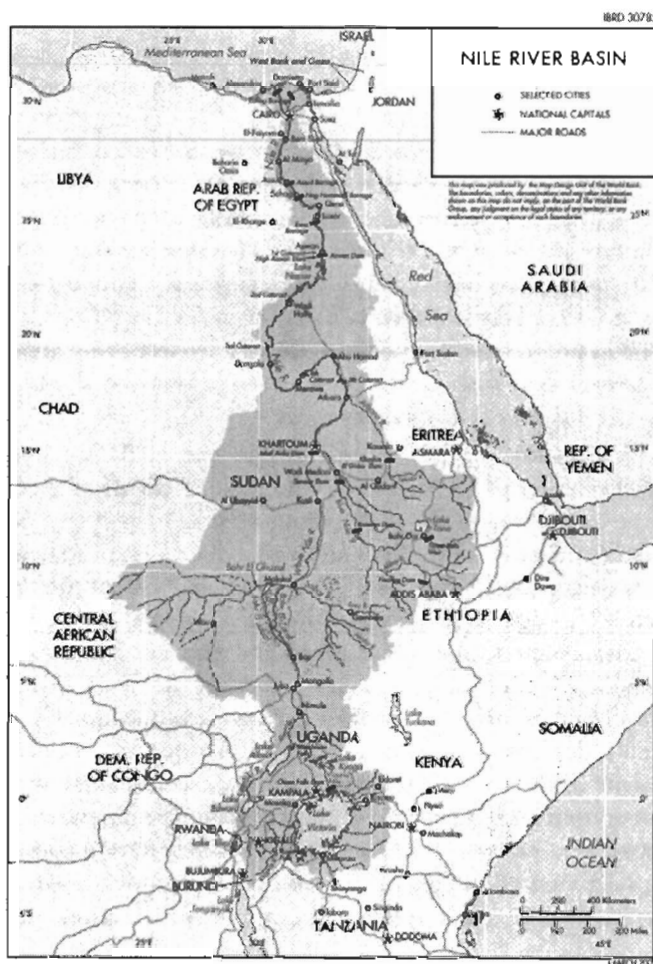
Conclusion

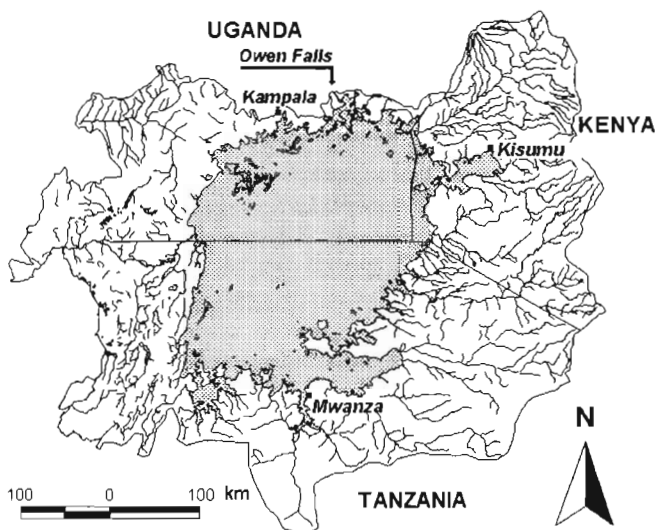
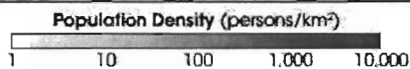
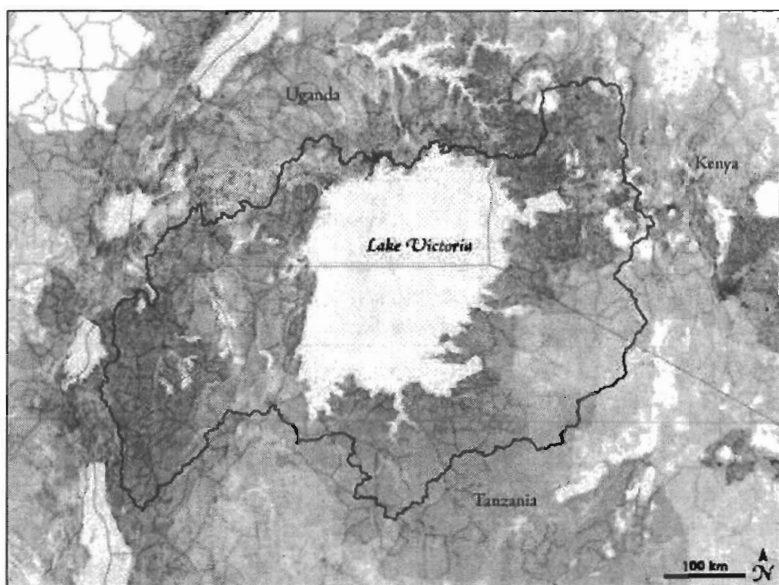
La plupart des pays d'Afrique de l'Est connaissent une croissance de leur économie supérieure à 5 % par an. La croissance augmente les besoins en énergie, qui devraient doubler dans les dix années à venir. L'agriculture, qui reste un des secteurs importants soit pour l'exportation (Kenya, 52 % des exportations en valeur) soit pour l'approvisionnement urbain (en particulier les villes moyennes en croissance continue) et la subsistance d'une population qui reste à majorité rurale, est très dépendante des variations climatiques. Des secteurs industriels, comme la pêche, font vivre des milliers de personnes (300 000 en Ouganda). L'eau apparaît donc au cœur de cette dynamique de développement, qui reste cependant tributaire de l'aide publique et des investissements internationaux. Comme l'écrit Sylvie Brunel⁴⁷, l'Afrique serait « en réserve du développement ». Dans ce contexte, la tension existe entre la croissance et la protection de l'environnement : l'Afrique apparaît souvent comme un des derniers grands sanctuaires de la Nature et un conservatoire de la biodiversité, en se voyant assigner une fonction récréative et exotique ; ce que Sylvie Brunel appelle un « *développement durable dévoyé, où l'approche écologique devient de plus en plus prégnante au détriment de la dimension sociale* ».

La question du Nil montre cependant qu'il faut sortir de cette dichotomie, et donc sortir de la logique du développement. En terme de représentation, cela paraît difficile, mais il faut prendre acte des impasses et des tensions que cette logique du développement crée dans les débats sur le Nil, et que l'ajout d'adjectifs tels que « véritable », « durable », « durable dévoyé » ne suffit pas à lever. Le développement restera toujours, dans l'imaginaire et dans son actualité concrète, lié à la croissance, comme pour la Chine aujourd'hui qui est devenue un des grands prédateurs des ressources naturelles de l'Afrique. La vulnérabilité du système du Nil et sa complexité demandent une autre approche de la ressource : reconnaître que les populations n'attendent pas le développement comme solution finale, mais peut-être d'abord et de façon plus pragmatique une meilleure distribution des ressources et un meilleur accès à ces ressources ; qu'elle se déterminent selon

⁴⁷ BRUNEL, S. (2005). 'Une Afrique en mutation', *L'Afrique dans la mondialisation, La Documentation française*, dossier n° 8048 :1-16.

d'autres valeurs pour un usage de la ressource qui est sans doute plus social au sens large qu'économique au sens restreint. Le développement crée l'inégalité. Les 300 millions de personnes qui vivent dans le Bassin, comme les commentateurs le répètent à l'envi mais sans vraiment intégrer cette dimension numérique dans leurs analyses, demandent une autre économie (aux deux sens du terme) de la ressource tirée des eaux du Nil.





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TRAP OF DEATH: HOW VILLAGE LIFE EXPOSES KENYAN YOUTH TO HIV/AIDS INFECTION¹

by Gerald Wangenge-Ouma

Since 1984 when the disease was first reported in Kenya, 42,000 people had developed full blown AIDS by February 1999, 70% of them under 25 years of age. The national prevalence (prevalence refers to the total number of persons with HIV infection alive at any given moment in time) rose from 3.1% in 1990 to 9% in 1997 then to a high of 14% in 2000. The disease spread rapidly in the country in the 1990s, reaching prevalence rates of 20–30% in some areas of the country. A recent government report claims that the national infection rate declined to 7% in 2004². The apparent reduction of the infection rate is not necessarily because of behaviour change but in part, because of the dramatic rise in the rate of AIDS related deaths. It is estimated that over 1.5 million Kenyans have since died due to AIDS-related illnesses. It is further estimated that there are about 150,000 AIDS deaths per year, double the rate in 1998. This increasing death rate, which exceeds the rate of new infections, tends to reduce overall prevalence as the epidemic in Kenya moves into the ‘death phase’³. Presently, the pandemic afflicts mainly young sexually active adults aged 15–50 years. Notwithstanding the reported decline in infection, the rate of new infections is “*unacceptably high particularly among vulnerable groups*”⁴ including young persons. Young women in the 15–24 age range are reportedly more afflicted than their male

¹ This paper is extracted from the results of a study entitled “Village Life, HIV/AIDS and the Youth in Western Province, Kenya: Establishing a Relationship”, supported by a fellowship from the ‘African Youth and Globalisation’ Fellowship Programme of the Social Science Research Council (SSRC). The study was conducted in 2002-2003.

² OFFICE OF THE PRESIDENT (2005). *Kenya National HIV/AIDS Strategic Plan 2005/6-2009/10*. Nairobi, NACC.

³ OFFICE OF THE PRESIDENT (2005), *ibid.*

⁴ OFFICE OF THE PRESIDENT (2005), *ibid.* (page iv).

counterparts in the same age range. Female prevalence is nearly five times higher than male prevalence (see figure 2)⁵. The increase in HIV infection among young people (especially women) has not only generated interest to establish causes of their particular susceptibility but has also raised serious questions about the effectiveness of HIV prevention interventions for this population group. Although the HIV prevalence rate is reportedly lower in the rural areas of Kenya (8–9%) than in urban areas (12–13%), over 80% of Kenyans live in rural areas⁶ which means that while the infection rate in rural areas is seemingly lower, given the high number of Kenyans living in these areas, the quantum of those infected is higher. For instance, in 2003 it was estimated that there were 410,000 infected persons in urban areas and 670,000 in rural areas in the 15–49 age range⁷. It is important therefore that the AIDS problem in rural areas be treated as seriously as the case seems to be in urban areas. It is reported that about 98.1% of Kenyans have knowledge of HIV and AIDS. And since ‘knowledge is power’, it is usually presumed that knowledge of HIV and AIDS will lead to automatic reduction of HIV infection. Information on HIV knowledge and on the level and intensity of risk behaviour related to HIV and AIDS is essential in understanding the dynamics of the epidemic. An important question with regard to knowledge of HIV and AIDS is: What do people know about HIV and AIDS?

It is argued that strategies for preventing HIV transmission must be informed by a clear understanding of the social, economic, cultural and behavioural context within which the epidemic is occurring. By focusing on village youth, this study sought to tease out these contextual particularities and the HIV predisposing behaviour that they encourage, especially among the youth. It must be emphasized that HIV infection in Kenya and especially in rural

⁵ CENTRAL BUREAU OF STATISTICS, MINISTRY OF HEALTH and ORC MACRO (2004). *Kenya Demographic and Health Survey 2003*. Calverton, CBS, MOH and ORC Macro.

⁶ NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT (NCPD), CENTRAL BUREAU OF STATISTICS (CBS) and MACRO INTERNATIONAL INC. (1999). *Kenya Demographic Survey 1998*. Calverton, NCPD, CBS and MI.

⁷ NATIONAL AIDS AND STI CONTROL PROGRAMME, MINISTRY OF HEALTH (1999). *AIDS in Kenya*, 7th ed. Nairobi, NASCOP.

areas is almost an entirely (casual) heterosexual affair. As such most debates on the spread of the disease obviously focus on risky (hetero) sexual dispositions. This paper is not an exception.

This paper discusses the findings of a study which sought to understand the factors causing susceptibility of village youth (marginalized) to HIV and AIDS infection. The paper identifies casual sex as the main cause of HIV infection in the study area and examines the cultural, social and economic dynamics (factors) in which casual sex is embedded. It is argued that these factors coincide lethally to produce (marginalized) young people's particular susceptibility to infection by the AIDS causing virus.

1. FOCUS OF STUDY

1.1. Definition of Study

The study was conducted in Western Province, one of Kenya's eight provinces. Western Province is predominantly inhabited by communities generally referred to as the *Abaluhya*. Western Province has eight districts, mainly rural, of which Butere–Mumias was the study's locale (see Figure 1). During the 1999 national census, the district recorded a population of 512,686. The HIV and AIDS prevalence in the district is estimated to be 10–14%⁸.

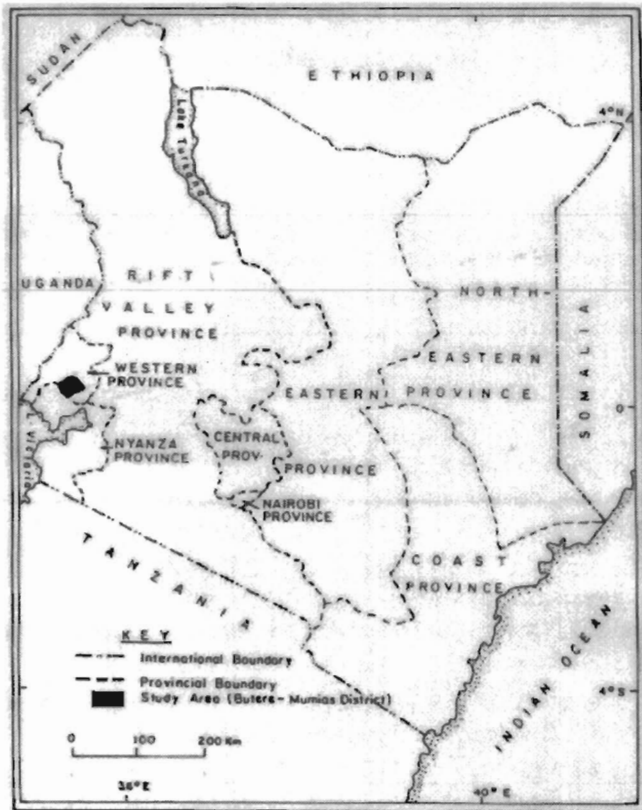
The study utilized both primary and secondary data. Primary sources of data included questionnaires, focus group discussions and self-reports (self-reports entailed narratives by respondents on their sexual lives and how these were influenced by the village context). Secondary sources included research reports, government reports and other documented sources. There were 500 randomly selected respondents⁹. A further group of 177 Form Two and Three students from six day co-educational secondary schools was involved¹⁰. This group provided narratives on their sexual life histories, in the context of their village life.

⁸ REPUBLIC OF KENYA (2004). *Economic Survey, 2004*. Nairobi, Government Printer.

⁹ 276 male youths (55.2%) and 224 female youths (44.8%).

¹⁰ 96 (54.2%) male students and 81 (45.8%) female students.

Figure 1: Map of Kenya showing the study locale



The respondents were young persons in the age range of 14–35 years. The mean age of respondents was 23 years. Many of them (41.45%) were married, with most of them getting married at the age of 21–25. A significant percentage (41.3%) of female respondents married at age 15–20 compared to only 18.8% males. Not many of the respondents had post-secondary training. Only 8.1% had post-secondary training. Many of them did not go beyond primary school (36.4%). To earn a living, most of them (48.6%) engaged in micro-businesses. Micro-business in the village context referred to petty trade, involving the selling of household

consumables such as sugar, salt, soap, fish and illicit brew. Although cash crop farming of sugar cane goes on in the study area, not many youth were involved in monetary farming. Only 3.3% of respondents engaged in farming to earn a living. This is mainly because land in Butere–Mumias District is, in most cases, under the exclusive control of parents (especially male parents). Land ownership has been complicated by sugarcane growing, the only cash crop grown in the District. As such, some (poor) parents either lease out the farms or want to remain in control of cane proceeds. Also, due to high population density in the area, land has been sub-divided into small economically unviable pieces. Accordingly, the youth are forced to look elsewhere for a living. Regarding income levels, majority of respondents (59%) earned less than Kshs 1000 a month, about US\$ 14.

1.2. Knowledge of HIV

A questionnaire was used to establish the village youths' knowledge levels concerning HIV and AIDS. Knowledge areas addressed included transmission, myths and other misconceptions concerning HIV/AIDS and HIV/AIDS prevention. Many respondents showed high knowledge of how HIV is transmitted and how one can prevent himself from infection.

There were however some gaps in the respondents' knowledge base. For instance 77.5% of the respondents indicated that it was false that people who are HIV positive generally feel quite well; 50.8% indicated that people infected with HIV are usually very thin and sickly. Looking at these two responses together, it is reasonable to conclude that most of the respondents would acknowledge that one was HIV positive when the disease was full blown. Failure to acknowledge that HIV carriers could look 'healthy' is likely to impact on protective behavioural dispositions, especially the use of condoms. Misconceptions regarding HIV and AIDS were further fuelled by 'inability' to understand certain information regarding the disease. Information issuing from the radio (the most popular source of HIV and AIDS information—71.3), was the most susceptible to misunderstanding. Owing to the low levels of education in the study area, some people do not quite comprehend what they hear on radio, especially discussions on research findings. Either the information is totally distorted or it

triggers even riskier responses. For example, when some people hear that condom use does not guarantee 100% safety, they resort to wearing more than one condom. When the radio announces research findings indicating that circumcision lowers probability of infection, some misconstrue this to mean invulnerability to HIV infection. Majority of the population in the study area did not have direct access to credible sources of HIV and AIDS information. Much of what they know is obtained from secondary sources, such as *busaa* or *chang'aa* (illicit brews) dens, market gossip, etc. Such information is likely to be distorted.

Although many people in the area appreciated that there was no known cure for HIV and AIDS, some of them believed herbalists who claimed they could cure AIDS. Consequently, desperate HIV and AIDS patients have ended up paying a lot of money for the said treatment. The belief that some herbalists can cure the disease can be alluded to a number of factors, key among them is the disappearance of symptoms associated with HIV and AIDS' opportunistic diseases (loss of weight, loss of appetite, diarrhoea, rashes, etc.), after taking herbal medicine. What the herbalists were calling cure was actually the disappearance of symptoms and not the virus. Groups involved in HIV and AIDS information dissemination need to emphasize that there is no known cure for HIV and AIDS. The disappearance of symptoms after herbal treatment does not change one's serostatus. This is important because some people are likely to engage in dangerous behaviour thinking there was cure. Herbalists also need to be educated on this.

A bigger problem regarding knowledge of HIV and AIDS is the misconception among people that they already know enough about the disease. There seems to be an HIV/AIDS-knowledge-fatigue. People have the impression that they already have enough information about HIV and AIDS when in the real sense what they know is either insufficient or distorted. Although, this is the natural consequence of hearing the same thing over and over, the presence of gaps in what is known about the disease calls for new and innovative ways of disseminating information about it. An approach that first establishes what the people know about the disease would provide the opportunity to dispel misconceptions and myths, and also determine what other information they need to

know. Certain ways in which HIV and AIDS information was disseminated had minimal impact and encouraged apathy towards HIV and AIDS information providers. For instance, certain non-governmental organizations (NGOs) involved in disseminating HIV and AIDS information were said to be casual in their approaches, especially those dealing with condom use. In one focus group discussion (FGD), a discussant lamented: "*These people [NGOs] usually arrive unannounced at markets and other areas where people are gathered, in vehicles playing loud music. Out of curiosity, people run towards them and immediately, they start 'preaching' about condoms and the dangers of contracting HIV/AIDS. The whole episode is usually more of a circus*".

Such approaches constitute a terrible misadventure. They ignore the reality that sex is an extremely sensitive matter in African societies, especially rural communities, such that public discussions on sex are frowned upon. Community norms do not encourage such discussions in a group made of people of different ages (that is young and old people) and certain social relations e.g. a son and mother-in-law. For instance a heterogeneous group (i.e. young and old people, men and women, and people with certain social relations and kinship ties) would be averse to a public demonstration of how to use a condom using a dummy penis. The need for a better focused and well targeted strategy cannot be over-emphasized.

Overall, although there are a few gaps in what is known about HIV and AIDS, knowledge levels about the disease are generally high, which then raises the important question: Why don't they use this knowledge to protect themselves against infection? An attempt is made to answer this question by way of teasing out the social, cultural and economic milieu in which young people live. It is later argued that this milieu is inimical to positive behaviour change even with knowledge of the disease.

2. ASPECTS OF VILLAGE LIFE THAT PRE-DISPOSE THE YOUTH TO HIV AND AIDS INFECTION

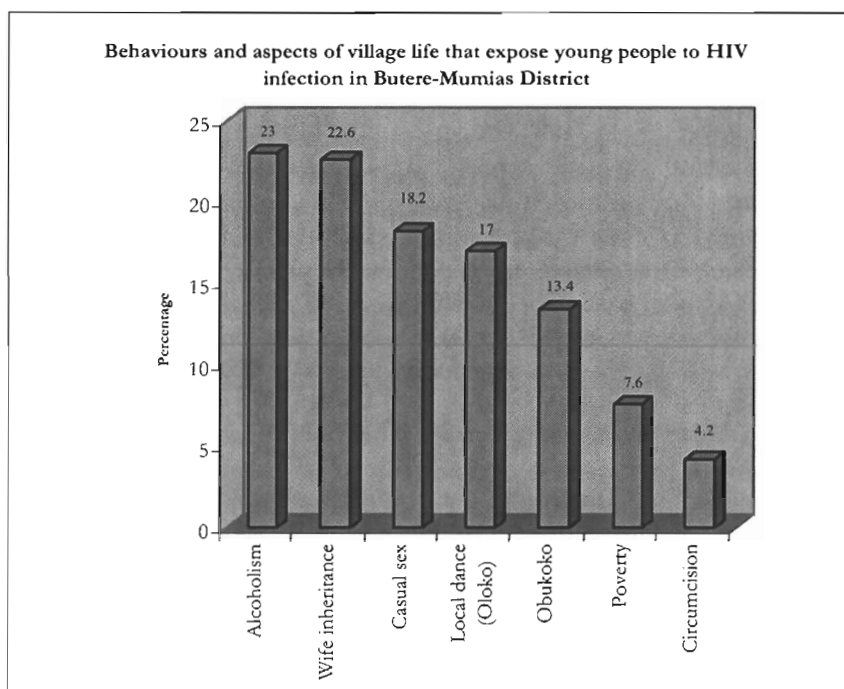
The village as a social, economic and cultural space is characterised by certain distinguishing aspects; some of which combine lethally to produce young people's particular susceptibility

to HIV infection. Some of these aspects are particular to these spaces such that HIV and AIDS policies constructed at the national level do not speak to them directly. Figure 2 shows some of the aspects of village life in the study area that pre-disposed the youth to HIV infection.

These aspects indicated in the figure actually underlie the occurrence of casual sex in the study area. As aforementioned, transmission of HIV in Kenya is largely a consequence of unprotected casual sex. Casual sex refers to promiscuous sexual activity, consisting of a range of informal sexual encounters. Casual sex is also cast in terms of loose sexual liaisons that lack long-term commitment or sex between unmarried people without necessarily demanding or expecting a more formal relationship as a goal¹¹. A definition that locates casual sex within a relationship in a particular context would closely reflect the sexual relationships reported in the study area. Accordingly, we locate casual sex in casual relationships. A casual relationship may be part time, or for a limited time, and may be monogamous or otherwise. Casual relationships may also encompass strong enduring friendships between people who enjoy each other's closeness but do not seek marriage for some reason, through to relationships purely entered into for sexual purposes. In each case, the relationship's dominance in the lives of those involved is voluntarily limited, and there is usually a sense that the relationship is intended to endure only so long as circumstances make possible and both parties wish it to¹². Thus, casual sex lasts as long as the casual relationship, it could be an hour or many years.

¹¹ www.en.wikipedia.org/wiki/Casual_sex

¹² *Ibid.*

Figure 2: *Aspects of village life that pre-dispose the youth to HIV infection*

Source: *Field Data*

The occurrence of casual sex in the study area is shaped by the social, economic and cultural milieu of the village. This milieu thus shapes casual sex differently. With regards to this milieu, the various aspects of village life or behaviour identified by respondents in the survey (see Figure 2), that circumscribe casual sex can be categorised into two broad groups: those that are shaped by local cultural circumstances (wife inheritance, circumcision, funeral ceremonies and dances) and those that are shaped by socio-economic considerations (alcoholism, poverty, and casual sex). It is important to emphasise that this milieu does not shape casual sex in a determinist manner. The milieu only provides 'favourable' circumstances for the occurrence of casual sex. The youth are not necessarily hapless 'victims' of this milieu. Other factors, outside

the purview of this paper (such as sexual risk perceptions, individual choices and idiosyncrasies, etc.), also play a role in the sexual behaviour of young people.

2.1. Casual sex shaped by local cultural circumstances

Sexual practices are variously shaped by local cultural circumstances. Certain casual sexual practices are directly sanctioned by local cultures, such as ritual sex, as in widow inheritance. In some cases, cultural narratives about sex, sexuality and sexual expectations exert considerable influence on young people's ideas of (casual) sex, sexuality, and relationships¹³. In other cases, casual sex is overtly encouraged by certain cultural practices or processes. In this case, culturally specific identities shape or encourage involvement in casual sex. Circumcision is an example. Local cultural circumstances thus have an influence on individual choices and behaviours regarding casual sex. Incidences of casual sex discussed in this category have a direct or indirect relationship with the local cultures or culturally specific identities.

2.1.1. Wife/widow inheritance

Wife/widow inheritance is an age-old practice among the people living in Western Province. The practice, though well intentioned in many African societies, is now a dangerous phenomenon which exposes people to the danger of contracting HIV. Wife inheritance is quite a complex problem considering that death from HIV and AIDS is always given an alternative explanation, mostly witchcraft. Cases of widows and widowers whose spouses had died of HIV remarrying were reported in all the focus group discussions (FGDs). In one of the FGDs the following disturbing scenario was painted: "*A husband dies of AIDS; the woman remarries in another area. When she gets bed ridden, she is taken back to her parents' home. When she dies, she is buried at her first husband's home. Meanwhile, her second husband marries another woman and the cycle continues...*"

¹³ IZUGBARA, C.O (2005) 'The socio-cultural context of adolescents' notions of sex and sexuality in rural South-Eastern Nigeria', *Sexualities* 8 (5): 600-617.

Young men were also said to be having sexual associations with widows. Some widows were blamed for encouraging this. It was reported that some of them had a carefree attitude, claiming they had nobody to please and nothing to lose since they had already lost their husbands. Some of these sexual associations were said to be a continuation of previous liaisons that existed even before the death of a spouse. A number of these sexual associations are sponsored by economic reasons. Accordingly, such relationships only last for as long as the young men can provide for the widows up keep or vice versa.

The problem of wife inheritance *vis-à-vis* HIV transmission is further compounded by men who would prefer somebody else to perform the rituals including sexual intercourse (condoms are hardly used in ritual sex) before they can now settle in. Such men then carry the virus to their spouses, in case they are married. The picture becomes even more disturbing when the man is polygamous or has multiple sexual partners.

Although a lot of focus has been put on widows being inherited, little is usually said in the case of widowers whose spouses died of AIDS re-marrying or landing sexual relationships. Such cases were reported. There may be nothing wrong with a widow or a widower re-marrying. But in case the widows or widowers are infected with HIV, then it may be important to forewarn their would-be partners and protect them from possible infection.

2.1.2. Initiation rites (circumcision)

Traditional circumcision was also blamed for encouraging casual sex and the spread of HIV and AIDS. It is both a predisposing practice and a barrier to positive behaviour change. Circumcision was traditionally considered the bridge to adulthood. After circumcision, the initiates were given an induction into 'adulthood'. This induction persists to date. Young initiates receive narratives (through erotic songs performed during circumcision and formal instruction) about sex, sexuality and sexual expectations, which exert considerable influence on their ideas of (casual) sex, sexuality, and relationships. They are told that they were now men-empowered to do all that 'appertained to being a man'. This often involved casual sex.

The problem is that presently, most initiates are young; twelve-year olds on average. A number of them have not even started experiencing adolescence. Sexual experimentation is one major problem of adolescence. These initiates therefore get into adolescence 'pre-allowed' to have sex. Early initiation into sexual intercourse makes the practice natural and therefore difficult to undo the behaviour later in life¹⁴.

In the traditional African society, male circumcision together with elaborate initiation rites that surround the actual operation was undoubtedly the most outstanding and important single event, as it involved a greater change in social status¹⁵. As a bridge to adulthood, the initiates acquired training that prepared them to adequately perform their roles as adults. Sexuality was a key subject in the circumcision curriculum. As such, the initiates were trained on how to seduce girls among other things. Circumcision was also a very delicate moment for the initiates. It was believed (even today) that during this time one would easily be bewitched, leading to impotence. As such there was a tendency for new initiates to want to 'confirm' their manhood as soon as they were circumcised. During a ceremony called *okbupa oluchembe* or *oklubita* among the circumcising communities in Butere–Mumias District, the circumciser tells the initiates, "*in case anything goes wrong don't blame me. Don't fear any girl* (added emphasis). *If you come to a house and it is closed, do not open it to enter. The closed door is not for you. Only the open door is yours*" (FGD, March 2003). 'Open doors' refer to unmarried girls and 'closed doors', married women. The initiates are therefore given a ticket to seek girls and have sex with them.

Other than encouraging casual sex, circumcision also directly exposed young people to infection through the use of an unsterilised knife. Using the same knife to circumcise a number of people was quite prevalent in the villages. In one FGD it was reported that some traditional circumcisers did not acknowledge that using the same unsterilised knife to circumcise several people was potentially risky in the context of HIV and AIDS. Asked

¹⁴ BIANCO, M (2001). *Women, the Girl Child and Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome HIV/AIDS*. Lusaka, UNAIDS.

¹⁵ GUNTER, W (1949). *The Bantu of North Kavirondo*. London, Oxford University Press.

whether they (circumcisers) thought using the same knife on several people was dangerous, some of them said, “*My knife is too sharp and I cut very fast that I scare away the blood and the virus [HIV]*”. Some circumcisers also wrongly believed that since most of those they circumcised were small boys, they were uninfected.

2.1.3. *Dances (Oloko)*

Dance is an age-old practice in many societies. In many cultures dance is functional. It could be part of a ceremony or celebration or function, or just for fun and recreation. There has always existed a relationship between dance and sexuality. In some cultures dance is seen as sexual embodiment and expression. Where physical intimacy is involved, dance has been associated with casual sex. In the study area, a dance called *Oloko/Omusolo* was reported as an aspect of village life that pre-disposed the youth to casual sex and HIV infection. *Oloko/Omusolo* are names given to an overnight erotic dance that is popular with the youth in Butere–Mumias District. In this dance, the revellers gather in a young man’s hut, as from about 7 p.m. To make sure the dance proceeds in an ‘orderly’ manner, a ‘referee’ (as they call him) is appointed. Among his duties is to ensure that order prevails in the dance arena and that all the rules of ‘engagement’ are observed. These rules could be arrived at collectively or unilaterally by the ‘referee’. Considering that girls/women are usually fewer than men (in the study area, a dance is only complete if it includes girls/women) a formula has to be arrived at on how the men will ‘share’ the girls equitably. One way to go about it is by the ‘referee’ selecting a number of men to dance with the girls in turns. The ‘referee’ will make sure that all the men enjoy the privilege. The other way is by asking the girls to select the men to dance with. They are however not allowed to select the same men all the time. The referee at times dictates the style of dancing, usually erotic. There is barely sufficient light in the huts. It was reported that the dancing quite often results in casual sex.

In the self-reports, the secondary school students considered *Oloko* a major cause of casual sex, as given in the following three reports: “*In my village, youths usually organise Oloko and I think this behaviour has increased the rate at which young people practice unsafe sex.*” “*In our village, there are many things which expose me to the risk of contracting HIV and AIDS. These are things like attending Oloko. In fact, it is the most*

serious of the predisposing factors. I once got a sexual partner from Oloko.”
“...one day I was convinced by my friends to attend Oloko and in the process I engaged in sex with someone I did not know. She ‘burnt’ [infected with a venereal disease] me!”

Traditionally, dances among the communities in Western Province took place in special occasions e.g. funerals and marriages, and were subject to strict regulations as to time and procedure. The present practice has arisen from the breakdown of such regulations and the introduction of new ideas. *Oloko* originated in the colonial period where youths returning from work in European settler farms and urban areas such as Nairobi introduced European dancing. The introduction of the gramophone and record player marked a variation in the manner dances were performed. The youth discarded traditional dancing and went for the ‘more fashionable’ European dancing in which the man held the girl round the waist, dovetailing into each other (closed couple dancing). In a report¹⁶ on ‘*Mrwanda* dances’ in Central Kavirondo by the District Commissioner (DC), Central Kavirondo, Kisumu, to the Provincial Commissioner (PC) Nyanza, the DC describes a dance not dissimilar to *Oloko*. In the report, the DC says:

“In Samia, Ugenya and Alego certain youths band themselves together and appoint one of their number as ‘king’ or ‘PC’ [referee] while under him are DC, etc. These youths hold séances every Saturday, Sunday more often. They procure if possible an equal number of women-and the ‘PC’ pairs them off. Their dances may last for the whole of one day and night, and after and during the dancing the pairs enjoying the pleasures of sexual intercourse. The actual dances are legion in variety, for as some of the chiefs point out, new dances are always being introduced, which the old men cannot understand.”

Even though the DC’s exposition of these dances is a bit exaggerated, it captures almost all the key facets of *Oloko*. The frequency at which these dances are held has significantly reduced and rarely do they last more than a night. In some areas, these dances are almost extinct. In such areas, the youth are favourably schooled and engage in meaningful economic activities. In other areas, *Oloko*-like dancing is only witnessed in funeral related

¹⁶ KENYA NATIONAL ARCHIVES (KNA-PC/NZA/3/27/4 (1932). *Report on ‘Mrwanda Dances’ in Central Kavirondo from DC Central Kavirondo, Kisumu, to the Provincial Commissioner Nyanza. 29th August 1932.*

celebrations. The incidence of *Oloko* remains high in areas where education levels are low and poverty levels high. In these areas most young people are largely idle and not very many opportunities for alternative leisure are available. In the District Commissioner's report, these dances are blamed for the spread of venereal diseases. Considering the manner in which *Oloko* came into being and how it is carried out, one could describe it as a youth sub-culture. It is not a 'culture' embraced by the entire community but a socio-cultural formation embraced by young people.

2.1.4. *Obukoko (funeral celebrations)*

Funeral related celebrations were also blamed for exposing or pre-disposing young people to casual sex. These celebrations are variously referred to as *Obukoko*, *Olung'anyi*, or *Amakumba*. *Obukoko* literally refers to a gathering of *abakoko*. *Abakoko* are one's sisters or paternal female relations. As such, during *Obukoko*, *abakoko* are the most important attendees. During these celebrations, which start during the day and go on overnight, daughters, sisters, nieces and other relations of the deceased gather at the deceased's home. Others in attendance are young men and women from the village and the neighbourhood. Other than prayers, the festivities include among other things alcohol consumption and dancing. These celebrations reportedly bring together former lovers and also offer an opportunity for others to meet sexual partners.

Obukoko, as an opportunity for people to meet sexual partners is narrated in the self-reports: "My first time to have sex was in December 2000 when I attended *obukoko*..." "Obukoko is responsible for many unwanted pregnancies and also HIV infection."

Obukoko as performed today is quite different from the way it was traditionally done. Traditionally, *obukoko* was a 'married women only' event. After the burial of an adult (male or female), married daughters of the deceased and their female cousins (also married) would set aside a date when they would gather at the deceased's home to bid 'farewell' to his/her spirit. The mourners gathered in the evening and the function was marked with singing all night long. Those who got tired slept in the very house where the singing took place. They sung songs in memory of the moments they shared with the deceased, exalted the dead person's virtues and

braced themselves for life without the deceased. In the morning, the mourners left for their marital homes.

With time *Obukoko* became an affair of the entire community and traditional musicians would be invited. They performed songs in praise of the deceased and consoled the bereaved family. Even though this was still done at night, high moral standards were observed. If anything, the dirges could not evoke erotic responses. Young people performed peripheral roles in these ceremonies. The occasion never belonged to them. Later, in an apparent struggle for space, identity and response to 'modernity', the youth would arrange a parallel entertainment programme for themselves. They would cluster in a small house usually belonging to one of them (unmarried young men usually put up small huts called *isimba*), and danced to music coming from a gramophone, record player etc.

Today, these ceremonies have almost lost their traditional meaning and trappings. Traditional performers are hardly invited; and modern day music has taken over. The dancing is along the lines of *Oloko*. The *Oloko*-like dancing during *Obukoko* is said to have been aggravated by the banning of *Oloko* proper. The banning of *Oloko* did not kill the spirit of dancing—the *Oloko* way—among young people. As such, it was reported that young people would almost likely take advantage of any overnight celebration to perform *Oloko*. *Oloko* dancing during *Obukoko* could also be explained by the fact that today young people play a major role in organising these functions. Presently, married daughters of the deceased attend these ceremonies more or else as guests of their brothers. Also, the said married daughters are predominantly young women who hardly understand the traditional purpose of *Obukoko*—they largely subscribe to the dominant persuasions of youth. As such the trappings of village youth observed during these occasions are not a surprise, but a manifestation of the change of roles and participation in these ceremonies.

Those being socialized into these practices presently misconstrue what goes on as the right thing. It is this re-constructed practice of *Obukoko* that predisposed the youth to casual sex and the entire society to HIV infection. Other than *Oloko*, abuse of potent illicit brews during *Obukoko* and related ceremonies is another break from the norm. It is not uncommon to come across vendors of these brews hawking their merchandise in

these ceremonies. As it will be shown below, alcohol abuse and the occurrence of casual sex have a significant co-relation.

2.2. Socio-economic shaping of casual sex

The occurrence of casual sex is closely linked with the context of social and economic dynamics. The sexual behaviour of other community members considerably influences young people's sexual perceptions and behaviour. Overall, in many societies, youth is a period of time marked by pecuniary disadvantage and high levels of peer (and community) influence and pressure. Social and economic circumstances thus play a big role in the shaping of young people's sexual experiences. In this section, socio-economic aspects of village life identified in the survey are discussed.

2.2.1. Alcoholism

Alcohol abuse is a major problem in Kenya. The problem has been accentuated by the proliferation of inexpensive brews and spirits, which are popular with the low income earners in poor urban enclaves and in rural areas. In all the FGDs alcoholism was cited as one of the foremost causes of casual sex. Drinking dens were also said to be venues for meeting prospective sexual partners. Men were said to solicit for sex by buying women alcohol. Others who already had sexual associations, mostly extra marital, found (illicit) liquor drinking dens convenient meeting venues. They would drink until very late at night and on their way home, engage in unprotected coital activities. It was claimed that consumption of alcohol caused a rise in libido and loss of self-control. More importantly, alcohol abuse encouraged HIV transmission by impairing judgment and hindering the adoption of preventive measures by its consumers in circumstances where these measures would be required. Such preventive measures include condom use. In many continents commercial sex and other risky encounters take place after drinking sessions¹⁷. People who are drunk are less likely to use condoms than people who are sober.

¹⁷ UNAIDS/WHO (2000). *Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections*. Israel, UNAIDS/WHO.

Consumption (abuse) of alcohol is a conspicuous feature of village life in Butere–Mumias District. Not many celebrations are considered complete without the consumption of liquor. A number of the inhabitants of this district earned their income by selling illicit brews. Its consumption is a popular pass time. Young men are among those deeply implicated in the habit. Some of them are said to report to the drinking points at dawn and then leave at dusk. It is not uncommon to come across a group of young men already in drunken stupor early in the morning. The high incidence of alcohol abuse has been attributed to the low levels of school participation and limited productive economic activities, leading to joblessness and economic impairment. A convergence of these factors produces a hopelessness that dangerously seeks solace from alcohol.

2.2.2. *Casual sex per se*

The common denominator in all the aspects of village life considered as predisposing to HIV infection is casual sex. Other than those aspects in which casual sex is embedded, there is also the occurrence of casual sex *per se*. Casual sex has become a major ingredient of young people's lifestyles. In the study area, the incidence of casual sex was said to be aggravated by adolescence. Sexual intercourse was seen as a mark of adolescence especially for young men whose sexual dispositions are complicated by the macho problem. It was established that some men carry on with their adolescent behaviours into their marriage life and adulthood. A practice known as *okbutsya isimba* was quite popular during adolescence. *Okbutsya isimba* literally translates to 'going to the hut'; meaning, conjugal visitations. In the study area, young men were expected to put up their own houses, usually small huts (*isimba*) at the onset of adolescence. Girls will usually move to the kitchen, normally a separate structure, or re-locate to their grandmothers' houses. This happened usually to allow parents their privacy, considering that their houses are usually small one-room structures. Grandmothers were also expected to educate girls about their sexuality and prepare them for wifehood and motherhood.

Owning a hut (*isimba*) gave boys the false impression that they were now adults. It was believed that the best way to formally 'inaugurate' a hut was by inviting a girlfriend for an overnight stay

or having an overnight erotic dance (*Oloko*). Sleeping outside their parents' houses also made adolescent girls think that they were 'mature'. This also made them in charge of their 'night life'. In one case history, it was reported that some girls sneaked out at night to visit their boyfriends. This usually happened without the notice of their parents. In most cases, parents got to know about it when the girls contracted either pregnancies or sexually transmitted illnesses.

The practice of *okhutsya isimba* involved young women visiting their boyfriends, where they could stay overnight or longer. This practice becomes riskier when the visiting partners have multiple sexual relationships. In this case, once the girl left, the young man could invite another of his girlfriends or the young women could visit their other boyfriends. These visitations were considered an epitome of youth.

Casual sex was further aggravated by the phenomenon of *olusiani* which literally refers to machismo. *Olusiani* exalts male virility. It encourages young men to experiment with multiple sexual partners. It idealises virility such that if a young man does not conform (to this idealised virility) he is ridiculed by his peers. Machismo promotes and perpetuates gender disparities in power, and therefore, it proliferates young women's vulnerability to HIV¹⁸. *Olusiani* finds expression in the following sayings obtained from participants during FGDs:

- *'isurusi ifwitsanga nende obunyasi mumunwa.'* Literally it translates to, 'a bull dies with grass in the mouth'. 'Grass in the mouth' refers to having sex.
- *'isurusi nwani si ikosanga emikhala ta'.* This means: a bull that fights always has scars. Scars refer to sexually transmitted diseases, children born out of wedlock, etc.

Olusiani was partly blamed for encouraging illusions of invulnerability. It was noticed that some young people had the false belief that they could not contract HIV irrespective of their behaviour. Illusions of invulnerability were further enhanced by the perceived 'failure' by people considered to be promiscuous to catch the disease. Some people were considered too promiscuous that they should be infected with the disease. The fact that they did not

¹⁸ BIANCO, M. (2001), *op. cit.*

'appear' to be infected seemed to encourage the notion that some people are immune to HIV infection. What the village youth forget is that being promiscuous and practising unsafe sex are two different things. One could argue that a promiscuous person, alive to the dangers of unsafe sex is much more likely to protect him/herself from contracting HIV than a non-promiscuous person who suffers illusions of invulnerability to HIV infection. It should be emphasized that contracting HIV through sex largely depends on whether it is safe or unsafe. Illusions of invulnerability to HIV infection, of the type discussed here show, to some extent, how sexual risk judgements are made.

2.2.3. *Sugar daddies [poverty] and survival sex*

About 60% of the population in Butere–Mumias District lives in absolute poverty. Poverty is known to foster survival sex. Poverty encourages casual sex in a number of ways. It has affected parents' roles. Since most of them are poor, they cannot adequately provide for their children. Some of their children, especially daughters, were treated as cash crops; they were expected to provide a livelihood to their families. Some parents will not reprimand their daughters when they engage in sexually risky behaviours, since out of it, they (parents) also earned a living. Well-to-do men were also reported to be taking advantage of the girls' poverty to have sex with them in exchange for money and other gifts. Such girls are forced to engage in quasi-consensual survival sex. It was not always a case of older men taking advantage of young women's situation of pecuniary embarrassment to have sex with them. Even young men, the girls' peers, were reported to employ money and gifts to gain sexual favours. In such cases, the young people's sexual relationships were underpinned by an economic exchange. These exchanges are not explicit commercial transactions as such. Gift (money or any other favour) giving "*in like-age relationships [can] be associated with sexual leverage, an exchange which somehow entitles one partner physical and sexual rights to the other's body*"¹⁹. Where money and other favours are involved, the

¹⁹ KAUFMAN, C.E. and STAVROU, S.E (2004) 'Bus Fare Please': the economics of sex and gifts among young people in urban South Africa', *Culture, Health and Sexuality* 6 (5): 377–391.

immediate problem of earning a living was considered more critical than contracting HIV, which was treated as a future problem. Poverty is said to encourage apathy and hopelessness which leads the youth to find consolation in casual sex, alcohol, and other HIV predisposing behaviour²⁰.

The occurrence of casual sex shown in the preceding discussion is further enhanced by failure by moral guardians (or social gatekeepers) from whom the youth model their behaviour, to live up to society's expectations. The most notorious moral guardians were parents, teachers and the clergy. It was observed that whereas these moral guardians talked about the dangers of HIV and AIDS, and advocated for positive behaviour change, their own behaviours were wanting. For example, cases of parents having concubines, openly engaging in multiple sexual relationships (especially widows and widowers) and wife inheritance were reported as a hindrance to positive behaviour change among young people.

Cases of pastors sexually associating with their followers and teachers flirting with their pupils were reported. In this category of moral guardians, parents were more to blame. Proper parenting does help mitigate the spread of HIV among young people. Other moral guardians such as pastors and teachers were accused of abusing their fiduciary roles. Some pastors were said to be asking for sexual favours after allegedly 'healing' or exorcising evil spirits from their faithful. It was said that it was difficult to resist such advances coming from pastors. Some invoke the name of God. Considering their perceived 'closeness' with God, some faithful believed that pastors could not contract AIDS and that having a sexual affair with them could bring blessings.

From a social learning perspective, moral guardians are critical in shaping positive behaviour. Behaviour is caused, it is learned; and it occurs in a social context. And HIV being a behavioural issue, it is important that the youth imitate or model

²⁰ MCHOMBU, K.J. (2000). 'The coverage of HIV/AIDS in Namibian media: a content analysis study', in S.T. KWAME BOAFO and C.A. ARNALDO (eds.) *Media and HIV/AIDS in East and Southern Africa: A resource book*. Paris, UNESCO.

the 'appropriate' behaviour from those they look up on. Moral guardians as custodians of society's norms play a much larger role in the way the youth think about themselves, and therefore how they interact or behave in the larger context of society. Moral guardians must, therefore, model appropriate behaviours and take care not to model inappropriate ones. This is because they influence the behaviours of those who look up on them (the youth) for guidance and direction.

The preceding exposition gives a picture of the many factors that converge to expose village youth to potential infection. It is a convergence that seemingly resists positive behaviour change campaigns and other policies for preventing the spread of the disease. The youth are apparently overwhelmed by these aspects (being the context they live in) such that the knowledge they have of HIV and AIDS is hardly transformed into praxis. Knowledge and behaviour change have little causal relationship, in a context such as that found in the study area. It is this very context that also hampers the realization of HIV and AIDS prevention policies promulgated at the national level. These contextual specificities must inform such policies at the level of implementation for any meaningful success to be achieved.

Arising from the findings of this study, it is reasonable to conclude that even though village youth have some knowledge concerning HIV and AIDS, practicing this knowledge has been hampered by a dynamics of factors. Chief among them is the environment (social, cultural and economic), the context in which these youth live, which exerts a formidable barrier to positive behaviour change. Having engaged in some of these risky behaviours for a long time, chances are that some of them are treated as appropriate behaviour. Prolonged exposure to inappropriate but predominant behaviour models may easily reinforce resistance to positive behaviour change. As such an attempt to change behaviour has to contend with conflicting 'signals' from the social, cultural and economic space the youth live in, which by and large discourage positive behaviour responses.

Poverty is one of the biggest challenges facing marginalised communities. It is widely acknowledged that the HIV epidemic affects the poorest and most vulnerable. Poverty amplifies other factors that contribute to vulnerability. Poverty thus places the

youth in a risky situation. They must respond to other more immediate needs, such as finding food and shelter, in their day-to-day decision making than considering how to protect themselves against HIV. In resource strapped settings, sexual activity may be the only way for young people to survive. It is common in economically impaired societies for young girls to engage in 'survival sex' with much older men who can give the girls monetary gifts, and increasingly HIV²¹. The inherent power differences in these relationships create a dynamic where youth have little control over their sexuality. The need for survival in the immediate can create serious health issues. In the context of their very challenging lives, HIV does not rank as one of their most pressing concerns. Poverty exposes, especially women and girls, to abuse and higher-risk behaviours, such as survival sex. Families have been pushed by extreme poverty to tolerate and even encourage survival sex by girls and women²².

Although this discussion has emphasised the cultural, social and economic context of young people in determining their sexual behaviour, it is important to emphasize the element of personal decision and individual choices as regards sexual dispositions. Young people should not necessarily be treated as hapless victims of their cultural, social and economic milieu. However, in a situation where this milieu is overwhelming, individual agency may be inhibited.

Conclusion

The Kenyan government has promulgated several policies geared towards halting the spread of HIV and AIDS. Mainstreaming HIV and AIDS in all sectors to support a multi-sectoral approach, targeting vulnerable groups, focus on women and youth, and evidence based interventions are some of the key principles that inform the fight against HIV and AIDS. The policy on young people entails carefully targeted prevention messages: most young people have heard of HIV and AIDS but, for example,

²¹ KIM, R. and AGGLETON, P. (1999). *Adolescent Sexuality, Gender and the HIV Epidemic*. London, UNDP.

²² *Ibid.*

only 53% of young women and 60% of young men aged 15–24 know that condoms reduce the risk of contracting HIV²³, youth friendly access to HIV and reproductive health information and other services; mobilising the education system to provide comprehensive prevention and care for youth in school; improving girls' access to education and skills training, and protecting their rights; and building partnerships with youth-based organisations. Other policies include the promotion of condom use; more effective, targeted behaviour change communication; and promoting abstinence, consistent safe sex and delayed sex debut among young people²⁴.

Almost all the policies emphasise the need to provide more information on the various aspects of HIV and AIDS, and appropriate behaviour. Although providing the requisite information or knowledge is obviously important, its effectiveness becomes hamstrung when it ignores the holistic condition of young people in their social, cultural, economic and behavioural milieu.

Consequently, these policies fail to directly speak to the condition of marginalised village youth whose vulnerability to HIV infection is not necessarily because of lack of appropriate information or knowledge but a context of economic impairment, educational disadvantage and an inimical cultural and social environment. Most village youth are poor; they are not well educated and live in an environment that largely negates their knowledge of HIV and AIDS. These have led to growing disillusionment, loss of purpose, and hopelessness among the youth leading some of them to seek relief through sex or escape through alcohol. A successful HIV and AIDS campaign must therefore be multi-pronged i.e. it should address the social, cultural and economic life in the villages. For as long as prevailing social, economic and cultural conditions of young people remain inimical to positive behaviour change, information alone is not going to attain the desired results.

²³ CENTRAL BUREAU OF STATISTICS, MINISTRY OF HEALTH and ORC MACRO (2004). *Kenya Demographic and Health Survey 2003*. Calverton, CBS/MOH/ ORC Macro.

²⁴ OFFICE OF THE PRESIDENT (2005), *op. cit.*

The apparent high incidence of casual sex involving the youth makes them a group most at risk of contracting HIV. They are therefore the most important target group in terms of the fight against HIV and AIDS. Although this paper argues for a holistic approach to fighting the AIDS pandemic, providing knowledge and other important information on the disease remains an important aspect of the fight against the scourge. It is important that those providing HIV education go beyond giving generic information on the disease. HIV and AIDS campaigns should provide information that directly speaks to the aspects that cause susceptibility to infection in particular locales. Such advocacy should, for instance, challenge harmful sexual cultures, the problem of machismo, inimical cultural practices, and dispel locally held misconceptions about the disease. Outright condemnation of 'harmful' cultural and other practices may not help much. Instead, through advocacy, the dangers of upholding these practices in their current form should be brought to the fore. Unless there is conviction that these cultural practices pre-dispose them to HIV infection, communities are likely to treat any condemnation as unnecessary outside interference. Where it may not be possible to discard these cultural practices, then, with the help of the concerned communities, alternatives to the inimical practices could be sought, or the practices be reconstructed in the context of HIV and AIDS. For instance, is it possible to have non-sexual wife inheritance?

From the data gathered in the study, it is reasonable to conclude that the HIV epidemic in Butere–Mumias District is characterised by heterosexual transmission, actually casual sex. The identified patterns of sexual behaviour have been shaped by cultural, social, economic and personal factors. That being the case, it is important to emphasise that understanding the dynamics involved in the occurrence of casual sex is important in arresting the spread of HIV and AIDS. Underlying social, economic, cultural and personal factors, which constitute cues to certain behavioural dispositions, must be taken into consideration by HIV and AIDS intervention programmes.

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MOBILITÉ, MIGRATIONS ET SIDA AU KENYA : ÉTAT DES CONNAISSANCES ET PERSPECTIVES DE RECHERCHE

par Matthieu Miralles

Depuis les débuts de l'épidémie de VIH en Afrique subsaharienne, sa physionomie générale, sa rapide propagation et ses disparités géographiques ont été associées à une multiplicité de facteurs biomédicaux, socio-économiques, liés aux comportements sexuels ou encore au type de virus (VIH 1 ou VIH 2). Dans l'éventail de ces facteurs, la mobilité géographique a été individualisée comme une des principales conditions facilitant la transmission du VIH et sa propagation¹. À l'échelle de l'individu, les recherches se sont intéressées aux situations de vulnérabilité suscitées par les migrations et au rôle du contexte social sur la gestion des risques des migrants². Dans une perspective plus large, d'autres analyses ont porté sur la dynamique spatiale de l'infection parmi les populations³.

En Afrique subsaharienne, plusieurs études ont ainsi mis en lumière un lien entre une prévalence du VIH élevée avec une courte durée de résidence dans une localité ; un déplacement le long d'un axe de communication majeur ; le statut de migrant et une mobilité internationale d'une région à l'autre. D'autres travaux soulignent la forte influence des migrations sur les dynamiques de l'infection. Dans cette perspective, des analyses proposent des schémas géographiques qui associent des pôles, des couloirs, des

¹ AMAT-ROZE, J.M. (1993). 'Geographical inequalities of HIV-infection and AIDS et du SIDA in sub-saharan Africa', *Social science and Medicine* 36: 1247-1256.

² LALOU, R. et PICHE, V. (1994). 'Migrations et sida en Afrique de l'Ouest. Un bilan des connaissances', *Cahiers du Ceped* 28.

³ WILLIAMS, B., GOUWS, E., LURIE, E. and CRUSH, J. (2002). 'Spaces of vulnerability: Migration and HIV/AIDS in South Africa', in J. CRUSH (ed.) *Southern Africa Migration Project, Migration Policy Series No. 24*. Cape Town: SAMP.

carrefours de diffusion du sida à la hiérarchie des villes et aux axes de communication⁴.

De façon plus particulière, la migration massive de jeunes adultes célibataires de milieux ruraux vers des contextes urbains est décrite comme partiellement responsable de la prévalence du VIH, alors que le mouvement migratoire inverse (urbain vers rural) semble être dans les études moins associé à des situations de vulnérabilité au risque VIH. Certaines recherches avancent également que les situations sociales partagées par de nombreux travailleurs migrants pourraient les exposer à la prostitution ou à d'autres comportements à risques⁵.

La question des relations entre migration et sida a été explorée à l'échelle du Kenya et à Nairobi, en particulier à travers notamment l'étude des catégories socio démographiques et des comportements à risques dans les bidonvilles. Cependant aucune étude n'aborde d'une part, des effets différenciés des multiples formes de mobilité sur les situations de vulnérabilité et l'exposition aux risques associés au VIH et d'autre part le rôle du facteur migratoire dans la dynamique spatiale de l'épidémie.

À l'aune de l'estimation moyenne de la prévalence du VIH en milieu urbain parmi les femmes enceintes (15 %) comparées à la même population en milieu rural (6.3 %) et des migrations multiformes qui parcourent le pays, le Kenya se profile comme un territoire propice à un tel bilan. En effet, la diffusion du sida depuis le début des années 1980 a coïncidé avec le phénomène d'urbanisation : la population urbaine a triplé entre 1980 et 1995 et le taux de croissance annuel dans la capitale s'est élevé à 6 %. Cette croissance urbaine est attribuable pour une large part aux migrations rurales-urbaines depuis l'indépendance, en 1963, et, singulièrement, à l'installation de migrants permanents dans les villes et à la circulation des hommes et femmes entre leur *home area*

⁴ RÉMY, G. (2002). 'Mobilité des personnes et diffusion du sida en Afrique de l'Ouest', *L'espace géographique* EG 2002-3 : 253-263.

⁵ DECOSAS, J. (1995). 'Women and AIDS in Africa; demographic implications for health promotion', in *Health policy and planning* 7 (3): 227-233.

et les lieux où se concentrent des opportunités économiques⁶. En 1989, près de la moitié des femmes résidentes en ville (46 %) en âge de se reproduire avaient migré en provenance d'autres pôles urbains et villages ruraux durant les dix années précédentes⁷. En outre, les mouvements fréquents entre les villes et les régions rurales d'origine, *home areas*, reste la norme pour de nombreux migrants urbains au Kenya⁸.

Au regard des disparités de l'épidémie à VIH, de la prégnance du phénomène migratoire et de la multitude des études sur les liens entre migration et sida, il importe de dresser un état des lieux des connaissances sur cette problématique vingt ans après les débuts de l'épidémie au Kenya et d'en dégager les apports et les limites.

À grands traits, certaines recherches épidémiologiques sont parvenues à associer des indicateurs de prévalence du VIH plus élevés à des formes de mobilité spécifiques tandis que quelques études socio-démographiques ont tenté d'appréhender les mécanismes sociaux et comportementaux par lesquels la mobilité favorise un risque majoré d'infection par le VIH.

Les migrants forment un groupe hétérogène et inscrivent leurs déplacements dans un large éventail de mobilité. Ce faisant, il est important de comprendre, non seulement comment l'exposition au risque diffère entre migrants et non-migrants, suivant les formes de mobilité dans lesquelles ils situent leurs déplacements mais aussi d'éventuelles différenciations face aux risques entre hommes et femmes, selon leur condition socio-économique et leur lieu d'origine — rural ou urbain — en milieu de départ et d'arrivée.

La diffusion hétérogène du VIH au Kenya procède de plusieurs facteurs. C'est à la lumière de ceux-ci et de la distribution de l'épidémie de VIH au Kenya depuis vingt ans (1) qu'il convient

⁶ THADANI, V.N. 1982. 'Social Relations and Geographic Mobility: Male and Female Migration in Kenya', *Center for Policy Studies Working Paper No. 85*. New York, Population Council.

⁷ BROCKERHOFF, F.M. et BIDDELCOM, A. (1998). 'Migration, sexual behaviour and HIV diffusion in Kenya', *International Migration Review* 31 : 833-856.

⁸ GOULD, W.T.S. (1988). 'Urban-rural return migration in Western province, Kenya', in *African Population Conference 1988*, vol 2. Liege: IUSSP (pp. 41-55).

de resituer les connaissances sur le rôle et la place du facteur migratoire en glissant dans l'échelle d'analyse de la population kenyane dans son ensemble (2) à trois études de cas circonscrites, d'une part, aux relations entre migrations et sida à Nairobi et, d'autre part, à un groupe dit « à risques », les chauffeurs routiers (3). En effet, une analyse multiscalaire est susceptible de mettre en perspective les tendances générales et pistes de recherches sur les associations entre mobilité et risques associés aux VIH et, aussi, à une grande échelle, ce qui relève dans l'exposition aux risques, des caractéristiques et vulnérabilités d'une sous-population, du contexte social et de l'expérience migratoire.

1. LE BILAN DE L'ÉPIDÉMIE DE VIH AU KENYA ET LES RÔLES DES DIFFÉRENTS FACTEURS DE RISQUE

La distribution géographique du VIH / sida au Kenya est marquée par des différenciations importantes suivant les populations, les régions, les aires urbaines et rurales. Cette hétérogénéité de l'épidémie s'expliquerait par l'effet singulier ou la conjonction de facteurs de différente nature : bio-médicaux, comportementaux et socio-économiques. La part du facteur migratoire dans cette avancée différentielle de l'épidémie à VIH ne peut être isolée et étudiée sans le resituer dans l'ensemble des facteurs intervenant dans la transmission du VIH. Pour ce faire, un état des lieux des facteurs de propagation de la maladie s'impose.

1.1. Des disparités géographiques et de genre

Deux sources d'estimation distinctes sur l'évolution de l'épidémie de VIH convergent sur les disparités géographiques et de genre qui caractérisent sa diffusion. Chacune de ces sources comporte des biais, mais elles livrent une vue d'ensemble de la distribution de l'épidémie à VIH complémentaire aux enquêtes épidémiologiques ponctuelles. À l'échelle du Kenya, ces deux sources sont :

- Les données de séroprévalence du réseau sentinelle, réestimées par l'OMS et l'ONUSIDA⁹. Elles prennent en compte femmes enceintes et professionnelles du sexe.
- Les données de séroprévalence du KDHS.

Le réseau sentinelle a été mis en place à la fin des années 1980 par le gouvernement Kenyan. Il s'agit d'un système national de surveillance de l'épidémie fondé sur des enquêtes longitudinales portant sur des populations de femmes enceintes et des patients infectés par des maladies sexuellement transmissibles (MST) dépistés dans 42 sites sentinelles. Ces sites localisés dans des aires rurales et urbaines sont censés représenter l'hétérogénéité du peuplement du Kenya¹⁰. Actuellement, un quart des sites du réseau sentinelle se trouverait dans des aires « rurales » regroupant moins de 10 000 habitants¹¹.

Les données sont collectées durant trois mois chaque année via le dépistage de femmes enceintes enregistrant leurs premières visites en maternité et de patients présentant des MST. À l'instar des autres pays abritant des sites sentinelles, ces données sont supposées livrer un panorama général de la prévalence au VIH parmi la classe d'âge 15/49 ans considérée comme la plus active sexuellement¹².

⁹ La prévalence peut être définie comme la proportion d'individus infectés dans une population donnée à un moment T. L'incidence est la mesure de la fréquence de l'épidémie sur une plus longue période. L'incidence est un outil de mesure plus précis.

¹⁰ ONUSIDA (2003). *Rapport d'activité sur la riposte mondiale à l'épidémie de VIH/SIDA 2003*. Genève, ONUSIDA.

¹¹ On ne peut affirmer que les données de séroprévalence de l'ONUSIDA censées représenter l'évolution du SIDA au sein de la population rurale reflètent la physionomie de l'épidémie en milieu rural dans la mesure où l'ONUSIDA estime la prévalence de la population vivant dans cet environnement à partir de sites localisés dans des villes petites et moyennes (Thika, Mbale...). Autrement dit, il est possible que les populations dépistées vivent dans ces unités urbaines et non dans des villages ruraux. Le critère de distinction géographique de l'ONUSIDA distinguant les « grandes aires urbaines » telles que Nairobi et Kisumu et les sites localisés « hors des grandes aires urbaines » ne semble donc pas totalement opératoire pour donner une appréciation juste de l'épidémie en milieu rural et urbain.

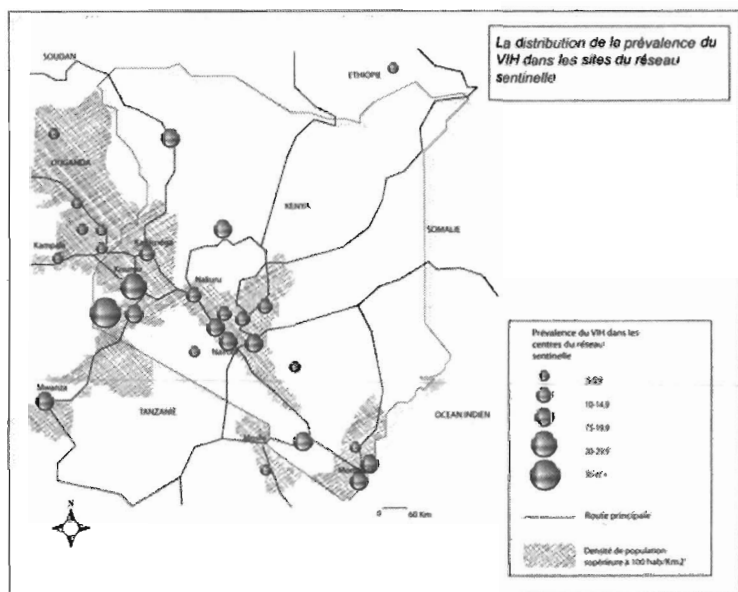
¹² ONUSIDA (2003), *op. cit.*

Toutefois, cet indicateur souffre de plusieurs limites. Les taux de prévalence du VIH ne donnent pas un décompte exact du nombre de personnes infectées par le VIH¹³. Ils sont utilisés pour livrer une estimation partielle de l'évolution de l'épidémie, de ses tendances temporelles et de ses variations géographiques. En outre, le taux de prévalence au sein du groupe des femmes enceintes n'offre pas une appréciation juste de la diffusion du VIH au sein des populations féminine et masculine dans leur ensemble. En effet, les données du réseau sentinelle sont partielles. Ainsi, elles ne prennent pas en compte les femmes qui ne vont pas accoucher dans les maternités du réseau. De plus, deux autres limites doivent être soulignées concernant la séroprévalence de la population féminine¹⁴. D'une part, les données de séroprévalence du réseau sentinelle pourraient surestimer la prévalence de l'infection parmi les jeunes femmes, car les femmes enceintes pourraient être dans une tranche d'âge plus sexuellement actives. D'autre part, concernant les femmes plus âgées, la surveillance sentinelle pourrait sous-estimer leur séroprévalence car celles-ci pourraient être plus exposées aux MST qui favorisent l'infection à VIH. *In fine*, le VIH est associé à une réduction de la fécondité parce que la connaissance du statut (par la femme et / ou le conjoint) est susceptible d'influencer les pratiques reproductives.

S'agissant d'étudier la population masculine, la prévalence féminine ne constitue pas un bon indicateur car les enquêtes épidémiologiques ponctuelles soulignent des taux et risques d'infection moins importants parmi les sujets masculins.

¹³ WILLIAMS, B. *et al* (2003), *op. cit.*

¹⁴ *Ibid.*



Au total, selon les estimations de l’OMS et de l’ONUSIDA, fondées sur les données du réseau sentinelle, la prévalence du VIH, dans le groupe des femmes enceintes, s’élevait en 2002 à 14,3 % dans les aires urbaines contre 6,3 % dans les aires rurales. La plus forte prévalence était observée à Suba avec près de 35 % alors que les prévalences les plus faibles étaient relevées sur la côte kenyane notamment dans la station touristique de Kilifi (4 %).

Dans la capitale, la prévalence du VIH parmi les femmes enceintes est passée de 24,6 % en 1995 à 14,7 % en 1999 pour atteindre 14,4 % en 2001. À Mombasa, cet indicateur se situait dans une fourchette échelonnée entre 12,2 % en 1995 et 14,2 % en 2002, après avoir connu une hausse à 16,3 % en 1999.

À Kisumu, la prévalence a été fluctuante et a connu son point d’acmé en 2000 avec près de 35 % de séropositives parmi les femmes dépistées. Selon, l’étude multisites à laquelle Kisumu était

intégrée¹⁵, les jeunes femmes étaient plus susceptibles d'être infectées que les hommes du même âge. Parmi, les femmes âgées de 15 à 29 ans, la prévalence était estimée à 33,7 % alors que pour les hommes, elle s'élevait à 14,3 %.

Figure 1 : Les estimations de l'incidence du VIH/SIDA d'après l'ONUSIDA au Kenya

Estimation fin 2003	Adultes	Enfants	Femmes	Nombre de décès en 2003	Nombre d'orphelins
Estimation basse	760 000	61 000	500 000	89 000	430 000
Estimation haute	1 600 000	170 000	1 000 000	200 000	930 000

Le *Kenya Demographic and Health Survey 2003* (KDHS), basée sur des enquêtes dont le taux de réponse se situait autour de 63 % en milieu urbain (52,4 % à Nairobi) et 79,3 % en milieu rural, livre une estimation de la prévalence nationale de 6,7 % avec des différences entre urbains (10 %) et ruraux (5,6 %) mais aussi entre hommes (4,5 %) et femmes (8,7 %). Le ratio homme / femme est plus haut que dans la plupart des pays africains.

En effet, les informations du KDHS indiquent que 3 % des femmes âgées de 15 à 19 ans étaient séropositives au moment de l'enquête contre 0,25 % des hommes de la même classe d'âge. La prévalence s'élevait à 9 % parmi les femmes âgées de 20 à 24 ans contre 2 % chez les hommes. Dans la population féminine, le pic de prévalence s'élève à 13 % pour la classe d'âge 25–29 ans alors que pour les hommes, elle atteint son niveau le plus élevé dans la classe d'âge 40 / 44 ans.

En termes de disparités géographiques, la province de Nyanza qui compterait 15 % de personnes séropositives est talonnée par Nairobi avec 10 % de sujets dépistés séropositifs. Les populations des autres provinces connaissent des prévalences entre 4 et 6 %. Dans la North Eastern Province, aucun répondant n'a été

¹⁵ BUVÉ, A., CARAËL, M., HAYES, R.J., AUVERT, B. *et al.* (2001). 'The multicentre study on factors determining the differential spread of HIV in four African cities', *AIDS* 15: 27–131.

testé positif. Selon le KDHS, les deux groupes ethniques avec les prévalences les plus importantes sont les Luo et les Taita : plus d'une Luo sur 4 et 18 % des hommes seraient séropositifs. La prévalence serait également plus importante chez les chrétiens comparés aux musulmans (9 % contre 3 %).

D'autres sources indiquent qu'il existe des disparités de prévalence au VIH importantes à Nairobi : 25 % de la population de femmes enceintes de Kibera serait infecté (ONUSIDA) alors que parmi des sujets masculins et féminins dépistés volontairement dans une clinique localisée à Kibera, dans le quartier de Gatwikira, la prévalence se situait entre 29 et 42 % au cours de l'année 2005. Cependant, ces données ne peuvent être considérées comme représentatives de la population vivant dans ce bidonville.

Les relations hétérosexuelles sont le principal mode de transmission du VIH au Kenya. Elle compterait pour 75 % des infections au VIH¹⁶. Ce mode de transmission devance la transmission périnatale qui peut se produire durant la grossesse, au moment de la naissance ou durant l'allaitement. On estime que 30 à 40 % des enfants nés de femmes séropositives seront à leur tour contaminés¹⁷.

Plusieurs facteurs sont susceptibles d'accroître le risque de transmission au cours d'une relation hétérosexuelle. Leur identification par différentes études contribue à expliquer la diffusion hétérogène de l'épidémie à VIH au Kenya marquée par des disparités entre les régions, les groupes ethniques et les hommes et femmes. Ces facteurs de risque sont aussi ceux qui ont été mis en lumière dans de nombreux pays africains. Ils concernent la prévalence des maladies sexuellement transmissibles ; la pauvreté et plus généralement, les caractéristiques socio-économiques ; la non-circconcision masculine ; les réseaux et comportements sexuels.

Le rôle des différents types de virus VIH 1 et VIH 2 et l'impact de la charge virale sur le risque de transmission ne seront pas abordés dans notre propos. Le VIH 1 considéré comme plus virulent pourrait être prédominant au Kenya, cependant nous ne

¹⁶ CENTRAL BUREAU OF STATISTICS, MINISTRY OF HEALTH and ORC MACRO (2004). *Kenya Demographic and Health Survey 2003*. Calverton, CBS/MOH/ORC Macro.

¹⁷ *Ibid.*

disposons pas de suffisants d'éléments pour évoquer son rôle dans la diffusion de l'épidémie.

1.2. Les caractéristiques socio-économiques et la pauvreté

Les relations entre prévalence du VIH et condition socio-économique des individus ont été fréquemment explorées. Les liens entre pauvreté et une prévalence au VIH élevée ont ainsi été clairement mis en lumière en Haïti¹⁸.

Au Kenya, des enquêtes anthropologiques et épidémiologiques réalisées à Kisumu attestent de cette relation notamment chez les jeunes femmes. Une enquête sérologique réalisée dans cette même ville¹⁹ auprès d'individus de statuts socio-économiques différents a montré que la prévalence au VIH était plus élevée au sein d'un groupe de femmes avec de très bas revenus appartenant à la classe d'âge 15–24 ans. Au sein des autres groupes, le risque est moins élevé même si les taux enregistrés étaient plus importants que la moyenne nationale. Dans ce groupe de jeunes femmes, la prévalence de l'herpès génital (HSV 2) était aussi marquée. En outre, elles se différenciaient également des autres groupes dépistés par des relations sexuelles précoces et par un faible usage du préservatif. Dans l'ensemble de la population dépistée au cours de cette enquête (indiquant une prévalence au VIH de l'ordre de 19,8 % pour les hommes et 30,2 % pour les femmes), les autres facteurs de risques associés au sida mis en exergue se situaient dans la prise d'alcool et aussi l'absence de circoncision chez les hommes.

À la différence des résultats de cette enquête réalisée à Kisumu, le KDHS 2003 indiquait que les classes sociales, caractérisées par des niveaux de revenus élevés étaient singularisées par les plus forts taux de prévalence (12,2 %) contre 3,9 % pour les populations avec les plus bas revenus. Cette différence coïncide avec le fait que la plupart des « pauvres » — en termes quantitatifs — résident en milieu rural où la prévalence est plus

¹⁸ FARMER, P. (1996). *Aids and accusation: Haiti and the geography of blame*. Paris, Karthala.

¹⁹ HARGREAVES, J.R., MORISON, J.A., CHEGE, J., RUTENBURG, N. *et al* (2002). 'Socioeconomic status and risk of HIV infection in an urban population in Kenya', *Tropical medicine and international health* 7 (9):793–802.

faible. Cette situation pourrait niveler vers le bas la prévalence relevée dans cette population fortement représentée dans les grandes villes, et notamment la capitale, où en 1995, les individus vivant en dessous du seuil de pauvreté constituaient 60 % de la population²⁰. Ainsi, le KDHS ne livre pas un état des lieux différencié de la prévalence au VIH parmi les populations pauvres urbaines et rurales.

Ce faisant, les résultats du KDHS ne peuvent être considérés comme représentatifs des populations urbaines dans la mesure où seulement 50 % des personnes sollicitées à Nairobi ont accepté d'être dépistées. In fine, des données de séroprévalence sur la population résidente à Kibera émanant de plusieurs cliniques et portant sur des dépistages volontaires indiquaient que la prévalence du VIH oscillait entre 12 % et 42 % sur les sujets masculins et féminins testés et 25 % pour les femmes enceintes²¹.

S'agissant des autres caractéristiques socio-économiques et notamment des liens avec le niveau d'instruction, les sujets qui ont achevé leur scolarité primaire sont singularisés par une prévalence plus importante comparés à ceux qui n'ont pas été scolarisés ou qui ont bénéficié d'une scolarité dans le secondaire et le supérieur. Ces indicateurs coïncident aussi avec la faible scolarisation en milieu rural où la prévalence du VIH est plus faible.

1.3. Le rôle des infections sexuellement transmissibles

Les maladies sexuellement transmissibles (MST) constituent un autre facteur déterminant dans la distribution et la diffusion de l'épidémie à VIH. En effet, les MST favorisent la contraction du VIH : la syphilis, l'herpès simplex II (HSV 2), la gonorrhée aussi bien que la chlamydia, la trichomoniose, les ulcères génitaux aux causes multiples...

Sans en dresser un inventaire exhaustif, plusieurs enquêtes réalisées au Kenya dans différentes populations démontrent le lien prépondérant entre une forte prévalence au VIH et les MST,

²⁰ AFRICAN POPULATION AND HEALTH RESEARCH CENTRE (APHRC). (2000). *Population and health dynamics in Nairobi's informal settlements*. Nairobi, African Population and Health Research Centre.

²¹ ONUSIDA (2003), *op. cit.*

comme cela a été montré dans d'autres pays. En effet, l'étude multisites réalisée à Kisumu²² associe, conjointement à d'autres facteurs, la forte prévalence au VIH relevée dans la population féminine avec l'herpès génital (HSV 2) et la trichomoniose. Ces facteurs, conclut l'étude, auraient eu un rôle plus significatif que les facteurs comportementaux.

Une autre enquête réalisée sur un échantillon de 4404 femmes à Nairobi²³ a montré que les femmes avec une histoire médicale marquée par des MST avaient un risque d'infection par le VIH plus accentué. À l'échelle du Kenya, l'importance du risque manifesté par les MST a été souligné par le KDHS 2003 sans toutefois être associé à l'indicateur de séroprévalence : 2 % des femmes et hommes soumis à un questionnaire rapportaient avoir eu une MST dans les douze mois précédents l'enquête. Toutefois dans cet échantillon, des disparités se sont profilées suivant la situation conjugale : hommes et femmes séparés, divorcés ou veufs étaient plus affectés par les MST. De la même manière, les histoires médicales marquées par ces pathologies étaient plus fréquentes chez les individus originaires des provinces de Nyanza et de l'Ouest.

1.4. Les comportements à risque

Il est clair que les relations sexuelles non-protégées en particulier avec des professionnelles du sexe et le multipartenariat sans usage du préservatif sont des facteurs de risques importants. Toutefois, les comportements à risque sont aussi inhérents à l'âge et au genre.

Cependant, il est difficile d'apprécier le rôle exact joué par les comportements dans la mesure où les enquêtes circonscrites à cet aspect portent généralement sur l'histoire sexuelle des individus dans les douze mois précédant l'enquête. Néanmoins, il apparaît que les relations sexuelles dans la population féminine de la classe

²² BUVÉ, A. *et al.* (2001), *op. cit.*

²³ JACKSON, D.J., NGUGI, E.N., PLUMMER, F.A., KIRUI, P. *et al.* (1999). 'Stable antenatal HIV-1 seroprevalence with high population mobility and marked seroprevalence variation among sentinel sites within Nairobi', *AIDS* 13 (5): 583-589.

d'âge 15–19 ans se traduisent par un risque significatif d'infection²⁴. Ce risque serait démultiplié si celles-ci ont un partenaire plus âgé d'au moins dix ans. Les hommes ayant connu des relations sexuelles au mitan de l'adolescence ne connaîtraient pas la même exposition au risque.

Les femmes ayant des partenaires, hors mariage et ne résidant pas avec eux, ont une prévalence de 17 % comparées aux autres (8 %). En outre, le multipartenariat dans la population féminine se traduirait par une prévalence plus élevée alors que le lien ne serait pas significatif pour les hommes²⁵. Les relations sexuelles accompagnées d'une contrepartie matérielle — monétaire ou non — pour les femmes comme pour les hommes sont associées à une prévalence élevée mais dont la significativité est patente seulement pour les hommes (11 % contre 10 % pour les femmes, 8 % contre 4 % pour les hommes).

Si l'on élargit l'éventail des comportements à risque, la prise d'alcool est aussi associée à une forte prévalence²⁶ : 19 % des femmes et 6 % des hommes ayant déjà pris de l'alcool étaient infectés contre respectivement 9 % et 4 % pour les individus ne l'ayant pas mentionné.

1.5. L'absence de circoncision

L'absence de circoncision chez les sujets masculins a été définie comme un facteur de risque en Afrique du Sud comme au Kenya en raison de son association avec une prévalence au VIH élevée. Ce facteur physiologique se traduit par une susceptibilité plus importante à l'infection. Plusieurs enquêtes ont souligné la relation significative entre la non-circoncision et la prévalence au VIH à Kisumu et Nairobi²⁷. Dans la province de Nyanza, les hommes qui ne sont pas circoncis ont ainsi dix fois plus de risques d'être infectés que ceux qui le sont. Une plus faible pratique de la circoncision masculine est observée dans cette province (46 % de la

²⁴ CENTRAL BUREAU OF STATISTICS (2004) *op. cit.*, HARGREAVES, J.R. (2002), *op. cit.*

²⁵ CENTRAL BUREAU OF STATISTICS (2004) *op. cit.*

²⁶ HARGREAVES, J.R. (2002), *op. cit.*

²⁷ BUVÉ, A. (2001), *op. cit.*, JACKSON, D.J. (1999), *op. cit.*

population masculine est circoncise). Les Luo compteraient selon les estimations du KDHS, 2003, 17 % d'individus circoncis parmi alors que pour les autres groupes ethniques pour qui la circoncision est une norme.

Au total, plusieurs facteurs ont contribué à la diffusion et à la distribution géographique du VIH. Si certains sont clairement identifiés, l'explication de l'épidémie reste complexe et la typologie des facteurs entrant en jeu est large. Parmi ceux-ci, le rôle de la mobilité géographique semble avoir été négligé notamment pour expliquer les différences de prévalence entre aires urbaines et rurales et l'évolution temporelle hétérogène de l'épidémie.

2. LES LIENS ENTRE MIGRATIONS ET SIDA À L'ÉCHELLE DU KENYA

La diffusion hétérogène de l'épidémie de VIH a légitimé quelques enquêtes sur le rôle des migrations. La compréhension des effets sur les comportements à risque et la propagation du virus peut s'inscrire dans plusieurs cadres d'analyse suivant les courants de recherche. A la lumière de ces travaux, les enquêtes menées à l'échelle du Kenya sur les relations entre migrations et sida permettent d'apprécier les effets différenciés de certaines formes de migrations sur l'exposition aux risques. Elles permettent aussi de comparer l'exposition des migrants et des non-migrants à certaines étapes de l'histoire de l'épidémie grâce aux informations collectées dans le *Kenya Demographic and Health Survey* – KDHS. Si ces travaux négligent les effets conjugués des contextes sociaux et de l'expérience migratoire, ils permettent néanmoins de cerner partiellement le rôle du facteur migratoire dans la dynamique de l'épidémie.

2.1. Quelques repères de la littérature consacrée aux relations entre mobilité et sida en Afrique subsaharienne

De nombreux travaux ont exploré les relations entre mobilité et sida en Afrique subsaharienne. Les recherches sur les liens entre ces deux phénomènes s'inscrivent dans plusieurs perspectives distinctes : l'épidémiologie et la santé publique ; l'approche

sociologique se caractérise par une analyse psychosociale et alors que le troisième courant de recherche marqué par des travaux de socio-démographes s'intéresse aux stratégies individuelles des migrants et aux cadres socio-culturels dans lesquels elles prennent forme²⁸.

Tout d'abord, la santé publique s'intéresse à la santé des migrants. La mobilité géographique peut faire, tour à tour, du migrant un individu susceptible de contracter une pathologie et un étranger contaminé qui peut introduire et diffuser la maladie²⁹. En d'autres termes, cette lecture postule que le sida est soit une pathologie d'importation dont les migrants sont porteurs ; soit une pathologie « d'adaptation » et les migrants confrontés à un environnement contraignant, celui de leur milieu d'accueil, cumulent les vulnérabilités favorables à l'infection³⁰.

La notion de pathologie d'importation se manifeste dans les recherches orientées sur les aspects épidémiologiques du sida pour lesquelles le VIH se transmet de personnes à personnes et circule dans les directions et aux rythmes des déplacements humains. De nombreuses enquêtes, en démographie, géographie et épidémiologie ont tenté de vérifier pour l'Afrique subsaharienne ces associations claires entre la dynamique spatiale de l'épidémie et la migration de travail³¹, les migrations forcées³², l'urbanisation³³ et les

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- ²⁸ LALOU, R. et PICHÉ, V. (1994). 'Migrations et sida en Afrique de l'Ouest. Un bilan des connaissances', *Cahiers du Ceped* 28 ; PICHÉ, V., LALOU, R., TALL, WAITZENEGGER, et THIAM, M. (2002). *Migrations, risk sexual behavior and AIDS in Senegal river valley*, Research report, Montréal University/IRD.
- ²⁹ WESSEN, A. (1974). 'The role of migrant studies in epidemiological research', *Israel Journal of Medical Science* 1: 584.
- ³⁰ GENTILINI, M. et DUFLO, B. (1986). *Médecine tropicale*. Paris, Flammarion.
- ³¹ PROTHERO, R.M. (1996). 'Migration and Aids in West Africa', *Geography* 81: 353-374.
- ³² PROTHERO, R.M. (1994). 'Forced movements of population and health hazards in tropical Africa', *International Journal of Epidemiology* 6 (3): 259-267.
- ³³ LYDIÉ, N., ROBINSON, N.J., FERRY, B., AKAM, E., *et al.* (2001). *Mobility and HIV-1 spread in an urban population in Cameroon*, Annual meeting of the Population Association of America, May.

axes routiers. La géographie du sida dresse un tableau d'ensemble de ces liens³⁴.

Le principal intérêt de ces recherches est d'informer sur la dynamique de l'épidémie. Mais leur principal écueil est d'analyser les relations entre migration et sida sans référence explicite aux modes de transmission. Ce faisant, le migrant est désincarné de sa réalité sociale et culturelle. Les comportements sexuels, vecteurs de la transmission avec les facteurs biomédicaux, sont subordonnés à la mobilité. *In fine*, cette lecture s'intéresse davantage à la migration du sida qu'aux relations entre migration et sida³⁵.

La deuxième approche porte sur les mécanismes comportementaux et sociaux par lesquels la migration favorise un risque majoré d'infection. Les migrations de travail initiées pendant la colonisation participent à un processus long et profond de désorganisation des sociétés, des familles et des comportements³⁶. La migration de travail est productrice de précarité et de vulnérabilité en raison de l'extranéité du migrant, de ses caractéristiques socio-démographiques et des contraintes économiques et sociales imposées par le milieu d'accueil. Ces facteurs changent les comportements dans le sens d'une multiplication des partenaires et du recours aux prostituées³⁷. Les migrant(e)s seraient ainsi plus disposés à s'engager, *a contrario* des non-migrants, dans des relations sexuelles non-protégées ou dans le commerce sexuel, dans leurs milieux de destination sans distinction de genre. Les hommes éloignés de leurs domiciles par leur travail, tels que les conducteurs, seraient aussi plus susceptibles d'avoir recours aux relations sexuelles non-protégées avec des prostituées

³⁴ AMAT-ROZE, J.M. (1993), *op. cit.*, AMAT-ROZE, J.M. (1989). 'HIV-infection and AIDS in subsaharan Africa: factors of regionalization', *Cahiers d'Outre-mer* 42 (168): 333–355.

³⁵ PICHÉ, V. *et. al* (2002), *op. cit.*

³⁶ HUNT, C. (1989). 'Migrant labor and STD: Aids in Africa', *Journal of Health and Social Behavior* 4: 353–373; LALOU, R. et PICHÉ, V. (1994), *op. cit.*

³⁷ HUNT, C. (1996). 'Social vs biological: theories on the transmission of Aids in Africa', *Social Science and Medicine* 20 (9): 1283–1296; LALOU, R. et PICHÉ, V. (1994), *op. cit.*

et leurs perceptions des risques du VIH seraient marquées par l'ignorance³⁸.

Le rôle du milieu urbain est, aussi, mis en lumière par des études sur les migrations rurales-urbaines en raison de sa supposée plus grande permissivité en matière de mœurs sexuelles. Cette hypothèse a ainsi été avancée pour expliquer les disparités de prévalence entre aires urbaines et rurales. Selon celle-ci, la transmission et la diffusion du VIH se réaliseraient d'abord en milieu urbain puis, par le truchement des migrations urbaines-rurales, se propageraient dans les milieux ruraux.

Cette deuxième perspective a l'inconvénient de poser le risque comme consubstantiel à la personne du migrant, les migrations de travail définissant un ensemble de contraintes : pauvreté, conditions pénibles de vie et de travail dans les exploitations agricoles et minières. Cependant, si on peut évacuer une détermination réelle dans certains contextes et pour certaines formes de migration, la migration de travail ne sous-tend ni un état qui comporte essentiellement des risques ni un environnement producteur de risques³⁹.

Un dernier courant de recherche introduit les stratégies individuelles des migrants à l'intérieur des cadres structurels et institutionnels qui les limitent⁴⁰. Ces études postulent que les migrants perçoivent et gèrent leurs risques dans le cadre d'une matrice socio-culturelle où plusieurs facteurs se combinent. Le risque de diffusion est attaché au contexte socio-culturel dans lequel les migrants inscrivent leurs pratiques. Ces études ont été enrichies par des enquêtes situant les différentes formes de migration comme des facteurs potentiels d'un environnement à risque au même titre que l'exclusion sociale, les inégalités de genre, et la montée en puissance des religions⁴¹.

³⁸ OUMA, V.A. (1997). 'A spatio-temporal analysis of HIV/AIDS diffusion in Kenya 1986-1993', *African Rural and Urban Studies* 3 (2): 113-140.

³⁹ PICHÉ, V. *et al* (2002), *op. cit.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

2.2. Des comportements à risque différenciés suivant les formes de mobilité et le genre

On ne peut appréhender les liens complexes entre migration, comportements à risque et diffusion du VIH / sida sans mettre en perspective l'histoire et les modèles migratoires qui prévalent au Kenya depuis l'indépendance. Les différenciations constatées entre migrant(e)s et non-migrant(e)s face au VIH mais aussi entre les différentes formes de mobilité sont, en effet, intimement liés aux ressorts, à la typologie et aux caractéristiques démographiques des migrations. À titre d'exemple, les migrations des femmes, substantiellement plus importantes depuis les années 1970, pour des raisons économiques ou liées à l'éducation, ont alimenté une réflexion sur le devenir des migrantes installées dans les aires urbaines en quête d'opportunités de travail et qui pourraient être contraintes à la prostitution faute d'alternative dans les secteurs formel et informel.

Les principales analyses sur les relations entre les différentes formes de migration et le sida à l'échelle du Kenya ont été élaborées à partir des *Kenyan Demographic and Health Survey* (1993, 1998 et 2003). Des enquêtes épidémiologiques⁴² ponctuelles prennent également en compte la mobilité, au même titre, que des facteurs biomédicaux dont le rôle est naturellement plus significatif que l'effet de la mobilité géographique.

À l'échelle du Kenya, la migration se profile comme un facteur favorisant les comportements à risque. Mais, l'effet de la migration pourrait varier suivant le genre et la destination des migrations. Les migrants se déplaçant entre les aires urbaines et les migrantes en situation de mobilité entre les aires rurales seraient plus susceptibles que les non-migrant(e)s de s'engager dans des comportements à risques associés à l'infection par le VIH. Dans les aires rurales, les migrants urbains de retour seraient également plus susceptibles d'avoir des comportements à risque que les non-migrants. Cependant, cette analyse sur les migrations et comportements à risque accuse plusieurs limites : d'une part, elle n'identifie ni le rôle de la mobilité en tant que tel dans le mécanisme d'exposition aux risques ni le rôle du contexte social. D'autre part, elle n'opère pas de différenciation suivant les régions.

⁴² BROCKERHOFF, F.M. et BIDDELCOM, A. (1998), *op. cit.*

L'association entre mobilité et une prévalence au VIH élevée a aussi été suggérée par le *Kenya Demographic and Health Survey* 2003, sans toutefois identifier explicitement les formes de mobilité en jeu. Ces éléments généraux permettent néanmoins d'esquisser des hypothèses sur la diffusion de l'épidémie à VIH au Kenya.

2.2.1. Une vue d'ensemble du paysage migratoire kenyan

À l'instar des autres pays africains, la typologie des migrations au Kenya comprend cinq modèles de migration⁴³. Liées au marché du travail, à la pression démographique, au processus d'urbanisation, mais aussi à des tensions ethniques, ces différentes formes de migration, présentées succinctement, ont été associées à différents comportements à risque.

Les migrations rurales–urbaines sont les plus fréquentes. Elles sont à l'origine de la rapide urbanisation de la capitale et ont contribué à la formation des villes secondaires dans le pays. Les prémisses de ce phénomène sont apparues avec la colonisation et ces migrations se sont accentuées après l'indépendance concomitamment à l'essor de l'éducation et au développement urbain sous l'ère Kenyatta. Essentiellement masculine et circonscrite à la classe d'âge des 15–30 ans, elles se sont peu à peu élargies aux femmes en quête d'emploi dans le secteur informel au cours des années 1990⁴⁴. Les migrations féminines vers les villes pourraient aussi être fonction du groupe ethnique⁴⁵. En effet, les mobilités des femmes kikuyu vers les villes, particulièrement Nairobi, ont une histoire séculaire. Apparues avec la colonisation, ces migrations motivées par la recherche de revenus dans le commerce — ou la prostitution durant la période coloniale — ont perduré au-delà de la colonisation en dépit de l'hostilité des hommes kikuyu. Toutefois, l'implication des femmes dans les activités et échanges commerciaux aurait été peu à peu acceptée à

⁴³ Les migrations internationales ne sont pas prises en compte dans notre étude.

⁴⁴ AGWANDA, O.A., BOCQUIER, P., KHASAKHALA, A., et OWUOR, S. (2004). *The effect of economic crisis on youth precariousness in Nairobi*, Working Paper, DIAL.

⁴⁵ MACHARIA, K. (2003). *Migration in Kenya and its impact on the labor Market*, Conference on African Migration in comparative perspective, Johannesburg, South Africa, June.

partir des années 1980 pour des raisons économiques mais aussi grâce à l'émancipation relative conquise par les femmes⁴⁶.

Les migrations des femmes vers les villes seraient encore fortement stigmatisées par les Luo : « *une femme luo qui voyage est appelée une prostituée. Une femme est supposée s'occuper de la terre et des enfants* »⁴⁷. La rationalité économique est souvent en jeu dans les migrations rurales-urbaines mais ce facteur ne pousse pas systématiquement les populations à migrer vers les villes car la faiblesse des capacités financières et des réseaux sociaux peuvent être réhibitoires pour s'installer en milieu urbain. En outre, des événements exceptionnels tels que les tensions ethniques dans la Rift Valley dans les années 1990 ont contribué à un escapisme migratoire vers Nakuru, Eldoret et Narok ; la sécheresse en pays Kamba a sous-tendu des migrations vers Kitui, Machakos ou encore Thika. Dans ces cas de figure, les stratégies migratoires peuvent aussi s'orienter vers des espaces ruraux.

En effet, les migrations entre espaces ruraux jalonnent l'histoire des régions frappées par des crises agraires, le manque de terre arable, les désastres naturels ou encore la pression démographique. Ces mouvements de population sont notamment à l'origine du phénomène des « squatters » dans la Mau Forest. Des flux migratoires importants se sont aussi orientés de la province centrale vers la Rift Valley dans les années 1970. Les Maasai, les Turkana et les Samburu adoptent aussi des stratégies migratoires les conduisant vers d'autres espaces ruraux susceptibles d'offrir des pâturages, des ressources en eau ou du travail.

Fréquentes dans un pays comptant 80 % de ruraux, les migrations entre espaces ruraux sont constitutives d'un paysage migratoire qui s'est élargi aux migrations entre aires urbaines dans la foulée de l'urbanisation que connaît le Kenya depuis quarante ans.

⁴⁶ Il est fréquent de voir des femmes associées à leur mari en affaire quelle que soit la nature et l'ampleur du commerce. Des entretiens biographiques réalisés (MIRALLES, 2005) dans la ville de Kiambu en témoignent. Quelle que soit l'échelle du commerce — exploitation agricole et horticole industrielle des « *Valentine Growers* » ou négoce de volailles — les affaires peuvent être gérées conjointement par des couples. Dans le cadre d'échanges entre ville et campagne, les femmes sont susceptibles d'être investies des transactions et du transport des marchandises. MACHARIA, K. (2003), *op. cit*

⁴⁷ FRANCIS, 2002.

Ce phénomène a été, notamment, illustré par les migrations de ruraux, par étape, d'un centre urbain proche de la campagne à une ville plus importante. Cette forme de mobilité aurait été surtout prépondérante au cours des années 1970. Des migrants urbains auraient aussi eu tendance à se déplacer des grandes villes vers des centres urbains plus petits où de nouvelles opportunités semblaient se dessiner. Cette stratégie semble encore d'actualité : il est fréquent de rencontrer dans les villes secondaires des migrants qui après avoir travaillé dans la capitale plusieurs années, s'installent dans des villes moyennes afin d'ouvrir leur commerces avec l'épargne et le savoir-faire accumulés dans la capitale. Cette forme de mobilité concerne également les étudiants affectés à une université ou un centre de formation dans une petite ville.

La prédominance historique des flux migratoires vers les villes trouve son pendant dans les migrations urbaines-rurales dont l'inscription dans l'espace migratoire kenyan est largement liée aux attaches multiformes des migrants à leur foyer d'origine, aux spécificités des migrations masculines vers les villes ainsi qu'aux difficultés d'une installation permanente en ville. Les réunions familiales rituelles à l'occasion des fêtes de fin d'année, des solidarités économiques — envoi d'argent — ou encore la présence du conjoint dans le *home area* motivent des déplacements périodiques des villes vers les campagnes.

Ces migrations sont aussi susceptibles de concerner plusieurs catégories d'individus : des retraités, des individus qui ont investi dans l'économie rurale ou dans la construction d'une maison avec l'argent épargné en ville. Sur une échelle de temps plus courte, cette mobilité toucherait également les femmes enceintes ou encore les individus qui connaissent des périodes d'inactivité en villes⁴⁸. Ce phénomène migratoire est intimement lié aux migrations circulaires qui parachèvent cette vue d'ensemble du paysage migratoire kenyan. Cette forme de mobilité a été fréquemment évoquée comme un des phénomènes associés à la diffusion du VIH en milieu rural en raison du va et vient d'hommes et de femmes entre les villes et l'intérieur du pays.

La migration circulaire recouvre différentes réalités dont le dénominateur commun se situe dans cette définition d'une forme

⁴⁸ AGWANDA, O.A. *et. al.* (2004), *op. cit.*

de migration dans laquelle l'individu ne quitte pas le foyer de manière permanente. D'un point de vue économétrique, la migration procéderait d'une décision familiale visant à maximiser l'utilité de la force de travail en se répartissant, dans l'exemple des petits agriculteurs, les activités entre travail de la terre et migrations de travail vers la ville⁴⁹. Cette forme de mobilité est un trait saillant de la vie de plusieurs groupes socio-économiques. Elle est devenue circulaire, car en dépit d'une stabilisation relative de la force de travail du secteur moderne, la majorité des travailleurs en milieu urbain ont gardé des attaches avec le milieu rural par l'envoi d'argent ou des visites⁵⁰. L'entretien de ces liens avec le *home area* ménage une alternative en cas de perte de travail ou de maladie⁵¹.

Le rôle de la rationalité économique dans les choix individuels qui président à la formation de ces différentes formes de mobilité est patent. Mais celui-ci tend à voiler les ressorts multiformes des phénomènes migratoires et peut, par conséquent, réduire la relation migration-sida à une équation pauvreté-migration rurale-urbaine de femmes ou d'individus seuls. Ce faisant, le large éventail des facteurs migratoires ne peut manquer d'interroger sur le rôle des facteurs d'ordre culturel susceptibles de favoriser les migrations et, au terme d'un processus complexe, l'exposition à des situations de vulnérabilité.

À titre d'exemple, les raisons qui poussent les femmes à migrer vers les villes sont susceptibles de relever du système patriarcal. Ce système pourrait sous-tendre les migrations de

⁴⁹ BIGSTEN, A. (1994). 'The circular migration of smallholders in Kenya', *Journal of African Economies* 5 (1): 1-20.

⁵⁰ Dans une étude qui compare un groupe d'hommes vivant à Nairobi, venant d'un district rural à 200 km de la capitale, avec des individus aux caractéristiques identiques, vivant dans ce même site rural, Nelson a montré (1976, p. 273) que le nombre moyen d'années passées en ville n'était pas significativement différent entre les deux groupes. Cette expérience urbaine analogue est un gage des liens unissant les migrants avec leur foyer d'origine.

⁵¹ Le lien avec la région d'origine, de caractère identitaire, peut rester important en dépit des mobilités. Il est symbolisé chez certaines communautés par le rapatriement des corps des défunts pour être inhumé dans le foyer de naissance.

femmes vers les villes⁵² quand le droit coutumier ne leur permet pas d'hériter la terre de leur mari défunt ou d'en avoir la jouissance quand elles n'ont pas de fils. Pour J., originaire de Mbale et responsable d'une association de séropositifs dans le quartier de Lindi à Kibera, il s'agit d'un contexte qui favorise les situations de vulnérabilité des femmes. P. Farmer en Haïti a montré que la tradition du « plaçage » favorisait les migrations rurales-urbaines de femmes et des trajectoires les mettant en situation de vulnérabilité (prostitution). Une autre étude réalisée au Kenya a montré que les femmes en milieu rural ne possédant pas de terres étaient trois fois plus susceptibles que les autres femmes de manifester des comportements à risques associés au VIH sans qu'il soit possible d'établir de différenciation selon l'âge, le niveau de revenu ou encore la situation conjugale⁵³. Cependant, cette analyse est à relativiser car les femmes qui avaient déclaré ne pas posséder de terre en milieu rural formaient une minorité : en effet, 92 % des femmes non-migrantes se disaient propriétaires — probablement à travers un titre de propriété possédé par leur mari — contre 88 % pour les migrantes.

2.2.2. *Migrations et comportements à risque*

En s'appuyant sur les informations sommaires sur la mobilité collectées dans le KDHS 1993⁵⁴ des différences en terme de comportements à risque entre migrants et non-migrants et suivant la forme de mobilité ont été mises en lumière⁵⁵. Au fil de ces analyses, la relation entre les formes de mobilité, le statut de migrant et les comportements à risque apparaissait complexe. En

⁵² En effet, les données du KDHS indiquent que 50 % des femmes migrantes contre 44 pour les non-migrantes, vivant en ville, possèdent des terres alors qu'en milieu rural 92 % des non-migrantes et 88 % des migrants déclaraient posséder des terres.

⁵³ BROCKERHOFF, F.M. (1998), *op. cit.*

⁵⁴ *Ibid.*

⁵⁵ Les migrants ont été identifiés sur la base de leur durée de résidence dans la localité où ils ont été interviewés et de la localisation de leur précédent lieu de résidence. Les personnes qui avaient résidé dans une communauté différente de l'actuelle six mois avant l'enquête ont été considérées comme des « migrants ». Les comportements à risque ont été définis sur la base de relations sexuelles non-protégées dans les mois précédents l'enquête.

effet, une différenciation entre migrants et non-migrants face aux comportements à risque s'est esquissée sans qu'il soit toutefois possible de dégager de modèle général distinguant les deux groupes suivant le genre et le lieu de résidence. Cependant, l'effet de la mobilité dans le processus d'exposition aux risques n'est pas identifié en tant que tel au profit d'un usage de la catégorie du migrant qui tend à être réifié comme une figure à risque. *In fine*, cette typologie ne subordonne pas les comportements à risques à des formes de mobilité : cet inventaire met en lumière les caractéristiques socio-démographiques et socio-économiques qui pourraient favoriser dans certaines situations migratoires les comportements à risque.

Dans les espaces ruraux, les différences de comportements à risques étaient plus prononcées entre migrants et non-migrants⁵⁶. Les migrantes commençaient, plus fréquemment que les non-migrantes, leurs vies sexuelles avant l'âge de 15 ans et avaient plus de partenaires que les non-migrantes. Les migrants avaient pour leur part des réseaux sexuels plus étoffés au cours de leur vie sans pour autant montrer une plus grande disposition à s'engager dans des relations sexuelles non-protégées avec des partenaires multiples comparés aux non-migrants. En termes de perceptions des risques, les femmes vivant en milieu rural et dont les conjoints ne résidaient pas avec elles étaient plus susceptibles de se percevoir à risques en raison des comportements des conjoints.

Ces tendances étayaient l'hypothèse selon laquelle le virus se serait diffusé des villes en direction des aires rurales de basse prévalence où les migrants masculins de retour auprès de leurs conjoints seraient susceptibles d'avoir des relations sexuelles non-protégées. Cependant, si les comportements à risque ont été quantifiés, tel n'est pas le cas pour les risques de transmission et de diffusion du VIH en raison de l'absence de données de séroprévalence. Cette limite est susceptible de soulever un écueil pour l'interprétation, manifesté par la confusion entre comportements à risque et risque de transmission: le premier n'entraîne pas systématiquement le second mais les comportements à risque créent les conditions favorables à la transmission et à la diffusion du VIH.

⁵⁶ CENTRAL BUREAU OF STATISTICS (1994). *Kenya Demographic and Health Survey 1993*. Nairobi, DHS/CBS; BROCKERHOFF, F.M. (1998), *op. cit.*

À l'aune du KDHS 1993, les mobilités féminines entre aires rurales se profilaient comme un facteur favorisant les comportements à risque alors que ce n'était pas le cas pour les hommes⁵⁷. En effet, les femmes circulant entre les aires rurales auraient eu des comportements sexuels à risque deux fois supérieurs aux femmes rurales non-migrantes. Cette tendance pourrait refléter les migrations de femmes vers les carrefours routiers en milieu rural qui aboutiraient, *in fine*, à des situations de vulnérabilité et notamment le commerce sexuel, comme cela a été fréquemment observée dans plusieurs pays africains⁵⁸. L'autre explication avancée s'appuie sur l'hypothèse que les migrations des femmes dans le Kenya rural accentuent l'exposition à des partenaires potentiels car les situations de mobilité les affranchiraient des contraintes familiales et communautaires. Cette mobilité se traduirait par ailleurs par un accès limité à l'information préventive ou au planning familial, incluant les préservatifs.

Les migrations vers les aires urbaines se seraient traduites par une exposition différenciée aux risques suivant le genre. Les migrantes en milieu urbain, singulièrement celles qui sont originaires des autres aires urbaines, étaient moins susceptibles de s'engager dans des comportements à risque que les non-migrantes urbaines. Ceci remet en question l'argument selon lequel les femmes migrent vers les villes et ont recours au commerce sexuel comme stratégie de survie⁵⁹.

A contrario, les hommes qui se déplacent entre villes (qui représentent $\frac{1}{4}$ des migrants masculins) étaient deux fois plus susceptibles de s'engager dans des comportements sexuels à risque comparés aux non-migrants. L'hypothèse a été posée que ces hommes sont essentiellement des cols blancs et des chauffeurs routiers avec des niveaux de revenus leur permettant de fréquenter des prostituées⁶⁰. Cette tendance aurait démultiplié les risques de

⁵⁷ BROCKERHOFF, F.M. (1998), *op. cit.*

⁵⁸ SEWANKAMBO, N.K., WAWER, M.J., GRAY, R.H., SERWADDA, D., *et al.* (1994). 'Demographic impact of HIV infection in rural Rakai district, Uganda: results of population-based cohort study', *AIDS* 8 (1): 1707-1713.

⁵⁹ ANARFI, J. (1993). 'Sexuality, Migration and AIDS in Ghana—a socio-behavioral study', *Health transition review* 3: 45-67.

⁶⁰ BROCKERHOFF, F.M. (1998), *op. cit.*

transmission du VIH en milieu urbain⁶¹ en raison de la prédominance des migrations masculines vers les villes et du multipartenariat sans recours au préservatif plus fréquent parmi les migrants (29 %) comparés aux non-migrants (6 %). Les comportements à risque selon les migrants entre villes seraient donc particulièrement marqués.

S'agissant des migrations urbaines-rurales, 47 % des migrantes de retour et 38 % des hommes étaient susceptibles de s'engager dans des comportements sexuels à risque, soit des taux supérieurs aux non-migrants. Ces indicateurs accèdent encore l'idée selon laquelle les migrations circulaires ou les migrations urbaines-rurales ont favorisé la diffusion du VIH / sida en milieu rural. L'évolution de la prévalence au VIH en milieu rural a en effet connu un pic à la fin des années 1990 après avoir atteint son point d'acmé dans les villes. Cependant, les migrations circulaires vers les campagnes qui s'opèrent à une fréquence difficile à déterminer ne semblent pas avoir entraîné, de façon homogène, dans l'intérieur du pays, une flambée de l'épidémie à VIH comparable à celle connue dans les villes⁶². Néanmoins, des populations de femmes enceintes dans quelques sites ruraux étudiés ont affiché des taux de prévalence équivalents à ceux observés dans des grandes villes, notamment à Chulaimbo dans le district de Kisumu (37,3 % en 1998) ou encore Usigu, localisé dans le district de Bondo dans la province de Nyanza (33 % en 1999). Mais les différences de prévalence entre sites ruraux reflètent les disparités régionales constatées au Kenya : les centres de dépistage situés dans la Nyanza Province présentent des taux de prévalence très élevés comparés à la moyenne nationale dans les localités rurales.

L'analyse du KDHS 1993 mettait également en lumière d'autres facteurs de risques. En effet, dans les aires urbaines et rurales, les hommes et femmes seuls étaient plus susceptibles de s'engager dans des comportements sexuels à risques comparés aux individus vivant en ménage.

⁶¹ *Ibid.*

⁶² Il est difficile de présenter une évolution des données de séroprévalence en milieu rural, dans la mesure où les données lacunaires grèvent les possibilités d'appréciation.

Le célibat était ainsi associé à des comportements à risque qui étaient aussi plus fréquents parmi les individus commençant leurs vies sexuelles avant l'âge de 15 ans. Néanmoins, ces comportements à risque seraient moins fréquents, indistinctement, dans les aires rurales et urbaines pour les hommes et femmes scolarisés dans le secondaire ou le supérieur. La vulnérabilité économique prédisposait les femmes à des comportements à risque se traduisant par une mobilité et une implication dans des réseaux sexuels commerciaux, en particulier, dans les carrefours routiers ruraux.

La relation complexe entre migrations et comportements à risque attestée par l'analyse du KDHS 1993 n'a pas été approfondie avec les KDHS 1998 et 2003. Néanmoins, le KDHS 2003, sans apprécier les effets des différentes formes de mobilité sur les comportements à risque, suggère une association entre une absence prolongée du domicile et une prévalence au VIH importante. En effet, les individus qui déclaraient s'être absentés de leurs domiciles plus de cinq fois, à chaque fois pour une période de moins de trente jours, dans les douze mois précédant l'enquête avaient une prévalence du VIH de 9 % contre 5 % pour ceux qui ne s'étaient pas déplacés ou qui avaient été absents de leurs domiciles pour un seul et long séjour de plus de trente jours (prévalence de 3 %). Ce faisant, le taux de prévalence semble être fonction de la temporalité de la mobilité.

En terme de comportements à risque, des tendances récurrentes ont été observées, entre 1993 et 2003 en milieu urbain comparé au milieu rural, sans toutefois être associées à l'expérience migratoire dans l'enquête réalisée en 2003. Néanmoins, leur évocation éclaire une vulnérabilité variable suivant le genre, l'âge et la condition socio-économique.

Les comportements à risques dans les douze mois précédents l'enquête, caractérisés par une pratique du multipartenariat, seraient plus répandus dans les villes — notamment à Nairobi — que dans l'intérieur du pays (16 % des hommes et 39 % des femmes en milieu urbain). Le non-usage du préservatif serait plus fréquent parmi les femmes avec un faible niveau de revenu et les hommes sans instruction. Cette tendance se reflète dans les enquêtes menées à l'échelle des bidonvilles de la capitale. Toutefois, l'usage du préservatif serait plus fréquent parmi les femmes avec un niveau

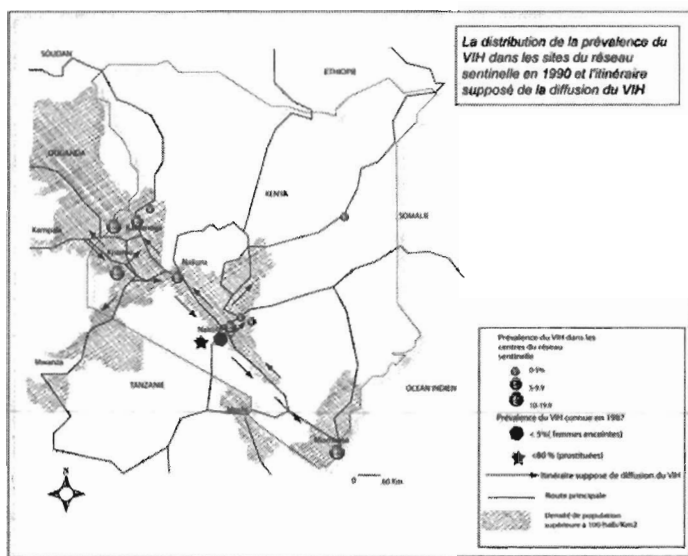
d'instruction et de revenu plus élevé et parmi les jeunes de 20 à 24 ans.

S'agissant des relations sexuelles avec une contrepartie matérielle, leur pratique serait plus répandue parmi les jeunes femmes âgées de 15 à 19 ans — et de manière générale chez les femmes qui n'ont jamais été mariées — comparées aux autres groupes (16 % contre 4 % pour les classes d'âge supérieures en moyenne). Le célibat, la séparation ainsi qu'un niveau de revenu élevé pour les hommes favoriseraient le recours à la prostitution qui serait plus fréquente dans les aires urbaines, où l'usage du préservatif serait plus répandu comparé aux aires rurales⁶³.

Ainsi, il a été avancé que les comportements à risque seraient moins fréquents parmi les femmes kikuyu car celles-ci résident à Nairobi où dans des villages sous influence d'aires urbaines favorisant la diffusion du préservatif.

De manière rétrospective, le rôle exact de la migration dans la diffusion et la distribution du VIH / SIDA est difficile à identifier à l'échelle du pays. Néanmoins, les migrations sembleraient avoir véhiculé le virus des aires urbaines vers les aires rurales.

⁶³ CENTRAL BUREAU OF STATISTICS (1994), (2004), *op. cit.*



On ne dispose d'aucune donnée de séroprévalence ou d'incidence permettant d'apprécier avec précision l'état de la diffusion de l'épidémie dans la population générale en 1986 à l'échelle des villes, des localités rurales ou encore des districts. Selon une étude sur la distribution géographique de l'infection à VIH, la diffusion de l'épidémie tendrait à être uniforme et comprise entre 0 et 2 %. Nairobi se profile alors comme un des premiers foyers de développement de l'épidémie⁶⁴ en raison de la présence du VIH dans des groupes noyaux tels que les prostituées. Mais il ne peut être exclu que le virus ait été présent dès le milieu des années 1980 dans la province du Nyanza, en raison de la proximité géographique de la région avec les premiers foyers de l'épidémie en Afrique subsaharienne, localisés dans le district de Rakai en Ouganda.

En 1987, la prévalence au VIH dans une cohorte de femmes enceintes dans la capitale s'élève 2.65 %. Elle atteint 9 % parmi les patients infectés par des MST et 80 % chez les prostituées⁶⁵. La même année, les premiers cas de séropositivité sont également

⁶⁴ OUMA, V.A. (1997), *op cit.*

⁶⁵ ONUSIDA (2003), *op. cit.*

dépistés dans les districts de la province du Nyanza et à Mombasa. Dans la *Central Province*, les premiers cas sont détectés en 1988 puis en 1990 dans la Rift.

À partir des groupes noyaux — travailleuses du sexe, conducteurs — l'épidémie se serait ensuite diffusée dans la population générale, des principaux pôles urbains du Kenya vers les villes secondaires et les campagnes par le truchement des mobilités géographiques.

3. TROIS ÉTUDES DE CAS

Trois études de cas circonscrites aux liens entre migrations, comportements à risques et prévalence du VIH dans la capitale et un groupe dit à risques, les chauffeurs routiers interrogent, à une grande échelle, les mécanismes susceptibles d'exposer les individus en situation migratoire à l'infection à VIH. Ces enquêtes témoignent d'une part de l'insertion systématique du fait migratoire dans une large typologie de facteurs de risques et, d'autre part, de la multiplicité des hypothèses, rôles et sens attribués à la mobilité et à l'expérience migratoire, dans les études épidémiologiques et socio-démographiques.

3.1. Retour sur le contexte migratoire dans la capitale

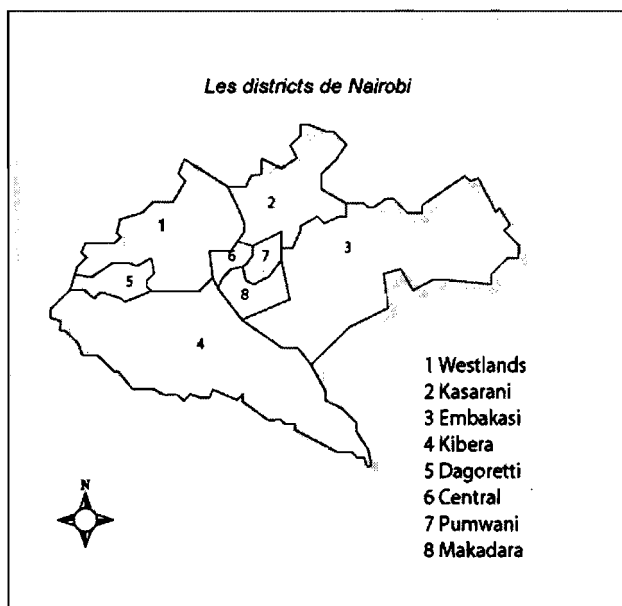
La croissance constante de Nairobi peut être attribuée, plus qu'ailleurs, au poids des migrations. En effet, ce phénomène a été patent au cours des deux dernières décennies lors desquelles la croissance du taux de mortalité a été largement compensée par les migrations. À la fin des années 1990, alors que le Sida causait la mort de 12 000 personnes par an dans la capitale, Nairobi accueillait dans l'année 105 000 nouveaux habitants dont 75 000 adultes⁶⁶.

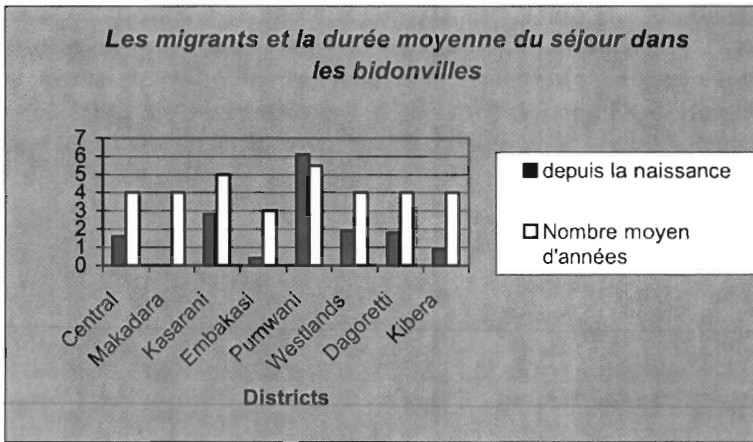
Ainsi, à l'échelle de la ville, la proportion de migrants représente 10 % de la classe d'âge 45 / 54 ans mais atteint plus de 20 % dans les deux sexes parmi les jeunes générations (25 / 45 ans). Ces migrants sont pour la plupart arrivés entre 15 et 30 ans et parfois moins pour les plus jeunes⁶⁷. L'âge médian à la première

⁶⁶ AGWANDA, O.A. *et. al* (2004), *op. cit.*

⁶⁷ AGWANDA, O.A. *et. al* (2004), *op. cit.*

migration varie de 21 à 23 ans pour les hommes et de 20 à 22 ans pour les femmes. Ces dernières constituent une proportion importante de cette population bien que les migrants soient en majorité des hommes. En effet, le ratio par genre est passé de 16 hommes pour une femme au début du siècle à 1,15 homme pour une femme en 1999.





Constitutives d'un système migratoire circulaire, les migrations vers la capitale s'effectueraient après l'école secondaire. Elles sont motivées par la recherche ou l'obtention d'un emploi et plus rarement par la possibilité de suivre une scolarité dans le secondaire et le supérieur. Les chômeurs de longue durée et les employés retraités ne s'installent pas de façon permanente dans la capitale et forment l'ossature des migrations de retour. Quelques migrants forment des familles dans Nairobi. Mais le niveau de fécondité est bas et peu d'enfants naissent ou grandissent dans la capitale. Néanmoins, de nombreuses migrantes deviennent enceintes et donnent naissance à leur premier enfant dans les deux années suivant leur installation à Nairobi sans nécessairement accoucher dans la capitale⁶⁸.

Au total, le système de la migration circulaire, mis en place au cours des années 1950, a partiellement évolué en raison du niveau d'instruction de plus en plus élevé des femmes qui sont entrées sur le marché de travail dans les années 1970 et 1980 et ont équilibré la balance des genres. Cependant, la discrimination des femmes sur le marché du travail pourrait avoir dissuadé les femmes, au fil des années 1990, de s'installer dans la capitale. Dans la perspective d'une analyse des relations entre migration circulaire, la compréhension de ce système est importante à l'aune de ces

⁶⁸ AGWANDA, O.A. *et al* (2004), *op. cit.*

caractéristiques marquées, d'une part, par des migrations vers la capitale d'individus jeunes susceptibles d'être exposés des situations de vulnérabilité et d'autre part, par des migrations de retour indexées pour son rôle supposé dans la diffusion du VIH en milieu rural. Les migrations croissantes des femmes vers Nairobi conjuguées au « va et vient » qui rythme la vie des migrant(e)s installés dans la capitale trouvent un écho dans les études suivantes effectuées.

3.2. L'approche de la mobilité géographique dans une étude épidémiologique réalisée à Nairobi

L'enquête de Jackson (1999) a été consacrée à l'évolution de la séroprévalence du VIH au sein d'une population dite à « haute mobilité ». Elle a mis en exergue une variation de séroprévalence marquée entre des populations de femmes enceintes dépistées dans quatre maternités (nommées A, B, C, D sans être localisées) dans la ville de Nairobi entre 1991 et 1997⁶⁹. Cette étude avance que les migrations d'hommes seuls vers la capitale se traduisent par des comportements à risque tels que la fréquentation de prostituées susceptibles d'entraîner une transmission du VIH à leurs épouses résidentes en milieu rural. Celles-ci durant leurs grossesses se rendraient à Nairobi pour bénéficier d'une meilleure offre de soins. Le va et vient entre ville et aire rurale expliquerait ces différences de séroprévalence au fil du temps entre les différentes cliniques.

Cette étude démontre que les changements de séroprévalence peuvent être liés, d'une part, à l'origine géographique de la population et, d'autre part, au changement structurel des populations dépistées liées à la mobilité. Cependant, si elle le suggère, cette enquête ne démontre pas que ces femmes dépistées ont été contaminées par leurs époux et dans le cadre d'une situation de mobilité.

La place et le sens attribué à la mobilité dans cette enquête n'éclaire pas le rôle du facteur migratoire dans les comportements à risque ou le statut sérologique des individus dépistés. La mobilité des patientes est plutôt mentionnée comme un facteur explicatif des variations observées dans plusieurs centres de dépistage. Ce faisant,

⁶⁹ JACKSON, D.J. *et al.* (1999), *op. cit.*

cette enquête livre un exemple original de l'usage de la notion de mobilité dans les enquêtes épidémiologiques. En effet, cette manipulation du phénomène de mobilité est éloignée de l'usage commun dans les enquêtes épidémiologiques qui convoquent généralement la mobilité de manière implicite en utilisant l'indicateur « absence du domicile pendant 15 jours ou 30 jours » pour expliquer des taux de séroprévalence.

De manière générale, la prévalence du VIH observée oscillait entre 12,1 % à 16,2 % entre 1991 et 1993. Aucune évolution n'a été constatée dans les enquêtes ultérieures. Cependant, des différences significatives de séroprévalence ont été relevées dans les différentes enquêtes réalisées entre les femmes originaires de la Nyanza Province (22,4 %) comparées à celles venant de la Western Province (14,1 %) et aux femmes originaires de l'Eastern Province (8,9 %). Seules 2 % des femmes indiquèrent que Nairobi était leur province d'origine.

L'évolution de la séroprévalence au VIH dans l'ensemble des cliniques était essentiellement liée à celle observée parmi les femmes originaires de la Nyanza. Le niveau d'infection dans les populations dépistées coïncidait avec l'évolution de l'épidémie à VIH dans leur province d'origine.

En outre, il y avait de considérables différences entre les quatre maternités (A à D) au fil du temps en raison de la mobilité des patientes. Ces différences reflétaient, selon les auteurs de cette étude les mobilités des femmes dépistées à l'intérieur de la capitale, à l'extérieur de Nairobi ou encore des changements dans la fréquentation des cliniques. Cette observation coïncide avec des constats effectués par des travailleurs sociaux de MSF Belgique à Kibera. Selon ceux-ci, les femmes séropositives connaissant leur statut auraient tendance à s'installer dans d'autres bidonvilles de la capitale, en raison du stigma.

Province d'origine	Prévalence du VIH
Northeastern	7,30%
Coast	8,20%
Central	9%
Eastern	9,10%
Nairobi	9,60%
Western	13,90%
Rift Valley	15,50%
Nyanza	22,40%
Statut conjugal	
Mariée	14,60%
Célibataire	15%
Divorcée	16,30%
Veuve	54,50%
Centre de dépistage	
Centre A	19,30%
Centre B	14,90%
Centre C	9,30%
Centre D	15,80%
Année de dépistage	
Novembre 91 / Février 92	12,10%
Mars 92 / Septembre 92	12,90%
Octobre 1992 / Octobre 1993	16,20%
Novembre 1993 / Novembre 1994	14,80%
Décembre 1994 / Mars 96	15,70%
Mai 96 / Avril 1997	15,90%
Moyenne	14,70%

3.3. Les migrants, les comportements à risque et le VIH dans les bidonvilles de la capitale

L'analyse des relations entre migrations et sida dans la capitale revêt toute son importance à la lumière de l'importante proportion de migrants vivant dans les bidonvilles et des hypothèses et études menées sur l'exposition aux risques de ces populations dans ce contexte.

Des études fondées sur des discussions de groupe dirigées et des enquêtes quantitatives dans les bidonvilles où 60 % des habitants de Nairobi résideraient convergent pour reconnaître la vulnérabilité des migrants à l'exposition au VIH.

Des discussions de groupe dirigées réalisées à Kibera, Majengo, Kahawa North et Embakasi⁷⁰ mettent l'accent sur la misère et le désespoir qui caractérisent la vie des bidonvilles et sur le rôle essentiel de ces conditions de vie dans les comportements sexuels à risques. La position économique des femmes dans les bidonvilles serait de manière générale plus précaire que celle des hommes. Les frustrations et le chômage masculin entraîneraient une consommation d'alcool et de drogues alors que la responsabilité de subvenir aux besoins de la famille et à l'alimentation des enfants incomberait aux femmes, dont l'entrée dans la vie adulte et le rôle seraient limités à celui de mère et d'épouse⁷¹.

Une autre caractéristique importante des bidonvilles se situerait dans la large proportion de migrants masculins, célibataires ou séparés de leurs épouses qui y résident. La séparation des épouses aussi bien que l'offre de prostitution faciliteraient la fréquentation masculine des professionnelles du sexe. Dans le même temps, la rapide augmentation des femmes migrantes dans les bidonvilles et la faiblesse des opportunités économiques pousseraient une proportion importante d'entre elles vers le commerce sexuel. « *For instance, if a woman stays alone, that is she is a single mother with children, and she wants to buy her children milk, the only solution would be to look for someone with money. She sells her body and gets the 20 shillings to buy milk* » (Kibera, Femmes pp. 13–17).

Le commerce sexuel se présente parfois comme une alternative pour nourrir des enfants dans un contexte où l'usage du préservatif, parfois trop onéreux, de 1 à 2 Ksh, quand il n'est pas accessible gratuitement est souvent désapprouvé par les autorités religieuses. En effet, au cours des séminaires organisés par MSF Belgique à Kibera à destination des responsables religieux, il est fréquent d'entendre ceux-ci assimiler l'usage du préservatif à un « péché ».

⁷⁰ ZULU, E.M., DODOO, F.N. and EZEH, A.C. (2003). 'Urbanization, poverty and sex: roots of risky sexual behaviors in slum settlements in Nairobi, Kenya', in E. KALIPENI, S. CRADDOCK, J. OPPONG and J. GHOSH (eds.), *HIV/AIDS in Africa: Beyond Epidemiology*. Oxford, Blackwell Publishers (pp. 167–174).

⁷¹ AGWANDA, O.A. *et. al* (2004), *op. cit.*

« Especially, in this village, there are very many women who stay on their own without their husbands ». « This other one has a man and he is working and he has his wife. She will go to this one because of poverty...and you hear that she is married. Because you slept hungry and you have a husband who is not working, you will go this one »⁷².

Leurs responsabilités de chefs de famille et le coût de la vie contraindraient les femmes à des comportements sexuels à risque. Des entretiens réalisés⁷³ entre août 2004 et novembre 2005 accréditent cette thèse. Sur plus d'une trentaine de femmes interviewées dans le cadre d'entretiens semi-directifs sur leur relation avec leur région d'origine dans les quartiers de Gatwikira et Kianda à Kibera, 28 étaient séropositives et sous traitement ARV avec MSF Belgique. Vingt d'entre elles étaient originaires de la Nyanza Province et de la Western Province et étaient chefs de familles, suite au décès du partenaire ou à une séparation :

M. : « Cela fait depuis quatre ans que je vis ici et je viens de Kisumu rural. C'est le change'a et des hommes originaires de mon home area qui viennent au cours de la journée pour passer du temps avec moi... C'est avec ça que je vis ».

Les migrants qui seraient plus exposés dans les bidonvilles de Nairobi ont été au cœur d'une analyse quantitative portant sur les comportements à risque à Nairobi à partir des questionnaires des KDHS 1993 et 1998⁷⁴. Cette étude n'individualise pas clairement le rôle des migrations mais elle met en relation les espaces habités majoritairement par des migrants avec des comportements à risque significatifs. Sur un échantillon de 413 femmes interrogées dans les bidonvilles, 75 % déclaraient avoir grandi dans un village et avaient par la suite migré vers Nairobi. L'âge moyen de la première relation sexuelle dans cette population se situait à 15,6 ans contre 17,6 pour les femmes ne résidant pas dans les bidonvilles. 9 % des résidentes des bidonvilles avaient eu des relations sexuelles multiples contre 4 % pour les non-résidentes. Parmi les femmes mariées, les habitantes du bidonville étaient plus susceptibles de pratiquer le multipartenariat que les femmes ne résidant pas dans le bidonville.

⁷² ZULU, E.M. (2003), *op. cit.*

⁷³ MIRALLES, M. (2005). *Les relations entre Kiambu et Nairobi*, Rapport de mission, IFRA, Nairobi.

⁷⁴ ZULU, E.M. (2003), *op. cit.*

Le nombre moyen de partenaires sexuels s'élevait à 1,23 pour les résidentes des bidonvilles et 1.06 pour les non-résidentes des bidonvilles. En outre, les femmes, chefs de famille, avaient plus de partenaires sexuelles que celles qui ne l'étaient pas. La proportion de femmes qui avaient déjà utilisé des préservatifs était moins importante dans les bidonvilles que parmi les autres résidentes urbaines (10 % contre 27 %). Il n'y avait pas, en revanche de différence entre les femmes résidentes dans les deux types d'espaces face aux MST. Au total, les femmes qui avaient recours au commerce sexuel, aux relations non-protégées, aux relations précoces, et au multipartenariat étaient proportionnellement plus importantes dans les bidonvilles de la capitale, peuplés majoritairement de migrant(e)s. Cette analyse soulève une double interrogation : les situations de vulnérabilité sont-elles associables au bidonville et à son contexte socio-économique ou à l'installation dans le bidonville de sous-groupes « déjà » vulnérables ?

L'hypothèse d'une vulnérabilité plus marquée de certaines populations trouve un écho dans l'analyse des données de séroprévalence de différentes cliniques distribuées au sein du bidonville de Kibera. Celles-ci indiquent une coïncidence entre les regroupements ethniques dans les quartiers du bidonville et les taux de prévalence affichés par les centres de dépistage localisés dans ces quartiers. Les quartiers où les Luo pourraient être majoritaires sont ceux où la population est la plus affectée par le VIH, à l'instar des différences de prévalence constatées entre la province de Nyanza et les autres régions du Kenya. Ces données ne peuvent toutefois pas être considérés comme représentatives car il s'agit de dépistages volontaires.

	GATWIKIRA VCT		SILANGA VCT		KIBERA SOUTH HEALTH VCT	
	Testés	Positifs	Testés	Positifs	Testés	Positifs
Feb	236	72 (30 %)	124	33 (27 %)	69	11 (16 %)
Mar	219	72 (33 %)	112	14 (12 %)	115	16 (14 %)
Apr	247	72 (29 %)	115	26 (22 %)	71	10 (14 %)
May	213	65 (30 %)	81	14 (17 %)	94	14 (15 %)
June	199	58 (29 %)	150	24 (16 %)	95	11 (12 %)
July	176	51 (29 %)	106	29 (27 %)	89	18 (20 %)
Aug	237	79 (33 %)	167	27 (16 %)	114	7 (6 %)

	GATWIKIRA VCT		SILANGA VCT		KIBERA SOUTH HEALTH VCT	
	Testés	Positifs	Testés	Positifs	Testés	Positifs
Sept	209	80 (38 %)	216	38 (18 %)	114	21 (18 %)
Oct	180	76 (42 %)	87	19 (22 %)	124	16 (13 %)
Nov	170	50 (29 %)	54	13 (24 %)	87	15 (17 %)

En effet, le quartier de Gatwikira est peuplé majoritairement de Luo (54 % selon une enquête réalisée en avril 2005 sur un échantillon de 500 personnes⁷⁵) alors que le quartier de Silanga est habité essentiellement de Luhya (34 % suivi des Kamba, 31 % sur un échantillon de 500 personnes). À Kibera, les regroupements ethniques contribuent à structurer la géographie du bidonville. Ces regroupements prennent corps à travers la présence, suivant le peuplement des quartiers, d'associations, de commerces, de clubs et d'édifices religieux affichant parfois ostensiblement l'origine géographique de leurs membres, ou de leurs usagers. Des quartiers sont aussi explicitement nommés du nom d'un leader communautaire — Raila — ou encore du nom de la localité du *Home area* « Kisumu Ndogo ». Ces regroupements ethniques dans le bidonville ont été parfois favorisés par des hommes politiques, particulièrement le quartier de « Raila » créé par le MP de Langata Raila Odinga afin d'abriter des jeunes de sa communauté qui sont autant d'électeurs que de fidèles serviteurs. Mais la formation de ces territoires reflète aussi l'existence de réseaux d'entraide entre migrants. Cependant, l'existence de ces solidarités ne doit pas voiler la mobilité importante de la population au sein du bidonville d'une part et entre Kibera et d'autres bidonvilles de la capitale d'autre part. En effet, des responsables associatifs mettent en lumière le va et vient important à Kibera : « *People come day and night. But for most of them, Kibera is a transit point. Housing is expensive here compared to other slums. They come because they know a relative and go away when it's not possible to stay longer*⁷⁶ ».

Toutefois, cette coïncidence entre les données de séroprévalence et la distribution ethnique de la population dans le bidonville ne peut donner lieu à une interprétation visant à réduire

⁷⁵ MSF Belgique.

⁷⁶ MIRALLES, M. (2005), *op. cit.*

l'appartenance à un groupe ethnique à une condition favorisant systématiquement l'exposition à l'infection. En effet, il a été démontré que la non-circconcision est un des principaux facteurs de risque et cette norme chez les Luo ne saurait être assimilée à la seule appartenance ethnique. En outre, l'exposition aux risques d'infection dans cette population a aussi été associée à la vulnérabilité socio-économique des femmes⁷⁷. Par ailleurs, les indicateurs de prévalence à Kibera sont supérieurs à la moyenne nationale dans des cliniques implantées dans les quartiers où les Luo ne sont pas majoritaires mais aussi dans l'ensemble du bidonville (25 % de la population des femmes enceintes). Ainsi, si on ne peut évacuer l'hypothèse d'une plus grande vulnérabilité de groupes particuliers, il semble tout aussi important d'interroger les liens entre exposition aux risques, contextes socio-économiques et insertion des migrants à l'échelle de l'ensemble du bidonville.

Ainsi, les situations de vulnérabilité pourraient procéder conjointement ou individuellement du contexte, de l'expérience migratoire, des spécificités des populations qui s'y installent et de leur gestion des risques. Afin de distinguer les effets des divers types de mobilité et du contexte social, il conviendrait d'étudier des populations dans deux zones contrastées sur les plans des mobilités et des contextes socio-économiques. Dans cette perspective, des travaux ont montré que l'expérience migratoire pouvait avoir des effets différents sur les comportements à risque suivant la forme de mobilité. Aussi le contexte social peut avoir un rôle déterminant sur les comportements et la diffusion du VIH soit en favorisant la prévention à travers un contrôle social de la sexualité soit en suscitant, *a contrario* des comportements à risque partiellement liés à la pauvreté et à la marginalisation à laquelle peut être réduite une frange de la population⁷⁸.

3.4. Sur la route : les chauffeurs routiers

Le cas des chauffeurs routiers au centre de plusieurs enquêtes sur liens entre mobilité et sida illustre les distinctions d'exposition à l'infection à VIH entre les différents types de

⁷⁷ HARGREAVES, J.R. *et al.* (2002), *op. cit.*

⁷⁸ LALOU, R. (1994), *op. cit.*

mobilité liées au travail. Parmi les multiples études réalisées sur cette population, l'une d'entre elles⁷⁹ indique que la séroprévalence au VIH parmi les 1500 employés d'une compagnie étudiée s'élevait à 17,8 %. La prévalence du VIH était associée à un âge inférieur à 25 ans, 10 ans ou moins d'activité sexuelle, un poste de conducteur ou de conducteur assistant, des voyages de plus de 14 jours par mois, la non-circconcision et des relations sexuelles avec des prostituées.

Ainsi, les conducteurs avaient quatre fois plus de risques que les mécaniciens d'être infectés par le VIH : 56 % des conducteurs rapportaient avoir eu une relation sexuelle avec les prostituées et, pour les deux tiers d'entre eux, sans préservatif. Ces conducteurs s'absentaient plus deux semaines par mois de leurs familles et avaient le plus haut niveau de revenu dans la compagnie pour laquelle ils travaillaient. Cette latitude financière leur donnait une capacité à avoir recours à des prostituées.

Une autre enquête sur le principal corridor routier du Kenya qui s'étire de l'Ouganda à Mombasa a localisé, à l'aide d'un dispositif cartographique, les carrefours de la prostitution fréquentés par les conducteurs⁸⁰. Sur les 39 sites identifiés, abritant 5600 prostituées, sont stationnés chaque nuit 2400 camions. L'usage du préservatif parmi les professionnelles du sexe opérant sur ces sites s'élevait à 77 %.

À titre d'exemple, Malaba, dans le district de Kakamega, accueille 210 camions et compte deux cents prostituées en activité chaque nuit. 42 % de leur client étaient des conducteurs et 9,3 % avaient une MST. La plupart des routiers avaient eu en moyenne 2,8 partenaires au cours de l'année précédente et avaient passé moins de 40 nuits chez eux l'année précédente. La malaria était pour ceux-ci le problème de santé numéro 1 et les MST, le deuxième enjeu de santé.

À l'aune de ces éléments, cette étude concluait, qu'il pouvait y avoir 2235 nouvelles infections en 2005 sur la route

⁷⁹ RAKWAR, J.P. *et al.* (1999). 'Co-factors for the acquisition of HIV among heterosexual men: cohort study of trucking company workers in Kenya', *AIDS* 13: 607-614..

⁸⁰ MORRIS, C. (2004). *Hot spot mapping of the Mombasa-Kampala Highway*, University of Manitoba, Power point document.

Mombasa / Busia soit 3,7 % des nouvelles infections susceptibles d'être décomptées au Kenya dans l'année suivant l'enquête. Au total, ces études de cas, basées sur des enquêtes quantitatives, donnent un aperçu de la manipulation de la notion de mobilité et de sa polysémie dans les études consacrées au sida. Certaines s'efforcent aussi d'insérer le phénomène migratoire dans la typologie et la problématique des risques associés au sida. Cependant, aucune d'entre elles n'explicite le rôle de l'expérience migratoire dans le processus social et comportemental d'exposition aux risques.

Conclusion

Cet état des connaissances sur les relations entre migrations et sida appelle plusieurs observations sur les apports et limites des recherches effectuées. Dans une perspective d'ensemble, les différentes études évoquées- de façon non-exhaustive- dévoilent partiellement le rôle du facteur migratoire sur les comportements à risques et la diffusion du VIH, en s'appuyant essentiellement sur des enquêtes quantitatives socio-démographiques ou épidémiologiques. Aucune étude qualitative n'a été, à notre connaissance, menée sur la gestion des risques par les migrants.

L'effet des migrations sur la dynamique de l'épidémie, à l'échelle du Kenya, a été peu exploré. Son rôle est suggéré en filigrane de quelques études⁸¹. Mais l'incidence exacte des migrations sur les disparités géographiques entre populations urbaines et entre milieux urbains et ruraux n'a pas été clairement mise à jour. Tout au plus les enquêtes laissent deviner le rôle de « groupe noyau » dans la diffusion tel que celui des chauffeurs routiers ou encore l'effet des migrations urbaines rurales sur la diffusion du VIH dans les populations rurales. Aucune étude empirique, dans une ou plusieurs localités, n'est toutefois venue vérifier la part de la mobilité dans les mécanismes qui ont soutenu la distribution et la propagation hétérogène de l'épidémie à VIH. En outre, les risques de diffusion susceptibles d'être associés aux sujets en situation de mobilité, selon les contextes socio-économiques et socio-culturels dans lesquels ils s'insèrent n'ont

⁸¹ OUMA, V.A. (1997), *op. cit.* ; BROCKERHOFF, F.M. (1998), *op. cit.*

ainsi pas été quantifiés comme cela a pu être fait dans d'autres pays africains⁸².

L'effet potentiel de la mobilité sur la prévalence du VIH a toutefois fait l'objet de tentatives de prise en compte dans des études épidémiologiques écologiques⁸³ de concert avec des facteurs biomédicaux, socio-économiques et socio-démographiques. Ces enquêtes, sans remettre en cause leur indéniable apport à la compréhension de la diffusion du VIH, réduisent toutefois le phénomène de mobilité à un épisode susceptible de survenir dans la vie d'un individu dans les mois précédents l'enquête. Les effets sur les comportements à risque des différentes temporalités, contextes sociaux et situations de vie qui marquent les trajectoires migratoires ne sont pas abordés. Le KDHS 2003 souligne pourtant les liens différenciés entre mobilité géographique et prévalence du VIH suivant les durées des mobilités, sans toutefois en préciser la nature.

À l'échelle des formes de mobilité, l'analyse des KDHS réalisées au cours des années 1990 éclaire les rôles que pourraient jouer certains types de mobilité sur les comportements à risque. Cependant l'association entre d'autres formes de mobilité, moins évidentes à repérer, liées au suivi de cursus scolaire, aux événements familiaux et fêtes de fin d'année, à des rencontres religieuses, etc., et un risque majoré d'infection à VIH n'a pas fait l'objet de recherche, à l'instar des effets exacts des migrations en milieu d'arrivée et de retour sur les comportements à risque.

Ainsi, dans le contexte des bidonvilles de la capitale, le rôle des migrations sur l'exposition au VIH n'a pas été explicitement au cœur d'une analyse portant sur les mécanismes sociaux et comportementaux liés aux conditions d'insertion des migrants dans le milieu d'accueil. La relation entre le statut de migrant et les comportements à risque est généralement subordonnée au contexte de vie dans le bidonville. De la même manière, aucune recherche n'a été tentée pour mettre en perspective le rôle que pourraient jouer, en milieu de départ, les situations socio-économiques et socio-culturelles sur l'exposition aux risques des migrants en milieu d'arrivée. Pourtant, les informations collectées dans les KDHS et

⁸² LALOU, R. (1994), *op. cit.*

⁸³ BUVÉ, A. *et al.* (2001), *op. cit.*

les études réalisées dans d'autres pays⁸⁴ invitent à approfondir les connaissances sur les positions de vulnérabilité comme, par exemple, celles des femmes en milieu rural.

Au total, ces limites devraient favoriser des recherches circonscrites à la part du facteur migratoire dans la dynamique de diffusion du VIH, aux effets des formes élargies de mobilité ainsi qu'aux cadres socio-culturels et socio-économiques dans lesquels les comportements à risque prennent forme.

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⁸⁴ FARMER, P. (1996), *op. cit.*

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L'AFRIQUE ORIENTALE

Cette nouvelle édition de l'annuaire de l'Afrique orientale revient sur les moments clés qui ont marqué l'année 2005 en Afrique de l'Est. L'actualité politique s'est caractérisée par des événements qui mettent en lumière les processus de transition démocratique complexes dans lesquels sont engagés les trois pays d'Afrique de l'Est (référendum constitutionnelle au Kenya, élection présidentielle en Tanzanie, et réintroduction du multipartisme en Ouganda). Les trois dossiers thématiques proposés dans cette édition viennent apporter un complément d'informations sur la vie politique et sociale des trois pays. Le premier est consacré au référendum constitutionnel au Kenya et au processus de démocratisation vu notamment à travers le statut de la presse. Trois articles mettent également en perspective la question de la gestion des ressources naturelles (forestières et lacustres) au Kenya, en Tanzanie et autour du lac Victoria. Enfin le dernier dossier fait le point sur l'épidémie de Sida au Kenya avec des éclairages sur les jeunes et les migrants.



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