

Kenyan Constitutional Reform

Ben Lucy

1. The application:

This student paper makes use of all three dimensions of the Power Cube to look back at a significant moment in Kenyan political history and assess whether on balance the achievement of constitutional reform shifted power relations for the better or not.

2. The case:

Over the period 1995-7 a movement for constitutional reform emerged and developed, in which civil society actors and the state entered into a dialogue over dissatisfactions with the existing constitution. It was on one level successful, in that the movement mobilised a number of actors and got the issue of constitutional reform onto the public and governmental agenda. On another, though, it failed to change in any meaningful way the underlying power relations which had led to the initial discontent – those which allowed the state to exercise domination over society, and those which meant the majority of ordinary Kenyans were effectively excluded from power.

The movement began when a group of human rights organisations galvanised a broader alliance of civil society and church groups leading to the establishment of the Citizens' Coalition for Constitutional Change (4Cs), which in turn networked with opposition politicians, religious groups and others around the idea of constitutional change. In 1997 500 delegates participated in the first session of the National Convention Assembly in Nairobi, a civil society forum in which to discuss proposals for constitutional reform. Agitation for change intensified in the run-up to the 1997 elections, with mass demonstrations calling for reform before these were held – and when these were put down by the government international condemnation added to the pressure on the government to negotiate.

Finally the government agreed to talk, but only to elected MPs within the movement for reform, thus excluding civil society from the dialogue. Although this frustrated the civil society actors within the movement it nonetheless had an effect by stimulating the creation of a cross-party parliamentary group to discuss constitutional reform, an entity which was ultimately successful in getting some reforms adopted by parliament, and committing to the creation of a constitutional review commission to examine the issue after the elections.

3. Analysis:

The state's visible power was widely seen by civil society as overbearing, and its hidden power meant that the issue of constitutional reform to limit this could be kept off the agenda. Civil society's response was to build up a movement of diverse actors united around this common concern - identifying and generating 'power with' other actors to a point where they could claim a space at national level – the NCA - and make the issue of constitutional reform un-ignorable. Mass demonstrations constituted transient claimed

spaces which lent further visibility, in particular attracting the attention of the international community such that the pressure for change started to be exerted not just from below but also above – i.e. at multiple levels. Finally, the state responded by establishing an invited space in which the issue of constitutional reform could be discussed, although this was so restrictive in terms of who could be invited that it was essentially closed to the civil society actors who had pushed the issue this far. Ultimately a restricted, invited space within parliament was able to effect some change although not on the scale hoped for or with the legitimacy that a more participatory process might have generated.

Beneath this story the realities of power relations in broader Kenyan society meant that ordinary, non-elite Kenyans were essentially excluded from the process. Civil society is a fairly elite sector in Kenya where the majority of people consider themselves to be passive subjects of more powerful entities including the government. Their non-participation in the movement for change reflected the way in which this invisible power structure renders them unable to conceive of bringing about change in their own interests, and had the effect of giving the movement the hidden power to determine the change agenda. This power may have been exercised in pursuit of progressive, pro-democratic goals, serving what the movement understood to be the interests of poorer and less elite Kenyans, but this should not be confused with the movement having empowered them. Indeed, the fact that the movement mobilised and the change was effected without broader participation could be argued to have consolidated existing power relations – and consolidated ordinary Kenyans’ belief that they have no influence over what powerful people do – rather than challenged them.

4. Implications & significance

Making particular use of the hidden and invisible dimensions of the Power Cube, the analysis here tells a very different and more nuanced story than the simple progression of events might have suggested: if a progressive policy change is achieved it is easy to assume that this means power relations have shifted towards more equality in some way, but this analysis gives cause to reconsider this. It suggests that building a movement for change without the participation of those negatively affected can consolidate inequality – a central premise of participatory approaches but one often sacrificed by movements in favour of ‘pragmatism’ – i.e. having some impact at an opportune moment rather than risking having none.

The case also demonstrates how strategies that build ‘power with’ can be effective in challenging hidden power, where they force the expressions of that power to come into sight. Making the hidden visible emerges as a powerful strategy – although at the same time it shows that this is insufficient for shifting invisible power, in the end undermining the achievement of the movement somewhat, so suggesting that tackling invisible power needs to be given more priority.