

May 2010

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KatibaNews

Towards a new constitutional dispensation in Kenya

The Church versus the State

- * **Leadership and Integrity in the Constitution**
- * **Bill of rights**
- * **Civic education**
- * **Katiba briefs**

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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 linking up with other journalists' organisations locally and abroad.

MAY 2010



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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All are welcomed to send their observations on the constitutional review process to be the Editorial Board.

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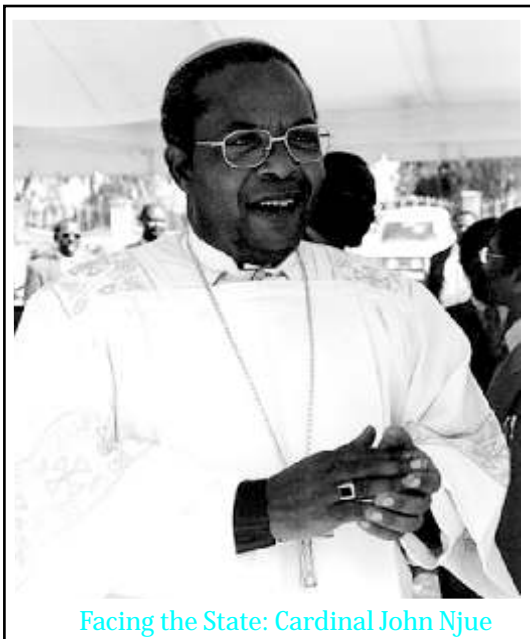
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We at *Katiba News*
support the
Proposed New
Constitution. We
ask all Kenyans of
goodwill to vote
YES on August 4th,
2010 and bring the
change we have
been fighting for
since
independence

The Church versus the State

The love hate relationship between these two institutions clearly emerged during the era of former President Daniel arap Moi. While Moi was an ardent churchgoer with his Sunday service attendance beamed on national television every Sunday, oftentimes he was at loggerheads with the clergy over controversial issues concerning governance. And now this relationship has reached a climax because of two issues in the Proposed Constitution that the Church feels aggrieved about. Our writer traces the history of the current conflict and which way the referendum might go as a result.

By Dorothy Momanyi



Facing the State: Cardinal John Njue

The countdown to the referendum on the Proposed Constitution has created the greatest divergence on an issue between the State and the Church in independent Kenya.

The major point of departure between the two has been the issue of abortion as provided for in Article 26 and the retention of the Kadhi's courts under Article 169 of the Proposed Constitution.

The Church maintains that the wording on the Article on abortion is susceptible to abuse

and can be easily used to permit abortions by choice. On the other hand the State maintains that in fact, the said provision proscribes abortions except in instances where either a mother's life and/or health have been certified as being in danger.

On the Kadhi courts issue, the Church says their inclusion in the Proposed Constitution is tantamount to unfairly elevating one religion over the others. But the State affirms that removing Kadhi's courts from the Constitution would be taking away the rights of the Muslim community which they currently enjoy in the present Constitution.

Though having their childhood shaped by the Church, all the three presidents, including the current one Hon Mwai Kibaki, had different relationships with the institution during their tenure.

Evangelising

During the first president Jomo Kenyatta years (1963 - 1978),

there was little conflict between the two. Both entities limited their activities to their respective turfs. The majority expatriate clergy focused their energies on the evangelising mission, the building of schools, hospitals and churches and was less bothered by local politics. There were few instances of conflict except in 1969 when the church opposed oath-taking activities taking place among Kenyatta's Kikuyu loyalists.

The church was complacent in the first 10 years of former president Daniel arap Moi's presidency. However, when the crackdown on dissidents intensified and the infamous "mlolongo" vote rigging occurred, outspoken clerics such as the late Bishop Alexander Muge, the late Archbishop Henry Okullu, David Gitari and Rev Timothy Njoya openly began to criticise the State. In return, they suffered constant harassment from State operatives. This tense relationship was maintained until Moi completed his two terms of office in 2002 after the resumption of multiparty politics in the country.

But Kibaki was viewed as a reformer by the clergy. During his first five years in office, the clergy was complacent and some like retired Catholic Arch Bishop Ndingi Mwana a'Nzeki and the controversial Father Dominic Wamugunda were co-opted into public office.

The church remained silent even in the face of endemic corruption

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and also took a neutral stand during the 2005 referendum.

Consequently, as a result of loss of political opposition in the mainstream churches, a new breed of evangelical churches rose. This group has not limited itself to simply influencing politics from the pulpit but has gone a head to vie for elective positions. The evangelicals have been the loudest in opposing the proposed Constitution but seem not to have any other bone of contention with the current government.

Echoes of the 2005 referendum

The first referendum on November 21, 2005 was preceded by an intensive period of campaigning pitting supporters of the draft Constitution (Banana camp) with those against the proposed constitution (Orange camp).

The campaigns split the already divided cabinet into two diametrically opposed camps. President Kibaki and close confidantes mainly from the Mount Kenya region supported the draft, while the Orange camp was led by Raila Odinga, Kalonzo Musyoka, William Ruto, Uhuru Kenyatta, Najib Balala and Charity Ngilu.

The campaigns were full of political intrigue and sadly, were informed by political expediencies of the time rather than substance. Members of the Orange camp advocated for a strong prime minister while the Banana camp sought a strong presidency. The fear that Hon Raila Odinga, now prime minister, was seeking executive powers through the back door

The first referendum on November 21, 2005 was preceded by an intensive period of campaigning pitting supporters of the draft Constitution (Banana camp) with those against the proposed constitution (Orange camp).

made the right wing arm of governing National Rainbow Coalition (Narc) to engineer the trimming of the proposed powers of the PM, thus irking the left wing of the coalition.

Coupled with other grievances by Narc's Liberal Democratic Party such as the failure of President Kibaki to honour the pre-election memorandum of understanding resulted to the voting being a disapproval of the Kibaki government.

The Banana camp was accused of using State funding, vote buying, arbitrary pay rises to civil servants and giving of "political" districts to woe voters. The Orange camp relied on donor funding and on the charisma of

its leaders, especially the Langata Member of Parliament Raila.

The civic education exercise bore little fruit since the campaigns turned from being periods of intensive voter education to avenues for a major political showdown and a realignment of the political spectrum in light of the looming 2007 General Election.

The referendum was professionally conducted by the now defunct Electoral Commission of Kenya. At the end of it all, the draft Constitution was rejected by 58 percent of voters.

Political fallout

The referendum caused great political upheavals. Kibaki dismissed the entire cabinet and the Orange camp, which slowly coalesced into the Orange Democratic Movement (ODM), demanded snap elections. ODM's calls for mass rallies were banned by the government. The President made new appointments to the cabinet completely leaving out all supporters of the Orange campaign. In an unprecedented move 19 ministers and assistant ministers rejected their appointments citing the lack of consultation.



The Rev. Timothy Njoya, the veteran clergyman of fighting the State

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Leadership and integrity in the Proposed Constitution

It is said that these two aspects of governance have been the bane of our socio-economic and political development in Africa. So much so that there is even an award worth millions of dollars for any African president who passes the test of visionary leadership by Sudanese international entrepreneur Dr Mohamed Ibrahim. Our writer delves into the Kenyan situation and looks at how the Proposed Constitution may help us get better leadership

Dorothy Momanyi

Generally, leadership can be said to be a social process by which a person, through influence, exercises his ability to motivate a group of people towards accomplishing a common goal.

On the other hand, integrity denotes the possession and adherence to firm ethical principles including self respect, sincerity, confidence, truthfulness, fairness, justice, punctuality, being consistent with one's values or belief system and having the ability to avoid wavering due to outside influences

Fortunately, aspects dealing with leadership and integrity have found a place under chapter six of the Proposed Constitution. Although the chapter does not define leadership and integrity, it makes reference to the authority assigned to a State officer and equates the position with that of a trustee.

The State officer is required to exercise his mandate in a manner that is consistent with the Constitution, respectful to people, that honours the nation, that dignifies the office and which promotes public

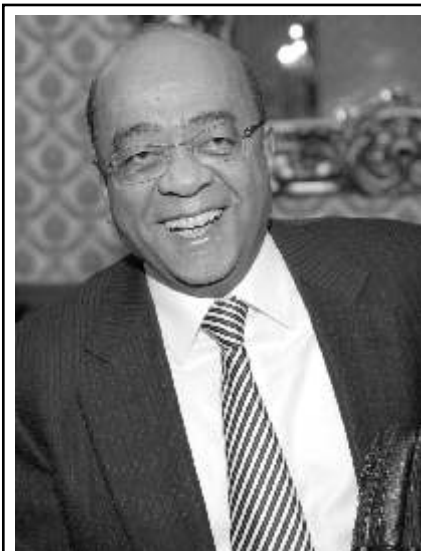
confidence in the integrity of the office. Article 73 (1) (b) reaffirms supremacy of the people by asserting that a State officer has the responsibility of serving rather than ruling the people. This is to deter the tendency of leaders lording over the people.

Article 73(2) outlines the guiding principles for leadership and integrity. These include the selection to office on the basis of personal integrity, competence and suitability or through free and fair elections. Such a guideline is a break from the past practice of making recruitments on the basis of ethnic affiliations, personal friendship, nepotism and individual loyalty.

Other captured principles include objectivity, impartiality, avoidance of nepotism, favouritism or corrupt practices, demonstrations of selfless service, honesty, accountability, discipline and commitment to service.

Conduct

An interesting aspect is the requirement that a State officer shall behave with decorum not only in public but also in private. This requirement is significant in that leaders with indecent conduct even in their households



African billionaire Dr. Mohammed Ibrahim, founder of Mo Ibrahim leadership award for former African presidents

will lose the capacity to run a public office.

Major restrictions have been imposed on State officers. The first is the prohibition of privately receiving gifts or donations; these will now be submitted to the State. However, the challenge will be distinguishing private gifts from public ones. For instance, if a State officer is awarded a Nobel Prize for his work while serving the State, will he or she be required to relinquish the entire prize to the State?

State officers will also be prohibited from operating bank accounts outside Kenya or accepting personal loans that may compromise the integrity of their offices. They are also prohibited from participating in any other gainful employment, holding an office in a political party and, if retired, holding more than two concurrent

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remunerative positions as chairperson or director of a State corporation or State organ.

Step forward

These prohibitions and guidelines are geared towards deterring avenues of corruption and addressing the challenges involving ethnicity, sexual exploitation and gender imbalance in public offices.

However, since these provisions mainly dwell on appointed State officers, it will be important for the public to be educated on the qualities of good leadership so that there is uniformity of character between elected officials and appointed officers.

Bearing in mind that learned individuals are often more skilled and effective than their uneducated counterparts, the Proposed Constitution falls short by failing to prescribe minimum education qualifications for State officers or highlighting the role of education in leadership. Another shortcoming concerns the failure to prescribe transparent wealth declarations for all State officers

in order to deter corrupt acquisitions of wealth.

Finally, since the Proposed Constitution equates a State office with a public trust, it ought to have specifically stated that a State office is not one for enrichment but sacrifice in public service so as to deter the growing trend where individuals go for public positions in pursuit of personal wealth.

Questionable leaders

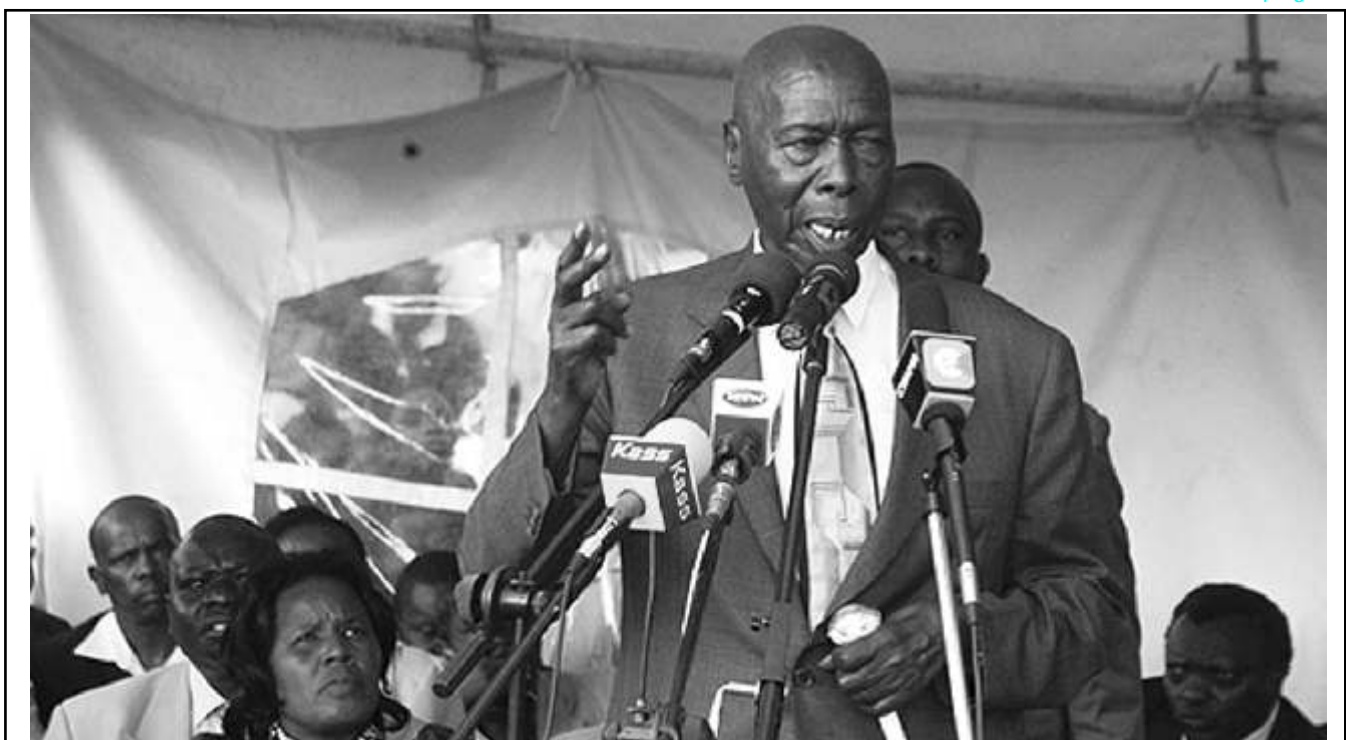
Scholars and commentators always point out that the single most challenge to development in Africa has been that of effective leadership. Since independence, many countries have been afflicted by questionable leaders who are characterised by tendencies towards personal rule, personalisation of national resources, selfishness, mediocrity, opportunists masquerading as nationalists and absence of pragmatic or charismatic leaders. The more popular of such leaders include the late Mobutu Seseko of Zaire,

the late Omar Bongo, the late Said Barre of Somalia, the late Sani Abacha of Nigeria and the late Idi Amin of Uganda.

Leadership skills are different in different leaders. Nonetheless, a good leader necessarily has to have gentleness, frugality, humility, tactfulness, efficiency, brilliance, charisma, modesty, sense of judgment, foresight, wisdom, ability to delegate, imagination and perseverance. (Adebayo A, (2000) Principles and Practice of Public Administration in Nigeria-Ibadan, sectrum Books limited) A leader does not necessarily have to have all the above but at least ought to have a great combination of most of them.

But is a leader born or made? This is a centuries old question. While some people believe that leaders are born with the requisite qualities, others believe that like any other vocation, leadership can be learnt and developed through life.

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How would former President Daniel Arap Moi be ranked in the Mo Ibrahim leadership index?

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Nazi regime

Monarchies have been established on the belief that their royal blood contains the necessary attributes of leadership. Greek city States like Sparta applied eugenics (selective breeding in humans) so as to produce leader like persons. Eugenics gained popularity in the 20th Century but fell into disrepute after it was associated with the Nazi regime.

The belief that leaders are born has recently been energised by a study presented at the British Psychological Society's annual conference in Brighton by Dr. Carr of the University of Birmingham and Institute of Psychiatry in London. The study indicated that people with high score of genes involved in synthesising *dopamine* (the brain chemical linked to empathy and *serotonin* the brain chemical linked to emotion) had higher scores on leadership.

The more logical view is that leaders are a combination of nature and training. This is because one essential feature of leadership is intelligence. If you are born without it, you are unlikely to become a leader. However, intelligence is only a potential and singly is inadequate to make a leader. The potential must be nurtured under the right stimulus and environment.

As the ancient Greeks thought, at birth a mind is *tabula rasa* (blank slate) which gathers knowledge from education, experience and perception. Sigmund Freud's theory of psychoanalysis also supports this school of thought by stating that personality traits are attributable to family dynamics and upbringing.

Tribal leaders

Chapter 6 of the Proposed Constitution directs the enactment of legislation dealing with the content, manner and form of oath or affirmation, the exemption on gifts that do not have to be surrendered to the State by its officers and legislation giving guidelines on other public officers. Though not expressly mentioned, legislation will have to be enacted to deal with the recruitment, monitoring, dismissal or conduct of disciplinary proceedings against State officers.

Kenya has had three presidents, and now a prime minister. The first president of the republic, Jomo Kenyatta, was charismatic and started off well in making the transition from colonialism to independence. He was able to maintain relative peace and stability in a cold war era. However, with ailing health, he allowed opportunistic tribal leaders surrounding him to commit gross atrocities including murder of popular politicians. He also developed an authoritarian character, entertained no dissent and is accused of taking part in massive grabbing of public land.

The second president, Daniel arap Moi, was less charismatic than his predecessor but certainly more hardworking. His initial years from 1978 -1983



American President Barack Obama: Is Africa capable of producing such charismatic leadership?

were characterised by a genuine desire for progress. However, his crackdown on Opposition figures and widespread corruption blotted his record.

As for Kibaki, he has most attributes of integrity but lacks charisma. He is more of an executive president who appreciates delegation of power. His failure to act on friends involved in grand corruption, the appointment of cronies in key positions of finance and failure to forestall the 2007 post election violence stains his positive attributes.

Compared to the rest of Africa, our leaders have relatively been better and have steered the country away from major conflicts. However, as compared with ideals of leadership as found in prominent leaders around the world, they fall short of the aspirations.

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The Banana vs. Orange referendum campaigns became the climax of the political infighting between members of the Narc coalition. This is seen as the precursor to the bloody 2007 post election violence.

Lessons learnt

The Banana versus Orange campaigns and the outcome of the 2005 referendum

provided Kenyans with an experience that ought to teach them lessons in the current attempt at a new Constitution.

First, civic education is crucial in enabling people to vote from a point of knowledge. People must be able to compare and contrast contents of the Proposed Constitution and those of the current one.

Compromise is another lesson that should have been learnt. Had Kibaki toned down on the issue of a strong presidency in 2005, the draft Constitution would have sailed through. After all, Raila still got the PM's position after the 2007 elections.

The current hardening of positions between the Church and the State is detrimental to Kenyans quest for a new Constitution. A give-and-take particularly from the Church would enable the Proposed Constitution to pass and create a new dawn for Kenya.



Muslims during a prayer session.

The current stalemate also negatively affects the wider reform agenda. Indeed, the Church cannot be taken for granted as it has access to more than 70 percent of Kenyans and the sermons may swing the voting pattern.

A Synovate report conducted in April this year and another from the Kofi Annan chaired Panel of African Eminent Personalities showed that at least two-thirds of voters shall vote in favour of the Proposed Constitution. This figure might change adversely as there is still a considerable number of undecided voters who may be influenced either by the Church, by unexpected developments like the illegal insertion of the clause on "National Security", declaration of Kadhi courts as unconstitutional and/or infighting between the politicians.

Spanner in the works

The Proposed Constitution provides for a progressive and elaborate Bill of Rights that shall

act as a vanguard for the protection of fundamental rights and freedoms. It is one of the unsung features of the draft, yet it is the most remarkable.

However, a criminal development took place immediately after the Attorney General published the Proposed Constitution. An insertion was made in Article 24 (1) (d) and the words "national security" were sneaked into the provision. The article thus read: "The need to ensure that the enjoyment of rights and fundamental freedoms by any individuals does not prejudice *national security* and the rights and fundamental freedoms of others."

Under Chapter 14 national security is defined as the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability, prosperity and

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The Bill of Rights and fundamental freedoms

Proponents of the Proposed Constitution state that Kenyans will now start reaping the fruits of the decades old fight for basic human rights. This is because rights and freedoms have been expanded in the draft covering many areas and peoples. But still, our writer analyses what is contained in the proposed document and gauges whether there can be absolute freedom.

By Guandaru Thuita

Although the expressions “human rights” and “fundamental rights and freedoms” find frequent use, they do not lend themselves to an easy definition due to controversies over virtually all the facets of the concept, particularly as regards the origin, underlying theories and the contents of the rights.

A definition may however be derived by isolating the individual words that constitute the phrase “fundamental human rights”. A right is a positive entitlement which creates a corresponding duty on others to respect or hold these claims. When these claims are described as human, it is meant that they are inherent in human beings.

The use of the term “fundamental” in relation to rights implies the existence of ordinary rights or what may be called secondary or derivative rights that are non-fundamental in nature. Majority of ordinary rights are granted by statutes and moral codes, whereas fundamental rights mean those rights expressly guaranteed by pre-eminent laws such as a Constitution.

Perspective

The definition of the fundamental rights and freedoms is influenced by the perspective or school of thought that one perceives the rights. The main theories are Natural Law theory, Legal Positivism and Marxism.

Natural Law theorists believe that human rights are rights that are naturally endowed, inborn and peculiar to humans. These theorists believe that the outlining of fundamental rights and freedoms in laws only serves to recognise them but not grant them.

In the school of legal positivism, human rights are considered to be those which are provided for by the laws of the State or international laws. Consequently, these laws would not be human rights unless the law prescribed them as such in Constitutions, national laws, conventions, treaties, declarations, conventions and covenants. The major articulations are many and include the United Nations Charter, The Universal Declarations

of Human Rights, The International Convention on the Elimination of all forms of Discrimination and The 1966 Covenant on Civil and Political Rights.

Karl Marx

Marxist theories insist that the socio-economic and political conditions prevailing in a given society are the ones that shape and create human rights. Karl Marx called human rights of the bourgeoisie as Sham rights, which enable the oppression of labour by capitalism. Marxists perceived human rights as the liberation of people from the domination by capitalists and elimination of the exploitation of the working class.

In the current Constitution Kenya has outlined a Bill of Rights under Chapter 5. These rights have strictly been referred

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Nyayo House: A building many would love to forget.

to as Fundamental Rights and Freedom in Kenya. The country has also endeavoured to domesticate some international laws in statutes but these other domestications have only created rights which are perceived as secondary rather than fundamental.

However, notwithstanding whether the definition of Human Rights is to be derived from a Naturalist or positivist perspective, it is not in dispute that Human beings are the entitled to certain rights and freedoms peculiar to them.

The expression “inalienable” right is a creation of natural law thinkers who primarily argue that natural rights are non-relinquishable, non-salable and non-transferable. Further, they state that natural rights are neither conferred by the State nor taken away.

In discussions on the Theory of Social Contract, inalienable rights are said to be those that cannot not be surrendered by citizens or taken away by the

sovereign. Scholars like John Locke identified the inalienable rights as those to life, liberty and estate (property). The 1776 United States Declaration of Independence also recognised inalienable rights as those relating to life, liberty and the pursuit of happiness.

The Proposed Constitution

The fundamental rights and freedoms have been captured in Chapter 4 of the Proposed Constitution simply as “Bill of Rights”. Part 2 of the Chapter covers the specific rights from Article 26 to 51. It is worth noting that the principles of natural rights have been reflected in Article 19(3) which expressly affirms these rights as natural and inalienable, except as contemplated in the Constitution. Article 25 further specifies the rights that cannot be limited. These include freedom from torture, cruelty, inhuman or degrading treatment, freedom from slavery, the right to a fair trial and the right to an order of *Habeas Corpus*.

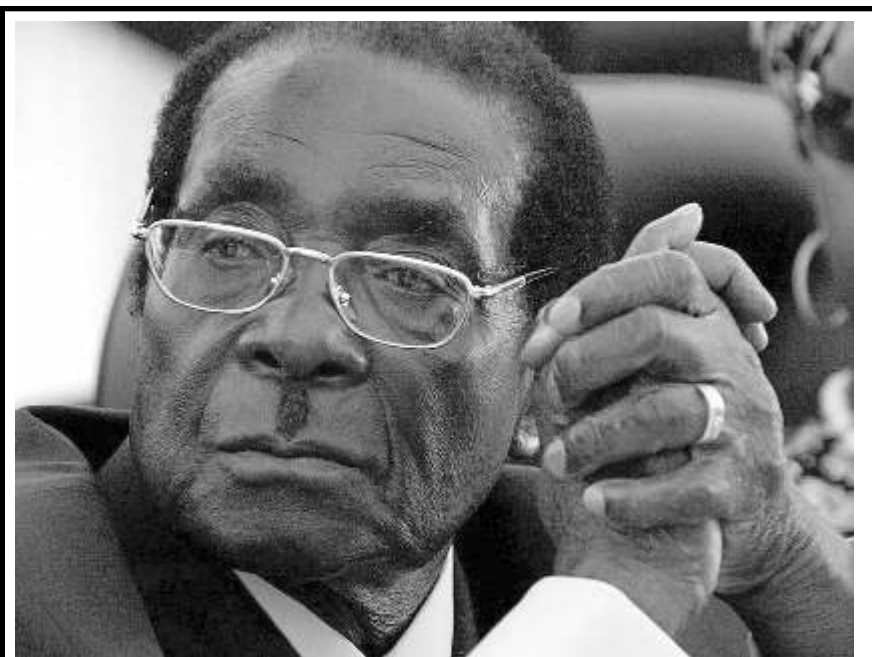
The Proposed Constitution is very expansive in content as compared to the current one. This has widened the scope of existing rights and makes an inclusion of other rights, thus increasing the number of constitutionally recognised rights from 12 to 26.

Basically, the current Constitution focuses on the so called first generation rights, which deals with civil and political rights. They include the right to life, liberty, protection from slavery and forced labour, protection from inhuman treatment, right to own property, protection against arbitrary search or entry, rights to secure protection of the law in respect of accused persons, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement and protection from discrimination.

The Proposed Constitution also contains second generation rights which focus on the social economic and cultural aspects such as decent working conditions, health and education. There are also the third generation rights which address collective or solidarity rights such as the right to economic development and the right to a good and clean environment.

Abortion

One of the most controversial expansions is the provision in Article 26 on the right to life. The article asserts that life starts at conception and proscribes abortion except in cases where a health professional is satisfied that either the health or life of the mother is in danger.



It's me against the world, so seems to be the attitude of Zimbabwean President Robert Mugabe.

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The other rights which have been added to the Proposed Constitution include those of freedom of the media; right to access information held by the State; the right to assemble, demonstrate, picket and petition; the political rights of forming a party, participating in a regular election and to be registered as a voter; the rights in respect of labour relations including the right to fair remuneration, reasonable working conditions or to form a trade union.

Others include the right to a clean and healthy environment; economic and social rights such as the right to healthcare services; freedom from hunger; education, water and social security; right to use language of choice and express culture; the right to start a family and recognition of marriages under custom; consumer rights to quality goods and; rights to fair and expeditious administrative action. The right to a fair hearing has been expanded to include the right to have an advocate assigned by the State if substantial injustice may otherwise occur.

Delicate balance

One of the most difficult tasks in the enforcement of rights is the balancing of the stated rights with the rights of others or in the

public interest.

The limitations in the Proposed Constitution are contained in Article 24(1) where it is stated that the rights are not limited except as justifiable on the basis of human dignity, equality and freedom, bearing in mind that the enjoyment of the rights should not prejudice the rights of others.

There is simmering conflict with and in particular reference between the rights of others and the reproductive rights of women. The state and other individuals assert that an unborn baby is a person like any other and is in need of being protected from deprivation of its right to life. Society is of the view that it is in the public interest for the child's right to be protected.

Women on the other hand have been advocating for the recognition of reproductive rights. The World Health Organisation observes that all couples and individuals have a right to decide freely and responsibly the number, spacing and timing of their children. Reproductive rights may include the rights to legal and safe abortion, the right to control one's reproductive functions, and the right to education about contraception and sexually transmitted infections.

In the Proposed Constitution, these reproductive rights have not been recognised and are actually proscribed under Article 26 which identifies the beginning of life as being the moment of conception and prohibits abortions. In the circumstances, the door to reproductive rights has effectively been shut.

However, since the agitation for these reproductive rights is expected to rise in Kenya, it will be interesting to see how the State shall seek to balance these rights with the public interest and the rights of others.

Curtailment

In spite of the great progress made by the human rights movement, there still continues to be widespread curtailment of these freedoms by States. Monitors done by bodies like the United Nations Commission on Human Rights, Amnesty International and Human Rights Watch continuously reveal that almost all countries have significant violations of human rights with the exception of a few such as Netherlands, Norway, Denmark, Iceland and Costa Rica.

The worst violators include Chechnya, Democratic Republic of Congo with its military campaigns against the Lord's Resistance Army, Zimbabwe on torture of dissidents, Colombia, Venezuela under Hugo Chavez, Myanmar, North Korea, Algeria, Egypt, Israel on its treatment of Palestinians, Rwanda, Egypt, Sudan, Iran and Saudi Arabia where the great violations are in respect of the treatment of women and foreign workers. ^{KN}

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Can civic education be impartial?

With accusations of partisanship by the group opposed to the Proposed Constitution the government, through its Committee of Experts, is hard pressed to show that it is not dictating that Kenyans vote for the draft document. Still, there are plausible arguments that the Constitution is part of Agenda Four as stipulated in the Dr Kofi Annan return to peace plan after the 2007 post election violence. As our writer discusses, it is a thin line between teaching and dictating.

By Ivy Wasike



Members of the Committee of Experts on the Constitution in a more relaxed mood.

Civic comes from the Latin word *civitas*, or the Commonwealth. Amy Gutman defines civic education as “political education”. She describes it as the cultivation of the virtues, knowledge and skills necessary for political participation. It aims at imparting the knowledge and skills that we need for effective participation in the community, government and politics.

Essentially, seeks to jumpstart the process of democratic socialisation by promoting support for democratic behaviour and values among citizens. Succinctly defined, civic education is the process of imparting to the citizens knowledge of the basic features of a democratic political system to enable them access it when their interests are at stake and to make them believe in the importance of key democratic values so as to be able and willing to participate in local and national

politics. It also seeks to ingrain in society a felt connection, if not an identity, with that country or society.

To the French Philosopher Jean Jacques Rousseau, civic education or “learning to function well in society” is unavoidable. The very act of formal education is by definition civic education as universal basic formal education and democratisation are complimentary.

Thus, the goals of civic education are:

- Introduce citizens to the

basic rules and institutional features of democratic political system and provide them with knowledge of their democratic rights and practices.

- Pass to them values that are essential to democratic citizenship
- Encourage responsible and informed political participation in society.

Civic education in Kenya

In post-independent Kenya, civic education was not deeply entrenched as its importance was not seen especially in the one party system era. However, in 2002 Kenya published its national curricula on civic education to be delivered nationally using non-formal education methods.

This was the period prior to the first multiparty elections and it was meant to guide both contenders and voters during the campaign period. It was delivered by a coalition of 70 non-governmental organisations (NGOs) co-coordinated and managed through a joint International Development Fund. In 2005 another civic education programme was rolled out by the then Electoral Commission of Kenya (ECK) to educate Kenyans on the draft Constitution before the referendum.

Civil society, religious institutions and other NGOs and politicians took upon themselves to carry out civic education on the draft Constitution. This was done in a highly charged environment due to a parliamentary

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split on along the MPs for or against the draft. Prior to the 2007 elections the country embarked again on civic education through the media, workshops and trainings as spearheaded by the ECK.

After the post election violence in 2008, people needed to be educated on the objectives and operations of the Truth Justice and Reconciliation Commission. Before the 2009 national census the government ensured that civic education was carried out to educate the citizens on the importance of the census and how they were expected to participate in the counting process.

Informed decisions

In 2002 and 2005, the money driven campaigns and rallies by politicians watered down civic education. Consequently, many voters participated in the respective voting exercises without making informed decisions. In 2007, however, civic education had an impact as people were more aware of their rights and the need to choose good leaders. This led to many people exercising their voting rights with the aim of

bringing change. Unfortunately, the General Election was riddled with controversy which culminated in the violence that shook the country to its core.

Civic education needs to be neutral, objective and impartial. But the effect of past civic education in Kenya has left much to be desired. After the draft Constitution was rejected at the referendum in 2005, the government attributed this to lies and propaganda that had been fed on the people. This was a clear statement of the inadequacy of civic education at the time. This also applied in the 2002 civic education exercise prior to the multiparty elections.

Citizens were taught to think about 'what is best for me' and not 'what is best for us'. What is best for me was all about block voting and not what was good for the country. As Rousseau aptly states in his treatise *Emile*, the essence of civic education is when all citizens ask themselves what is best for all and then actively participate in bringing the needed change.

Constitutional issues

Currently, there are two civic education initiatives going. One is by the Interim Independent Electoral Commission (IIEC) of Kenya as mandated by the Constitutional Review Act while the other is by the Committee of Experts (CoE) also under the same Act. It is the first time that civic education is expressly prescribed by an Act of Parliament, and a body established to oversee it. Section 24 of the said Act mandates the CoE to facilitate and promote civic education in order to stimulate public discussions and awareness of constitutional issues.

The funds for this exercise were drawn the Consolidated Fund. Only the two bodies are mandated to carry out civic education in Kenya. IIEC is also carrying out civic education through the media and has published booklets as a guide to elections. The committee has rolled out a manual to be used by all civic educators and has also 15 provincial co-ordinators and 210 constituency civic educators to assist in the delivery of civic education and coordination of regional activities nationally.

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All the political bigwigs are in the Yes camp.



Supporters of the No Campaign in a demonstration at Uhuru Park during its launch.

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Manual

The delay by the government to release funds for civic education on the referendum as a tactic to ensure there is limited time to educate people. Other stakeholders in the Constitution review process are allowed to carry out civic education but adhering to the IIEC's manual as a guideline. Contrary, religious organisations, civil societies and politicians have already started the campaigns for and against the Proposed Constitution by targeting specific groups and giving their personal opinions on specific topics.

Most of the civic education carried out in the past as highlighted failed in fulfilling the three key aims of civic education. Instead, it was used as a form of propaganda leading to conflict and partisanship. By failing to control who does and to whom the education is carried out to creates a situation where parties interested in a particular outcome pursue their biased objectives. Consequently, citizens make uninformed choices.

Best Practices

In South Africa, an extensive values and education programme has been developed and institutionalised in the school curriculum to preserve, promote and extend the constitutional democracy established in 1994. A survey carried out showed that many students in South Africa knew and believed that voting, paying taxes and taking part in political decisions that affect their country was an important part of a responsible citizen.

In Germany, there is an informal regulator of theoretical materials and curriculum support materials to encourage use of what already exists - instead of people creating their own materials. In America students are taken through civic education which involves learning about the country's political and military history, the workings of governmental bodies and conformity to specific rules.

Gutmann's position is that the government must oblige its people to participate in education for citizenship, especially children who

must be exposed to embrace certain national values.

This has been the trend in Eastern Europe in countries like Bosnia where civic education through the existing schooling system has been one of the forms of democratic support to independence, democracy and accession to the European Union. From the foregoing, it is clear that if Kenya seeks to have impartial civic education, there is need to create a value based curriculum to be taught in schools instead of rolling this out on an ad hoc basis.

This will help to avoid impartiality during heated campaign periods and fulfill the aims of civic education. Since there is universal free primary education, children can grow to be responsible citizens ready to actively participate in issues that affect their communities and country as a whole. **KN**

The writer is an Advocate of the High Court of Kenya.

Katiba Briefs

May 3rd - The Anglican Church says it will keep away from the planned public rallies organised by Christian clerics to campaign against the Proposed Constitution. ACK Archbishop Eliud Wabukala said the planned launch of the 'NO' campaign at Uhuru Park was likely to open the door for an emotional rather than a sober approach to the referendum debate.

May 4th - The United States Government disowns a group said to be funding some Kenyan Churches to lobby against the proposed Constitution.

May 5th - Attorney General Amos Wako was given the go-ahead to publish the draft Constitution after scrutiny by a parliamentary committee confirmed that no major changes had been made to the document endorsed by Mps.

May 7th - Wako executes his part of the review deal by publishing the Proposed Constitution.

May 11th - President Kibaki and Prime Minister Raila Odinga met leaders of parties with MPs in parliament in an attempt to rally them behind the 'YES' campaign.

May 13th - The conduct of the National Security Intelligence Service was called into question as the 'NO' camp demanded the suspension of the referendum over illegal changes in the proposed Constitution.

May 14th - Kenyans move another step closer to approving or rejecting the Proposed Constitution with the publication of the referendum question: "Do you approve the Proposed New Constitution?" A team of detectives was set up to investigate how illegal changes were sneaked into the Proposed Constitution.

May 18th - Green and red colors will soon capture the psyche of the country after they were declared the symbols for the 'YES' and 'NO' camps respectively for the August 4th referendum. Both sides welcomed their campaign colours selected by the Interim Independent Electoral Commission.

May 20th - The 'YES' team says it needs KSh 541 million to finance its referendum campaigns, saying that the money should come from the government.

May 21st - MPs allied to the 'NO' camp termed as illegal plans by their rivals to raise KSh 541 million for their campaign from tax money

May 25th - The decision by a Constitutional Court to declare inclusion of Kadhis courts in the Constitution illegal elicited mixed reactions. Chief Kadhi Kassim Hamad expressing his disappointment with the ruling.

May 26th - The August 4th referendum will still be held despite the Constitutional Court ruling, AG Wako clarified.

May 28th - Wako asks for a speedy hearing of his appeal against the ruling which declared the Kadhi courts illegal. In a letter to the Registrar of the High Court, he asked that the appeal be held before the August 4th referendum.

May 31st - The ongoing civic education on the Proposed Constitution will be conducted to its full conclusion despite the funding shortfall from Treasury, Committee of Experts Chairman Nzamba Kitonga said.

An elaborate security plan was put in place to check hate speech during campaigns on the Proposed Constitution.

June 3rd - President Mwai Kibaki and PM Raila Odinga told cabinet ministers opposed to the Proposed Constitution to stop peddling falsehoods against the document. The President said it was wrong for ministers who were in Parliament when the Proposed Constitution was debated to turn around and rubbish the document.

Compiled by Monica Gachui. Briefs courtesy of local dailies.

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other national interest.

The inclusion of the term in Article 24 would have legalised actions of the already feared national security organs such as the police, Criminal Investigation Department and the National Security Intelligence Service in curtailing individual rights on the pretext of national security. The entire Bill of Rights would have been substantially down by these two words.

The Ruto-led No campaign

One of the loudest voices opposing the draft has been that of Minister for Higher Education Hon William Ruto. One of his main contentions is on devolved government where he argues that as envisioned, the Counties are too weak to counter a strong presidency. He desires that a pure presidential system go hand in hand with strong regional governments to check the presidency.

He has also raised issues against the chapter on land. In particular, he claims that Article 65 is unacceptable as witch hunting may be used by the State to deprive individuals of land in the pretext of regulating its use.

Unfortunately, are not seen in good faith but as a gimmick to achieve political mileage against his erstwhile political friend turned bitter foe Raila Odinga. **KN**

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Reconciliation

One of the most celebrated leaders in the present times in Africa remains Nelson Mandela of South Africa. Throughout his struggle to end apartheid he exhibited selflessness, limitless determination, passion, courage, conviction, sacrifice and humility.

As president he led a fragile South Africa towards the path of peace, growth and reconciliation. He then retired voluntarily after serving for only one term. Attributes such as those of Mandela have been seen in current leaders like popular American president Barack Obama, former UN secretary general Kofi Annan with his meek and diplomatic style, Nobel peace laureate Prof Wangari Mathai and the Indian Prime Minister Man Mohan Singh who has transformed India into an economic giant, and is on the course of eradicating poverty in the vast country.

Traits

Several leadership models and theories have been advanced to

explain forms of leadership. The prominent of these are trait, behavioural, cognitive resources and transformational leadership theory.

The trait theory hypothesises that leaders have universal set of physical characteristics and aptitudes that combine to form the basis of their success. Such traits are physical vitality, intelligence, eagerness to accept responsibility, understanding flowers, social skills, capacity to motivate, trustworthiness, decisiveness, self confidence, assertiveness and adaptability.

Behavioural theory postulates that individuals can become leaders by following specific behavioural guidelines. Such guidelines are, for example, the managerial grid theories which focus on either the concern for the people or concern for production - a balance between the two, or the high concern for both.

The cognitive resources theory asserts that the effectiveness of group performance is contingent

upon the interaction between the intelligence and experience of the leaders.

The final leadership theory is the transformational leadership theory. This theory centre's on a leader's vision focusing on idealised influence, inspirational motivation, intellectual stimulation and individualised c o n s i d e r a t i o n s . Transformational leaders engage followers by making them aware of the importance of the task outcome.

All the above theories are important and borrowing a leaf from each would be appropriate. However, bearing in mind that Kenya is a third world country lagging behind many nations in development, we better get transformational leadership as a start. After we make enough gains we can then shift to the behavioural model to manage them. **KN**

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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