



Saba Saba at 30: The Struggle for Progressive Alternative Political Leadership in Kenya Continues

By Willy Mutunga



KES 2020

Three decades ago, driven by a quest to reclaim their sovereignty and recalibrate the power relations between the state and society, the people of this country went to the streets to push for political and constitutional reforms, a major inflection point in the history of our nation. Through a protracted, peaceful struggle by Kenyans in the country and in the diaspora, the country finally transitioned into a multi-party democracy.

The struggle is not over; Kenya's politics have taken a backward trajectory, moving towards dictatorship in the midst of an intra-elite succession struggle that could descend into violent conflict, chaos, and even civil war.

Kenya is a fake democracy where elections do not matter because the infrastructure of elections has been captured by the elites. There is a danger of normalising electoral authoritarianism, where the vote neither counts nor gets counted. The Judiciary is under constant attack and disparagement by the executive while parliament is contorted into a body increasingly unable to represent Kenyans and provide oversight over the executive's actions. The security services are unleashed on the poor and the dispossessed as if they are not citizens but enemies to be hunted down and destroyed.

A range of constitutional commissions are in a state of contrived dysfunction while our media business model is failing, accelerated by political interference. Grand corruption—perpetrated by a handful of families and by the elites collectively—has been normalised and the fight against corruption has been politicised. In the creeping descent into dictatorship, civilian public services have been militarised and the 2010 Constitution that was in many ways a culmination of the struggle that started on 7 July 1990 when the late Kenneth Matiba and Charles Rubia called for a meeting at the Kamukunji grounds in Nairobi, is being deliberately undermined.

We have a duty and a responsibility to defend Kenya's constitution; to resist efforts to undermine devolution in particular; to resist those determined to continue looting an economy already on its knees; to stand up against efforts to brutalise, dehumanise, and rent asunder the essential human dignity of Kenyans as a people.

Three decades is a generation. The generation that voted for the first time in 1992 is a venerated demographic that is 48 years old today. It is the generation of freedom (the South African equivalent of the "born-frees"), and a significant part of the cohort that participated in the struggle as teens or young adults. It is the generation that bore the brunt of the struggle for freedom but which has been denied the opportunity for real political leadership. That part of its membership that has had access to state power is drawn from the reactionary wing of the group—the scions of the decadent YK'92 and drivers of the "NO" campaign against a new constitution.

Despite having successfully fought for a new constitution, three decades after *Saba Saba*, the frustration felt by this generation and its children runs deep. Why? Power is still largely imperial, exercised in a brutal and unaccountable manner, as institutions flail and falter. The country is still ethnically divided, the fabric of our nationhood is fraying and its stability remains remarkably and frighteningly fragile. Foreign domination, exploitation, oppression is still with us. Poverty and inequality still reign as a tiny economic aristocracy consolidates wealth at the top, while a large pool of the poor underclass expands at the bottom. Why is this the case? Why, after three major successful transitions over three decades—multipartyism in 1992; power transition in 2002; and a new constitution in 2010—are we still being frustrated by our politics and economics? Why is our quest to advance Kenya as a prosperous, democratic and stable country floundering? I see five main reasons why Kenya's democratisation and development have been stymied.

First, and most importantly, is the moral bankruptcy of Kenya's elite. It is the loyal facilitator of our continued colonisation by the imperialism of the West and the East. We have a political elite who—together with their acolytes in the middle classes—view this constitution as inconvenient and who have in the last decade taken every step to undermine it, now even audaciously threatening to overhaul it. This mythmaking of how the constitution "doesn't work for us"; or how it is "expensive" (despite analytical evidence to the contrary), or how it "does not promote inclusivity", is basically political mischief-making that must be roundly denounced and firmly rejected.

But this hostile attitude by the political class towards the constitution should not surprise us. The constitution was imposed on them by the people through a people-driven process. And we must remember that they proposed more amendments to it on the floor of the House than there were articles in the constitution. To be sure, when the political class finds a constitution, a law or an institution to be an inconvenience, that is a clear indicator of success.

We must actively resist the schemes by the political class to hijack, mangle and wreck the constitution, and thus remove the checks that make the exercise of political power onerous. The constitutional product is only as good—and as secure—as the process that creates it. And whereas we must salute the decision of Uhuru Kenyatta and Raila Odinga to stop the grandstanding and step back from the brink to save lives, the framework for dealing with the issues that created the problem

in the first place (such as electoral theft right from the party primaries to the general election, ethnicity, police brutality and vigilante massacres) should have been broader, more structured, and more inclusive than the present process which is private, exclusionary, unstructured and partisan.

The moral bankruptcy of the political elite is pushing us into a false choice between “dynasties” and “hustlers”—a very superficial and shallow narrative masquerading as a class-based political contest yet it is merely a joust between gangs. It is a (mis)-framing that obscures the underlying forces that create underdevelopment, instability and violence and those who benefit from the end result. We must not buy into this misframing of our political choices, whose guile in placing a confederacy of familiar surnames on one side, and a well-known economic rustler of public assets on the other, seeks to hide the common denominator of those two groups: the plutocrats within the state that are the beneficiaries. Both are extractive and extortionist, only distinguished by the differences in their predatory styles and their longevity in the enterprise of shaking down the Kenyan public. This is a club, a class of state-dependent “accumulationists” and state-created “capitalists” united by a history of plunder of public resources and unprincipled political posturing, and only divided by the revolving-door cycle of access to the public trough.

My second argument as to why, despite the many progressive political and constitutional transitions the country still feels restless and dissatisfied, has to do with the performance and the posture adopted by parliament. Whereas the judiciary has emerged as an effective and consequential arm of government since 2011, simultaneously playing defender and goalkeeper of the constitution, parliament, since 2013, and even more so now, acquiesced as an adjunct to the executive. In a complete misreading of the presidential system, parliament sees itself as an extension rather than a check on the executive. The senate is even worse; instead of playing its constitutive role of protecting devolution against the excesses and encroachment of the national government, senators got into the most parochial contest of egos with the governors, bizarrely siding with the executive to stream-roll and undermine devolution. It took the judiciary, through a number of bold decisions, and the public, who rallied around devolution, including in the ruling party’s backyard, to save devolution from an early collapse.

Third is the suboptimal output from devolved governments. Devolution has been good but is not yet great. Because of a hostile national government and endemic corruption in the counties, devolved governments have not performed optimally although, compared to the central government’s record of the last 50 years, they have made a big difference in people’s daily lives. Although devolution has been revolutionary, a combination of frustration from the top (especially from the Treasury the Devolution Ministry (particularly the first one) and the Provincial Administration) and the extremely poor and corrupt leadership of some governors have delayed the devolution dividends.

I dare say that without the strong backing of the judges—a raft of decisions by the High Court and two decisions by the Supreme Court on the Division of Revenue Bill—devolution would long have unravelled. These decisions are part of the reason for the animosity towards the judiciary that we have witnessed in the last decade.

Fourth, political parties have not been operating optimally. Political party primaries have been heavily rigged and violent, which has undermined people’s faith in the democratic process. Further, the Political Parties Fund is operated in an opaque manner, with the size of the allocations to some parties being equal to the allocations that are given to some counties. The disorganisation and privatisation of parties is nurturing a feeling of despondency and a lack of belief in parties, yet our constitution envisages a party-based constitutional democracy.

Fifth is the country’s economic collapse due to mismanagement. This economic failure preceded the COVID-19 pandemic. Never before has the country witnessed such a spectacular mismanagement of

the economy. There is absolute incoherence and inconsistency in the public policy priorities. From a glitzy manifesto that has been honoured more in the breach than in the observance, to the Big 4 Agenda, the Nairobi Regeneration Team, the Anti-Corruption, we are all over the place, and are now consumed by succession politics. We have a ballooning debt that is unprecedented in stock (over Sh6 trillion), in composition (much of it expensive commercial debt); and in impact (Eurobond monies are yet to be accounted for).

In this context, it would be extremely foolish to think that individuals who have been partners in this mismanagement could be plausible alternatives. The authors of the last seven years of corruption, debt, and underdevelopment are known and so, if the country is to stand a chance of realising the benefits of the transitions that it has undergone, then it would be utter tomfoolery to consider parading any of these characters as the agents of that change.

Our Constitution is not defective. The quality of our elite is—fatally so. The problem is not in the structure of power as expressed in our constitutional architecture, but in the exercise of power in the conduct, choice and decisions that leaders—and to some extent the masses—make. The structure of power does not command us to have a President, Speaker, Prime Minister (that is what the Majority Leader would be in a parliamentary system), Attorney General, Chief of Defence Forces, Director General of Intelligence, Head of Kenya Police, Director of Directorate of Criminal Investigations, Governor of Central Bank, Commissioner General of Kenya Revenue Authority, and Auditor General, all from one region.

It is the exercise of that power, both by the nominating and confirming authorities, that allows for this construction of an ethnic hegemony at the heart and in the commanding heights of state affairs. This is not to question the competence and patriotism of these compatriots; it is to question the effect of this apparent singular concentration of competence in one ethnic identity on the fabric of our nationhood. The absolute necessity for diversity and inclusion in public positions and policy cannot be gainsaid. That is how you create a strong and united nation. The argument that changing the constitution will, *ipso facto*, foster inclusivity is a false one. With an already expansive government of 22 ministers, over 40 Principal Secretaries, parastatal chiefs, and an expanded leadership in both Houses of Parliament, how come we are still not able to be inclusive?

Vuguvugu la Mageuzi (VUMA) or Kongomano la Mageuzi. These are possible names of a transformative movement made up of all the social movements that exist in the country and that, going forward, would tackle a number of issues.

First, the middle class civil society must reactivate its engagement and build strategic and effective alliances with grassroots movements and the over 40 social justice centres countrywide to keep both national and county governments in check and create a strong central defence for the constitution. Indeed, the countervailing power of the civil society must be strengthened.

VUMA should be the crucible for the development of alternative leaderships drawn from such movements as The Artist Movements of cartoonists, film makers, singers, poets, and song writers; 100 Days of the Citizens' Assemblies; Congress for the Protection of the Constitution; DeCOALonise; Friends of Lake Turkana; Inuka Kenya Ni Sisi, Okoa Mombasa, Kenya Tuitakayo Movement and SwitchOffKPLC. There are many others in formation: the movement to protect the rights of tea workers in Kericho; the movement to protect the cane farmers in Western Kenya; the movement to protect devolution in the NFD; the movements that defend community land from commodification; farmers revolts against crony capitalism in the Rift Valley and Central Kenya; and the movement to withdraw our troops from Somalia, among others.

Second, the movement must give voice and support the Council of Governors' demands for the

arrears in development funds that the national government continues to refuse to disburse.

Third, this is a good moment for the emergence of an alternative leadership for Kenya. The political elites are in fear of each other and there is a hurting stalemate in their relationship and negotiations. We need to invest in the rupture of those negotiations.

Fourth, we need to support a principled and fair fight against corruption, both at the national and county levels, and establish whether public policy and the law have been used for public good or private gain.

Fifth, we also need to set up at least three Judicial Commissions of Inquiry, the first one being on the public debt incurred since independence so that we can establish the rationale, basis, terms, impact and beneficiaries of these debts. This includes Ken-Ren, Goldenberg, Anglo Leasing, SGR, Eurobond and other scams. The second one should be on all government technology projects from IFMIS to OT-Morpho, to Huduma Number to E-Citizen. The third commission of inquiry should target police brutality and the vigilante and police massacres of 2017, especially in Western Kenya and in the slums of Nairobi.

Sixth, we should revisit all the solutions devised by the Saitoti Report; the Akiwumi Ethnic Clashes Report; the Ndungu Land Report; the InterParty-Parliamentary Group Report (particularly its unfinished business); the Truth and Justice Commission Report; the Kreigler Report; the Kroll Report; Kofi Annan's Agenda 4; the Waki Report and all the reports developed by the civil society as solutions to our societal problems. That rich and robust material should be debated and refined for implementation.

Seventh, we must undertake mass civic education on the contents of the 2010 Constitution with a view to triggering the citizenry to demand its implementation;

Eighth, we must form a united front with political parties that are against imperialism and baronial rule and their respective narratives.

Ninth, we must nurture a political party or political parties that will contest for political power in the interests of the motherland.

And lastly, we must ensure that the failure of the ruling elite to secure the social and economic rights of the Kenyan people as provided for under the constitution (the right to food, housing, water, education, health, social security, employment) during the ongoing pandemic is an important lesson about the kind of leadership this country should not have.

The future of the constitution and our democracy will depend on the quality of leaders the country elects. That is when the full dividends of *Saba Saba* and 2010 will be fully realised. As the United States has shown, even constitutions, institutions, and customs that have been nurtured over hundreds of years can come easily undone by a rogue leadership and a pliant public.

Published by the good folks at [The Elephant](#).

The Elephant is a platform for engaging citizens to reflect, re-member and re-envision their society by interrogating the past, the present, to fashion a future.

Follow us on [Twitter](#).