The Katiba Journal

Towards a new constitutional dispensation in Kenya

OCTOBER 2009

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On the spot!

Attorney General Amos Wako

* Wherefore Agenda Four reforms
* Constituency & administrative boundaries
* Putting marriage asunder

Kindly supported by: Konrad Adenauer Stiftung

ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

The Media Development Association (MDA) is an alumnus of graduates of University of Nairobi's School of Journalism. It was formed in 1994 to provide journalists with a forum for exchanging ideas on how best to safeguard the integrity of their profession and to facilitate the training of media practitioners who play an increasingly crucial role in shaping the destiny of the country.

The MDA is dedicated to helping communicators come to terms with the issues that affect their profession and to respond to them as a group. The members believe in their ability to positively influence the conduct and thinking of their colleagues.

The MDA aims at:

- Bringing together journalists to entrench friendship and increase professional cohesion;
- Providing a forum through which journalists can discuss the problems they face in their world and find ways of solving them;
- Organising exhibitions in journalism-related areas such as photography;
- Organising seminars, workshops, lectures and other activities to discuss development issues and their link to journalism;
- Carrying out research on issues relevant to journalism;
- Organizing tours and excursions in and outside Kenya to widen journalists' knowledge of their operating environment;
- Publishing magazines for journalists, and any other publications that are relevant to the promotion of quality journalism;
- Encouraging and assist members to join journalists' associations locally and internationally;
- Creating a forum through which visiting journalists from other countries can interact with their Kenyan counterparts;
- Helping to promote journalism in rural areas particularly through the training of rural-based correspondents;
- Advancing the training of journalists in specialised areas of communication;
- Create a resource centre for use by journalists;
- Reinforcing the values of peace, democracy and freedom in society through the press;
- Upholding the ideals of a free press.

Activities of MDA include:

- Advocacy and lobbying;
- Promoting journalism exchange programmes;
- Hosting dinner talks;
- Lobbying for support of journalism training institutions;
- Initiating the setting up of a Media Centre which will host research and recreation facilities;
- Working for the development of a news network;
- Providing incentives in terms of awards to outstanding journalists and journalism students;
- Inviting renowned journalists and other speakers to Kenya;
- Networking and liking up with other journalists' organisations locally and abroad.

This newsletter is meant to:
1 Give critical analysis of democracy and governance issues in Kenya.

2 Inform and educate readers on the ongoing Constitution Review Process.

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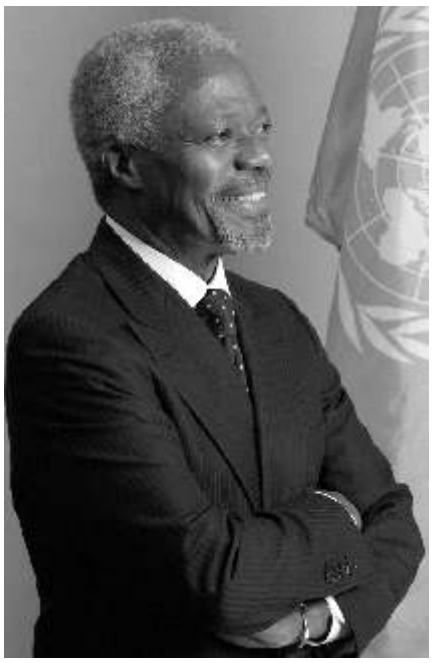
By Macharia Nderitu



Former UN Secretary General Koffi Annan

Following post-election violence over the disputed elections in December 2007, former UN Secretary-General Koffi Annan was designated by the African Union as the Chief Mediator in Kenya's political crisis. Graca Machel and Ben Mkapa assisted Annan. The Kenya National Dialogue and Reconciliation team was subsequently constituted consisting of eight persons appointed by the political protagonists with Orange Democratic Party and the Party of National Unity each nominating four persons.

The resolution of the dispute was clustered into four agenda items. These were set out in the Agreement on the Principles of Partnership of the Coalition Government, which was signed on February 28, 2008. The Agreement was later enacted as the National Accord and Reconciliation Act, 2008.

The first agenda constituted actions required to immediately stop violence and restore fundamental rights and liberties. The parties were required to take steps to end the then prevailing state of politically instigated violence. Such measures were to be taken by the general public, the police, media and political leaders.

Agenda Two concerned addressing humanitarian crisis and promoting national healing and reconciliation. The parties were obliged to assist and encourage displaced people to return to their homes or to new areas and to have safe passage and security. The process of resettling the IDPs is incomplete. However, it gained new momentum with the presidential directive that all IDPs be resettled by October this year.

This directive has led to speedy disbursement of resettlement facilitation by the Government and attempts to identify and purchase land to resettle IDPs. It is estimated that up to 10 per cent of the IDPs will be unable to return to their original land. About 118 camps have been closed to date with a few remaining open. There are allegations that part of the funds meant for IDPs has been misused by Government officers and already investigation is underway to establish the veracity of the allegations.

Grand coalition

The need to resettle IDPs is urgent with the expected heavy rains in the last quarter of the year. The Government has not made sufficient and timely effort to resolve the IDP issue. The continued presence of IDPs in camps is a clear and stark reminder that the political crisis has not been fully resolved.

Agenda Three related to political settlement and power sharing. The Accord led to the creation of the post of Prime Minister and two Deputy Prime Ministers in a Grand Coalition Government. The Government has been characterised by increased factionalism and political realignments both within the Grand Coalition and within the coalition partners. These political activities have undermined the efforts at full national healing and reconciliation.

The coalition continues to hold together with markedly improved relations between the two leaders — President Kibaki and Prime Minister Raila Odinga. There is disagreement in the coalition on how to deal with impunity and try the suspects of post-election violence. The Cabinet rejected efforts to set up a local tribunal to try suspects. This means the perpetrators of the violence may be investigated and tried by the International Criminal Court.

Agenda Four concerned long-term reforms and solutions in regard to land, judiciary, police, constitutional review, tackling poverty and inequality and combating regional imbalances, tackling unemployment especially among the youth, consolidating national cohesion and unity and addressing

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accountability, transparency and impunity.

This agenda referred to the underlying problems that precipitated the political violence and which need to be addressed, as they threaten the existence of Kenya as a nation. They provide a framework for undertaking comprehensive constitutional and institutional reforms to address root causes of recurrent conflict.

Kenya National Dialogue and Reconciliation Report on the Implementation reforms

The Government has made attempts to implement the reform agenda. On agenda One, the political violence that followed the 2007 General Election has ceased, but the security situation is deteriorating. There has been rise in other forms of crime such as kidnapping for ransom and rising vigilantism. Vigilante groups have been formed in parts of Central Kenya, which have been committing crimes with impunity. The use of violence by these vigilantes against suspected members of proscribed groups such as Mungiki has disrupted social harmony and divided communities.

Part of the rise in vigilantism is motivated by the public perception that the Government is insensitive to the safety concerns of the public and has failed to ensure public security. The public has resorted to self-help. Even where crimes have been committed, the Government has been slow to investigate and prosecute the perpetrators. There are reports of communities residing in parts of the Rift Valley arming in readiness for renewed violence after the 2012 elections. The Government needs to investigate these reports.

The Government has disbursed start-up funds to a significant number of IDPs for resettlement. Some IDPS have failed to return home due to insecurity and the slow pace of healing and reconciliation. Some have settled in transit camps, where they have no access to basic services. The urgency to resolve the IDPs problem seems to have fallen off the national agenda. The problem has potential to degenerate into a major social and economic challenge in future, if left unattended. The interventions on the part of the Government have not been guided by a clear policy and this may be undermining the effectiveness of interventions. Healing and reconciliation interventions have similarly been *ad hoc* and lacking clear policy direction.

The Grand Coalition Government that was constituted by the President and the Prime Minister has been functioning. The rapport between the two leaders has greatly improved. The coalition partners seem to have formed a working relationship and open disagreements are minimal. The improved working relationship among Kibaki and Raila has the effect of reducing tension in the coalition.

Some ministers have transformed their portfolios into patronage resources to reward their allies. Political patronage seems to be driving the coalition, thereby deflecting energy from reforms. Reforms under Agenda Four have been slow. There is potential of the political conflicts in the coalition spilling over to the constitution review. Already, the constituency delimitation process has sparked heated debate from the two sides of the coalition, thereby undermining the review process.

It is expected that electoral reforms suggested by the Interim Independent Electoral Commission (IIEC) and the Interim Independent Boundaries Review Commission (IIBRC) will be part of the draft constitution. Failure to complete the review process would end or slow down the review process, with most of the resulting reform measures being administrative and inadequate. The constitution review must be insulated from political conflicts at this penultimate stage.

Concern has been raised on the holding of a referendum on the new constitution, which proved politically divisive in 2005. The Committee of Experts (CoE) is expected to publish the draft constitution in November 2009. According to their timetable, the referendum on the draft should be held in April, next year. The IIEC has not conducted fresh voter registration since the old Electoral Roll was nullified.

The public has been concerned about the pace of reforms given the next General Election are due in 2012. The pace of implementation of the reform agenda, especially the long-term reforms, has been slow.

Verdict by H. E Dr Kofi Annan

Kofi Annan made a monitoring visit to Kenya in October, 2009. After the Grand Coalition partners disagreed on the formation of a local tribunal for post-election violence perpetrators, the Chief Mediator handed over the evidence and the names of the suspects to the Chief Prosecutor of the ICC, Luis Moreno-Ocampo. Since that handing over of the evidence, this is the first visit to Kenya.

A protestor during the post election violence.

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After assessment, Annan noted efforts by the Government to implement Agenda One to Four. However, he noted that the pace of reforms was slow, especially on the long-term ones. He noted that the Government needed to move from formation of commissions and committees to implementation of the reform agenda.

Saying the 2012 General Election was not far off, the Chief Mediator warned that the window for reform was rapidly closing on Kenya. The commissions formed after the political crisis, for example the Independent Review Committee and the Commission of Inquiry into Post-Election Violence, have submitted their reports to the Government. The Government must move with speed to implement these recommendations. The establishment of interim commissions on elections and boundaries review should also add impetus on the Government to complete the reforms on electoral system.

There is little movement on Agenda Four Reforms. The Cabinet approved the National Land Policy after six years, but it is yet to be tabled in Parliament. The proposed legal reforms on land to implement the policy have not been drafted for public debate. Task force reports on the Police and the Judiciary have been submitted to the Government. The Government needs to implement these reforms speedily.

The Interim Independent Constitutional Dispute Resolution Court is yet to be established. The Interim Court is expected to resolve disputes on the review process. The Parliamentary Select Committee on the Constitution has short-listed candidates for the Interim Court who will be approved and appointed once Parliament resumes its sittings.

Parliament has implemented reforms by adopting new Standing Orders, which have been in use since April, 2009. The Standing Orders established a Monitoring and Implementation Committee, which will follow up on implementation of resolutions and Motions of the House. Parliament has set up a Broadcasting Unit to increase openness and transparency and permitted access to committee sittings by the public. The House passed the Fiscal Management Bill, which will permit parliamentary scrutiny of budget proposals. Parliament has employed more officers to its research unit. Parliament seems to be the only institution that has conscientiously implemented the reform agenda, with the Judiciary and Executive lagging behind. Parliamentary reforms show that with sufficient political will, the reform agenda can be swiftly accomplished.

The Grand Coalition Government that was constituted by the President and the Prime Minister has been functioning. The rapport between the two leaders has greatly improved. The coalition partners seem to have formed a working relationship and open disagreements are minimal. The improved working relationship among Kibaki and Raila has the effect of reducing tension in the coalition.

On youth unemployment, the Government established the Kazi Kwa Vijana Programme to offer employment to the youth. The programme has been affected by slow revenue uptake by the Government, resulting in delays in disbursements to the ministries. Other measures include the setting up of the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission. These commissions need to complete their mandates if they will be expected to usefully contribute to the reform agenda.

Where the commissions have a conflicting mandate, they should be facilitated to reach a common position. For example, the interim commissions on elections and boundaries review and the Committee of Experts on the constitution review will make recommendations that have an impact on the electoral process in Kenya.

The window for reforms is closing due to the approach of the 2012 General Election. The divisive politics may affect the realisation of a new constitution. There is jostling for positions in readiness for the 2012 political contest. The interim commissions on boundaries and elections should work harmoniously to ensure voter registration is not delayed. The delimitation of boundaries will have an effect on the voter register.

Government's response

The Government published a report indicating a 90 per cent score on the implementation of the reform agenda. Such as high score can only be described as inaccurate and meant to mislead.

On the spot!

Institutional reforms in the office of the Attorney General

By Dorothy Momanyi

The office of the Attorney General is one of the most important constitutional offices in Kenya. The office is established under Section 26 of the Constitution with functions of chief public prosecutor and the legal adviser of the Government. To perform his roles, the AG sits in Parliament as an *ex officio* member and in Cabinet. The responsibility on legal policy has been shared with the Minister for Justice. The ministry has existed in the periods 1963-64, 1980-83 and since 2003. However, the role of the AG and the Ministry of Justice are not well defined, leading to conflict.

Hon Charles Njonjo, a lawyer trained in the United Kingdom, was appointed the first AG at independence. He served during the entire tenure of the late President Jomo Kenyatta and was reappointed by President Daniel Moi on assuming office in October 1978. In the last years of the Kenyatta presidency, a group of politicians had campaigned for the review of the Constitution to prevent the Vice President from automatically succeeding the President on his demise. This campaign was targeted at Moi, the then Vice President.

Njonjo, as the AG, clarified that it was treasonable for any person to imagine, invent, devise or intend the death of a sitting President. This effectively terminated debate on the constitutional amendment.

Njonjo served until 1980 when he resigned to contest the Kikuyu Parliamentary seat. On election, he was appointed Constitutional and Home Affairs minister. Hon James Karugu, who was the Deputy Public Prosecutor during his tenure, succeeded Njonjo as AG. Karugu served for a short stint, between 1980 and 1981. There was a conflict with Njonjo partly due to the prosecution for treason of Andrew Muthemba, who was his cousin. Karugu resigned and was succeeded by Hon Joseph Kamere, who served between 1981-1984.

Mwakenya

After his term, the President appointed Justice Mathew Guy Muli. Hon Muli was a serving judge of the High Court at the time. He was the AG in the period when there were massive violations of rights of political prisoners. The crackdown targeted alleged members of the proscribed Mwakenya Group. The Directorate of Special Branch and the Kenya Police were accused of torturing suspects. The AG's office conducted prosecutions based on the confessions obtained by the police. The Deputy Public Prosecutor at the time was Justice (Retired) Bernard Chunga, who was appointed the Chief Justice in 1999.

Muli's tenure was marked by Mwakenya crackdown and the agitation for reintroduction of multiparty politics. The Constitution was amended to remove the security of tenure for the AG, judges of the High Court and the Court of Appeal and Controller and Auditor General. It was shocking that a sitting Attorney General could draft and support an amendment that effectively undermined the independence of his office and that of the High Court and the Court of Appeal. At the time, there was increased pressure by the international community on the Government to implement reforms and improve its human rights record.

Attorney General Amos Wako

The President appointed Hon Amos Wako in May 1991 from private legal practice to take over as the AG. Wako was a renowned jurist with international human rights background, having served as a member of the UN Human Rights Committee and as the UN Secretary General Special Rapporteur to East Timor. Wako prioritised law reform and set up task forces to review laws on children, women, the Companies

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Act, landlord and tenants' laws, and environmental law.

The task forces reports were presented and some resulted in new laws, like the Children's Act, the Environmental Management and Coordination Act and the National Commission on Gender and Development Act while other reports are yet to be implemented. The AG is responsible for revising and recommending new laws. The task forces reinvigorated the law reform agenda.

Constitutional and legislative duties

The AG is the principal legal adviser to the Government of Kenya. The AG's is an office in the public service. The AG has power to institute and undertake criminal proceedings against any person before any court in respect of an offence alleged to have been committed by that person, to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority and to discontinue at any stage, before final judgement, any such criminal proceedings.

The AG may require the Commissioner of Police to investigate any matter that discloses an offence. The Commissioner may exercise the prosecutorial powers of the AG or officers subordinate to him, acting in accordance with his instructions. These powers are vested in the AG to the exclusion of any other person or authority.

The AG shall vacate his office when he attains such age as may be prescribed by Parliament. The AG has security of tenure and may be removed from office only for inability to exercise the functions of his office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour. The question of the removal of the AG, if it arises, should be referred to a tribunal appointed by the President, which shall inquire into the matter and report on the facts thereof to the President. The tribunal shall recommend whether the AG ought to be removed from office.

The AG is an *ex officio* member of the National Assembly. He is not entitled to vote on any question before the Assembly. As the chief legal adviser to the Government, the AG sits in the Cabinet. The AG, through the Chief Parliamentary Counsel, drafts all new legislation and legal notices on behalf of the Government. He is, therefore, instrumental in the Government's legislative agenda. The Solicitor General assists the AG and serves as the administrative head of the AG's office. The Solicitor General is Wanjuki Muchemi.

In the period when there was no Ministry of Justice, the Attorney General handled all policy matters relating to the law. The Ministry of Justice was re-established in 2003 to facilitate the carrying out of certain legal matters on behalf of the Government. Some of the departments which were unbundled from the office of the AG and transferred to the ministry were the Kenya School of Law, the Kenya National Commission on Human Rights, which monitors Government's compliance with international human rights obligations; and the Kenya Law Reform Commission, which undertakes periodic review of the laws of Kenya and recommends necessary and urgent reforms.

> Njonjo, as the AG, clarified that it was treasonable for any person to imagine, invent, devise or intend the death of a sitting President. This effectively terminated debate on the constitutional amendment.

However, even where the Commission recommends new legislation, the AG must redraft the Bills and present them to Parliament. The Ministry of Justice coordinates the sector wide reform programmes for the Governance, Justice, Law and Order Sector.

The AG is in charge of public prosecutions, the registry of companies, societies and trade unions, instituting and defending civil cases filed by or against the Government, provision of legal advice to the Government on treaties and Agreements, administering the Public Trustee, the Advocates Complaints Commission and legislative drafting on behalf of the Government.

The separation of the roles of the AG and the Ministry of Justice is not very neat. Indeed, in the past there was conflict of roles between the two offices. Due to the nature of the Ministry of Justice, three ministers have served in the office while Wako has remained the AG. The incumbent AG has been able to play his political cards effectively and avoided meddling in political matters.

Reforming the office of the AG

The role of the AG should be separated into the office of the chief government adviser, which role should be vested in the AG and the prosecutorial role, which should be vested in the Director of Public Prosecutions. The role of legal adviser to the Government is essentially a political role and entitles the incumbent to sit in the Cabinet and Parliament. A public prosecutor should be independent and apolitical.

Further, prosecution service in Kenya has performed dismally over time and

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appointment of a full time and constitutionally protected director will assist in professionalising the service. Failure to initiate prosecution where it is clear that an offence has been committed has contributed to the perception of impunity and undermined public confidence in the justice system. The AG has appeared reluctant to charge and prosecute politicians with crimes, especially corruption. The separation will ensure that prosecutorial functions are not exercised at the whims of politicians. A public prosecutor should be independent, professional and impartial and must act in public interest.

The office of the AG has many disparate roles that have not been managed well. Some of the functions may be transferred to distinct departments. The registry services for companies, trade unions and societies have for a long time been unprofessional, riddled with graft and slow. These services can be vested in fully-fledged and autonomous departments. Such transfers will fast track reform in the departments, including the use of modern technology to expedite service delivery. Some of the functions previously exercised by the AG have been transferred to the Minister for Justice and Constitutional Affairs.

The Constitution provides that the AG's is a public service office and that Parliament should set the retirement age for the AG. Parliament has not prescribed the retirement age for the AG. Njonjo left office at the age of 60. Wako has served since 1991 and is, at the age of 64, past the retirement age of public servants. Parliament should move with speed to prescribe the retirement age for the AG.

In the new constitution, the term for the AG and the DPP should be a fixed tenure term of ten years. This will create certainty in the tenure. The roles of the AG, DPP and the Ministry of Justice should be well defined to eliminate duplicity and conflict. Further, the DPP and the AG should be subject to parliamentary vetting after nomination by the President to assess their suitability to hold the respective offices and enhance public accountability and scrutiny of the holders.

The office of the AG should be properly staffed. The office suffers chronic shortage of personnel. The DPP should recruit professionals to carry out public prosecutions. At present, police officers prosecute on behalf of the AG, leading to conflict in prosecutorial and investigation roles and lack of professionalism in prosecution.

Administrative measures should be introduced to promote efficiency and effectiveness of the office of the AG. For example, ICT can be used to speed up registration of companies, trade unions, societies and business names. The staff should be sponsored for professional development and training. It is commendable that the AG has been providing limited opportunities for staff training.

The reforms will only succeed if related and complementary institutions like the Judiciary and the police are reformed to enhance and streamline delivery of justice. The reform process must be structured in a sector wide format and the relevant departmental heads must buy in to the reform agenda.

Relationship between the AG, the Minister for Justice and Parliament

The relationship between the office of the AG, which is a constitutional office, and the Ministry of Justice, which is established by Presidential order, has been conflicting. The Ministry of Justice and Constitutional Affairs was established at independence with the late Tom Mboya as the minister. The ministry handles politically sensitive issues, especially in regard to constitution and legal reform. The ministry was later abolished and its functions transferred to the AG's office. It was re-established in 1980 as the Ministry of Constitutional and Home Affairs with Njonjo as the minister. He was

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The separation of the roles of the AG and the Ministry of Justice is not very neat. Indeed, in the past there was conflict of roles between the two offices. Due to the nature of the Ministry of Justice, three ministers have served in the office while Wako has remained the AG. The incumbent AG has been able to play his political cards effectively and avoided meddling in political matters.

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hounded out of office in 1983 following a Commission of Inquiry into his conduct. The ministry was thereafter abolished.

It was created again after Hon Kibaki was elected President in December 2002. Hon Kiraitu Murungi was appointed minister to head it in 2003. He was in charge of the constitutional review in the run up to the 2005 referendum when the Draft Constitution was rejected. In 2006, Kiraitu was implicated in an attempted cover-up of the Anglo Leasing scandal. He resigned and was replaced by Hon Martha Karua.

Karua was reappointed minister after the General Election in 2007 and served until 2009, when she resigned from the Cabinet. She said the Executive appeared to have lost interest in reforms in the justice sector.

The AG sits in the Judicial Service Commission, which vets and recommends appointments of judges of the High Court and Court of Appeal. The Chief Justice chairs the Commission. The President appointed Hon Mutula Kilonzo to the position. Kilonzo is superintending the constitutional review, which is nearing completion.

The ministry is expected to play a complementary role to the office of the Attorney General on policy and legal matters. While the minister is an elected MP, the AG is an e*x officio* Member of Parliament. In this capacity, the AG carries out legislative drafting and prepares subsidiary legislation and rules. Due to understaffing and attrition of employees at the AG's office, Parliament, through the Parliamentary Service Commission, has recruited Parliamentary Counsel to assist in legal advice and drafting laws, including Private Members Bills. The AG, in his capacity as the Chief Government legal adviser, attends Cabinet meetings.

The relationship between the ministry and the AG is amorphous. If the AG insisted on exercising his constitutional independence, the operations of the ministry would be severely curtailed. Wako has tried to establish an amicable working relationship with the ministers even where they have attempted to usurp the role of the AG.

How others do it

South Africa

The National Director of Public Prosecutions conducts public prosecutions. The current Director is Vusi Pikoli. At the State level, the Director of Public Prosecutions, who used to be called the Attorney General, is responsible for criminal prosecutions by the State. The State Attorney is the lawyer who represents the State in civil actions where the State is suing or has been sued. Regional Directors of Public Prosecutions and several Special Directors support the Director.

High Court of Kenya

Germany

The Federal Prosecutor General prosecutes on behalf of the State and represents the Federal Republic of Germany at the Court of Justice. Besides its role in appellate cases, the Federal Prosecutor General has primary jurisdiction in cases of terrorism, espionage, treason, and genocide. The Federal Prosecutor General also represents Germany in certain civil cases. The Federal Prosecutor General is appointed by the Federal Minister of Justice with the approval of the Bundesrat. The Bundesrat is a legislative body that represents the 16 federal states of Germany at the federal level.

United Kingdom

The AG for England and Wales is the chief legal adviser of the Crown and its government in England and Wales. The AG is assisted by the Solicitor General. The current AG is Baroness Scotland of Asthal, both the first female and first black AG. The position of AG was established in 1243, when a professional attorney was hired to represent the King's interests in court. The position took on a political role in 1461 when the holder of the office was summoned to the House of Lords to advise the government on legal matters.

In 1673, the AG officially became the Crown's adviser and representative in legal matters, although still specialising in litigation rather than advice. Since the onset of the 20th century, the AG's role has shifted away from litigation towards legal advice. At present, the AG delegates most prosecution and litigation work.

The role of the AG includes supervising the Director of Public Prosecution, supervising the Serious Fraud Office, and other Government departments with the authority to prosecute cases in court, advising the Government, government departments and ministers on legal matters, answering questions in Parliament and filing appeals on 'unduly lenient' sentences and points of law to the Court of Appeal. **KN**

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On youth unemployment, the Government established the Kazi Kwa Vijana Programme to offer employment to the youth. The programme has been affected by slow revenue uptake by the Government, resulting in delays in disbursements to the ministries. Other measures include the setting up of the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission. These commissions need to complete their mandates if they will be expected to usefully contribute to the reform agenda.

Whereas commissions have been formed, the Government has been unable to effectively marshal support for some reform priorities in Parliament. For example, the proposal to set up a Special Tribunal to try post-election violence perpetrators was rejected by Parliament. Attempts to reintroduce the Bill were thwarted by the Cabinet.

The leaders of PNU and ODM do not have control over MPs who have often rebelled against party positions. Even where the task forces on reform have submitted their reports, the implementation of the recommendations has been slow. All the reports on reform should be published to enable the public to hold the Government to account.

The Executive is a beneficiary of the *status quo* and is hence slow to accept major reforms. Some politicians are seeking the retention of the current Constitution so that they may benefit from it in future. The reform agenda has been suppressed through politicisation and ethnicisation. The implementation of reforms should target institutions. The task force on Police Reforms has submitted a preliminary report, which has been partially implemented by the Government.

The report recommended the retirement of senior police officers who are seen as obstacles to change in the police force. The Police Commissioner has since been replaced, but no other visible measures have been implemented. The report on the Judiciary should be implemented to enhance institutional effectiveness and restoration of public confidence in the institution.

Role of Parliament and the Executive

With the adoption of new Standing Orders this year, Parliament is well placed to drive and fast track the reform agenda. Parliament has been robust in enacting laws that will facilitate the long-term reforms. The Constitution of Kenya (Amendment) Act, which abolished the ECK and created the IIEC and the IIBRC is a case in point. Parliament has further enacted the Truth Justice and Reconciliation Commission Act and National Cohesion and Integration Act. The Parliamentary Select Committee on the Review Process has been instrumental in facilitating the work of the CoE on the constitution review. Where Parliament is required to vet appointees to these commissions, this has been done efficiently.

Parliament has an important role in constitution review. After the resolution of contentious issues by the CoE, Parliament will consider and approve the draft constitution. An important role for Parliament is to serve as a watchdog over the Executive to ensure accountability. The Parliamentary Committees will be expected to watch the actions of the Executive to seek accountability and transparency. After the formation of the Grand Coalition, there is no official opposition in Parliament as the majority of political parties are part of the Coalition Government. The attempt by some backbenchers to form an opposition caucus has not borne fruit.

The legislative calendar is crowded with priority Bills including the Elections Bill and the Judicial Service Commission Bill. The failure of institutional effectiveness in the Judiciary and the ECK was blamed for the political crisis following the 2007 elections.

The relevant committees should expedite the review of these Bills. Given the wide consensus on the reform proposals, some of these reforms do not need to await the adoption of the new constitution.

The Executive, especially the office of the Attorney General, must prioritise the legislative reform and draft the necessary Bills for enactment by Parliament. The President and the Prime Minister must marshal the MPs to enact the reform measures urgently to allow for a setting in period of the reforms before the next elections. KN

The redrawing of constituency and administrative boundaries

By Kwamboka Mogaka

The procedure and outcome of delimitation of electoral areas has a significant impact on electoral integrity. To respect the principle of one-person-one-vote, representation from each constituency or electoral area needs to be relatively equal. Whereas equality of the vote is a primary consideration in ensuring equal representation, other factors may be considered to guarantee not only equal, but also effective representation.

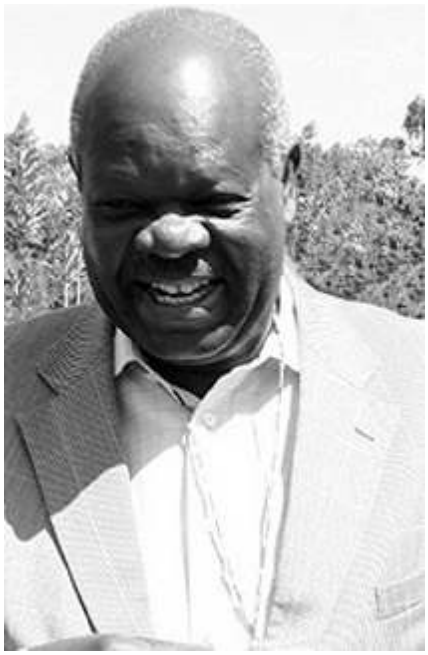
These factors include cultural identity, history and geography, community of interest, population density and the presence of minorities. The outcome of elections can be influenced through the gerrymandering or malapportionment of constituencies. Gerrymandering involves drawing constituencies' boundaries with a view to favouring a certain political group while malapportionment occurs where constituencies vary widely in population size. These practices undermine the principle of one-person-one-vote, and hence democracy.

In Kenya, there are 210 constituencies each represented by an MP. The constituencies vary in population. In 2002, the variance ranged from 3,635 to 301,558 voters. The average population size per constituency was 102,271 with Lamu East Constituency having a voting population of 18 per cent of the average and Embakasi Constituency had 351 per cent of the average. The Independent Review Committee chaired by Justice Johann Kriegler noted that such variation was unacceptable in a democracy. The committee recommended the redrawing of constituency boundaries by a commission other than the Electoral Commission of Kenya, now disbanded.

The ECK had increased the number of constituencies from 188 to 210 in 1996 with the creation of 22 constituencies. An analysis of the delimitation shows deliberate over representation of sparsely populated areas of North Eastern, Eastern, Coast and Rift Valley and under representation in Central, Nairobi and Western Kenya. The system of under representation favoured the ruling party Kanu in 1992 and 1997, as the sparsely populated constituencies largely voted in its favour. In 1997, Kanu won 107 out of 210 seats with a vote of 43 per cent.

Constituency delimitation

Kenya has adopted a 'First past the post' electoral system where a candidate who garners the majority votes in a constituency wins the elections regardless of whether he or she garners more than half the vote. For political parties, it is important to have majority seats in Parliament to facilitate passing of Bills to implement the agenda for the Government. This system was a motivation for Kanu to skew the constituency delimitation in its favour. In 1996, the commissioners of ECK constituted appointees of the President. The process of delimitation was viewed as gerrymandered and meant to assist Kanu to retain power through parliamentary control.



Hon. Andrew Ligale

An analysis of the 2007 voters' roll and the estimated population in the constituencies show the wide discrepancies. Twenty-one constituencies had populations of more than 250,000 according to 2006 government estimates. These include Kimilili, Kisauni, Starehe, Langata, Dagoretti, Westlands, Kasarani, Embakasi, Msambweni, Bahari, North Imenti, Lurambi, Nithi, Makueni, Turkana North,

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Molo, Eldoret North, Saboti, Naivasha, Narok South and Nakuru Town. Fourteen constituencies had more than 100,000 registered voters during the 2007 General Election.

These were Kathiani, Kangundo, Lurambi, Lugari, Kajiado North, Nakuru Town, Naivasha, Molo, Saboti, Eldoret North, Kiambaa, Kikuyu, Juja and Kiharu. Eight constituencies had estimated population of less than 50,000 according to 2006 government estimates. These were Samburu East, Lamu East, Isiolo South, Laisamis, North Horr, Saku, Galole and Ijara. And 13 constituencies had less than 30,000 registered voters. These were Budalangi, Galole, Lamu East, Taveta, Lagdera, Fafi, Ijara, Wajir North, Wajir East, Mandera West, North Horr, Saku and Laisamis. The population estimates ranged from 535,912 for Embakasi constituency to 20,287 for Lamu East Constituency.

Whereas geography has been explained as part of the reason for the discrepancies, even neighbouring constituencies show variation in numbers of voters. Statistics from the 2007 Electoral Roll show variations in numbers of registered voters in neighbouring constituencies with similar geographical, historical and demographic patterns.

For example, Lamu East constituency had 12,867 registered voters while Lamu West constituency had 34,672, Wajir North (14,177), Wajir West (35,561), Isiolo North (43,014), Isiolo South (14,559), Samburu West (51,095), Samburu East (17,721), Malava (67,250) while Lugari constituency had 112,509. Others were Kisauni (128,486) and Mvita (75,256). The justification for the variations is unclear. This indicates that the variations were deliberate and planned by the ECK.

Electoral boundaries need to be regularly reviewed to safeguard election integrity and the principle of one-person-one-vote. The changes in population trends should be considered and delimitation of electoral areas completed at reasonable intervals of five to 10 years. The Constitution, prior to amendment in 2008, provided that ECK was to carry out boundary review every eight to 10 years. The last review was carried out 13 years ago. An attempt to review the constituencies in 2007 prior to the General Election was rejected by Parliament.

A victim of tribal land clashes.

The Interim Independent Boundaries Review Commission

Section 41B of the Constitution establishes the Interim Independent Boundaries Review Commission (IIBRC) while section 41C of the Constitution outlines the mandate of the commission.

The Commission shall make recommendations to Parliament on the delimitation of constituencies and local authority electoral units and the optimal number of constituencies on the basis of equality of votes. The Commission shall also take into account the density of population, and in particular the need to ensure adequate representation of urban and sparsely-populated rural areas; population trends; means of communication; geographical features; and community interest.

The Commission shall also recommend to Parliament on administrative boundaries, including the fixing, reviewing and variation of boundaries of districts and other units and performing such other functions as may be prescribed by Parliament. The Commission was appointed and sworn in in May 2009.

Part of the functions of the defunct ECK was to review electoral boundaries while the administrative boundaries were fixed by the Office of the President. Under the Districts and Provinces Act, Kenya is divided into eight provinces and 46 districts. While the number of provinces has remained at eight, the districts have increased from 46 to 254 since 1992. With the enactment of the Constituency Development Fund Act and the resultant devolution of resources to electoral units through CDF, National Aids Control Council and the Ministry of Education Bursary Fund, have transformed the constituency into an important centre for devolution.

Prior to the enactment of the CDF Act, the centre of devolution was the district. The mandate of the Commission will be to attempt to harmonise the electoral and administrative boundaries. Already, all constituencies have been converted into districts. The Government has not allocated adequate resources for the setting up the district headquarters.

The debate on the delimitation process has centred on the

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constituency sizes versus population. Ideally, each vote should have the same weight and each constituency should have approximately equal numbers of voters. The population, either resident or registered as voters in a particular constituency, should be the primary consideration for boundary delimitation.

However, due to the failure by the ECK to carry out regular boundary delimitation, there is wide discrepancy in the number of voters per constituency. Most of the large constituencies are located in the Northern part of Kenya where the means of communication and transport is undeveloped.

The US Constitution requires that each electoral constituency for the House of Representatives should have approximately equal number of voters while each of the 50 states are each represented by two Senators. The selection of electors for the President from each State is based on the population size resident in the State. The US Supreme Court in *Reynolds vs Simms* stated that 'legislators represent people, not trees or acres. Legislators are elected by people, not farms or cities of economic interests'.

Kenya's Marriage Act was enacted in 1902, the African Christian Marriage and Divorce Act in 1931 and the Matrimonial Causes Act in 1941. This was during the era when the East African nation was under British rule. Since independence, no serious effort has been made to amend the marriage law. Former parliaments have been a male dominated arena; any effort towards reviewing laws governing this institution has resulted to nothing.

Arguments have been put forward on the mandate of the Commission. Whereas politicians from Western and Central Kenya have argued that the constituencies should be delimited in regard to population size, politicians from arid and semi-arid areas have stated that the land sizes should be considered given that the Northern parts of Kenya are the least developed and should be effectively represented in Parliament. The Commission should develop criteria that will consider both the population size and the area covered by the constituency. Such criteria must be objective and must justify the variation of population sizes across different constituencies.

Rulings of the High Court on the legality of New Districts in 2001 and 2009

In the case of *Hon John Michuki vs the Electoral Commission of Kenya & 2 others*, the court held that under Section 123(1) of the Constitution, 'district' means one of the districts into which Kenya is divided in the manner prescribed by an Act of Parliament, while a 'Province' means one of the provinces into which Kenya is divided in the manner prescribed by an Act of Parliament.

The applicant moved to court to challenge the legality of 24 districts, which have been created by the President since 1992. The Act lists 46 districts as the legitimate ones. The applicant argued that additional districts could only be created with the concurrence of Parliament. However, the court ruled that districts had been created in accordance with the law since the Act was enacted pursuant to a valid constitutional provision. The court observed that the District and Provinces Act purported to amend the Constitution.

The purported amendment was unconstitutional. However, the court said that nullification of existing districts would have devastating effects as the court had no mechanism to supervise the process.

In the case of *Rev Titus Okoda & 2 others vs the Attorney General and the Interim Independent Electoral Commission,* which was determined in September 2009, the High Court declared that the new districts, which have been created by the President since 2005, were created in contravention of the Districts and Provinces Act. The suit had been brought in regard to Nyamira North District, in which the applicants were resident. The court held that the procedure followed in creating new districts was irregular and contrary to the Act. In the court's view, Parliament must amend the Schedule to the Act to increase the number of districts from 46 to 254.

The court ordered that the process of creating new districts be halted pending amendment of the Act by Parliament. Further, the court declared newly created Nyamira North District illegal. The court stated that a district is an important administrative and political region to the extent that it is recognised in the Constitution and any violation of its boundaries must be done in total adherence to the relevant law.

The Act does not prescribe the mechanism for creation of new administrative areas. By including the list and boundaries of districts in the Schedule, it was the intention of Parliament that any amendment

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Putting marriage asunder?

A critical analysis of the proposed Marriage Bill 2009

By Albert Irungu

Marriage today has become a sensitive institution, which has increasingly come under close scrutiny as society continues to change. Now we have homosexuals who are fighting to be acknowledged in all areas of life, including the right to marry and have children. As lifestyles change from the overwhelming influence of western cultures, so does the institution of marriage.

The Proposed Marriage Bill of 2009 has been re-introduced and has received mixed reactions. The changes that the Bill proposes to bring are fundamental to what marriage is perceived to be by parties involved. For example, the Bill proposes to legalise polygamy and cohabitation, aspects of matrimonial unions that religious institutions find irreconcilable.

The Marriage Bill, which is being reviewed with two others - the Matrimonial Property Bill and the Family Protection Bill - proposes to change the marriage institution in a big way. There are seven Acts that govern marriage in the Constitution. Marriage has different meanings and unique practices to the diverse ethnic and religious groups that constitute the Kenyan citizenry - African customary traditions, Hindu culture, English law and Islamic law - thus the Bill faces rough times ahead before it becomes a reality.

A wedding ceremony.

The Bill, however, has omitted any aspect regarding same sex unions, which as demonstrated recently, is a thorny issue. The much-publicised marriage of two Kenyan men in Britain generated a nation-wide debate. This is a subject that has many opponents and its supporters ironically shun publicity. Surrogate unions have also not been mentioned in the Bill.

Matrimony

These are unions where, for example, a spouse, mostly the woman, is infertile and the husband marries another wife to give him children. This is fundamentally different from marrying a second wife for the fact that the husband may have not had prior knowledge of such a situation, thus may have failed to give notice of his intention to have another wife, as the proposed Bill requires.

Kenya's Marriage Act was enacted in 1902, the African Christian Marriage and Divorce Act in 1931 and the Matrimonial Causes Act in 1941. This was during the era when the East African nation was under British rule. Since independence, no serious effort has been made to amend the marriage law. Former parliaments have been a male dominated arena; any effort towards reviewing laws governing this institution has resulted to nothing.

In 1967, the late President Jomo Kenyatta appointed Justice Spry to set up a commission that would establish

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a law to alleviate the marriage conflicts experienced then. The commission was to propose a legislation that would replace the then existing African Customary, Islamic, and Hindu Laws on marriage and Acts of Parliament. In August 1968, the commission submitted its report to the Government and annexed a draft Bill of Marriage and Divorce to give effect to its recommendations.

The Bill was debated in Parliament in 1970, but defeated after the male dominated House disapproved provisions that made adultery and chastisement of wives an offence. These sections were later deleted and the Bill re-tabled, but it was Parliament rejected it again in 1981.

The Marriage Bill 2007 was introduced as a private Bill. In September this year, Gender minister Esther Mirugi re-introduced the Bill during a Cabinet meeting. However, the President deferred it from a House debate until further consultations were done between the relevant stakeholders.

Current Law

To understand the current Marriage Law, you would have to sift through a total of seven Acts to have an idea of how the Law deals with this institution. They are the Marriage Act, African Christian Marriage and Divorce Act, Matrimonial Causes Act, Subordinate Courts (Separation and Maintenance) Act, Mohammedan Marriage and Divorce Registration Act, and Hindu Marriage and Divorce Act. The proposed Bill, if it becomes Law, will consolidate all these into one.

The current laws are out of touch with reality considering the last time there was any attempt to review them was four decades ago. In view of the many inheritance court battles that have taken place over the years and the time wasted by courts in trying to unrig the intricate web of needs that each party demanded, it is important to change these laws.

Essence of the new Bill

There have been varied opinions on the Bill's statutes. It seems to both appease and antagonise the various parties concerned in the marriage institution. Some of the clauses have become contentious, as they trespass religious and customary traditions. Take the example of cohabitation popularly known as “come we stay” marriages. Under the proposed Bill, they will become legally recognised. The particular clause states:

“*Where proven that a man and a woman have lived together openly for at least two years in such circumstances as to have acquired the reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married*.”

Another welcomed clause is that a spouse will be required by Law to get a court order if he or she wants to kick out his or her partner. This essentially means that domestic violence will decrease if the draft Bill ever becomes a reality. The Bill puts in place a minimum age for marriage at 18 years for both men and women. This will be good news for the many underage girls that are married off by their parents. Previously, the minimum age was 14 years. In 1999 then President Daniel Moi raised it to 18. However, it was never enshrined in any legislation. For any individual under the age of 21 years, parental or a guardian's consent is required before marriage.

> Marriage has different meanings and unique practices to the diverse ethnic and religious groups that constitute the Kenyan citizenry - African customary traditions, Hindu culture, English law and Islamic law - thus the Bill faces rough times ahead before it becomes a reality.

The draft law would also allow either party to declare, at the time of marriage whether the union is intended to be a monogamous or polygamous one. Polygamous marriages will be allowed only if the first wife accepts to have co-wives. Any person married as a second or consecutive wife will have no rights on any property or wealth that the husband has with his first wife. This will provide each spouse an opportunity to make a decision on whether to proceed with the union or not. In addition, the Bill allows those who have wedded under customary Laws to get a marriage certificate.

In matters relating to property, women will finally have recourse in situations where they have been wronged. In case of separation or divorce, the Bill advocates for 50-50 sharing of property gained in the course of the union. This is good news for the many women who are chased out of their matrimonial homes after years of marriage without anything to show for it. In addition, women who target men and marry them with the goal of inheriting property when they die have been put in check. Second wives or any consecutive spouse married shall have no legal right to property gained in the first union of the person they get married to. The only exception to this clause is property that is held in trust or has been inherited.

In the event of separation or divorce, the Bill advocates for either able spouse to financially support the other. Previously it was unheard of for a woman to support her ex-husband in such circumstances. In light that in

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modern times women have become financially successful than the case was earlier, many men have welcomed this clause. Circumstances where the marriage can be annulled are if it is conducted in the absence of either party or failure to consummate the union. If during the wedding one of the parties is found to be insane, drunk or under the influence of drugs, the union is null and void.

Conflict of proposed law with customs, traditions and religion

As expected with change, not many will be ready to embrace it, as already witnessed. The draft Bill is already being resisted by the different religious denominations. There is the feeling that the Bill has borrowed heavily from the Western culture, which places it in conflict with religious institutions. For example, outlawing compulsory payment of dowry will be resisted by both religious leaders and traditional elders, bearing in mind that it is one of the cornerstones of many religious and customary marriages.

In many African customary weddings, some form of appreciation is always presented to the bride's family. The importance of such gesture is for the bridegroom to prove to the bride's parents that their daughter will be well taken care of. Even with the erosion of many cultural practices in the traditional marriage institution, payment of dowry has been steadfastly held on to.

It is also considered illegal and taboo in tradition to live with someone's daughter without paying dowry. It never matters the duration of time, but at the end of the day, the man is required to pay dowry. There have been situations where women died and their husbands could not bury them because they defaulted in paying bride price.

The Muslims believe that payment of *Mahr* (dowry) is a must. As with African customary marriages, the man is able to prove his ability to take care of his wife or wives. When the Bill becomes law, dowry will enter the annals of other traditional practices that have been eroded by modern lifestyles. The Muslim faithful also find the Bill inconsequential as the provisions for divorce and inheritance in the proposed Act are already taken care of in the *Kadhi*'s Courts. When it comes to polygamous unions, the *Quran* allows Muslim men to marry a maximum of four wives.

This is based on the condition that each wife is treated equally without any discrimination whatsoever. However, because the law will require one to declare whether to marry one wife or more, Muslims will be slighted if by the time of their first marriage they cannot provide for another wife, but later on attain the ability to provide for more and thus want to marry again.

Religious leaders are not in favour of this Bill. Any Law that will consent to polygamous marriages, bar compulsory dowries and recognise cohabitation transgresses against religious teachings. Considering that the church doctrine advocates for one-man-one-wife marriages, the draft Bill will have a rough time before becoming law.

Cohabitation or "Come we stay" is yet another addition that many feel will compromise religious and social values. Credible religious and traditional institutions consider this to be wrong and taboo. Christianity perceives the union as sinful and breaking of basic Christian values of purity before marriage. In Islamic faith this is considered to be *Haram* and a preserve of Western culture.

A Christian wedding ceremony.

Expected effect/impact

The draft Marriage Bill, which will work in tandem with other two Bills, has a long way to go. The Bill has brought mixed reactions. Research done by Synovate, formerly Steadman, showed that 2,005 Kenyans living in rural and urban areas polled support the Bill. Some of the clauses that received majority support were the 50-50 sharing of wealth when couples divorce. The proposed Bill would reduce court battles over property succession as women married under the customary law could now register their marriages and gain legal recognition.

With legalisation of cohabitation as a way of getting married, there will be an increase in "come we stay" unions considering that in today's socio-economic climate, majority of Kenyans struggle to earn their daily bread. For this reason, weddings, whether traditional or religious do not come cheap, and many will opt to take this cheaper alternative - stay together for the mandated period of time then seek legal approval afterwards.

Regulation of dowry is one of the positive impacts that will save many women from physical and emotional abuse unlike before. The concept of dowry has been misinterpreted and payment of it perceived to mean having "bought" a person. Indeed, many spouses are mistreated under the guise that they are "owned" like property, thus should never question or complain about their husbands' behaviour.

Many married women will stay on in an abusive marriage for fear that if they left, then the in-laws would demand back their money or whatever was given as bride price. Thus in case of termination of a marriage, neither party involved can claim back dowry. Furthermore, the Bill states that a union cannot be invalidated due to non-payment of bride price. **KN**

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to the boundaries must be approved by it. The Act and the Schedule should be amended once the Commission completes its task to redraw the administrative boundaries. Its predecessor, the ECK, had no mandate to review administrative areas, which was a mandate exclusively exercised by the Office of the President.

The Districts and Provinces Act

The Act sets out the boundaries and names of eight provinces and 46 districts. This means the Act has not recognised the districts created from 1992 to 2009. Recognition of such districts requires an amendment to the Schedule to the Act. Each of the 210 constituencies has been converted to a district with the total number now estimated at 254 districts.

The President has been creating the districts at his own prerogative without seeking amendment of the Act as required. With the constituency serving as a centre for devolution of the CDF and other devolved funds, most MPs have been requesting for conversion of all constituencies into districts.

No procedure is prescribed in the Act for increasing or amending the boundaries of the districts and provinces. However, by including the list of districts and the boundaries in the Schedule to the Act, parliamentary approval is required to authorise increase of the number of districts and provinces as the Schedules are part and parcel of the Act. The Act has to be amended by Parliament to ratify the increase in the number of districts.

Equality of the vote and Constituency delimitation

Some international best practices have been devised to guide boundary delimitation. Electoral boundary delimitation should be performed by an independent and non-partisan body. Partisan delimitation results in marginalising specific groups and ensuring that particular candidates or parties are elected. Delimitation should be performed regularly to ensure equal representation, taking into account population shifts. Some of the best practices include:

i) Independent Boundary authorities. The boundary authority should be independent and non-partisan. The authority must possess sufficient skills in electoral administration, geography, cartography, statistics and demography. The authority should not be staffed with partisan representatives. The IIBRC is chaired by Hon Andrew Ligale, who contested the 2007 General Election and has been a Member of Parliament. Though his appointment was vetted and approved by Parliament, one hopes that he will demonstrate independence and non-partisanship required of his office.

> The purported amendment was unconstitutional. However, the court said that nullification of existing districts would have devastating effects as the court had no mechanism to supervise the process.

ii) Equality of Vote. All votes should be granted equal weight in election of representatives. The authority should ensure that each single member constituency has equal number of voters. Applicable population data is the total number of registered voters or the population. The law must establish clear criterion for tolerance limits for deviation. The delimitation process must be devoid of intentional bias.

iii) Representativeness. The constituencies should be composed of united cohesive communities for ease of representation. The criteria may include administrative boundaries, geographic and social milieu of the residents and communities of interest.

iv) Non-discrimination. Minority groups should not be fragmented across constituencies to diminish their chances of being elected into office. This affects only minority groups that are sufficiently large and geographically compact. In the case of *Rangal Lemeinguran & others vs the Attorney General and others*, the High Court ordered that the Il Chamus community should be considered for allocation of a constituency as they are spread in two constituencies thereby diminishing their chances of having an elected representative in Parliament.

v) Transparency. The delimitation process should be accessible, open and consultative. The criteria for delimitation should be identified and made public. There should be consultations with stakeholders. Explanations should be provided for decisions on final assignment of boundaries, especially where there are objections. The process must be accompanied by voter education to ensure participation.

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THE KONRAD ADENAUER FOUNDATION IN KENYA

Konrad-Adenauer-Stiftung is a German political Foundation which was founded in 1955. The Foundation is named after the first Federal Chancellor, Prime Minister and Head of Federal Government of the then West Germany after World War II. Konrad Adenauer set the pace for peace, economic and social welfare and democratic development in Germany.

The ideals that guided its formation are also closely linked to our work in Germany as well as abroad. For 50 years, the Foundation has followed the principles of democracy, rule of law, human rights, sustainable development and social market economy.

In Kenya, the Foundation has been operating since 1974. The Foundation's work in this country is guided by the understanding that democracy and good governance should not only be viewed from a national level, but also the participation of people in political decisions as well as political progress from the grass roots level.

Our aims

Our main focus is to build and strengthen the institutions that are instrumental in sustaining democracy. This includes:

- Securing of the constitutional state and of free and fair elections;
- Protection of human rights;
- Supporting the development of stable and democratic political parties of the Centre;
- Decentralisation and delegation of power to lower levels;
- Further integration both inside (marginalised regions in the North/North Eastern parts) and outside the country (EAC, NEPAD); and
- Development of an active civil society participating in the political, social and economic development of the country.

Our programmes

Among other activities we currently support:

- Working with political parties to identify their aims and chart their development so that democratic institutions, including fair political competition and a parliamentary system, are regarded as the cornerstones for the future development in Kenya.
- Dialogue and capacity building for young leaders for the development of the country. Therefore, we organise and arrange workshops and seminars in which we help young leaders to clarify their aims and strategies.
- Reform of local governance and strengthening the activities of residents' associations. These voluntary associations of citizens seek to educate their members on their political rights and of opportunities for participation in local politics. They provide a bridge between the ordinary citizen and local authorities, and monitor the latter's activities with special focus on the utilisation of devolved funds.
- Introduction of civic education to schools and colleges. We train teachers of history and government in civic education. In addition, we participate in the composition of a new curriculum on civic education.

Our principle is: Dialogue and Partnership *for Freedom, Democracy and Justice.*

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