

# KatibaNews

Towards a new constitutional dispensation in Kenya

JANUARY 2010

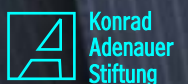
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# ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

**T**he 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.

# Unbelievable? Believe it!

Even by our own standards of cynicism, I think this time we have outdone ourselves. For once, our politicians have caught us totally by surprise. Honestly, very few Kenyans can say they saw the new status quo coming. That we are actually staring at a new Constitution by the end of this year is a development that found us still sneering.

But away from the shock, the big question is what took us so long? The Nzamba Kitonga-led team (Committee of Experts on the Constitution) has accomplished what many before him just managed to haggle over year after year. We must confess that even our (*Katiba News*) interview with Mr Kitonga a few months back did not prepare us for this. In fact, when I met him later on the city's streets, I got the impression that he was scared stiff of the politics that would inevitably get in the way of the consensus building stages.

One of the realities that most of us quietly agree about is the fact that the 2007 post election violence taught us a few lessons. That you cannot keep promising and deceiving people forever. While the PEV had considerable tribal overtones, the real reasons for people venting their anger on each other was as a result of pent up frustrations built up over the years.

Since our leaders were too high up from the so called common *mwana nchi* to reach, the next easy thing was to get your neighbours throat. And so we murdered and maimed each other with abandon as our leaders tried to wrench power from their rivals in hotels and secret

locations.

It is just when the leaders cried that they had reached a deal did the mayhem die down. And that should have taught us... It is our leaders who really decide the fate of this country. They have held us on a leash and they are the ones who decide where they want us to go and how they want us to get there.

But that is a story for another day. What we are

trying to say here is that for once our politicians have realised that they owe Kenyans a living. For sure if we do not get it right this time, those who can take cover come 2012 would be well advised to do just that, including the politicians. If we do not cover issues raised in the post election Agenda Four deal, let us start building trenches for the blood that will surely flow.

With good governance and real democracy, it is very easy to move Kenya to the next level. Kenyans are a

truly ambitious lot who would care less about the tenant in State House if their basic needs are adequately met. All Kenyans want is peace to raise their children comfortably and give them a bright future.

So we are pleasantly surprised that we are standing on the threshold of history. The confidence that will emanate from the enactment of a new Constitution will have a ripple effect that will touch all other facets of the country's institutions for a long time to come. For once, let us be the envy of other countries the world over away from the long distance races. **KN**

Editor



Mr. Nzamba Kitonga, CoE Chair

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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# The political will yardstick



Former President Daniel Arap Moi addressing a public rally.

The constitutional making process in Kenya has been essentially a political and not a legal process. One question that will always baffle us is why we took 20 years to come up with a document that was always urgently needed. It's the politics stupid! That is our final answer.

By Dennis Jalang'o

**T**he history of the demand for review of the Constitution can be traced to the 1992 General Election when the ruling party, Kenya African National Union, won the elections with a tally of 34 per cent of the total voters cast. This was the result of fragmentation of the Opposition. The Opposition argued the election playing field was tilted in favour of KANU.

This demand for reform has remained since then with the process being fronted by civil society groups and opposition political parties. The review process has faced the problem of institutional self-dealing. Politicians and other government institutions, like the Executive and Parliament, and

who have a lot to gain or loose from the constitutional outcome have been intimately involved in the process and to a large extent have acted as road blocks to its completion. The public has been involved through collection of views and representation at all stages of the process. Intense public participation is expected to promote public support for the Harmonised Draft.

The Committee of Experts (CoE) has stated that it is keen to produce a draft that reflects Kenyans' views. These views were collected by the Constitution of Kenya Review Commission, which was created under the Constitution of Kenya Review Act, 2002. They were collated into the Bomas Draft that was debated at the National Constitutional Conference and later transformed to the Proposed New Constitution, which was rejected at the referendum in 2005.

## Revised draft

The success of the review process depends on good will from the political class. This is because Parliament, which is populated by politicians and is the supreme law-making organ, is central to the process. Indeed, the procedure of constitution making is prescribed by Parliament, which also plays a role in building consensus on the draft. However, disagreements in the

political class have delayed resolution of contentious issues.

Once the legal experts in the CoE complete their task, the political class will have to build consensus. As part of these efforts, the Parliamentary Select Committee on the Constitution Review held a retreat to discuss the revised draft with a view to reaching a consensus. The political divisions in the major political parties and coalitions are, therefore, reflected in the process and have contributed to the delay in completion of the review.

The Grand Coalition Government, which was formed in 2008, comprises two competing political parties, namely the Orange Democratic Party and the Party of National Unity. Under the National Accord and Reconciliation Act, the two parties are supposed to share power on equal basis. Despite teething protocol hitches in the initial stages, the President and the Prime Minister have established a working rapport and are keen to facilitate the implementation of the reform agenda.

However, some of their lieutenants drawn from their respective political parties have been sending mixed signals on harmony and collective responsibility in the Government. The two leaders are yet to publicly declare their views on the Harmonised Draft, but their parties have published different positions, which they had earlier presented in their Memoranda to the CoE.

As of now, there is no unified Government position on the Harmonised Draft. Within the parties, some officials have adopted positions that are radically different from the stated party position. Each MP and party official has the right to his own opinion, including an opinion that is different from the party position. However, it would be easier to build cross party consensus where each political party presents a unified stand on the draft.

For example, ODM deputy party leader, Hon William Ruto, has been reported to oppose the hybrid system proposed in the Harmonised Draft. On its part ODM has stated that it

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## Politics

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supports a parliamentary system. These intra and inter party differences among the political class have the potential to derail the review process.

### Current political barriers The Mau evictions

The Prime Minister has been leading the campaign to restore the Mau Forest Complex. The Mau Complex is one of the five water towers in Kenya and is the source of 12 rivers that flow into Lakes Victoria, Nakuru, Turkana, Natron and others.

The other water towers are Mount Kenya Forest, the Aberdares, the Cherengany Hills and Mount Elgon. The depletion of the Mau Complex has international ramifications since River Nile, which sources most of its waters from Lake Victoria, is shared by ten Nile Basin countries in East and Northern Africa. The deforestation will thus affect the volume of waters in the Nile, which could lead to inter-state tensions.

The Mau reclamation will of essence involve the eviction of squatters and beneficiaries of illegally or irregularly allocated land and subsequent reforestation. Thereafter, the boundaries of the complex will be marked and secured. The eviction of squatters from the Mau Forest has split the leadership of the Orange Democratic Party. One faction of the party, led by Ruto, who is the Minister for Agriculture and Deputy Leader of ODM, is demanding that all landowners in the forest should be compensated and that the squatters should be resettled.

On the other hand, a faction led by Hon Raila Odinga, who is the Prime Minister and the Party Leader of ODM, has insisted that no compensation should be paid for illegally acquired land and that illegal squatters should not be resettled. This view is supported by the Ndung'u Report on Irregular and Illegal Allocations of Land, which concluded that Mau Complex land was a designated forest and was, therefore, not available for alienation by the Commissioner of Lands or the President as unalienated public land.

Any titles subsequently derived from the irregular alienation were not legal and should not be recognised. Most of the squatters and settlers in the complex are from Rift Valley Province where the complex is situated. Rift Valley MPs are treating the eviction of squatters as inhuman and degrading to the squatters and they have stated that the squatters settled in the forest more than 30 years ago and they had no other known ancestral land. The MPs organised a fundraiser to provide basic supplies for the evicted squatters.

has not addressed the humanitarian implications of the evictions and whether the settlers in the forest who have 'valid' title deeds will be compensated.

The legal position is that the roots of the titles are not legitimate, given that the boundaries of the Mau Complex have never been altered. Any land that is within the forest boundary is part and parcel of the forest and was and is not available for alienation. Such title deeds cannot be valid.



President Mwai Kibaki and Prime Minister Hon. Raila Odinga shake hands after agreeing on a coalition government at Harambee House.

### Boundaries

The dispute on the reforestation of the Mau may affect unity of the party in the push for the completion of reforms. The ODM has not developed a consensual position on the reform agenda. The Rift Valley MPs have been involved in limited party activities and have been taking different positions from their party. The Government, while insisting that its programme of restoring the forest was on course,

### Resettling of internally displaced people

The Government has resettled IDPs in a haphazard and uncoordinated fashion. Adequate resources have not been provided for the exercise. The resources provided by the Government have been mismanaged and looted and there has been a tug of war between the line ministries of Special Programmes, Lands and Provincial Administration. Despite the

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# The constitutional minefield

As we conquer the difficult part in the review process, the tricky bit will soon begin. With a new Constitution things will never be the same again. The government and its structures will be a new creature that must be nurtured to suit the dictates of our national vision and mission. So, where do we go from here?

By Macharia Nderitu

**T**he Constitution review process is drawing to an end. In order to transit into the new legal order, the laws of Kenya must be harmonised with the provisions of the new constitution. Further, since the new constitution will create new institutions and reform others, the constitutive laws guiding the operations of these institutions must be overhauled. New laws must be proposed and enacted for the new institutions.

In this exercise, Parliament will, being the supreme law-making organ, play a central role. Parliament, as an institution, must be prepared to enact the laws required to operationalise the new constitution. The public must also be sensitised on the contents of the new constitution to enable them hold public office holders accountable and enforce their rights, if and when violated.

The office of the Attorney General, being the chief government legal draftsman, must also be equipped to ensure that it will produce quality Bills within a short notice to ensure the fruits of the new constitution are fully realised. Parliament, through the Parliamentary Service Commission, has been expanding its secretariat to ensure that relevant and adequate skills are made available to MPs to enable them carry out their work.



The August House in session

## Anticipated challenges

The implementation of a new Constitution will be fraught with a number of challenges. The political class must buy into the new constitution. It must be clear to all that once the Harmonised Draft is ratified in a referendum with the requisite majority, it shall become the Constitution of Kenya. The politicians, with narrow sectarian interests, can foment civil strife by rejecting the new constitution post-referendum. The consensus building by the Parliamentary Select Committee on the Constitution must, therefore, address such an eventuality. Other challenges that may face the implementation process are:

## Civic education

A massive civic education programme should be designed in the pre- and post-referendum period. The citizenry has scant understanding of the role and functions of a constitution. A constitution defines the main principles of governing a country, establishes institutions and provides for the rights and obligations of the citizenry. In the constitutional reform debate, the public provided detailed suggestions for inclusion into the constitution that rightly belong to legislation. This demonstrated lack of a clear understanding of the constitution as the supreme law

.In the pre-referendum period, the public must be sensitised on the contents, purport and meaning of the draft constitution. This will enable the public to make an informed choice at the referendum. The 2005 referendum was highly politicised. The highly charged political environment led to the suppression of the real issues in the Draft.

The public does not appreciate the centrality and importance of the Constitution in the governance process. In the post-referendum period, the public must be sensitised on the contents and the role of the new constitution to enable them adhere to its provisions and monitor the actions of public officials and institutions. At a referendum, most voters choose the option propagated by politicians. To ensure the public is vigilant on the mode of governance adopted by politicians, the public must be educated on the constitution.

Civic education in Kenya is conducted by the civil society. This type of education has limited reach due to limited resources available for this purpose and changing donor paradigms. The Government must fund the civic education process to ensure sustainability. The Government can also solicit and

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## Barriers

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ensure better management and monitoring of donor funds devoted to civic education. As part of this effort, the school curriculum should be reformed to include a civic education component.

### Legislation and implementation of laws

A number of laws will be legislated and implemented to operationalise the new constitution. Parliament has improved its legislative efficiency with the adoption of new Standing Orders. It has recruited legal experts to assist in the drafting of new laws. This enhanced capacity and efficiency will assist in fast-tracking the enactment of new laws. The proposed laws must be balanced against the watchdog and oversight roles of Parliament as well as legislative imperatives. This calls for further capacity for Parliament and a structured use of the committee system to expedite the legislative process.

The Government must also be prepared to build the capacity of public officers appointed into new or reformed institutions. The management of public institutions have eroded public trust in the Government. The new institutions must inculcate professionalism, transparency, democratic principles

and openness to ensure they deliver on their different constitutional obligations. The officers appointed into public offices and commissions must be persons of integrity and must be properly vetted by Parliament prior to appointment.

### Referendum and elections

The Harmonised Draft will be ratified through a referendum. In 2005, Kenya rejected a Proposed New Constitution in a referendum. The 2005 referendum was deeply polarising and in many ways was the precursor to the 2007 political violence. The referendum has been provided in the Constitution as the method of ratification of the new constitution. Due to the existing political intrigues, the referendum has potential to polarise the country along ethnic lines. The legal framework for the referendum and elections should be revised to outlaw hate speech and incitement, which are the primary triggers of political violence.

### Reconstitution of the Judiciary

Some judges of the High Court and the Court of Appeal have voiced their opposition to the recommendation that an independent Judicial Service Commission vet all serving judges who wish to remain in office after

the promulgation of new constitution. The Committee of Experts has proposed that judges will have the option to retire from office, in which case they will be paid full benefits, or to remain in office, but be vetted by an Interim Judicial Service Commission. The civil society has called for judicial reform.

The appointment procedures to judicial offices are opaque since the Judicial Service Commission, which is comprised of presidential appointees, vets all appointments. Argument has been made that the commission is not independent. In 2003, the Constitution of Kenya Review Commission recommended that all judges of the High Court and Court of Appeal should resign to pave way for vetting. Two serving judges of the High Court sued the Commission seeking a review of this proposal. However, the proposal was revised at the National Constitutional Conference at Bomas.

Since the radical surgery in 2003, not further attempts to carry out institutional reform of the Judiciary have been made. Little effort has been made to reorganise and reform the Judiciary, using administrative and legal measures.

The Committee has provided for structured and phased vetting of judicial officers to ensure judicial services are not disrupted.

The Chief Justice will vacate office and if he chooses to remain in office, will be vetted and deployed as a judge of the Court of Appeal. The Chief Justice will not vacate office until the President appoints a replacement with the concurrence of the Prime Minister. The Law Society of Kenya has expressed support for reorganisation of the Judiciary. Indeed, the Judiciary was identified as an underlying



High Court of Kenya

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cause of the post-election violence.

The Judiciary as an arm of the Government is supposed to be an independent arbiter of disputes and the protector of the rights of the citizenry. The Judiciary has not performed its role well and is viewed as an appendage of the Executive. In a report prepared by Justice (Retired) Richard Kwach, it was noted that the Judiciary was unwilling or unable to play its role as the third arm of the Government. It is important to ensure that serving members of the Bench buy into the proposed reform measures to ensure they do not block reforms, which are for the greater good for Kenyans.



TJRC Chairman, Bethwell Kiplagat

### Constituting the constitutional commissions

The Harmonised Draft has proposed 11 constitutional commissions and provides that each will be composed of three to nine members. Some of the proposed commissions are a transformation of existing commissions while others will be newly established. The proposed commissions are the Commission on Revenue Allocation; the Ethics and Anti-Corruption Commission; the Kenya Human Rights and Gender Commission; the Independent Electoral and Boundaries Commission; the Judicial Service Commission; the National Land Commission; the Public Service Commission; the Police Service Commission; the Salaries and Remuneration Commission; the Teachers Service Commission; and the Health Services Commission.

The Kenya National Commission on Human Rights will be transformed into the Kenya Human

Rights and Gender Commission while the Kenya Anti-Corruption Commission will be transformed into the Ethics and Anti-Corruption Commission. The Teachers Service Commission exists as a statutory commission and the Public Service Commission is a constitutional commission. The Judicial Service Commission will be reformed by including elected judges and representatives from the Law Society of Kenya to serve in it. The Chief Justice will not chair the Commission.

The independent commissions will check on the powers of the Executive in the system of checks and balances. The Draft reduces the numbers of commissioners. The Public Service Commission has 17 commissioners. These will be reduced to a maximum of nine. The Teachers Service Commission similarly has a high number of Commissioners. The National Commission on Gender and

Development will be merged with the KNCHR to form a leaner commission. This will provide taxpayers with value for money.

The commissioners will be vetted by Parliament prior to appointment. While vetting enhances the quality, diversity and professionalism of appointees, the process must be guided by appropriate rules and procedures to prevent political intrigues affecting the process. At present, Parliament does not have clear rules on vetting public officials and different parliamentary committees have adopted different rules to carry out vetting.

### Endgame

Kenyans must anticipate implementation challenges to the new constitution. The implementing institutions must, therefore, be sensitised and readied to implement the new constitution. Such institutions include Parliament and Judiciary. The public must also familiarise itself with the provisions of the draft to enable them hold public institutions and officers to account. The process of the review will not be complete without a programme of implementation that will include institutional reform and legislation. Kenyans must adopt and comply with the new constitution if and when it is ratified at the referendum. A new election may be necessary soon after the referendum to fully implement the reforms. The Grand Coalition Government has demonstrated severe internal cohesion deficit. The Government does not have the necessary political will and mandate to conclude the reform agenda. **KN**

## Politics

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huge support the programme received from external donors, a lot remains to be done for it to be deemed a success.

The Government has not been forthright on the progress made to resettle displaced people. Most of them were forced out the camps, but they are yet to resettle on their land. Indeed, some IDPs have settled in transit camps from where they access their land. The number of IDP camps has reduced significantly, but the number of transit camps has increased. IDPs in transit camps do not have food, shelter, water, or health care.

The uneasy calm that followed the signing of the National Accord has led to the false assumption that the underlying causes of the conflict have been addressed. The process of resettling the IDPs in land acquired by the Government is yet to bear fruit. Peace building programmes in the communities have stalled and the host communities are seemingly hostile to reintegration of IDPs in their communities.

The plight of IDPs has constitutional ramifications. It has been noted that the Government is facilitating the drafting of a new constitution whereas it is not able or willing to uphold provisions of the existing one. The IDPs' property was expropriated without any compensation. In some areas, persons are squatting on land belonging to IDPs without any colour of right. Where there are transition camps, it has been said that the Government is yet to set up mechanisms to protect the IDPs.

With these challenges, the question is whether the Government should be committing more resources to building its institutions or in the drafting of a new constitution. While the review process is important, the Government must commit its resources to tackle humanitarian crises caused by weaknesses and failure of its institutions. The IDPs remain a scar on the conscience of the

nation. The prospect of being evicted after an election or referendum may lead to voter apathy and disharmony in the communities.

**Intra-party struggles**

In PNU Coalition, the President, who is the party leader, does not have full control of the party as he is leaving presidency at the end of his two terms in 2012. The PNU is a conglomeration of other parties that have support on their own. The Vice-President, Hon Kalonzo Musyoka, vied for election for presidency on an ODM-Kenya ticket in 2007.

He joined the PNU Coalition in the middle of the post-election political crisis. The Deputy Prime Minister, Hon Uhuru Kenyatta, is the Chairman of KANU, which was the Independence party established in 1960. KANU has branches all over the country and has



President Kibaki posing with the IICDR Judge after they were sworn in at State House, Nairobi

wide support. It joined the Coalition when it decided not to field a presidential candidate, but support Hon Mwai Kibaki for the presidency in 2007. Though several members of the party have declared or shown intentions of vying for the presidency in 2012, the PNU coalition has submitted a unified stand on the Harmonised Draft.

In ODM, differences on other issues have affected consensus building on the draft. The differences stemmed from the support for the establishment of a Special Tribunal for Kenya by the Prime Minister and the President as proposed by the Commission of Inquiry into the Post-Election Violence. The Tribunal was supposed to try sponsors and perpetrators of the violence for international crimes. A section of

ODM MPs stated at the time that such a Tribunal was being set up to witch hunt residents and politicians from their region.

The MPs eventually rejected the Bill to set up the Tribunal. Since that time, that group of MPs seem to form and support positions that are opposed to the official party position. Since the officials seem to be pulling apart, the party has not presented a unified stand on the Harmonised Draft and this has undermined consensus building.

**The referendum**

The Parliamentary Select Committee must ensure that all the contentious issues are resolved prior to the holding of a referendum. The referendum will, therefore, be held to ratify the new Constitution and as a mark of public approval. The Interim Independent Electoral Commission will be responsible for formulating the referendum question and conducting the exercise. The Interim Independent Electoral Commission is yet to register voters for this exercise though it has stated that this process will be commenced before April, this year.

The referendum must be carefully designed to ensure the public is able to approve or reject the Harmonised Draft. The past referendum in 2005 was modelled in a Yes-No vote in which a draft was presented for approval or rejection by the public. This type of referendum caused animosity and divisions. The Minister for Justice and Constitutional Affairs is yet to present a Draft Referendum Bill that will guide the design and voting at the referendum. Such a Bill will also create the Code of Conduct that will be followed by political parties during the campaigns to stem incitement.

The civil society has proposed a Yes-Yes vote in which two drafts can be presented at the referendum for approval by the public. This will ensure that the country will get a new constitution regardless of the outcome of the referenda. The model

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# What agenda!

In the building excitement towards a new Constitution, we can easily forget that we still have unfinished business. After the 2007 post election violence, we said our *mea culpas* and agreed that there were some things that could not wait any longer to be changed. This gave birth to the so called Agenda Four which was part of the peace pact among our politicians with the Kofi Annan led peace makers. Our correspondent looks at whether the new Constitution will be the panacea for our problems with democracy.

By Dorothy Momanyi

**T**he Committee of Experts (CoE) was established to spearhead the new push by the Government of Kenya for the realisation of a new Constitution under the Constitution of Kenya Review Act, 2008. The Committee has the mandate of identifying the contentious issues in the review process, seeking public views and consensus on the issues and drafting and publishing a Harmonised Draft.

After seeking views from the public, civil society, political parties and other interested persons, the CoE published the Harmonised Draft on November 17, 2009. The publication provided the public with an opportunity to make comments on the Harmonised Draft for a period of 30 days. Thereafter, the committee was to incorporate and publish a revised draft.



COTU Secretary General Francis Atwoli addressing workers about agenda 4

The CoE has published the Revised Harmonised Draft and handed over its report and the draft to the Parliamentary Select Committee on Constitutional Review. The PSC has 21 days to negotiate and resolve any issues that remain contentious. Final amendments will be made by Parliament. Section 28 (c) of the Constitution of Kenya Review Act, 2008 provides that after revision of the Harmonised Draft by the committee, the PSC shall deliberate and build consensus on the contentious issues on the basis of the recommendations of the CoE. However, amendments by Parliament require approval by 65 per cent of all MPs.

The CoE noted that some of the contentious issues, for example the structure of the Executive, have ramifications that require political consensus that can be best guided by Parliament. The Committee, therefore, noted that the PSC was best suited to build consensus before further revision of the draft.

## Consensus

The affairs of the Grand Coalition are deliberated and resolved by the Permanent Committee of the Grand Coalition Government. The Permanent Committee comprises the President, the Prime Minister and twelve representatives drawn equally from Orange Democratic Party and the Party of National Unity. The Permanent Committee attempted to resolve issues in the Harmonised Draft in order to present a Government viewpoint. However, this failed especially in regard to the Executive.

The Permanent Committee stated that though there was a broad consensus in Government on the fundamental principles in the Harmonised Draft and the urgency to complete the review process, the PSC would negotiate the details and resolve the contentious issues. The ODM has stated that it prefers a parliamentary system of government while PNU prefers a presidential system. Efforts to submit a unified government position on the Harmonised Draft did not bear fruit after ODM submitted its views before the inter-party deliberations were completed.

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## Agenda 4

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### Presidential system

The Executive has emerged as the most contentious issue, especially within the political class, with the two coalition partners — ODM and PNU — taking diametrically opposed views. The Executive defines the exercise and distribution of political power and hence generates most debate. Failure to agree on the best model for the Executive by the political class has the potential to cost Kenya a new Constitution. The responsibility to resolve the contentious issues now rests with the PSC.

The public views on the structure of the Executive oscillate between a presidential, parliamentary and a hybrid system. The CoE noted that Kenyans were in favour of directly electing their chief executive. There are reports that the PSC has settled for a presidential system of Government where the President and Ministers will not be Mps.

The CoE should have been bold and recommended the best model for the Executive after carefully examining the views submitted by the public. The Executive was one of the contentious issues that led to the rejection of the Proposed New Constitution in 2005 in a highly politicised and ethnically polarised referendum.

### Checks and balances

The Grand Coalition Government is a hybrid model, which can be modified and adopted to suit the Kenyan context. The lack of a central authority that exercises executive authority has been identified as the cause of dismal performance of the Grand Coalition in the first year of its existence. The proposed model in the Harmonised Draft that separates the Head of Government and Head of State has the potential to create two centres of power, especially where the President and Prime Minister are sourced from different political parties.

Further, the President will be unable to fulfil election pledges where the

programmes and policies of the Government are determined and implemented by a Prime Minister of different and opposing political persuasion. The view by the public that the head of the Executive should be directly elected indicates a preference for a presidential system with appropriate checks and balances. The fact that political parties in Kenya are fickle and undeveloped will undermine the functioning of the parliamentary system.

### Agenda Four

The review process is the culmination of the reform agenda in Kenya. After post-election violence, the completion of the constitution review process was identified as an underlying cause of political violence. The weak constitutional framework had resulted in weak institutions that proved incapable of resolving political disputes after the election. Whereas the need to reform the constitution was identified about 20 years ago, the process has been accelerated by the 2008 post-election political crisis.

Other underlying factors for the crisis were identified as land, youth unemployment, inequitable sharing of national resources, ethnicity and political power, police reforms, the structure of the Executive and electoral reforms.

Commissions and task forces set up by the Government have interrogated these factors. The reform process has not borne fruit as yet, as the social economic and political conditions that were the underlying causes of the

post-election violence are intact. Some measures to address some of them have been instituted and are being implemented.

The Cabinet adopted the National Land Policy in 2009. The drafting of the policy had been commenced in 2003. A Sessional Paper on the policy will be presented to Parliament for debate, approval and adoption. This will set the stage for the review and possible consolidation of over 30 laws that deal with land in Kenya. Land reform must of essence be anchored in the Constitution.

The Revised Harmonised Draft creates the National Land Commission. The Draft divests the power to allocate inalienated government land from the President and the Commissioner of Lands and vests it to the Commission. The misappropriation of public land to reward political interests can be attributed to the unchecked and unaccountable exercise of this power by the Commissioner of Lands. The Commissioner for Lands exercises the power to alienate inalienated Government land under the delegated authority of the President.

This has resulted in illegal and irregular allocations of land in breach or circumvention of legal and constitutional provisions. Some of the key highlights of the National Land Policy are equitable distribution of land, systematic land registration, conversion of customary land tenure into individual ownership, repossession of illegally acquired land and computerisation of land records. The Policy has been criticised as being agrarian and that it ignores the housing needs of a rapidly urbanising population.

The National Land Commission will implement the recommendations of the Truth, Justice and Reconciliation Commission in so far as they relate to illegal or irregular allocation and corruption relating to land. The power to allocate public land will vest in the



Peace broker, Kofi Annan, addressing the press

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National Land Commission. The office of the President is highly politicised and this facilitates the tendency to abuse its powers to allocate public land. The Commission will be a constitutional commission and accountable to Kenyans and will assist in protection of public land. One of its functions is to manage public land on behalf of the national and devolved governments.

### Youth unemployment

Although unemployment among the youth was identified as a major contributor to the post-election crisis, initiatives by the State do not seem to be effective or responsive. Such initiatives have narrowly focused on entrepreneurship without taking into consideration the fact that not all youth are organised into groups to access the funds for small and micro enterprises. Lack of skills, assets and access to credit facilities has rendered self-employment difficult for the youth, hence leading to high crimes rate, street begging and drug abuse.

The adoption of a new Constitution that is acceptable across the political divide will boost investor confidence, minimise the possibilities of political violence and secure property rights of investors and citizens. A reformed Judiciary will ensure accelerated and efficient dispute resolution of business related disputes. This will facilitate economic growth and provide opportunities for the youth to gain employment and opportunities to self-employment.

At the moment, more than two million youths comprising 40 per cent of the youth population are unemployed. There are few economic opportunities for the youth that foster feelings of resentment. The Government has proposed programmes intended to increase opportunities for youth employment. These include the setting up of the Youth Enterprise Fund whose capital is currently Ksh4 billion; the Kazi Kwa Vijana programme that was expected

to provide Ksh5 billion for labour intensive projects in various parts of the country and provide jobs for the youth; and the economic stimulus package, which proposes construction projects in health, education and trade in each constituency.

Other measures are providing mechanisms to manage transition from school to work, career guidance, industrial attachment, mentoring and

mechanisms for holding the Executive to account through Constitutional Commissions and the Legislature.

The current Constitution has been criticised for vesting too much power on the President and failing to provide mechanisms for checks and balances. It has been said the 'Imperial Presidency' ignited the clamour for reforms. For example, until recently, the President appointed persons to public offices, commissions and parastatals without consulting any other authority. Parliament acted as a rubber stamp for Executive action without exercising any oversight functions on the Executive. Without checks, the holders of offices in the Executive had a tendency to abuse power.

Since 2001, MPs have empowered Parliament and reclaimed their watchdog role. The checks and balances offered by the Legislature and the Judiciary on the Executive

prevent any form of abuse of power by the Executive. Therefore, the debate is not essentially about the structure of the Executive, but the strengthening of the Legislature, the Judiciary and the constitutional commissions will ensure power is exercised in accordance with the law.

### Electoral reforms

The political crisis in 2008 can be traced to the conduct of General Election in 2007. The Electoral Commission of Kenya conducted the elections in a manner that eroded public faith in the electoral process. In 2008, the Government established the Independent Review Committee to review the conduct of the 2007 polls, to re-examine constitutional and legal structures of the electoral process and make recommendations for reforms.

The Committee, chaired by Justice Johann Kriegler, presented its report stating that given the manner the elections had been conducted and the



Kazi kwa Vijana initiative in progress

couching, and rendering business counselling advisory services. Youth unemployment is not essentially a constitutional or legal problem. It is a symptom of failure by successive governments to implement economic and educational policies that ensure the economy constantly creates employment opportunities and that the education offered to the youth is relevant and practical.

### The Executive

Politics in Kenya are highly ethnicised. The winner-takes-all electoral system ensured that the President did not need a majority vote to be elected. This meant that presidential candidates used all manner of inducements and incitements, including ethnic hate speech, to win the elections. This scenario has made the structure of the Executive a contentious issue in the review process. A well-designed Executive will establish a clear pecking order and delineate the roles for the President and the Prime Minister. The Draft must establish appropriate

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# Katiba Briefs

December 2009 to January 2010

- Internal Security Minister George Saitoti and Mathira MP Ephraim Maina oppose a proposal to scrap the provincial administration contained in the harmonised draft Constitution.
- Kenya asks donors to support efforts to get a new Constitution by helping finance the referendum set for March 2010.
- Former President Daniel arap Moi writes to the Committee of Experts (CoE) on the Constitution rejecting the proposal to have executive power shared between a prime minister and the president. Moi also cautioned against the scrapping of the provincial administration.
- Orange Democratic Movement fails to reach consensus on its position on various contentious issues in the harmonised draft Constitution, barely two weeks before expiry of the 30 days within which presentations can be made to the CoE.
- Voter registration and referendum will cost about KSh10 billion, the Interim Independent Electoral Commission Chairman, Ahmed Issack Hassan, reveals. He says that the commission had a deficit of KSh 9 billion for the registration exercise.
- Heads of local authorities said that the draft Constitution should be reviewed to give them more powers to run the councils.
- The CoE warns against deleting a clause to recall non-performing MPs from the draft Constitution. Speaking during an open forum in Nairobi, speakers from various parts of the country said they wanted the clause retained and only be deleted by the MPs themselves.
- Lobby groups demanded a constitutional provision to open up defence and intelligence budgets to parliamentary scrutiny. The 15 groups meeting at the Kenya National Commission on Human Rights offices in Nairobi said a lot of money is lost in security projects and ask that the national Intelligence council be subjected to parliamentary oversight.
- Experts rewriting the Constitution received what they described as "overwhelming views" as Kenyans rushed to beat the set deadline for suggesting changes to the harmonised draft Constitution.
- The National Anti-corruption Campaign Steering Committee proposed that the anti-graft agenda be entrenched in the Constitution.
- Muslims demand for amendments on a Bill that seeks to make payment of dowry before marriage optional. The marriage Bill, 2007 also outlaws the return of dowry after a marriage turns sour, which is usually a common practice.
- Three religious leaders sued the CoE on constitutional review for allegedly contravening fundamental rights. Also sued were the Attorney General and Parliamentary Select Committee chairman.
- Kenyans are still strongly divided over the kind of government they want, views presented to a team working on a new Constitution indicate. Although the Executive attracted most of the 1.8 million views the CoE received, it remained highly contentious compared to devolution and public service.
- President Kibaki and Prime Minister Raila Odinga met with the members they picked to hammer out a consensus on contentious issues in the harmonised draft Constitution but once again hit a deadlock.
- Kibaki and Raila hold closed door meetings of their parties to discuss the positions they will take on the revised draft constitution. Kibaki met Party of National Unity leaders in his Harambee House office while Odinga hosted Orange Democratic Movement bigwigs at Treasury Building.
- Kibaki and Raila meet to examine a proposal floated to break the impasse on the Executive chapter of the harmonised draft Constitution.
- President Kibaki presided over the swearing-in of six judges appointed to the Interim Independent constitutional dispute resolution court.
- Grand coalition partners embrace presidential system but each side had its own version.
- Kenyans will have one draft Constitution to choose from when they vote in the referendum. The Parliamentary Select committee on the Constitution rejected suggestions that the public be presented with two drafts - one on a parliamentary system of government and another on a presidential system.
- Catholic Bishops threatened to disown the harmonised draft Constitution unless it includes a clause that clearly stipulates when life begins.
- The US President called Kibaki and Raila to lobby for reforms, including the need for an acceptable new Constitution.
- In a dramatic twist of events, the parliamentary select committee on the Constitution unanimously adopts an American-style presidential system for Kenya.
- The United States pledges financial support for the upcoming referendum on a new Constitution, Prime Minister Raila Odinga announces.

# Juggling parallel reform initiatives

After the mediation of post-election violence by the Panel of Eminent African Personalities, the negotiating panel set a reform agenda. Among the measures that were to be implemented were immediate cessation of violence, the resettlement of IDPs and provision of humanitarian aid to the displaced, the political settlement through power sharing and the long-term reforms, popularly known as Agenda Four Reforms. The long-term reforms dealt with the underlying causes of the violence and included reforms in land, Judiciary, police and the completion of the constitutional review process. How will this be dealt with now?

By Katiba News correspondent

As part of the implementation of the agreed reform agenda, a number of commissions were formed to interrogate different aspects of the political crisis and provide solutions. The Independent Review Committee reviewed the conduct of the 2007 General Election. The Commission of Inquiry into the Post-Election Violence investigated the causes and nature of the violence and recommended the formation of a Special Tribunal for Kenya. The mediation team agreed to the formation of the Truth, Justice and Reconciliation Commission, which was to be set up through an Act of Parliament.

The reform initiatives will supplement the constitution review process. Coordination among the commission has been made difficult by the fact that most of the commissions were formed at the same time, hence there is little opportunity for proper coordination. However, with all the reform initiatives being implemented simultaneously, there is need for greater harmonisation and coordination to ensure the intended result is achieved.

## Truth Justice and Reconciliation Commission

The Truth Commission has been set up to look into historical injustices that have occurred in Kenya between December 12, 1963 and February 28, 2008. The Truth Commission has a mandate of two years. The Chairman and other Commissioners have been appointed and the Truth Commission is in the process of setting up its secretariat. Ambassador Bethwel Kiplagat chairs the Commission.

Among the objectives of the Commission are to establish an accurate, complete and historical record of violations of human and economic rights inflicted on persons by the State, public institutions and holders of public offices by conducting investigation and holding hearings; establish a complete picture of the possible causes, nature and extent of gross human rights violations; investigate gross human rights violations and violations of international human rights law and abuses; investigate economic crimes including corruption and exploitation of public resources and inquire into irregular and illegal acquisition of public land and make recommendations for such repossession.

Others are to inquire into acts of State repression, including torture, cruelty and degrading treatment; inquire into the causes of ethnic tensions and make recommendations on the promotion of healing, reconciliation and co-existence among ethnic communities; determine ways of redress for victims of gross human rights violations and provide victims of human rights violations and corruption with a forum to be heard and restore dignity.

The TJRC has a mandate for two years. It is in the process of constituting its secretariat with a

view to commence public hearings. The Truth Commission was intended to facilitate national healing. The Truth Commission is part of transitional justice mechanism and one of the outputs will be recommendations for institutional reforms. Since the constitutional reform process is almost complete, these reform proposals will be incorporated into the proposals for legislation to implement the new constitution. For example, police reform proposals can be incorporated into the new Police Act.

## Justice for victims of post-election violence and the investigation by the ICC

The President and the Prime Minister initially supported the establishment of a Special Tribunal to try post-election violence suspects in Kenya. In 2008, the Minister for Justice and Constitutional Affairs at the time, Hon Martha Karua, drafted two Bills to entrench the Special Tribunal into the Constitution and to establish it. The Bills were rejected by Parliament on the basis that such tribunal would be used to witch hunt political opponents.

After the resignation of Hon Karua, the Cabinet detailed the new Minister for Justice, Hon Mutula Kilonzo, to prepare a Bill to establish the Commission. There was no consensus in the Cabinet on the Bill and it was

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ICC prosecutor, Luis Moreno Ocampo

## Other reforms

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rejected. An attempt by Hon Gitobu Imanyara to introduce a Private Members' Bill has not borne fruit, as Parliament went on recess before debating it. With the debate on the Harmonised Draft now taking the centre stage, the Bill may not see the light of day, especially since it is a constitutional Bill that requires approval by two thirds of Mps.

In the meantime, the Chief Mediator, HE Kofi Annan forwarded the evidence and names identified by the Commission of Inquiry on Post-Election Violence to the Office of the Public Prosecutor of the ICC. The Prosecutor of the ICC has earlier indicated that the court would investigate the Kenya situation with a view to initiating prosecution if Kenya was unable to prosecute the perpetrators.

The Prosecutor visited Kenya to meet the President and the Prime Minister in November 2009 to determine the way forward in the country's situation. The President and the Prime Minister stated that the ICC was at liberty to proceed with the case though the State did not formally refer the case to the Prosecutor of the ICC. If the Government had made the referral to the Prosecutor of the ICC, this would have obviated the necessity of the Prosecutor to obtain the ICC's Pre-Trial Chamber's permission to commence investigation.

After the failure of the local investigation and prosecution mechanisms to demonstrate willingness and ability to prosecute the perpetrators of the violence, the Prosecutor petitioned the Pre-Trial Chamber on November 26, 2009 to permit him to commence investigation into the Kenya situation. The Presidency of the ICC had earlier designated the hearing of the case to the Pre-Trial Chamber 2 of the ICC. Already, an NGO and two individuals are reported to have petitioned the Pre-Trial Chamber to be permitted to appear as *amicus curiae* (friends of the court) in the proceedings.

## Impunity

The two groups are opposing the granting of permission to the ICC Prosecutor to initiate investigation, stating that the violence in Kenya did not meet the threshold of the ICC statute and that the Kenyan Judiciary



The desecration of the Mau forest.

was not incapable of trying the post-election violence suspects since Kenya was not a failed State. The Pre-Trial Chamber is yet to deliver a ruling on whether to grant permission to the Prosecutor to commence investigation. There are reports of threats to witnesses of the violence and the Kenyan witness protection programme implemented under the Witness Protection Act, 2007 by the office of the Attorney General seems incapable of protecting the witnesses. Failure to prosecute the perpetrators and sponsors of the violence will perpetuate a culture of impunity.

Without due application of the rule of law, political violence is likely to recur in future, especially given that the 2012 elections are less than three years away. The public has lost faith in the justice system since it is seemingly unable to prosecute criminal violations by senior politicians and public officials. There has been no attempt to charge any of the sponsors of violence before the court even where there was overwhelming evidence of culpability. Instead, the efforts to deliver justice to victims of post-election violence has been politicised and ethnicised.

## Interim Independent Boundaries Review Commission (IIBC)

The Commission has the mandate to review electoral and administrative boundaries and present the recommendations to Parliament. The IIBC has been constituted through appointment of the commissioners. The disbanded Electoral Commission of Kenya (ECK) had the mandate of drawing constituency boundaries in intervals of eight to ten years. The last

boundary review was conducted in 1996. Failure by ECK to conduct regular and objective reviews has led to the view that constituency boundaries were gerrymandered to favour areas that supported a particular political persuasion.

This led to the dilution of votes and violation of the principle of equality of the vote at the elections. The Commission has completed preparatory work for the boundary review process and has released a schedule for public hearings on boundary review. The work of the Commission is intertwined with the constitution review. The Harmonised Draft provides for representation of the people.

The structure of representation and the size of Parliament will be determined by the report submitted by the Commission. If the report is adopted, the resulting constituencies will be used for the purposes of conducting elections. Likewise, the boundaries of the counties will result from the commission's report. The counties, as recommended in the Harmonised Draft, are drawn from district boundaries, which the Commission has the mandate of reviewing.

## The Interim Independent Electoral Commission (IIEC)

The IIEC was formed as the successor to the Electoral Commission of Kenya in the matters of elections management. The voters' roll used in 2007 was nullified and the Interim Commission is expected to register voters afresh. The Commission will also supervise any elections or

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referenda for a period of 24 months. It was the intention of Parliament that prior to the expiry of this period, a new Constitution would be realised.

The IIEC is charged with the duty of implementing reform proposals on the electoral process. The IIEC has drafted an Elections Bill that will review, reform and consolidate all laws relating to elections. The Commission is the successor to the ECK, which was accused of mishandling the 2007 General Election. The IIEC has already conducted by-elections in Bomachoge and Shinyalu constituencies. The Speaker has declared the South Mugirango Parliamentary seat vacant after nullification of the 2007 election by the High Court in its judgement of an election petition. The Commission is supposed to hold by-elections within 90 days from the date of the declaration.

The Commission is making preparations to start voter registration in readiness for the referendum to be held on the Harmonised Draft around June, this year. The on-going boundary delimitation process has hampered this exercise. The IIEC has performed well and has stated that it will now proceed with registration of voters and review the voting centres once the IIBC completes its review of constituency boundaries. With a looming referendum to ratify the Harmonised Draft, the IIEC must execute its mandate expeditiously to ensure its success.

### The Interim Independent Dispute Resolution Court

The Independent Court was established under Section 60A of the Constitution to hear and determine all matters relating to the review

process and the ensuing referendum. The judges to the Court were interviewed by the Parliamentary Select Committee on Constitutional Review and approved by Parliament. The President later formally appointed them. The judges were sworn in on January 15, 2010.

Two suits challenging the review process have been filed in the High Court's Constitutional and Judicial Review Division in Nairobi and the High Court of Kenya at Mombasa. The Independent Court will now determine them. The Court is expected to hear and determine all suits relating to the review process. In the past, judgements of the High Court have shaped the procedural issues relating to the review process. For example, the judgement of the High Court in the Reverend Timothy Njoya versus the Constitution of Kenya Review Commission determined that the referendum was mandatory to facilitate adoption of the constitution by the electorate.

The Constitution has been amended by inserting Section 47A, which expressly provides that the sovereign right to replace the Constitution with a new one vests collectively in the people of Kenya and shall be exercisable by the people through a referendum. The court further held that the National Constitutional Conference in Bomas of Kenya could not serve as a constituent assembly for the purposes of adopting a constitution.

The procedure in adapting a new constitution is important because it defines who and at what stage comments can be delivered to the Commission, the range of community interests that will be considered in the review process, generates trust and inclusion and creates mechanisms for consensus building and compromise.

### Impact on Harmonised Draft

The findings, activities and reports of organs established to implement the reform agenda are expected to feed into constitutional

review and the necessary laws required to implement the constitution. Ultimately, the reform agenda must inform the constitutional review process. The different commissions involved in the process were established at different times and have demonstrated varying effectiveness in delivering their mandates.

The IIEC is preparing to carry out voter registration while the IIBC is yet to carry out public hearings on boundary delimitation. This means that the results of the two commissions may not inform the review process that is nearing completion. The remaining stages in the review process, including the holding of a referendum must be completed within six months. The Committee of Experts must, therefore, envisage the recommendations of the commissions and include any proposals with a constitutional dimension in the Harmonised Draft. The detailed reforms will subsequently be included in legislation.

### Nutshell

The reform processes have been proceeding in isolation and in parallel. There is real danger that the results may be competing or conflicting and not complementary. The Committee of Experts and the Parliamentary Select Committee on the Constitution Review must integrate the recommended long-term reforms into the constitution. Other reforms will form part of the wide ranging and mandatory legislative reforms that will ensure the laws of Kenya comply with the provisions of the new constitution. Any law that is inconsistent with the provisions of the Constitution is void to the extent of such inconsistency. The outputs of the different reform initiatives must be implemented in a logical and coordinated manner to optimise the impact.

Even with the setting up of the Truth Commission and the National Cohesion and Integration Commission, the process of national healing is unlikely to succeed as long as the Kenyan society is polarised. There is an urgent need to address past crimes, corruption, marginalisation and poverty. The Truth Commission will assist in the understanding of these issues, but a lot more must be done across other institutions. **KN**



Protesters during the post election violence.

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is opposed as likely to divide the public. The section of the electorate that will reject the draft that will be adopted as the new constitution may not recognise that constitution. This may cause divisions in the country. Further, the threshold for approval in a Yes-Yes referendum should be a majority vote of at least 65 per cent of votes tallied to ensure wide support for the Draft.

Section 47 A (5) (b) of the Constitution provides that the Draft Constitution shall be ratified if at least 50 per cent of the registered voters vote in the referendum; and more than 65 per cent of the valid votes cast are for ratification; and at least 25 per cent of all the valid votes cast in at least 65 per cent of all the districts are for ratification. The public must be sensitised on the need to vote at the referendum to ensure that the threshold prescribed in the Constitution is met.

Since Kenyan politicians have demonstrated little ability to identify and support national causes, the

electorate must hold them to account and watch their moves during this consensus building process. Kenya is at crossroads and a historical moment. It cannot afford to stall the reform process. The referendum, the 2012 elections, the trial of post-election violence victims and the release of the 2009 National Census results are all possible triggers for violence.

## Ultimately

The new constitution will set up accountability mechanisms that will ensure impunity does not fester and that all are equal before the law. Further, if the President and the Prime Minister support different options during the referendum, then the Grand Coalition will collapse after the referendum. If a new constitution will not be realised, that will be a recipe for chaos and anarchy. The requirement that for a President to be declared elected must garner more than 50 per cent of the votes cast will eliminate ethnic voting blocks by requiring that winners must partner with other ethnic groups to ensure a win.

The Grand Coalition was formed to ensure return to peace in Kenya. The coalition lacks cohesion leading to open and embarrassing disagreements on national issues. The lack of cohesion in the coalition is a significant threat to the implementation of the reform agenda. It has been noted that coalitions have undermined the maturation of political parties as they are usually formed as vehicles for winning political power rather than bringing social transformation and institutional development.

The two coalition partners do not seem keen to push for completion of the reforms. They are interested in pursuit of political power and maintenance of the status quo. Without progress on fundamental reforms, any contentious event could precipitate renewed violence. Due to the instability in the country, Kenyans must put pressure on politicians to demonstrate patriotism and put the country first to ensure the reforms are realised and implemented. **KN**

## Agenda 4

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votes tallied, it was impossible to establish the winner of the elections. The committee identified constitutional, legal and administrative reforms necessary to enhance the efficiency and credibility of the electoral process.

The Draft must implement the recommendations of the Kriegler Commission to ensure the management of elections is beyond reproach. This will be strengthened by the reform of the Judiciary, which has the role of determining disputes relating to election results.

## Police reforms

The Government appointed a Task Force chaired by Justice Philip Ransley to review the constitutional and legal framework regulating the police and identify the key reforms required to increase the effectiveness of the force. The final Task Force Report was submitted to the Government in September, 2009. The report identified more than 200 reform measures. The

Kenya Police is the primary organ mandated to maintain law and order in the country.

The Commission of Inquiry into the Post-Election Violence, chaired by Justice Philip Waki, stated that police reforms were necessary and urgent to restore public confidence in the force. Transparency International has identified the police as the most corrupt public institution in Kenya for successive years. The police have been accused of using excessive and unnecessary force against unarmed civilians resulting to injuries and death.

Such reforms must of necessity include provision of adequate equipment, legal reforms and retraining of police officers in community policy and attitude change to enable them deal with the citizens in a humane manner and to respect the right of citizens. An Implementation Committee will guide the implementation of the report on

Police Reforms chaired by Titus Naikuni. The Committee has been granted one year to prioritise and implement the reforms.

## Conclusion

The myriad reform initiatives being implemented in Kenya must be harmonised and streamlined to reduce duplication and enhance delivery. This will include full implementation of commissions' and task force reports which have been submitted to the Government.

The public must hold the Government accountable by reading the reports and demanding their implementation. The anchor is the constitutional reform process, which has a bearing on all the other reforms. Parliament must, therefore, endeavour to play its part in the successful conclusion of the review process and in implementation of the new constitution. **KN**

# THE KONRAD ADENAUER FOUNDATION IN KENYA

**K**onrad-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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