

Review on the workshop “Education on the proposed Constitution for dioceses of Nyeri and Nyahururu” held in Nyahururu the 16th June, 2010

On 4 August 2010, the Kenyan citizens are going to vote on the Proposed Constitution in the version published on 6 May 2010 by the Attorney-General Amos Wako. After the Kenyans declared themselves against the version of the constitution left to decision, the so-called Wako- draft, in 2005 the Kenyan people is now called up to decide by referendum about the adoption of a new constitution..

The present Proposed Constitution is the result of a reform process that started in 2008. After the post-election-violence, which followed the contested presidential elections held in December 2007, the competing presidential candidates Mwai Kibaki and Raila Odinga signed an agreement, referred to as National Accord or Reconciliation Act, to set an end to the riots and the crisis in the country. One of the agreement's essential commitments was to adapt a new constitution.

In 2008 the revision process started: The Kenyan Parliament passed a law specifying the procedure for the adoption of a new constitution. In February 2009 the Committee of Experts (CoE) was established with the mandate to elaborate a draft of the constitution. On 17th of November the Committee of Experts released the first draft of the constitution. The public was invoked to participate by proposals for modification. After that the draft was revised and went its way through the Parliamentary Committee (PSC) and the National Assembly finding its final version published on 6 May 2010.

Now the Kenyan public discusses the Proposed Constitution controversially. The process towards a new constitution for Kenya has been accompanied by the Country Programme of the Konrad-Adenauer-Foundation for many years.

In preparation for the “Harmonized Draft Constitution” the Konrad-Adenauer-Foundation published together with one of its partner organisations, the “Catholic Justice and Peace Commission (CJPC)”, executive organ of the Kenya Episcopal Conference for Justice and Peace, a handbook on the “Constitution Review Process” to facilitate the understanding of the process so far by comparing the proposed new constitution draft, the current constitution with the Bomas draft from 2004 and the Wako draft from 2005.

Another essential part in the field of Civic education on the Proposed Constitution is the organization of workshops. These workshops are held in conjunction with partner organisations like the CJPC, addressing representatives of the dioceses enabling them to refer their knowledge and understanding of the constitution to their members. A further example for the workshop activities of the Konrad-Adenauer-Foundation is the cooperation with the Dialogue Africa Foundation, addressing community members and delegates of resident associations.

The objective of these workshops is to acquaint the participants with the content and the meaning of the provisions in the Proposed Constitution, enabling them to inform the Kenyan people about the proposed constitution and to enable them to decide themselves to vote on the constitution in August with Yes or No.

The workshop held by the Catholic Justice and Peace Commission (CPJC) and the Konrad-Adenauer-Stiftung in Nyahururu on 16 June 2010 was one of the education workshops on the Proposed Constitution. Participants were members of the dioceses from Nyeri and Nyahururu.

At the beginning the participants expressed their expectations regarding the workshop. As a result it turned out that the majority was most concerned about the contentious issues discussed in the public – the question of abortion, the Kadhis' courts and the land issue.

The attendants of the workshop demanded information about the procedure of amending the constitution as it had been proceeded so far. Why there is going to be a referendum on the whole document although there are still some contentious issues remaining.

The fact that in many provisions of the Proposed Constitution the Parliament is empowered to enact legislation were occasion to explain some foundations of constitutional law, e.g. questions on the binding of laws in Kenya, the relation between the constitution and an Act of Parliament. This leaded to a discussion about the function of a constitution as a guideline for people and legislation.

By raising the question whether there is need for a new constitution the participants were asked to write down their own point of view. The unanimous uttered opinion was that the current constitution needed a reform. The given reasons were diverse: The desire for a truly Kenyan constitution drafted by the Kenyans themselves in contrast to the colonial heritage of the current version, complaints about bad governance, the abuse of power, the too powerful president, corruption and lack of the rule of law as well as concerns about the judicial system, human rights and the issue of ethnicity were announced. The participants complained about the fact, that the present constitution does not address the needs of the Kenyan people.

The workshop continued with the description of the main principles, guidelines and some important amendments foreseen by the proposed constitution. Starting with the procedure of the reform process, then talking about the basic principles the proposed constitution sets, further on discussing the most important Chapters: Leadership and integrity, the devolution of power and introducing an new level of administration – the county administration, the new composition of the Parliament (the Senate as the second Chamber), Legislation, amendments in the field of the Executive and the Judiciary .

With large interest the participants discussed the contentious themes like the clause on abortion, the Kadhis' courts and the issue of land possession in the proposed constitution. However, the attendants showed not less interest in themes linked to basic constitutional and fundamental right issues.

In the end the workshop returned to its starting point the question, why there was a need for the constitution giving the participants the possibility to compare the settings in the constitution to the before expressed wished changes, to measure the impact of the Proposed Constitution by themselves.

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