



March 2008

Adili 100

CIVIL SOCIETY IN THE GRAND COALITION: CAN IT EFFECTIVELY CHECK ON THE GOVERNMENT?



The current power sharing political arrangements leaves a vacuum on the institution of the political opposition. It has been argued that the civil society will then have to take the role of checking on the government.

By Cyprian Nyamwamu

As dust settles in Kenya, focus is shifting to the challenges of the aftermath of the post election crisis. One of these challenges is the operations of government in the interest of accountability and public good after the formation of the Grand Coalition Government occasioned by the passage in Parliament of the Constitutional Amendment Bill, 2008 and the National Accord and Reconciliation Bill, 2008.

The Grand Coalition Government framework threatens the institution of political opposition

to government and the tenets of Multi-Party democracy in Kenya. The proposal that Kenya's civil society organisations and the media should fill in the gap and effectively check on government has not been fully examined; the question being posed is if the civil society is competent enough to be the official opposition. What does it entail to be the official opposition or the institution offering checks to government institutions? What context is the civil society working within? Does this undermine its capacity to deliver as the watch

dog of the government? Is the civil society in Kenya credible enough to be the watchdog? Can Kenyans trust the civil society to perform this role effectively? What are the challenges the civil society faces that affect

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its operations and its effectiveness while performing the role? Are there alternatives to civil society in the pursuit of an answer to checking the government?

These issues need to be examined and alternatives offered for the reader and ultimately the civil society in Kenya to make informed choices regarding this role that may bestow it. These issues should be considered in informing the discourse that has just commenced regarding the future of democracy and good governance in the context of the grand coalition government formed after the PNU-ODM negotiations guided over by the Panel of Eminent Africans under the leadership of former UN Secretary General Dr. Kofi Annan.

The 2007 Elections and CSOs Transitional Role in 2002

The Civil Society Organisations (CSOs) have since 2002 been accused of being partisan and friendly to the government of the day and at some point their legitimacy to act on behalf of the citizens has been questioned. The current power sharing political arrangement leaves a vacuum on the institution of the political opposition. It has been argued that the civil society will then have to take the role of checking on the government.

While after the 2002 general elections, civil society was seen by most Kenyans as highly compromised and pliant in favour of government whims, programmes and policies, the truth lies elsewhere. There was a structural dysfunction in the political system caused by the depletion of the political opposition with a conservative and intellectually bankrupt KANU coming to the opposition after 39 years of misrule.

KANU suffered a moral and legitimacy crisis and did not know how to go about positioning itself as the alternative leadership and therefore work with the opposition. Therefore the country's governance was distorted and there was a strategic misfit. The strategic misfit is simple to explain. Before the Kibaki-NARC ascendancy to government, the civil society had a political framework to express its political will and agenda through

the highly respected political opposition headed by Mwai Kibaki's DP, Wamalwa's FORD-Kenya and Safina Parties. More so, Muungano wa Mageuzi headed by NCEC/SDPs James Orenge also was available to channel the political will of civil society to the political system during the 1997-2002 periods.

The Ufungamano Reform Initiative relied too heavily on the political opposition for political activism and leverage with the Moi-Kanu state system. The opposition was a threat to the Moi-KANU dictatorship and the civil society continually aligned itself to the opposition to persuade and pressurise the Moi regime to negotiate on the reform and development agenda of civil society.

In this way, civil society worked as the civil service of the political opposition and in exchange, the opposition accepted to act as the civil society's

threat to Moi. Note that this strategic arrangement was no more after the Kibaki led political opposition turned into government. Instead KANU took over the leadership of the political opposition and suddenly, it emerged that KANU and the civil society could not work together. This is the untold story.

Civil society only found a working formula with the opposition when the LDP part of the Orange Democratic Movement (ODM) fell out with the NAK wing of NARC after the referendum of 2005. This is when the Muungano wa Katiba Mpya was finally formed between the reform wing of civil society and ODM. This is the first time KANU ever worked with civil society on any known common agenda.

The point is that civil society did not compromise its agenda or get accommodated in government. Only few erstwhile civil society leaders got accommodation in the NARC arrangement. This proved costly for civil society. The impression formed in the mind of the public was that civil society ceased to act with the intensity it acted with during the KANU regime since its own were now in government. The truth is that its political voice had been taken away and this had not fully been anticipated in the civil society quarters. Unfortunately, the NARC regime which was vaunted and driven to power on the rails of the civil society infrastructure and resources turned into an ogre that wanted to con-

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Civil Society in the Grand Coalition

sume the civil society it formerly worked within and with.

CSO's after the 2007 General Election

The context obtaining for civil society after the 2007 general election and the formation of the impending grand coalition is radically different from the 2003-7 contexts. With the formation of the grand coalition comprising PNU, ODM and their surrogates, the civil society finds itself in a context where the political environment shall mainly be averse to scrutiny and accountability. With the Kibaki succession high on the agenda of politicians, it is unlikely that the ruling class shall cooperate in offering information to the public aimed at making the political parties in the coalition accountable.

The opportunity presented is that due to the fierce rivalry expected between the main political camps, information and leaks from within government may emerge that the civil society can exploit and make cracks in the ruling class. By so doing an entry point to enforce accountability may be solidified.

The logic is that politicians will present the option to the nation that if they want peace they must allow politicians to deliver on their terms otherwise the coalition will collapse leaving the people exposed once again.

Similarly, the national context of reforms, reconstruction and reconciliation may pose a problem to the civil society actors in the pursuit of accountability and transparent government. The people having suffered the repercussions of the pit-stops of elections over the last 20 years and seeing the cost of peace may settle for much less to be offered by the coalition in the attitude that peace is better than accountability.

There is a climate for impunity and blackmail that the grand coalition creates because of how it was constructed. The logic is that politicians will present the option to the nation that if they want peace they must allow politicians to deliver on their terms otherwise the coalition will collapse leaving the people exposed once again.

On the other hand, the international community which was a key player in the political settlement that led to the grand coalition may not be as keen on the high standards of good governance and responsive government as the community will be keen to ensure the coalition works and the economy is revived and stability restored. This

will complicate the role of civil society. At first the civil society organisation called for a fresh election, the formation of a transitional government and the enactment of an interim constitution to facilitate reconstruction, reforms and reconciliation.

This was down played and a political settlement prioritized. The agenda of stability was realised but the goal of justice and democratic restoration was sacrificed. So the politicians got a very good deal and the victims got nothing, but relative calm which was destabilized by the actors in ODM and PNU through their acts of omission and commission.

This context paints a grand coalition government established on very low standards and high public expectation will require that civil society actors create new space for civic engagement and governance engineering outside the state framework. The civil society must go for the direct engagement with the people. It must go for the soul of the nation and present themselves as the alternative leadership rather than the opposition to government.

The Sun and Sun Civil Society platform

While it looks natural to many that the current composition of civil society should take up the gauntlet and effectively play the role of opposition, most civil society organisations see themselves playing a more proactive role and pursuing a more transformative social agenda of activism for Reforms, Reconstruction and Reconciliation. The three Rs are the main thematic developmental areas the Civil Society Congress resolved on in the recently concluded Kikambala Civil Society Congress Retreat.

- o Ensure a clean, accountable and a publicly responsive grand coalition government
- o Electoral truth and electoral reform
- o Advocating for justice and upholding the human rights of the post election victims including re-settlement of the displaced persons
- o Promoting Kenya's nation hood, unity and

The Objectives the CSOs Focus fall Under a Ten Point Plan,

dealing with the spectre of negative ethnicity

- o Constitutional reform process, content dialogue and negotiations to promote social justice, gender justice, intergenerational equity, effective and democratic government and the access to justice for all.

- o Economic and social reconstruction and reform particularly engendering and re-prioritizing the national budget through a Marshall Plan model.

- o Land and agrarian reform to resolve the sources of conflict and offer alternative economic strategies for development and progress.

- o Truth, Justice and Reconciliation: resolving the historical injustices, gross human rights violation, assassinations, misuse of office, corrup-

tion, institutional decay and crumbling.

- o Building a strong reform Movement and a strong civil society

- o Influencing regional integration and governance to promote democracy, good governance and Human Rights.

These key items of agenda must be pursued through proactive as well as defensive approaches. The proactive approach shall maximise and strengthen voices of the people, presenting alternative visions, conducting civic education and lobbying government to enact policy that shall make these goals realizable.

The defensive strategy shall include the active monitoring and watchdog role of civil society through research, publications, policy dialogue, activism and mass action aimed at making it expensive for government to defraud or short-change the people

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CSOs: THE FORCE BEHIND THE STRATEGY

Interview with Prof Macharia Munene, a political analyst and a lecturer at the USIU

Q: Who is the Civil Society and what is its mandate in any country?

A: Civil Society tends to refer to any organized group in a place that becomes primarily concerned with the way public affairs are managed, and often wants to have a hand in the conduct of those affairs.

Its members are not elected to any official public position yet they take a lot of interest in what ever happens. They have no official mandate to do what they do other than the fact that they are often citizens of the country in which they operate. In recent times, involvement in civil society activities has become a profession in which people earn a good living agitating and lobbying on behalf of some forces, all in the name of public interest.

Q: Can Kenya boast of having vibrant CSOs that legitimately represents the citizens?

A: Yes, Kenya has vibrant Civil Society but there is doubt as to whether it legitimately represents Kenyan citizens. This is because Civil Society in Kenya tends to be foreign driven rather than home grown. Members of Civil Society tend to be dependent on foreign largesse for funds and many times for ideas. They make detailed reports to "donors" and "programme" officers of foreign sponsors before receiving the money to do whatever it is they are supposed to do at a particular time. They essentially become lobbyists for foreign interests, though some of them are very effective in their work.

Q: What is the role of CSOs?

A: The role of Civil Society Organizations is to inform people of what they think may be happening or should be happening depending on the agenda at a particular time. They mobilize people in an effort to promote or undermine a particular public undertaking. Together with the media, they help to keep public officials on their toes.

Q: The CSO'S have since 2002 been accused

of being partisan and friendly to the government, what do you think ?

A: It depends on who is doing the accusing. The CSOs are definitely partisan but that partisanship is not necessarily on the side of the Government. The record so far is that many of the well known CSOs have been openly hostile to the Government and appear to enjoy being seen to harass the Government. It is therefore a fallacy to say that CSOs have been friendly to the Government.

Q: What kind of relationship should the CSOs and government have in sustaining the governance structures of the country?

A: The relationship should be civil rather than antagonistic. The Government is the one officially charged with the responsibility of running public affairs. CSOs have rights as organs in the State to raise questions and to assist the Government in fulfilling its obligations. There are many times when there would be differences, as it should be, but it makes

no sense to assume that Government and CSOs should be in constant friction

Q: Can the current composition of civil society effectively play the role of opposition?

A: The fact that the Government appears to be in a confused state does not mean that there will not be political opposition in parliament. Even in the days of the one party state in Kenya, there was opposition within the parliament. One interesting thing is that between 2003 and 2006 there was more opposition within the Government than from without although there was an official opposition party. The Government was doing a better job of opposing itself with cabinet ministers bickering in public than what the KANU opposition party could offer.

In the current scenario, if it continues and is realized through the National Accord and Reconciliation Act, the opposition from within the Government, the implosion within the Government is likely to be bigger than it was in the build

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CSOs: The Force Behind the Strategy

up to the 2005 Referendum. The CSOs will most likely side with one faction in that internal opposition just as they did before. They will become cheer leaders for their favourite political faction.

Q: Which other bodies can compliment the works of the CSOs?

A: CSOs are similar to NGOs and they work closely together. The public in general will need to be vigilant. The media, if they can avoid playing favourite or trying to victimize, will be vital to keeping all factions in Parliament and the Executive on check.

Q: What strategies should the CSOs put in place to help in sustaining the democratic process?

A: That is hard to answer given that whatever they supposedly come up with will largely be

foreign controlled rather than Kenyan. Hardly any CSO is Kenyan funded and driven.

Q: Is there any co-relation between the political situation resulting after the 2007 elections and the transitional role that CSOs played after the 2002 elections?

A: In both elections, CSOs were very active in the electoral process. In 2002 the loser accepted defeat. In 2007, the story was different. The CSOs are not innocent.

What are the challenges facing the Civil Society?

A: The main challenge is on how to be truly Kenyan as opposed to being extensions of foreign interests.



CHALLENGES FOR CIVIL SOCIETY IN KENYA

As the civil society gets down to deliver on their tasks and historic development goals, it must develop a strategy for dealing with many challenges. The first challenge is the lack of an effective opposition in parliament.

Dependence on financial support from donors who keep shifting priorities and alliances between state and non state actors is a challenge civil society is yet to fully plan for. Similarly, weak structures within the civil society and with the communities and grass roots constituencies, weak communication strategy given the fact that the media is totally controlled by the ruling classes now in the grand coalition; credibility issues and weak internal organisation among CSOs remain the other challenges.

These challenges can be overcome if the CSOs focus on building the National Civil Society Congress and if courageous and credible leaders spearhead the mission and agenda of social justice.

Building Credibility for Civil Society

For Kenyans to turn their faith for national transformation and good governance to the civil society, the question that begs then is, can they trust the CSOs to check on the government? Kenyans can only trust the CSOs to undertake this his-

toric mission if the CSOs demonstrate that they are credible and capable to lead. The credibility of civil society can only be built in the face of the public if the sector finally positioned itself as the protector of the public from the uncanny ways of politicians in the coalition.

Three quick civil society wins should help bolster the confidence of the people. Civil society should make the issue of the resettlement of the internally displaced Kenyans a reality through strong advocacy and joint action with the government. Secondly, privatization in Kenya should be stopped or be done in the interest of Kenyan workers through cooperative societies and with accountability.

Thirdly, institutions of government must be held accountable through the use of many enforcement mechanisms including the courts, public arrests and the enforcement of reports from commissions of inquiry. For instance civil society should take it upon them to resettle displaced people in the lands that were grabbed by the post independence ruling class and let government react to this proactive strategy of civil society.

These actions will make civil society be respected for its character of solidarity with the citizens and their interests. This is a sure way of winning credibility.

Corruption News Wrap

Namibia: Authorities Drag Feet on Corruption Cases – Survey

Wezi Tjaronda
Windhoek

Although the Namibian media reported on more corruption cases in 2006/7 than between 2004 and 2006, authorities are not acting on most of them, a survey has found.

The survey found that the number of cases that the media reported on jumped from 92 cases in 2004/6 period to 240 cases in the 2006/7 survey period.

The number of articles generated from these cases also increased from 682 in 2004/6 to 709 articles from 2006/7 period. During the 1990/2004 period, the media produced 83 articles from 31 cases per year.

These are findings of a Namibia Institute for Democracy (NID) publication 'Actual Instances of Corruption as Reported in the Namibia Print Media, 2006-2007', which was launched yesterday.

The publication, which forms part of the organisation's zero tolerance for corruption campaign aims at identifying trends in the occurrence of corruption and in the print media's reporting on actual corrupt cases. Graham Hopwood, project manager for the Public Dialogue Centre at NID, said, "The media is doing its part of the deal although the authorities showed disinterest in acting on these cases."

The survey said the Anti-Corruption Commission (ACC) received 686 complaints about corruption in 2006, of which 85 were closed because of lack of evidence or because the allegations were unfounded, while another 145 cases were passed on to other authorities.

The ACC did not take action against 259 cases because they either fell under the jurisdiction of other authorities or because other authorities were already taking action, said Hopwood in the report. Of the 686 cases, five were consolidated with others, while 192 were carried over to 2007.

Last year, the ACC received 831 complaints. Hopwood said in terms of the 2006/7 cases, it showed that the anti-corruption agency took on 192 cases but either rejected or passed on 489 cases.

"This study found that the print media reported on 240 cases from April 2006 to March last year. This indicates that the media, which almost certainly did not report on all the complaints taken up by the ACC covered many other cases that were being investigated by other authorities, had been uncovered directly by the media, or were old cases that were being reported on because of continuing delays and inaction," he added.

Legal Analysis / The shocking depths of corruption

By *Ze'ev Segal*

Judge Jacob Zaban's detailed verdict is a difficult and shocking document: It attests to the depths of governmental corruption to which former minister and current MK Shlomo Benizri descended. The verdict convicts Benizri of taking bribes - a crime that previous rulings have defined as the "supreme source of corruption" - and of other serious crimes, whose circumstances are described in detail. And it proclaims the shame of anyone convicted of these acts.

The court properly stressed that the crimes of bribetaking, fraud and breach of trust, especially in the circumstances of this case, constitute corruption of the sort that endangers both society and government: They undermine social stability and cause the public to lose faith in government agencies.

Judge cited an earlier verdict against another former minister - Aryeh Deri, who was convicted of taking bribes - as an example of the gravity of this offense. But the chain of events unveiled in Benizri's case seems no less grave than the Deri affair. Even Benizri's acquittal on some counts - including one charge of ac-

cepting a \$200,000 bribe - does nothing to mitigate the severity of the offenses of which he was convicted.

The Jerusalem District Court, which convicted Benizri, must now complete the case by sentencing him. The sentencing decision will not only determine his punishment; it will also determine whether he is guilty of moral turpitude. In his verdict, Judge Zaban noted that bribery carries a stiff maximum sentence.

The court will decide the turpitude question in accordance with the standard approach that views this as a "moral/ethical" issue. It will take the nature of the crimes and the circumstances in which they were committed into account. But bribery is generally considered a crime that entails turpitude by its nature. So is obstructing justice, of which Benizri was also convicted.

The court can address the turpitude issue either on its own initiative or at the request of the attorney general, who will presumably ask the court to determine that Benizri's acts did involve turpitude. Once the sentence is issued, Benizri can appeal both the verdict and the sentence within 45 days.


Some indicators For Civil Society

- o Are there restriction on the ability of civil society to organise itself through the formation of non-government organisations?
- o If so, are these reasonably necessary in terms of ensuring accountability by the NGOs? Or do they continue unjustified obstructions?
- o Are there restrictions on holding of public meetings which act a barrier to the mobilisation of NGOs?
- o If there are requirements for the licensing of meetings are licenses issued as a matter of course.

Legal and Accounting profession

- o Is the legal profession subject to disciplinary measures?
- o Are lawyers who are detected as behaving corruptly likely to lose their right to practice?

Medical profession

- o Is there medical profession subject to disciplinary measures?
- o Are those detected of acting corruptly likely to lose their right to practice? 

Event: World Bank and International Monetary Fund Spring Meeting
 Date: 10th -13th April 2008
 Venue: World Bank, Washington DC
 Organizers: WBG and IMF Civil Society Teams

Event: Conference on strategies for Combating Fraud, chair of stream: "White collar fraud and corruption"
 Date: 21st- 24th April 2008
 Venue: Crown Plaza, Brussels, Belgium
 Organizers: IIR

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Adili is a news service produced by TI-Kenya's Communications Programme. The views and opinions expressed in this issue are not necessarily those of TI-Kenya. The editor welcomes contributions, suggestions and feedback from readers. Transparency International, 3rd Floor, Wing D, ACK Garden House, 1st Ngong Avenue. PO Box 198-00200, City Square, Nairobi, Kenya. Tel.: 254-020-2727763/5, 0733-834659, 0722-296589; Fax: 254-020-2729530.