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## Torture, Politics of Pain and Transitional Justice in Kenya: A Historical Perspective

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### **Abstract:**

*This paper seeks to examine evolution of torture in Kenya between 1952 and 2013, it examines the extent of torture which was used as a tool for statecraft and how those in authority have historically unleashed torture as an unconstrained and atavistic tool of state repression. Scanning through the colonial dungeons, the inquisitional interrogation, the auto-da-fe, the witch-trial, and the most horrid of prisons, this paper explores systematic use of repression through the Kenyatta, Moi and Kibaki states by paying attention to various means of punishment, torture, coercion, and torment. We argue that 'the torture debate' proved instrumental in raising a fundamental question, ubiquitous today: How can the state combat a discourse which expressly defies courts, in order to legitimize such obscene acts?*

**Keywords:** Coercion, detention, punishment, regime, repression, torture, torment

### **1. Introduction**

Historically, the state and private elites have for long tried to gain and retain political influence and control.<sup>1</sup> Research on these efforts sprawls across a wide array of literatures in history, sociology and political science, from research on how racial, ethnic, and religious elites have sought to maintain and grow privilege and so on. While there exist different modes of control, political repression becomes distinct in that the purpose of the control is to prevent or diminish direct and non-institutional challenges to social, cultural, and/or political power in form of protest, activism, and social movements. As such, repression is often much more targeted than these other diffuse systems of social or political control.

But, like other forms of control, political repression has complex effects, shaping non-institutional political challenges across their entire life cycle from inception to success or death. Throughout much of history- from ancient times to modern day, political suppression has been carried out or sanctioned by governments on political oppositionists. Reasons for repression can include punishment, revenge, political re-education, deterrence, interrogation or coercion of the victim or a third party, or simply the sadistic gratification of those carrying out or observing the torture<sup>2</sup>. In Kenya, under the colonial government, from 1890 to until after Kenya's independence to the end of cold war, there were series of political repression and torture that came to define the Kenyan state.

### **2. Colonial Era: The Birth of Tragedy and the Genealogy of Morals, 1890-1963**

The colonial era strengthened the power of powerful political leaders and centralized bureaucracies over their communities. This undermined pre-existing checks and balances. In this way the colonial era helped institutionalize repressive forms of government. At the same time colonial rule also ensured that post-colonial leaders would face a major struggle to assert their authority. It did this by creating states with limited capacity to provide services and police their own territories. The unstable authoritarian pathway that so many states followed after colonial rule was no accident. It was facilitated by the ways in which European empires undermined democratic elements within African societies. First, it created clearly demarcated national boundaries and a central authority structure, along with a more extensive bureaucracy and security forces. Such measures created atmosphere of distrust and hence the use of repression in the control of native.

Torture is a manifestation of the class struggle. Europeans colonised Africans as a process of acquiring political power to access, control and distribute resources. In bid to establish and consolidate power and their rule in Africa, Europeans resorted to use of violence and intimidation. From the onset, torture or violence in the form punitive

<sup>1</sup> Clavel, J. P. (1974). The return of torture. In *Humanities Context* 6: 408-414.

<sup>2</sup> James Jaranson, 'The Science and Politics of Rehabilitating Torture Survivors,' in *Caring for Victims of Torture*, edited by Michael K. Popkin, Amer Psychiatric Pub Inc.1998 and also The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

expeditions were conducted on resisting communities such as the Nandi, Kisii, Giriama, Kikuyu among other communities in Kenya. Security agencies that comprised of a police force that was well structured to meet policing demands of the colonial state, never hesitated to deal with anyone who opposed the colonial regime. The Governor under the Natives Removal Ordinance of 1909 had untold powers to get rid of any troublesome individuals without recourse to a proper trial.<sup>3</sup> Trouble makers like Harry Thuku were arrested and deported to remote areas like Kismayu as his supporters who protested unfair treatment of their leaders easily fell victims of police brutality. For instance, in the case of Thuku the police shot dead twenty-one African protesters as country witnessed its first political demonstration.<sup>4</sup>

Torture reached its peak in colonial times in 1952 when the colonial government declared a state of emergency that was orchestrated by increased resistance by Mau Mau. From 1952 onwards, the British government established detention camps where suspected Mau Mau fighters and their sympathizers were incarcerated. Others were detained in restricted villages which were used as forced labour camps under harsh and atrocious conditions when beating and other forms of torture was a common norm.<sup>5</sup> The colonial state established detention camps for example, Manyani detention camp, Kamiti detention camps, Kodiaga detention camps, Mackinon road detention among others.<sup>6</sup> The Africans were also hustled out of their houses and herded into barbed-wire compounds where they waited for the cogs of colonial bureaucracy to turn.<sup>7</sup>

In June 1954 the colonial government embarked on compulsory construction of villages in order to contain the Mau Mau. The Kikuyu were herded into these villages at strategic points. Villages held those residing as squatters on European farms and town dwellers. Those from towns were first held in barbed enclosures.<sup>8</sup>

In these colonial detention camps and villages Detainees were beaten by warders, camp commandants, officer in-charge, rehabilitation teams and screening teams. Among the weapons of choice were 'permabox bundles and rifle butts', rhino whips, buttons and chains. Detainees were sexually abused—whether through sodomy with foreign objects, animals and insects, cavity searches, the imposition of a filthy toilet-bucket system or forced penetrative sex. Camp cleanliness was very poor since detainees used same buckets for lavatory use and for bathing uses. The problem of hygiene, diseases and the lack of medical treatment was foremost in many detainees' letters. Many suffered diarrhoea, dysentery and typhoid.<sup>9</sup> The State of Emergency paved way for the creation of villages, barbed enclosures and detention camps to help manage and stamp out the Mau Mau rebellion. They were also used as tools of confinement, control and domination. The State of Emergency legitimized murder and detention of the Mau Mau fighters. The security agents were empowered to arrest and execute all the people that did not follow the Emergency regulations. The colonial government therefore sanctioned torture on Africans.

Under colonial government women like men were not exempted from torture. Physical violence was meted on African women who dared to challenge colonial establishment and its long tentacles of exploitation, oppression and torture. In her own words, Field Marshall Muthoni Kirima remembered what used to happen to women:

We African women suffered under the colonial government even more than men. Once a person was arrested, hooded and taken to a cell, hell broke loose as policemen worked on her mercilessly. Without mercy, those devils could pull our nipples using pliers before going down to insert bottles of hot water in the vagina all in the name of getting information about Mau Mau who were believed to be our husbands.<sup>10</sup>

By the time colonial period was setting down to give way to independence in Kenya, repressive laws and government machinery that could be embraced and easily used by Kenya's first independent government were in place.

### 3. The Kenyatta State and Politics of Cruelty, 1963-1978

The Kenyatta state enjoyed power over a vast territory and diverse group of communities. More particularly, the study maintains that the effect of statism upon independence in Kenya was to endow the new ruling class with an enormous degree of authority which it could effectively use to blunt opposition on a country-wide basis. The argument forces us to challenge one bit of conventional wisdom: that Africa's paucity of economic resources and its underdeveloped technology have limited political authority in the 'periphery'. Such a view fails to take account of the way in which a regime's monopoly of resources and sanctions, the small scale of most rural communities, and the consequent lack of anonymity, all work to facilitate political control in the countryside as well as in the cities.

In 1963 independence came with high expectations and hope. It signalled an end to a practice that had been institutionalized under the British rule; the end of racial segregation, detention camps and torture. However, to Kenyans, independence meant the return of land which had been dispossessed alienated for settlers. It was supposed to be the beginning of political and economic emancipation; the start of respect for the rule of law, human rights and dignity and the laying down of the foundations and tenets of democracy. These expectations never materialized as president Kenyatta earnestly embarked on a scheme to consolidate power into his hands through several mechanisms of control and

<sup>3</sup>Natives Removal Ordinance of 1909 (Nairobi, 1909)

<sup>4</sup>W.Kihoro, *The price of Freedom*, p. 27

<sup>5</sup>KNA/AG/19/115 The Emergency Ordinance 1938

<sup>5</sup> For detailed information on the Emergency, see also C.D. Home, *Evelyn Baring: The Last Proconsul* (London, 1978), pp.226-234

<sup>5</sup>KNA/AG/19/115 The Emergency Ordinance 1938

<sup>6</sup>See Kenya Human Rights Commission *Improving Prisons in Kenya* (Nairobi, 2002)

<sup>7</sup> KNA/ABK/14/130 The Emergency Powers Ordinance of 1950

<sup>8</sup>M.Likimani, *Passbook Number F.47927 Women and Mau Mau in Kenya* (Nairobi, 1998), pp.110-115

<sup>8</sup> D.Anderson, *Histories of the hanged*, pp.202-203

<sup>9</sup> KNA/AH/9/37, Complaints by detainees in prison camp 1954-1955

<sup>10</sup>Muthoni Kirima, O.I, July 7 2019

domination. He used existing repressive legislation which was carried over from the colonial government. He also pushed through constitutional amendments to achieve his goals. Lastly, he condoned extra legal means to silence his opponents.<sup>11</sup>

Kenyatta and his associates preserved what they most needed from the colonial state and particularly the law and order aspects. Institutions such as the Provincial Administration, police and the army were taken over intact.<sup>12</sup> Kenyatta ruled Kenya by manipulating factions working through a relatively strong civil service and utilizing his ethnic base.<sup>13</sup> Political intolerance led arrest, detention and torture of dissidents like Koigi Wawere, Ongongi Were, Achieng Oneko, Wasonga Sijeyo and major Mwanzia wa Musau, Mwangi Mahinda, Thairu Muthiga, Moffat Munyaira, Adam Mathenge, Gicheru Njau and Gikonyo Rukungu later he was joined by Muhoro Muthiga, Martin Shikuku, Mohammed Dahii Digalle among others.<sup>14</sup> Jomo Kenyatta's regime took over governance from the colonial government that had established prisons, police, courts and Provincial Administration which he used to silence all that criticised his government. Upon his death on 22 August 1978 Jomo Kenyatta bequeathed his vice president Daniel Toroitich Arap Moi a country that was burdened with heavy history of human rights abuse, torture, political intolerance and assassinations.<sup>15</sup>

#### 4. The Nyayo Era: Compulsive Operations and Herein of Torture, 1979-2002

After his death, Daniel Toroitich Arap Moi, the then vice president, was sworn in as president. There was great expectation in the country that the new government would expand democratic space and uphold respect for human rights. He assured the country that he would only detain Kenyans as a last resort. In his formative stages of administration, he is quoted saying: 'Kenya has in the past been one country championing democracy and come what may this democracy should be upheld' This created a new era which was full of optimism compared to the Kenyatta era.

Immediately after taking over as president, a delegation of Nyanza leaders visited state house Nairobi, in September and petitioned him to release political detainees and fast track amendment of the amendment of the constitution so as to do away with detention. In an interview by a correspondent of the BBC of what he thought of the Nairobi times press that had reported of optimism of the release of the political dissidents and an end to a dark era. Moi said that there was time for everything and that he would deal with the issue of detainees when the right time comes. Moi therefore, remained non-committal on the issue of detention.

Later, perhaps under pressure from the international community and in a bid to open a new chapter of tolerance and reconciliation, Moi released all the political detainees. In addition, this release was a strategic move to blackmail the world that the KANU regime cared about human rights.<sup>16</sup> With independence in 1963, hopes and expectations were high. These, however, were mercilessly dashed. Kenyatta's government was constantly accused of political assassination, torture and detentions, Moi's presidency maintained the status quo for a couple of years before becoming notably worse after the coup attempt of August 1982. Thereafter, Moi stepped up measures aimed at controlling the state and further consolidating power. This transition period, was marked by political intolerance. The perception of Kenyans was reinforced by Moi releasing twenty-six political detainees across the ethnic divide. The change was characterized by a short period of political tolerance.

The theme of continuity that marked the presidency of Moi was clearly emphasized by his choice of *Nyayo* philosophy (footsteps) as the watchword of his administration. There were no significant changes in terms of corrective institutions. In other words, Moi told Kenyans not to expect any revolution. He was determined to follow Kenyatta's policies.<sup>17</sup> Focussing on Kenya African nationalism, Moi asserts:

*Nyayoism* has come from the spirit of the motherland. While Mzee Jomo Kenyatta always preached love, unity and forgiveness; we look back further to the incarnate source of inspiration. That is the fundamental source of our nationalism. That is the moving spirit that begets and upholds African socialism. Therefore, when we recognize *Nyayo* as the moving spirit of our nation-building, we are not only following in the footsteps of our fathers who created and maintained the motive of force, spirit of African socialism. Thus, *Nyayo* links us to Mzee and to our socio-cultural African foundation.<sup>18</sup>

This political ideology of *Nyayoism* (footsteps) meant that he would follow the footsteps of his predecessor. With the emphasis on the *Nyayo* ideology it can be argued that, there was nothing much expected in terms of respect for human rights in Kenya.<sup>19</sup> Moi travelled constantly throughout the country addressing many pre-arranged public meetings. He popularized *Nyayo* within the context of what he called 'love, peace and unity'. This act turned to be a strategy geared towards the achievements of specific agenda; the control of state and consolidation of power.<sup>20</sup> This political relief only ended when KANU headquarters refused to clear former KPU leaders Oginga Odinga and Achieng Oneko to contest the 1979 general election on a KANU ticket.<sup>21</sup>

<sup>11</sup>J. Kenyatta, *Suffering Without Bitterness, The founding of the Kenya Nation*, (Nairobi, 1968), p.213

<sup>12</sup>See The Constitution of Kenya Amendment) Act, 1964 Date of Assent 23 November 1964.

<sup>13</sup>W.R.Ochieng' *Structural and Political changes*.p.93 see also J.Murry Brown *Kenyatta* (London,1972),p.312

<sup>14</sup>G.Wanjau, *Mau Mau Author in Détection*, (Nairobi,1988),p.210

<sup>15</sup>The Weekly Review *Detention conditions were Horrible*.December 29 1978, pp.1012

<sup>16</sup>The weekly Review.1978. *Kenyans Grief-Stricken, but Dignified in Hour of Sorrow* August 25

<sup>17</sup>The Weekly Review, *Moi Launches an Era of Tolerance*, December 15 1978, pp.3-4

<sup>18</sup>R. Maxon and P. Ndege The Economics of Structural Adjustment in B.A. Ogot and W.R. Ochieng' *Decolonization and Independence in Kenya* (Nairobi,1996), p.152

<sup>19</sup>D. T. A. Moi, *Kenya African Nationalism: Nyayo Philosophy and Principles* ((London,1986), pp.15-34

<sup>20</sup>See also G. I. Godia, *Understanding Nyayo Principles and policies in contemporary Kenya*, (Nairobi, 1984). Also see Daniel Arap Moi, *Transition and continuity in Kenya. Selected speeches*, (Nairobi,1979), Daniel Arap Moi, *Continuity and Consolidation in Kenya*, (Nairobi,1982), pp.1-20

<sup>21</sup>D.T. Moi, pp.3-6 See also G. Godia. *Understanding Nyayo Principles and policies in Contemporary Kenya* (Nairobi,1984), pp.1-6

<sup>22</sup>Weekly Review, Nairobi,25 April 1979, pp.3-4

On 1 August 1982 there was an attempted coup against President Moi staged mainly by members of the Kenya Air Force (KAF) allegedly led by one Hezekiah Ochuka. The attempted coup, apart from making the country unsafe made Moi look like a weak leader.<sup>22</sup> The coup attempt left Kenya's political scene severely shaken. Moi relied increasingly upon army chief of staff Major-General Jackson Mulinge who had remained loyal all this time. Moi isolated the Kikuyu and the Luo from his administration. He even became more distrustful of his Kikuyu advisers.<sup>23</sup>

The attempted coup led to extensive loss of life and property. Over 900 Air force and some army personnel were arrested, court-martialled and given long jail sentences of up to 25 years for planning a mutiny and treason. The trials period lasted up to four years; 12 soldiers were sentenced to death. On 2 July 1982,<sup>24</sup> a committee chaired by John La Rose and mandated to champion for the release of political prisoners was constituted in London. This committee was formed in solidarity with the dissidents in their struggle for national democratic rights.

The attempted coup made Moi show the world that 'he was in control' of the country. He used legal mechanism as a tool of political domination and control. Adar<sup>25</sup> argues that Moi used constitutional changes as a strategy of consolidating and personification of power; they were meant to help Moi control the state, legitimize his leadership and broaden his political base. Moi systematically usurped the functions of the other institutions of the government to the extent that the concept of the separation of powers had been rendered nugatory.

Through Moi's political machinations, the Kenyan constitution underwent several amendments in the 1980s to infringe on the independence of other arms of government and to remove security of tenure for important state officers such as the Attorney General, Auditor General among others that the man at the helm thought could stand on his way to fully control the state.

Kenya's parliament, through Moi's order, reinstated detention laws which had been suspended in 1978. The laws were Chiefs Authority Act, the Public Order Act, the Preservation of Public Security, and the Penal codes. These acts gave the president powers to suspend individual rights guaranteed by the constitution. The parliamentary privilege, which guaranteed members of parliament; the right to obtain information from the office of the president was revoked. The members of parliament and the citizens surrendered their rights to the presidency. Parliamentary supremacy became null and void.

Moi's control of parliament was extended to election. The 'queue' voting system introduced by KANU in 1986 replaced the secret ballot with a system where voters lined up behind a candidate. KANU, the ruling party by then, by the orders of Moi amended its nomination rules to create the queue voting system (mlolongo). Through these regulations; the secretary-general of the party was no longer going to 'clear' parliamentary election candidates to vie in the general elections, as had happened in the past. Candidates would instead be 'cleared' by the general public-but only after the party had 'cleared' the candidates for nomination. The electorate would then do the nomination-not by secret ballot but by openly forming queues behind their chosen candidates.<sup>26</sup>

This procedure transformed the vote from a party nomination to an election procedure. This process disenfranchised anyone who chose not to vote in the nominations, or who was not a KANU member and therefore not entitled to vote in those nominations. The election procedure was meant to eliminate politicians who were not loyal and pro- government policies. In a situation where there was a dispute over the head count a repeal of the same process was not possible at the end of the exercise. Parliamentary supremacy became subordinated to the president and KANU with the party becoming the mouth piece of the executive.<sup>27</sup>

After the 1982 attempted coup, Njonjo harassed and intimidated members of parliament in a bid to silence the legislature and place its powers within the executive arm of the government.<sup>28</sup> Through the reinstatement of Public Order Act (cap 56) empowered the Provincial Administration to control public gathering. No public meeting or procession could be held without a licence. District commissioners could refuse to issue a licence if they felt the public gathering would prejudice the maintenance of public order. Public gatherings were seen as avenues for political incitements to the public. All those that fell afoul of Moi's governance landed in prisons for detentions. The most appropriate prisons for detention were either Kamiti or Manyani prisons. Manyani held the political dissidents detained for a second time.<sup>29</sup>

The year 1984 remains dreaded among the residents of Wagalla in wajir. In early February of this year the government of Kenya decide to restore peace in the northern frontier by disarming the Degodia clan of the Somali community. However, the exercise became the worst case of human rights abuse and torture of citizenry by own government under Moi's presidency. For about four days the residents of Wagalla from the Degodia clan were forced to lie

<sup>22</sup>See also the extensive coverage in the Kenyan media especially Weekly Review,6 August 1982,pp.3-17,13 August,1982,pp.8-16;20 August pp.4-10;27 August 1982 pp.3-4;and 14 January 1983 pp.13-18 contains interesting analysis of the Coup d'etat and the political situation in Kenya for more details on Disbanding of Gema see also M. Katumanga & M. Omosa Leadership and Governance in Kenya In P. Wanyande et al (eds) *Governance and Transition in Kenya*(Nairobi,2007),p.68

<sup>23</sup> Weekly Review 20 August 1982 pp.4-8 and 3 September 1982 pp.3-7

<sup>24</sup> Kinyatti. p,238

<sup>25</sup> K. G. Adar, The Internal and External Contexts of Human Rights Practice in Kenya: Daniel Arap Moi's Operations Code. *African Sociological Review* 4(1) 2000, pp. 74-96

<sup>26</sup>R. Odinga, *Flames of freedom* pp.321-329 see also The electoral system and multi partyism in Kenya Michael p.12 see also G. Hyden and C. leys, 'Elections and politics in single party systems; The case of Kenya and Tanzania; Journal of commonwealth and comparative politics; vol 32,No 2 1992. Also D. Throup.: *Elections and political legitimacy in Kenya*'Africa ,Vol 63 No 3 1993;A C. Horbsby and D. Throup, Elections and Political change in Kenya' Journal of commonwealth and comparative politics vol 32 No 2 1992 ,See also K. Kibwana; unfinished Business; The transition to Multi-Party Democracy and Kenya's Post December 1991 Electoral law reforms in Kivutha Kibwana (ed) *Constitutional law and politics in Africa* pp.215-229

<sup>27</sup> K.G. Adar, *The Internal and External Contexts of Human Rights Practice In Kenya: Daniel Arap Moi's Operations Code*. *African Sociological Review* 4(1) 2000,pp. 74-96

<sup>28</sup> The weekly Review, 'The Seven Bearded Sisters,'March,16 1984, pp.10-14

<sup>29</sup> The Weekly Review, 'Court Jails One, Fines Three students,'April 21 1985, pp-4-7

down naked on the pebbly ground of Wagalla airstrip without food and water. At the end of this ugly script, an estimated 5000 people succumbed to the mistreatment meted agents of their own government.<sup>30</sup>

Kenya's leadership transition occurred in 1978, when then Vice-President Moi took power upon the death of Jomo Kenyatta, leader since the country's independence from the British in 1963. Once in office, Moi immediately clamped down on dissent. In the 1980s and early 1990s, many courageous lawyers and activists who were critical of the government were harassed and jailed or fled into exile, and the press was tightly controlled. A coup attempt by the Kenyan air force in August 1982 was aborted. In 1982, the constitution was amended to make KANU the only legal political party. In 1987, it was amended again to give Moi the power to fire senior judges and civil servants. Both amendments were repealed in the 1990s, but the executive branch continues to wield considerable control over the judicial and legislative branches of government through a system of patronage and threats.

The government also decided to purge its opponents suspected of abetting the political acrimony in the country. At the same time Moi's government instituted a number of measures designed to reassert its authority among the dissidents. It is important to note, whereas the colonial government used the barbed pens as centres of screening and interrogation of Mau Mau rebels, the post independent government came up with dungeons that were constructed as part of government houses in Nairobi. The most infamous houses were *Nyati House* and *Nyayo house*.<sup>31</sup>

The building's basement acted as torture chambers where Kenyans who were deemed to be radical or opposed Kenyatta and Moi Governments were locked up and beaten to confess to crimes they did not commit. They were government buildings that were galvanized to suit the government torture agendas.<sup>32</sup> After being tortured for days, the detainees would be taken to court at dusk where they would plead guilty to charges of sedition rather than return to the dark.

*Nyati house* was based in Loita Street which housed the torture chambers. *Nyati house* was built by Kenyatta government with the purpose of housing Nairobi Provincial headquarters. The building was also used by special branch that came later to be known as the National Security Intelligence Service who interrogated the political dissidents. The basement was turned to be torture chambers. In the *Nyayo house* basement, the cell walls were very high. The doors were electrically operated and insulated with rubber to make them watertight. It had a single light which burned high in the centre of the ceiling. The light was meant to make the detainee lose the aspect of time.

The prisoners brought to *Nyayo house* were blindfolded and handcuffed. It had a lift that connected to the upper floor where the prisoners were interrogated. The police officers held prisoners one by one and side by side. They were led through the dark corridors into the open room. The prisoners were not mastering of their own fate but their fate lay in the hands of ruthless police. In front of the senior police officers on a raised platform was a chair where the prisoners sat.

In 1980s, many people who were tortured in *Nyayo house* died; were unable to take more and to save their lives or simply to get the agony to stop, they broke down and signed false confessions. Once they had been forced into false confession. They would be given papers to sign pleading their guilt on the sheet that had their charges. The police officers waited for the city to clear in the dusk. It was a well-defined network with the magistrates for them to appear before them. The prisoners would be coerced to plead guilty with no lawyers to represent them. The plea would be recorded and the prisoner escorted off to Kamiti prison to begin the long jail term. The media would then be alerted. The story of their detention would appear as a surprise to the prisoner's family. By the time the family got the information, it was too late to appeal. They could only make an appeal with signed confession. The success of the appeal was almost zero.<sup>33</sup>

From the torture chambers the political dissidents were transferred to Manyani Prison Manyani prison played a significant role in the history of detention during Moi regime. Political rebels were incarcerated in the prison. It served as a prison of torture for political dissidents. Raila Odinga was transferred from Kamiti camp to Manyani prison in 1985. This was his second detention. The transfer was very thrilling as described in *Flames of Freedom*. He was heavily handcuffed, driven out of the prison compound in a land rover with curtained windows. As he was driven through the city he was led and followed by a civilian escort car that no one outside would have guessed they were heavily armed. He was taken to the police air wing at Wilson Air Port then escorted on to the plane.<sup>34</sup>

When the plane landed at Manyani air strip he was told 'Manyani is your new residence.' Warders working there had to take an oath to keep secret everything they saw and divulge their knowledge to no one. During the Moi administration on arrival at the Manyani, detainees were blindfolded and curfew declared. The Moi government designed Manyani prison specifically for prisoners of conscience.<sup>35</sup>

Second time detainees were put under tight security because they were termed as trouble makers. Prison officers were ostensibly there for security. Manyani prison offered the required mechanism of torture for the dissidents. According to Koigi's confession Manyani prison was the worst detention. He remembers:

In the second detention I was kept under solitary confinement. This made my detention harder to bear with. My second detention remains vivid in my mind. I spent most of it at Manyani prison. It was meant to detain all those that had fallen out with the Moi government. This is a prison I will ever remember because of its uniqueness; its unbearable heat, mosquitoes and millions of vexatious and venomous insects that made life impossible. In the first detention I was allowed to have religious services such as visits by a catholic priest and prison chaplain but in the second detention I was not allowed. It was illegal to have any book especially political book or a pen in the prison.

<sup>30</sup>ALJAZEERA News, Feb 27, 2014

<sup>31</sup> See Truth, Justice and Reconciliation Commission Report August (Nairobi, 2013), pp.6-7

<sup>32</sup>Truth, Justice and Reconciliation Commission Report, p.6

<sup>33</sup> See also, Koigi Wamwere

<sup>34</sup>R. Odinga, *Flames of Freedom*, pp.272-297

<sup>35</sup>Ibid, 298

The official rationale was that copies of letters and other materials that had been written by political detainees in the first detention had been used by people like Ngugi wa Thiongo to write books on prison life and denigrate some prison officers. They portrayed them as cruel and oppressive.<sup>36</sup>

There was spread of infectious disease and other illnesses arising from the inadequate and unbalanced diet. Matters to do with health had been neglected and the camp acted as incubator of diseases. It was there that incidences of torture and brutal treatments left a lasting impression on the detainees.

The year 1990 commenced with extensive clamour for the country to adopt a multi-party system of government to challenge KANU's stronghold over the country's political life. The struggle for multi-party democracy was spearheaded by Kenneth Matiba and Charles Rubia before other political leaders joined the wagon. They called people for meetings to agitate for the same. One historical meeting was the 7 July 1990 (Saba Saba) at Kamukunji grounds in Nairobi. The government outlawed the meeting. Scores of people were killed for rioting and street actions. Hundreds of people were arrested and held in police stations.<sup>37</sup>

Moi accused the multi-party crusaders of destabilizing the country. The president informed a rally in Kirinyaga that Matiba and Rubia were plotting his assassination and death of other senior government officials. Such claims were a traditional smear tactics in Kenya.<sup>38</sup>Matiba's home was ransacked and his wife seriously injured by a 15-man armed gang believed to be members of the GSU in search of the ex-minister.

On 4 July 1990 Matiba and Rubia were arrested in Mutugi's Bar Conspiracy. They were arrested and detained under the conservation of Public Security legislation.<sup>39</sup>The two were detained without trial for these activities. They were first tortured in the Nyayo house during the *Mwakenya* crackdown before being charged with treason and sedition. Later, George Anyona, Raila Odinga, among other multiparty crusaders were arrested and detained without trial.<sup>40</sup>

Their detention produced an outcry both in Kenya and abroad. Tension gripped the country. This was after reports began to flow that Matiba had suffered one or more strokes and was near death but the government insisted that Matiba was in good health. By June 1991 Matiba's health was fragile. The Police Commissioner Kilonzo informed Moi that Matiba was likely to die in detention if he suffered another stroke. At the same time there was increased political agitation. This led to the release of the political detainees.<sup>41</sup>

Political leaders like Masinde Muliro also called on Moi to repeal section 2(A)<sup>42</sup> of the constitution noting that this would reform the freedom of association and bring about political stability. Kenyans not only called for a new constitution but also on one whose creation they would participate. Moi gave in due to pressure from the public and the international community. This led to the repeal of section 2A and the return of democracy in Kenya.<sup>43</sup> The repeal of the constitution established multi-party democracy in Kenya hence ending party rule in Kenya. This change in the Constitution marked the end of political detention in Kenya.<sup>44</sup>

## 5. The Kibaki Era: Anarchical Fallacies and Transitional Justice, 2002-2013

The defeat of KANU in 2002 elections and the new governance of NARC marked a new beginning for Kenya. It could be described as the beginning of a new era characterized by a wide democratic space and the end of authoritarianism. It marked a moment when Kenya united forces and brought to a halt the forty plus years of the Kenya African National Union party's domination of Kenya's politics. Political parties, civil society organizations, the private sector and ordinary Kenyans participated in ousting the Moi government and ending the despotic rule. This period led to the expansion of democratic governance under Kibaki's rule. Kibaki's era focused on dealing with traces of patronage and widespread abuse of human rights.<sup>45</sup>

President Moi handed over power peacefully to President Mwai Kibaki on 30 December 2002. In his inaugural speech President Kibaki said:

I am inheriting a country which is badly ravaged by years of misrule and ineptitude. You have asked me to lead the Nation out of the present wilderness and malaise on to the promised land and I shall...The task ahead is enormous, the expectations are high, and the challenges are intimidating. But I know that with your support and cooperation we shall turn our problems into opportunities.

The church asked president Kibaki to full fill his election campaign pledges. Kibaki responded by saying:

You have asked me to lead this nation out of the present wilderness and malaise into the Promised Land...I shall do so.<sup>46</sup>

<sup>36</sup> Koigi wa Wamwere, O.I. 3/7/2015.

<sup>37</sup> Kihoro, p.190.

<sup>38</sup> Weekly Review, May or June 1990, see also the remarks by president Moi when he announced the appointment of the Saitoti commission into KANU's internal affairs as printed in weekly Review 6 July 1990, pp.9-10 and remarks during a visit to Nakuru reported in the same issue p.12

<sup>39</sup>The economist 23 June 1990, p.83 see weekly Review 4 January 1991, p.17 for the trial of those subsequently arrested.

<sup>40</sup>Thrup, p.63, also see Weekly Review 13 July 1990, pp-3-23, Saba Saba means literally the seventh of seventh standing for date seven the seventh month of 1990

<sup>41</sup> Thrup, p.76, see also Weekly Review .14 June 1992, pp.4-7

<sup>42</sup>The amendment of section 2A of Kenya's constitution was formally legalize political opposition, opening the door for the formation and registration of a multiplicity of political parties

<sup>43</sup>M.Mwagiru & P.M.Mutie Governance and Conflict Management in P.Wanyande et al (eds)*Governance and Politics in Kenya* (Nairobi,2007),p.143

<sup>44</sup>K. Karuti Political Change In Kenya in P.Wanyande et al (eds)*Governance and Transition Politics in Kenya* (Nairobi,2007),p.89

<sup>45</sup>O. Otieno, Negotiating Governance; The Role of Civil Society Organizations in The 2002 Transition Politics in O. Okombo, (ed)*Civil Society and Governance in Kenya since 2002:Between Transition & Crisis*,(Nairobi,2010),pp.93-112

<sup>46</sup>Gonza, Sam 'Churches Celebrate Kenya's New President' in *Christianity Today*, March, Found at [www.christianitytoday.com/ct/2003/003](http://www.christianitytoday.com/ct/2003/003)

Kibaki asked Kenyans to work and fight all the ills reminiscent of the outgoing regime. Kibaki promised not to witch hunt for alleged crimes by the outgoing administration stressing forgiveness and reconciliation and insisting that Kenyans should work for a common destiny.<sup>47</sup> He also promised that his administration would be guided by the principle of team work and consultation. Kibaki's regime brought remarkable progress towards democratic governance and the respect of liberties compared to the dark days of the Kenya African National Union (KANU) regime prior to 2003. The agitation for multi-party in Kenya led to the end of Detention without trial.

The Narc government pledged quick economic fix, adherence to the rule of law, constitutional reforms, and transparency.<sup>48</sup> It is this change in governance that ushered a new era of Prison reforms spearheaded by the Vice president and Minister for Home Affairs, Moody Awori. Prison reforms were initiated year 2003. Prison reforms were driven by the fact that prisoners were incapable of reforming under harsh conditions. It was based on this understanding that changing prison conditions was seen as an important aspect in the rehabilitation of prisoners. They were instigated by overcrowding in prisons, the increasing proportion of minority inmates, increased court oversight of prisons and the reaction of prison staff and administration to the inmates which resulted to the radicalization of inmates.

Indeed Kenya's 2010 Constitution, ushered a new era having taken into account the historical mistreatment of people in the hands of the state. Provisions against torture and detentions are provided as a means of safeguarding the people.<sup>49</sup> The Constitution guaranteed the Bill of Rights for every individual. The Constitution also provided for the freedom from torture and cruel, inhuman or degrading treatment or punishment being unlimited and guaranteed by the constitution.<sup>50</sup> As part of the healing from abuse of human rights the constitution provided freedom from torture and cruel, inhuman or degrading treatment or punishment. Chapter fourteen of the constitution created National Security Organs; Kenya Defence Forces, the National Intelligence Service and the National Police Service. These institutions were to ensure that national security shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms. Parliamentary and civilian institutions were created to oversight and ensure checks and balances of the executive that seemed very powerful and authoritative during the Moi era. These institutions were mandated to ensure proper accountability in the national security framework.<sup>51</sup>

Other institutions enshrined in the constitution that enforced respect for human rights include; the Kenya National Commission on Human Rights Act which established the Kenya National Commission on Human Rights its primary function is to ensure protection and observance of human rights in public and private institutions. It was also mandated with the responsibility of receiving and investigating complaints about a abuses of human rights.<sup>52</sup> The constitution established office of the Director of Public Prosecutions under Article 157 who has the power to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct.<sup>53</sup> The new constitution also established the National Police Service Act whose establishment formed the Independent Police Oversight Authority which was meant to hold the police accountable to the public in the performance of their functions and also ensure independent oversight of the handling of complaints by the Service.<sup>54</sup> In 2016 the government sponsored the Prevention of Torture Bill with particular reference to the investigations conducted by the Truth Justice and Reconciliation Commission that revealed great instances of torture and related violation of human rights and historical injustices. The report further established that torture, extra-judicial executions, murders, harassments by law enforcement agents and many other forms of human rights violations are still being reported across the country. Despite the Constitution's attempt to provide for freedom from torture and inhuman, cruel and degrading treatment as an unlimited right, it has been noted that the provision falls far short of defining what constitutes torture nor establishing mechanisms for reparations for victims of torture.<sup>55</sup>

Kibaki reinvented Kenya and he gave Kenyans a gift of the constitution. From where people drew so much inspiration and where no one was above the law. <sup>56</sup>Changes that Kibaki brought were so significant that devolution in particular made it possible for participatory governances that all Kenyans from all over the country and from all levels of power. Today everyone shares power women, youth, marginalized and even disabled; the Uhuru state disregarded all that.

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## 6. Conclusion

It is without a doubt that the Moi regime, especially 1978 and 1990 was synonymous to abuse of human rights through detention without trial, torture and general intimidation on the part of those who tried to oppose the then KANU government. Government machineries were well oiled to hunt down and coerce perceived critics to toe government lines. The independence of the judiciary and parliament remained on paper at the face of KANU operations that day in day out

<sup>47</sup> J.M. Omiti, 'New president Spells out his Vision as he takes the oath of top Office,' Daily Nation 31 December, 2002, pp 4-6

<sup>48</sup> O.N. Gakuru, Hope, Disillusion, and Reconciliation in P. Wanyande et al (eds) *Governance and Transition Politics In Kenya* (Nairobi, 2007), pp. 280-297

<sup>49</sup> Citizens of Justice, We Lived to Tell the Nyayo House Story, Friedrich Ebert Stiftung (FES), 2003.; Kenya Human Rights Commission, International Day in Support of Victims of Torture, 28 June 2011

<sup>50</sup> Article 19(3) (a), Constitution of Kenya, 2010. 6 Article 25(a), Constitution of Kenya, 2010

<sup>51</sup> Article 238(2) (b), Constitution of Kenya, 2010 and Article 239(5), Constitution of Kenya, 2010.

<sup>52</sup> Article 59 (3), Constitution of Kenya, 2010 and Section 32, Kenya National Commission on Human Rights Act, No. 14 of 2011.

<sup>53</sup> Article 157 (4), Constitution of Kenya, 2010

<sup>54</sup> Section 5, Independent Policing Oversight Authority Act, Chapter 88, 2011. 156 Part III, Independent Policing Oversight Authority Act, Chapter 88, 2011

<sup>55</sup> Prevention of Torture Bill, National Assembly Bills No. 47, 2016.

<sup>56</sup> OI, Koigi Wamwere, Interview by author, Nakuru, July, 2018

<sup>57</sup> OI, Anne Wangari, Interview by author, Kericho, July, 2017

adopted way on infringing on their functions as arms of Government. All this was in line with Moi's agenda to grasp and control the state.

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