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The Politics of HIV/AIDS and Implications for Democracy in Kenya

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THE POLITICS OF HIV/AIDS AND IMPLICATIONS FOR DEMOCRACY IN KENYA

by

Wambuii Henry Kiragu

A Dissertation
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
Degree of Doctor of Philosophy
Department of Political Science

Western Michigan University
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June 2004
Democratic consolidation in newly transitioned democracies has traditionally been attributed to widely accepted political and legal mechanisms, like elections and constitutions. Existing literature on democratization in sub-Saharan Africa is preoccupied with these mechanisms as prime indicators for democratic takeoff in specific countries. Hardly any attention has been paid to other less openly political mechanisms, such as the response to external shocks, as potential sources of institutional development that could advance democratic practices.

Yet national response to any external shock can entail a host of actions with potentially far ranging political implications, including transformation of the form and means of political contestation in a given country. The practical need for means to address urgent issues in response to the external shock could lead to the emergence of institutional mechanisms that foster democratic practices. A logical question to ask is: How does mobilization against external shocks affect the process of democratization in fragile democracies?

This project identifies the institutions that emerged in response to the HIV/AIDS pandemic in Kenya and examines their impact on the country's democratization.

The dissertation adopts a historical institutionalist perspective, advanced through analyses of policy documents and a review of the secondary literatures dealing with HIV/AIDS and with post independence political developments in the country. Tracking
institutional developments before and during the HIV/AIDS era, and examining the contribution from responses to the HIV/AIDS pandemic to these developments, provides insight into this kind of political change.

I conclude that although consolidation of democracy in Kenya is still in its infancy, mobilization against HIV/AIDS has inadvertently led to the emergence of institutional mechanisms that, along with other factors like civil society agitation and international pressure, have built a significant structure for the practice of democracy. I emphasize that while HIV/AIDS has been documented in existing literature as set to reverse political gains across sub-Saharan Africa, mobilization against the pandemic in Kenya has led to the emergence of citizen driven institutions that contribute to advancing democracy.
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Wambui Henry Kiragu

ENTITLED THE POLITICS OF HIV/AIDS AND IMPLICATIONS FOR DEMOCRACY
IN KENYA

AS PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE

DEGREE OF Doctor of Philosophy

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Date June 2004
ACKNOWLEDGMENTS

This dissertation is the culmination of a long held aspiration to contribute to the search for solutions in the fight against HIV/AIDS. The pandemic is a sad reality that for over two decades has affected those not only close to my heart in Kenya, but also has caused many needless deaths across the world. This dissertation is foremost an acknowledgement of man's ability to overcome, a salute to goodwill and cooperation for the sake of human kind, and an ode to the many hapless victims of a pandemic beyond their comprehension.

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Wambuii Henry Kiragu
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CHAPTER I

INTRODUCTION

Two significantly different, yet cross cutting political phenomena occurred in sub-Saharan Africa in the last two decades of the twentieth century and constitute the region's main political preoccupation in the early twenty first century. These are; the remarkable transitions to democracy by a majority of the countries in the region in a decade and a half beginning in the early 1990's on one hand, and the rapid spread of the deadly HIV/AIDS epidemic in the sub continent beginning in the mid 1980's on the other.

The HIV/AIDS pandemic is the single most devastating calamity to afflict the African continent in the twentieth and early twenty-first centuries. As Boone and Batsell (2001) point out, the pandemic has been "redefined as a major developmental crisis" by among others, the development oriented World Bank, who now view the pandemic as "the biggest threat to all gains in health, education, life expectancies, and standards of living that Africa has made since the 1950's" (Africa Today, v.48 (2), 3-33). The pandemic can also be seen as having a major impact on political developments in the continent. One area of political focus is the intersection between the raging HIV/AIDS pandemic and the ongoing process of democratization in sub-Saharan Africa.

The HIV/AIDS pandemic has the full potential to exert dual impacts on the process of democratization in the region. On one hand, the pandemic poses a very real threat of reversing the democratic gains that sub-Saharan Africa achieved in the last decade of the twentieth century and in the dawn of the twenty-first century. As Jeremy [Further text]
Youde (2001) concludes in his discussion of the negative impact of HIV/AIDS on democracy in Africa, the pandemic “poses a serious potential threat to the democratic stability and legitimacy of African states” (3).¹

The alternate effect of the pandemic on democratization, what I term as the ‘enrichment’ impact on democracy, is the pandemic’s ability to draw attention to significant social and political inadequacies in society, including human rights and good governance issues, which demand immediate attention as diverse communities mobilize to respond to the pandemic. The emergent institutional frameworks and mechanisms in the response against HIV/AIDS have inadvertently set in motion several significant processes with a cumulative enriching impact on the processes of initial democratization and even continued democratic consolidation in the infant democracies in the region.

For one, the urgent need to respond to the HIV/AIDS pandemic has opened up the political space for a more heightened interaction between state officials and members of the civil society and in so doing, has fostered the emergence of new, more citizen accommodating roles in policy making. Ann Dill (1994) acknowledges the existence of interrelated stakeholders and emergent institutional mechanisms in the mobilization against the pandemic in her assertion that:

Since the story of AIDS involves service providers, advocacy groups, and social movements from vastly different sectors interacting in response to a dynamic epidemic, there are presumably evolving combinations of technical and institutional imperatives guiding organizational action (*Journal of Health and Social Behavior, Vol. 35, 353*).

Second, the need for immediate widespread action has led to the rejuvenation of existing political institutions and the emergence of new multi-sectoral oriented political and social institutions as both state and civil society struggle to respond to the devastating pandemic.

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This research ventures into previously unexplored areas in the democratization literature in sub-Saharan Africa by using responses to the HIV/AIDS pandemic, an external shock whose impact has been felt across the world, as the means to gauge democratic gains and consolidation in Kenya. Specifically, taking a macro level approach of the intersection between the response to HIV/AIDS and the process of democratization in Kenya, I make the argument that emergent institutional mechanisms in the responses against HIV/AIDS have inadvertently contributed to the advancement of democracy in Kenya at several levels. Hardly any attention has been paid to the potential of external shocks, like mobilization against natural catastrophes and disease, as a beginning point for institutionalization of policy making processes, high level of political activism and cooperation between state and civil society, all instrumental mechanisms for institutional buildup and subsequent democratic takeoff and longevity.

The study uses data gathered from policy documents detailing the fight against HIV/AIDS in Kenya, along with an analysis of existing literature on democratization, to make an argument for the importance of considering other political phenomena like mobilization against external shocks, as mechanisms for advancing the democratic process. Such an approach seeks to address a shortcoming in democratization literature in sub-Saharan Africa. Existing literature, as Ndegwa (2001) aptly points out, has overwhelmingly focused on 'the political and legal spaces' (1), including a fascination with elections and constitutions, as both the precursors and prime indicators of democracy.

Taking HIV/AIDS in Kenya as an external shock with a potential to impact the process of democratization, the study's main focus is on how emergent institutional mechanisms in the response to the pandemic have affected the process of democratic consolidation. A key unit of analysis is the interaction between state and civil society.
based organizations fighting HIV/AIDS in Kenya. On one level, initial mobilization against the pandemic could be seen as part of civil society organizing to address an issue of immediate concern. Such organizing however was not restricted to the issue of HIV/AIDS, more so given the fact that the onset of the pandemic coincided with heightened agitation for political reforms and consequent transition to democracy in Kenya.⁴

Besides, relations between state and civil society pervade practically all the thematic areas that the response to the HIV/AIDS has drawn attention to, be it human rights issues, gender empowerment or even the need to streamline public policy making processes. An inherent objective in this study is to describe and analyze how the responses to HIV/AIDS in Kenya have shaped interaction between the state and civil society organizations in the period between 1985 (one year after the first HIV positive case was diagnosed in Kenya) and 2003, and to relate this to the broader historical process of continued democratic progression in the country.

**Theoretical Conception**

I take the path dependent position that, democratic institutions that take root as both state and civil society mobilize against an external shock will continue evolving and will endure long after means and forms to address the shock have been formulated and perfected.⁵ Based on the observable outcome of the mobilization and formulation of national level responses to HIV/AIDS in Kenya, especially the close correspondence between those issues outlined as important for successful responses to HIV/AIDS, and those important for the ongoing process of democratization, we can extrapolate a more general theoretical explanation that could be tested widely across different issues and regions.
Using the intersection of responses to an external shock, in this case HIV/AIDS, and the process of democratization, I advance what I refer to in this study as the 'Theory of Democratic Enrichment'. The theory is based on the theoretical conception that, mobilization in times of national catastrophe (external shock):

1. Could foster the initial processes of agitation for democratic reforms in authoritarian regimes by opening up the political space to allow citizen participation in responding to urgent issues, like formulating specific shock related issues based on their expertise, and in education and information disbursement, albeit limited to specific issues. Inadvertently, this participation could grow into a fully engaged involvement of the citizens in activism and policy advocacy on essential areas like human rights protection, and could become a source of pressure on the government to institute political reforms.

2. Could foster democratic consolidation in fragile, newly transitioned, democracies by enhancing the streamlining of existing institutions, and promoting the emergence of new institutional mechanisms to address important and urgent issues raised in response to the external shock, and that correspond closely to issues important to the advancement of democracy. Such issues could include the need to institutionalize policy making processes, the need for more effective legal institutions to protect against human rights abuses, and the need for cooperation between civil society based organizations, and even more, between them and the state to allow for the growth of a process of political consensus.

This theoretical conception seeks to add on to the tools involved in the process of analyzing the mechanisms that advance democracy in developing, less democratic countries. Further discussion on the theory will be revisited in the concluding chapter. For now, it is worth noting that the theory could be seen as adding a solid theoretical
dimension to the analysis of the impact of responses to HIV/AIDS on democracy in sub-Saharan Africa. As seen in the few existing writings on the topic to date, HIV/AIDS is seen as mainly capable of undermining the process of democratization by reversing political gains made in the last decade of transitions (Manning and Mattes, 2003; Youde, 2001). Where a positive effect on democratization is envisioned, the commentaries are purely speculative and in need of both a specific case and a theoretical framework to allow for general application of the findings (Whiteside, 1999; Fourie and Schonteich, 2001).

At another level, while my theoretical conception imagines the active involvement of a civil society working alongside the state, a preponderance of existing literature on state-civil society relations in Africa have clearly depicted the political reality of two actors, one state, the other non-state, whose relationship is marked by hostility and competition (Azarya 1994; Bayart, 1986; Bratton, 1989; Chazan 1994; Diamond, 1988; Hirshman, 1970; Ndegwa, 1996).

While HIV/AIDS, the preferred external shock in this study, is unique both due to its destructive nature, its widespread nature across the world, and its apparent longevity, external shocks need not necessary mirror the characteristics attributable to HIV/AIDS. Other less destructive, but nonviolent national catastrophes can be identified. A fitting example could be a devastating earthquake, whose effect is huge and long enough to allow for nation wide mobilization. While this theory can be extended to several other mechanisms in democratically challenged societies, and could be applied across time, only the future will tell what faces external shocks will adopt in consequent years. At the basic level, this study intends to deepen our understanding of Kenya’s policy strategies, both in search of solutions against the HIV/AIDS pandemic, and also for factors contributing to the process of democratization.
in the country. By extension, the study will contribute to both our understanding of the ever changing, dynamic relationship between the state and civil society in sub-Saharan Africa. At another level, this study offers a framework for approaching the analysis of the connection between external shocks and the important issue of democratization in similarly disposed fragile democracies across the world.

**Research Questions**

This study poses three interrelated questions on the nature of corresponding issues between the response to HIV/AIDS and democracy, emergent institutional mechanisms and forms, and the impact on democracy in Kenya. The research questions are: (i) what contentious political issues have emerged in the response to HIV/AIDS in Kenya? (ii) What new characteristics of institutionalization, political contestation and exercise of power have emerged to address the contested issues? How have these new mechanisms created a capacity to address the greater practical problems raised by the HIV/AIDS pandemic? (iii) How have the emergent institutional mechanisms affected the process of democratization in Kenya?

To answer these questions, the study employs a combination of qualitative methods. These are: analysis of policy documents from both the government of Kenya and HIV/AIDS organizations, and an analysis of secondary literature on political developments in Kenya, especially as it pertains to democratization and civil society relations, for the purpose of connecting this research to the existing literature in the field. This introductory chapter is divided into two main sections. The first section seeks to ground this study in the existing literature on democratization and state-civil society relations in sub-Saharan Africa. The second section details the research design and the eventual chapter by chapter organization of the entire research project.
Political Participation and the Search for Democracy in Kenya

Democracy is a much desired resource for Kenyans, both as a means for getting involved in formulating favorable public policy, and as a means for political empowerment and stability in a society hitherto strongly controlled by unpredictable authoritarian regimes both during, and after British colonial rule. At the onset, especially in the case of culturally different and less democratic developing countries, there is need to view democracy as a more encompassing 'resource' that needs to transcend the generic simplistic equation to issues of systematic changes in political office and mechanisms for acquiring such (Seymour Lipset 1959, 71; Schumpeter 1947, 269; Weber 1946, 226).

To be sure, such issues as frequent peaceful and systematic leadership transitions or the existence of a legal constitution as the basis of law are important for political stability, and by extension the practice of democracy. However, the huge array of unique social, economic and political issues present in the world's developing countries demand a more dynamic, elaborate and context-sensitive inclusion of many other factors as part of the process of advancement of democratic practice. Any attempt to understand democratization in the developing world must put into consideration processes that address such issues as traditionally mandated gender imbalances, responses to sometimes abusive traditionally customs that however form part and parcel of a particular people's inherited way of life, and efforts to overcome elite domination based on exploitation of the traditional administrative structure, and that has given rise to such political practices as 'patron-client' relationships.

By extension, to understand the process of democratization in Kenya, one needs to consider developments in various aspects of daily life, along with the much-touted changes in political leadership. While regular elections are necessary as 'a
requisite for broader democratic consolidation' (Bratton, 1998, 51-66), elections in themselves do not equate to much in a country faced with a myriad of counteracting issues.

Writing on politics and public policy in Kenya in the post independence period up to the early 1980's, Joel Barkan (1984) aptly captures the paradox of participation by Kenyan citizens in public affairs, especially in electoral processes. According to Barkan, Kenyans' participation in general elections is characterized by "a regularity unmatched in most other African states, but participating in a way that does not demonstrably affect the content of public policy" (29). It is indeed a fitting description of a country where although a robust civil society existed even before independence, the respective regimes in office made actual influence on policy strictly a preserve of the government, especially the president. Democratization in such a case has to go beyond institutionalized elections, to consider other forms of empowerment for the community.

The idea of democracy as important for human development is best exemplified in Amartya Sen's (1999) designation of the rise of democracy as the 'preeminent development' of the twentieth century. Sen enumerates the importance of democracy as follows:

> The value of democracy includes its *intrinsic importance* in human life, its *instrumental role* in generating political incentives, and its *constructive function* in the formation of values (and in understanding the force and feasibility of claims of needs, rights, and duties). These merits are not regional in character (*Journal of Democracy* 10.3, 16).

In his explanation of the benefits associated with democracy, Sen (1999) points to democracy's ability to mitigate against catastrophe that causes human suffering, like in the case of famine in several poor, but democratic countries. As Sen (1999) writes:

> Even the poorest democratic countries that have faced terrible droughts or floods or other natural disasters (such as India in 1973, or Zimbabwe and Botswana in the early 1980s) have been able to feed their people without experiencing a famine. Famines are
easy to prevent if there is a serious effort to do so, and a democratic government, facing elections and criticisms from opposition parties and independent newspapers, cannot help but make such an effort (Journal of Democracy 10.3, 8).

To Joseph Kibwana (1994), "...democracy is one of the critical resources needed to be harnessed so that it can interact with other resources such as natural, capital/financial, entrepreneurial resources (etc) in order to catalyze development in Kenya and the Third World in general" (1). Kibwana further advances the view of 'the democratic system' as "capable of creating the requisite environment for removing Kenya and the Third World from the trajectory of decay, instability and uncertainty" (2).

Such a view is an acknowledgement of Adam Przeworski's (1986) positioning of democracy as a means for institutionalizing uncertainty, albeit of the good kind (57-61). Though democratic governance embodies uncertainty, it is a different kind of uncertainty altogether, 'one contained within and structured by the predictable system of rules' (Fatten, in Graybill and Thompson. Eds. 1998, 24). This study adopts the view of democracy as 'a politico-socio-economic and cultural system of organizing a society-including government'-- which allows for (but not necessarily guarantees) 'incremental freedom, economic opportunity and general well being for citizens and communities' (Kibwana, 1994, 2).

Although the recent history of heightened struggle for democratization in Kenya can be traced to the early 1990's, there is need to point out that political developments since independence in 1963 have reflected continuous political struggle between an authoritarian state on one hand, and a democratic leaning citizenry on the other. Political assassinations for opponents considered a threat to the regime in power like Tom Mboya (1969), J.M. Kariuki (1974) and Dr. Robert Ouko (1990) have been part of a continuous state strategy to keep political opposition in check. As Huntington (1991) asserts in reference to politics in developing countries, the much-celebrated
independence from former colonial masters became to many a form of ‘punishment’ as ‘nationalists of yesterday’ turned into ruthless dictators and many oppressed people began to wish for a ‘second uhuru’. Mbaku and Ihonvbere (1998), quoting Mazrui (1990) point out the need to extend the analysis of the struggle for democratization to the early years of many developing countries’ independence, beyond what Huntington (1991) has referred to as ‘the third wave of democratization’, in their assertion that:

“...The struggle for democracy, accountability, social justice, and democratization can and must therefore be located in this period (early post independence—italics mine), clearly predating the monumental upheavals in Eastern Europe in the later 1980’s” (11).

Despite this caveat however, the end of the cold war and the subsequent change of political attitudes towards third world countries can be seen as a fitting starting point for the analysis of a rejuvenated process of political activism. In the case of Kenya, spurred on by the prevailing democracy supportive international mood after the end of the cold war, various elements of Kenyan civil society, most notably the Law Society of Kenya and the National Council of Churches of Kenya (NCCK), became outspoken against continued suppression of the citizenry and denial of basic rights by the ruling single party, Kenya African National Union’s (KANU) government under President Daniel Arap Moi. Backed by international donors like the World Bank and the International Monetary Fund (IMF) who were quick to peg further economic assistance to specific requirements of good governance and democratic reforms, pro-democracy campaigns against the Moi regime became the main political preoccupation for many in civil society.

The history of political participation in Kenya can be described as one initially marked by active pre-independence advocacy and wide, though strongly ethnic based participation. This was followed by over three decades of systematic state control,
authoritarianism and the entrenchment of personalized rule at the expense of citizen participation.

As early as 1944, agitating members of the Kikuyu tribe, the largest ethnic group in the country, had joined together to form the country's precursor national political party, the Kenya African Union (KAU). In 1952, the violent Mau Mau rebellion against the British colonizers began, centered mostly around the Central province of Kenya. As Bates (1989) notes, "Kenya became independent as a consequence of a rural rebellion. Commonly referred to as "Mau Mau", this rebellion attracted widespread notoriety and lurid popularization" (2). Though contrasting views exist as to whether the 'Mau Mau' rebellion that occurred in Kenya between 1944 and 1956 was actually a nationalist movement or a local based ethnic rebellion, the importance of the armed struggle by poorly equipped Kenyan peasants against the superior British army serves as a crucial indicator of the high level of involvement by Kenyans prior to the country's independence. Most significant is the high level of involvement by the rural populace who spurred on the rebellion in various ways. The rebellion took a huge toll on the colony's population, with an estimated 13,500 people killed and another 100,000 thrown indiscriminately into detention camps.

Following the calming of hostilities in 1956 as a result of the capture of the leading Mau Mau general, Dedan Kimathi, and the earlier application of a state of emergency in 1952, the British government moved to institute the first ever elections to bring about African representatives to the country's Legislative Council (LEGCO) in 1957. Out of the total thirty-two seats in the Legislative Council, only eight were available for African representatives. The rest were reserved for the British settlers. Six additional seats for African representatives were granted in the next year (1958).
Though strongly ethnic based, mainly because the elections were at district level, participation in this democratic, albeit strongly controlled, exercise was to usher an era of Kenyans' participation in politics and also an awareness of what group unity could achieve in terms of political office. Other elections followed in 1961 for an increased thirty-three seats. Coming one year after the lifting of a ban on multiple parties imposed in 1953 when the leading party of the day, Kenya African Union (KAU) had been outlawed, and after the lifting of the long existing state of emergency imposed in 1952, the 1961 elections saw the involvement of two 'nationwide coalitions of district organizations-- the Kenya African national Union (KANU) based on the principles of former KAU, and the Kenya African Democratic Union (KADU)' (Barkan in Hyden and Bratton, 1992, 169). KANU was seen as a representative of the larger tribes--Kikuyu and Luo-- while KADU was seen as the voice of the many smaller tribes clustered mainly in the coastal region and the expansive Rift Valley province.

In May 1963, general elections were held leading to the granting of internal self-government in June 1963 with Jomo Kenyatta as the country's first Prime Minister. Kenya became independent on December 12, 1963, and eventually a fully-fledged republic on December 12, 1964 with President Kenyatta at the helm.

While the run up to the country's independence can be seen as a time of widespread social mobilization and far reaching fruitful participation, more or less the opposite of this can be said to describe the next three decades between the mid1960's to the early to mid 1990's. As early as 1964, President Kenyatta's ruling party, KANU, had moved to incorporate the opposition party, KADU, under the guise of a merger. This made Kenya a 'defacto' one party state and Kenyatta the undisputed 'father of the nation'. Attempts to establish a new political party by Kenyatta's former vice president Jaramogi Oginga Odinga in 1966 were met with state intimidation and harassment.
Eventually, all other political parties were outlawed in the country in 1969. The Kenyan African National Union (KANU) was the only party to run in the general elections in both 1969 and in 1974, thus establishing itself as the dominant party in the country.

After president Jomo Kenyatta's death in 1978, Daniel Arap Moi, the country's vice president at the time, took over the presidency as mandated by the country's Constitution. Moi's philosophy, 'Nyayo' (Swahili for footsteps), promised to uphold Kenyatta's form of governance to the letter. Like his predecessor, Moi moved quickly to consolidate his power by eliminating political opposition (Haugerud, 1995; Ndegwa, 1996). One of his main strategies was to fill government positions with hand picked candidates from his own tribe, the Kalenjin, and as such surround himself with people he could trust. To further consolidate his hold on power, especially after an attempted coup in August 1982 by a section of low ranking Kenyan Air Force soldiers, Moi used detentions without trial to punish many of the learned people perceived to be threats to his regime.

Human rights abuses were rampant. Any act termed to be oppositional was heavily punished, mostly through the strongly partisan courts of law and an eager police force ready to swing in action at the least suspicion or accusation. Though Kenyans continued to go to the polls dutifully, as was the case in September 1983 and in February 1988, Moi easily held on to the presidency unopposed. Not even international criticism of his regime could bring change. Indeed, Moi was notable for angry outbursts against the Western media seen as perpetrating a 'hate campaign' and lies about his government (Weekly Review, 1985, October 11). Earlier in June 1982, the Kenyan parliament had passed a bill to amend an existing law, the notorious Section 2A, henceforth officially declaring Kenya as a one party state and in so doing, moving the country from a 'defacto' one party state to a 'dejure' one party state.
Any attempts to organize politically were met with heavy state suppression, as was the case with Kenneth Matiba and Charles Rubia's attempts to organize Kenyans at the famous Kamukunji grounds in Nairobi on July 7, 1990. The day, known widely in Kenya as saba saba (Swahili for seventh of July) saw 28 people killed in subsequent rioting and Matiba, along with other so termed dissidents, arrested and thrown into detention without trial (New York Times, 1990, July 8). Another attempt at political organization, the formation of 'The Forum for the Restoration of Democracy (FORD)', in August 1991, by six opposition leaders led by veteran politician Jaramogi Oginga Odinga, was also met with heavy suppression. The government outlawed Ford, and its executive members were arrested on the eve of a planned pro-democracy rally at the politically symbolic Kamukunji grounds in Nairobi. These arrests invited a huge negative international reaction against Moi's government, including donor countries' suspending of aid to Kenya to protest Moi's failure to put in place a process for democratization transition.

In December 1991, Moi's government gave in to international pressure and reinstated the pre-June 1982 constitutional order, thus allowing the existence of a multiparty system in the country. Such was Moi's indignation at having to allow an opposition that, to bring his prophecy true of chaos hitting the country as a result of multipartyism, heightened tribal clashes instigated by the government broke out between Moi's tribesmen, the Kalenjins, and the Kikuyus in the Rift Valley. The government was openly biased in support of the Kalenjins. As a result of the clashes, approximately 2,000 people lost their lives. The state's response was to ban political rallies across the country, seen as spewing propaganda and inflaming the tribal clashes. This ban was however short-lived as, put under pressure by a two days
general strike, Moi's government gave in to pressure and agreed to allow political rallies, although under strict police watch and intimidation.

In December 1992, Kenyans were back in the polling stations, this time around to participate in the country's first multiparty presidential and legislative elections in three decades. President Moi easily won a fourth term of office to last until 1997. Several factors could be seen as having contributed to victory by the Moi government. On one hand, an opposition divided along tribal lines, gave an advantage to the incumbent party, KANU, with its wide reach across the country, to amass enough votes in each province to win over the other five political parties represented in the political contest. On the other hand, Moi's government employed a combination of politically mischievous strategies, including using the provincial and local administrators and electoral officials, to rig the election.

While rigging would connote interference with the ballots, which was also a factor to consider in the 1992 elections, another effective form employed was the formation of several state sanctioned youth militias to practically 'buy votes' through a well financed government campaign, and to spread violence in areas where anti-government sentiments were too deep to be appeased by monetary handouts. A combination of bribery and physical intimidation ensured an upper hand for the incumbent President and his party in the general elections.

Despite an increase in the number of new political parties and in basic freedoms of association, the multiparty 1997 presidential election was no different in terms of outcome, compared to 1992. Once again, faced with a strongly divided opposition, President Moi won his fifth and final term of office.

Partly due to increased political awareness and sheer regime fatigue, the period between 1997 and 2002, Moi's last five years in office, saw stepped up political
participation spearheaded by a combination of civil society based organizations. With political parties so far ineffective against a strongly entrenched political regime, the only other counteracting force left to represent the masses was the various civil society based organizations. Kenya has always enjoyed a huge number of civil society based organizations, both international and local, compared to any other sub-Saharan African country (Bratton, 1989; Ndegwa, 1996, 9). Indeed, that civil society continued to expand in Kenya is well documented by the fact, “the total number of registered NGOs rose from 124 in 1975 to over 400 in 1987” (Fowler, 1989) and to over 500 organizations by 1990 (Kenya Times, 1990, February 14). By the same time, over 20,000 self-help groups existed, partly spurred on by the ‘harambee’ philosophy, which encourages self reliance (Ndegwa, 1996; Ngethe and Kanyinga, 1990).

In Kenya, civil society can be seen as diversified into several prominent voices. These include public interest advocacy groups, religious organizations, independently owned media, women’s organizations, human rights bodies, environmental groups, university students and professional bodies like the Law Society of Kenya. Given the wide representation of different issues, civil society organizations in Kenya have become instrumental means of empowering communities to better deal with social, economic and political issues. Indeed, it was civil society mobilization, most notably a consortium of religious organizations referred to as the ‘Ufungamano Initiative’, that, in the period leading up to the December 2002 presidential elections, was to form the crucial organizing link for various political parties to merge. Under the loosely organized, though fanatically and widely supported political alliance named as the ‘National Rainbow Coalition’ (NARC), the opposition was finally able to trounce the former ruling party KANU and in so doing, bring to an end KANU’s strongly protected 40 years hold over political power in Kenya.
State - Civil Society Relations in Post-Independent Kenya

The history of state-society relations in post-independence Kenya can broadly be broken into three phases falling within each of the three presidential regimes that the country has had between 1963 and 2003. The first is the Kenyatta era, marked by "networks of patronage" (Ndewga, 1996, 26). The second is Moi's era characterized by far reaching government actions to suppress civil organizations in favor of consolidating power around the ruling party KANU. A third phase, which may be seen as falling partly into the last five years of Moi's regime, and squarely within Kenya's third government's domain, can be described as one marked by cooperation between state and civil society organizations in Kenya. It's important to add that, the period referred to as Moi's last five years in power (1997-2002), was also a time of much interaction between the state and civil society organizations dealing with HIV/AIDS.

Partly due to the need for urgent solutions to a worsening crisis, and as some may argue, perhaps due to a need for Moi to build a positive legacy in his last constitutionally mandated term in office, President Moi became an unlikely champion for national responses against HIV/AIDS. His involvement was much evident in his public speeches in which he urged Kenyans to protect themselves against infection and to take care of the sick. It was clear however that even with his support for a multisectoral involvement in the fight against HIV/AIDS, President Moi still remained somewhat suspicious of the broader civil society movement.

Support for civil society organizing gained a more convincing ally after the transfer of state power to a new government under Kenya's first ever Coalition government-- the National Alliance Rainbow Coalition (NARC) under Mwai Kibaki in December 2002. The new government expressed willingness to work together with civil society organizations and to involve all stakeholders in the process of policy making.
While initial indications attest to the new government’s adherence to its promise, only time will really tell the eventual direction and outcome of this transformed state-civil society relationship.

The respective changes in state power offer us a basis for analyzing how respective governments have interacted with civil society within the limits of existing institutional forms. This is significant in drawing conclusions on the role that political leadership have played in shaping relations between state and civil society over the years.

As previously mentioned, post-independent Kenya’s first political phase lies within former president Kenyatta’s fifteen years’ regime. Kenyatta had for long ignored his political party, Kenya African National Union (KANU) as a means of power consolidation, preferring to establish direct connections as a patron to various loosely organized groups of clients. John Okumu’s (1984) explanation of President Kenyatta’s political inclinations aptly captures the first Kenyan government’s attitude towards the civil society. In a calculated effort to maintain his “popularity and political prestige” by rising above “the waves of the long-standing intraparty factionalism” that characterized KANU, Kenyatta sought support elsewhere. According to Okumu (1984), Kenyatta decided to “remain above the day to day conflicts of party politics” (Okumu, in Barkan. Ed. 1984, 53) by encouraging the development of hierarchical social networks at the expense of the party machinery.

Though KANU remained active as the ruling party, much of Kenyatta’s activities were conducted outside the party machinery. Leaders identified themselves more with regions in the country in their dealings with Kenyatta, the ‘father of the nation’, as opposed to party loyalty. For Kenyatta, who had gained the title of ‘Mzee’, a respectable Swahili word for wise old man, such a system of regional loyalties enabled
him to establish "indirect political control of the grass roots via a series of informal patron-client hierarchies of which he was the head" (Okumu, in Barkan. Ed. 1984, 53). Kenyatta's strategy was to create an elaborate system of domination. Such an approach involved the use of the state apparatus in "molding patterns of domination" (Migdal, in Migdal, Kohli and Shue, 1994, 8). Such a political setup is limiting for the process of democratization as it relegates the role of formal institutions and encourages political sycophancy as the only way forward.

Kenyatta's main vehicle for mobilization was the 'Harambee' philosophy that he strongly espoused. The word 'harambee', Swahili for 'come together', was to become the rallying call for self-help groups to seek out politicians and the resources that they brought with them. Joel Barkan (1984) explains the intricate web that characterized the relations between the state and civil society in Kenyatta's Kenya in the following terms:

Under the Kenyan system, MPs make direct claims on the ministers and assistant ministers most relevant to projects and the problems with which they are concerned. The result is that ministers use a portion of their budget as patronage and end up playing a role vis-à-vis individual MPs that is similar to the role which the MPs play vis-à-vis their constituents. Where implemented, especially if done on a regular basis, such exchanges for resources for political support establish viable linkages, or linkage chains, between center and periphery of a clientilist nature (79).

At the top of the patronage pyramid was the president, who had the sole responsibility of sharing out the ministerial portfolios to favored candidates. Kenyatta's system of patronage was strongly supportive of localized ethnic group developments, as opposed to a national development of a civil society organization. Notable among the existing groups was the Gikuyu, Embu, Meru Association (GEMA), a tribal based organization that brought together members of the three tribes seen as the backbone of the MAU MAU resistance against the British in colonial Kenya.

Such patron-client networks can be traced back to what has been seen as an 'interplay of pre-colonial, colonial and post-colonial features of Kenya's development
path' (Haugerud, 1995). This can be explained on two levels. First, long before colonialism, different groups existed all over the country. The divide and rule approach adopted by the British to ease the burden on colonial administration, by using particular tribes to pacify others, brought the issue of diversity along tribal lines into much sharper focus. After independence, Kenya inherited this tribal diversity, and had the challenge of making the different tribes to consider each other as fellow citizens in one nation. Doubtless to say, a strong sense of tribal animosity and mistrust existed in the country. This became a preferred source for gaining political mileage by political leaders seeking support. By playing the tribal card as the representative of the people at the national level, one could be assured of mostly emotional support at the constituency level. The political leader, however, had to reciprocate by ensuring that benefits from the top trickled down to the village to appease his/her supporters.

On another level, the political elites’ need to pacify the people and eliminate any opposition, saw an exploitation of the traditional African set up with its respect for the power of the leader (be it a council of elders or a local chief). The post independent President could as well be seen as having assumed the traditionally important role as the top decision maker, whose favor was to be courted, and his wrath was to be avoided at all cost. Given such an intricately woven nature of relations, it was hard for any civil society group to survive outside of, or in opposition to, the Kenyatta government.

Kenyatta died in 1978 and was succeeded by President Moi. Moi held on to some aspects of Kenyatta’s patronage system that favored him, and moved to patronize the smaller tribes in the country. More significantly though, he set out on a dismantling campaign of all existing “civic and political organizations and networks of patronage” that threatened his power consolidation (Throup, 1987). Among the
prominent civic organizations that were banned was the formerly strong regional based Gikuyu- Embu- Meru- Akamba Association (GEMA), a political association that enjoyed Kenyatta's open patronage. This action of the Moi regime to rid itself of any potential opposition from the civil society has been referred to by Ndegwa (1996) as, an “assault on organizations in civil society by a regime seeking to consolidate power and neutralize potential independent agents of agitation” (26-27).

In December 1990, the Moi government, using its majority vote in the Kenyan parliament, passed the NGO Coordination Act, with the direct intention of whole control over the activities of NGOs in Kenya. This state action was however faced with stiff opposition from civil society organizations who rightly regarded it as a means to muzzle them. The NGO Coordination Act was to provide the platform for a hostile relationship between the state and civil society in Kenya. As Ndegwa (1996) points out, “this confrontation was among the most prominent challenges mounted by civil society, organizations against the single-party state in Kenya” (31).

While the history of civil society in the first two and a half decades of post independence Kenya can be seen as marked by either accommodated or disbanded civil organizations, the 1990's witnessed increased resistance by civil society organizations to give in to the state's pressure. Indeed, civil organizations increasingly asserted themselves as viable challengers to the government's failure to deliver both on resources and on much desired political reforms. Such a scenario of civil society organizations as challengers of the state most directly resulted in the Kenyan civil society having practically no influence in the formulation of important public policy. The organizations were engaged in frequent conflicts with the hostile state, thus derailing important policy initiatives.
The case of the vocal Green Belt Movement leader Wangari Maathai stands in point. When not being chased in the streets of Nairobi by armed state police under charges of holding illegal meetings, she was headlining Kenyan newspapers being attacked by either President Moi or his henchmen as a saboteur in the pay of foreign masters. This hostility effectively took the focus from the environmental protection activities of her organization and derailed implementation of necessary projects, to the satisfaction of her detractors.

Despite the state’s efforts to deny civil society input in essential policy, this confrontation can nevertheless be seen as having a favorable outcome for the overall growth of civil society in Kenya. For groups that resisted government control, as in the case of the environment oriented Green Belt Movement, freedom to act and criticize the state, though always at the danger of being dragged to court over made up charges, was now possible. Having established themselves as bona fide opposition, any government efforts to outlaw them had been pre-empted. This opposition to state hegemony and suppression fits in well with one of the existing views of civil society in Africa as defiant and as engaged in conflict with a state seeking to repress it. Such a view is clear in Bayart’s (1986) characterization of civil society as society ‘in confrontation with the state’ (111-17).

The relations between state and society in Kenya in the last decade and a half should not however be taken as purely conflictual. As Ndegwa shows in his study of two organizations in Kenya that “resisted attempts by the KANU government to control them”, civil society groups are not necessarily out to violently oppose the state. Ndegwa’s (1996) formulation of ‘the two faces of civil society’ brings to the fore the tale of two NGOs: “One NGO actively opposes the state and seems to further the democratization movement” (4). The other preferred not to get into conflict with the
government and could be described as seeking “accommodation to the repressive state, even as opportunities to oppose it arise” (Ndegwa, 1996, 4). While the Green Belt Movement strongly engaged the state in conflict and challenged it over apparent corruption that resulted in land grabbing and abuse of power, the Undugu Society, though not in any way in agreement with the regime’s actions, chose to stay clear of any conflicts with the state.

Ndegwa’s (1996) analysis pays attention to the existing rules of the game, seen as factors that mitigate either in favor of, or against an organization’s conflictual engagement with the state. The disposition of an organization’s leadership and their relation to the regime is seen as a key factor in determining how particular civil society elements choose to interact with the state. Ndegwa (1996) portrays the civil society as comprising rational actors, who make a conscious decision whether to engage the state or not. Such an interpretation may be seen as relegating institutions and their capability to shape interactions and indeed political history to the backbenches in favor of a deliberate rational choice explanation.

The history of state-civil society relations in post-colonial Kenya is one marked by suspicion and hostility and a strong control by the state of activities carried out by civil society based organizations. The emergence of a mutually accommodating ‘multi-sectoral’ approach in response to the HIV/AIDS pandemic in the last decade has however redefined the relations between the state and its people. Civil society has emerged as a rejuvenated and robust source of political activities. Its new role does not only include the taking care of people living with HIV/AIDS (PLWHA), but also extends to working together with the state to ensure the formulation of favorable AIDS policies. Civil society based organizations involved in the anti HIV/AIDS campaign have been

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observed to be actively involved in the policy process, an area seen as the
preoccupation of the state's political elite, more so the president.

These numerous organizations continue to pressure the state to pass laws in
several significant areas, including the need to protect people living with HIV/AIDS,
motorcycle and vulnerable children and in so doing, transform Kenya's tainted political
record in both governance and human rights issues. As Harbeson (1994) points out,
'not since the crescendo of nationalist political movements during the twilight of
European colonialism has popular demand for political transformation been so deep or
widespread' (Harbeson, in Haberson, Rothchild and Chazan. Eds. 1994, 1).

With a succession of two regimes opposed to an independent civil society and
consequently accounting for the stunted development of civil society in Kenya,
indications of cooperation between the state and civil society based HIV/AIDS
organizations in the country in recent years reveals a new political development worth
investigating. Given the tradition of either hegemonic control or outright suppression,
such a development leads us to investigate the mechanisms behind the new political
developments, and to see the impact these are having on the process of democratic
consolidation in the young democracy. In keeping with our theoretical conception that
there is a reciprocal relationship between response to an external shock and the
advancement of democracy, if we take President Kibaki's ascendancy into power as an
indication of a successful transition into democracy in Kenya, then we could expect at
this initial stage to see emergent institutions in the response against HIV/AIDS working
to advance democratic consolidation in the African country.
A Theoretical Understanding of State-Society Relations and the Impact on Democratization

As a significant element of political developments, the relations between the state and civil society in Kenya have been the focus of various scholarly inquiries. Much of the inquiry has tended to categorize the relationship as one that is strongly conflictual and mostly oppositional, with an overly dominating strong state dealing ruthlessly with a fragmented civil society. While each political player seeks to employ a particular strategy to gain a desired end, the state has had the upper hand in mapping out the nature of relationships between itself and civil society. Where accommodation has failed, the state has been shown as quick to apply the baton to keep civil society in line.

Closely related to this is the focus on democratization as the main preoccupation for civil society based organizations. As Ikelegbe (2001) notes, ‘much analysis of civil society has related to the democratization project’ (1-24). This equating of the civil society with democratization is further seen in Larry Diamond’s (1988) assertion that civil society in Africa “has become the cutting edge of the effort to build a viable democratic order” (Diamond, Linz and Lipset 1988, 26). Indeed, much of the focus on civil society groups in Kenya has equated them with the country’s transition to democracy.

Writing on religious institutions in Kenya, Mutahi Ngunyi (1995) acknowledges this democracy-oriented approach. Ngunyi (1995) brings to view the fact that religious institutions have played a major role in mobilizing the people and exerting pressure for a transition to democracy in Kenya (Ngunyi, in Gibbon. Ed. 1995, 121-177). Though religious institutions deal principally with both the spiritual and social needs of their members, given their active role in the struggle for democratization in the country, it is hard to study their interest articulation without necessarily involving democratization as
part and parcel of that. Ngunyi’s (1995) discussion of religious groups’ interest articulation in Kenya clearly brings out this element.

Yet, as Ndegwa (1996) asserts, civil society based organizations “are not necessarily oppositional to the state nor democratizing” (4). Michael Bratton (1989) further expounds on the view of a non-conflictual civil society. Bratton (1989) acknowledges that civil society does not necessarily seek to get into conflict with the state. Bratton (1989) asserts that, “...state-society relations ebb and flow as state and social actors each exercise a range of engagement, as well as disengagement options” (415).

Such a discussion is useful for this dissertation, as it allows for the existence of a ‘range of options’ in the dynamic interactions between state and civil society. It is a fitting starting point to the study of the complex and ever evolving state-society relations. This study posits a contrast to the prevailing view of state and civil society as competing actors with civil society pushing democratization and the state steadfast in its refusal of the same, not only in Kenya, but in much of sub-Saharan Africa. While eventual outcomes reveal the role of civil society’s actions in contributing to consolidation of democracy in Kenya, and as such enhancing citizen participation in policy formulation and the practice of good governance in the country, I argue that civil society actions are not necessarily deliberately political and democratizing.

Civil society based HIV/AIDS organizations have by no means set out to push for democratization through direct confrontation with the government over such issues as the need for transformation of rule making processes, the empowerment of marginalized groups like women and children in Kenya, or even the elimination of excessive political powers from the hands of the president. However, the issues they see as important if the country has to put up an effective response against HIV/AIDS
correspond closely to factors deemed important for democratic consolidation. These include: protection of marginalized groups’ human rights, the empowerment of women who are seen as victims in the HIV/AIDS crisis due to their vulnerability to both physical and mental abuse brought about by strongly entrenched societal norms, and the streamlining of the public policy making process to allow for a more timely adaptation of policies to govern the response against the pandemic.

Inadvertently, the effort to respond effectively to the HIV/AIDS pandemic has become synonymous with the quest for a true and stable democratic system in Kenya. Gains achieved by these organizations pertaining to both individuals affected by HIV/AIDS (both directly and indirectly), and on general policies to protect future generations against such pandemics, have the potential of advancing the ongoing process of democratic practices in Kenya. Such gains could further be seen as significant in consolidating any previous gains by other civil society based organizations pushing directly for democracy in Kenya. Examples of such groups include professional organizations like the Law Society of Kenya, Transparency International, an organization crusading against institutionalized corruption in Kenya, and even Human Rights Watch, an organization that has sought over time to expose various incidents of abuse of power and denial of democratic rights to many by the state. Others include such faith-based organizations as The National Council of Churches of Kenya (NCCK) and The Supreme Council of Muslims of Kenya (SUPKEM).

Unlike these earlier organizations however, the HIV/AIDS era civil society could be seen as eager to cooperate with the government to achieve its goal of directing the emergence of mechanisms to benefit its constituents—those affected by HIV/AIDS. Important to note here is the fact that, such a scenario should not be taken to mean the
elimination of conflict in dealings between state and civil society in Kenya. Rather, it should draw our attention and indeed our curiosity to decipher emergent characteristics of political contestation in Kenya.

This study looks elsewhere to identify forces that are transforming state-society relations in Kenya and in so doing, impacting the process of democratization. Using the case of political interaction between the Kenyan state and civil society in the response to the HIV/AIDS epidemic, this study looks at state-society relations as a product of historical processes beyond the reach of individual actors. To the old refrain that 'one holds their destiny in their hands', this study argues that one's destiny is shaped by factors in time and environment. The correspondence of issues important for both the fight against HIV/AIDS and for the advancement of democracy in Kenya would explain this study's portrayal of an rejuvenated, more active civil society that is however less conflictual in dealing with the state.

One prevalent form of interaction between state and civil society in Kenya and elsewhere in sub-Sahara Africa, can be seen as the state's establishment of a hegemonic structure, well illustrated in a patron-client system in which elite political figures patronize local groups. This echoes the Gramscian notion of the state being used as the organ “with which the ruling class justifies and maintains its dominance” (Gramsci, 1971, 244). In a hegemonic setup, civil society organizations are seen as providing a harmonious link between the political leadership and the masses. Writing on the case of Kenya in the years following independence, Joel Barkan (1992) points out the 'importance of the intermediary roles' played by civil society as follows:

On the one hand, these organizations broadened the social base of the Kenyatta regime. On the other hand, they served as counterweights to the state and fostered a process of bargaining and mutual accommodation between the regime and civil society (Barkan, in Hyden and Bratton. Eds. 1992, 175).
Implicit here however is the state’s upper hand in relation to civil society when it comes to setting up policies. Civil society can simply not afford to be seen as critical of the regime that patronizes it. While politicians in government are often willing to serve as patrons to social groups, a group that seeks to be independent and critical of the political system is perceived as a threat to a state bent on protecting its hold on political power.

A group may also choose to ‘disengage’ from any direct interaction with the state. Such a group may seek to advance its social programs by seeking independent means of financing itself, and by deliberately refraining from comments on issues that may be seen as constituting a challenge to the government. Victor Azarya (1994) refers to this detached civil society action as “an avoidance of the risks of involvement, a withdrawal, or disengagement from public action” (Azarya, in Haberson, Rothchild and Chazan. Eds. 1994, 98). A possible negative outcome of such action is the possibility of a weakened, if not inconsequential civil society in terms of influencing the adoption of necessary policy or weighing in on bringing about needed reforms.

Another form of civil society participation is a clear policy of active engagement with the state, bordering on conflict and competition. Albert Hirschman (1970) posits the acts of either engaging or disengaging from the state as either the “voice” or “exit” options. While an organization that chooses to avoid direct interactions with the state may be seen as having taken the ‘exit’ option, the other option is to strongly ‘voice’ an organization’s concerns and to actively challenge the state on its policies, or for the lack of essential policy initiatives.

As Azarya (1994) characterizes it, the ‘voice’ option: “involves an engagement, a willingness to take the risk of retaliation by the opposite side. The risk is taken because of the belief in one’s ability to make a difference and/ or a sense of
responsibility and duty to try” (Azarya, in Haberson, Rothchild, and Chazan, Eds. 1994, 98). This constrained relationship between the state and elements of civil society willing to challenge it has further been heightened by increased agitation by civil society in the face of growing ‘inability of the African state’ to deliver both scarce resources and political reforms. Yet, despite Hirschman’s indication of the ‘exit’ option as involving an organization’s withdrawal, it is hard to realistically imagine an organization that does not interact with the state in its daily duties. In reality, the exit option is just another form of engagement, albeit using different strategies to acquire desired ends.

This triangulation between ‘incorporation’, ‘disengagement’ and ‘engagement’ has for long dominated the characterization of the relations between state and civil society in Kenya. Given the clear indications of a civil society that is increasing its strength vis-à-vis the state, another possibility to consider in state-society relations is the transformation both in shape and form of the existing relations between state and society into an institutional space for cooperation between these political actors. This entails the existence of a civil society that cooperates with the state while at the same time, exerting independent pressure on the state to bring about desired policies, and challenging it on its failure to deliver essential services.

Such an approach propounds the existence of institutional mechanisms that foster cooperation between state and society, without necessarily ruling out the existence of the all-suffusing conflict between state and society. Such an approach is well characterized in what Haberson (1994) describes as a state-society relationship marked by “ongoing interdependence, intermediation, and parallel development of state and society” (Haberson, in Haberson, Rothchild and Chazan, Eds. 1994,13). It is the image of a state that actively seeks out civil society and is frequently willing to
adopt policy initiatives that emanate from civil society. This action may be seen as a safe center path between policy effectiveness and political control.

As Donald Rothchild and Letitia Lawson assert, such an approach may be seen as the state's action to incorporate “societal groups into the public realm while reducing, but making more effective, the operations of the state” (Rothchild and Lawson in Haberson, Rothchild, and Chazan, Eds. 1994, 278). Such an acceptance of the existence of an interdependency relationship between state and society however implies the existence of a different set of forms and rules for interaction.

HIV/AIDS and Democratization: A Tale of Two Intersecting Issues

One particular area that can be seen as connected to the pandemic is the existence of democracy. Using evidence from the case of Kenya, this study asserts that there is a strong interrelationship between the process of response to HIV/AIDS, an external shock, and the process of democratization. This connection extends beyond short-term events, seen as leading to institutional disruptions, to a possible prolonged process of institutional buildup and related democratic consolidation, as society mobilizes to address the pandemic.

Like the bearer of news, both good and bad, the pandemic's effect on democratization must be viewed from two distinct analytical points of views. On one side, HIV/AIDS has revealed its ability to disrupt many institutions across diverse communities, be they social, economic or even political. On the other side, there is a possibility of the response to the pandemic leading to a stronger process of citizen participation and to the buildup of democratic institutions. This could be through a combination of the creation of a more organized civil society that is better equipped to interact with the state, and the related emergence of political and social institutions that not only govern, but with time, shape the nature and means of interaction between the

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state and civil society. The strengthened participation process could be achieved through increased joint agenda setting interactions between the state and HIV/AIDS organizations, among other forms of interaction. These aspects however remain undocumented. As Manning (2003) points out, “the implications of the pandemic for the survival and consolidation of democratic government, in particular, remain largely unexamined” (5-6).

Over two decades into the pandemic across the African continent (1983-2004), political science has little to show on the topic in terms of diverse literature. While literature abounds on scientific descriptions of HIV and AIDS and on sociologists and economists’ projections of the pandemic’s perceived social and economic impacts, such literature is scarce “when it comes to the more political, institutional, and macro causes and effects of HIV-AIDS” (Boone and Batsell, in Africa Today, 2001, v.48 (2), 3-33). Much of the political developments in this era continue to pass unnoticed by political scientists. Where such literature exists (Manning 2003; Youde 2001, (Whiteside, 1999; Fourie and Schonteich, 2001), it is not only overly fragmented, but also both speculative and deterministic. A common conclusion is that the HIV/AIDS pandemic would affect democracy in the near future by crippling existing political institutions, and reversing independently gained democratic achievements. As Manning (2003) suggests: “HIV/AIDS will detrimentally affect democracy and democratic systems of governance” (5).

Commenting on this failure by political science to address issues involving HIV/AIDS in the hard hit sub Saharan Africa region, Boone and Batsell (2001)--writing approximately two decades after the first HIV positive case was diagnosed in 1981--declared that: “Nearly two decades into a pandemic that poses one of the gravest threats to public health and development that sub-Saharan Africa has ever faced,
political science can no longer afford to ignore the political implications of AIDS in Africa” (Africa Today, 2001, v.48 (2), 3-33).

These comments may seem to echo earlier sentiments expressed on the topic by a few scholars frustrated at the pariah status that HIV/AIDS was being accorded by political scientists. Lanegran and Hyden (1993) had earlier attested to the fact that the pandemic had remained “silent and largely invisible” among political scientists (247). A year before, Sherill (1992) drew attention to the fact that: “When it comes to using its accumulated wisdom to help society understand the phenomenon of AIDS, professional political science lags far behind psychology, anthropology, sociology and other social science disciplines” (Sherill, in Sherill, Somerville and Bailey, 1992, 688).

At a time when the African continent is faced with a deadly pandemic of historical proportions on one hand, and a growing transition to democracy on the other, there is need for increased understanding of different political aspects of how the pandemic interacts with democracy. There is a pressing need for political science literature to fill an existing gap with unique political explanations detailing among other things, how the pandemic has affected governance and democratic consolidation in different regions, and to offer political road maps for the future.

Political scientists could join in the search for effective solutions in several ways. For one, they could seek to increase existing knowledge and understanding of public policy formulation processes, an essential aspect of finding effective responses against the pandemic. Further, political scientists could dissect the outcomes of contemporary political interactions in the response against HIV/AIDS to provide a clear picture of ‘the state of the union’, mainly, the new political dynamics that have been put in motion by the response to the devastating pandemic. Political scientists could also use the knowledge of current responses to make projections that will enable societies
to better deal with similar pandemics in future. It is this shortcoming in existing political
science literature that this study intends to address.

**Research Design and Intellectual Framework of this Study**

This study is divided into three main parts, whose discussion is carried across
the six chapters that make up this study. The first area of inquiry is Kenya’s the post-
independent political history. Analyzing political developments in the country is
important for information on the direction of institutional development, seen as
conducive for democratization. The second part deals with HIV/AIDS and the nature
and form of institutional mechanisms emanating from the nation wide responses to the
pandemic. HIV/AIDS can best be described as an external shock that has strongly
affected political developments in Kenya, and one that is capable of bringing about
institutional changes. The third section deals with the nature of intersection between
the responses to HIV/AIDS and the process of democratization within Kenya and
projects beyond this particular case to other similarly situated cases of fragile
democracies across the world.

A combination of methods was used in data gathering. First, a process of policy
documents analysis was carried out. The main focus was government and AIDS
organizations’ policy documents, minutes of joint agenda setting meetings, and
recorded workshop summaries that detail the history of state-civil society interactions in
the course of HIV/AIDS response in the period between late 1980’s to 2004.

An understanding of the history of engagements between the civil society
based organizations and the government, political developments that make up a good
part of Kenya’s post independent history, are also important for our understanding of
the changing political environments in the country. To this end, secondary research on
a variety of literature on political developments in Kenya was conducted. Important also

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were the various newspapers and magazines articles in the East African region that have been especially active in documenting the interaction between the state and the civil society based organizations at various levels. Information collected from existing documents on the political history of Kenya, especially in the last fifteen years, was analyzed for details pertaining to various aspects important for this study, including the changing nature of interactions between the state and civil society organizations, general trends in institutionalization and changing elite attitudes.

Taking off from the hypothetical suggestion that emergent institutions in Kenya will transform both political developments and essential policy by shaping the nature of interaction between state and civil society, the theoretical perspective informing this inquiry is historical institutionalism. I adopt the definition of institutions as “both formal organizations and informal rules and structures that structure conduct” (Thelen and Steinmo, 1992, 2). Further, this study adopts the classical historical institutionalist perspective that “institutions play a much greater role in shaping politics and political history” (Thelen and Steinmo, 1992, 2). Here, there is a clear acknowledgement of the fact that institutions are one of the many factors that influence political outcome in a given country. As Peter Hall (1996) explains, historical institutionalists:

...are especially concerned to integrate institutional analysis with the contribution that other kinds of factors, such as ideas, can make to political outcomes...Institutions are seen as relatively persistent features of the historical landscape and one of the central factors pushing historical development along a set of ‘paths’ (938-941).

With the basic understanding being that ‘institutions matter too’ (Thelen and Steinmo, 1992), this perspective is emphatic on the role of institutions in shaping and constraining political developments and as a process of shaping history. Paraphrasing Hall, Thelen and Steinmo (1992) assert that: “By shaping not just actors’ strategies (as in rational choice), but their goals as well, and by mediating their relations of cooperation and conflict, institutions structure political situations and leave their own
imprint on political outcomes" (9). This theoretical perspective may be seen as holding institutions as 'agents of history' that advance political developments from one point in time to another.

While institutions are vehicles for political transformation, they do not exist in a vacuum, but are products of "deliberate political strategies, of political conflict, and of choice" (Thelen and Steinmo, 1992, 10). Such a view calls for the need to understand the position of the individual actor vis-à-vis institutions, and by extension, how institutions affect individual behavior in a given society. Peter Hall (1996) explains how historical institutionalists deal with the question, by drawing a clear distinction between what he refers to as the "calculus approach", and the "cultural approach" (939). As he explains: "...Those who adopt a calculus approach focus on those aspects of human behavior that are instrumental and based on strategic calculation" (939). The underlying assumption here is that individual actors weigh their options and seek to pursue those that they see as 'conferring maximum benefit'. In this scenario:

Institutions affect behavior primarily by providing actors with greater or lesser degrees of certainty about the present and future behavior of other actors...Institutions provide information relevant to the behavior of others, enforcement mechanisms for agreements, penalties for defection, and the like...They affect individual action by altering the expectation an actor has about the actions that others are likely to take in response to or simultaneously with his own action (Hall, 1996, 939).

On the other hand, a typical cultural approach "stresses the degree to which behavior is not fully strategic but bounded by an individual's worldview" (Hall, 1996, 939). While this approach does not necessarily negate the issue of individuals as seeking to maximize their gains, it is however more emphatic on "the degree to which the choice of a course of action depends on the interpretation of a situation rather than on purely instrumental calculation" (Hall, 1996, 939). In such a setting, institutions provide an encompassing framework for interactions among individuals. Beyond
providing information essential for individual’s strategic positioning, they direct, if not dictate, the nature of action that individual actors take on a particular issue.

In dealing with the issue of HIV/AIDS, this study is more sympathetic towards the ‘cultural approach’. While the emergent AIDS era institutions can be seen as constraining/ shaping political developments in Kenya, these institutions are products of a time in history when both the state and the civil society are faced with a pandemic of gigantic proportions on one hand, and also a country moving to consolidate its recent transition to democracy. The devastating and widespread nature of the pandemic across every sector of society has made it necessary for political actors in Kenya to get involved in formulating responses. While one cannot rule out strategic calculations behind such involvement, including the issue of maintaining a hold on financial resources provided by the donors on part of the state, or getting a share of the money for civil society actors, the far reaching impact of the pandemic provides a far more demanding and meaningful need for involvement. As will be seen in my discussion of President Moi’s change of heart from a position of aloofness to one of active support for HIV/AIDS activism in Kenya, a combination of factors, both self-centered and institutionally imposed, come into play in such a consideration.

Subjects of Study

In response to the HIV/AIDS epidemic in Kenya, new institutional forms, means and actors have emerged in the last decade. These include such institutional actors like the National AIDS Control Center (NACC) and constituency level committees, and also emergent rules and practices that govern interactions between the state and civil society based organizations. Such rules and procedures for interaction include frequent joint agenda setting meetings and workshops between state and civil society based officials, and emergent donor conditions and formulas for applying for, and sharing of,
available HIV/AIDS funds among the many stakeholders. Coupled with these new institutional forms are indications of increased cooperation between the state and civil society based organizations.

The emergent institutional forms include the state supported AIDS coordination body (NACC), the Office of the President and constituency level AIDS committees. Others are the HIV/AIDS NGOs networks, emergent rules, processes and procedures that have come to govern interactions between state and civil society based organizations in Kenya. One such network is the Kenya AIDS NGOs Consortium (KANCO). As a host organization of over 600 member groups, KANCO’s activities include both human rights advocacy in the country and coordination of the various member organizations working on HIV/AIDS in Kenya. Among the organization’s long-standing projects is production and distribution of HIV/AIDS education materials. KANCO plays the significant role of mediating between its nationally diverse members and the state on issues pertaining to the HIV/AIDS crisis.

Kenya can best be described as a mid-range African country both in terms of governance and economic attributes. Political developments in Kenya have mirrored developments elsewhere in the region, either as a precursor or as a follower. As table 1 below illustrates, the case of transitions to democracy across Africa substantiate the point that political developments in the region generally take the same direction. This fact can help justify why studying events in one country may potentially lead us to understand events in the region.
Table 1: Democratic Transitions in Africa between 1991 and 2002

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>FORMER REGIME TYPE</th>
<th>YEAR OF TRANSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benin</td>
<td>Military</td>
<td>1991</td>
</tr>
<tr>
<td>Zambia</td>
<td>Single party</td>
<td>1991</td>
</tr>
<tr>
<td>Mali</td>
<td>Military</td>
<td>1992</td>
</tr>
<tr>
<td>Malawi</td>
<td>Single party</td>
<td>1994</td>
</tr>
<tr>
<td>South Africa</td>
<td>Single party</td>
<td>1994</td>
</tr>
<tr>
<td>Malawi</td>
<td>Military</td>
<td>1999</td>
</tr>
<tr>
<td>Senegal</td>
<td>Dominant party</td>
<td>2000</td>
</tr>
<tr>
<td>Ghana</td>
<td>Military</td>
<td>2000</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>Military</td>
<td>2002</td>
</tr>
<tr>
<td>Kenya</td>
<td>Dominant party</td>
<td>2002</td>
</tr>
</tbody>
</table>

In the case of responses to the HIV/AIDS pandemic, it is increasingly clear that Kenya’s multisectoral approach and the strong emphasize on cooperation between all sectors, is very much like Uganda’s or Senegal’s much hailed winning formulas in addressing the pandemic. The big difference though remains the amount of time that it took each country to formulate a visible and effective response. While both Uganda and Senegal were quick to react to the epidemics, Kenya dragged its feet along with majority of the other sub-Saharan states. It is only in the last three years of the twentieth century that Kenya increased the level of state involvement in confronting the pandemic. Since then however, the country can rightly be described to be in top gear in its push for an effective answer to the pandemic.

Conclusion

To restate my objectives, this study seeks to expand our understanding of the process of democratization and democratic consolidation in Kenya through analyzing emergent institutional mechanisms and forms in the response against HIV/AIDS in Kenya. A key area of focus in this endeavor is the political interaction between the
state and civil society organizations dealing with the HIV/AIDS pandemic in Kenya, seen as the prime mover of the various institutional mechanisms.

To this point, this chapter has established a close link between two disparate, yet closely intertwined political phenomena, these being ongoing process of democratization and democratic consolidation on one hand, and the prevailing devastating HIV/AIDS pandemic on the other. While the most easily recognizable effect on democratization by the pandemic is the physical disablement of both public officials and private voters and a subsequent destruction of existing political institutions, other not so extreme effects can nevertheless be seen. Using what I am referring to as ‘the enrichment impact on democracy, the argument was made to the effect that, the response to the HIV/AIDS pandemic has given risen to factors seen as contributing positively to the process of democratic consolidation.

The study traces the evolution of HIV/AIDS policies in Kenya in the period between 1985 and 2003 and attributes the significant change in state-civil society relations to a growing heightened need to address the pandemic. Arguing that this is beyond ‘elite concession’, the crucial point to make here is that there is a genuine need to address various human rights and policy making issues brought to the fore by the need to respond successively to the AIDS pandemic. Significantly for the process of democratic consolidation, this need to address such issues coincides with an ongoing process of transition to democracy in Kenya, as in several other sub-Saharan African countries.

I argue that democratic gains made in the fight against the pandemic are bound to serve as platforms for continued democratization long after a cure for the devastating HIV virus will have been found. Such gains include various legal protections for the weak in society, especially the sick and children. Other gains are
noticeable in state policy to undo the long prevalent gender imbalances that have seen women's human rights violated in a male dominated society, and the establishment of advocacy and joint policy formulation among different stakeholders in society as a way of bringing forth public policy.

That democracy in Kenya has come a long way is adequately documented in the discussion on political participation across two authoritarian regimes that together, held on to political power in Kenya for 40 years. The unit of analysis used here for gauging changes in political developments, either favorable or not, is the interaction between state and civil society based organizations. The case was made that, while the documented post-independence history in Kenya is one of prevailing hostility and suspicion between a state bent on total control and a reform minded civil society, current developments reveal a trend towards a more concerted way of interaction between the two. This is crucial in order to move forward the process of democratization.

The study contributes to deepening our macro level understanding of the continuing process of democracy consolidation. It also advances our knowledge on the ever-evolving literature on the relations between state and civil society organizations both in Kenya, and elsewhere in sub Saharan Africa, given the similarity in political developments across the region. Given the scanty literature on the impact of HIV/AIDS on democracy and governance in sub-Saharan Africa, and in Kenya to be specific, this study will fill a gap by contributing knowledge on the process of democratization.

While acknowledging the emergent institutional mechanisms, that I argue have set up a structure for advancement of democracy in Kenya, it is imperative however to also acknowledge the fact that the process of democratization is still at its infancy. Kenya still faces huge political hurdles that constitute threats to democracy. These
include a weak ruling coalition, whose political party members are still very much dependent on particular ethnic groups’ support and a weak economy which can be seen as leading to high levels of poverty, insecurity and consequent mistrust in the country. It is hard to predict how many of the emergent institutions that endow democracy will stand the test of time. While democracy is definitely the winner at this initial stage, one can only hope that given the good start, these institutions will outlast the pandemic and live to favorably shape the tide of politics in Kenya.
CHAPTER II

THE EVOLUTION OF HIV/ AIDS AS A POLITICAL ISSUE

The medical syndrome widely referred to as *Acquired Immune Deficiency Syndrome* (AIDS) was first reported by America's Center for Disease Control (CDC) in mid-1981. In 1983, French researcher Professor Luc Montagnier identified a specific 'bloodborne viral pathogen' seen as responsible for destroying the human immune system. Researchers referred to this virus as the *Human Immunodeficiency Virus* (HIV) (WHO, 2003; Stine, 2004, 26) and sought to trace the mechanisms for its transmission. As a World Health Report (2003) explains: “Everywhere in the world, HIV is transmitted through a fairly limited number of mechanisms. HIV is a blood borne retrovirus and is transmitted through sexual contact, contaminated blood transfusions, injecting drug use...and from mother to infant during pregnancy, delivery and breast feeding” (45).

Though disputes exists as to the exact connection between the HIV virus and AIDS (Mameli, 1998,2), it is nevertheless accepted that full blown AIDS-- characterized by a host of opportunistic illnesses that lead to death-- is first precipitated by one acquiring the Human Immunodeficiency Virus (HIV). The virus goes through several incubation phases before finally overwhelming the human immune system and in so doing, lays it open for attack by various opportunistic illnesses.

Initially observed as prevalent among urban gay communities in the United States, AIDS has invaded the rest of the world causing huge undiscriminating devastation at all levels of society. Jonathan Mann (1992) captures this devastation in
his assertion that: "As HIV dissects the immune system, so HIV/AIDS lays bare the social, cultural, and political character of entire societies" (Mann, in Kirp and Bayer, 1992, X). Somerville and Gilmore (1992) introduce another dimension to the pandemic in their description of AIDS as: "Probably the most powerful word of our era for evoking intense individual and societal responses. The reasons for this are often cited: fear, death, stigmatization, prejudice, discrimination, illness, suffering" (Sommerville and Gilmore, in Kirp and Bayer, 1992, XI).

Another scholar, Stine (2004), presents the view of HIV/AIDS as consisting of two parts: "One medical, the other social" (12). While the pandemic has given rise to a host of scientific issues, including research on a possible vaccine and the science of how the disease spreads and its associated symptoms, it has also forced various societies to come to terms with significant social and political issues hitherto not addressed. Such issues range widely from questions of health policy strategy, personal and collective sexual behavior, to issues of resources allocation and the care and protection of the infected.

Though other infectious illnesses like Ebola, Menengitis, Tuberculosis and Severe Acute Respiratory Syndrome (SARS) exist across the world (Mameli, 1998; WHO Report, 2003; Stine, 2004), no other medical epidemic in world history has had such a devastating global effect as HIV/AIDS. As table 2 below shows, by 2004, the total number of both adults and children already infected with the HIV virus was estimated at 47 million, with the pandemic showing 'few signs of slowing down' (UNAIDS, 2003, December). Sub-Saharan Africa continues to claim a dubious title as the world's leader in both AIDS cases and AIDS related deaths. As table 2 further reveals, about 32 million people in sub-Saharan Africa were already infected by the beginning of 2004. The region also accounts for a majority of reported AIDS deaths.
across the world. As Stine (2004) writes: “Africa with about 10% of the world’s population now accounts for about 90% of all new HIV infections. Beginning in 2004, about 83% of all AIDS deaths have occurred in Africa (356).

Table 2: Number of Adults and Children Estimated to be Living with HIV/AIDS in 2004

<table>
<thead>
<tr>
<th>Region</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-Saharan Africa</td>
<td>32,000,000</td>
</tr>
<tr>
<td>South and South East Asia</td>
<td>7,000,000</td>
</tr>
<tr>
<td>Latin America</td>
<td>1,900,000</td>
</tr>
<tr>
<td>East Asia and the Pacific</td>
<td>1,400,000</td>
</tr>
<tr>
<td>Eastern Europe and Central Asia</td>
<td>1,300,000</td>
</tr>
<tr>
<td>North America</td>
<td>1,100,000</td>
</tr>
<tr>
<td>Western Europe</td>
<td>913,000</td>
</tr>
<tr>
<td>North Africa and Middle East</td>
<td>613,000</td>
</tr>
<tr>
<td>Caribbean</td>
<td>517,000</td>
</tr>
<tr>
<td>Australia and New Zealand</td>
<td>14,000</td>
</tr>
<tr>
<td><strong>Estimated total HIV/AIDS cases</strong></td>
<td><strong>46,757,000</strong></td>
</tr>
</tbody>
</table>

Note: Based on figures from UNAIDS, updated (2004)

The pandemic has given rise to various social, economic and political dynamics across the world that promise to reshape not only how the world responds to pandemics of global concern, but also how diverse communities and groups across the world relate to each other. While responses to the pandemic can generally be described as characterized by an unusual willingness for all stakeholders—both state and civil society based—to work together, there have however been several areas of controversy worldwide.

One notable area of involvement is the widely publicized global response based on the premise that no one country in the world is safe from the HIV/AIDS pandemic. The global campaign is spearheaded by the United Nations’ mandated World Health
Organization (WHO) and The Joint United Nations Programme on HIV/AIDS (UNAIDS), and seeks the involvement of various countries both in mass mobilization and in setting up favorable policies.

In 1987, the World Health Organization established Global Programme on AIDS (GPA) to coordinate worldwide responses to the pandemic. GPA proposed the establishment of a national AIDS program (NAP) in each country, as a framework for coordinating issues involving the pandemic. The reasoning behind the establishment of NAPs, was "...fashioned around an ethic of participatory management of the disease, involving multiple actors from all levels of the political process involved in responding to the pandemic" (Mameli, 1998, 3).

Along with the WHO NAPs, in 1997, UNAIDS formulated 'The National Strategic Plans'. As the Africa Development Forum (2000) report, *AIDS in Africa: Country by Country* explains: "Strategic planning is a dynamic and participatory process that involves all sectors and levels of government as well as NGOs, private sector, religious organizations and international development partners (UN and bilateral donors) in order to produce a multisectoral and decentralized response to the epidemic" (8).

Other international actors include The Global Fund and World Bank, who are both major sources of financing for anti-AIDS campaigns. Developing countries have received the bulk of such aid, with a significant amount of AIDS financing heading to sub-Saharan Africa. As Kenneth Prewitt (1988) declares, it is fitting to assert that:

The AIDS pandemic has, to be sure, provided a global stage for compassion and a far-flung effort to treat and cure. The enormous commitment of research and public health resources, the global mobilization of private voluntary organizations, the dedicated and often courageous actions of thousands of medical and health workers, and the search for an appropriate educational response, are expressions of human compassion at its best. Africa has been a beneficiary of this internationally expressed concern" (Prewitt, in Miller and Rockwell, Eds. 1988, X).
Granted that global responses are well formulated and in most cases, well funded, the actual success in any given country has a lot to do with how those in power approach the response to the pandemic. Indeed, while both the WHO and UNAIDS can strongly recommend that each country put in place some measures to address the pandemic, it is up to individual governments to decide the timeline of such response efforts. As Meritt (1988) aptly point out in the discussion of AIDS in Africa:

HIV control depends directly on how African governments view the scale of the problem, how best to intervene, and identification of priority actions. Donor organizations have special responsibilities to assist and have been eager to help. However, representatives of donor countries have sometimes spoken out too quickly on the HIV subject in Africa, sometimes stating conclusions for which there has been insubstantial evidence. Deep irritations and suspicions have been aroused needlessly (Meritt, in Miller and Rockwell, 1988, 126).

It is as such imperative for scholars interested in how the HIV/AIDS has shaped political developments across the world to focus on individual country level responses to comprehensively delineate the nature of social and political dynamics taking place.

The quest for answers and more effective means of responding to the pandemic has also brought to the fore notable disagreements. These include issues like the origin of the HIV virus, an area where Africans take much offense at any suggestions that the virus may have originated from the continent. Other controversies abound on such issues as the connection between the virus and the AIDS syndrome, and the hotly contested issue of accessibility to available AIDS medications by the infected in developing countries by breaking internationally sanctioned drug patents held by major pharmaceutical companies like the drugs giant, Pfizer. Such discussions have strongly rekindled a long standing debate on dependency and underdevelopment that have previously marked the relations between the North and the South, and which are often accompanied by a series of traded verbal attacks between activists and
scholars in developing countries, and scholars, policy makers and entrepreneurs in the developed countries. As Prewitt (1988) cautions: “AIDS in Africa, with its innuendo of sexual excess, gives license to those who would attribute Africa's current political and economic problems to the "backwardness" of its people. The fear of AIDS and the anger towards its carriers has the potential in some quarters to reawaken earlier and ugly ideologies” (Prewitt, in Miller and Rockwell, Eds. 1988, XI).

While the pandemic has given rise to a host of both scientific and political issues, my main interest in this dissertation is the understudied political outcome, especially its potential for institutionalization arising from mobilization against the pandemic. The response to HIV/AIDS has both spurred a political transformation of existing institutions and led to the emergence of new AIDS era political institutions in developing countries, seen as instrumental for the ongoing process of democratic consolidation in these states. As discussed in the following chapters, in the case of Kenya, response to the HIV/AIDS pandemic has both advanced significant political issues that directly impact the process of democratic consolidation in the country, and transformed the nature of relationships between the state and civil society based organizations.

**The Phases of Response to HIV/AIDS in Africa**

Unlike any other epidemic in recent history, the spread of the HIV virus and the related AIDS disease has ravaged the African continent with abandon, causing untold tragedy and suffering. In Kenya where the number of infected adults and children rose to 2.5 million from 1985 to 2001 (*UNAIDS Epidemiological Sheet, 2002*), the government has projected a drop in life expectancy from 65 years in the early 80’s to 46 years in 2001, and to 45 years by 2010 (*The Daily Nation*, 2001, July 31).
A few scholars have attempted to categorize the development of anti HIV/AIDS responses across the world. Such time frames trace developments back from a rudimentary stage in the 1970's when AIDS was thought to exist but with no positive identification to prove that, through to the contemporary times of organized global responses (Mameli, 1998, 16; Fredland, 1998, 550-552). Writing on the case of AIDS in Africa, Richard Fredland (1998) identifies five overlapping phases, which he sees as characterizing the responses to the pandemic in the continent. These are: 1. Fear 2. Blaming 3. Biomedical response 4. Institutional mobilization 5. Government involvement (550-552).

According to Fredland (1998), the first phase in the response to HIV/AIDS was clearly marked by fear, both of the ailment itself and of related economic and political consequences. The phase is best characterized by wide ranging denial mostly by governments, like those of Kenya and Zimbabwe, eager to maintain a safari paradise image conducive for tourism. An underlying reason behind the vehement denials also was the presupposition that, like in the past when Africa's image in the Western media was often negative, the case for AIDS in Africa was just another plot to discredit Africa in the eyes of people in the developed world. As Fredland (1998), quoting Ken Mufuka (1993), explains: "Zimbabwe and Kenya were long reluctant to reveal the extent of the problem in their respective countries because of 'racist overtones and the sensitivity of the tourist industry" (550). Lanegran and Myden (1993) concur that African states were overly reluctant to address the pandemic. As they point out: "What is striking about the situation in most African countries is how little urgency there appears to be in dealing with this war of attrition or impending catastrophe" (246).

In the 'blaming' phase, Fredland (1998) discusses the prevalence of blames mainly between the North and the South, with African countries blaming not only those
in the West as responsible for the virus, but also some sections of their own societies as responsible for sustaining the epidemic. In the case of Kenya, a common thing in the early years was to hear leaders, both political and religious, lament on the declining morals and call for a return to traditional moral values. Though such moralizing still occurs, the current situation is one marked by increasing awareness that HIV/AIDS is not necessarily a product of immorality. Other factors like high levels of poverty that lead to risky behavior and prevalent cultural practices that interfere with one's ability to negotiate safe sex especially for women, are among some factors to consider.

The third stage in Fredland's (1998) conceptual framework is what he describes as the onset of medical professionals trying to do something about the fast escalating crisis. In Fredland's (1998) words: “This third phase evolved when the biomedical profession could no longer avoid coming to grips with the problem, regardless of their level of knowledge (or lack thereof, as it turned out)” (551). An important feature of this phase was the emergence of “institutional structures... primarily to provide education and/or research” (Fredland, 1998, 551). As will be seen in my discussion of institutional mechanisms in Kenya, it is such emergent institutions that came to play a major role in shaping relations between the African government and civil society groups involved in the response to the pandemic.

The fourth phase is characterized as a time when institutions got actively involved “to mobilize resources for systematic study and possible treatment”. The key emphasis here is the involvement of ‘outside support’ (Fredland, 1998, 551) like in the case of the World Health Organization, in helping Africans deal with a problem that was clearly both medically and financially overwhelming. Fredland (1998) notes the ineffectiveness of such outsider involvement in Africa mainly due to the difference in traditions. In essence, what works best in the West does not necessary work well in
Africa. As my analysis of the history of AIDS in Kenya reveals, it is important to look at these institutional mobilizations not as a terminal effort that failed to take off, but rather as a starting point in a process of institutional involvement that was to form part and parcel of the continuing efforts to respond to the devastating pandemic.

The fifth phase in Fredland’s (1998) conceptual framework is that of government involvement, albeit reluctantly and even “often under external as well as internal pressure” (552). Beyond the individual state level, Fredland (1998) notes the involvement of the Organization of African Unity (OAU)—now renamed African Union (AU)—in passing resolutions and monitoring efforts to ensure its members’ active involvement in setting anti HIV/AIDS policies. True to say, most African states were initially reluctant to be seen as actively involved in discussion on issues involving sex, a topic regarded as taboo especially in public and more so, between the young and the old. A missing component in Fredland’s (1998) discussion however is the lack of details on the mechanisms of government involvement. Given its huge significance for the fight against the pandemic, it is imperative to note exactly how African governments have sought to react to the pandemic and how this related to the bigger picture of good governance and democratization.

Moreover, Fredland’s (1998) categorization underplays the role played by civil society based organizations in the evolving of a response to the pandemic. As witnessed in the case of Kenya, the active involvement of civil society based HIV/AIDS organizations from an early stage after the first positive diagnosis in the country has made a remarkable difference. Though Kenya continues to carry a huge burden brought upon it by the pandemic, the country’s increasingly successful response can partly be seen as a product of relentless efforts by members of the civil society who have sought participation though various institutions like the Kenya AIDS NGOs...
Consortium (KANGO), a leading organization that has been active in coordinating efforts by various non-governmental organizations dealing with HIV/AIDS. According to figures released by the Kenyan government in 2003, the country's new cases infection rate had dropped to 10% in 2003, from a high 14% in 1999 (Daily Nation, March 31, 2003).

Fredland's (1998) categorization offers a good starting point in understanding the evolution of concerted responses to the HIV/AIDS pandemic in Africa. The following section will analyze the evolution of HIV/AIDS as a political issue in Kenya, along with corresponding responses and political developments at different stages.

**History and Politics of the HIV/AIDS Pandemic in Kenya**

While prevailing knowledge on the length of HIV virus incubation would lead us to believe that the HIV virus probably started to spread in Kenya in the late 1970s, the first diagnosis in the country was not until 1984. Though no official confirmation is forthcoming, the sad story of the first confirmed HIV positive case is widely known by many in the country. As the account goes, the positive diagnosis in a district hospital caused much fear and uproar, not only among the medical staff, but also among other patients in the hospital. Doctors and nurses alike abandoned their duty stations in fear of infection. Likewise, patients were moved from adjacent hospital wards thus effectively isolating the HIV infected person. Only fearful relatives, keen to take care of their own, were left to feed the patient.

This state of paralyzing fear slowly waned away among medical personnel as more cases were quickly discovered and more facts on HIV infection became available. Fear of the virus and stigmatization of those infected however remains a big issue among many not only in Kenya, but also elsewhere in sub Saharan Africa where HIV/AIDS have wrecked havoc among the populace.
From an initially low number of people infected with the virus in mid 80’s, the numbers skyrocketed in 15 years to an estimated 1,900,000 cases by early 2000 (NASCOP, 2001), and 2,025,000 infected by 2001 (UNAIDS, 2002). According to the National AIDS and STD Control program (NASCOP) estimates, by 2000, the HIV prevalence in the country had increased to 13.5 percent (NASCOP, 2001). To further compound the problem, the number of orphaned children was growing to gigantic proportions. By 2001, there were an estimated 890,000 children listed as orphans (UNAIDS, 2002). By early 2003, although there was evidence of a decreasing rate of new infections, the number of already infected had however climbed to 3 million people, with a combined death total of 1.5 million attributed to AIDS related complications. Indeed as per Kenyan government’s 2002 figures, people living with HIV/AIDS accounted for ‘about 50 per cent of beds in Kenyan hospitals’ (Daily Nation, 2003, March 31).

Table 3: HIV Infection by Province, 2001

<table>
<thead>
<tr>
<th>Province</th>
<th>No. With HIV</th>
<th>Prevalence Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nyanza</td>
<td>480,000</td>
<td>22</td>
</tr>
<tr>
<td>Rift Valley</td>
<td>390,000</td>
<td>11</td>
</tr>
<tr>
<td>Eastern</td>
<td>380,000</td>
<td>16</td>
</tr>
<tr>
<td>Central</td>
<td>240,000</td>
<td>13</td>
</tr>
<tr>
<td>Western</td>
<td>210,000</td>
<td>12</td>
</tr>
<tr>
<td>Nairobi</td>
<td>175,000</td>
<td>16</td>
</tr>
<tr>
<td>Coast</td>
<td>135,000</td>
<td>10</td>
</tr>
<tr>
<td>North Eastern</td>
<td>15,000</td>
<td>3</td>
</tr>
<tr>
<td>Nationally</td>
<td>2,025,000</td>
<td>13.5</td>
</tr>
</tbody>
</table>

Note: Based on Figures from the AIDS Control Unit of Ministry of Health and National AIDS Control Council, 2001

Yet while such huge numbers are by all means shocking, the total number of infected accounts for about 10 per cent of the total population in the country. As Kenya’s Director of Medicine points out, “About 90% of Kenyans are not infected and this is the population we would want to jealously guard against being infected” (Daily Nation, 2003, March 31). Such an outlook galvanizes the efforts to search for timely
prevention strategies. While medical experts continue to look for effective medication, 
another avenue to explore could be search for means to address the political, social 
and economic issues that may not only be seen as exacerbating the risk of HIV 
infections, but also frustrating efforts to formulate effective responses to the pandemic. 
This is essential first as a step in eliminating the traditionally sanctioned practices, like 
the discrimination and stigmatization of such marginalized groups as people living with 
HIV/AIDS (PLWHA), women and children.

Another area of concern is the vulnerability felt by women in the face of the 
HIV/AIDS pandemic as a result of a combination of factors. At the level of sexuality, 
prevalent cultural expectations create an environment conducive for the spread of the 
HIV virus by exposing women to risky, but in most cases necessary sexual activity, 
especially in the pursuit of their societal role as mothers. At another level, that of 
women empowerment, there is need for economic improvement as increasing levels of 
poverty exacerbate the HIV/AIDS pandemic. The ‘at risk’ people may sometimes be 
forced to not only engage in risky behaviors like prostitution in search of sustenance, 
but also the need for economic protection continues to hold women captive in abusive 
relationships, which may eventually end up in HIV infection through unfaithful spouses.

The burden on children has also increased enormously, both for the orphaned 
one and even for those lucky enough to have either one or both of their parents still 
alive. The sad reality brought about by the HIV/AIDS pandemic is of young orphaned 
children who in the absence of their parents, are being forced to become family heads 
at a tender age and to take care of their likewise young siblings. The touching case of a 
young aids orphan in Kitui, Kenya, whose future does not look so promising, is well 
detailed in the following extract:

Michael Ndungi has just sat for his Standard Eight mock examinations and was sixth in 
a class of 32 at Mathima Primary School in Kitui. Michael is not excited about the
possibility of secondary school in the next five months. For on his young shoulders rests a burden many his age have to bear in this rural outpost. Michael and the rest of his siblings are AIDS orphans... when asked about his ambitions, he bows his head and tears well up in his eyes. Clearly, he has not had time to dwell on such issues" (Daily Nation, 2003, August 15).

For other children, the risk of HIV/AIDS lurks everyday through the possibility of infection by adults either through coerced early intercourse or even as the recent trend in many African countries has shown, through beastly defilement of infants by much older people. Myths abound across the African continent that sex with an uninfected virgin (minor) would rid one of any infections. As an online based petition (2004) against such practice explains:

A myth in South Africa, and that has reached Kenya, assures that having sex with a virgin will cure AIDS. The younger the virgin, the more potent the cure. This has led to an epidemic of rapes by infected males, with the correspondent infection of innocent kids. Many have died. Recently in Cape Town, a nine month old baby was raped by 6 men. The South African CPU (Child Protection Unit) of Port Elizabeth receive 120 to 130 abuse reports a month, 95 percent of which are rape (Worldwide Online Petition, 2004. Available http://www.petitiononline.com/sc98a/petition.html).

Yet even in the face of such open violation, the legal systems in many African countries remain unable to deal with such human menace. A case in point was the acquittal by a Kenyan court of law of a man “who allegedly raped a nine year-old girl”, on the basis that “the girl did not immediately identify the accused person”. Kenya’s ‘Evidence Act’ at the time, “required corroboration of a minor’s evidence” (Daily Nation, 2003, March 26). An increase in such incidents forced both civil society activists and the Kenyan parliament to start working on a ‘Children’s Act’, that would protect the children by imposing severe penalties on accused child molesters and eliminate the many loopholes prevalent in the present system. Putting in place such new processes can be rightly described as a major step towards institutionalization and may bode well for the future of a democratically governed country.
In analyzing the political history of HIV/AIDS in Kenya, it is important to acknowledge the fact that, the country's response has logically progressed through several phases, characterized by vehement denial, fear, anger and witch hunting at one extreme and full transparency and multi-sectoral involvement at the other. In between, the country has witnessed a gradual progression with the state slowly adopting the view that the HIV/AIDS pandemic is much more than a simple health concern best left to the Ministry of Health and its medical experts. Despite this general trend in response evolvement however, a close look at the HIV/AIDS pandemic in Kenya reveals the presence of mechanisms that call for a more elaborate categorization of the anti-AIDS efforts in Kenya.

A key point of departure from a categorization like Fredland's (1998), is the fact that given the long existence of a strong, though fragmented civil society in Kenya, non-governmental involvement in anti-HIV/AIDS action can be seen right from the earliest known onset of the epidemic in Kenya. Besides, given the short period of time involved (barely two decades), it is hard to draw clear conclusions as to the failure (or success) of a particular response. Rather, I argue it is more important to analyze each identifiable phase in Kenya's response as a beginning point of certain institutional mechanisms that are not only essential for the fight against the deadly pandemic, but are also significant for the country's future governance.

As table 4 below shows, I have formulated four phases unique to Kenya's experience, with a particular emphasis on the institutions that can be tied to each time frame. I suggest here that such a typology can be adopted to trace the evolution of HIV/AIDS across sub-Saharan Africa, noting the particular gains of such involvement to the eventual aspect of democratic consolidation in the region.
The first phase of HIV/AIDS in Kenya, referred to in this study as the 'phase of indignation' can be seen as covering the period between 1984 and 1987. This phase is marked by a strong campaign by the Kenyan government to refute any suggestions of HIV/AIDS as a problem in Kenya. As Forsythe et al. (1996) point out, during these early years, “there was a general sense that HIV/AIDS was not a serious problem for the country. AIDS was described in the press and by policymakers as “a disease of Westerners, especially gay men” (3).

Table 4: Phases of Responses to HIV/AIDS in Kenya

<table>
<thead>
<tr>
<th>RESPONSE PHASE</th>
<th>PERIOD</th>
<th>NATURE OF ACTION TAKEN</th>
<th>ACTIVE INSTITUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indignation</td>
<td>1984-1987</td>
<td>Vehement state denial, accusations against enemies of state</td>
<td>Media (Local and International), state machinery</td>
</tr>
<tr>
<td>Biomedical and civil society involvement</td>
<td>1987-1993</td>
<td>Establishment of health advisory organ by state, increased, albeit financially constrained civil society involvement</td>
<td>a) 5-Year medium Term Plan (MTPI) b) National AIDS and STD Control Program (NASCOP) c) KANCO</td>
</tr>
<tr>
<td>State involvement</td>
<td>1993-1999</td>
<td>Acceptance by state of HIV/AIDS problem as a national disaster. Guidelines beyond health concerns, are set to deal with the pandemic</td>
<td>a) Sessional paper NO. 4 of 1997 b) 5 Year Strategic plan c) National Poverty Eradication Plan</td>
</tr>
<tr>
<td>Multisectoral approach and institutional takeover</td>
<td>1999-?</td>
<td>1. Genuine involvement of civil society members as partners in setting HIV/AIDS agenda. Acceptance of policy proposals from members of civil society 2. Prevalence of institutions governing the response to HIV/AIDS. Increased interaction between state and civil society within the confines of existing institutions</td>
<td>a) National AIDS Control Center b) Office of the president c) Various civil society networks e.g. Kenya AIDS NGOs Consortium, d) International donors</td>
</tr>
</tbody>
</table>

Quick to take a defensive stand against any suggestions of HIV/AIDS spreading in Kenya, the Kenyan government used a combination of misinformation, public expressions of anger, denial and outright refusal to take any official stand even when prompted to do so by media reports. Despite a strict hold and censorship of the Kenyan media by the government under the dominant ruling party, Kenya African
National Union (KANU), the country’s newspapers were the first to actually call attention to the existence of the deadly disease in Kenya. In January 1985, the country’s second largest daily newspaper—The East African Standard—alerted Kenyans to the disease’s existence in their midst through two articles respectively entitled: “Killer Disease in Kenya” and “Horror Sex Disease in Kakamega”.

These revelations were not well taken by the government. Alfred Fortin (1987) details the reaction of one governmental official to the newspaper’s claim of “horror disease in Kakamega” thus: “Later accounts contradicted the story, quoting a hostile district medical officer who claimed that the deaths were not due to AIDS but were simply extreme cases of skin cancer” (Fortin, in Third World Quarterly, 1987, July, 907).

Beyond the locally restricted media, international media picked up and widely reported on the spread of the epidemic sub-Saharan Africa. Such media revelations included a report on the existence of ninety prostitutes in a Nairobi slum showing signs of progressed illness, publicized in November 1985 by the International Herald Tribune (International Herald Tribune, 1985, 9,10 November). The Kenyan government reacted angrily to this report, confiscating the entire shipment of the issue to Kenya and preventing it from reaching the newsstands, while Kenyan officials reacted by alleging a Western-oriented ‘racist campaign’ against poor African countries.

The ensuing debate was woven around the question of the controversy over the origin of the HIV virus. As noted earlier in this chapter, this question is volatile and rekindles an ugly debate with racial and demeaning connotations. Africans take much offense at any suggestion that the disease originated in the continent. Prewitt (1988) puts the origin of such strong feelings among Africans in better perspective, in his assertion that:
The special characteristics of AIDS—its mysterious origin, its resistance to biomedical treatment, its association with social deviance and its hint of exotic behavior—provide a ready justification for those who would just as soon not be bothered by Africa, its need for international aid, and its development difficulties. Starting from the deeply planted image of Africa as "the dark continent", strengthened by the racist ideology used to buttress slavery and then colonization (which has its final outpost in apartheid), and finding modern expression in development doctrine that treats Africa as a problem to be solved rather than a voice to be heard, there is a view which denies its dignity and ignores its accomplishments. The prevalence of AIDS in Africa raises the specter that this view may gain currency (Prewitt in Miller and Rockwell, Eds. 1988, xi-xii).

In somewhat of a surprise move given the importance of tourism to the country, leading Kenyans increasingly started to point at foreigners visiting the country as the source of the scourge in Kenya. As Fortin (1988) writes: "An editorial in Medicus, the official publication of the Kenyan Medical Association, suggested the possibility that tourists from around the world had introduced AIDS into Africa, and complained of the West's apparent need for an African connection for every disease" (Fortin, in Third World Quarterly, July 1987, 909). Such claims were also widely voiced in the local partisan media, eager to echo the government's stand on different issues (Weekly Review, 1985, November 29).

Furthermore, such indignation was by no means restricted to the professional ranks in government. None other than the Kenyan President, Daniel Arap Moi, came out strongly in denial of claims by the foreign press asserting the existence of an epidemic in Kenya. In a reported speech on October 11, 1985, President Moi called on patriotic Kenyans "to turn a deaf ear to our enemies", whom he described as bent on 'conducting a hate campaign' against Africans (Weekly Review, 1985, October 11; Fortin, in Third World Quarterly, 1987, July, 908).

The escalating pandemic and its adverse effects on all sectors of society, including the remote rural locations, however, made it impossible for the Kenyan government to continue its initial denial of the existence of a HIV/AIDS epidemic in the
country. In 1985, after declaring the much conservative figure of only ‘twenty victims with AIDS’ in the country, the government moved to create a National AIDS Council (NAC), situated within the country’s Ministry of Health. It is important to note that at this early stage, the HIV/AIDS epidemic was seen as a purely health concern to be dealt with by the Kenyan government’s Ministry of Health.

NAC proved to be a non-starter as a lead organization in coordinating activities in the fight against HIV/AIDS. As Forsythe et al. Eds. (1996) point out: “…the NAC lacked authority and resources to develop awareness or prevention efforts. Two years passed before the NAC formally met” (3). As will be discussed later in this study, the organization however served as a precursor to the Kenyan government’s efforts to address the issue of HIV/AIDS squarely. NAC can be seen as the starting point in the emergence of an institution that was to later become central in shaping the relations between the state and civil society organizations dealing with HIV/AIDS.

Further, although the position taken by a large section of the Kenyan media could be seen as mostly sympathetic to the government’s position on HIV/AIDS, this phase also saw the emergence of a new disposition by the local media, which increasingly took on the role of an informed source of information on HIV/AIDS. As the pandemic progressed in the country, media accounts were to form an integral part of both education and information for the Kenyan community. Indeed, there was a notable change in Kenyan media’s reporting of AIDS related stories from one of compliance with government wishes to one of assertive and sometimes contradictory information on the impact of HIV/AIDS. Such a change reveals the emergent shape of an important institution that became increasingly effective in structuring responses to the pandemic in Kenya.
The second phase spanning the from 1987 to 1992, which I see as extending beyond Fredland’s designation of the second stage of HIV/AIDS development in Africa as that of ‘blaming’, is what I refer to as the phase of ‘biomedical and civil society involvement’. This period was marked by a combination of spirited civil society efforts to counsel the populace and support those already infected with HIV/AIDS, and a more focused health based approach by the government. While both efforts were aimed at alleviating suffering and stopping the spread of the disease, it is important to note that both state and civil society actions were not related at all in terms of formulation and implementation. Indeed, civil society organizations were highly critical of the government and saw their work as having been complicated by the government’s failure to address a crucial problem.

Organized both nationally and locally, various formal and informal organizations emerged and with very limited resources in most cases, increasingly sought to organize the people to prevent further HIV infections and to assist those already infected. These include church based organizations like the Kenya Catholic Secretariat, the All-Africa Conference of Churches (AACC), the National Council of Churches of Kenya (NCCK) and the Norwegian Church Aid (AIDS Program) in Kenya. Other civil society efforts come from various community base organizations (CBOs) including self help women’s groups and youth groups and even international organizations, like the World Vision and Action Aid, already engaged in relief work in parts of the country.

Perhaps the most significant early effort by civil society to respond to the HIV/AIDS pandemic can be seen as the formation of the Kenya NGO AIDS Consortium (KANCO) in 1990. The consortium initially brought together a group of seven active NGOs. These were: Christian Health Association of Kenya (CHAK), Kenya Red Cross,
African Medical Research Foundation (AMREF), Kenya Catholic Secretariat, Norwegian Church Aid, Family Planning Association of Kenya and Action Aid (KANCO, 2003; Shorter and Onyancha, 1998, 30). The consortium’s membership had extended to 410 organizations by 1998 and to over 650 in 2003 (KANCO, 2003). As will be revisited in our discussion of emergent institutions in the Kenyan response to the HIV/AIDS pandemic, KANCO was to play a major coordinating role by establishing a reliable network between various organizations dealing with HIV/AIDS in Kenya. Besides, KANCO came spearhead the efforts for cooperation between the state and civil society through its advocacy and policy initiative efforts.

Other organizations that emerged during this phase include The Association of People Living With AIDS in Kenya (TAPWAK). The organization’s main goal was to offer a forum for representation of people living with HIV/AIDS in Kenya (PLWHA). Given the prevailing stigmatization and discrimination of PLWHA in Kenya, the organization also sought to participate in advocacy for the human rights of the infected. Until then, one major setback to any efforts to address issues concerning HIV/AIDS was the widespread mistreatment and discrimination of people living with HIV/AIDS, especially women and children. This could be seen partly as a result of predominant cultural factors born of the traditional African attitude towards issues involving sex as taboo, and as such a topic not to be openly discussed, and also due to the lack of ‘a politically active AIDS constituency’ to ‘galvanize, articulate and document AIDS activities in Kenya and other African states’ (Fortin, in Third World Quarterly, 1987, July, 907). In developed countries, PLWHA are effectively advocated for by organizations like the AIDS Coalition to Unleash Power (ACT-UP) in the United States and Canada which acts as a nonpartisan forum for the empowerment of all groups facing any form of discrimination, including gays and lesbians, and women’s
organizations, and serves as the main source of AIDS activism with a full capacity to exert strong advocacy on behalf of PLWHA (Smith, 1996, 276; Brown, 1997, 57).

A strongly involved stakeholder in the response against HIV/AIDS in Kenya has been religious based organizations. While religious groups can be seen as presenting a challenge to policy makers due to their stand against such protective measures as the use of condoms, they nevertheless have mobilized their members and are both advancing citizen activism and taking care of the infected. Writing on the case of churches and AIDS in Kenya, Shorter and Onyancha (1998) point out the fact that: "Churches are making a very substantial contribution indeed towards the care and counseling of AIDS people" (Shorter and Onyancha, 1998, 16). As the two scholars further elaborate, a cross section of "denominational projects" work together to further their efforts to spread awareness of the pandemic. Yet such responses remain too narrowly focused and constrained by limited financial resources. Prevalent poverty has led to a vicious cycle that has not only adversely affected the infected, but also increased the chances of infection through engagement in dangerous lifestyles for basic survival by those not infected.

Besides, while genuinely involved in alleviating the suffering caused by the HIV/AIDS pandemic by providing help for PLWHA and their families, religious organizations ironically present a major stumbling block to the advancement of particular HIV/AIDS policies. While their stand against the advancement of sex education programs in Kenyan schools has softened, they remain strongly opposed to the advancement of condom use as a preventive measure against HIV/AIDS. As detailed in various press releases, both Christian and Islamic groups in Kenya have continuously expressed their opposition to condom distribution in the country. As one Christian cleric put it, "Though the disease has become a threat to human life in the"
country, use of condoms by Christians to save them from getting infected is prohibited by the Church” (*East African Standard*, 2003, March 31).

Likewise, Muslims in the country are steadfast in their opposition to any use of condoms in the campaign against HIV/AIDS. As an influential Council of Islamic scholar declared, such an act is tantamount to allowing sex outside marriage, which to their religion “is criminal and attracts a very strong penalty” (*East African Standard*, 2003, March 31). The religious organizations offer an interesting challenge to our understanding of the role played by civil society based organizations in responding to the HIV/AIDS and points to a potential area for future research on the nature, organization and priorities of specific organizations dealing with HIV/AIDS in Kenya and how these factors impact their effectiveness.

Other elements of civil society whose activities can be traced to this second phase are gender specific organizations. Previously, women exercised little, if any power in policy making at the national level. Emergent HIV/AIDS era organizations’ roles both in empowering women and advocating for protective policies as a means for responding to HIV/AIDS, was to blossom into major components of the eventual process of democratic consolidation accruing from the need to mobilize against HIV/AIDS in Kenya. As opposed to men in the same age groups, young women aged between 15 and 24 years have proven to be more than twice as likely to be infected with the HIV. This situation is compounded by prevailing poverty. It is easy for rich older men to target young girls as sexual partners usually through financial inducements. Such practices are born of the mistaken belief that the young women are free from the virus as opposed to older women. Further to this, the existence of traditionally mandated customs such as relatives inheriting their dead kin’s wives,
coupled with widely practiced polygamy has seen a vicious cycle where relatives continue to get infected and in turn pass the infection on to their wives.

One gender-oriented organization is Women Fighting AIDS in Kenya (WOFAK), a non-governmental organization founded in August 1993 by a group of ten women. The majority of the founders are HIV positive, while the rest have lost close members to AIDS related complications. WOFAK's principle mission is to empower women and young girls, both to prevent infection through active education and refusal to be subjugated by gaining economic freedom, and also to empower those already infected by supporting them to break stigmatization and discrimination barriers. To these ends, WOFAK has established outreach activities which include education and awareness programs all across Kenya, a home-based care component and also continuous counseling and advocacy on behalf of women and children affected by the pandemic.

Fully cognizant of the fact that poverty has led to desperation and suffering among many of the poor women in Kenya, WOFAK, with the help of both local and international donors has developed small scale income generating activities for both the widows and women living with HIV/AIDS. These activities include selling of charcoal, firewood, second-hand clothes and shoes, dried and smoked fish, and fruits and vegetables. Though the returns are very small and in most cases may not fully sustain a family, these activities are significant, not only as a means of enabling affected women to gain some little degree of financial ability, but also as a means of empowering and reintegrating them in society, as opposed to staying in seclusion and succumbing to a combination of social ailments, including loneliness and bitterness, at the prevalent stigmatization. WOFAK further assists women to provide food for their families. It is however fitting to point out that, reintegrating the women in a society awash with dangerous myths on how HIV/AIDS spreads, and quick to tie this with
prevailing superstitions on the pandemic, has been an uphill battle. The women's courage in facing their predicament however goes a long way in helping society come to terms with the pandemic.

To reinforce its gradual acknowledgement of HIV/AIDS as an issue of urgent medical concern, in 1987, the Kenyan government, with the support of the World Health Organization, launched a ‘five-year Medium term Plan (MTP-1). The five years plan contained state formulated guidelines detailing the country’s efforts to promote “blood safety, mass awareness, promotion of safer sex and control of STDs” (Report of the Task Force on Legal Issues, 2002, July). Further, the government sought to re-energize the moribund National AIDS Committee (NAC). To this end, NAC was transformed into the National AIDS Control Programme and took on the formerly existing STD Control Programme in the Ministry of Health to form an umbrella organization named as the National AIDS and STD Control Programme (NASCOP). The organization was to be the government’s lead health coordinating unit on issues of HIV/AIDS.

While the Kenyan government moved to adopt policies aimed at enhancing the fight against the spread of HIV in the early 1990’s, the government’s acknowledgement of HIV/AIDS as a more encompassing societal, developmental and political issue can only be traced to the presentation of the Sessional paper No. 4 on AIDS in Kenya in 1997. The period between 1992 and 1999 comprises a third phase in the response against HIV/AIDS in Kenya, which I refer to as the “state involvement phase”. Although the Kenyan government had earlier on acknowledged existence of the AIDS epidemic and sought to get involved through the Ministry of Health supported National AIDS and STD Control Program (NASCOP), it was only in 1999 that measures were adopted to recognize the HIV/AIDS epidemic as a national disaster deserving more than medical
attention. The state acknowledged what it had all along disputed-- the fact that HIV/AIDS was adversely affecting every aspect of society and would require a more direct response both in terms of policies and financial resources.

After a decade and a half of the Kenyan government's reluctance to get involved fully in formulating various strategies to address HIV/AIDS, the declaration of the pandemic as a national disaster meant that the government had no option but to get fully involved in each and every aspect of the response to the pandemic. The urgency of the situation allowed the government to adopt all measures it deemed necessary to control the spread of the virus and assist the people already infected.

Following the declaration of AIDS as a national disaster in 1999, the National AIDS Control Center (NACC) was established under the 'State Corporations Act'. NACC was mandated to co-ordinate efforts in prevention and control of HIV/AIDS in the country. NACC is under the Office of the President, and has a chairperson, who is a presidential appointee, and a director, who is the secretary to the council. Its membership comprise of officials from government ministries, the private sector (including other non-public organizations), the religious sector, women's organizations and even organizations of HIV-positive people. NACC has become a vehicle for a renewed cooperation between the state and civil society in responding to the HIV/AIDS pandemic and may offer important explanations on the question of how far and in what ways the relations between the state and civil society have changed in Kenya. Along with other new institutional actors and practices, NACC can be seen as serving as a platform for the transformation of relations between the state and civil society in Kenya.
Observations of the HIV/AIDS era political developments in Kenya reveal a strong move towards a multisectoral involvement in the fight against HIV/AIDS. This phase in the response against HIV/AIDS is what I refer to as 'multisectoral approach and institutional takeover'. This stage can be seen as combining two of the stages that Friedland (1998) refer to in his discussion of AIDS in Africa, namely institutional mobilization and government involvement. In my typology, the process of institutional mobilization is seen as having taken a 'multisectoral' face, with all stakeholders, be they state or none state, being involved at length in formulating responses to the pandemic. Departments in the Kenyan government and various elements of civil society have increasingly been involved in formulating a joint response to the pandemic. There are indications of increased willingness by the state to actively support and involve civil society organizations as partners in a concerted response to the HIV/AIDS pandemic. The accepted norm of doing HIV/AIDS business has become a process of joint agenda setting between the political leadership and civil society organizations dealing with HIV/AIDS in Kenya.

This has led to the emergence of new institutional forms-- both in terms of actual actors and also emergent practices and rules-- with the potential of transforming the traditionally hostile relations between the state and civil society and leading to the formulation of HIV/AIDS policy in the country. Under the aegis of the National Aids Control Council (NACC), which is the designated government institution for coordinating national HIV/AIDS related activities, the Kenya AIDS NGOs Consortium which brings together over 600 non-governmental organizations, and all inclusive constituency-level committees formed to coordinate HIV/AIDS responses at the grass roots, interaction between the state and civil society is increasingly becoming rejuvenated.
In an effort to involve the local communities in the process of developing and implementing HIV/AIDS prevention and patient care, the Kenyan government after declaring HIV/AIDS as a national disaster moved to establish committees at different administrative levels. Membership in such committees comprises both government officials and local leaders in each area. In terms of practices, there is an apparent increase in the frequency of joint workshops held between civil society and the state. Another element to consider is the increased donor involvement, especially in the case of emergent rules for the sharing out of available funds for the HIV/AIDS campaign. While such organizations as the World Bank have offered Kenya significant amounts of funding, the lending conditions include formulas for sharing out the money among the many stakeholders. This factor may be seen as instrumental in bringing the state and beneficiary civil society groups to a working arrangement.

These new institutions have become arenas for interaction between the state and civil society. While they have been put in motion by a state seeking to control the process of response to the HIV/AIDS epidemic, these institutions have taken on a life of their own, and, in so doing, are transforming both political interactions and essential areas of policy. State and civil society based organizations’ interaction within the emergent institutions has seen inroads into essential policy areas and may be seen as responsible for a significant shift in the nature and levels of citizen participation in policy formulation in Kenya.

I should point out that such close state-civil society interaction should not be taken to mean the absence of conflict between the two actors. However, the nature of conflict is now characterized by a governance friendly form of interaction, where aggrieved civil society activists lobby attentive lawmakers willing to oblige and pass appropriate laws. Where such laws fail to get implemented in a timely manner, another
source of discourse, the courts of law, stand ready to genuinely oblige the state to enforce certain actions. Recent examples of changes in the political atmosphere can be seen in several policy areas. Change is evident in the emergence of such an institution as the “Children’s Act of 2001”, passed by the parliament under lobbying pressure from groups like the Coalition on Violence Against Women and The Kenya Alliance for the Advancement of Children (Daily Nation, 2003, March 28). At another level, a related case is one in which a court ordered public primary school heads in the country to accept HIV positive children, following a successful lawsuit by one civil society based organization, Nyumbani Orphanage, alleging open discrimination in the school system. The two cases are fitting indicators of the new political atmosphere.

Conclusion

It is important to understand not only the institutional mechanisms that facilitate institutional change, but also the nature and direction that this transformation has taken. This chapter detailed the progression of the HIV/AIDS pandemic in Kenya in the two decades from 1983 to 2003. The development of the pandemic is traced from the initial days of the “don’t talk, don’t tell” position taken by the state, to the emergence of actively engaged none state actors, and eventually to the state acknowledgement of the issue of HIV/AIDS as a national emergency worth of a broad, institutionalized response. The following chapter discusses specific issues exposed in the response against HIV/AIDS in Kenya, and places these within the broader context of the country’s historical political development. The emphasis here is on how these issues correspond to the process of democratization in Kenya.
CHAPTER III

SETTING THE GROUNDS FOR CHANGE: THE POST INDEPENDENT
POLITICAL ENVIRONMENT IN KENYA

In seeking to understand the nature of political change in any given country, it is imperative to understand the former prevailing political environment, complete with its inadequacies and complexities that form the basis for political action. As Michael Bratton and Nicolas Van de Walle (1997) point out: "The structural characteristics of previous political regimes...constitute a reasonable starting point for analysis of transition processes" (42). To understand the emergent institutional mechanisms for political transformation in Kenya, it is important to first consider the preceding political environment that shaped, and indeed necessitated their emergence, for as Bratton and Van de Walle (1997) further suggest: "The prospects for political change in any country are partly predetermined by its distinctive institutional heritage" (42).

Four issue areas during the country's first two political regimes have been identified in this study as fitting starting points for the process of institutional buildup that has taken place in Kenya in the AIDS era, and that has strong positive implications for the process of democratic consolidation in the country. The four areas to consider are: Human rights, gender roles, policy process and advocacy and the use of power by state authorities, especially the executive (president) and the state bureaucracy. The argument is made here that the HIV/AIDS catastrophe has inadvertently drawn a sharp focus to the prevailing situation of institutional inadequacy in the four areas and cleared the way for the emergence of institutional mechanisms aimed at filling the existing political voids.
HIV/AIDS and Human Rights in Kenya

As a political topic, human rights is strongly controversial, with different regimes firmly contesting any suggestions of human rights abuse under their watch. Indeed many developing countries' regimes have sought to distinguish between individual rights, much enjoyed in Western democracies, and collective rights, seen as prevalent in developing countries. In asserting the case for collective rights, the state portrays itself as the guardian of the community against errant individuals, regardless of their basic rights. Yet, as Kofi Annan noted: "Human rights are what reason requires and conscience demands...Human rights are rights that any person has as a human being" (Kofi Annan, statement from the UN, 2004, March 4).

The history of human rights in Kenya is one of a state that was highly suspicious of any form of criticism, and that was quick to employ its coercive power in the form of heavily armed police units against any perceived source of discontent. Such actions were often rationalized in terms of protecting the society. Such flimsy excuses gave political leaders undue mileage in protecting their bad governance. On the other hand, a prevailing culture of blatant abuse of individual human rights by the state machinery made it almost acceptable nationwide to discriminate and mistreat certain groups of people with impunity. Such groups include women, low ranking employees, children and people living with HIV/AIDS.

More than any other political development in post-independent Kenya, the HIV/AIDS pandemic has brought to the fore several significant, but neglected human rights' issues. One area of focus in this study is the issue of denial of human rights for three strongly marginalized groups in Kenyan society. These are: People living with HIV/AIDS, women and children. Some of the main issues facing them include discrimination in various aspects of society, including jobs, schools and in property
ownership, mistreatment and physical abuse and the lack of adequate legal protection for them. I argue that the need to respond to these issues has heightened interactions between the state and civil society, with strong implications for the process of democratic consolidation in the country. Before discussing the emergent institutional mechanisms (actors, forms and means) to address human rights issues, it is imperative to offer a background picture of how the demise of human rights for vulnerable groups in Kenya has evolved as a topic demanding political action in the fight against the HIV/AIDS pandemic in Kenya.

**Disease and Discrimination in Kenya: The Plight of People Living With HIV/AIDS**

According to official UNAIDS figures, the number of people living with HIV/AIDS in Kenya had risen to 2.2 million adults and children by 2002 (UNAIDS, 2002). Despite this high number of already infected, in the two decades that HIV/AIDS has been recognized in the country, PLWHA have remained largely voiceless and overly mistreated. While many people have preferred to hide in shame and disguise their illness, once their status is known by the public, both they and their families are openly shunned and strongly castigated by a society eager to ignore the existence of the disease in their midst. While the minority rich families can fairly manage to conceal their relative's illness and afford regular medication, the majorities who are poor are left with no one to turn to.

Despite their condition, in the absence of institutions to protect and advocate for the rights of the PLWHA, many infected people have struggled to appear infection free and continued to engage in risky sexual activities. The case of commercial sex workers in Nairobi who despite their high rate of infection continue to ply the streets in search of business illustrates the complex nature of the problem. In November 1985, the *International Tribune* reported the case of a study on prostitutes in Nairobi. Of the
ninety prostitutes involved in the study, "...over half were reportedly infected with the HIV virus and three quarters of these women showed signs of significant illness" (International Herald Tribune, 1985, 9-10 November; Fortin, in Third World Quarterly, 1987, Vol. 9 (3), 908).

Another section of the population, fearing adverse effects of a HIV/positive diagnosis has avoided any testing for the virus. Such efforts to maintain normalcy are further exacerbating the spread of HIV/AIDS. The need to appear normal, borne mainly by the need to escape shame and discrimination, and partly by high levels of poverty, has led to the worsening of the disease at several levels. For one, new infections continue to be recorded as already infected people have engaged in concealed risky sexual behavior. At another level, the general denial and failure to call the syndrome by its name has led to a lack of direct confrontation with the pandemic.

Existing Kenyan laws to safeguard against continued deliberate spread of sexually transmitted and communicable diseases fall far short of addressing the situation, not to mention the fact that such laws are rarely enforced. Section 186 of the Penal Code states that: "Any person who unlawfully or negligently does any act which is, and which he (italics mine) knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life is guilty of a misdemeanor" (Constitution of the Republic of Kenya, Section 186; Kibwana, 1992, 25). Punishments for deliberately infecting one with a sexually transmitted disease could range from a token fine of four thousand Kenyan shillings (approximately fifty-five U.S. dollars in February 2004) to a term of six months in jail. On the other hand, a misdemeanor as stated in the Kenyan Penal Code could fetch a two years jail term, a fine or both. A combination of factors like lack of legal awareness for a majority of the people, failure by the Kenyan Police to treat such cases seriously and seek prosecution for wrong doers and prevailing cultural
expectations where women especially are strongly discouraged from seeking any government prosecution against their spouses, have combined to impede efforts for a quick legal intervention to arrest the spread of the deadly HIV virus in the country.

Over the last fifteen years in Kenya, newspaper and radio obituaries are full of people whose sad demise is always attributed to a 'short illness bravely borne'. It is rare for the cause of death to be given as AIDS related complications. Anyone brave enough to close the societal imposed boundaries and to declare their HIV positive status gains an instant pariah position in the community and is openly discriminated and stigmatized at all levels. Doubtless to say, such emersion in denial and forced silence about HIV/AIDS status has overly complicated the process of AIDS policy formulation and taken away from the adaptation of effective legal protection for the infected which would offer a place to turn to for those who are willing to seek legal redress against discrimination and stigmatization.

In contesting the issue of human rights for PLWHA in Kenya, several areas can clearly be seen as requiring action, in order to stem the tide of continued human rights abuses of individuals living with HIV/AIDS. These areas are: the right to privacy, right to freedom of movement, work and education, right to health care and protection against different forms of discrimination.

**Right to Privacy**

Along with the need for care and understanding for PLWHA is the need to be in control of their own lives, if they are to gain any amount of respectability in society. This could only be enhanced through such practices as voluntary HIV testing and a strict enforcement by the government of confidentiality for one's medical records. The prevailing situation in Kenya was initially one of open castigation of HIV infected people who were seen as immoral and wayward. Narrations abound of medical personnel
openly humiliating HIV positive people. In one hard to forget incident reported by Human Rights Watch (2001), a disabled HIV-positive man was castigated openly by a medical nurse who openly wondered how disabled people could get involved in sexual encounters as if they did not have enough to worry about. Yet other similar cases abound across the country (Human Rights Watch, 2001, June).

In seeking to address the question of privacy for PLWHA in Kenya, the Sessional paper No. 4 of 1997, which it must be noted serves simply as a policy guideline, also sought to address the issue of an infected person’s right to marry and have a family counterbalanced against the need to protect uninfected spouses through an act of spousal notification in case of a positive diagnosis. The Sessional Paper (1997) drew attention to the need for a balance on the delicate situation of need for confidentiality in doctor-patient relationships on one hand, and need to encourage HIV testing as a significant step in stopping HIV transmissions on the other (Sessional Paper No. 4, 1997, 23-28).

HIV/ AIDS has led to the breakup of many homes in cases of one partner testing positive while the other one does not. Yet as recent studies reveal, it is absolutely possible to have people who are resistant to the HIV virus despite repeated exposure. To ensure privacy, the Sessional Paper (1997) proposed that the state put in place legal mechanisms to regulate notification to partner. Such measures would ensure that those at risk of HIV infection would be informed without the consent of the infected person, which the Paper termed as an act ‘in the interest of public health’ (Sessional Paper No. 4, 1997, 23-28). In the same breath, the Sessional Paper (1997) called for severe criminal sanctions against those who deliberately infected others with the HIV virus. Such an attempt to balance the protection of individual rights with the

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state's avowed duty to protect collective rights however remains merely on paper while HIV/AIDS continues to exert a heavy toll on the country’s populace.

Right to Health Care

Despite repeated promises for free antiretroviral medication by both international companies and the Kenyan government, the cost of available medication continues to be out of reach for the poor, allowing otherwise manageable AIDS related opportunistic ailments to continue devastating the population.

In August 2002, the Kenyan government launched a program to provide free medication to prevent mother to child HIV transmission using Nevirapine, an antiretroviral drug donated by a German Pharmaceutical firm, Boeringer Ingeilheim. Clinical studies found Nevirapine to be effective in preventing mother-to-child transmission of HIV in at least 60 per cent of the cases tested (Daily Nation, 2002, August 19). Besides the fact that the implementation of the program was two years behind schedule following the German company’s initial offer of the drugs during the 2000 International Aids Conference in Durban, South Africa, the Kenyan government’s effort was very limited in terms of scope as the program would initially be implemented in only eight district level hospitals countrywide.

A recent government initiative in the offing is a proposed 2004 program to provide free antiretroviral drugs to about 140,000 Kenyan annually using money donated by the American government as part of President George W. Bush’s 15 billion campaign to combat AIDS in Africa. Other promising initiatives yet to bear fruit include a ‘corporate drive to provide anti-retroviral drugs’ by ‘nine multinationals affiliated to then Global Business Coalition on HIV/AIDS and the Global Fund to Fight AIDS, Tuberculosis and Malaria’. The multinational companies involved are AngloAmerican,
Bristol-Myers Squibb, Chevron Texaco, Daimler Chrysler, Eskom, Heineken, Lafarge, Pfizer and Tata Steel (Daily Nation, 2003, December 5).

**Freedom of Movement, Right to Work and Education**

A frustrating issue facing people living with HIV/AIDS is the open discrimination against them at places of work. While HIV infection does not necessarily equate to lack of productivity especially during the early incubation stages, prevailing societal stigmatization of HIV positive people has not spared many company employees. While some companies conduct pre-employment HIV screening, others terminate HIV positive workers under various pretexts. Yet another coping strategy for companies has been to ignore the problem and refuse to offer any company assistance to affected workers. A survey conducted by Pricewaterhouse Coopers in 2003 in the East African countries of Kenya, Uganda and Tanzania revealed that: “While most companies are aware of the need not to discriminate when hiring on the basis of a person’s HIV status, about 20 per cent still consider HIV status as a factor when recruiting and conduct mandatory tests” (East African Standard, 2004, February 11). Besides, while a few companies have woken up to the reality of HIV/AIDS and sought to provide antiretroviral medication for their infected employees, many continue to ignore the problem and to take it out on individual employees deemed as unproductive. As the survey report explains:

AIDS has a profound impact on businesses but, sadly, companies have taken an ostrich approach by burying their heads in the sand...Most companies have not attempted to establish what proportion of their work force might be infected by HIV/AIDS, either by direct enquiry or indirectly through modeling (East African Standard, 2004, February 11).

Discrimination for workers purely on medical grounds amounts to gross and illegal inhuman treatment and only adds up to the stigmatization and hopelessness of
PLWHA in the general society. While the law guarantees various basic freedoms, clearly the issue of AIDS was not a factor in its initial composition and loopholes exist that promote continued discrimination against PLWHA. The HIV/AIDS pandemic has exposed a Pandora's box of labor regulations issues whose favorable resolution would be beneficial for the process of democratic consolidation in Kenya.

Another unfortunate side to HIV infection is the fact that one is practically sentenced to a life of legal restrictions. Nowhere is this more obvious than in travel, especially across national boundaries. While short time travel is sometimes possible, extensive travel is strongly hampered by the need to obtain visas and even medical insurance. Among others, India and Canada continue to require foreign students to test for HIV as a precondition of entry. For PLWHA, travel to such countries has become practically impossible.

At a local level, prevailing shunning of PLWHA has made it almost impossible for the infected to mingle openly with people who are aware of one's status. PLWHA are treated as outcasts by superstitious societies who see them as either likely to spread their infection through contact, or even to bring their perceived 'bad luck' through association. While one would think such uninformed practices are a preserve of the unlearned, cases of discrimination against PLWHA include the case of public school head teachers who have refused to admit HIV positive children on the strength of the argument that such children will affect the uninfected.

Faced with persistent discrimination against their school aged HIV positive children, Nyumbani Orphanage under the leadership of a Jesuit priest, father Angelo D'Agostino, as previously alluded to, took the Kenyan Ministry of Education and the Nairobi City Council, whose jurisdiction the home falls in, to court over continued denial by Council supported public schools to admit HIV positive children. In a landmark and
unprecedented ruling in favor of PLWHA and disadvantaged children in general, on January 9, 2004, Kenya's high court ordered the Ministry of Education and the Nairobi City Council to immediately place the HIV positive children in various public schools around Nairobi. As one lawyer put it: "This is a resounding victory for life, liberty, and justice, over prejudice, stigma, and fear" (Daily Nation, 2004, January 10). The high court decision however fell short of declaring the obvious as requested by Nyumbani: That education is a fundamental human right. No doubt, the HIV/AIDS pandemic has brought to bear such important, but long prevalent discriminatory practices against such groups as the politically weak orphans, in sharing of public resources. It is such imbalances that the emergent institutional mechanisms have sought to address and in so doing, are contributing to the larger process of democratic consolidation in the country.

One of the main areas of activism is the fight to have HIV positive people treated in the same way with everyone else and to be accorded equal protection under the law of the land. Section 82 of Kenya's Constitution (1963) is categorical on the fact that: "No person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in performance of the functions of a public office or a public authority" (Constitution of the Republic of Kenya, 1963, Section 82; Kibwana, 1992, 11). While the old law remains passive to obvious discriminatory practices, pressure continues to build for more effective laws that put into consideration the HIV/AIDS realities. Indeed, HIV/AIDS is one of the major issues that a proposed new constitution for the country hopes to deal with.

The Rights of Children Affected by HIV/AIDS in Kenya

Unlike any other phenomenon in the history of sub-Saharan Africa, including slavery and various civil wars, the HIV/AIDS pandemic has brought in its wake the
biggest devastation on the sub continent's children--defined here as those below fifteen years of age. Not only have children become directly infected with the deadly HIV virus, they have also become victims of related issues emanating from the pandemic.

One such related effect is the high number of poverty stricken orphans that have accumulated across sub-Saharan Africa. According to official figures from Kenya's Ministry of Health, there were 1.1 million Aids orphans in the country by early 2004 (*East African Standard*, 2004, February 20). The figures reveal a steady increase in the number of orphaned children in the country. In 1999 for instance, UNAIDS put the figure of under fifteen years orphans in Kenya at 730,000. Worse still, Kenya National AIDS and Sexually Transmitted Disease Control Programme (NASCOP) estimates put the number of orphaned children under fifteen years of age at 1.5 million by the year 2005 (Human Rights Watch, 2001, Vol. 13 (No. 4A). The main reason accounting for this increase in the number of orphans is AIDS related deaths. The figures from Kenya are indeed part of a larger picture of orphaned children across sub-Saharan Africa. According to the Census Bureau: "By 2010, in five countries of eastern and southern Africa, over 30 percent of all children under age fifteen will be orphans, largely due to AIDS (Human Rights Watch, 2001, Vol. 13 (No. 4A).

The widespread deaths of family heads have resulted in an increase in the number of children-led homes. While many children start off with caring for their sick parents, such responsibility roles progress into becoming the primary caretakers and breadwinners for the rest of the siblings upon the parent' deaths. While the extended African family has long offered a source of refugee for orphaned children, the wide ranging effects of AIDS related deaths has seen the weakening of such systems. While grand parents have increasingly taken active child rearing duties all over again with the demise of younger parents, such cases are limited to a few families where the grand
parents are still healthy. In most other cases, the elder child is forced to grow up quick and take over the duties of parenting.

Heart wrenching tales abound of young children bearing a mammoth burden of taking care of their families with little or no help at all from the government. Indeed, existing customary laws, exacerbated by greedy relatives, have worked against such children, usually by denying them inheritance rights to property left behind by their parents. In such cases, many have been left with few choices for survival leading to involvement either in criminal activities or in prostitution.

The increased burden on children has meant an increase in school dropouts and a related increase in child labor as the responsible children seek to take care both of their sick parent and eventually of other young children. Eventually, such children are forced to search for means of income generation, opening themselves up to a host of work related abuses.

A UNICEF report (1999) on the situation of child laborers in six countries in Eastern and Southern Africa identified the situation of children being in AIDS-affected families as a "consistent and strong determinant of their being forced into the workplace, often into hazardous jobs" (UNICEF, 1999). Such jobs include prostitution, which according to the Human Rights Watch, "is classified as among the worst forms of child labor in the International Labor Organization Convention No. 182, which has been ratified by sixty countries, excluding Kenya" (Human Rights Watch, 2001, Vol. 13 (No. 4 A).

Another common form of employment, especially for young girls, is as domestic workers, a job where they are not only grossly underpaid, but also subjected to much physical abuse as various reported cases of mistreatment of domestic workers across Kenya reveals. Other readily available areas for child labor are as casual laborers in
large scale tea and coffee plantations where no labor guidelines are enforced, and the wages are extremely low. Sad to say, this crisis mandated engagement in income generating activities puts a stop to the children's pursuit of education and for that matter, future possibilities of career progression.

Increased poverty in the household also results in deterioration of health among children in a given home. As a World Bank policy report (1999) explains:

Childhood malnutrition is potentially one of the most severe and lasting consequences of a prime-age adult death. The death of a parent or other adult may lower the nutritional status of surviving children by reducing household income and food expenditure, and by reducing adult attention to childbearing ...Childhood malnutrition can impede intellectual development and thus impede a person's long run productivity...(223).

Such resulting health problems can also be combined with expected psychosocial distress for the children following the death of a parent. In cases where such distress could be militated against by a traditional structure of kinships and extended families that would take in such children and take good care of them, the increased level of deaths among various families has made it increasingly hard for orphaned children to find a soft cushion to land on. Worse still, a high level of stigmatization for people living with HIV/AIDS has resulted in orphaned children bearing the pain of being permanently ostracized in society long after their parent's deaths.

A related effect of the pandemic on children is the increase in the numbers of homeless children across major African cities. As a Human Rights report (2001), quoting a WHO/UNICEF report (1994) explains: "...AIDS has become another factor pushing children onto the streets, as parents die and relatives are unable or unwilling to provide care. Some street children are involved in sniffing glue or solvents, and their
level of sexual activity is high, bringing the risk of sexually transmitted diseases, including AIDS” (Human Rights Watch, 2001, Vol. 13 (No. 4A).

While the International Covenant on Civil and Political Rights (ICCPR), the U.N. Convention on the Rights of the Child, and the African Charters on Human and Peoples’ Rights and on the Rights and Welfare of the Child, all international human rights treaties which Kenya has ratified, guarantees children’s rights to ‘protection and care’ the legal situation in Kenya is far from the expected. Although the government was clearly aware, and indeed stated the importance of instituting special protection for the “at risk” children who frequently fall victim to neglect, abuse and violence, practically no efforts were taken to rectify the situation prior to the escalation of the HIV/AIDS pandemic and the demand for urgent action to protect children championed mainly by a section of the overly active civil society.

Kenyan law meant to protect children is not only full of loopholes, but it ends up emphasizing punishment for errant children, more than it governs protection for the vulnerable ones. As a study on the legal and judicial systems for children in the country revealed:

Under existing laws and practices, child law is enforced on the premise of protecting society from the errant child rather than protecting the child from errant members of adult society...it is common for children found roaming the streets to be arrested for no apparent reason...This practice has been justified on the principle that children need care and protection under the Children and Young Persons Act. However, close scrutiny shows that the objective is to "clean up" the streets and not to protect the children (Human Rights Watch, 2001, Vol. 13 (No. 4 A).

Where children’s laws like ‘The Children and Young Persons Act of 1964’ exist, the emphasis, as noted above, is on punishment, what a Human Rights Watch report aptly describes as: “the treatment of children in conflict with the law and not those in need of care and protection” (Human Rights Watch, 2001, Vol. 13 (No. 4A).
A clear indication that the issue of an increased number of orphans is a new development is the fact that there are very few provisions in Kenyan law for the care and protection of orphans. One such case is ‘The Law of Succession Act of 1981’, which addresses the issue of property inheritance for orphaned children. Section 26 of the act asserts the right of orphaned children or their guardian to apply to the court for help. The act also details the issue of holding property on behalf of young children until they are deemed old enough under the law-- which is eighteen years in the Republic of Kenya. As has been alluded to, and as will be seen in our discussion on emergent mechanisms, a purely HIV/AIDS era set of laws is ‘The Children’s Act of 2001’, passed mainly through collaboration between various members of the civil society and Kenyan law makers, with the full knowledge of the issues brought about by HIV/AIDS. The act sought to address various issues on the protection of children and echoes well recognized treaties and bills on children’s rights.

Women’s Vulnerability and the Need for Institutional Protection in Kenya

Exposure to the HIV virus has taken a likewise heavy toll on women, who comprise over fifty percent of the total infected in Kenya, a statistic that is repeated worldwide. According to figures released by UNAIDS in 2002, of a total estimated 2.5 million people living with HIV/AIDS in Kenya by the end of 2001, 1.4 million were women and girls between the ages of fifteen and forty-nine years. This reveals an alarming vulnerability for a generation of the most productive women, both in terms of human reproduction and also in sheer economic output. The Human Rights Watch report further expounds on this vulnerability in the assertion that: “The HIV infection rate in girls and young women fifteen to nineteen years old is about six times higher than that of their male counterparts in the most heavily affected region and three times
higher than males of that age in the country overall" (Human Rights Watch, 2003, March, Vol. 15 (No. 5A), 1).

A long outstanding issue of debate is the position of women in Kenya. Given the prevalence of diverse cultures in the country, the way women are treated in different situations is often a topic of passionate debate between traditionalists and human rights advocates. For the traditionalists, the role and position in society of each member of the group, including women, is well detailed in the community's cultural practices. It is unfathomable to let go of a group's way of life. On the other hand, human rights advocates point an accusing finger to prevailing societal practices as combining to dehumanize women and call for reforms to such cultural practices. A Human Rights Watch report on the position of women in Kenya summarizes the activists' view of the plight of women in the country as follows:

By just about any measure, women in Kenya are worse off than men. Their average earnings are less than half those of men. Only 29 percent of those engaged in formal wage employment are women, leaving most to work in the informal sector with no social security and little income... Women head 37 percent of all households in Kenya, a number likely to grow as AIDS claims more victims. Eighty percent of female-headed households are either poor or very poor, in part due to their limited ownership of and access to land. Girls receive less education than boys at every level, and women's literacy rate (76 percent) is lower than men's (89 percent). Violence against women is commonplace: 60 percent of married women reported in a 2002 study that they are victims of domestic abuse (Human Rights Watch, 2003, March, Vol. 15, (No. 5A), 1).

More than any other event in Kenya's history, the search for solutions to effectively counter the spread of the HIV/AIDS pandemic has drawn much attention to the issue of women in Kenyan society, especially the complexities brought to bear on their lives. As both state and civil society stakeholders dealing with HIV/AIDS have realized, the onset of the pandemic has brought in its wake an urgent need for an effective balance between the need to sustain cultural practices, which are the backbone of any society, and the need to address factors that promote women's vulnerability to HIV infection, as a major step in responding to the deadly pandemic. To
be sure, it is a widely traded misconception that women’s vulnerabilities to HIV/AIDS are attributable solely to their being in a traditional set up that favors men and an environment where such acts like physical violence against them is prevalent. In this scenario, women in many African countries are shown as weak and unable to negotiate issues involving timing for sexual activities, and even more significantly for the prevention of HIV/AIDS, the use of condoms. As the Sessional Paper No. 4 on AIDS in Kenya (1997) declares:

The low status of women in society reduces their capacity for decision making in matters related to sexuality, fertility and their lives in general. The majority of women therefore lack bargaining power and are unable to negotiate desirable and safe relationships...Efforts will be made to empower women to recognize their vulnerability (15/16).

While such abuses do exist, they do so at an individual family level. To point to these events as the main reason behind increased HIV infection is a negation of the true facts, and depicts a typical top-down prescription of what society needs, as opposed to a bottom-up emergence of issues important to a specific group or community. To be sure, negative generalizations of women’s position are prevalent in Kenya. Such a view was evident in former President Moi’s various demeaning public remarks to women. In 2001 for example, President Moi was quoted as having said the following in an address to women: “You can achieve more, can get more but because of your little minds, you cannot get what you are expected to get” (BBC News, 2001, March 8). Only to be expected, no official apology was forthcoming after this top-level outburst.

In the true sense of the anthropologist who pays attention to the smallest dynamics that make up relations in a given society, there is need for us to pay closer attention to the African family setting, to better understand the roots of prevalent complexities and in order to offer predictions on how to proceed next. That the African
woman's position presents a complex situation worth close scrutiny, is well
documented by Sarah Levine (1979) in her assertion that:

African women occupy a special place in the annals of cultural variation. As tillers of the
soil and market traders, they bear a subsistence burden unique among women of the
world. As the wives of polygynists in this most polygynous of continents, they share
marital rights to a degree that is rare in other places. Yet their relative freedom of
movement and independence of activity and spirit have long attracted the interest of
outside observers” (1).

Among many Kenyan societies, the traditional image of a woman, both as a
daughter, wife, and as a mother, is one of a matriarch endowed with a lot, if not
unlimited powers over her body and decisions, as opposed to a demure human being
open to the whims of a male dominated society. While many scenarios of a woman’s
power among diverse Kenyan societies abound, the following narration of a Luo girl’s
options over the institution of marriage will suffice in this case. As Ocholla-Ayayo
(1976) writing on the traditions of the Southern Luo of Kenya, explains:

A girl may resist a marriage arranged through her parents. She may postpone the
marriage temporarily under what they usually call “I am thinking about it”, Pod aparo! Or
she may have it abandoned altogether during “forced escort”, Ywecho or Meko, or
sometimes after she has reached the boy’s homestead “Nyako odagi”, “the girl has
refused”. She can show her flat no by holding a Euphobian tree called Bondo. A girl
may also show her flat negative willingness to enter a marriage by “eating” the earth,
Chamo Lo, or a handful of Sodom apples, Otange. She may climb over the anthill and
swear “Never to be married in that village”, or she may show it by an ultimatum that
unless her refusal is granted, then suicide is the next alternative. A girl may show her
refusal by running to a village where there is mourning or to a village where another
wedding has not been completed. If any of these cases appeared in her refusal,
murriage is cancelled automatically. The mother of the girl may also show absolute no
for the marriage of her daughter by turning her back on the members of the would-be
husband’s clan. She may throw her cloth at them, or climb an anthill and swear, “Never
will my daughter be married at that village”. If this happened she was given her
daughter to take back with her (140).

In the same breath, it is worth noting that among the same community (Luo):

“The refusal of brothers was never considered serious, and cannot stop a marriage of a
sister if the sister wants it” (Ocholla-Ayayo, 1976, 140).

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Despite this traditional empowerment however, there seems to be a disconnection between this traditional societal empowerment for women, and the actual positions that they hold in contemporary Kenyan society, and that can be seen as exacerbating their vulnerability in the face of the devastating HIV/AIDS pandemic. Such a scenario sets up the need to move beyond acceptance of widely traded and often quoted reasoning that point to powerlessness as the reason why African women are vulnerable, and that come complete with their disdain and impatience over particular African customs, into an exploration of context specific paradoxes why African women remain so vulnerable to the pandemic, despite their ability to influence important decisions at the community level.

To begin with a culturally related factor, at the level of sexuality, the institution of motherhood--a universal basis for family--and a role that every African community holds in high esteem, has unfortunately exposed women to a risky situation in the face of HIV infection. While African women have always been accepting of their roles as mothers as per societal expectations, the need to procreate in an environment where the HIV virus is a stealthy and silent killer moving from one person to another, has drawn attention to their vulnerability in the course of fulfillment of this societal role. The big question becomes: What next? In line with my general argument that external shocks, like the HIV/AIDS pandemic can become a conduit for better, more citizen participation intensive processes of governance, I hold that emergent policies could be fine tuned to better protect the institution of motherhood, which is a central cog for the family unit. Such policies could ensure continued procreation at minimal risk by opening up different avenues for both the active involvement of men and women in seeking favorable policies like those establishing accessible HIV testing centers, and
also for protecting vulnerable women through legal stipulations that for example, punish those who knowingly infect others.

There is need for easily accessible testing and counseling facilities and frequent information distribution to drum home the message of HIV/AIDS infection in Kenya. The goal here would be to allow for people to get tested for the HIV virus before marriage, or even before deciding on procreation. On the other hand, the existence of severe legal punishment for anyone who spreads the HIV virus knowingly, along with allowing of spousal notification in case of one partner’s infection, at the minimum, could go along way in resolving the need for balance to counter the aspect of a woman’s vulnerability against the need to have children.

Furthermore, such a keen sense of detail to an issue important to diverse African communities could ensure sustenance of traditional practices, for example wife inheritance among the Luo people of Kenya. To come down from an all knowing moralistic tower, as anthropologists will aptly point out, it is not fitting to expect a group of people to give up their way of life entirely. Culture as we know, is after all handed down from one generation to another, and must not stop with one generation. However, to encourage a combination of a people’s strong involvement in the formulation and implementation of policies that embrace their cultural practices, along with tough punitive restrictions for the errant in society who refuse to adhere to such mass sanctioned policies, is itself an advancement of what I describe later on in this study as ‘democratic practice’.

Another level to consider is that of women participation (or lack of) in governing, and its impact on their position in society. Closely allied to the need for a participation intensive policy environment, is the need for an all- inclusive input in law making. The HIV/AIDS pandemic has brought in its wake such dehumanizing practices as the
prevalence of defilement of young girls by older, HIV infected men, usually on the strength of a prevalent myth that such an act would cleanse one of infection (Weiss, Whelan, and Gupta, 2000). The post independent Kenyan law, though vocal on practically every aspect of criminal law, does not however go far enough to deter serious crimes, like defilement of minors. A major limitation for the effectiveness of Kenyan law is a failure to acknowledge the unique positions that gender imposes on the political context. For example, while Kenya’s ‘Evidence Act’ calls for open court participation of the victim, such a stipulation is by all means a failure to be sensitive to the stigmatized position of a rape victim, and in essence, a denial of one’s right to see justice done.

The following two newspaper accounts of recent happenings in Kenya capture the extent of victimization that young girls have been subjected to, and speak to the urgent need for the adoption of far reaching protective mechanisms to thwart the continued defilements of young girls. As a newspaper article recounts:

Tears flowed freely for love of a little girl when eight women MPs went to hospital to see a four-year-old who had been viciously raped and left for dead. The girl sat and chatted freely with them, forgetting for a moment the bandages that swathed her innocent young body . . . and the women MPs broke down and wept. Then they found their voices – and demanded that men who defiled children or raped women should be castrated. They also called on MPs to protect children from defilement by supporting a move to rewrite the law and equate defilement with murder. The girl, who cannot be identified for legal reasons, was kidnapped ...and subjected to a night of abuse in a nearby forest. She was discovered unconscious and covered in blood the following morning by an anxious neighbor, who had joined a search party from the village (Daily Nation, 2003, December 4).

In yet another incident, the body of a two years old girl was found after she was defiled and dumped in a field (East African Standard, 2004, March 18; Daily Nation, 2004, March 18). Such incidents drive home the need for action and pave the way for establishment of institutional mechanisms to protect young girls from such blatant abuse.
At another level, Kenyan statutory law recognizes customary law, a traditional set of mainly unwritten, though widely held traditional practices among different groups. While by no means ineffective in original setting, customary law is nevertheless inadequate in application to many situations. For one, such laws are strongly patriarchal in nature, leaving out an important feminine perspective in the application of laws. Furthermore, its emphasis on material payments as punishment for practically every crime including, murder, does not go far enough in deterring such crimes as child defilement. Although Kenya's constitution clearly prohibits various forms of discrimination, including those based on sex, it however takes away from its effectiveness by giving credence, and indeed differing to customary law in several instances. As has been the practice in post independent Kenya's judicial history, it is not unusual for a Kenyan judge to assert the prominence of cultural law in a particular case as his/her point of reference in delivering a controversial decision. Customary law is enforced by local village elders and even by government sanctioned local officials like the chiefs and village headmen.

Despite the existence of a legal framework, women continue to be subjected to institutionalized discrimination, well supported by the customary law and ignored by a none effective set of statutory laws. Despite various efforts by women activists to undo the imbalance throughout independent Kenya's history, little success if any had been gained prior to the start of a stepped up countrywide, multisectoral, mobilization as a means of responding to the devastating HIV/AIDS pandemic. The history of efforts to reform restrictive laws dates back to the early days of Kenya's independence in the 1960s when government commissions proposed changes in Kenya's family and inheritance laws (Human Rights Watch Report, 2001).
In 1981, the Kenyan parliament passed the 'Law of Succession Act'. As opposed to earlier proposals, the act fell far short of addressing important inequality issues, including on transfer or sharing of family property between husband and wife in cases of divorce or death. In 1985, a crucial bill with the potential of establishing a central marriage registry to harmonize customary, formal and religious based marriages and also establish a countrywide common law to enforce the equal sharing of family property between husband and wife failed to take off. The male dominated Kenyan parliament described the proposal as a means for disrupting the African traditional relationship between spouses.

A point to note at this juncture is the fact that the failure by Kenya's legislature to pass effective laws to protect women in the country can itself be interpreted as a factor emanating from the biased nature of representation in this law making organ. The Kenya African National Union (KANU) led government that ruled Kenya for forty years under two respective presidents, Jomo Kenyatta (1963-1978) and Daniel Arap Moi (1978-2002) had little room for women in its government. Both governments for example had no women as full ministers throughout their stay in power. The Human Rights Watch report on women in Kenya further captures this power sharing inequality in its assertion that: “Prior to the December 2002 elections, only 1.4 percent of government-appointed chiefs were women, and 2.6 percent of all local administrative authorities were women” (Human Rights Watch March 2003, Vol. 15 (No. 5A) 1).

It is clear from the preceding argument that in order to arrest the tide of abuse that has exposed women to risk, especially with the HIV virus lurking unseen in the shadows, there is need for far reaching punitive legislation against criminal activities that harm women. Further to this, to achieve the right balance in setting up such laws, there is need for increased involvement of women in the law formulation process,
either directly as representatives in parliament, or indirectly as civil society activists working along with the law makers to achieve what is desirable for women.

Though by no means conclusive, Kenya’s third government under the leadership of President Mwai Kibaki, and the National Rainbow Coalition (NARC), that came into power mainly due to cooperation between various parties and civil society organizations in the country can be seen as moving in the right direction for the entrenchment of sound democratic laws. Already, by early 2003, barely a month after taking office, President Kibaki’s government boasted of six women ministers, three of whom made history by becoming the first women full ministers in the country. Subsequent to this, unlike ever before, there were eighteen women members of parliament by early 2004, a significant voting block likely to pursue women’s interests in the legislative organ of government.

Another indicator of a democratic consolidation in the making is the new government’s determined pursuit of a new, citizen driven national constitution. By late 2003, the new government had determinedly embarked on deliberations over a new draft constitution for Kenya with participation from people’s representatives, including a good number of women, from across the country. To be fair, the process was started, albeit half-heartedly, by former President Moi’s government in 1998 mainly as a stalling strategy against demands for government change. The draft constitution, initially released in September 2002 after nationwide consultations with people interested in giving their views to the designated constitutional review committee, promises to undo many of the openly undemocratic practices enforced by the two previous governments.

A crucial point to consider is the fact that all these events are taking place with the backdrop of the devastating HIV/AIDS. While the democratic transition has opened
up the political space for citizen participation and activism, the HIV/AIDS pandemic has
drawn a sharp focus on essential issues that must be addressed if the country is to rid
itself off, or at least effectively stop further spread of the HIV virus. As will be seen later
in our discussion, issues raised in responses to the pandemic have become central in
the drafting of a new Kenyan constitution. These include the need to protect vulnerable
members of society, be they women, children, or people living with HIV/AIDS.

Another source of explanations for women's vulnerability could be seen as the
issue of loss of property ownership and related lack of economic empowerment.
Though slightly different from one group to the other, various Kenyan societies have in
place society sanctioned norms that may impede women's ownership of property and
ensure they remain subjugated in a male dominated society.

Among the Luo people, prevalent practices of both subjugating and disinheriting
women of property after a husband's death is evident through the cultural practice of
wife-inheritance by a relative of the deceased and the passing over of property from a
widow without sons to her husband's brother. Compliance with the cultural norms is
heightened by the fact that in Luo culture, a woman who is not inherited is deemed as
cursed. Such a woman is not allowed to fetch water from a common public place or
even enter people's houses for fear that she will bring her bad luck to others. Writing on
cattle ownership among the Luo, a valued symbol of wealth, Ocholla-Ayayo (1976)
asserts that:

...While the head of the homestead was still alive, he had full rights of disposal over
the head, though obligations of marrying a wife for each son controlled his misuse of
cattle.... If the head of the homestead dies before any of the sons become married, his
brother becomes the protector of the family and its cattle until after the marriage of the
first son (134).

Notice little is said of the mother and her daughters, though by extension, one would
imagine the daughters would get married and be party to someone's property.
Elsewhere among the Maasai people, a woman's right to property is closely tied to the male figure in her life. Paul Spencer (1993), in his narration of the life of a Maasai woman named Telelia from the Matapato clan explains thus: “She lives in a society where men are in charge—her father when she was a child, her husband when she was married, and her sons when she accompanies them to the Manyatta, and again her sons at some future point if her husband dies first” (Spencer, in Spear and Waller, 1993, 160). While a woman who gives birth to sons is assured of property ownership, though as a trustee for her sons, the future of a woman with no sons is not all that bright and she may end up dejected due to social stigmatization. By their own standards, the Maasai are a rich community. The wealth however has a strong male face to it, and women can only access it by proxy.

Among the Bantu Akamba people, property ownership is traditionally seen as a man’s domain. As Joseph Muthiani (1973) writes: “Family property belonged to the sons, as rightful heirs—that was the rule of the thumb...” (74). The same practice can be seen among the Gikuyu people. The only exception was that unmarried daughters could be given a piece of their father’s land, but usually only with the brother’s blessings and even then, not on an equal footing with them. In Kikuyu culture, women do not inherit their husbands’ property, but with male children, one could continue to live and hold on to matrimonial property, including land.

One of the major catastrophes brought on by the HIV/AIDS pandemic is the huge number of women without male children who have fallen victim to these traditional biases. Such occurrences result in a double tragedy as both the disinherited mother, a good case of whom are HIV positive, and before too long her daughters, are forced to engage in risky lifestyles that may severely affect one’s health, in search of basic means of daily sustenance. Though prostitution could be an option, other
dangerous occupations like brewing of illegal beer and sometimes even peddling drugs are feasible.

Out of fear of impeding misery and threat of violence and social stigmatization if one tries to go against set societal norms, many women are forced to comply with the degrading customary expectations. In so doing, they help perpetuate a culture of dependency on male figures and a lack of independence in social and economic affairs. Such a situation has far reaching repercussions. For one, many formerly financially independent women who have resisted in-laws advances after their husbands’ deaths, like in the case of the Luo people, have been reduced to a life of poverty. Kenya’s poverty levels have continued to rise. According to the government’s Poverty Reduction Strategy Paper for the Period 2001-2004, Kenya’s absolute poverty level was 52 percent in 1997. By the year 2002 however, this had risen to 56 percent (East African Standard, 2002, November 11). A good number of those afflicted with poverty are widowed women who have seen a turn in their economic fortunes after the death of a spouse.

Writing on the plight of women in Kenya, a Human Right’s Watch report (2003) aptly describes the connection between denial of women’s rights and the onslaught of the HIV/AIDS pandemic as follows:

The deadly HIV/AIDS epidemic magnifies the devastation of women’s property violations in Kenya, where approximately 15 percent of the population between the ages of fifteen and forty-nine is infected with HIV... They not only lose assets they could use for medical care, but also the shelter they need to endure this debilitating disease. Moreover, the failure to ensure equal property rights upon separation or divorce discourages women from leaving violent marriages. Those women risk exposure to HIV infection due to the correlation between HIV/AIDS and domestic violence, which often involves coercive sex, diminishes women’s ability to negotiate safe sex and condom use, and impedes women from seeking health information and treatment (Human Rights Watch March 2003, Vol. 15, (No. 5A), 1).

Besides this direct affront on the widows’ rights to own property and to make their own choices, women have become the primary caretakers for people living with
HIV/AIDS across sub-Saharan Africa. Faced with an increasing number of patients occupying beds in all the major hospitals, the Kenyan government has strongly urged that HIV/AIDS patients be taken care of at home, a double pronged strategy aimed at both enhancing comfort for the stigmatized and discriminated against patients, and freeing up hospital wards. The effect of this policy on women has been to add on to their 'burden'. In cases where older women are either dead or too weak to help, young girls are being forced to drop out of school to become the primary caretakers of both the sick and the rest of the family. As Hope Chigudu (2001) explains, such occurrences: "Take advantage of the fact that African women exude a passion for living no matter how dire the situation, a passion for love and family, for traditions that confirm a heritage, a passion for people and the land. In fact, a passion for everything that epitomizes life" (par. 8).

Use of Political Power and the Impact on Policy Making Processes

More than any other political crisis in independent Kenya, the HIV/AIDS pandemic has drawn much attention to the fact that existing policy processes are overly inadequate in addressing issues requiring both immediate attention and widespread involvement. The onset of the deadly HIV/AIDS crisis in Kenya (1984) coincided with a political era of dominance by the executive in all areas of policy making and concentration of political power in the hands of a few state officials allied to the president. While the administrative structure of the country as set in both the Constitution and in various policy guidelines, most notably Sessional paper No. 10 of 1965 on 'African Socialism', favors decentralization of power at several levels and the widespread involvement of citizens across the country, a domineering style of personalized rule was adopted by the country's first president, Jomo Kenyatta and further entrenched during his successor, President Moi's, twenty four years in power as
the country's second post independence president (Anyang' Nyon'go, 1989; Barkan, 1995; Chege, 1995; Hyden, 1995). A significant repercussion of this political culture on the fight against HIV/AIDS is the clear disconnection between the state and civil society based organizations agitating for action, who were initially seen as trouble makers by the government officials.

Kenya's post independence Constitution adopted in 1963 and expanded on in 1964, clearly explained how power was to be shared, and explicitly detailed the process of public policy making in the country. While state power was to be vested in three main branches namely: The executive, legislature and the judiciary, the institutional framework for policy making was to extend to both local authorities and political parties (Barkan, in Hyden and Bratton, 1994; Gertzel, 1970, 125; Jackson, 1970; The Constitution of Kenya, 1963; 167-192; Odhiambo Mbai, in N'gethe and Wasunna, 1999, 30-31). Odhiambo Mbai (1999) elaborated on the relationship between the various branches in policy making in his assertion that:

"Whereas the executive could initiate public policies, both regulative and developmental, all the policies had to be approved by the legislature before they could be implemented. At the same time, whereas the judiciary was charged primarily with the responsibility of administering all regulative policies, it also acted to moderate the excesses of the executive and the legislature by ensuring that the two institutions operated within the constitution" (31).

The first few years of Kenya's independence saw the emergence of a clearly identifiable institutional framework of decision making, what Barkan (1992) referred to as the emergence of a 'governance realm' (Barkan, in Hyden and Bratton, 1992, 168). The policy making structure was evident in the state's establishment of a tiered hierarchical system of policy formulation. In terms of governance, the country was divided into provinces headed by provincial commissioners, then districts under district
commissioners, divisions under divisional officers, locations headed by chiefs and sub-locations being the smallest administrative units and headed by sub-chiefs.

In terms of policy making, at the head of the ladder were the members of the cabinet, followed by various planning units within the ministries that were to be headed by permanent secretaries. Below those came the Provincial development Committees (PDCs) that were to be found in each of the country’s eight provinces. Under the PDCs came the District Development Committees (DDCs) spread across each of the country’s districts. Below the DDC’s were community development committees both at the locational and actual project levels. The duty of each of these organs was to coordinate the implementation of projects which had the blessings of the central government. To further strengthen this aspiration, the government established parallel advisory units, namely the Provincial Development Advisory Committees (PADCs) and District development Advisory Committees (DDACs), charged with the task of identifying “various local development needs”. The top advisory official was to be the Provincial Planning officer, charged with among other duties, actual gathering of field information and advising of the provincial commissioners on various developmental issues in the province (Jackson 1970, 184, 192; Odhiambo Mbai, in N’gethe and Wasunna, 1999, 31).

The key focus of this structure was to afford a clear channel of communication between the top (state) and bottom (grass root) levels and ensure an efficient parallel implementation of developmental projects across the country. Yet while the initial structure offered a potentially effective system of policy making for the young country, subsequent political developments presented the country with a much different political reality and strongly undermined the development of a well structured institutional framework for policy making in Kenya. As will be discussed here, this political sabotage
of institutional formation was to prove very costly as the country grappled with the HIV/AIDS pandemic across the different levels of society.

Compared to many other African leaders of his generation, president Kenyatta comes off favorably as a confident leader willing to delegate political power and allow limited democracy to take shape in the country. As Barkan (1992) explains: “Although Kenyatta’s regime was an authoritarian one, especially during its latter years, and while he ruthlessly repressed any direct challenge, it was not a system marked by the excesses of personal rule found elsewhere in Africa and later in Kenya itself...While Kenyatta’s Kenya was not democratic, it was nonetheless a relatively open and resilient system with multiple secondary centers of power and a measure of real competition-- and hence accountability-- at the local and regional levels” (Barkan, in Hyden and Bratton, 1992, 175).

Despite this favorable rating however, Kenyatta’s overall strategy to hold on to political power saw the beginning of a gradual advancement of several political trends with the cumulative effect of significantly disrupting existing policy process institutions. While the policy making process was initially well laid out in Kenya’s Constitution and grounded in various institutions, several political factors intervened to make the various decision making units practically obsolete. These could broadly be identified as: 1) The emergence of ‘harambee’ philosophy and its affront on existing formal institutions and 2) the massive concentration of political power in the hands of the president and the systematic suppression of civil society.

‘Harambee’ Philosophy’ and the Growth of Patron-Client Networks in Kenya

Kenyatta’s preferred approach to politics was characterized by his espousing of the ‘harambee’ philosophy. Simply defined, ‘harambee’ is a Swahili word that means ‘let us pull together’ (Widner, 1992; Mutiso, 1975). It was a philosophy taking root from
traditional African societies' values for communal work and extended kinship relations. The basic understanding behind the philosophy was that, as opposed to looking up to the central government for help, each community could organize itself to advance various development projects through individual voluntary contributions of whatever one wished. It is important to point out that this was a significant departure from the formally constituted policy making system, complete with provincial and district advisors to advise the government of potential areas for development.

While the structure of the constitutionally mandated public policy process in post independent Kenya could be seen as essentially non-competitive, the emergence of the ‘harambee’ ideology as President Kenyatta’s preferred style of governance, beginning in 1965, brought in its wake a strongly ingrained culture of patron-client relationships and competition for the president’s attention among both members of parliament, influential government officials and even from civil society organizations wishing to get a share of the wealth that the president was all too willing to dish out to his perceived supporters. While the basic tenets of the ‘harambee’ philosophy do sound quite revolutionary as a means to development for a young country, the politicization and accompanying corruption that came to characterize this process of development strongly eroded the policy making process and left public policy vulnerable to the whims of a few powerful elites.

From the beginning, as various scholars have aptly pointed out, the ‘harambee’ concept was open to interpretation. Since its advent in the early sixties, the word has over time acquired many political contextual meanings. One of the earliest sociopolitical contexts for ‘harambee’ is what Gideon Mutiso (1975) explains as a political strategy by Kenyatta’s government to extend a hand of welcome for both minority European settlers and Asian businessmen who remained in Kenya after
independence and who were eager for a chance to fit in the now overly indigenous Africans’ dominated state. As Mutiso (1975) wrote: “It is conceivable that the Europeans, who had pushed the idea of multiracialism in the last days of the colonial period, saw it as an opportunity for incorporation into the emergent society...It is also conceivable that to the Asians it offered an umbrella under which they could stay” (268).

At another level, 'the spirit of 'harambee' could be seen as a genuine strategy to mobilize a young nation, both at the leadership and the common person’s levels. As initially confidential government documents reveal, one of the main purposes for formulating a system to involve Members of parliament MPs “in constituency-based projects, in what was to emerge years later as routine weekend harambees, started as a way to keep them busy” (East African Standard, 2004, February 1). This was partly due to the young government’s concern over the fact that "excessive drinking" was becoming a preoccupation for a good number of MPs whose only obligation was to attend parliament in Nairobi (Secret government document in revealed in East African Standard, 2004, February 1). Indeed as an age old Kenyan joke holds, an MP was said to make only one technical appearance in the village every five years to get the necessary votes and then disappear back to Nairobi. Widner (1992) explains the benefits of ‘harambee‘ to the community at large as follows:

At one level harambee bespoke a preference for local-level community action to achieve collective benefits or "development." At another level it embodied a strategy of bargained exchange; Kenyans could "pull together" by compromise—by sacrificing rewards or labor in the knowledge that at some other time or through private means the contribution would be reciprocated (131).

The initiation of the 'harambee’ system was further empowered by President Kenyatta’s elimination of interparty competition in 1969 when a leading opposition party—Kenya People’s Union-- was banned and Kenya resumed its ‘defacto’ one party
status. In contrast to his elimination of opposition and as such competition at the national level, Kenyatta strongly encouraged a culture of internal competition within the single existent and ruling party KANU. As Barkan (1992) narrates:

At the same time as he suppressed competition between parties, Kenyatta began to institutionalize a significant measure of competition within KANU. Beginning with the parliamentary elections of 1969, and continuing through the elections of 1974 and 1979, almost any adult member of KANU who supported the party’s manifesto could become a candidate for parliament. Parliamentary elections were open contests that usually attracted multiple candidates” (Barkan, in Hyden and Bratton, 1992, 172).

As it turned out, harambees became a good measure of an MP’s performance at the constituency level. To be seen as working for the electorate, MPs now competed to initiate as many development projects at the constituency level as time would allow through formally organized events where everyone would contribute any amount of money at their disposal. As only to be expected, no MP wanted to be overdone both in terms of the frequency of events and, even more so, in terms of the actual amounts contributed. With ever increasing demands to produce resources for their constituents, MPS turned to the central government for handouts. President Kenyatta’s enviable position at the top of the distribution chain is worth mentioning. Through manipulation of the existing Constitution to situate more decision making power in the hands of the president, Kenyatta became the single custodian of key government positions which he shared at will with his favored candidates.

One such new constitutional stipulation was Act 16 of 1966. The amended Act took away exclusive power to hire and fire civil servants from the Public Service Commission-- a constitutionally mandated impartial institution-- and empowered the president to not only henceforth hire and fire civil servants at will, but also to determine who was to get tenure of office, a hitherto constitutionally stipulated fact.
As the sole distributor of key government jobs, including ministerial and top corporation managerial portfolios, Kenyatta's good grace was much courted by many. Loyalty to the president became a central means for ensuring a ready source of resources, which then could be turned into 'harambee' contributions and subsequent points for longevity in publicly elected office. Such a network of relationships undoubtedly led to a strongly ingrained system of patron-client relationships that was repeated at several tiers, from the national to the village levels. Widner (1992), quoting David Leonard, places such political phenomena in a wider elaborative context in the statement that:

Where power is concentrated in the hands of a head of state, the ability to secure economic demands derives primarily from personal relationships with the president and his close associates. To gain access to resources, politicians, civil servants, businessmen, and farmers alike seek to cultivate patronage networks, which may increase stratification in the society but confer mixed economic advantages upon their participants. Personalization of power, where that power remains effective, thus attenuates interest-group formation (171).

Yet another line of interpretation can be pursued in regard to political events in Kenya. In contrast to the notion that a single political party interferes with the practice of democracy by restricting competition, the post 1969 situation in Kenya presents us with an interesting case for theoretical formulation. Although it is true to say that the practice of democracy was severely restricted at the national level through President Kenyatta's strong hold on power, competition could be seen to thrive at the constituency level. Such a situation would lead us to argue that the further away from the center of national power, the bigger the chance of freedom to choose for the citizens. A downside however to such an argument, as well illustrated by the need to partake in the sharing of national resources, is that such freedom of choice may be severely restricted by selfish personal goals as opposed to idealistic goals like improvement of the welfare of an oppressed group in society. The sum total of such a
practice unfortunately is a sabotaging of democracy through the inculcation of a culture of votes for sale to the highest bidder.

Kenyatta’s ‘Harambee’ philosophy was expanded on by his successor, President Daniel Arap Moi beginning in 1978. Like Kenyatta, Moi was the chief distributor of government resources mainly to his favored tribesmen and political allies in the ruling party KANU. The combined hold on political power by the two leaders, which spanned a prime forty years of Kenya’s history (1963-2003), saw to the growth and institutionalization of a partial, informal system of patron-client relationships at the expense of detailed impartial, formal public policy processes. Though itself a prime mover of development projects at the grassroots level through appeals to the African traditional communal way of life, the ‘harambee’ philosophy nevertheless effectively eroded the preference for constitutionally mandated policy making institutions.

Personal gain through political networks became more the norm as opposed to a systematic process where policies benefiting the whole community were propagated. With the need to respond effectively to HIV/AIDS, a pandemic that recognized no social stratification and affected all in society, the institutionalized patron-client mode of transacting business was overly inadequate. This lack of a solid policy making process was to become a major stumbling block to the initial efforts to fight the spread of the virus.

**Wapende Wasipende: Constitutional Amendments and the Emergence of Road Side Declarations as Policy Decisions**

While the practice of the ‘harambee’ philosophy clearly marked the President as the top patron whose favor was to be sought often and whose wishes were uncontestable, the most destructive factor to the existence of impartial policy processes was perhaps the deliberate manipulation of the country’s constitution to
firmly place various policy decisions under the direct control and whim of the president and to make his every spoken word, regardless of the setting, an enforceable policy. Some of President Moi's most notable policy prescriptions were indeed impromptu announcements delivered usually on a stop to talk to gathered crowds who would normally line up along his road of passage to cheer him on.

Given this prominence of the executive in decision-making, the role of the president as a key policy maker in Kenya is of utmost significance in analyzing the country's initial failure to respond effectively to the HIV/AIDS crisis. A factor to consider is the prevailing policy making environment and how this may have contributed to the state's initial lack of effective policies to address the pandemic even as the numbers of HIV infected continued to skyrocket. It is worth noting that it took fifteen whole years for the Kenyan government to put in place an acceptable initial policy for facing the HIV/AIDS pandemic. To better understand the evolution of the prevailing policy making environment, it is imperative to analyze the historical process of how the president manipulated parliamentary discourse to amass policy-making power. As will be discussed here, the political history of independent Kenya is full of instances of manipulation of the Constitution by the government of the day to allow for more power in the hands of the president.

The top-down, executive controlled policy making process that gradually became the norm in Kenya has proven to be a major hindrance to the formulation of effective HIV/AIDS policies. Among others, though Kenya has always enjoyed an active civil society even before independence, practically no policy initiatives were forthcoming from this sector. To the state, especially during President Moi's tenure in office, civil society was seen as working to antagonize and destabilize the government. While various civil society based organizations, including local churches and women...
self-help groups were quick to react to the HIV/AIDS crisis in their localities, their appeals for action went unheeded by a government long used to setting the agenda of the day.

Contrary to suggestions from a cross section of civil society activists that a more society wide approach was needed to address the HIV/AIDS pandemic, to the government, the HIV/AIDS crisis was a purely medical issue, which could only be solved through formulation of medical solutions. Thanks to a personalized, top down policy-making process, the government thus failed to capitalize on this early chance to formulate a multisectoral approach to the epidemic. Writing on leadership challenges and the need for democratic change in Kenya, Anyang' Nyong'o (1993) concisely summarized the prevailing situation in Kenya as one marked by: "...arrogance of power, the wapende wasipende (whether they like it or not) syndrome in the Kenyan Government" (8). Moi's government's strong hold on power and intolerance for the opposition is well characterized by Widner (1992) in her comparison between Moi and Kenyatta's approach to politics. Although the similarities may in cases be more compelling than the differences, as Widner explains:

"Moi introduced a different slogan and a different conception of appropriate political strategy. "Nyayo!" ("Follow in the footsteps") took the place of "Harambee!" Although the slogan was intended to convey respect for Kenyatta and highlight the need to pursue the course the first president had set for the country, nay acquired a second interpretation: do what the Office of the President tells you to do. Politics as control began to take the place of politics as exchange (130).

One such area of open control was the government's effort to manipulate the country's constitution. To be fair, Kenyatta's government, having initially accepted the constitution as an emergency measure to ensure the country's gaining of independence in 1963, set in motion a series of amendments that were to see the Kenyan constitution amended at will to fit the whims of the president. Parliament, the house of the people's representatives, became nothing more than a rubber stamp to
legitimize the president's desired decisions. As prominent Kenyan lawyer Githu Muigai stated in making a case for the need to rewrite Kenya's Constitution in 2001: “Speak of a dismantled Constitution and you will be speaking about the Kenya Constitution. Since 1963, the Kenya Constitution has been 'tampered' (read amended) with so much that it can no longer be classified as rigid...Since the Constitution was drafted, there have been 30 amendments which have created anomalies in the document” (Muigai, in Constitution of Kenya Commission report, 2001).

Each of these amendments left the president relatively stronger at the expense of the corresponding institutions. Notable among these frequent amendments (average of one amendment per year since independence) is the 4th Amendment-- Act 16 of 1966, which as earlier mentioned, gave the president power to hire and fire members of the civil service at will. The same amendment also granted the President powers to rule by decree in the remote North-Eastern region of Kenya.

The 9th Amendment-- Act 16 of 1968-- abolished existing provincial councils, a mainstay in the initially detailed policy making process, and granted the president more power to allocate both provincial and district administrative boundaries without necessarily consulting the local people. This was a clear move to eliminate any remaining forms of regionalism in the country and to centralize power in the hands of the all powerful president.

The main effect of these early constitutional amendments, that were consolidated together as Act 5 of 1969, was to effectively centralize power in the hands of the president and to erode parliament's ability to make important decisions as the house of representatives continually abdicated its responsibility and granted its power to the executive.
While Kenya remained an unofficial one party state during Kenyatta’s era and
indeed the first few years of Moi’s rule, the 19th amendment-- Section 2A of 1982
officially confirmed Kenya as a ‘de-jure’ one party state. Most significant in this
amendment was the government’s outlawing of any opposition in the country. The
ruling party KANU became practically synonymous with the government. Party policy
was practically national policy and opposition in any form was viewed as an act of
treason. Other controversial amendments that saw the state further erode the now
overly diminished independence in policy making was the 22nd amendment of 1986.
The amendment took away formerly constitutionally guaranteed securities of tenure for
two high ranking custodians of public policy namely: the Attorney-General and the
Auditor general.

The most direct implication of such a move was the fact that the executive
could manipulate the country’s constitution at will and further, had no checks
whatsoever on public spending. Though it is accurate to say that both of these offices
had long been compromised by the all controlling executive, actual constitutional
legitimacy for such an action only went to prove the president’s determination to run
the country single handedly.

To further support this assertion, the 24th amendment of 1988 not only
empowered the now overzealous police to hold suspects for up to 14 days without
prosecution for any type of crime regardless of how minor, but also likewise
outrageously did away with the securities of tenure for both the judges of the High
Court and the Court of Appeal as well as that of some members of the Public Service
Commission. As Githu Muigai (2001) explains, a country that claims to be democratic
must adhere to a number of values. Important aspects include separation of powers—
evident in the freedom and ‘impartiality of the judiciary’ and the ‘political neutrality’ and

While the subsequent amendments took power away from parliament in favor of a strong executive, two new amendments, amendments 25 and 27 are significant as turning points in the respective presidents’ amassing of political power. The two amendments can in a sense be seen as seeking to bring back some sanity into the Kenyan Constitution. While amendment 25 restored all the formerly denied securities of tenure (those of the members of the Public Commission, the Auditor-General as well as those of the various judges and the Attorney-General), amendment 27 (1991) removed the strongly controversial section 2A that made the country an official one party state. In so doing, the government reluctantly invited multiparty politics back into Kenya.

Important to note here is that both of these progressive amendments came in the wake of ever increasing pressure on the government, both from civil society activists who risked not only police brutality but detention without trial, and from international donors whose focus turned to human rights and governance issues in Africa and elsewhere in the developing world, after the collapse of the cold war.

As can be observed, the common factor in the amendments to Kenya’s post independence Constitution was the drive to prop up the powers of the executive by eliminating all possible avenues of opposition and to center all policy making powers in the hands of the president. Another possible explanation, as Muigai (2001) points out could also be seen as: “The desire to grapple effectively with the challenges of
governance in an emergent nation” (Muigai, in Constitution of Kenya Commission report, 2001). The immediate result of this reversal in policy processes was the emergence of the now infamous and mostly contradictory series of presidential decrees in Kenya, especially during President Moi’s reign. As Odhiambo Mbai (1999) narrates: “Unlike Kenyatta...Moi resorted to issuing populistic policy statements and directing civil servants to implement them. The press always referred to them as presidential decrees despite the fact that the constitution provided no powers to the president to pronounce decrees” (Mbai, in Ng’ethe and Wasunna, 1999, 45).

Examples of such decrees abound, including short-lived declarations in 1978 granting free primary education and free milk to school going children across the country (Daily Nation, 1978, December 13; Mbai in Nge’the and Wasunna, 1999, 46). The lack of practicality for many of the spur of the moment decisions made them impossible to enforce. Worse still, such decrees became a real burden to members of the civil service keen on implementing earlier existing policies as they were often faced with a confusing situation, thanks to an unending stream of directives ‘from the top’.

Table 5 (next page) details both the expectations and actual outcomes of the different actors in public policy formulation in Kenya from independence in 1963 to 2000. The timing is significant as the year 2000, in my conception, marked the beginning of the multisectoral approach to policy formulation in Kenya. This illustration of the structure of policy making in Kenya is based on an adaptation of classical functionalist scholars’ view of political transactions as clearly structured between state and none-state actors (Almond and Powell, 1960; Easton, 1965; Olowu and Soumana. Eds. 2002, 57). As Easton emphasizes, each system has both a set of inputs and outputs.
Table 5: Political Institutions and Public Policy Processes in Kenya (1963-2000)

<table>
<thead>
<tr>
<th>FUNCTION</th>
<th>STRUCTURE</th>
<th>EXPECTED ROLE IN PPP (H, M, L)</th>
<th>ACTUAL ROLE IN PPP</th>
</tr>
</thead>
<tbody>
<tr>
<td>NONSTATE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Socialization</td>
<td>Educational institutions</td>
<td>HIGH</td>
<td>LOW</td>
</tr>
<tr>
<td></td>
<td>Community organs</td>
<td>MEDIUM</td>
<td>LOW</td>
</tr>
<tr>
<td>Interest Articulation</td>
<td>Interest groups/civil society</td>
<td>HIGH</td>
<td>MEDIUM</td>
</tr>
<tr>
<td>Interest Aggregation</td>
<td>Political parties</td>
<td>HIGH</td>
<td>MEDIUM</td>
</tr>
<tr>
<td></td>
<td>Private sector</td>
<td>MEDIUM</td>
<td>LOW</td>
</tr>
<tr>
<td>Political communication</td>
<td>Media</td>
<td>HIGH</td>
<td>MEDIUM</td>
</tr>
<tr>
<td>STATE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rule making</td>
<td>Legislature</td>
<td>HIGH</td>
<td>LOW</td>
</tr>
<tr>
<td>Rule Execution</td>
<td>Presidency</td>
<td>HIGH</td>
<td>HIGH</td>
</tr>
<tr>
<td></td>
<td>Cabinet</td>
<td>HIGH</td>
<td>MEDIUM</td>
</tr>
<tr>
<td></td>
<td>Civil service</td>
<td>HIGH</td>
<td>MEDIUM</td>
</tr>
<tr>
<td></td>
<td>Local Governments</td>
<td>HIGH</td>
<td>MEDIUM</td>
</tr>
<tr>
<td>Rule Adjudication</td>
<td>Judiciary/Quasi-judicial organs e.g.</td>
<td>HIGH</td>
<td>MEDIUM</td>
</tr>
<tr>
<td></td>
<td>Electoral Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>INTERNATIONAL</td>
<td>Funding/Advisory</td>
<td>Foreign capital</td>
<td>LOW</td>
</tr>
<tr>
<td></td>
<td></td>
<td>International NGOs</td>
<td>HIGH</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>MEDIUM</td>
</tr>
</tbody>
</table>

PPP= Public Policy Process; H= High; M= Medium; L= Low


Such was the public policy environment that heralded the onset of the HIV/AIDS in Kenya. The pandemic exposed the system’s weakness in passing effective policies and dictated the need to consider a more involving process of policy making, if progress was to be achieved in the mounted responses.

A specific factor to consider concerning HIV/AIDS pandemic is the total failure by the president as a decision maker to react effectively to the crisis. Faced with a crisis of huge proportion, President Moi’s initially firm rejection of the crisis was not only self-defeating in the fight against the pandemic, but can also be seen as having contributed to further spread of the virus. While the historical weakening of policy making institutions through calculated constitutional amendments can be seen as a
broader system failure, this second factor places the blame squarely in the hands of the top office holder. For one, President Moi was reluctant to get involved in a campaign involving issues of sex, seen as taboo and not a topic for public discussion among all Kenyan communities. The President's stance was partly borne of the mistaken belief that involving himself with issues pertaining to HIV/AIDS would undermine his position as a traditional leader and legitimacy as the upholder of the country's cultural heritage. On another level, the need to ward off a potential economic downfall as discussed earlier, brought about by portrayal of the tourism dependent country as a dangerous place for visitors forced the President to submerge the country's official position in denial and retribution against anyone bold enough to suggest HIV/AIDS was a growing problem in the country.

International Actors and the Effect on the President's Public Policy Decisions

While the president has so far been portrayed as an independent actor seeking to control various political outcomes through advancing of favored policy initiatives, a significant factor to consider as having an effect on the president's use of power is the ever-present hand of international actors (Olowu 2002; Mbai, in N'gethe and Wasunna 1999; Widner, 1992). Either as allies or as adversaries, international actors including both foreign investors, international humanitarian NGOs and even Western governments have proven to be a force to consider for many leaders in developing countries.

On one side, Kenya's two first presidents had a history of forming strong alliances with both the British government and other foreign investors in the country. President Kenyatta, a British educated politician, was always eager to cultivate good relations with the west. Indeed, one of Kenyatta's first crusades right after independence was to make Kenya a multiracial country, with strong government
assurances for protection and goodwill being issued to the many white settlers who remained after independence. Kenyatta’s big heart for capitalism ensured his favoring of policies seen as conducive to international business, and to a big extent, emergent policies reflected the wishes of the majority foreign owners of capital. As Odhiambo Mbai (1999) explains: “...The executive has often shared this role (policy making) with international and domestic private capital...” (Mbai, in N’gethe and Wasunna, 1999).

On the other hand, with the growth of opposition against Kenyatta’s successor, and the onset of pressure by donor countries like the U.S. on President Moi to reform his governance and set in motion a transition to democracy beginning in 1990, the policies of the day could be seen as a direct outcome of ongoing political pressure on the state. Widner (1992) elaborates on the alliance between Kenya’s political opposition and foreign donors in the following terms:

In an effort both to lower the risks associated with protest and increase bargaining leverage, opponents of the government sought to establish ties with groups in the international community. In the Cold War period, Odinga had tried to sustain his position by turning to the east. The tactic proved unsuccessful. In the post–Cold War period, individuals and groups sought to ally themselves with internationally recognized churches, bar associations, or other movements, or to affect the conditions multilateral and bilateral donors attached to loans and grants to the government of Kenya (171).

Response to the HIV/AIDS crisis has further cemented the position of influential international organizations like the World Bank as forces in the emergence of AIDS policies in Kenya. I argue that, while the donor funds are necessary for governance purposes and are needed to fuel a successful response to the HIV/AIDS pandemic, involvement by international actors in setting conditions for the behavior of both state and none state stakeholders benefiting from the funds is limiting to the process of participation. Where a bottom-up approach could elicit a communities’ listing of its priorities, lending rules governing the conduct of stakeholders could restrict adaptation of such priorities, in favor of formalized top down approaches.
Conclusion

This chapter has explored four broad issues that must be immediately addressed as a necessary step in responding to the HIV/AIDS pandemic. Further, each of the three issues corresponds directly to the advancement of democracy. If resolved, each of these issues would contribute significantly both to the war against HIV/AIDS and also to the consolidation of democracy in Kenya. The issues are: human rights, gender empowerment, policy process and advocacy, and use of state power. This chapter has discussed in detail the prevailing situation before the emergence of various institutional mechanisms that I argue, have transformed the political developments in Kenya. The following chapter will detail these emergent mechanisms and set up the discussion of how these new forms and means impact the ongoing search for democracy.
CHAPTER IV

ASSESSING INSTITUTIONAL CHANGE IN KENYA: THE EMERGENT INSTITUTIONAL MECHANISMS FOR RESPONSE TO HIV/AIDS

How will different societies respond to AIDS? What value systems will withstand the fear that will sweep through the people? Who will know better than to blame the victims? (Mathilde Krim (1986), in AIDS: Public Policy Dimensions, XV).

This chapter takes off from the argument that external shock can serve as a catalyst for institutional change as organizations mobilize to cope with important issues delineated in responding to the situation at hand. Responses to such external shock may be seen as furthering democratic consolidation in young democracies, or in setting conditions necessary for the takeoff of democracy in undemocratic states through emergent institutional mechanisms. Taken as an external shock, the HIV/AIDS pandemic in Kenya offers us a platform for the study of both emergent institutional mechanisms and the reorganization of old ones as society mobilizes to counter the pandemic, and their impact on the process of democratization in the country.

To set terms straight, this research pays attention to Douglass North's (1993) assertion that: “The study of institutions and institutional change necessitates as a first requirement the conceptual separation of institutions from organizations”. As North (1993) explains, “Institutions are the rules of the game and organizations are the players. The interaction between the two shapes institutional change” (1). This chapter will focus on emergent AIDS era institutional mechanisms and the organizational forces behind their emergence. For the purpose of the study, the term
'institutional mechanisms' is used to denote a full range of strategies and structures involved in the response against HIV/AIDS.

The emergent institutional mechanisms to be discussed span a wide spectrum, ranging from new AIDS policies, new regulations, emergent policy making structures and procedures, and emergent legal institutions that have come up during the HIV/AIDS pandemic era. The organizations to be considered as the forces driving institutional change include both political organizations (state related) and social and religious organizations (civil society based). That organizations are instrumental as forces behind institutional change is well justified in North’s (1993) further assertion that:

...Organizations induce institutional change as they perceive new or altered opportunities. They induce it by altering the rules (directly in the case of political bodies; indirectly by economic or social organizations pressuring political organizations); or by altering, deliberately and sometimes accidentally, the kinds and effectiveness of enforcement of rules or the effectiveness of sanctions and other means of informal constraint enforcement. Informal constraints will be altered as organizations, in the course of interaction, evolve new informal means of exchange and hence develop new social norms, conventions and codes of conduct. In this process "obsolete" informal constraints will gradually wither away to be replaced by the new ones (Working paper,1).

The broad organizational response to the HIV/AIDS pandemic in Kenya has led to a process of institutional change in several significant areas with a resultant positive impact on the process of democratization in the country. As will be discussed here, institutional change is noticeable in such areas as: the buildup of legal institutions to protect marginalized groups, the institutionalization of a mechanism for joint policy making between the state and civil society, and the institutionalization of citizen activism and policy advocacy. The use of disease as a platform for institutional change analysis is well justified by Mameli (1998) in his assertion that: "Disease and the treatment of both its carriers and survivors has always been a prism through which
people can see and assess the compassion, fortitude and performance of their current institutions and cultural bulwarks" (23).

Writing on decentralization, which can be seen as one form of institutional change, Ndegwa and Levy (2003) draw attention to the distinction between 'big bang' and 'incremental' reforms. In their words, 'big bang' reforms are “…Those in which local political authority is created or revived, center-local fiscal governance systems deployed, and personnel transferred from the center to localities in a massive program rolled out across all sectors and regions, and within a short period" (Ndegwa and Levy, Workshop paper. (Online serial), 2003). On the other hand, incremental reform involves: “Changes ranging from the barely perceptible to more dramatic but sequential reforms over time" (Ndegwa and Levy, Workshop paper. (Online serial), 2003).

While it is possible to conceive of some changes in the state’s approach to HIV/AIDS in Kenya as part of a ‘big bang’ reform process, more so given the state’s full response coming after a period of fifteen years of state reluctance, it is nevertheless more fitting to describe the process of institutional change in the AIDS era as more ‘incremental’ than sudden. The observed political changes ranging from institutionalization of the policy making framework, to adaptation of legal institutions to protect citizens’ human rights that have taken place, can be seen as part of gradual advances in political institutionalization that were galvanized by the urgent need for effective solutions to address the HIV/AIDS pandemic. While legal stipulations against violence on women existed before for example, these were ineffective, and would require sharpening to address the reality of violence against women exposed by the HIV/AIDS crisis.

In classifying the AIDS era political reforms in Kenya as part of a gradual progression of the broader process of political evolution ingrained in the ever present
need for democratic practice in the country, I must anticipate the counter argument that
to the contrary, Kenya’s actions can be seen as a ‘big bang’ process, more so, given
the general truism that it is only a matter of time before any country establishes
necessary mechanisms to address in-house shortcomings such as legal protection of
marginalized groups within its jurisdiction. While hard to entirely dismiss, such an
argument must consider not only the prevailing policy environment in the country, but
also the direction of overall political developments.

Up until the early 1990’s when HIV/AIDS became such a widespread problem
beyond the state’s ability for cover-up and denial as witnessed in the government’s
initial reaction to the existence of HIV/AIDS in Kenya, there existed a vibrant civil
society dealing with issues of HIV/AIDS on its own. The organizations were however
scattered all over the country and were indeed typically involved in competition for
financial resources and political patronage amongst themselves. Policy advocacy was
restricted to the historically formalized strategies including exploitation of tribal links,
accommodation by the state, and even withdrawal from areas seen as politically
adverse and threatening to the state, and an emphasis on such ‘safe’ areas as taking
care of the infected. The need to formulate effective responses to the pandemic
however made it necessary for civil society based organizations to transcend their
traditional relations both among themselves and with the state, a process that has led
to the emergence of formidable civil society coalitions seeking to advocate for
favorable HIV/AIDS policies.

Besides, several legal statues that sought to protect marginalized groups
against discrimination existed before the onset of the HIV/AIDS pandemic. However,
these existing legal stipulations were not far reaching and were incapable of dealing
with emergent realities like the need for protection of PLWHA in the face of existing
cultural expectations. With increased pressure for effective HIV/AIDS policy from both civil society activists and international donors, the state opened up to the formulation of a host of mechanisms to address many aspects of the raging pandemic. These emergent mechanisms have inadvertently set in motion a process of institutional buildup. Indeed as Bratton and Van de Walle (1997) point out: “A country’s political prospects derive directly from its own inherited practices” (41). I argue that this ongoing process not only has the potential to outlast the HIV/AIDS pandemic, but also has an enriching impact on democratization in Kenya both directly through resulting reforms, and indirectly through the changing forms and means of power contestation and overall positive relationships between the state and civil society.

Though useful as a basis for classification, Ndegwa and Levy’s (2003) description of the possible forms of institutional reform is however limited in this discussion by its emphasis on state led reforms, whether radical or incremental. One of the institutional mechanisms discussed in this chapter are the emergent civil society coalition networks that have transformed the nature of citizen activism and given rise to a rejuvenated form of policy advocacy. While the state, unlike in the past, has not sought to oppose and sabotage the growth of such networks, it has also not been instrumental in their formation and may well have been suspicious of the mushrooming of civil society coalitions.

The predominant argument on the impact of HIV/AIDS on governance institutions in sub-Saharan Africa is that the pandemic has led to the deaths of a huge number of government bureaucrats and as such resulted in a wide scale devastation of governmental structures and related governance processes in the region (Manning, 2003; Youde, 2001). This argument presupposes a deterministic, negative impact of the pandemic on governance in the region. To the proponents of this argument
however, it is important to point out that the pandemic also has a potential for enriching the process of governance through inadvertent processes of institutional changes that occur as different sectors in society respond to the pandemic.

Although it is true that the pandemic has extremely devastated both human lives and the structure of society, this is also a fitting starting point for understanding the forms and means that the society has adopted in responding to a significant political development that may have implications for future governance.

Central to the process of institutional change is the issue of power, seen here as the ability to control both people, policy formulation processes and outcomes to achieve a desired purpose. The response to HIV/AIDS set in motion a process of increased interaction and a change in the means and forms of contestation for power between the political and social organizations in Kenya. While the state and its organs were used to hoarding political power and to passing policy by decree, civil society based organizations had over the years resulted in a combination of not so successful strategies to will the state to act in several areas. These would include organizing street demonstrations, appealing to influential international donors, and even calling for national strikes to force the state to comply with such wishes as the need to institute political reforms. Van der Vliet (1996) characterizes such a scenario as ‘the interplay of power and powerlessness’ (4).

The need for a concerted effort in dealing with the pandemic brought about a realignment of relationships, with old enemies seeking new means for cooperating for mutual benefits. As will be discussed in this chapter, it is fitting to assert that: “The means to formulate policy questions and to influence the direction of debate on HIV/AIDS issues in Kenya has been strengthened in recent years. Existing networks have become stronger and new coalitions have emerged” (AIDScaptions, 1996, Vol. 3,
No. 2). Most significant has been the government's gradual overcoming of its suspicion of civil society based organizations and its acceptance of these stakeholders as partners in the search for fitting institutions to address prevailing problems in the country. As historical institutionalists will argue, such institutions will transform themselves across time and space and may govern future political developments, in this case, the practice of democracy in Kenya. This notion of 'path dependency' is well explained by Douglass North (1990) in his suggestion that: “Today’s and tomorrow’s choices are shaped by the past” (vii).

Besides, the cooperative nature of state-civil society interaction is of interest to us as it marks a clear departure from the historical nature of state-civil society relations in the country. As different scholars have previously documented, relations between states and civil society in sub-Saharan Africa, Kenya included, are marked by hostility and competition between the state and particular members (organizations, individuals) of civil society (Azarya 1994; Bratton, 1989; Chazan 1994; Diamond, 1988, 26; Hirshman, 1970; Ndegwa, 1996).

**Analyzing Emergent AIDS Era Institutional Mechanisms**

In an effort to address the many issues exposed by the advent of the deadly pandemic, the response against HIV/AIDS in Kenya is multifaceted. The HIV/AIDS pandemic can best be characterized as having two major contrasting effects on Kenyan society. On one hand, the pandemic has brought in its wake untold misery and suffering both for those who are infected with the deadly HIV virus, and for their immediate families who have first to take care of their sick relatives. Later, many of the uninfected have to adapt to what has too often become a life of poverty in the case of the death of a prominent bread winner in the family, and also stigmatization by a society eager to blame the victims and to deny the widespread existence of the virus in
their midst. The pandemic has also disrupted many social, political and economic structures, and in so doing, undermined the processes of economic and political development in the country.

The effect of the pandemic on the educational structure in Kenya is one such case in point. According to a joint government of Kenya and UNICEF report (2000) on *The Impact of HIV/AIDS on Education in Kenya*, the pandemic has affected education in more than one way. According to the report:

Due to parental/guardian illness and/or death, children lack school fees and educational materials...Owing to the loss of parental love and livelihood, children drop out of school. The results also showed that pupils' participation and performance in education had been affected by teacher infection, absenteeism, and death, leading to the shortage of teachers in some schools...HIV/AIDS has reduced resources available for education. Resources that could have been used for educational purposes are used for medical care (vii-viii).

To be fair, this prevailing situation could also be seen as having a positive element to it, albeit overshadowed by the huge negative impact. As the GOK/UNICEF report (2000) explained: "On the positive side...HIV/AIDS had instilled a sense of responsibility and morality in pupils" (Vii-viii). Despite this growing awareness however, new infections continue to be recorded, further underlining the need for sustained involvement in responding to the pandemic.

Like in the positive case of increased sense of responsibility and awareness among the youth in Kenya, the spirited nationwide mobilization in response to the pandemic could also be seen as having a potential positive outcome in enhancing democratic consolidation in the country through the emergence of many democratically oriented AIDS era institutional mechanisms. Though primarily designed as coping strategies against the devastating pandemic, these institutional mechanisms, like the rejuvenation of citizen activism and networks for policy advocacy and also the establishment of an institutional framework for HIV/AIDS policy making, inadvertently
address areas of democratic importance, and serve as instrumental forces for the consolidation of the country's fragile democracy.

The Kenyan government had to contend first with a furious civil society angered at the lack of policy at many levels, such as the provision of medication for the infected, protection of the human rights of PLWHA, other marginalized and "at risk" groups—especially women and children, and also failure by the government to include this important sector in the formulation of effective strategies in response to the pandemic. On one hand was a government eager to hold on to its power by dismissing the threat of HIV/AIDS and using its state apparatus to put up a façade of normalcy at a time when the HIV virus was rapidly spreading throughout the country. On the other hand was a determined civil society eager to get involved in alleviating the crisis and mobilizing its members to pressurize the government to establish favourable policy and to provide physical resources for the response against HIV/AIDS. Notable sources of pressure for the Kenyan government in the fight against HIV/AIDS include PLWHA, uninfected civil society activists, members of professional organizations and religious figures all keen to see a successful response to the crisis.

The state was also faced with pressure from international donors like the World Health Organization that was keen on pushing the Global Program on AIDS (GPA), a response mechanism that the organization was advocating worldwide and that would see each country establish a national AIDS program (NAP)—a multisectoral framework for coordinating issues involving the pandemic (Mameli, 1998, 3). Further to this, by 1997, the United Nations AIDS organization (UNAIDS) was keen on seeing the establishment of "The National Strategic Plan" in each country of the world. As previously noted: "Strategic planning is a dynamic and participatory process that involves all sectors and levels of government as well as NGOs, private sector, religious
organizations and international development partners (UN and bilateral donors) in order to produce a multisectoral and decentralized response to the epidemic" (AIDS in Africa, 2000, 8).

Table 6, adopted from a Policy Project's analysis that applies an analytical formula referred to as the *AIDS Program Effort Index* (API),\(^{12}\) offers a snapshot of the AIDS policy environment in Kenya between 1998 and 2000, the take-off era of a rejuvenated and focused response against HIV/AIDS in Kenya, and the consequent emergence of multiple institutional mechanisms with far reaching implications beyond the immediate need to address the HIV/AIDS pandemic. The Policy Project research identifies seven broad components of Kenya's AIDS policy environment. As the table illustrates, there has been a remarkable improvement in the two year period in AIDS policy in Kenya, a 19.7 point increase from a score of 43.7 points in 1998 to a score of 63.3 points out of a possible 100 in 2000.

Furthermore, if the improvement trend revealed by the API analysis holds, we can expect even further gains in policy processes and the establishment of legal institutions to address the issue of HIV/AIDS. As the data reveal, by the year 2000, one of the areas showing overall strong and steady upward progression in the API survey was the advancement of 'legal and regulatory' institutions (a high score of 75.5 out of 100), a crucial area both for the fight against HIV/AIDS and the democratization process as it squarely addresses the issue of human rights and the protection of both those discriminated against and marginalized groups like PLWHA, women and children. As postulated in this dissertation's theoretical conception, such an institutional buildup is bound to have far reaching implications that spin beyond the HIV/AIDS issue. Once in place, legal institutions for the protection of marginalized groups are
bound to open up the legal space and form the basis for an institutionalized pursuit of individual rights in the country.

The AIDS Policy Index covering the period between 1998 and 2000 is a good indicator of the fact that significant political developments in the response against HIV/AIDS have occurred in Kenya in a matter of only a few years.

Table 6: API Kenya AIDS Policy Environment Score by Component, 2000 and 1998

<table>
<thead>
<tr>
<th></th>
<th>P.S.</th>
<th>P. F.</th>
<th>Organization</th>
<th>Program resources</th>
<th>E. and R.</th>
<th>L. and R.</th>
<th>Program Components</th>
<th>API Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>68.6</td>
<td>73.2</td>
<td>72.8</td>
<td>52.5</td>
<td>38.0</td>
<td>75.5</td>
<td>62.8</td>
<td>63.3</td>
</tr>
<tr>
<td>1998</td>
<td>39.7</td>
<td>45.3</td>
<td>40.3</td>
<td>35.3</td>
<td>25.2</td>
<td>67.4</td>
<td>52.3</td>
<td>43.7</td>
</tr>
<tr>
<td>Point Change</td>
<td>28.9</td>
<td>27.9</td>
<td>32.5</td>
<td>17.0</td>
<td>12.8</td>
<td>8.0</td>
<td>10.5</td>
<td>19.7</td>
</tr>
<tr>
<td>Percent Change</td>
<td>72.8</td>
<td>61.6%</td>
<td>80.8%</td>
<td>48.0%</td>
<td>50.9%</td>
<td>11.9%</td>
<td>20.0%</td>
<td>45%</td>
</tr>
</tbody>
</table>

P.S.= Political Support; P.F.= Policy Formulation; E. and R. = Evaluation and Research; L. and R. = Legal and Regulatory


These developments can be described as the emergence of various institutional mechanisms to govern interactions within this political arena. The following section will discuss the specific emergent institutional mechanisms and detail how each of them fits in with the need to address the greater practical questions raised by the HIV/AIDS pandemic.

The Multisectoral Approach and the Emergence of a New Policy Making Framework in Kenya

The history of concerted action against HIV/AIDS in Kenya dates back to 1997, a landmark year when the Kenyan parliament adopted the Sessional Paper No. 4 of 1997 on AIDS in Kenya, a policy framework document intended to be the main source of reference in the response against HIV/AIDS in Kenya. The Sessional Paper was a product of a state driven process of widespread consultation between various groups...
and individuals across the country. As the Minister for Health at the time declared in the paper’s foreword, the Sessional Paper could be seen as representing "a commonwealth of experience from individuals, technical experts, opinion leaders and the general public" (iii). While initial recommendations were gathered from experts in various fields, these “were presented to a broad cross section of public leaders and the general public at a series of nation-wide workshops” (Sessional Paper No. 4 of 1997 on AIDS in Kenya, iii).

One may argue that such a process was not entirely revolutionary given the widespread nature of the pandemic and the need to involve all stakeholders. Yet, it is important to consider this political development in the context of both the prevailing policy environment in Kenya and the history of state-civil society relations in the country. As earlier mentioned, policy making was strongly dominated by the president and top government officials who would pass down decrees to be followed across the country. Besides, relations between state and independent civil society actors were hostile and non-cooperative. The emergence of a policy framework on a topic of national concern based on widespread consultation among different stakeholders across the country reflected change in the policy process and can be described as a landmark political development.

It is however fair to acknowledge that at this initial stage, despite the widespread participation by the general public in policy guidelines formulation, the state was still the dominant player in the process, with civil society being seen as a necessary participant to enhance the effectiveness of adopted policy guidelines. As the Kenya National AIDS Consortium (KANCO) network notes: “Drafting of the Sessional Paper was largely a government-initiated process. The KANCO policy process would
be complementary, drawing upon local input to monitor and highlight priority issues”
(KANCO, Lessons Learned, 1998, 4).

The Kenyan government actually acknowledged this complementary role of civil society in entrenching the adaptation of set policy guidelines, in its statement that:

“NGOs act as conduits of development assistance. Their strengths are considerable and complement the official government agencies to reach the poor segments of the population in inaccessible areas. They have existing close links with poor communities and skills to ensure wide participation” (National Strategic Plan on HIV/AIDS, 2000, 44). Such state commendation of the usefulness of civil society organizations, in a country with a long history of hostile relations and confrontation between political and social organizations, is a strong indicator of a changed nature of interaction and promises different forms of power contestation between the two actors.

The Sessional Paper (1997) can best be described as both acknowledgement of an existing national problem and a detailing of the policy areas requiring attention. The paper is vocal on possible strategies and effective organizational structures that could be adopted for the country to advance successful responses to the pandemic. On strategies, the Sessional Paper (1997) clearly delineates several ‘legal and ethical challenges’ to be addressed.

The paper identifies violation of affected people’s human rights as a major factor and not only calls for the outlawing of ‘all forms of discrimination’ against marginalized groups, but most significantly, guarantees that the human rights of all Kenyans would be respected (Sessional Paper No. 4, 1997). The paper also advocates voluntary HIV testing, extensive counseling of both the infected and those at risk, and the need for enforcement of ethical practices on the issue of confidentiality of an individual’s HIV status. The protection of individual’s privacy would be extended to the
work place, where employers would be forbidden to take any forced steps to find out a person’s HIV status. Such a move would ensure privacy and would serve as a point of reference for the protection of different patients both at the community level and at the workplace.

This situation is significant, as it would require taking on two strongly entrenched institutional pillars in the Kenyan political landscape. On a social level, Kenya has a rich cultural diversity, with each group openly embracing its traditions, a political phenomenon described by Ndegwa (1997) as ‘dual citizenship’. Since independence the government, while keen to uphold national standards of law, has nevertheless been careful not to be seen as interfering with different tribes’ cultural practices. A good case in point is the existence of councils of elders across the country to deal with land conflicts. Another example is the deference by Kenyan courts to traditional customs in case of conflict between traditional African practices and modern ways of life, like in the case of burial rites.

At the economic level, successive post independent Kenyan governments have long been unwilling to interfere with the private sector’s policies, be they on hiring and firing or on remuneration and associated benefits. Kenya inherited a capitalist economic system from its colonial British colonial masters. The post independent elites led by President Kenyatta, were capitalists who believed in the supremacy of individual property ownership and sought to enhance the country’s economic growth through a pro-active system of opening up the country’s markets to foreign investment. To be seen as enhancing an environment conducive to investments, the government learned early to keep out of private companies’ boardrooms. Besides, many of the country’s top elites had connections with different companies and acted to protect their self-interest. As successive financial scandals in the country have revealed, many top elites,
including incumbent presidents, have over the years held shares in leading enterprises. The loser in such a setup has been the ordinary worker who is left without adequate labor protection and at the mercy of profit minded entrepreneurs.

The Sessional Paper (1997) also details the need for legal mechanisms to “regulate drug trials and provide sanctions against those peddling, cutting up for sale and advertising substances that have no proven curative value against HIV” (25). Such legal stipulations, coupled with the provision of criminal penalties for those who knowingly infect others with the HIV virus, can further be seen as setting up an institutional platform from which the issue of human rights of those infected could be addressed.

The Paper’s proposed institutional framework emphasized stakeholders’ involvement at two levels. One was the need for “a strong political commitment at the highest level” and second, a “multi-sectoral AIDS prevention and control strategy” (1), to be achieved through the establishment of an organization with the ability to coordinate different stakeholders’ activities across the country. Such an organization would eliminate duplication of activities and ensure a well coordinated relationship between the different sectors involved. Every sector of the Kenyan society was to be involved directly in the response, most significantly, through their inputs on both new anti-AIDS’ policies and strategies and in taking care of those already infected.

**The Changed Role of the President in Policy Formulation**

To the proponents of the Sessional Paper on AIDS in Kenya, high-level political commitment in addressing the HIV/AIDS pandemic was seen as a mandatory component for the success of the country’s response. The basic argument behind such a move was the knowledge that as the most powerful governmental official, direct involvement by the president in mobilizing society against the pandemic was bound to
elicit a positive reaction for several reasons. For one, such top-level involvement would show state determination to address HIV/AIDS, and would serve as enforcement for others across the country. At another level, the role of the president as an opinion shaper was instrumental for the fight against the pandemic.

Already in the case of neighboring Uganda, where remarkable results have been achieved in reducing the country’s high rate of HIV prevalence, President Museveni’s direct involvement has been credited as the main reason for the country’s successful response. According to Uganda AIDS Commission (2003), the HIV/AIDS prevalence rate among the adult population in the country dropped from 18 per cent in 1993, to a remarkable 6 per cent in 2003. The country hopes to achieve a below 5 percent prevalence rate by the year 2005. Uganda’s first known HIV/AIDS case was diagnosed in 1982 in the Southern Uganda district of Rakai, along the shores of Lake Victoria.

Initially dubbed the ‘slim’ disease, due to the characteristics of full blown AIDS where a victim gradually wastes away, the onset of HIV/AIDS in Uganda was met with much ignorance and traditionally mandated disdain, indicative of African societies’ generalized views on sexually transmitted diseases as products of immorality, and as such a case for shame and stigmatization. Worse still, Uganda was still submerged in a prolonged civil war. Eventually, President Museveni’s rebel army was able to oust then President, Milton Obote, from power in 1986. Given the prolonged armed conflict, Uganda’s economy had practically sank to the very bottom, and the country was in urgent need of various infrastructure. The country was in dire need of an effective health system for example, including need for doctors to deal with the many patients.

From his first days in the top office, President Yoweri Museveni openly declared war on HIV/AIDS and sought to involve not only members of his cabinet and the
Ugandan populace in likewise public condemnation of the disease, but also
international donors as sources of much needed funds to counter the pandemic. As he explained:

When our government came on the scene, we decided to resort to the loudest method of spreading an alarm to the people. We gathered all the possible information there was on AIDS virus. We worked with doctors and other experts from other parts of the world to get a general picture of what we were dealing with both medically and scientifically...We also realized that in the absence of either a cure or a vaccine, it was our duty to protect those who were free of the disease by scaring them about the disease and its consequences. Although the initial response was largely resistance, many of our people have come to appreciate it today (Masatmura, in Inter Press Services Agency, 2002, December 20).

A question of much fascination is exactly why Museveni came out so strongly against HIV/AIDS, at a time when many of his fellow African leaders, like Moi in Kenya, were cowering away from any public mention of the pandemic and indeed would take offence at the suggestion of the existence of such a crisis in their countries. One way to answer this question is to consider Museveni’s knowledge of the grassroots, and his willingness to consult with the citizens over various issues, both essential attributes cultivated during his many years as a rebel leader. As Paul Clements suggests:

Museveni won the war against Obote by building a more effective administration in western Uganda than Obote put together in Kampala. Although not formally democratic in the manner of a national government, Museveni’s resistance councils involved consultative procedures that institutionalized some degree of accountability and some sense of social responsibility. Museveni was, in this sense, much closer to the people than Moi. As an experienced military leader, he also had more of a practical sense for the kinds of costs an AIDS epidemic could inflict. He also needed to establish his power, both in regard to the Ugandan people and to the West. Museveni addressed AIDS so much sooner than Moi did largely because he was better connected to “the people” (not necessarily to all the people), and his administration had a more practical, public spirited orientation (Private communication, 2004, May).

While many scholars, activists, and policy makers frequently hail President Museveni as a success story in advancing Uganda’s response against HIV/AIDS, Museveni’s widespread mobilization could also be interpreted was as an act of self preservation, what Peter Hall would aptly refer to as a “calculus approach” to the issue of HIV/AIDS. Fresh from the battleground, and with a rag tag army that was excited to
be in power, the devastating HIV virus was perhaps among the worst enemies for President Museveni's Resistance Army. Though figures on the actual number of affected soldiers are scarce, yet the possibility of a weakened military force in a country marked by repeated armed insurgencies was a threat huge enough to galvanize Museveni into frantic action to stem the tide of the pandemic. Unlike Presidents' Moi in Kenya and Ali Hassan Mwinyi in neighboring Tanzania, who were not faced with any immediate political threat in terms of armed conflicts, President Museveni's early comparative advantage was in maintaining a working military unit to wade off any counter resistance.

At another level, the ascendancy to power of Museveni's widely supported popular government opened up the political space for the mushrooming of hitherto non-existent civil society. A point of caution though is the fact that, although he has transformed himself into a civilian president, Museveni's transformation into a democratic leader can at best be described as 'a work in progress'. Among others, his frequent intimidation of his critics, and his insistency on a one party state, could be seen as indicators of a leader yet to fully embrace democratic practices.

Nevertheless, the renewed ability for civil society to operate in Uganda saw the emergence of The AIDS Support Organization (TASO), inspired by Noerine Kaleeba, a woman who had lost her husband to AIDS and feared she was herself infected, despite tests to the negative (Garrett, in Newsday, 2000, July 11). As Garrett explains, in 2000, TASO was "...the largest and most successful nongovernmental AIDS organization in Africa, boasting 40,000 staff and volunteers and clinics all across Uganda. Funded entirely through charitable donations both from Ugandans and foreign organizations, TASO influences every aspect of the country's AIDS effort: treatment, prevention, stigma, politics and education" (Newsday, 2000, July 11).
The coinciding of a new government with an active, politically none threatening civil society, ensured the birth of a culture of cooperation between the state and elements of the civil society, and set in motion the ingraining of a culture of multisectoralism. This was clearly manifested in the establishment of Uganda AIDS Commission (UAC) by an act of parliament in 1992, a national coordinating body that had President Museveni as its first chairperson, and 18 board members drawn from all sectors of the Ugandan community, including PLWhA. All said and done, President Museveni’s strategy of talking openly about HIV/AIDS as a means of early intervention, serves as a good indicator of what political leadership’s involvement can achieve in the war against HIV/AIDS. At the very minimum, no person in a given country has as many opportunities to elicit nationwide attention as the president does.

Direct involvement by the executive in HIV/AIDS issues can be seen as a significant shift from the customary approach to political issues in the African context. While the traditional role of the President in Kenya, for example, has been shown as one of dominance over policy making processes and as one hostile to participation by other sectors in setting political agenda, involvement in the HIV/AIDS arena would require the president to change his approach to politics on two levels. Besides being the main voice for mobilization against HIV/AIDS, a role that President Moi had so far carefully avoided, the president would of necessity have to reverse his positions on non-interference in diverse cultural practices, and also on the failure to involve civil society organizations in policy formulation.

Though President Moi’s dominance was evident in many areas pertaining to the country’s governance, the one area where his input was noticeably lacking was on the issue of HIV/AIDS. Short of far flung, on the side, commentaries mostly to enforce the government’s stubborn denial of HIV/AIDS as a crisis worthy of national interest,
President Moi, on whose watch the pandemic first struck, was firmly withdrawn from most discussions on the topic. The urgent emphasis on the need for involvement of the president as espoused in the Sessional Paper can be seen as an enforcement of the call for the President to join in the response.

President Moi's change of attitude from one of opposition to that of openly embracing broader anti-AIDS efforts, beginning with his endorsement of the Sessional Paper No. 4 on AIDS in Kenya in 1997, became a major turning point in the war against HIV/AIDS, and indeed the onset of a process of institutional changes in the country. Moi increasingly signalled his change of heart on different occasions and his acceptance of the need for the state to revaluate its position vis-à-vis the HIV/AIDS crisis. On one such landmark occasion, faced with unrelenting pressure from religious groups asking him to ban the importation and use of condoms in the country, President Moi cast a major vote in support of an 'all holds barred' response to HIV/AIDS by openly endorsing the use of condoms by all. In his rebuttal to the religious groups, summarized in a catchy newspaper headline as: "Moi takes on Catholic church over condoms" (East African Standard, 1999, December 3), the President was quoted as saying: "I am the President of the Christians and the drunkards. I am responsible for all. I say use condoms!" (East African Standard, 1999, December 3).

The Office of the President has become an instrumental part of the responses in Kenya. It is the headquarters for the country's main HIV/AIDS activities coordinating body-- the National AIDS Control Council (NACC). In November 1999, the President had declared HIV/AIDS as a national disaster, and as such, an emergency requiring quick response both in terms of effective policies and financial resources. Following this declaration, the National AIDS Control Council (NACC) was established by a Presidential Order (No. 170 of 26/11/99), and incorporated under the 'State
Corporations Act'. NACC was mandated to "provide policy and a strategic framework for mobilizing and coordinating resources for prevention of HIV transmission and provision of care and support for the infected and affected people in Kenya" (Strategic Plan on HIV/AIDS, 2000, 49). The president is in charge of appointing a qualified chairperson for the Council. This makes the president accountable for either the success or failure of the response to the pandemic.

One argument to anticipate here is that in participating actively as the head of anti-HIV/AIDS responses, the president could be seen as moving to further entrench his hegemonic control. To be sure, to many skeptical Kenyans, increased involvement by a president known for his reluctance to address issues concerning HIV/AIDS, was seen as a calculated move by a president keen on controlling increased donor funds coming into the country, hence the situating of the National AIDS Control Center in the Office of the President, and advocacy for increased government involvement in the importation of condoms. Yet, as will be discussed shortly, the highly decentralized structure of the NACC, and an emphasis on bottom-up decision-making processes, has clearly marked the president not as the customary hegemonic figure, but more as a team player with a specific mission to fulfill. Besides, as the case of President Museveni--whose strategy in dealing with AIDS has served to inspire the Kenyan model--reveals, it is imperative for the political leader to get involved strongly in formulating an anti-HIV/AIDS campaign. With the change of government in December 2002, the role of the President in spearheading the campaign against HIV/AIDS became even more evident. Unlike President Moi's initial reluctance, President Kibaki became very vocal on the need for action against HIV/AIDS, if the country was to make any economic progress.
This study has detailed the progression of President Moi's position on HIV/AIDS from one of strong denial and anger, to one of acceptance of the pandemic, accompanied by a spirited public campaign urging Kenyans to avoid risky behavior. Moi's change of heart can be seen as having been shaped by political developments worldwide, which made it impossible for a political leader in his position to ignore the raging pandemic. Other factors include a combination of pressure on the government from civil society and from international donors, both strong enough to force the president's hand into action.

After Moi, the new President, Mwai Kibaki, singled out HIV/AIDS as "one of the biggest single challenges to development in our nation" (Kaiser Daily HIV/AIDS Report, 2003, March 24). Again, timing is important in shaping the new president's policy preferences. By 2002, every country in the world could be seen as seriously involved in the war against HIV/AIDS, albeit to varying degrees of success. On top of existing institutional structures to deal with the pandemic, the president right away established a 'Senate Committee', which he headed, and whose members were to be cabinet ministers in the NARC government. The top level Committee was expected to meet frequently to review the progression of the countrywide fight against the pandemic. The senate committee was to be an instrumental mechanism for easing bureaucratic bottlenecks that could hinder the advance of efforts against the pandemic.

The president's wife, Lucy Kibaki, also took on a powerful activist role in mobilizing Kenyans to take positive actions in addressing the AIDS scourge. Along with other first ladies in the African continent, the President's wife was a founding member of the Organization of African First Ladies against HIV/AIDS (OAFLA), and served as the chairperson of OAFLA Kenya Chapter, an organization launched in July 2003. The organization aimed to: "...work towards eliminating the stigmatization and
discrimination of people living with or affected by HIV/AIDS" and to support "social involvement in the fight against HIV/AIDS at the grassroots and national levels" (Agence France-Presse, 2003, December 2). OAFLA Kenya Chapter would also seek to bring about "effective policies and strategies of treatment and care for people living with or affected by HIV/AIDS" (Agence France-Presse, 2003, December 2).

The response to the pandemic opened up the President's office, an integral institution for governance, and made it accessible for citizen activism. For a country with a long history of institutionalized personal rule, the involvement of the president as part of a policy making chain is indeed revolutionary. This shift in the policy climate could further be evidenced by an increasing willingness by a cross section of political leaders to publicly discuss HIV/AIDS and to call for action.

**NACC and the Devolution of the AIDS Policy Making Process in Kenya**

In a candid statement of the limitations of its response to the HIV/AIDS pandemic through the Ministry of Health, the Kenyan government had in 1997 acknowledged that:

> The Ministry of Health is not able to marshal other sectors involved in AIDS prevention and control. Lengthy and complicated bureaucratic procedures at the Ministry of Health headquarters inhibit the smooth flow of funds for initiatives at the provincial and district levels. Effective district inter-sectoral AIDS committees are few and where they exist lack capacity to implement an effective HIV prevention program" (Sessional Paper No.4 of 1997, 29).

To overcome the shortcomings of its initial approach and to open up the space for involvement of other sectors in the response to the pandemic, as stipulated in the Sessional Paper, the newly established National AIDS Control Council (NACC) sought to foster widespread involvement by both state and non state actors by providing both funding and coordination assistance for activities ranging from prevention through
education and counseling, policy advocacy and even treatment through provision of affordable anti-retroviral medications for organized groups.

The organization has received huge financial support from international donors like the World Bank and the United Nation's 'Global Fund To Fight AIDS, Tuberculosis and Malaria'. On 18 June 2003, the Global Fund agreed to give Kenya grants worth US $52 million to advance the country's fight against AIDS, tuberculosis (TB) and malaria. Of the total package, a remarkable US $37 million would be directed solely to combating HIV/AIDS in the country (IRIN Plus News, 2003, June 27). Earlier in March 2003, the World Bank had pledged US $ 50 million (about 4 billion Kenyan shillings) for the campaign against HIV/AIDS (East African Standard, 2003, March 25). The money was to be channeled through the NACC institutional structure to stakeholders at the different community levels for the purpose of AIDS education and testing, and the provision of ARVs for the infected. While such international donations can be seen as a huge blessing for the response against HIV/AIDS, these easily flowing financial resources have also given rise to a whole new dimension of political conflict, mainly related to allocation and management of these donor funds. Chapter five will relate these external resources to the development of democracy in Kenya.

Despite its state affiliation, this organization is unique due to its diverse membership drawn from all sectors in the country. NACC is under the Office of the President, and has a chairperson, who is a presidential appointee, and a director, who is also the secretary to the council. Membership is made up of officials from government ministries, the private sector (including other non-public organizations), the religious sector, women's organizations and even organizations of HIV-positive people. As table 7 illustrates, the organization upholds a firm process of power devolution,
evident in its bottom-up hierarchical structure, ranging from AIDS control units in each
government ministry to provincial, district, and constituency level AIDS committees.

Table 7: Institutional Structure of HIV/AIDS Responses in Kenya

The AIDS control units (ACUs) are parallel structures situated in each
government ministry at the national level, with the aim of ensuring that each state
department takes AIDS as a priority, and has in place a structure for interaction with
other stakeholders in its field. A good example is an ACU within the Ministry of
Education that would work along with other stakeholders to coordinate the responses
to the issue of HIV/AIDS in schools. Such an ACU would seek budgetary allocations
from the ministry to advance HIV/AIDS education and counseling at all levels. At the
provincial level, Provincial AIDS control committees (PACCs) would coordinate and
supervise HIV/AIDS responses and would serve as a liaison between the District AIDS control committees (DACCs), situated at the District level, and the NACC head office to ensure timely allocation of needed resources and the addressing of issues at the top raised at the lower levels. Money channeled from the NACC would be passed on from PACCs to DACCs and onwards to the constituency level. These units would interpret HIV/AIDS policies at the regional level and would monitor how such policies were being implemented in their areas.

Both the PACCs and the DACCs were also expected to take the lead in delineating priority areas to be addressed in each region. This acknowledgement of existing differences across regions in the country was a key strategy to address HIV/AIDS from specific angles as opposed to a blanket policy. In Nyanza province where wife inheritance was most prevalent for example, the PACCs and DACCs could prioritize the issue of education and legal protections to combat harmful practices. In the Western province where the most pressing issue was abject poverty for example, the regional PACCs and DACCs could prioritize income generation, as well as address many of the other factors that could be traced uniformly across the country.

It is worth noting that like the NACC’s diverse membership, both the PACCs and DACCs members would come from a cross section of regional citizens, including representatives of the private sector, PLWHA, women’s groups, religious groups, and civil society activists. Leadership for the PACC’s would come from government appointed Provincial AIDS coordinators, who would serve to coordinate the different stakeholders.

At the grassroots levels are to be found the Constituency AIDS Control Committees (CACCs). More than at any of the other levels in the set institutional framework, CACCs are the closest link to the different communities and seek to both

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mobilize local people and to come up with local suggestions for coping with specific HIV/AIDS related problems facing the people. The principle administrative unit within the CACCs is the committees of elders, comprising local leaders and the area's Member of Parliament. Others include women's representatives, a local based expert on issues of HIV/AIDS, capable of providing and interpreting technical information to the committee, at least one representative of PLWHA, and a competent accounts manager to handle the finances flowing in from the NACC. The CACCs are accountable to DACCs and are expected to institute solid monitoring and evaluation systems to gauge their relative successes in the constituencies.

To scholars of Kenyan history, NACC's structure is reminiscent of the immediate post–independence structure of policy making complete with committees at different administrative levels (Odhiambo Mbai, in N'gethe and Wasunna, 1999, 31; Jackson 1970, 184, 192). Along with other new institutional actors and practices, NACC can be seen as serving as a platform for the transformation of relations between the state and civil society in Kenya. While initial observations reveal progression towards cooperation between the state and civil society in response to the HIV/AIDS epidemic, actual details of the outcome of such a process, and indeed knowledge on its potential for successful transformation of hitherto hostile relations between the two political actors, are only to be found in the yet to transpire near future. Only then can scholars interested in this topic conduct longitudinal studies in search of convincing explanations on the question of how the relations between the state and civil society have changed in Kenya.

Significance of the Sessional Paper on AIDS in Kenya

First, the Sessional Paper served as a prominent statement of the Kenyan government's renewed willingness and determination to not only support, but to
spearhead the establishment of both policies and organizational structures to effectively address the issue of HIV/AIDS. Of urgent concern for policy makers were the issues of slowing the continued fast spread of the HIV virus, the need to protect vulnerable groups’ human rights, and the practical need to enhance the provision of care and availability of affordable anti-retroviral drugs for PLWHA. The Paper can be seen as bringing about institutional change by setting in place an institutional framework for policy formulation in Kenya.

On another level, the Sessional Paper marked a turning point in state-civil society relations and heralded the taking root of an institutionalized process of joint agenda setting as a preferred policy-making strategy in Kenya. The Sessional Paper can be seen as setting in motion a process of institutional change, with possible implications for other policy areas beyond the HIV/AIDS pandemic. The Paper is a necessary mechanism in addressing the HIV/AIDS pandemic in Kenya through its efforts to transcend the prevailing situation of a fragmented response to HIV/AIDS and to create a well-structured institutional framework to govern the response. It serves as a landmark guideline for cooperation between state policy makers and civil society in Kenya. As noted earlier, policy guidelines offered in the Paper were a product of wide ranging contributions and deliberations among a cross section of Kenyans, including both state and civil society experts on HIV/AIDS, community based activists, local leaders and PLWHA.

This significant policy initiative could well be seen as a departure from the prevalent image of a sub Saharan African state reluctant to address the pandemic. As Caldwell explains, it was fitting to describe the previous situation in sub-Saharan Africa as one in which there was little recognition by governments of the “enormous scale of deaths” and “no real recognition by government or many religious leaders of the rights
of civil society, in which people deserve help in avoiding death even if their sexual behavior is at odds with the preached orthodoxy (Caldwell, 2000: 130).

Emergent Coalition Networks and the Transformation of Policy Advocacy

Partly due to the widespread and all encompassing nature of HIV/AIDS across different social groups in the country, and the urgent need to formulate responses to the pandemic, the onset of the HIV/AIDS pandemic has fostered an environment conducive to coalition building and the advancement of an ‘empowerment’ agenda. While individual organizations still exist in Kenya, coalitions formed by various organizations have increasingly become the norm for civil society interactions with the state. Such a development of broader networks dealing with a single issue has gradually overcome government suspicion and the coalitions have gained recognition as the representatives of their specific groups.

One such emergent coalition is the Kenya AIDS NGOs Consortium (KANCO). As the organization’s statement of purpose explains: “The Kenya AIDS NGOs Consortium was created in 1990 to enhance networking between NGOs, religious institutions and the government for the purpose of controlling the spread of HIV/AIDS and Sexually Transmitted Infections, and helping in the care and support of people infected and affected” (Lessons Learned, 1998, ii). The consortium initially brought together a group of seven active NGOs, namely: The Christian Health Association of Kenya (CHAK), Kenya Red Cross, African Medical Research Foundation (AMREF), Kenya Catholic Secretariat, Norwegian Church Aid, Family Planning Association of Kenya and Action Aid (KANCO, 2003; Shorter and Onyancha, 1998, 30). The Consortium’s membership had increased to 410 organizations by 1998, and to a remarkable 680 organizations in 2004 (KANCO, March 2004). KANCO has become a main front in the interaction between the state and AIDS oriented civil society.
organizations, and a forum for expression to a cross section of Kenyans, including PLWHA and activists from grassroots organizations.

The coalition's mark can be seen in many of the emergent HIV/AIDS policies in Kenya. This has been achieved through a combination of strategies. For one, the Consortium serves as the national forum for the coordination and harmonizing of HIV/AIDS policy initiatives. KANCO has been active in holding joint agenda setting workshops that have increasingly brought both Consortium members and government officials to the same table to strategize on responses to the pandemic. As opposed to a centralized forum where policy initiatives emerge spontaneously from a common boardroom, ideas discussed at KANCO forums are a reflection of priorities across the country.

The workshops openly discuss different issues brought to the table by various field-based personnel, including AIDS programs managers at the grass root levels, civil authorities, and religious leaders. These resulting proposals are packaged into policy initiatives to be presented to the country's lawmakers as viable means for the response to the pandemic. The process allows different stakeholders to advance suggestions on issues important to them and more importantly, endows them with a framework within which to engage in advocacy for the adaptation of desired policy issues. This process has evolved gradually and continues to bring in additional participants. As a KANCO (1998) document explains:

The growth of the KANCO Network far exceeded original expectations. KANCO had been largely Nairobi-oriented...the attendance at workshops by district and provincial participants provided a forum for sharing experiences. Many participants wanted to keep the dialogue active and were encouraged to do so through the creation of network branches at district and provincial levels...Nearly two-thirds of the districts, with KANCO's support, held regular meetings, began accumulating and documenting issues related to HIV/AIDS prevention and care, and maintained contact with the KANCO secretariat. The secretariat staff realized that policy development was an ongoing process, and that the workshops and creation of networks at district level were only elements contributing to the long-term process (Lessons Learned, 20).
Another strategy adopted by KANCO for developing the policy advocacy process is the coalition's engagement in capacity building and education of its members through the Consortium's Resource Center. As the Consortium readily admitted in its formative stages: "The general lack of awareness and understanding of policy formulation and influencing amongst KANCO members and district networks has hampered the process of project implementation" (Lessons learned, 1998, 21). The Resource Center is perhaps the country's leading source of educational materials on HIV/AIDS. A visit to the Center reveals a wealth of materials that span the world of HIV/AIDS from scientific explanations to sociological narrations to even elaborate descriptions of how members can organize groups to undertake anti-HIV/AIDS action. Another important component of the Resource Center's literature is the compilation of the nation's policy documents pertaining to areas important to the pandemic. KANCO not only avails necessary materials at the district levels where smaller resource centers have sprung up, but also conducts training courses aimed at strengthening citizen participation in policy formulation and also in assisting PLWHA in their communities.

A significant development is the fact that the Resource Center has become a source of information for state policy makers who have used it on several occasions in search of information to advance AIDS policy in Kenya. One such occasion was "during debate on legislation to assist children orphaned by the death of parents to AIDS" when "members of parliament visited the center for information" (AIDScaptions, 1996, July, Vol.3 (No.2).

The Consortium has become a valuable state partner in combating HIV/AIDS. The Kenyan government's Strategy Plan for 2000-2005 hails KANCO as "already working very closely with NACC" (44). KANCO has been recognized by both the government and by international donors as a main vehicle for civil society coordination.
Its recognition and acceptance by the state has not only led to the strengthening of cooperation between the state and civil society, but also it has given a structure for the development of a bottom-up process of policy advocacy. While citizen activism was limited and policy advocacy fragmented, KANCO has empowered a cross section of Kenyans to pressure the government for favorable policies through new means of power gained through numbers, civic education and also through a form of interaction with policy makers that emphasize similar challenges to be faced as opposed to differences.

Another form of emergent coalition networks can be seen as those networks bringing together PLWHA. These networks have become a strong institutional mechanism for strengthening citizens’ policy advocacy in Kenya, and indeed, in other hard hit countries across sub-Saharan Africa. PLWHA networks also have the unique significance of providing a forum for empowerment of the much stigmatized and discriminated against PLWHA. Not only can PLWHA use the network as a means to access national policy formulation, they can also use it as a support group. The collective coalitional force is better placed to stand against institutionalized stigmatization and to break away from such cultural mandated practices as the restriction of discussion of issues involving sex (seen as taboo).

One such coalition is the Network of African People Living with HIV/AIDS (NAP+), whose membership extends beyond Kenya, to the entire sub-Saharan Africa region. Formed in 1993 by two PLWHA who sought a means to break away from ‘a feeling of hopelessness’, NAP+ has been involved in a host of activities bent on advancing the position of PLWHA in the region. A crucial part of the coalition’s daily activities is advocacy on the issue of fair treatment and legal protection for PLWHA in the entire African continent. The network is involved in extensive lobbying of law
makers to pass and uphold legislations to safeguard such basic human rights for PLWHA as: right to privacy, elimination of discrimination in employment and travel, and the guarantee of access to public goods like health care and education.

Given the common denominator of infection among the networks members, a prevalent strategy for mobilization has been the 'personal experiential approach', where PLWHA use personal experiences as the basis for galvanizing other similarly predisposed people into action. Such experiences may be narrations of humiliations suffered by PLWHA, which form a reference point of what to work against, or could be successes achieved in behavior change that give an example of cases to emulate. The network is also engaged in fostering the formation of new support groups for PLWHA in areas where none exist. Through the 'Ambassador of Hope project', the network actively pursues the development of new, and the strengthening of already existing, networks for PLWHA. The project involves community visits by activists who not only share their experiences, but also spread information on new developments in policy and on areas requiring action.

The coalition has given a voice to a marginalized part of the population whose position as a group of people suffering from a sex related disease make them outcasts in practically all African traditional communities. Not only have they found a means through which to lobby specific governments on important policy areas, but they also have produced a form of social structure for the civic education of many from the village to the city. This can be interpreted as a development that is inadvertently sowing the seeds for the growth of citizen activism and participation in policy formulation beyond the immediate HIV/AIDS crisis.

Another network is the Association of People Living With AIDS in Kenya (TAPWAK). The organization's aim is to provide a forum for representation of people
living with HIV/AIDS in Kenya and also to participate in advocacy for the human rights of the infected. The organization takes part in a wide variety of activities involving PLWHA, both directly and indirectly. Direct activities include both person to person and group counseling, home and support of aids orphans, albeit limited by the available financial resources. Along with the other active networks, TAPWAK has been involved extensively in both lobbying of lawmakers and also in drafting of proposal initiatives on issues important to PLWHA for the consideration of the country's lawmakers. The network also offers a specific forum for HIV positive women-- The Positively Women of TAPWAK (POWOTA)-- to share their problems and to seek support in cases of mistreatment by other members of society. As part of the recognition of the fact that HIV/AIDS is a global problem, the network is an active participant in each year's World AIDS day commemoration, which in itself serves a huge role in mobilizing members of society by drawing attention to specific tenets of the devastating crisis.

Given the prevalence of discrimination and stigmatization of HIV positive people at the workplace, another area where networks have emerged is on the labor front. Founded in 2000, the Kenya HIV and AIDS Private Sector Business Council (KHBC) comprises 100 private sector companies (by 2004), who seek to contribute to the fight against HIV and AIDS in the workplace and at the related community level. KHBC is mainly engaged in spreading education on HIV/AIDS among workers and lobbying the state for the provision of favorable policies to address the issue of HIV/AIDS at the community level. It is plausible to argue that the private sector has a huge stake in the response against HIV/AIDS as a rational business move to protect their profit margins, even if they do not necessarily care about the plight of PLWHA perse. Moreover, while many employers have been seen as involved in discriminatory acts against PLWHA in their firms, the recognition that companies cannot escape the effect of the pandemic by
simply firing infected workers has dawned clearly on the private investors. A unique strategy employed by the network is what is referred to as the 'Greater Involvement of People Living With AIDS model' (GIPA). The model is based on the premise that, to do away with stigmatization and discrimination of PLWHA at the workplace, businesses must empower them. Consequently, GIPA employs the strategy of involving an appointed HIV positive person as the head of a specific firm's HIV/AIDS programs at the workplace.

Such company HIV/AIDS heads are not only connected to each other through the KHBC emblem, but also work closely with policy makers at the National AIDS Control Council (NACC) to put across their suggestions for different aspects of policy on HIV/AIDS. The network also works closely with other business networks across the world as seen in the networks affiliation to the Global Business Coalition, an international umbrella organization with its headquarters in New York, that aims to strength businesses' capacity to deal with issues of HIV/AIDS across the world and to coordinate the sharing of experiences between countries to help advance the response against HIV/AIDS. The HIV and AIDS Business Council has become an effective institutional framework for the private sector involvement in issues of HIV/AIDS and has afforded the private sector a front for frequent interactions with state policy makers, as well as other civil society activists.

Another labor based network, the Federation of Kenyan employers, has put together a good conduct reference book for dealing with HIV/AIDS at the workplace. The main purpose is to institutionalize the process of dealing with HIV/AIDS at the workplace by giving employers a framework within which they could develop their companies' policies for HIV/AIDS and institute education programs for those at risk. Of special emphasis in the codebook is the need to uphold human rights of the infected
employees. Important to note is that the much referenced codebook has become an instrumental mechanism for the protection of hitherto abused employees at the workplace. It is however only fair to also point out that despite the labor oriented coalition's involvement in the formulation of actions against the HIV/AIDS pandemic, the Kenyan government remains a step behind in instituting legal institutions to govern the workplace. While various suggestions exist, including a legal task force formed by the country's Attorney General to probe and make suggestions on different ways in which PLWHA's rights could be protected, more firm action is necessary to address the issue.

One area of much importance to the fight against HIV/AIDS is the issue of the provision of drugs to address the many opportunistic ailments as a result of the body's lack of immunity during advanced and full blown AIDS stages. While policies protecting the human rights of PLWHA are essential, it is equally important to take care of the infected through the provision of adequate and affordable antiretroviral drugs, which have been proven as capable of slowing down fatalities by dealing with the many resulting opportunistic ailments. Globally, according to the WHO, in 2003, there were six million people in need of 'immediate antiretroviral therapy (ART) in poor countries of the world. As the high death rate reveals, very few people had access to the essential medication compared to over seventy percent access in the economically developed countries (WHO, 2003). During the World AIDS Day commemoration in December 2003, WHO and UNAIDS clearly set their goal as the provision of treatment to 3 million people in developing countries by the year 2005, what has been termed as 'the 3 by 5 Initiative'.

In Kenya, the Kenya Coalition on Access to Essential Medicines has been vocal on the need for accessible medication for PLWHA and for the prevention of Mother to Child HIV transmission in the country. The network's membership is an assortment of
civil society stakeholders, including a few international NGOs who deal with the issue of primary care for the infected in Kenya. Members of this coalition include such Kenyan based civil society organizations as: Women Fighting AIDS in Kenya (WOFAK), Association of People living with AIDS in Kenya (TAPWAK), Network for people living with HIV/AIDS (NEPHAK), Society for Women and AIDS in Kenya (SWAK), Health Action International (HAI Africa), Nyumbani Orphanage, International Federation of Women Lawyers Kenya (FIDA), Kenya Medical Association (KMA), Consumer Information Network and Campaigners for AIDS Free Society. International actors active in the coalition are CARE International, Action Aid, Médecins Sans Frontières (MSF), Pharmaciens Sans Frontieres (PSF).

This network has been instrumental in bringing together different organizations to engage in advocacy for the state to relax enforcement of existing trade laws that force compliance with international pharmaceutical firms’ patents on expensive drugs, seen as a means for denying poor African countries access to affordable AIDS medication. On their part, pharmaceutical companies make a case that a lot of money is spent on research and development of the patented drugs and hence the need for competitively higher prices.

The conflict over drug patents actually resulted in the filing of a lawsuit in March 2001 in a South African court against the South African government, by a group of pharmaceutical companies who accused the government of flouting international trade laws by allowing the importation and production of generic AIDS medications, seen as infringing on the companies’ legal patents. In November 1997, South Africa’s Parliament, as an emergency measure, had passed the landmark and strongly controversial Medicines and Related Substances Control Amendment Act 90, allowing importation and the also domestic manufacture of generic AIDS drugs regardless of
patent rights. Concerted civil society pressure and worldwide outcry at the companies' audacity led to their withdrawing of the petition and to the promise of more affordable drugs for the poor African countries.

**Visualizing Institutional Change: Emergent Mechanisms in Action**

While the level of mobilization against HIV/AIDS has undoubtedly been stepped up in Kenya beginning with the adaptation of the Sessional Paper No. 4 in 1997, a question that remains to be answered is exactly how effective the emergent institutional mechanisms have been both in addressing the issue at hand, and also in enforcing democratic practices in Kenya. This section will discuss the initial successes, while the following chapter will put the question of the pandemic's impact on democratization in better perspective.

To answer the question as to what has transpired in Kenya so far, one must start by acknowledging the fact that emergent institutional mechanisms have emphasized the importance of community involvement, and also an approach that holds human rights protection as crucial for dealing with different aspects exposed by the pandemic. At another level, one must also be open to the realization that mobilization against HIV/AIDS and the practice of democracy in Kenya. Are both political processes in their infancy. While it is possible to take stock of accruing successes and failures to date, there is need to realize that many of the political processes taking shape in the early 2000's, the time span of this study, will best be gauged through a longitudinal study a few years down the road.

Nonetheless, an initial analysis of the policy arena reveals a quick progression of new policies governing the responses to HIV/AIDS, and new legal stipulations protecting marginalized groups in the country. Increased involvement by both individual citizens and the broad coalitions in policy advocacy, has been instrumental in bringing
about legal institutions whose influence and effectiveness has the full potential to outlast the pandemic and to increase the level of political institutionalization in Kenya.

As if to make up for the over fifteen years of reluctance to get involved in HIV/AIDS policy formulation, a time when the HIV virus spread quickly across the country, the Kenyan government has stepped into high gear and has sought to get involved along with members of civil society and international donors in addressing practically every area of concern in the fight against the pandemic. Several national guidelines to direct the response against HIV/AIDS have been advanced. These range from national guidelines on counselling and testing, policy on caring of AIDS patients, a code of regulations governing the treatment of PLWHA in the workplace, policy guidelines to guide the provision of anti-retroviral medication for the infected, including provision of medication to prevent mother to child HIV transmissions, to even a national policy on provisions of condoms.

An important place to start in gauging initial success is an analysis of the level of pandemic awareness and related willingness among individuals to seek essential information on their HIV status, a crucial first step in combating the pandemic. While the early years of the pandemic saw many Kenyans shun anything to do with the pandemic and continue to practice discrimination at all social levels against those bold enough to reveal their HIV positive status, Kenyans have increasingly opened up to AIDS activism, and to the need for self education and testing for the HIV virus. This willingness can partly be seen as a result of the Kenyan government and AIDS based civil society organizations’ commitment to advancing AIDS education and establishment of accessible centers for counseling and HIV testing across the country. From a state of none existent easily accessible HIV testing facilities in 1999, there were 203 Voluntary Counselling and Testing Centers (VCTs) across the country by
December 2003, sponsored by both the state and by civil society organizations. According to the Minister of Health, this number was set to increase to 473, courtesy of funds donated by the UNAIDS Global Fund to help Kenya mount a successful response against the pandemic. As a USAID report (2003) on HIV/AIDS in Kenya explains:

Voluntary counseling and testing is a powerful weapon against the spread of HIV/AIDS. VCT is a key entry point for needed medical, psychological, social, and legal interventions for HIV-positive Kenyans and their families. Interventions include treatment and prevention of opportunistic infections; prevention of mother-to-child transmission of HIV; home-based care; orphan support and post-test clubs. VCT is a catalyst for behavior change—for clients who test HIV-negative as well as those who test positive. Clients are counseled about HIV prevention, and they develop HIV risk-reduction plans and receive referrals to post-test clubs to reinforce behavior change. The Kenya program uses two models of service provision: stand alone sites and those integrated into public health facilities such as large hospitals, smaller health centers, and rural dispensaries (USAID report, 2003, May. Online serial).

That the VCTs have had a positive impact on Kenyan society is evident in the ever-increasing numbers of Kenyans who have openly sought their services. Between January 2001 and September 2002, for example, “more than 36,000 Kenyans visited program sites and received HIV/AIDS-related services” (USAID report, 2003, May). Such increases would reveal growing acceptance by the populace of the VCTs’ ability to handle confidential matters.

Another indication of change is the growing confidence and willingness by a cross section of Kenyans to express their views on different critical issues. One such incident involved mass demonstrations against both the government and foreign multinational companies, seen as withholding essential AIDS medication. As a newspaper recounts:

More than 200 people infected with Aids yesterday convened a “people's tribunal” and passed a guilty verdict against the Government and multinational pharmaceutical companies. They accused the Government of paying lip service to the provision of life-prolonging Aids drugs, commonly known as anti-retrovirals, to the 250,000 infected people who urgently require them. They said although they welcomed Government move to begin treatment of 6,000 patients in public hospitals soon, it was yet to design
and implement a national ARV treatment plan... Participants at the tribunal donned black T-shirts bearing the legend: "Treat 1/4 million Kenyans Now!" and another message on the back: "Only 2 pills a day"... Every time the moderators asked their verdict against the Government, World Trade Organization, pharmaceutical companies, stigma, discrimination and denial, the participants shouted in unison guilty! as they hoisted placards of the word... They also shouted: "We need treatment now... We need treatment now... We need treatment now... (Daily Nation Online, 2003, September 24).

While demonstrations may not always reveal political progress, they are however a good indicator of a population that is well aware of important issues around them, and who have refused to resign themselves to fate. A demonstration is a strong me and for political activism. That the state will allow such demonstrations can also partly be seen as part of the democratic maturity that is increasingly gaining credence in Kenya.

The Industrial Property Bill and Affordable HIV/AIDS Medication in Kenya

Following intensive lobbying and pressure from a cross section of civil society activists, among them the Kenya Coalition on Access to Essential Medicines, on 13th June 2001, the Kenyan Parliament passed the Industrial Property Bill (Reuters, 2001, June 12). The bill is significant as a mechanism for the country to provide more affordable generic antiretroviral drugs, essential for dealing with full-blown AIDS. Two ways in which the country aspires to provide affordable ARVs are either through direct importation of generic drugs from manufacturers in such countries as India, Thailand or Brazil, and through encouragement of local manufacture of affordable HIV/AIDS generic drugs by any willing domestic or foreign investors. Such a move would not only make the drugs cheaper and much accessible, but it would also play the dual role of advancing the country’s industrialization and offer accruing employment benefits.

Donor funding coming into Kenya, mainly from the Global Fund and from the World Bank, has already been earmarked for the provision of HIV/AIDS drugs for patients at an advanced stage of AIDS, and who need support in coping with a host of opportunistic ailments. As the Kenyan Ministry of Health’s mandated HIV/AIDS organ-
the National AIDS/STD Control Programme (NASCOP)—announced in April 2004, Kenya aspires to provide treatment for 20% of the AIDS patients in urgent need of anti-retroviral (ARV) treatment by 2005, and another 50-60% by 2008 (NASCOP, 2004). Given a prevalent figure of approximately 200,000 Kenyans in need of urgent medication, this translates into 40,000 people receiving treatment by 2005 across the 15 designated treatment centers around the country. As the figures reveal however, it is clear that, though HIV/AIDS continues to ravage the country, little has been done so far in terms of directly confronting HIV/AIDS, which has so far spread among 2.5 million Kenyans. Setting up such clear goals is nevertheless a remarkable first step forward, albeit belated, in actually facing up to the existence of a killer pandemic that requires urgent attention.

While the country is still in dire need of medication, the Industrial Property Bill has made it possible for those who can afford to start importing cheaper, but effective generic AIDS drugs. These are the few though, and majority of the infected await the state's free program. One newspaper account aptly juxtaposes the current need with the current effort level as follows: “At least 250,000 Kenyans are in urgent need of antiretroviral drugs (ARVs), but only between 7,000 and 10,000 can afford them (IRINPLUS News, 2003, September 23). While the Industrial Bill can primarily be seen as a coping mechanism against the devastating HIV/AIDS pandemic, it could also be seen as a very useful institutional mechanism to enable the country to begin importing or locally manufacturing different essential drugs, formally seen as out of reach. Such diseases like malaria continue to exert a heavy death toll on Kenya’s population. The bill could afford the country protection in seeking likewise emergency measures to deal with these other medical problems.

On the downside however, given the prevalence of a culture of deeply rooted
corruption, both the state and civil society have to guard against illegal profiteering from the sale of cheaply imported drugs which could then be sold at high prices for those who could afford them. Though Kenya has always tried to provide a manageable health system for its populace, including a very low cost sharing charge for treatment in government hospitals, it has become common knowledge to many in the country that no drugs are available in the hospitals. A combination of corrupt medical individuals and lack of an effective state oversight of the hospitals has led to a systematic cleaning out of the medical stores in many public district hospitals in the country for private gains. For imported cheap AIDS medication to be sold at high prices to the highest bidders in the market would be self defeating for the country’s efforts, hence the need for strict regulation and protection for such a process.

A related component is the need to provide an effective health care structure for the distribution of such medication. Given the fact that no single anti-HIV/AIDS medication exists, a lot of the available medication needs combining, thus raising the fear of increasing toxicity levels for the AIDS patients and opening up a stream of side effects, if abused. To avoid such pitfalls, a firm health department capacity is needed to offer skilled services in relationship to the administering of the ARV therapies. Already, the Kenyan government has designated eight district hospitals as the venues for the provision of free medication to prevent mother to child HIV transmissions. Given the huge number of AIDS patients, there is urgent need for the expansion of the centers providing such skilled services, if the desired goals in passing the Industrial Bill have to be achieved in a timely manner. Despite the challenges however, the Industrial Property Bill is no doubt a significant mechanism for both addressing HIV/AIDS, and for empowering Kenyans to seek independent solutions for their medical issues.
Legal Provisions for the Protection of Women and Children in Kenya

Another way of explaining initial successes emanating from the political transformation that is taking place in Kenya is the increased level of protection for marginalized groups and indeed, their empowerment through parliament sanctioned policies. While mobilization against HIV/AIDS may not entirely claim all the credit for the emergence of various legal bills, yet the urgent nature of the crisis has drawn attention to various essential needs and in some cases, speeded up the adaptation of bills that have previously failed to go through in the Kenyan parliament.

Of the emergent legal institutions, ‘The Children Act’ of 2001 can be seen as a fitting example of the renewed interest in issues of human rights protection. In comparison with previous legal stipulations on children, the bill is a clear addition to existing Kenyan laws, more so given its emphasizes on ‘protection’ of all children, including those in Children’s Homes and Orphanages, as opposed to ‘punishment of children who break existing laws. The bill details protection of children several areas, including from sexual abuse and forced harmful cultural practices like forced early marriages. Coupled with the emergent Criminal Amendment Bill, which as will be discussed, stipulated a mandatory life sentence for child rape crimes, the ‘Act’ has spurred a flurry of activities on issues concerning the protection and care of children, and has formed the basis of several landmark court cases. In one such historic case in December 2003, an 18 years old man convicted by a Kenyan court of raping a four years old girl, was condemned to a life in prison, amid much interest in the case by not only a cross section of government officials, but by members of the civil society.

As Joyce Majiwa, chairperson of the Kenyan chapter of International Federation of Women Lawyers (FIDA) aptly explained: “the new law had helped overcome one of the biggest legal hurdles faced by victims of sexual violence in Kenya” (IRIN, 2003,
December 9). At another level, According to the Act, anyone who infringes on a child's right to primary education is guilty of an offence and punishable by a jail term of not more than 12 months or a maximum fine of 50,000 Kenya shillings (about US $640). This has had the effect of opening up public institutions for hitherto discriminated infected children and AIDS orphans, who could barely afford to pay for anything, including their school uniforms.

Beginning with the adoption of the Sessional Paper No. 4 of 1997 on AIDS in Kenya, the Kenyan government has shown increased interest in working with civil society activists to establish legal provisions to protect vulnerable women and children in the country. Further to this, while the state has all along striven to encourage and indeed preserve different cultural heritages that women and children are part and parcel of, the focus drawn by the HIV/AIDS pandemic on inherent mistreatment of women in different societies has made it necessary for the government to look favorably upon several different bills presented in parliament, seeking to advance the protection of women and children regardless of cultural stipulations.

By the end of 2003, with consultations and support from both organized women's groups and other civil society activists, including children activists who lobbied both the president and the members of parliament tirelessly, a cross section of members of the parliament (MPs) had already presented four major bills before the Kenyan Parliament for debate and adaptation into laws. A discussion of these legal mechanisms for protection of the marginalized groups follows.

**Criminal Law Amendment Bill**

This bill was first debated by the Kenyan parliament in 2000 and passed into law in June 2003. The bill sought to strengthen existing laws' ability to protect women and children against violence and sexual abuse. The amendment eliminated legal
loopholes caused by application of different standards and harmonizes all the penalties for sexual crimes. Those found guilty of any sexual offence for example could now be sentenced to a maximum of life imprisonment.

Another area was the shifting of the required burden of proof in favor of young victims. Initially, existing Kenyan law was rigid on the need for the victim to prove their case beyond any doubts and to have such cases collaborated by others. Given the secret nature of a majority of sexual crimes and the legal complexities involved in proving them, such requirements would often disadvantage young rape victims whose evidence was held suspect and deemed insufficient by existing law, and consequently, frustrate any possible actions against the offenders. The new amendment makes it possible for the courts to convict accused people simply on the strength of a victim's evidence. The law particularly favors minor victims of rape crimes.

Closely allied to this is the new amendment's proposal to have cases involving minors tried in privacy as a means of protecting both the victim's identity and privacy and in so doing, encourage increased reporting of such cases whenever they occur. Most significantly, the amendment raised the age for legal protection from fourteen years to sixteen years, a step meant to counteract prevalent traditionally sanctioned forced marriages of school going young girls to older men.

**The Family Protection / Domestic Violence Bill**

Kenya is a signatory to several international treaties for the humane treatment and protection of women. One such international treaty that addresses the issue of violence against women and that Kenya is supportive of, is 'The Declaration on the Elimination of the Violence against Women (DEVAW). According to the declaration, violence against women constitutes: "Any act of gender-based violence that results in, or is likely to result in: physical, sexual or psychological harm or suffering to women,
including threats of such acts, coercion or arbitrary deprivation of liberty whether owing in public or private life" (DEVAW, December, 1993).

An emergent legal mechanism in Kenya that echoes the sentiments expressed in DEVAW is the Domestic Violence (Family Protection) bill first presented in the Kenyan parliament in 2001. The Bill’s main aim is to stop widespread gender violence in the country, seen as a factor behind the high number of broken families in the country. The Bill sought to fully involve the Kenyan courts of law in protecting women against domestic violence by enforcing stiffer penalties for those committing domestic violence. The bill postulates a jail term of up to one year, combined with a fine of Sh100,000 (about 1,200 dollars) for anyone found guilty of domestic violence. The bill would also provide some financial assistance for women who had suffered domestic violence. The reasoning behind the financial clause is that women sometimes are held captive in violent relationships by the fear of economic misery once one breaks loose. To be able to protect women in different situations, the bill also took into consideration the issue of traditional cohabitation arrangements where no formal agreements are signed, and sought to extend the definition of ‘spouse’ to include people living together who may not necessarily be in a legally constituted union.

The Affirmative Action Bill

Another mechanism for the protection and enhancement of women’s position and that has been considered favorably in the AIDS era after initial failed attempts to have it debated by previous Parliaments is the ‘Affirmative Action Bill’. Interestingly, this motion had already been attempted once before in the Kenyan parliament and rejected with minimal debate by the overwhelming majority of male legislators. The bill’s main agenda is to gain fair representation for women in the public sector, including in the parliament and in local council governments. The bill explicitly

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advocates that one third of the seats in the Kenyan parliament be reserved for women candidates, as well as another one third of the total local government representative seats. The proponents of the motion see this strategy as the only direct means to give women a ‘voice’ in policy making in the country. The imbalance in representation is well documented by the heavily slanted figures year after year.

In 2001 for example, there were only nine women Members of Parliament in a house made up of 210 MPs. Five of the women MPs owed their positions directly to the president who had nominated them to office. The local councils did not fare any better with only 300 women dispersed among 3,392 male councilors across the country. By December 2003, the number had risen to 18 women in parliament, including eight nominated directly by President Kibaki, out of a total 222 legislators in Parliament. As it turns out, this is the highest number of women in post independence Kenyan Parliament. Six women have also been named as cabinet ministers, out of the total 51 ministers. Again, this is a first in the country since gaining independence from the British in 1963. The situation is no better in local authorities.

That the country has indeed seen a growing mobilization and growing awareness is well captured by the following narration of the scene outside the Kenyan parliament on the day that the ‘affirmative action bill’ was presented. As the newspaper article notes:

In a prime example of collective action, women’s groups countrywide rallied behind the Affirmative Action motion, soon to be presented to Parliament as a Bill, thus ensuring that Parliament passed the motion it rejected in 1997. On the day of reckoning, women from all parts of Kenya turned up at Parliament Buildings to give moral support to the mover of the motion, Social Democratic Party’s Beth Mugo of Dagoretti. The campaign outside Parliament was spearheaded by the Kenya Women’s Political Caucus chaired by Mrs. Phoebe Asiyo, who moved the 1997 motion (Daily Nation, December 8, 2000).

Suffice to say, the question of equality and indeed equal representation for women in Kenya as a means towards empowerment is still of much concern. If we take the basic
tenet of democracy as 'equality for all', it would then only be fair to conclude that this activism by women in Kenya is a logical step towards achieving aspired-for democracy.

Other areas of increased interest by women activists include the issue of access to women's matrimonial land and other property, a traditionally strong male relatives' preserve. Despite the formal recognition of women's property rights by existing Kenyan law, as previously detailed, death of spouses has left many women destitute through loss of their matrimonial homes and land to greedy male relatives. Under pressure from women activists, President Moi set up “The Njonjo Land Commission” in November 1999. The Commission's main task was to evaluate the country's land law system seen as overly biased against women.

While a majority of the proposed bills are yet to become law, the steady progression of debate in the Kenyan parliament and continued media and public interest have strongly rejuvenated citizen activism in the country, besides introducing a whole set of institutional mechanisms for the protection of a hitherto marginalized section of the population. When finally signed into law, the bills will strongly enhance the expectation of freedom that women and the children in the country are increasingly growing accustomed to.

Conclusion

My main argument is that while HIV/AIDS has been documented as having a negative impact on the process of democratization and as set to reverse political gains made in recent years in sub-Saharan Africa (Manning, 2003; Hope, 2003; Youde, 2001), mobilization against the pandemic does however contribute to the process of democratic consolidation in the country through the emergence of new, more citizen accommodating political institutions and multi-sectoral oriented approaches to policy.
formulation. Evidence from recent research on HIV/AIDS era political developments in Kenya reveal an increasingly democratic outcome from the interaction between state and civil society in the response against HIV/AIDS.

This chapter adopts a more micro level exploration of specific political developments in the country and reveals the emergence of several institutional mechanisms that shape the country's AIDS policy arena and that show a huge potential of transforming the country's political developments, including the means and forms of power contestation, policy making processes and relationship between the state and civil society in several significant ways. For one, improvements in both the policy making environment and in institutional mechanisms aimed at boosting the fight for the pandemic's prevention are beginning to have an impact on the country's war against the catastrophe. At another level, policies adopted in the war against HIV/AIDS are positively affecting the consolidation of democracy in Kenya by giving a voice to marginalized groups of people, and by both streamlining the issue of citizen activism and also the form and means of participation in policy making.

An important tenet to consider is the fact that beyond the present, emergent institutions have the ability to shape political developments in society long after a cure for the devastating HIV virus has been discovered. Much as HIV/AIDS is a current threat, many will concur that it is really just a matter of time before the threat is eliminated. Equally believable, considering what history has so far proven, is the fact that other epidemics lurk in our future. As Mann notes: "While it is clear at the moment that HIV/AIDS has stepped to the forefront of global health concerns, it is equally clear that it will not be the last disease to do so (Mann in Kirp and Bayer 1992, ix; Mameti, 1998, 24)."
The search for solutions to counter the HIV/AIDS pandemic has drawn a sharp focus on existing inadequacies in issues of human rights, governance and even state-civil society relations vis-à-vis policy formulation. To address these issues, it has become imperative to depart from the practice of 'business as usual' marked by hostility and competition between the state and civil society based organizations, and to seek new more cooperative means for coping with the inadequacies. It is worthwhile to note that emergent institutional mechanisms in Kenya can be seen as resulting from a process of widespread participation and joint agenda setting between different stakeholders.
CHAPTER V

THE RESPONSES TO HIV/AIDS AND IMPLICATIONS FOR DEMOCRACY IN KENYA

This chapter will discuss the impact of the response to HIV/AIDS, an external shock whose effect has been felt in every sector in Kenya, on the process of democratisation. A closer look at the mobilization against the pandemic reveal the existence of emergent institutional mechanisms which have given rise to robust political activities, and that correspond closely to factors that I see as necessary for the advancement of democracy. Emergent institutional mechanisms emanating from the responses to an external shock can impact the political environment in several ways, including affecting the progression of democracy.

While I must acknowledge the fact that democracy in Kenya is still in its infancy, and hence the need for caution in discussing what has worked (or not), it however stands to be argued that these emergent mechanisms have both engendered democratic practice and can be seen as contributing to the consolidation of the young democracy in Kenya. To make this case however, there is need to first discuss what I understand by ‘democracy’, and to delineate its constituent elements that may be seen as corresponding closely to issues defined as most important for successful responses to the HIV/AIDS pandemic.

From Aspirations to Practice: What it Means to be Democratic

Democracy has been tagged in many ways, and described as constituting different aspects in line with the concept’s Greek origin as ‘rule by the people’ (demos:
the people; kratein: to rule). The broad definition begs the question as to exactly how the people should rule, and sets a need for detailing the mechanisms for such political involvement.

To probe the mechanisms that endow democracy, I start by calling attention to the need for clear separation between democracy as an aspired for ideal system of government to benefit mainly those people living under authoritarian regimes --hereby referred to as ideal democracy-- and actual democratic practice—as ongoing process of political system development, complete with its achievements and frustrations, as experienced in democratic countries. To use the analogy of the progression of democracy in Kenya, 'ideal democracy' can be described as that force which made Kenyans to take to the streets in the early 1990's in huge demonstrations to pressure the state to adopt political reforms, in the face of brutal repression by heavily armed police units. On the other hand, democracy in practice is that which saw a cross section of Kenyans take to the streets on several occasions in 2003, either to express their dissatisfaction with, or support for, several issues, including the redrafted Constitution and Kenya's policy on provision of HIV/AIDS drugs, with unarmed police personnel escorting them from the side flanks and stopping traffic to ensure their safe passage on each occasion.

In its ideal form, democracy encompasses usually emotionally infused aspirations by a people to achieve a set of goals deemed as necessary for the improvement of their welfare. Such aspirations include the need to participate in choosing both their political leaders, and also favorable policies to govern them. The concept also encompasses aspirations for freedom, be it of association, movement, worship or expression. Further to this, ideal democracy is also an aspiration by the people in a given society to be treated equally and fairly by the government based on a
system of predictable rules and regulations, as opposed to reliance on the whims of those wielding political power. While many sub-Saharan Africa states claim to be democratic in their Constitutions for example, like in the case of Somali Democratic Republic, or the Democratic Republic of Congo (DRC/ Kinshasa), theirs is an expression of awareness of democracy in its ideal form, as opposed to the actual experiencing of actualized democracy. Each of these countries has experienced a strongly authoritarian form of governance and continued violent interruptions in governance.

In practice, democracy can consequently be seen as a means of implementing, at least to some degree, the aspired for elements of democracy for the good of society. This stage reveals the reality inherent in mass participation in the process of determining what is good for society. Though largely preferred in comparison to authoritarianism, it is however a reality marked by high and low points, achievements and complexities, that make up democratic practice. The exercise of democracy entails the existence of institutional arrangements to govern daily political transactions as opposed to reverting to ad hoc decisions by those in power. Formal institutional arrangements allow for the participation of the citizenry in various aspects of nation building, including repeated participation in picking those to represent them, and getting involved in determining the right policies to be pursued to regulate different areas, through formalized means of achieving political consensus. Such institutions also provide for the protection of citizens' rights and ensure the exercise of their basic freedom.

Citizen participation in a political system could be described as both a prerequisite for, and an indication of, democracy in practice. While mass participation in agitating for political reforms will put pressure on a regime to reform—sometimes
successfully -- institutionalised citizen participation in policy formulation and policy advocacy indicates the case of a state that has embraced democratic practice. Such continued participation is however closely tied to the existence of such basic freedoms as association, movement, speech and freedom of the press, all essential ingredients for the advancement of citizen political awareness and mobilization, and the subsequent creation of a political environment conducive for the takeoff of citizen participation in various aspects of ‘nation building’.

The inculcating of the freedoms of press and speech in particular can be seen as steps in ensuring open societies that embrace transparency and accountability. The role of the media to exert checks on political abuse is well documented. The beauty of democracy is that, regardless of a particular leader’s feelings towards the media, a structure exists for their involvement as both informants and the watchful eyes of the masses vis-a-vis the government. As press conferences in democracies have time and again revealed, a leader’s personal feelings towards a particular media’s editorial policy is not a consideration on whether to let them into the conference room. Democratic etiquette requires the leader to answer most of the questions on the table, time allowing. As is sometimes the case, a leader’s leeway is to refuse to ‘make any comments’ directly on particular issues or to offer a ‘not so useful’ generic response. Still where an independent media exists, this could become the basis for pressure, eventually forcing the leader to react to the issue at hand. It is only fair however to acknowledge the fact that most political leaders are suspicious of a larger section of the media, whom they see as snoopy and as bent on highlighting only their weaknesses as opposed to their achievements.

Through its ability to disperse essential information on issues of political concern, and to criticize unfavorable policies, the media is in most instances the first
stage in mobilization against important issues and consequently, leads up to greater
citizen empowerment for collective action. As previously detailed in this study, the
involvement of the media as whistle blowers in the early days of the HIV/AIDS
pandemic in Kenya, despite the government's firm rejection of the stated facts,
eventually contributed to the state's acknowledgement of the problem, and ironically,
the same formerly demonized media received appeals from the state to spread
information about how people could protect themselves from HIV infection.

Mass mobilization and involvement in the political system, itself an aspect of the
freedom of association, can best be seen through civil society organizing. To be sure,
such organizations are by no means limited to democratic systems and indeed have
been documented as active in many authoritarian regimes. Civil society in authoritarian
regimes is however locked in hostile conflict with the state over the need for political
reforms, or is too demure and agreeable with state actions, usually for the propagation
of self-interest like financial gain for a particular community. Political scientists
interested in African political systems have extensively documented the existence of
'patron-client relationships' on one hand, and strongly suppressed civil societies on the
other, in many African states where authoritarian regimes reigned supreme
(Hirschman, 1970; Barkan, 1984; Callaghy, 1984; Throup, 1987; Chazan, 1988;
Azarya, 1992; Hyden, 1992; Widner, 1992; Bratton, 1994; Gellner, 1994; Migdal, 1994;

Civil society organizations in democracies offer an easily accessible structure
for the involvement of the masses in the political system, at minimal cost. Civil society
based organizations afford the masses a formalized structure for the articulation of
specific interests and policy desires, usually at the cost of a ballot vote for political
leaders willing to listen and take action. In such democratic countries, while by
administrative design civil society can be seen to be on the outside of the state's elected law making machinery, such organizations nevertheless do take part actively in designing the nature of new policies, and in drawing attention to important areas of concern through joint agenda setting initiatives with the state's policy makers.

Consequently, civil society can essentially be seen as helping the government to govern. They may not sign the final policy declaration statement, a role reserved for the elected law makers, but their points of view as well as their constituencies' interests are usually included as determining factors in the formulation of the final policy. As further discussion will reveal, in the case of the response to the HIV/AIDS pandemic, initiatives on policies to ensure human rights protection and also the establishment of measures to provide affordable medication to treat those infected with HIV in Kenya, can be seen to be emanating partly from civil society coalitions working with the state to counter the spread of the devastating pandemic. Civil society in this case offers the marginalized groups a chance to push for favourable policies.

At another level, a vibrant civil society can be seen as instrumental in advancing the practice of democracy through encouragement of a culture of cooperation and trust both within a particular organization, and across the nation to other similarly involved organizations. From the development of positive relationships at a personal level, civil society organizing also extends to widely encompassing positive relations among diverse groups interested in one issue, as the previously discussed case of emergent civil society coalitions on the issue of HIV/AIDS in Kenya revealed. It is this harmonizing ability of civil society organizing that Robert Putnam, in his study of Italian politics, refers to as 'social capital' (Putnam, 1993). At the onset, the concept denotes existence of friendly relations among groups of people who come into contact with each other through social networks, a factor that could account for the
growth of a spirit of trust, loyalty, and willingness to do things for each other, what Putnam further refers to as 'norms of reciprocity' (Putnam, 1993). Beyond this level however, social capital also entails the development of a formidable process of information sharing, political socialization, identity formation for particular groups, and eventual collective bargaining in politics, all of which are important assets that benefit the practice of democracy.

While democratic practice entails wide-ranging participation, it is no secret that the citizenry cannot always be assured of their desired ends, either due to leadership weaknesses or due to policy failures. Likewise, where issues of equality arise, democracy is still short of offering conclusive solutions to address traditional human nature inequities, both in property ownership and in gender relations. The question of how to deal with the huge gap in wealth between the rich and the poor still remains an enigma for democracy, even in the world’s strongly consolidated democracies like India, where such inequities are a mainstay of the political system.

Besides, while democracy has in place a system of universal suffrage, where every qualified person exercises their choice of candidate or policy through casting of a single vote, democracy is yet to find a way of making everyone a winner, short of appeasing the defeated minorities. Contemporary democratic practice has expectations for the defeated to comply with the results as part of the system of ‘democratic bargaining’, marked by the understanding that the losing side in a political contest, be it over leadership or policy, have other opportunities to change the system. This could be either through future ballot casting or through other more immediate means like lobbying lawmakers to ensure that the final policy considers their position, albeit partly.
Though inconsistencies abound, in terms of the general good however, it is the capability to repeatedly achieve desired changes in governance through political consensus embedded in formalized institutional frameworks, and the ability to practice one's preferred way of life—as long as it is not harmful to others—that make democratic practice worthwhile. As Cohen points out:

Policy is constantly being formed and re-formed; the direction of a community requires continual attention. Self-government, therefore, requires a continuing series of decisions, of greater or lesser importance, and it is in the making of these decisions, choices that participation in policy-making becomes concrete. When the most important decisions of the community are reached through the general participation of its members, we may call that community self-governed" (Cohen, 1971, 7).

A point to note is that these repeated experimentation with democracy in search of satisfaction for a particular society, points to a localized, political context specific, process of democratic goals attainment. It is a process that would seem to emphasize the emergence of a unique end product that makes most sense to a particular people, as opposed to others. To be sure, certain institutional outputs like incremental changes in particular policies and frequent change of holders of political office as a result of institutionalized election processes are indisputable as widely applicable forms of describing democratic practice across different nations. However, a view of democratic practice as entailing continuous citizen inputs in determining the outcome in various areas of society—a form of dynamic bottom up involvement—weighs heavily against the acceptance of a generalized view of democracy as a political system tied to a particular application of specific tools of trade to produce expected similar outcomes across the world. In line with the continued reengineering inherent in democratic practice, I concur with Benjamin Barber's view that: "It is in the nature of democracy that it is a process, not an end, to an ongoing experiment -- not a set of fixed doctrines" (Barber in key note address to Civitas).
The discussion as to what standardized factors impact democracy has for long captured many scholars interest. From Martin Seymour Lipset's entailing of the prerequisites of democracy (1959), to Robert Dahl's proposition of 'polyarchy' (1971) to even Linz and Stepan propositions on the necessary factors for the consolidation of democracy (1996), scholars on democratization have laid out a concrete view of democracy as a product of very specific political, economic and legal mechanisms. One such mechanism that has captured the fancy of scholars is the process of electioneering. As Bratton writes, elections are: "fundamental not only for installing democratic governments, but as a necessary requisite for broader democratic consolidation" (Journal of Democracy 9.3, 1998, 51-66).

Other scholars writing on politics in sub-Saharan Africa have sought to emphasize the view that liberal democracy is a western concept. These scholars advocate for the need to recognize African forms of democracy. A starting point is a focus on the traditional African communities' set up, where decisions were made openly and a structured system existed in every community, complete with its set of rewards and punishment for every act. It is indeed an emphasis on participative democracy as opposed to the contemporary prevalent representative democracy. Dele Olowu argues for the need for any democratic efforts in Africa to put into consideration already existing local structures of governance. As he writes: "The basic community structures necessary for such an approach appear to already exist in most parts of Africa. It remains necessary to recognize them and to provide the legal, financial, and institutional mechanisms for them to take full responsibility for the overall economic, social and political development of their respective communities" (Olowu in Joseph ed., 1999, 294).
Yet even for the scholars advocating for an ‘African form of democracy’, the point of convergence with other scholars of democracy is the deterministic acceptance of a set of formalized political and legal mechanisms as the indicators of democracy in a given system. They emphasize the existence of uniquely African political structures, both for ensuring predictability and for providing transparency. The very nature of the practice of democracy as a total sum of ongoing political activities calls for frequent examination of different processes in different societies in order to authoritatively detail the advancement of democracy in such localities.

A potential process affecting the practice of democracy is the response to an external shock, in this case HIV/AIDS. Such responses call for wide ranging mobilization, need for inclusion of different stakeholders, and also measures to mitigate against the effects of the shock. This study details one such hitherto unexamined process in Kenya— that of the response to HIV/AIDS. While the short run can be seen as not so favourable, several areas important for democratic consolidation are shown as benefiting in the long run. Emergent institutional mechanisms to address HIV/AIDS can be seen as corresponding to the advancement of democracy in Kenya in several significant areas. The areas are: Human rights issues for marginalized groups, institutionalization of the process of public policy formulation, harmonization of hitherto hostile state-civil society relations and subsequent institutionalization of citizen activism and policy advocacy.

**HIV/AIDS and Democratization in Kenya**

In disentangling the nature of connections between the response to HIV/AIDS and the practice of democracy in Kenya, a starting point should be acknowledging the fact that the formulation of a nationwide strategy for dealing with the HIV/AIDS pandemic in Kenya coincided with the period of transition to democracy, a time when
many local and international actors were involved in putting pressure on the Moi
government to adopt political reforms. Mobilization against HIV/AIDS should be viewed
as one element in a range of factors seen as benefiting the practice of democracy in
Kenya. Further to this, the emergence of democratic friendly institutional mechanisms
in the response to the pandemic should be seen as rooted in the evolving political
environment. Mobilization against external shocks, as mentioned earlier, may help
advance democracy where such a need exists. In the case of Kenya, coinciding of the
response to HIV/AIDS and advancement of democracy, allowed for the coping
mechanisms to address the pandemic to transcend into more protracted elements for
the advancement of democracy. Before we embark on the specific connection
however, it is only fitting to shed some light on the other factors present in pushing
democratization in Kenya.

An active effort by fragmented groups of civil society based activists to have the
Moi government adopt democratic reforms can be traced as far back as in the early
1990’s. Haugerud aptly describes this period as follows: “A lively opposition political
culture stormed Kenya’s public domain during the early 1990s. Carefully preserved
silences were shattered, though the immediate outcome was not the “democracy”
some expected” (Haugerud, 1995, 15). Earlier on in 1989, President Moi had firmly
dismissed opposition’s initial agitations for a multi-party system in the country as a
recipe for tribal turmoil. It took a combination of domestic revolt and international
donors’ pressure, including withholding of over $350 million in development aid to the
country, for Moi to agree to the amendment of the constitution to allow a multiparty
system in the country in December 1991. One of the most sustained sources of
pressure on the Kenyan government to adopt democratic reforms came from the
government’s domestic opposition. The reference to ‘opposition’ may give the false
image of a united group of activists working together to put pressure on the
government. Yet, the nature of Kenya's opposition can best be described as
multifaceted, both in terms of their ideological stands and also largely due to their
different professional backgrounds. As Hauregud explains:

Opponents of the Moi regime, who in the early 1990's advocated that state adopt a
multiparty political system, formed fragile, shifting coalition that had quite disparate
ideological and historical roots. They included, for example, intellectuals (some with
sympathies toward the left) and politicians from the colonial, Kenyatta and Moi eras;
clergy; lawyers; and conservative disaffected businessmen and women who had lost
ground under the Moi regime (Hauregud, 1995, 19).

To this mix, I add both university lecturers and students from the country's five
public universities, newspaper writers who time and again had to face the wrath of an
exposed government, and even public buses (matatu) drivers and their conductors who
played an instrumental role in ferrying masses of people, usually at no cost, for public
meetings called to mobilize against the government.

Given this diversity of civil society activists, it is logical to assert the fact that a
host of mechanisms were applied in the struggle for reforms. One such mechanism
was mass mobilization through political meetings addressed by leading figures in the
opposition across the country. While such public meetings to allow people to voice their
frustrations were frequent, such gatherings were always considered illegal by the
government and would normally be marked by heavily armed police units waiting for
the opportune moment to pounce on the unarmed civilians. And pounce they surely
often did, sometimes with the disastrous result of loss of life for unlucky civilians caught
in the melee. The following newspaper account recalls the political atmosphere and
political contestation around one such meeting, famously referred to as saba saba
(Swahili for July seven). The meeting was to become an important symbolic instrument
for the opposition's ability to pressure the government, as it was the first real show of
the determination of many in the face of a repressive government. As the narration, written in July 2000 to commemorate ten years since *saba saba*, explains:

President Moi "revealed" that Saba Saba was being organized by subversives who hoped to kill innocent citizens and blame it on the government. On July 6, he alleged that a terror gang had just returned from Libya to manage the expected violence. Later, the President claimed that the "hooligans" planning Saba Saba were offering half a million shillings for anybody killed during the planned rally. He promised firm action. Then there was the actual state terror. Starting on July 1, shops were raided and hawkers selling "subversive" music and thousands of wananchi were arrested. On July 4, Matiba and Rubia (*the leading organizers*—italics mine) were arrested in a humiliating way. Their detention was followed by a series of other arrests.... In spite of all these hurdles, wananchi went to Kamukunji in the tens of thousands and launched a series of protest actions that continued for most of the following week. A transport strike was launched with much success in spite of threats from the government to de-register vehicles participating. Buses were burnt for breaching the strike. Motorists were forced to flush the two finger multiparty salute. A demonstration of the potency of popular action was made planting "mass action" into the repertoire of Kenyan political tools forever (Daily Nation, July 16, 2000).

Other mechanisms included acts of civil disobedience, including work boycotts. A proliferation of music and leaflets written in different Kenyan languages, usually attacking the government and calling for determination and courage from the masses in the struggle for democracy, were also part of the arsenal in civil society's bag of strategies. While seen as illegal by the government, these mechanisms however afforded a voice to the oppressed Kenyans and helped set the ground for the eventual transition to democracy. A point to emphasis here is that these mechanisms were based purely on confrontation, a classic situation of frustration leading to aggression.

Another source of pressure for the Moi government were the international donors. Countries in sub-Saharan Africa, Kenya included, have traditionally been beneficiaries of fairly significant sums of money relative to their GDPs, in comparison to countries in other world regions. As Michael Chege explains: "On average, sub-Saharan states receive the highest ration of external aid to GDP: 16.3 percent in 1994 compared with 1.7 percent for Latin America and 1.9 percent for South Asia" (Chege in Deng and Lyons. Eds.1998, 120). In the case of Kenya, Moi's country received the
highest amount in aid in 1990 from one of the leading donors, the USA, in comparison to any other sub-Saharan Africa country (Africa Watch, 1991, 372). While the 'war on terror' may have caused a reconfiguration in the amount of financial aid dispersed per continent, yet undoubtedly, sub-Saharan Africa is still a leading case for the donor's support. Tied to this support however, especially beginning in the early 1990's, were expectations for political reforms.

For the case of Kenya, the World Bank rhetoric for 'good governance, accountability and transparency' (Hauregud, 1995, 22) was rife. Moi's reluctance to institute reforms got him in trouble with the donors, who were quick to punish him by withholding financial aid. As Hauregud further explains: "Some of Kenya's foreign aid was suspended (initially for six months) by the World Bank and other donors at the Paris Club Conference in late November 1991" (Hauregud, 202, 1995). From a leading recipient of US aid, Kenya's financial fortunes dipped between 1991 and 1993 when the formerly abundant US aid was reduced almost 50 percent (Africa Watch, 1991, 372). It was under such increased pressure that the Kenyan government reluctantly allowed the reestablishment of a multiparty system and arranged for a multiparty contested general elections in 1992.

Despite the fact that a host of opposition parties emerged and put up candidates to compete against Moi and his ruling party KANU, in both the 1992 and 1997 general elections, various abuses of the democratic system still existed, including violent repression and restrictions on the opposition members' freedoms of speech, association and movement. A full transition to democracy was yet to be realized.

After the 1997 general elections however, political developments took a turn for the better. The previously hostile state could be seen moving to mend broken bridges with civil society and to accept increased citizen participation in policy formulation. In
seeking to explain this change of heart, many factors can be advanced, including the convincing argument that given this was Moi’s constitutionally mandated last five years term in office, he was keen on building a positive image for himself as a political reformer.

Most significantly for this research, this period also coincides with a phase when the HIV/AIDS pandemic in the country had grown to proportions that defied state efforts to pass it off as a medical issue, undeserving of massive involvement of the entire state machinery. By the mid 1990’s, it had become increasingly apparent both to state policy makers and to members of the civil society that HIV/AIDS was not simply a medical issue, but really more of a wide spread societal problem affecting every sector in the country. This called for a broad response from to address different aspects deemed to be exacerbating the pandemic’s spread, be they social, economic or even political.

A point to make here is that while initial mobilization against the pandemic can be seen as mainly the work of civil society based organizations, an extension of the very same organizations involved in mobilizing for political defiance against the state, the emphasis was on abating the suffering caused by the pandemic by taking care of the infected and stopping further spread through education, as opposed to direct confrontation with the state over particular policies. To be sure, the state was typically suspicious of civil society efforts, especially given its continued reluctance to own up to the existence of a full blown pandemic in the country. The suspicion was however to ebb away as the relations between the state and civil society grew increasingly cordial and joint agenda setting workshops became the norm. If one were to open this study at this page, the obvious question to ask would be: what brought about this change of heart for the state and how come the good relationship? As
chapter 4 detailed however, the emergence of several pandemic response specific mechanisms led the way for the transformation of the political environment in Kenya. Given the pressing need to involve all stakeholders in the process of response to the pandemic, emergent mechanisms spoke to the furthering of cooperation both between members of civil society and between society and the state. Emergent mechanisms also demanded increased level of citizen participation in policy making, a new way of life in a country where policy making was strictly the domain of those wielding state power.

Thus, along with the other ongoing factors for achieving what I can now firmly characterize as 'democracy in practice', the response to HIV/AIDS, in its own way, became a factor in democratization. This process that began for different reasons during a time when the country's quest for democracy was at its height, can be seen as having become a factor in further consolidating the very democracy that it helped to bring about, albeit indirectly. This process, I argue, has inadvertently led to the emergence of institutions that have gained a life of their own and are instrumental for the consolidation of gains made in the transition to democracy in Kenya.

**Responses to HIV/AIDS and the Case for Democratic Consolidation**

One intrinsically important factor for consolidation of democracy in Kenya, brought about by the mobilization against HIV/AIDS has been the empowerment of a cross section of the population to take part actively both in joint policy formulation with the state policy makers, and also to get involved in policy advocacy. The realization that the response to the pandemic must entail wide ranging solutions, beyond the reach of the government's Ministry of Health, led to the need for creation of an enabling environment for a cross section of Kenyans to participate in policy making processes. Kenya embraced the World Health Organization's vision of an approach to HIV/AIDS
that entails "cooperation and inclusion" as opposed to a country's pursuit of a strategy based on "contain and control" (WHO, 2003; Mameti, 1998, 26).

In an effort to inculcate increased citizen participation in the process of developing and implementing HIV/AIDS prevention and patient care, the Kenyan government has advocated an all encompassing 'multisectoral approach' for the fight against HIV/AIDS. The government reached out for policy suggestions from such stakeholders as the private sector, religious groups and professional organizations. As part of the National Aids Control Center's (NACC) institutional structure, HIV/AIDS committees exist at different administrative levels, with membership drawn from members of the local communities as well as local government officials. These committees channel suggestions from the grassroots to the top policy making level, and ensure fair representation of the local people's views on important issues regarding the pandemic.

The emphasis on an institutional framework with decision-making ability at different administrative levels, ranging from the office of the president to the constituency/ grass root levels, could also be seen as a form of institutionalizing decentralization in policy making. As part of a broader policy framework to promote effectiveness and efficiency in responding to the deadly pandemic, local units have become instrumental, not only as forums for the people to voice their concerns, but also as financial watchdogs for the use of money dispersed by international donors to help in the fight against the pandemic. While decentralization in policy making can be seen as limited to the issue of HIV/AIDS, no doubt such a political development has the potential of setting a trend for the country to address other issues. For one, issues involving community policing could benefit from such localized cooperation between the state and the people.
This strategy of citizen empowerment is a distinct departure from the formerly strongly state dominated policy making process during the years leading up to the first and second multiparty elections in Kenya (1992 and 1997). Policy making in the HIV/AIDS era has become a joint affair where the state will seek citizens' input, to ensure a favorable end product. It should however be noted that, though the government is seen as taking the lead initiative in organizing, the multisectoral approach is itself a product of suggestions collected from ordinary people across the country in the process of putting together the Sessional Paper No. 4 on AIDS in Kenya. This mechanism has transformed the nature of citizen involvement and given voices to people who were, in the years before the mobilization took shape, literally non-entities in policy formulation. It is only fair though to acknowledge the fact that the effectiveness of this new approach to policy making is limited by the fact democratization in Kenya is still in its infancy. If eventually successful, however, it would have a huge enriching effect on the practice of democracy in Kenya, given its allowing for a bottom-up approach to policy making and its empowering of citizens' participation at different policy making levels.

The nature of citizen participation as thriving where an enabling political environment exists has been previously alluded to. Such an environment is marked by the existence of basic forms of freedom like association, speech, press and movement, all factors that also encourage policy advocacy where the state is reluctant to act/comply. It is also a political environment that has in place safeguards for the protection of citizens' welfare regardless of their social status, and the application of justice fairly and equally to all. More than any other time in Kenya, the era of HIV/AIDS has witnessed a remarkable buildup in political and legal institutions detailing the protection
of marginalized groups and setting in place a formal structure of governance to be followed, complete with predictable rules and procedures.

As previously discussed, institutionalized rules and procedures in post independent Kenya were sacrificed at the alter of corruption, nepotism, exploitation of biased traditional customs and the protection of certain sectors in the country by the president. Faced with a host of issues, including such human rights abuses as discrimination and stigmatization of people living with HIV/AIDS, lack of access to affordable medication, and continued lack of legal protection for vulnerable groups like orphaned children, many formerly silent people found their voices and sought to increasingly get involved in policy advocacy through various civil society based organizations, as a means to put pressure on the government to adopt necessary reforms.

One area of human rights focus is the protection of marginalized groups against different forms of discrimination, be it at the workplace or in public institutions and the setting in place structures for them to seek relief in case of abuse. Incidents are common where many have either lost their jobs or forfeited their chances to be hired due to their medical status. New regulations and legal requirements protect infected workers from such biased treatment and set in place protective measures for their welfare. A new policy is also evident in public education. The Children's Act, passed in 2001, guarantees the right of every child to be admitted to a public school regardless of medical or social status. It also guarantees children care and commits the government to ensure the protection of this vulnerable group. Still, it took a fight in court for the public schools to comply, a stark reminder of the ingrained stigma against HIV positive people, and that can only be mitigated against by the existence of such institutions like the Children's Act to offer a structure for their protection.
At another level, although elementary education is compulsory in Kenya, teaching of sex education in public schools initially proved to be a controversial issue. On one hand, proponents of the traditional African way of life were firmly opposed to any policy that would allow public discussion of issues involving sex. The same stand was echoed by a cross section of religious personalities in the country who considered such a venture as immoral. Under the rejuvenated political environment after HIV/AIDS was officially declared a national disaster in 1999, the Kenyan government with support from a cross section of civil society based coalitions introduced HIV/AIDS education as part of the curriculum in all public schools, starting from the lowest primary school class level (standard 1) up to the upper secondary school class level (Form 4). HIV/AIDS education was to be taught as a separate subject for a period of half an hour a week. The curriculum is intended to explore different aspects of HIV/AIDS, including both scientific knowledge on its spread and prevalent social and cultural constraints. HIV/AIDS teachers have a 'facilitators’ handbook to use. This will increase awareness among school going children, and in so doing, one can only hope that such a process of education will make better, well informed citizens, more so given the potential of these group as tomorrow’s voters. A limitation to the implementation of the curriculum however has been lack of extensive training for the curriculum implementers. Most of the teachers conducting HIV/AIDS classes are former Physical Education (PE) teachers in the public schools, under whose portfolio HIV/AIDS education was pegged.

Another area of human rights concern, and one that can be seen as advancing the consolidation of democracy by ensuring fair and equal treatment under the law for both men and women in Kenya, is the emergence of legal institutions to protect against domestic violence, and to ensure stiff penalties for the offenders. The Kenyan parliament debated several bills on ‘family protection and domestic abuse’ that would
benefit mainly abused women and children. While it is unfair and even self-defeating to paint the image of women as entirely powerless in Kenya, it is nevertheless important to acknowledge the fact that the HIV/AIDS pandemic has exacerbated women's vulnerability, especially given their role as mothers and the continued human need to procreate.

While traditional African customs are not elaborate on the need for a partner to own up in case of potential danger of infection to the other partner, new laws view it as criminal for a person to infect any other person with HIV knowingly or to coerce them into cohabitation under any pretext. Besides, spousal notification has increasingly been embraced as a necessary step towards protecting at risk partners. While many could argue that such laws interfere with the sanctity of marriage, such an argument fails to recognize the urgency of the moment and the need to ensure protection of all partners. For those women and girls subjected to criminal physical violence, emergent laws will enable them to speak up and to seek legal redress, without fear of public humiliation.

In relation to HIV/AIDS, the need to address their perceived vulnerability both as mothers and as the primary care takers in the family has translated into a need for women to work to influence important decisions like condom usage, monogamy practices, and even the right to know open about their partners' HIV status. There is an increasingly conducive environment for such political activities. As the Sessional Paper No. 4 on AIDS in Kenya (1997) promises: “efforts will be made to empower women to recognize their vulnerability (15/16)”. Already, such organizations as WOFAK have made clear headway in organizing women to participate actively in formulating strategies in the response against the pandemic. As evidenced in the progression of bills debated in parliament, and that will form the basis for legal protection, I conclude that Kenya can rightly so be seen as having made significant progress to bring about

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fairness and equal treatment under the law through the wide ranging efforts to integrate gender perspectives in legislation and in emergent public policies. Besides, such involvement by the masses in determining the direction of policies affecting them is a significant move towards a self governing society and helps advance the consolidation of an existing, but young democracy.

A possible counteracting argument to advance as a challenge to the view that the response to HIV/AIDS has opened up the political space and is contributing to the enrichment of democracy, could be the plausible scenario that, faced with a politically threatening external shock, the African state has moved to preserve its political advantage by encouraging limited democratic practices, a façade of democratic progress that Michael Bratton refers to as ‘elite concession’ (Bratton, in Haberson et.al., 73, 1994). According to Bratton, such was the case in Kenya’s transition to a multiparty system in 1991. President Moi’s government conceded reluctantly to pressure from both the Kenyan civil society and international donors “so as to recapture control of a runaway wave of political change” (Bratton in Haberson et.al. 73, 1994).

The closer analyses conducted in this project however reveal that emergent institutions have become genuine arenas for positive interaction between the state and civil society. The emergent institutions have taken on a life of their own, and, in so doing, are transforming both political interactions and essential areas of policy. Subsequent state and civil society based organizations’ interaction within the emergent institutions has seen inroads into essential policy areas and may be seen as responsible for a significant shift in the nature and levels of citizen participation in policy formulation in Kenya.
HIV/AIDS and the Transformation of Civil Society Organizing in Kenya

A vibrant civil society is beneficial on several levels. Civil society involvement in advocacy and policy making at the national level has the possibility of bringing about significant political transformation supportive of the process of democratic consolidation. Political scientists in other arenas have indeed described the twin roles of civil society organizations as movers of policy and political reforms. Such a view is prominent in Boone and Batsell's view of NGOs as: "Grassroots activists and promoters of political and policy reform" (Africa Today, v.48 no.2, 2001 3-33).

While civil society based organizations are by no means a new phenomenon in Kenya, their effectiveness in advancing different political agendas, including democratic reforms, had been severely limited by the existence of an authoritarian state with a generally hostile attitude towards any form of criticism, or even cooperation that would, potentially, have led to decentralization of the policy formulation process. At the onset, the history of civil society in Kenya is one marked by largely fragmented groups whose ability or failure to produce desired goals has been dependant on different situational factors, including leadership, tribal links and financial ability.

One example of such constraints can be seen in Ndegwa's (1996) detailing of what he refers to as 'the two faces of civil society in Kenya'. Writing on two different cases of civil society based organizations involved in politics, namely the Green Belt Movement and the National Council of Churches of Kenya (NCCK), Ndegwa attributes their ability to advance set agendas largely to the positions taken by the leaders in dealing with the state. In the case of the environment based Green Belt Movement, the leader's conflict oriented disposition is seen as responsible for the Movement's limited success in the face of a suppressive government. This can be contrasted with NCCK's leadership that chose a non-conflicting, non-threatening position in relation to the
state. Such a strategy allowed the organization some room to organize and advance its strongly politically watered down agenda.

At another level, Alan Fowler (1991) writing on the issue of NGOs in Africa, points a finger to civil society groups' emphasis on 'modernization' as opposed to 'empowerment' as the main reason for civil society's failure to 'advance the political liberalization agenda in African countries' (Ndegwa, 1993, 4). The main reason for this failure is seen as the reliance on foreign funding which dictates the need for quick tangible results. As Fowler explains, NGOs in this situation are valued “for what they do—implement projects—rather than what they can be—politically pluralizing entities (Fowler, 1991, 74). Indeed, competition for funding and jockeying for favorable political standing as evidenced in the many organizations that sought to exploit existing ethnic links to the two respective former regimes of Presidents Kenyatta and Moi, can be seen as major factors behind Kenyan civil society’s failure to emerge as a united force for activism and advocacy in important policy areas. While international financing is still an issue of importance for the civil society organizations dealing with HIV/AIDS, the nature of issues delineated as necessary for the response against HIV/AIDS has afforded these organizations a chance to advance citizen empowerment as a means for combating the pandemic.

The need to mobilize against the pandemic has led to the emergence of strong policy advocacy coalitions that have transformed the nature of citizen participation in Kenyan politics by setting up an institutional framework within which citizen activism can take place. A major advantage of these emergent coalitions is their ability to exploit the existing social environment to advance a strongly political agenda by emphasizing similarities among the different stakeholders in society as opposed to differences. Previous attempts at coalition building had been undermined by differences between
civil society groups and between civil society in general and the state, resulting in an adversarial relationship between the two sides. Where competition for finances and positioning in the political hierarchy would formerly be the order of the day among civil society actors, emergent coalitions necessitated primarily by the need for efficiency among the many civil society based organizations, have become strongly fortified networks capable of presenting a united civil society front in pushing law makers for favorable AIDS policies.

Furthermore, these networks have rejuvenated the process of policy advocacy by giving a common voice to particular groups of activists, in their interaction with the state. In line with Putnam's pointing to frequent interactions as the origin of social capital, the argument can be made here to the effect that, frequent fraternizing among the members of civil society and between them and state officials have contributed to a favorable situation for the furthering of policies. Consequently, such a situation could be seen as much conducive for the advancement of democracy.

One area where renewed policy advocacy has produced tangible results is in the effort to provide affordable AIDS medication to already infected patients, and also establishing of projects to streamline the provision of medication to address prevalent mother-to-child HIV virus transmissions. In June 2001, under mounting pressure from civil society based HIV/AIDS organizations, the Kenyan Parliament defied stiff opposition from international pharmaceutical companies and voted overwhelmingly to pass the 'Industrial Properties Bill', which would allow the country to import and/or manufacture more affordable antiretroviral drugs. The bill is a good indication of the government moving to adopt a policy widely favored by the masses.

In addition, the government moved to encourage increased condom use. For the 2001 annual budget, the Minister of Finance, following sustained lobbying by civil
society activists, announced the removal of tariffs on imported condoms as a step towards combating the spread of the HIV virus. The government also announced a medium-term plan for dealing with HIV/AIDS by recommending a U.S. $30.7 million budget in government funds over five years. Other initiatives are evident in the pursuit of policies that emphasize inculcation of avoidance of risky sexual behavior and facilitate voluntary counseling and home-based care for the already infected.

While emergent coalitions can essentially be seen as pursuing issues only pertaining to different aspects of the HIV/AIDS pandemic, policies adopted as a result of their activism reveal a far reaching potential for institutional buildup beyond the immediate need to address HIV/AIDS. Emergent legal institutions guaranteeing protection for property ownership for women, for example, are not likely to be reversed in the near future simply because a cure for HIV/AIDS has been found.

A plausible counter argument though would be the question on the disposition of such coalitions after the current pandemic is controlled. Such a scenario sets up the ground for future research beyond the scope of this study as to how emergent political actors in the response to an external shock conduct themselves in the aftermath of a pandemic. Important for this study is the observed political development of emerging coalitions in the face of such an external shock and their ability to transform the process of policy advocacy and to give a voice and a structure to increased citizen activism by using their strength in numbers.

As opposed to the prevailing view of a state in competition with its civil society, we can extrapolate from the response to HIV/AIDS in Kenya the image of an African state that is increasingly coming to terms and gaining comfort with the idea of cooperation with civil society in policy making. This should not be taken to mean that civil society has lost its ability to place checks on the state. On the contrary, civil
society remains a powerful advocate for political change and indeed a force against the government's free will use of political power. As the response to HIV/AIDS in Kenya proves, both the state and civil society can work together in formulating and implementing favorable policies without each stakeholder looking over their shoulder and busy strategizing on how to stay ahead of the other players in the political game.

In Kenya, there is an increase in both the frequency and the number of both state and non-state participants working together in joint agenda setting workshops, or consulting each other over the best ways to approach particular issues involving HIV/AIDS. One memorable moment while conducting field work in Kenya occurred while I was a silent observer (albeit a lucky one, given I had no control over the timing of the occasion), to a conversation between a senior female librarian at the much referenced Kenya AIDS National Consortium (KANCO) library and a top male government official from the National AIDS Control Center (NACC). The government official was on a fact-finding tour to the resource center to see how the state could establish a national resource center for HIV/AIDS. Most notable was his reference to the fact that they (the state) needed to enlist the librarian's support in order to avoid unnecessary duplication of materials between the two resource centers. Given the state's history of implementing policies without any consultation with civil society, such an action is significant as an indication of the new reality in fighting HIV/AIDS. It reveals to us the taking shape of a form of cooperative interaction between the state and civil society based HIV/AIDS organizations that is underway in many sub-Saharan African countries.

To summarize this section, there are significant recent indications of a trend towards democratic practices in Kenya, as both the state and civil society based AIDS organizations struggle to put up a successive response against the ravaging pandemic.
The need to address issues brought to attention by the pandemic has led to the adaptation of policies that foster increased democracy and good governance. Such policy areas include the protection of individual’s human rights enforcement of various legal requirements and the establishment of a culture of advocacy and joint agenda setting between the different stakeholders in the community.

The Other Side of HIV/AIDS Impact on the Process of Democratization

The most immediate impact of the HIV/AIDS pandemic on democracy can be explained using several factors. At the onset, it is true that, the HIV/AIDS pandemic has continued to weaken resources for democratization in Kenya in several ways. First, it continues to exert a heavy toll on citizen participation by disabling or eliminating hitherto politically active members of society. As Youde’s catchy title reads; “All the Voters will be Dead” (2001).\footnote{HIV/AIDS pandemic is neither class based nor region based. It is a non-discriminating catastrophe that has spun across different communities, affected both city and village, top bureaucrat and low scale peasant alike. Perhaps the only difference is when it comes to being able to afford the still highly priced, available HIV/AIDS medication. While the rich can prolong their lives through such medication that keeps opportunistic ailments in control, in the absence of a benevolent government to provide such medication, the poor have no alternative but to sadly succumb to such ailments.}

A major implication for the future of democracy in Kenya, and elsewhere in similarly affected countries, is the pandemic’s ability to disrupt state bureaucracies and formalized structures of power. The frequency with which leaders in top positions have succumbed to what is normally termed as a ‘short illness’ has led not only to wide ranging speculations as to the cause of death, but also to a clearly visible destabilization of democratic institutions in the continent. As Youde (2001) points out,
"When government ministers or the civil servants who carry out their programs fall ill and die from disease, the lack of continuity threatens the government's ability to provide services" (9). Closely related to this scenario is the fact that HIV/AIDS continues to be a 'silent killer' especially among the elite, leading countries to miss out on possible education opportunities for the effects of HIV/AIDS in society. The typical leadership style in Africa is to cast a tight veil of mystery and secrecy around a particular leader's life, especially in issues of personal health. Few leaders in Africa would ever agree to reveal their HIV positive status no matter the level of speculation.

The third Kenyan government has been faced with costly disruptions in government structure as the HIV/AIDS pandemic continues to take its toll. Barely one year after taking over from the Moi regime in December 2002, the Kenya's parliament had lost six high-ranking members of parliament by January 2004, including the country's eighth vice president, Michael Kijana Wamalwa. At a time when Kenya most needed the services of the eloquent, much respected and politically moderate vice president, who had proven himself quite an authority in mediating between the three largest tribes jostling for power in the country, he died 'suddenly' following what was described as a short lived, but fatal medical complication. Though the government was quick to offer an explanation, albeit vague, for the cause of his death, speculation was rife in the country. One newspaper editor wrote the following:

His death was unexpected. But those who knew him better say he had been in bad shape for a while. The question is: Didn't his visitors have an obligation to inform the country correctly on the VP's health? Granted that the health of every individual is a private affair, we need to find a standard for handling the status of public officials who impact on the lives of others. It is a fact that the clinic Mr. Wamalwa checked into in London is noted for outstanding work relating to HIV/AIDS. It has also been established that one of the causes of pancreatitis, which the Vice-President was suffering from, is excessive use of anti-retrovirals (Makali, Daily Nation, September 9, 2003).
Beyond Kenya to other countries in sub Saharan Africa, the same story can be told. In the case of Zimbabwe, Youde (2001) narrates that: “At least three government ministers have succumbed to AIDS in recent years”. Another notable personality, Chenjerai Hunzvi, “the leader of Zimbabwe’s war veterans and a key ally of President Robert Mugabe, is widely believed to have died of AIDS” (9). These deaths are seen as contributing to the fragility of the political system and as a factor in undermining the taking root of firm governance structures. As evidenced in the case of Kenya, frequent need for by-elections has destabilized representation and also exerted a heavy toll on the country’s Electoral Commission budget. While repeated elections could be seen as an aspect of democracy in practice, lack of stable representation as offices change hands frequently is bound to deny constituents a chance to be adequately represented in the country’s Parliament.

At another level, the pandemic can be seen as limiting the process of democratization by destabilizing civil society. Writing on the case of HIV/AIDS and democracy in South Africa, Manning (2003) predicts that: “The pandemic may indirectly reduce overall level of public participation in democratic processes by further damaging the capacity of civil society organizations” (Manning, 24). The same argument can be made of Kenya, with its strongly engaged civil society made up cross section of Kenyans, including the country’s top intellectuals. A key factor here is the vulnerability of the young, well educated, professionals whose expertise and energy is crucial for the effectiveness of civil society organizing. Besides direct involvement in political contestation, civil society organizations are also involved in counseling of those at risk of being infected, and have also taken a leading role in taking care of the infected.

Further to this, the pandemic has also fostered a double-pronged economic disaster through increased health costs on one hand, and a hugely decreased
production capacity, and almost stunted economic growth on the other. Writing on the case of 'the indirect cost of AIDS' in Kenya for example, Forsythe, Rau et. al. projects that: "The discounted value of lost output in the years 1985 through 2005 is Ksh76 trillion" (1996, 122). As the writers reveal: "This is almost double the discounted treatment cost of AIDS over the same period which...is Kshs42 trillion" (1996, 123). The combined projected toll on the already overstretched Kenyan economy adds up to a whopping Ksh118 trillion in this period. This trend is duplicated elsewhere in the region with the majority of the countries losing much more than they can afford to spend in mounting campaigns against the HIV/AIDS pandemic.

Another element to consider is the increased donor involvement, and the politics surrounding the sharing of available funds for the HIV/AIDS campaign. Kenya has received huge amounts of money to advance the HIV/AIDS response from various donors including the World Bank, the Global Fund for HIV/AIDS, Tuberculosis and Malaria and a portion of President Bush's $15 billion initiative to combat HIV/AIDS in developing countries. The money is channeled through the National AIDS Control Council (NACC) which in turn would disburse it directly to AIDS NGOs ("War on AIDS Gets Shs. 146 Million Funding," The Nation June 15, 2001). A positive side to such organizations offering significant amounts of funding to Kenya would include the fact that it is now possible for various projects necessary for the response to be implemented. Further to this, the lending conditions put forth by the donors, which include expectations for transparency and accountability in sharing out the money among the many stakeholders could be seen as instrumental in bringing the state and beneficiary civil society groups to a working consensus.

The close involvement of foreign actors in issues pertaining to policy making in the country could however be seen as limiting the taking root of democracy in Kenya in
several ways. First, the continued lending conditionalities may inadvertently take away from expression of free will by those most affected by the resulting policies, and may impair the development of independent policy making institutions. Second, the flooding of the HIV/AIDS arena has led to the emergence of corrupt dealings, seen mostly in the fraudulent use of AIDS money and the establishment of many fake organizations to cash in on the easy to get money.

A notable case of corruption in Kenya involved the former head of the national AIDS Control Council (NACC) Dr. Margaret Gachara who was accused of ripping off the organization by unfairly drawing a salary approximately seven times bigger than what the her position as director calls for. As a Kenyan government official explained: “She (Gachara) used fake documents to negotiate her salary...what has been reported in the papers is that it was about US $27,000 [per month], compared with the normal director’s salary of US $4,000 per month” (IRIN Plus News, 2003, September, 1).

Earlier in June 2003, the Global Fund for HIV/AIDS, Malaria and Tuberculosis had withheld an AIDS grant to NACC totaling to US $15 million pending the Kenyan government’s active involvement in investigating allegations of corruption in the council. It took the assurance of the Minister of Health to the effect that Constituency AIDS Committees would take a leading role in the disbursement of funds and that administrative structures that create loopholes for corruption at NACC would be reviewed with an aim of changing them, for the Global Fund to reactivate the grant in August 2003. For a political system keen on practice of good governance, existence of corruption in such core institutions is defeating for the process of democratization.

Conclusion

Though by all accounts understudied, I conclude that there is a connection between emergent institutional mechanisms for responding to the external shock of
HIV/AIDS, and the advancement of democracy in Kenya. While a combination of short term factors, like initial arbitrary measures to deal with the shock and opportunistic actions by both state and non-state actors can be seen as undermining the process of democratization, long term factors like the gradual buildup of institutions and a rise in citizen participation can be seen as contributing to the consolidation of the young democracy in the country.

Moreover, the acknowledgement of a dynamic relationship between state and civil society in Kenya, one that is based on consensus, fits in well with this study's view of the role of emergent institutional mechanisms as transforming political developments in the country, and in so doing, contributing to the consolidation of democracy. As Chazan argues, there is need to view state-civil society relations as: 'fluid, changing, complex and multifaceted' and as varying ‘widely in response to the vectors of time, place and circumstance’ (Chazan, 1988). Further to this, the emergent institutional mechanisms discussed in this chapter as contributing to the advancement of democracy can be seen as part and parcel of an evolving political system, complete with changing processes and ongoing institutional transformation. As Migdal et. al explains: It is these 'constantly changing' interactions that, ‘redefine the nature of state structures and social forces, generating an ongoing, mutually transforming dynamic” (Migdal, Kohli, and Shue, 1994, 256). Here, the view of democracy in practice as an ongoing process is clearly visible.

While I have all along argued for the need to look for factors benefiting democracy from outside the traditional focus on political and legal mechanisms, I am sympathetic to the following conceptualization of consolidated democracy by Juan Linz and Alfred Stepan, which may be seen as offering us a stating point in analyzing consolidated democracies, as opposed to a terminal set of principles for cracking the
'democratic consolidation code'. I insist that there is need to carry the analysis further, to include such mechanisms as the emergence of favorable human rights practices and cooperation between state and civil society actors. As Linz and Stepan (1997) point out: "A lively and independent civil society, a political society with sufficient autonomy and a working consensus about procedures of governance—are virtually definitional prerequisites of a consolidated democracy" (Linz and Stepan in Diamond et. al, 1997, 20).
CHAPTER VI

CONCLUSIONARY NOTES

This study set out to analyze the impact of the response to HIV/AIDS--an external shock that has affected practically every country in the world beginning in the early 1980's-- on the process of democratization in Kenya. While the response to the pandemic took shape at a time when the country was experiencing increased agitation for political reforms, the response has lasted into the country's new era of transition to democracy. Given a strong correspondence between the issues delineated as essential for the response to HIV/AIDS, and those seen as prominent for advancing democracy, the two political phenomena have undoubtedly intersected.

The study conducts two complementary activities. At an inductive level, it is a study of one of the many issues raised in dealing with the devastating HIV/AIDS pandemic-- specifically the pandemic's impact on the political process of democratization in Kenya. Such an endeavor advances our understanding of the interaction between HIV/AIDS and politics, an area in much need of political science literature to detail existing political dynamics.

At a more general, deductive level, this study adds on a new dimension to our understanding of the processes/ factors that advance the practice of democracy. I view mobilization against external shocks, like the HIV/AIDS pandemic, as a potential source for mechanisms to advance democratic practices, mainly through two related processes. The first is creation of an enabling political environment by opening up the political arena in authoritarian regimes. The second is by drawing attention to essential
areas deemed essential for responding to the external shock, but that also correspond closely to the advancement of democratic practice in actualized, but still fragile democracies. Given this focus on HIV/AIDS and democratization, two intersecting political phenomena, this chapter will draw out several conclusions that not only help cement my findings, but which also place the study in perspective alongside existing political science literature on the broad topic of democratization.

**External Shock and Democratization**

A principle concern for this study was to move our understanding of the processes that contribute to democratization beyond the traditionally predominant focus on ‘political and legal’ mechanisms, like elections and constitutions, into an exploration of context specific factors that help cement the view of democratic practice as ongoing political deliberation. Such a process, I argue, is driven by specific mechanisms emanating from the need to address felt inadequacies in a particular community. A potential area for such mechanisms could be seen as mobilization against external shocks.

While a good number of political scientists are fascinated by democracy, and have set out to study different aspects of democratization, the emphasis is on those deliberately executed democracy oriented strategies, like donor conditions set on a developing country to force political reforms, or civil society pressure on the ruling elite. If we take democracy to be a dynamic process marked by frequent decision making by the citizens, restricting analysis to a set of principles is a negation of other possible political dynamics that may help us better understand how democracy evolves in any given country. Such an approach sets the need to branch out and address mechanisms emanating from other less directly political processes, but that may
inadvertently have a likewise huge impact on political developments, like the case of mobilization against HIV/AIDS leading to institutional buildup in Kenya.

At this juncture, it is worth focusing on the character of external shocks. While the basic understanding is that of external shock as unforeseen factors, social, political or economic, that bring intense pressure on a political system at a given point in time, a particular shock need not be as destructive as the HIV/AIDS pandemic, both in terms of casualties and also related social structures given its widespread nature. A key distinction however is that external shock, as conceptualized in this study should last long enough to allow for mobilization to take place. For example, whereas a devastating earthquake can be seen as an external shock, its effect however must be felt widely, beyond the momentous earth tremors, into a full scale catastrophe that demands attention on its own right and allows for nation wide mobilization.

To be sure, the issue of external shocks has featured before in political science literature. However, it is mainly the view of actualized democracy as providing a structure for absorbing external shocks, as opposed to mobilization against such shocks advancing democracy. Perhaps the most famous argument in this connection is Amartya Sen’s (1999) designation of democracy as a factor in preventing full-scale famine, even for the ‘poorest democracies’ (Journal of Democracy, 10.3, 1999, 16).

In particular, Sen (1999) points out to the existence of ‘elections’ and an independent media as the main factors behind democracy’s effectiveness. While ‘elections’ will act as a sword of Damocles\(^\text{17}\) hanging over the heads of the law makers, hence the need to be seen as delivering on important aspects, an independent media acts as a whistle blower in cases of natural catastrophe and not only demands immediate action, but also acts as a checking mechanism on the actions of those in power. A point worth noting, however, is that in Sen’s analysis, democracy is seen as
an important existing institution to protect society. How we get there however is not the issue in Sen's analysis. The case of Zimbabwe in the 1980's, which Sen points to as a successful democracy mitigating against famine, had become a classic example of a reversed democracy by the early 2000, with President Robert Mugabe taking on a role as an outright African dictator. Such a scenario may hint at the need for understanding how democracy evolves, before singing its praises when faced with turmoil.

Another view is that of Robert Dahl (1997). Writing on the ability of democratic states to survive a 'crisis'—a term that Dahl does not elaborate on--, he points out to the existence of a 'democratic culture' in democracies as the most important factor in helping a country survive a crisis. According to Dahl:

Two culturally based practices are crucial to the survival of democracy through periods of crisis. First, the main public forces of organized coercion—the military and the police—must be firmly under the control of democratically elected leaders...A second culturally based practice of crucial importance and surely one of the most difficult to sustain in any country, is a tolerance of and, even more, form legal protection conflicting views and beliefs" (1997, 34-39).

As in Sen's view of the abilities of democracy to contain external shock, Dahl strongly presupposes the existence of democracy as a measure to help deal with crisis. It is by extension a view that holds none democracies as prone to devastation by occasional external shocks. This view is faulted to a good extent by prevailing reality in the fight against HIV/AIDS across the sub-Saharan Africa. While democratic countries like South Africa and Botswana are reeling with two of the highest prevalence rates for HIV/AIDS infection in sub-Saharan Africa (over 36 percent in both cases by 2004), the case of Uganda, by all other accounts a country struggling with democracy, and whose leader Yoweri Museveni has entrenched his position as a personal ruler, despite repeated elections, throws into disarray this touted confidence in democracy's ability to arrest external shocks. Such a scenario then calls for more
theorizing on the relationship between external shocks and democracy (or the lack of it).

A predominant explanation of the effect of external shocks on politics has been the discussion of economic factors affecting a political system. One such view is that of Gyimah-Boadi (1997). Writing on the case of civil society as a mover of political reforms in Africa, Gyimah-Boadi points out to 'neoliberal economic reforms', which in the case of African countries, are mainly pushed down by the intergovernmental money lenders like the World Bank and the IMF, as a factor for enhancing the development of civil society. As Gyimah-Boadi explains:

The increasing trend towards political liberalization and pluralism may give civil society its best-ever opportunity to flourish. Thus instead of the normal historical sequence in which civil society engenders democratization, the introduction of constitutional rule and pluralism "from above" could have an enabling impact on the growth and development of civil society in Africa...Multilateral and bilateral donors are increasingly refusing to regard national sovereignty as sacrosanct, which means a greater willingness to give direct assistance to local NGOs and pro-democracy civil associations (Gyimah-Boadi in Diamond et. al, 1997, 290).

Gyimah-Boadi's view however is one of evolution of democracy as a top-down process. This contrasts with the view advanced in this study of democracy as a product of various context specific mechanisms. It is a view of democracy growing from bits and pieces, picked up by a conscious society faced with inadequacies that it wishes to address. Civil society in this scenario is seen as an active partner in formulating successful responses, as opposed to a by-product of such responses. It is this involvement that transforms existing relations between the state and civil society and in so doing, strengthens civil society into an active partner in policy making.

But why, if one may ask, are external shocks potential sources of essential institutional mechanisms? Responses to external shocks require urgent attention to particular issues, and demand firm and effective solutions, albeit in the short run, for
the identified issues. It is in the process of providing such required solutions, which in most cases correspond to the general factors essential for the practice of democracy, that institutional mechanisms with far-reaching implications emerge. Such emergent mechanisms could be seen as either engendering or consolidating democratic practices on several levels. In the case of Kenya, democratic consolidation has benefited through not only an institutionalisation of such processes as policy making and human rights protection, but also due to a transformation of relations between state and civil society from one of hostility into one of cooperation.

One distinction worth drawing is the relationship between the time span of a particular external shock and the advancement of democratic practice, otherwise seen as the difference between short term and long-term reactions to an external shock. In the short term, many states will adopt what can clearly be seen as usually excessive powers in dealing with the shock, including the possibility of adopting a state of emergency, complete with its restrictions on basic freedoms and free will under the guise of maintaining law and order for the good of society. Evoking of such emergency powers, which by their very nature negate the practice of democracy, may be seen as taking away from the practice of democracy.

In the long term, as argued in the case of Kenya, the various mechanisms that take shape in various responses to the shock may help strengthen democratic practices. This understanding helps advance this study's theoretical conception that mobilization against an external shock is a plausible source for institutional mechanisms that advance democratic consolidation. This study could be seen as taking a distinct departure from what we already know about external shocks and democracy. I see external shocks as an intervention, as opposed to an interruption or a nuisance that democracy must arm itself against. Though by no means do I rule out
the case of democracy providing a structure for dealing with external shocks, I suggest that at the minimum, we must acknowledge the existence of a reciprocal relationship between democratisation and mobilization against external shocks, and that allows us to observe how responses against such catastrophes as HIV/AIDS can build up institutions important for democratic practice.

Consequently, my discussion sets a theoretical framework for understanding the impact of external shocks on the advancement of democracy and advances what I referred to in my theoretical conception as the ‘Theory of Democratic Enrichment’. This theoretical conception is based on an understanding of the role played by institutional mechanisms emanating from responses to an external shock on the advancement of democracy in newly transitioned democracies. While inherent in my discussion is an argument that the responses to an external shock, along with other factors, can help foster democratic practice where it is none existent, I focus more on those early and fragile years after a transition to democracy has taken place, a situation which best describes the position of Kenya in the early 2000’s. More than any other stage in the process of cultivating the practice of democracy, the early years after transition are crucial for the survival of democracy, and demand the highest level of social, economic and political goodwill. The question I have sought to answer is whether the response to an external shock, in this case the HIV/AIDS pandemic, can contribute the much needed advancement of a fragile, but actualized democracy.

I make the argument that although it is undoubtedly important to recognize democratic practice as also benefiting from the existence of traditionally widely accepted mechanisms such as the process of elections, the many unique social, political and economic dynamics in developing countries call for a more inclusive description of what democratic buildup entails. Here, response to external shocks, like
the issue of responses to HIV/AIDS, a less political issue at face value, is posited as a significant source of mechanisms that endow democracy, along with the already documented political and legal institutions.

HIV/AIDS and Democratization in Kenya

A point of departure is the discussion of a prevailing view that the HIV/AIDS pandemic will ‘reverse political gains’ made in sub-Saharan Africa, including gains made, painstakingly, in democratization. To start with, it is only fair to acknowledge the plain truth that the HIV/AIDS pandemic has exerted a heavy toll on different communities, mainly through deaths whose effect reach deep into the very core of diverse societies. In regard to governance, the pandemic has been seen as potentially destructive of existing bureaucratic order as a result of deaths or weakening of government personnel through opportunistic illnesses, weakening of the voters base and of civil society activism through increased number of casualties, and flourishing of corruption and financial mismanagement as some opportunistic officials and civil society activists move to capitalize on financial donations from both international and domestic donors. However, this analysis should not stop here, as evidence from the response to HIV/AIDS aptly suggests.

At the heart of this academic endeavor has been the conviction that political transformation in any country must be analyzed within the specific ‘cultural and socio-political constraints’ inherent in that society. The current status of democracy in Kenya can be seen as the product of a combination of ongoing processes deeply rooted in both the history and cultural heritages of the country. In regards to the response to HIV/AIDS, my point is that in reaching out to do something about exposed glaring social and political inadequacies, like the need to address discrimination and stigmatization against people living with HIV/AIDS, a custom borne of the traditional
African societies' firm disapproval of public discussion of issues involving sex, the Kenyan society has put in place mechanisms that have created a favorable human rights environment, with positive implications for the practice of democracy.

A key point to note is the transformation of political attitudes towards HIV/AIDS among policy makers in Kenya, from an initial view of a localized medical problem to a more fitting view of the scourge as a wide spread societal emergency requiring action at different levels. While the Kenyan government was at first reluctant to as much as acknowledge the existence of the HIV virus in the country, its position gradually changed in the face of a worsening crisis, too huge to, figuratively, lock up in the house, leave alone or push under the carpet.

Such a transformation of political attitudes can be seen as beneficial for the expansion of state-civil society cooperation. Well cognizant of the widespread nature of the pandemic and likewise, the deep involvement and expertise of civil society on the issue, the government of Kenya has in latter years increasingly put aside its traditional suspicion of civil society and opened up to cooperation with civil society as bona fide participants in the national efforts to address the HIV/AIDS pandemic. Inadvertently, the opening up of the political space and related transformation in form and means of policy formulation has enriched the process of democratization in Kenya and indeed, may serve as movers of democratic consolidation in the country.

Actualized institutional changes are evident in the changing nature of the policy formulation process, an area where among others, the indiscriminate inclusion of all stakeholders as part of the newly instituted multisectoral approach, and decentralization of the response to HIV/AIDS, have taken shape. Other changes could be seen in the area of policy advocacy and in citizen activism where state-civil society relations have taken a turn for the better, and cooperation promises to become a norm.
Further to this, institutional change is evident in both the streamlining of existing legal institutions and the emergence of new ones to protect marginalized groups like women, children and people living with HIV/AIDS (PLWHA). These subsequent changes have led to the institutions' ability to better cope with political realities delineated in the response against HIV/AIDS.

Specific institutional mechanisms identified include the formulation of the Sessional Paper No. 4 of 1997 on AIDS in Kenya. This Sessional Paper has provided a structure for wide participation in formulating of public policy by different stakeholders in the country. In the area of civil society organizing, the emergence of different broad coalitions has cemented the taking root of social capital, giving a voice to increased citizen activism and policy advocacy on important issues. Increased policy advocacy and citizen activism has led to the emergence of various favorable policies on such important issues as the different legal stipulations protecting victims against domestic violence and criminal sexual abuse, and the Industrial properties bill governing provision of affordable antiretroviral therapy for the infected. It is this HIV/AIDS specific institutional mechanisms, that however correspond directly to just what the advancement of democracy in Kenya needs, that can be seen as advancing this studies connection of mechanisms emanating from response to an external shock to the advancement of democracy in a given country.

There is however need for caution in detailing institutional change. Although institutional change can be seen to have taken place in Kenya, there is need to point out the fact that no one society can be seen as undergoing a fully complete political makeover. Indeed, I doubt whether such a complete political makeover could be good for a specific country in all aspects. Existing dynamics from old practices can still be identified in emergent institutions. Important though for the advancement of democracy
is the need to recognize existing inadequacies and to streamline them to better serve
democratic practice.

A case in point in connection to the Kenyan situation is the ever-present
traditional customs practiced by the diverse communities in the country. While it is not
fitting at all to expect the Luo people, for example, to discard their long held cultural
practice of wife inheritance among brothers, emergent legal stipulations would
empower the woman to have a say in the dynamics of such a situation, including
requiring HIV virus screening of her potential partner, and even protecting her against
the wrath of a jilted relative if of her own volition, she decides against such a union. As
Gertzel (1970) aptly asserts: “...States often like to seem newer than in fact they can
be, for they all have to work within an inherited framework which is more difficult to
change than it might appear” (1).

A last conclusion on the relation between HIV/AIDS and democracy is also a
statement to challenge existing over exaggerated accounts of the effect of HIV/AIDS
on African communities. Commentators on the crisis, especially as it pertains to Africa,
have loudly proclaimed the case of a continent on the verge of extinction by a
pandemic beyond its control. Yet as initial evidence from Kenya reveals, African states
are not just sitting ideally by, or even turning wholesale to the west to solve their
problems. On the contrary, there is a spirited effort, albeit late in coming, to stop the
spread of the virus and to offer relief to the already infected. As many have realized,
the pandemic can only be stopped from within, through popularly supported
interventions, as opposed to proscribing of solutions that must be complied with. As
Meritt et. al (1988) further points out:

African societies are probably much more robust than recognized. Even given some
level of elite mortality to HIV, the potential for sizable upward social mobility
(occupational replacement) should not be underestimated. Kenya, for example, has
high unemployment and underemployment among the educated and may not differ

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qualitatively from most other countries. Though many of these people are comparatively inexperienced, societal loss of leadership to HIV/AIDS would never be instant; there will be time for occupational induction...Indeed, pervasive unemployment and underemployment in contexts of rising aspirations may carry far greater potential for revolutions and massive disruptions than selective mortality from HIV/AIDS" (Merritt et. al., in Miller and Rockwell, 1988, 121).

Such a scenario can make a statement for the future of development in sub-Saharan Africa. For long, these states have been implementers of suggested policy development initiatives as opposed to originators of unique policy. Uganda's spirited fight against the pandemic woke up the world to the ability of African states to formulate effective intervention programs. Countries like Kenya, which by 2004 had reduced its prevalence rate from 13.5% in 2001 to 10% by early 2004, have further advanced the possibility of African countries taking the lead in solving problems afflicting them.

Suggestions for Future Research

This section discusses possible directions for future research pertaining to our understanding of the mechanisms involved in the development of democracy. It is only fair to acknowledge here that though this discussion makes a strong case for the consideration of responses to external shocks as a source of mechanisms that enrich democracy, and takes us beyond the unquestioned acceptance of external shocks as set ‘to reverse’ democratic gains, it is nevertheless a limited discussion based on one particular case, which to say the last, is still evolving. Hopefully, this study will provoke broad future research along the same lines to not only more fully demarcate the position of external shocks vis-à-vis democratic consolidation, but also to identify other less political processes that could enrich democratic practice. Given the limitless sources of democratic practice across diverse societies, lessons learned in particular
cases could be widely applicable as the basis of inquiry into similar processes in
different societies.

One limitation of this study is the adaptation of a macro level analysis of
emergent institutional mechanisms impact on democratization. There is need to take
the natural progression into a micro level analysis of specific factors in both the
advancement of democracy and in policy formulation. One area with potential for future
research is civil society development. While studies targeting civil society are by no
means new, we are yet to see a study that details how responses to an external shock
affect the leadership of an organization, for example. Thus, future study could focus on
specific structures and how the new political developments have affected them.
Ndewa (1996) discussed a society in conflict with the state, with organizational
leadership as a key determinant for consideration as to whether one group would
engage or withdraw from the state. We can pose the question as to how, with
cooperation between the state and civil society now a factor, organizational leadership
has been affected.

Furthermore, while this study documents the emergence of several institutional
mechanisms in the response against HIV/AIDS, my argument is limited in term of
projection, more so given the youthful status of democracy in Kenya. This calls for a
longitudinal study, that will set out to collect data over the life of a particular political
regime, or for several years at least, and that should clearly document the trend in
political developments. These longitudinal studies could also help us make conclusions
on the effectiveness of particular policies, both across nations and across several
years. At the heart of such a lengthy endeavor would be the need to see how
democracy is evolving (or is being hindered), and to understand in details the very
nature of such forces.
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**HIV/AIDS Pandemic Specific Sources**


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In his article entitled "All the Voters will be Dead”, HIV/AIDS and Democratic Legitimacy and Stability in Africa (2001), Youde focuses on five of sub-Sahara Africa's most affected cases. These are Botswana, Lesotho, South Africa, Zambia and Zimbabwe. He identifies three factors, all associated with HIV/AIDS, that he sees as most likely to contribute to lack of legitimacy and stability among African states. The factors are: 1. electoral fraud as a result of the deaths of politically neutral civil servants 2. economic decline 3. lack of a vibrant civil society to agitate for democratization due to the many deaths among young professionals who are most likely to get involved in organizing for the civil society.

As will be discussed in the follow up chapters 4 and 5, these emergent institutional mechanisms, including an all inclusive multisectoral approach and civil society based coalitions, have contributed to consolidation of democracy in Kenya in such ways as setting up a framework for policy making, opening up the political space for the wide ranging citizen participation and even transforming the nature state-civil society relations from one of hostility into one of cooperation and goodwill.

To be exact, Ndegwa also draws attention to the need for scholars of Democratization to spread out their wings and explore other processes. In Ndegwa's reckoning however, such issues should include "...social norms, generational change and class and gender issues" (1). See Ndegwa. 2001. A Decade of Democracy. Leiden: Brill.


In the case of the HIV/AIDS pandemic, although there still is no cure for the HIV virus, significant strides have been made in recent years. Among others, existing medications have proved effective in stopping mother to child transmissions. Besides, various vaccine trials are now underway, giving hope to the world that a cure may be on its way.

Though the first case of documented Mau Mau violence was not until October 7, 1952 when members of the Mau Mau assassinated famous native colonial administrator, Senior Chief Waruhiu, yet clandestine activity among leaders in Kenya’s central province can be traced back to 1944, as the survivors of the WWII started to stream back from foreign lands where they had fought in support of the allies. For more on this, see Bates Robert H. 1989. Beyond the Miracle of the Market: The Political Economy of Agrarian Development in Kenya. New York, NY: Cambridge University Press. 11-40.

Though the actual onset of the HIV virus on the African continent remains unknown and indeed strongly controversial as it brings forth the question of where the HIV virus originated, the first documented positive diagnosis occurred in Uganda in 1983. Since then, HIV/AIDS in
Africa has become an issue of international concern given the very high numbers of infected people. By January 2004, UNAIDS was projecting a total number of between 29.4 to 32 million people living with HIV/AIDS in sub-Saharan Africa alone.

This approach holds institutions as the main actors in politics and the main structures within which political change takes place. According to Theda Skocpol, a leading proponent of the approach, "Over time, processes are traced in order to discover the intersections of separately structured developments that often account for outcomes we wish to understand" (Polity, Volume XXXVIII, Number 1, Fall 1995). By focusing on the patterns of political developments emanating from the intersection between the responses to HIV/AIDS and the process of democratization in Kenya over the last fifteen years, this approach will assist us in developing plausible explanations, not only on the nature of relationship between the state and civil society, but also on the impact of emergent mechanisms on the advancement of democracy.

As history reveals, devastating medical epidemics have occurred in the past. These include the smallpox epidemic that swept across Mexico in 1520, killing between 15 and 18 million of the native people (Van De Vliet, 1996; Swenson, 1989). Another epidemic was the fourteenth century's outbreak in Europe commonly referred to as 'the great plague' or 'Black Death' (Van De Vliet, 1996; Tuchman, 1987). Over 25 million people are estimated to have died as a result of the plague in a course of only three years. The two epidemics were also significant as mechanisms for re-engineering the different societies. In the case of Mexico, the epidemic opened the way for Spanish conquest, while the plague in Europe reconfigured not only relations between the landholders and the peasants, but also between the religious figures and the general populace. A major difference between these epidemics and the prevailing HIV/AIDS pandemic is the fact these epidemics were localized and ran their course within relatively short periods. The HIV/AIDS pandemic has been positively diagnosed for over two decades (by 2003) and still shows no signs of slowing down its advance across the world.

For more on these, see The Standard (Nairobi, Kenya), 15 and 18 January 1985.

According to Douglas North, "Institutions are the constraints that human beings impose on human interaction. They consist of formal rules (constitutions, statute law, common law, regulations) and informal constraints (conventions, norms and self enforced codes of conduct) and their enforcement characteristics. Those constraints define (together with the standard constraints of economics) the opportunity set in the economy. Organizations consist of groups of individuals bound together by some common objectives" (North, 1993 Working paper).

The Policy Project is a world wide program with highly-skilled, experienced staff that works with different governments and civil society groups (present in over 30 countries in Africa, Asia and the Near East, Eastern Europe and Eurasia, and Latin America and the Caribbean), with a goal of establishing favorable policy environments for the three related issue of family planning, HIV/AIDS, and child birth care (see www.policyproject.com). The AIDS Program Effort Index (API) formula is based on another measurement tool, The AIDS Policy Environment Score (APES) which measures "the perceptions of knowledgeable respondents concerning the AIDS policy environment through their rating of a series of statements organized by seven categories: (1) political support, (2) policy formulation, (3) organizational structure, (4) program resources, (5) evaluation and research, (6) legal and regulatory environment and (7) program components. Scores range from 0 to 100" (see Assessing the HIV/AIDS Policy Environment in Kenya, November 2000, V). While the AIDS Policy Environment Score (APES) is primarily intended to measure the degree to which the policy environment in a given country supports advancements in prevention of spread of both HIV and other sexually transmitted diseases, and in the provision of care, protection of human rights in a policy making window of between one to three years, the API aims at gauging not only the policy environment, but more broadly the amount of effort put into national HIV/AIDS programs by various stakeholders, including NGOs.
individuals, and international actors. The formulas rely on information, both current and dated within a few years, provided by people deemed as knowledgeable about a given country's HIV/AIDS program. This attempted time series analysis enables the research to draw conclusions on the development of a particular country's policy environment.

13 Kenya has been an active participant in issues concerning women at the global level and has joined in several international agreements. These include ratified the International Covenants on the Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Conventions on the Elimination of Discrimination against Women and on the Rights of the Child. Kenya is also a signatory to the African Charter on Human and Peoples Rights and the African Charter on the Rights of the Child. Kenya has also ratified.

14 In Kenya, female adolescents from ages 15 to 19 years old have the highest rates of HIV-infection -- about six times as high as their male counterparts. One in five girls in Kenya reports that an older man coerced her first sexual experience (Adolescent Reproductive Health Needs in Kenya: A Communication Response Evaluation of the Kenya Youth Initiatives Project." The Johns Hopkins University/ Population Communication Services, March 1998).

15 According to Youde, the title comes from an AIDS poster held by a lone nurse demonstrating in a political meeting in Kenya. For more on Youde's article, see note (1) above.

16 With a combined slump in the economy and an increase in the number of seriously ill AIDS patients, Kenya has witnessed dramatic increases in the rate of poverty. In 1972, it was estimated that about 3.7 million Kenyans lived in poverty (defined as an income level of less than U.S. $1 per day). By the turn of the century, that number is estimated at about 15 million, or about 52 percent of the population. For more on this, see Government of the Republic of Kenya, "Interim Poverty Reduction Strategy Paper 2000-2004".

17 The Myth comes to us from the ancient world. As Cicero explains, Damocles was a poor man who was offered the reigns of power by Dionysius, the fourth century B.C. tyrant of Syracuse, upon frequently complimenting him on his seemingly good luck and comfortable life. As could be expected, Damocles was only too eager to accept the offer. As it turned out, however, a sword permanently dangled above the king's head from a horse's hair. As the story goes, Damocles was so stressed out that his poor, lowly, but carefree life seemed like paradise in comparison to the tyrant's seemingly good life. For more on this, see Cicero, Tuscalan Disputations V.