

October 2010

Issue NO. 10.10

KatibaNews

The birth of a new Republic

Implementing the new Constitution

- * **Editorial**
- * **Interview: Which way the civil society in Kenya?**
- * **Restructuring public administration**
- * **Katiba briefs**
- * **The Hague beckons**

Kindly supported by:



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.

October 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.

KatibaNews is published by Media Development Association (MDA). This publication has been made possible with the kind support of the Konrad Adenauer Stiftung (KAS) in Kenya.

MDA is not-for-profit organisation registered under the Societies Act.

Managing Editor
Stephen Ndegwa

Associate Editors
Susan Kasera
Patrick Mwangi
Henry Owuor

Office Assistant
Monica Muthoni

Photography
World Wide Web

Art Direction & Design
Khafre Graphics



Contents

2. Editorial
3. Implementing the new Constitution
6. Which way the civil society in Kenya?
10. Restructuring public administration
13. Katiba briefs
14. The Hague beckons

KatibaNews is published monthly and is distributed free to all media houses, civil society organisations, and the public.

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

Views expressed in this newsletter do not necessarily reflect those of MDA, KAS or partners. Reprinting of materials permitted provided the source is acknowledged.

All Correspondence to:

The Editor
Katiba News
P.O. Box 64254-00620
Tel. 2712309
Nairobi, Kenya
Email: mediakenya@yahoo.co.uk

Warning: The dragon slayer is in town



Dr P L O Lumumba

case dating back to the days of Kanu rule.

Following swiftly was former Foreign Affairs minister Hon Moses Wetangula and his permanent secretary after they were accused of complicity in a multi-million foreign

embassies scam. Not to be left behind was former Nairobi mayor Godfrey Majiwa after he was implicated in the Nairobi City Council's cemetery buying scandal.

Word is that more shockers are on the way as the new broom at the Kenya Anti-Corruption Commission (KACC), Dr P L O Lumumba, takes full charge of his new appointment. For Dr Lumumba it is a case of walking the talk. Luckily for him, Lumumba was not short of goodwill when he took over at Integrity Centre and people cannot wait to see him bait the sharks and whales.

So far so good, we might say. Kenyans have become used to new brooms that start by sweeping quite clean only for them to let dust gather after a short while. We do not wish this to Lumumba but we

appreciate the gargantuan task ahead of him. Already, people have started expressing their reservations about the sustainability of the renewed war.

Like former KACC director Justice Aaron Ringera said, corruption fights back. Already, pedestrian talk is that the corrupt will not let Lumumba go far. That in one way or the other they will devise schemes aimed at thwarting his efforts and turn him into a toothless bulldog. Such is the curse of leadership and we believe Lumumba clearly understands that this is not a walk in the park. Rather, it is more like a walk on Elm Street (the movie!).

Working for the KACC is really not your kind of ordinary job. May be Lumumba should take a visit to The Hague and have a lengthy chat with current prosecutor of the International Criminal Court Luis Moreno Ocampo. Definitely, he has quite some tips from his fearless work in Argentina as public prosecutor which are benchmark in the fight against corruption.

Of course, we wish Lumumba Godspeed and nerves of steel. If he is able to deliver on this one, then he can rest assured that his day in the sun now and in the future is made. **KN**

Over the last couple of months, Kenyans have woken up to strange goings-on in government. In unprecedented fashion, high ranking politicians and technocrats have either voluntarily, or been forced to do what they hitherto saw as a death knell to their careers.

Following accusations of corruption either by omission or commission, a couple of ministers and technocrats have recently left their hallowed seats to pave way for investigations into their role in alleged corrupt deals involving their institutions. Former Higher Education minister Hon William Ruto was the first to give way after being required to do so by the president and prime minister. Hon Ruto has a corruption

Implementing the new Constitution

Where do we go from here? This is the question in the minds of many Kenyans after we successfully promulgated the new Constitution. There are various committees to be formed and deadlines to be met in order to make the document as a whole operational. Our correspondent looks at the job ahead and whether we are equal to the task of making justice equal for all citizens of this country.

By Guandaru Thuita

In Kiswahili they say “Kuzaa si kazi, kazi ni kulea mtoto”. This means that childbirth is not a difficult process as raising a child. The analogy is more than appropriate for the Constitution implementation process in Kenya. Voting was a walk in the park compared to the impending task ahead of implementation.

Implementation in this context denotes the giving of life to the new Constitution by actualising all its directives. It encompasses the procedure to be used in making the Constitution alive and the teaching of citizens and the governors alike to act in line with the letter and spirit of the new

Constitution. The Commission for the Implementation of the Constitution (CIC) as established under paragraph 5 of the 6th Schedule of the Constitution is mandated with the implementation role.

This article seeks to examine the aforesaid commission through the lens of the CIC Bill 2010. To achieve this, we seek to underscore the objectives and contents of the Bill, draw attention to its flaws, if any, indicate whether the same is in symphony with the requirements of the new Constitution, make recommendations to the same and finally, examine the challenges that are likely to arise in implementing the Constitution.



Hon. Mutula Kilonzo, Minister for Justice & Constitutional Affairs.

The Ministry of Justice, National Cohesion and Constitutional Affairs has since published the CIC Bill, but attempts by the minister to table it in Parliament were thwarted for having been premature since the Constitution Implementation Oversight Committee (CIOC) was not yet in place.

Functions

The CIOC has since been constituted and focus has now shifted to the CIC. The urgency and significance of the CIC is

that no Bills can be presented to Parliament before it is formed. The Bill is on the face of it a commendable effort by the Government to create a mechanism for the appointment of competent persons to facilitate and oversee the implementation of the new Constitution.

The Bill bestows corporate personality to the CIC and reiterates its functions as outlined in the Constitution. These functions include monitoring, facilitating and overseeing the development of legislation and administrative procedures to implement the new Constitution; coordinating with the Attorney General and the Kenya Law Reform Commission in tabling Bills; working with constitutional commission to ensure there is respect of the letter and spirit of the new Constitution and finally to report regularly on the progress of implementation and impediments if any. It is not clear though, what the terms “monitoring”, “facilitating” or “overseeing” the implementation entails, but they are wide enough to cover all aspects of the process.

The CIC Bill also sets forth the standards and qualifications of those applying to be its members. One must be a Kenyan citizen and must also meet the guidelines on leadership and integrity as set out under Chapter 6 of the Constitution. These include the selection on the basis of personal integrity, competence, suitability, objectivity, impartiality, honesty and selfless service based solely on the public interest.

Legal practitioner

Other requirements are the possession of a degree from a recognised university and a distinguished career and experience of not less than ten years in the fields of law, public administration, economics, gender, human rights and government. The chairperson is further required to have qualifications of a

from page 3

Supreme Court judge including at least 15 years experience as a superior court judge, academic, judicial officer or legal practitioner.

Interestingly the CIC Bill also provides for persons excluded from applying to be members of the commission such as MPs, members of a local authority, persons adjudged bankrupt and those who were members of the Committee of Experts.

The procedure of appointment of members of the CIC under the Bill is one of a kind. The recruitment is to be done by the Public Service Commission (PSC). The PSC is required to shortlist about 21 suitable persons whose names it is to submit to the President and Prime Minister for nomination of a Chairperson and eight members. The President is then to forward the said names to Parliament for approval. Once approved the names are re-submitted to the President for appointment but if Parliament rejects the nominees, the President is allowed to submit a fresh nomination from amongst the persons short-listed by the PSC.

The CIC Bill stipulates the terms of office and vacation by commissioners, provides for the appointment of the Secretary of the Commission as Chief Executive Officer, declares that the CIC's funds shall be based on the figures provided by Parliament and provides that the quorum shall be two-thirds of the membership. The Bill finally reiterates that the commission shall stand dissolved five years after its establishment or upon the full implementation, whichever comes earlier. Nonetheless, Parliament is empowered to extend the life of the commission if need be.

Flaw

In spite of the positive attributes of the CIC Bill, close examination reveals glaring flaws, which completely water it down. This is a fundamental error bearing in mind that the CIC is the body that will set the tone for implementation of the letter and spirit of the

Constitution. Any faults in the set up of the CIC will not only give the entire process a false start, but it will also set a bad precedent for the subsequent legislations and consequently the entire process. If we get it wrong from the outset, we will be no different from the biblical person who built his house on quicksand.

The first flaw is in regard to the entity to recruit the commissioners. This mandate is donated to the PSC by Section 8 of the Bill. The PSC in recruiting the commissioners is required to convene a committee comprising of a person from the Cabinet office, the office of the Prime Minister, Ministry of Justice, State Law Office, Ministry of State for Public Service and Public Service Commission.



Prominent lawyer Ahmednassir Abdullahi, former LSK chairman and nominee to the Judicial Service Commission.

Save for the member from the PSC, none of the others is suited for the task of recruitment and the other nominees are nothing but busy bodies. In fact, the entire committee is a purely Government affair which excludes members from crucial civil society organisations such as the Law Society of Kenya. Considering that one of the *raison d'être* for the new Constitution was to avoid the exclusive operations of the Government, then the provisions relating to membership of the recruitment committee must be restructured.

Perhaps, it would even be better if the PSC is excluded completely from the exercise since the CIC is to be an independent

organ rather than an office within the Public Service. In fact, one wonders what the basis of the PSC in recruitment is since no powers has been donated to it in respect of the CIC under Schedule 6 of the Constitution. A private recruitment firm may be retained to perform the task.

Spheres

Another major flaw is in respect of the qualifications of the members of the CIC. Save for the requirement on gender, the Bill fails to adhere to the spirit of the Constitution in regard to the youth, disabled people and other marginalised groups.

Article 54 (2) of the Constitution requires that at least 5 per cent of members in elective and appointive bodies be persons with disabilities. Article 55 (2) also directs the State to take measures to ensure youths have opportunities to participate in political spheres of life. The requirement of 10 years experience in the prescribed areas such as law is a restriction clearly aimed against the youth as quality of experience is in all cases more useful than quantity.

The provisions relating to the procedure of appointment is also obscure. The drafters of the Bill must realise that the provisions of Chapter 15 of the Constitution entitled "Commissions & Independent Offices" do not apply to the CIC. Consequently, the role of the President in receiving the names of 21 nominees, forwarding some to Parliament and thereafter receiving the approved list for purposes of appointment is an unnecessary cycle.

The mischievous provision in Section 8(14) of the Bill allowing the President in consultation with the Prime Minister to nominate and forward names other than those submitted by the PSC is unwarranted and unjustifiable as the provision is a *carte blanche* for the Executive to dish out the seats to his relatives, cronies, loyalists and sycophants just like it was done by the past regimes.

from page 4



Hon. Abdikadir Hussein Mohamed, the Parliamentary Select Committee chairman on the Implementation of the Constitution

The worst evidence of poor draftsmanship is in regard to a situation where Parliament rejects the list of nominees forwarded to it on more than one occasion. Whereas it would make more sense if a rejected list was to be sent back to the recruitment organ, sections 9 and 11 talks of the list being returned to the President or Parliament in a never ending cycle.

Failing to provide for the qualification of the Secretary to the Commission is a serious omission in the Bill considering that the Secretary shall be the CEO of the CIC. This omission is a loophole that can be exploited to reward sycophants.

An unusual provision appears in Section 8 (2) (b) of the Bill, which allows applications for the position of commissioner to be made by a person, organisations or group of persons on behalf of any qualified person. The rationale behind this provision is not only unclear, but also suspect. It is likely to

open a floodgate for busy bodies to campaign for their friends, relatives, cronies and business partners. The ideal position would be for an interested individual to make a personal application.

Elective positions

In view of the foregoing, the CIC Bill is clearly an affront to constitutional values and has little symphony with the Constitution. The role of the PSC and the President in recruitment has no constitutional basis and the qualification criterion similarly exclude the youth and the disabled contrary to constitutional principles. Section 13 of the Bill which disqualifies persons from holding elective offices within five years of being a member of the commission equally has no constitutional basis and is, in fact, contrary to provisions such as Article 99 of the Constitution, which has set out an exhaustive list of persons disqualified from elective positions.

The implementation process is hurdled with numerous challenges. The greatest of these and those likely to frustrate the process are political. The process is yet to significantly commence, but we are already witnessing worrying signs. Controversy and drama is always lurking behind every step of the way. The formation of the CIOC was less than smooth. The tabling of Bills by the Justice Minister rather than the AG has also been heavily criticised.

The dearth of experienced drafters is slowing the process down. Hundreds of Bills are required and some like the Commission on Revenue Allocation have deadlines yet they are far from being drafted. Things are not made any better by the heavy schedule of the National Assembly, the looming General Election and succession politics.

Constitutionalism

Financially, the Government has to find ways of raising more revenue to support the structures, institutions and Commissions that have been introduced by the Constitution. It is yet to be established how much the whole process is to cost, but the Ministry of Justice, National Cohesion and Constitutional Affairs has indicated that in this first year, an estimated Sh6.8 billion shall be spent on the process.

Out of this money, a substantial sum shall be used to counter the challenge of social acceptance of the Constitution. Unless the masses are well informed of the Constitutional principles, taught to respect, own and adopt them, the new Constitution shall have been an effort in futility.

Consequently, a lot of resources must be spent on civic education to make the Constitution culturally, religiously and socially acceptable. In that way, we shall avoid being a nation with the best Constitution, but farthest from constitutionalism. **KN**

The writer is a Nairobi based Advocate.

Which way the civil society in Kenya?

With the government becoming more reforms savvy and giving up dictatorial tendencies, Kenyans have become a less belligerent lot. There is now more democratic space and people are willing to give the government a chance to get us out of decades of misrule. With this background in mind, the role of the civil society would seem to be waning. But, as our correspondent, Ms Dorothy Momanyi, found out from the President of the National Civil Society Congress, Mr Morris Odhiambo, there will still be big fish to be roasted.

KN: What is the National Civil Society Congress?

MO: The National Civil Society Congress (NCSC) is the umbrella body for all civil society organisations in the country with a signed up membership of over 600 organisations. Apart from the organisations that have signed the Charter of the Congress, there are hundreds more that take part in the activities of the Congress every year as long as their objectives are in line with the goals of the Congress.

The process of forming the Congress started way back in 2003 after the National Rainbow Coalition (NARC) took power. In various meetings beginning around March of that year, civil society groups met with a view of determining how they would operate under what was seen as a reformist regime. The fear then was that the new regime would co-opt members of the sector into government and, therefore, weaken civil society.

Between 2004 and 2007 we convened the Civil Society Forum (CSF) under the auspices of various organisations including the Legal Resources Foundation (LRF), the Constitution and Reform Education

Consortium (CRECO) and the Citizens' Coalition for Constitutional Change (4Cs).

The resolution that formed the Congress was formally adopted in 2007 basically transforming the CSF to the NCSC. The Charter of the Congress was formally ratified on November 1st, 2008 when the number of signed organisations reached 150. On November 2nd, 2008 an elected executive council replaced the interim executive council that had existed for about one year.

All activities of the Congress are done in accordance with the Charter. The Congress brings together NGOs, social movements, green formations (such as the Bunge La Mwananchi group whose national coordinator is a member of the executive council), faith based organisations and so on. To the members, the Congress represents the maturity of the civil society in Kenya.

Some of these formations have their own umbrella organisations. For instance, the Council of NGO which represents organisations registered as NGOs. The Congress represents all organisations and has in its membership even networks such as CRECO which has a membership of about 24 organisations across the country.

You will be interested to know that not many countries have such a solid formation and leadership as the civil society in Kenya. The Congress provides an important and unified platform for civil society to articulate issues of national importance. In short, it is the political voice of civil society.

KN: Shortly after the referendum on the Constitution on August 4th this year you held the National Civil Society Post-referendum Conference. Please give us



Mr. Morris Odhiambo

the background of this initiative and what it seeks to achieve.

MO: Yes indeed, the National Civil Society Post-Referendum Conference was held between August 12th and 15th, 2010 just one week after the referendum. It was the first significant activity held on a national scale after the referendum and to us it is significant that this was a civil society activity. In other words, it was an initiative of the people and not the State or political parties. It was purposefully held after the referendum but before the promulgation of the Constitution.

Why did we plan it this way? The aim was to place civil society in a very prominent place for implementation of the Constitution. Since we had secured a "Yes" vote, it was important to immediately host the entire civil society to think together and plan together for our role in the implementation phase. We wanted to give civil society a head-start in the implementation process.

The conference adopted eight resolutions which will guide civil society during the implementation phase. They also adopted the Jukwaa La Katiba as the common platform for participating in implementa-

-----> page 7

from page 7

tion of the Constitution. The conference mandated the leadership of the Congress to ensure that the Jukwaa! has a presence in all the 47 Counties created by the Constitution.

What we have been doing for the last seven weeks is to launch the Jukwaa! and set up County Steering Committees in all the Counties. This exercise has now been finalised for more than 15 Counties around the country. Jukwaa! is the citizens' platform for implementation of the Constitution.

KN: All other matters remaining constant, especially our party and tribal politics, would you say the referendum was a true reflection of the will of Kenyans?

MO: There is a lot that one can say about the referendum vote and why the majority of people voted for the new Constitution. Obviously, the positions taken by key political leaders were important in determining the final results of the referendum. One cannot rule out the usual influences such as ethnicity, religion, class, political party membership and gender among others. These and other factors will always shape peoples political thinking, positions and actions and they indeed influenced the vote.

Now, ultimately in regard to the referendum vote, it is the result that matters regardless of what influenced the decisions of individual voters. In this sense the Constitution enjoys broad legitimacy because almost 70 per cent of Kenyans voted for it. This is the political fact. On this basis one is justified to say the Constitution reflects the will of Kenyans. Remember also that one of the key facets of democracy by the majority is that the majority will have their way while the minority have their say. Legitimacy is a factor of popular acceptance.

Also, let's not forget that many groups took part in urging Kenyans to accept the

new Constitution. I want to single out the role that civil society through the Katiba Sasa! Campaign played. The Katiba Sasa! Campaign was an initiative of the NCSC that started fairly early - in November 2008 - just before the launch of the Harmonised Draft Constitution that month.

We were able to marshal the civil society across the country to speak with one voice on the Constitution. Broadly speaking, that really is the role of the NCSC. So, in this case we enabled civil society to take common positions on the issues involved. We even coined the Katiba Sasa! slogan that eventually became the catchword for the "Yes" campaigns. Even the Yes secretariat adopted this catchword because it was already popular.

KN: How do you rate the political will of implementing the new Constitution and how do you see the process influencing or affecting the 2012 General Election?

MO: Let me start by saying that I am not a believer in political will. I am a believer in citizens empowering themselves to ensure that those responsible for implementing the Constitution will do so faithfully. Political will to me suggests that we sit on the side and leave our fate to politicians. This is basically to surrender our fate to one group of interested individuals.

I would rather talk about political necessity. The question therefore is, will those responsible for implementation of the Constitution see the political necessity to implement it faithfully?

I do not believe for once politicians and those who dominate our political economy see this Constitution as a friendly document. I dare say that even some of those who supported it did so only because it had already become popular with Kenyans, and they feared the consequences of being seen to oppose the popular will.

Consequently, it is my belief that the dominant groups will try all means to scuttle the process of implementing the Constitution. What Kenyans must do is to use all means necessary to stop this from happening. We have already seen some ominous signs like the whole debate on restructuring the provincial administration which we shall talk about later.

Political necessity is mobilised through civic action. This is precisely why we are organising citizens countrywide through Jukwaa La Katiba. It is my belief that the main factor that will determine whether or not the Constitution is implemented is how engaged the citizenry will be. As usual, we invite all citizens to join Jukwaa! so as to be empowered to pressure the responsible institutions and the political class to implement the Constitution fully and respect their sovereignty.

KN: You have not responded to the question of how it will influence the 2012 general election.

MO: Oh, yes! For me there are two fundamental ways in which the Constitution will influence the 2012 elections. First, it will fundamentally restructure our mechanisms of representation, law making and so on. For instance, instead of a unicameral parliament we now have a bicameral parliament made up of the Senate and the National Assembly. In addition, for the first time affirmative action for marginalised groups and women is now a constitutional reality. There are many other examples.

Secondly, it will influence politics in terms of the expected political realignments and coalitions as we approach the 2012 elections. Politicians and Kenyans generally are busy looking at the changes that have taken place particularly in representation. Those who aspire to be leaders are now familiarising themselves with the new structures, seeing how the new structures fit into their calculations

-----> page 8

from page 7

and their potential to build winning alliances. I think this is an issue that will occupy public debate for a long time to come. I do not think it is a debate that can be concluded right away.

KN: Who will be the real watchdogs in ensuring that the Constitution is implemented according to schedule?

MO: The very first watchdog is Kenyans in their diversity of interests. Kenyans can play this role through their organisations and this is where organised civil society comes in. By this I mean the various organisations which include NGOs, CBOs, faith based organisations, women groups, youth groups etc. Jukwaa La Katiba is the key watchdog on implementation for Kenyans given that it is the key expression of their organisation.

The political parties of course will play their roles. However, the key thing for me is how citizens themselves will be mobilised, sensitised and organised to take part in the implementation. The NCSC is ready, willing and capable of presenting further opportunities for Kenyans to sufficiently play their watchdog role. We call upon Kenyans to support the Jukwaa! effort in large numbers.

KN: You recently stated that you would mobilise the public to demonstrate in the streets if the government reneges on its promise to implement the new Constitution as stated in the document. Do you think this approach is wise or even practical in this new dispensation? What other options of pressurising the government are available to the civil society?

MO: All options are open to the public. The overriding interest in all this is to ensure that the Constitution is faithfully implemented. As civil society, we have to send a strong message both to Kenyans and to the political elite. To Kenyans the

message is very clear: if you rest on your laurels you will be sorely disappointed. To the politicians the message is equally clear: if you have designs of frustrating the rebirth of our republic then please think more than twice! We are here!

The fact of the matter is that we are not out of the woods yet as a country. As you have seen, the old order will still want to reassert its values. Corruption persists. Ethnic based politics and distribution of state largesse is going on. Appointments based on ethnic rationale, nepotism and cronyism is the norm. Neglect of parts of the country is still a headache. Having a new Constitution in and of itself does not solve our challenges as a nation.

What it does is to give us the tools that we need to resolve these challenges. For instance, the Constitution gives us very clear tools to fight corruption and puts clear premium on integrity of public servants. But this does not mean that all of a sudden our civil service will be filled by people of integrity. It simply means that if we implement the constitution faithfully, then in the fullness of time, we shall create the conditions that will give us a clean public service.

This will start with very simple steps such as developing a code of conduct based on Chapter Six of the Constitution. We can also develop a criteria of leadership based on the same chapter and begin assessing all public officers using this criteria.

I repeat again that all options are open. These include demonstrations, picketing, petitioning public authorities and, of course, using the courts which we are sure will achieve a higher threshold of independence under the new constitutional dispensation. All these strategies and mechanisms have their own strengths and weaknesses. So we intend to employ all of them depending on the context.

KN: The provincial administration has lately become a heated topic of

discussion. What is your stand on the current system and what new governance structures do you think should replace it?

MO: Indeed, the issue of the provincial administration has become a hot topic. This has happened because of two reasons. One is that the old order is fighting for survival. Two is the uncertainty over what will happen to the roles that the provincial administration used to play. In other words, who will play these roles? Who will provide the services that this sector used to provide to the public?

The concern of many Kenyans we have been engaging with through Jukwaa! is the functions of the provincial administration. However, the elite are using some of the sentiments to try and sneak back the old order.

When we were in Voi for the Taita Taveta regional forum to launch Jukwaa La Katiba, one of the participants, an official of Mandeleo ya Wanawake, raised this concern. It was a good thing because it led us to a very useful conversation. The main question to us was not how to restructure the provincial administration per se or whether or not the provincial administration will be done away with or retained. Rather, it was how do Kenyans prepare themselves for self-governance at the local level?

Remember that the provincial administration was about how the central government (read the president) would govern mashinani (so called grassroots). This is why the provincial administration had been baptised the ears and eyes of the government, and particularly the head of state.

Now, the Constitution puts emphasis on self-governance. The system of provincial administration is a negation of the principle of self-governance since it is a system of vertical control without the requisite accountability. So the relevant question

from page 8

now is how to organise Wananchi for self-governance. What structures should we design within the Counties to provide for self-governance?

Remember that we shall still have decentralisation of County functions within the Counties. We shall also have administrative functions within the Counties. Therefore, to me the fears about the locus of the roles of the provincial administration are misplaced. From the Voi meeting we already have proposals that we shall soon share with the public on this issue. We shall also continue to sharpen these proposals as we wait for the setting up of the Commission for Implementation of the Constitution. I believe there is need to reengineer this debate and focus it in the right direction.

KN: *Is the rule of law and democracy finally on the right track in Kenya or what more needs to be done?*

MO: In line with what I have said before, I believe it is citizens through civic action who will ultimately determine our success. Those who are in power will not respect democracy and the rule of law if these do not promote their interests. The national interest shall only be guaranteed by Kenyans themselves. Therefore, we need to organise, organise, organise! This is what Jukwaa! is all about.

KN: *As the Kenya government becomes more amiable to reforms, there is the feeling that the influence of civil society is waning. Where do you see the civil society in the country ten years from now? Aside from rule of law and democracy issues, which other areas would you say need the attention of this sector?*

MO: The influence of civil society cannot wane because civil society is the society. We have the State on one hand and we have the society on the other. Organised groups are present even in the so-called

Now, the Constitution puts emphasis on self-governance. The system of provincial administration is a negation of the principle of self-governance since it is a system of vertical control without the requisite accountability. So the relevant question now is how to organise Wananchi for self-governance.

advanced democracies. Their roles are always relevant.

In 2003, many said the civil society was dead! The state then co-opted some members of civil society into state institutions hoping that the sector would be weakened. But this did not happen. Instead, civil society got rejuvenated through new ways of organising and new ways of conducting business. In the fullness of time, civil society responded to the challenges during that period by coming up with the NCSC.

Remember that it is through the activities of civil society that for the first time cabinet ministers resigned from government because of pressure in 2006. This was a time when some were busy writing the obituary of civil society.

These demonstrations were organised by the Name and Shame Corruption Networks (NASCON) campaign hosted by the organisation I work for – the Centre for Law and Research International. Therefore, like any other societal form of organisation, the civil society has its own organic ways of evolving and continuing to serve the public.

KN: *How seriously do you think the Kenya government holds the International Criminal Court (ICC) in terms of handing over suspects of the post 2007 election violence? Comment on the government's invitation of Sudan's President Omar El Bashir for the August 4th referendum.*

MO: First and foremost, I am one of those who initially believed that a local tribunal

was preferable to the International Criminal Court in resolving the post-election violence. I say this knowing very well that there are reasons such as corruption that have compromised the ability of our courts to guarantee justice.

The ICC option was always fraught with political quagmires. I also hold the view, secondly, that the political elite, by refusing to set up a local tribunal showed they preferred that the ICC be involved in resolving the issue. There is no need to underscore that Kenya as a signatory to the Rome Statute has certain responsibilities that it should meet under that Statute.

To the extent that the political elite refused to set up a local tribunal, and to the extent that justice to the victims of post-election violence will not be realised locally, as the NCSC we have supported the actions of the ICC.

However, we do not kid ourselves that the government is committed to resolving this issue. Remember that the government was forced to resolve the post-election violence by the Waki (Justice) Commission. If Waki had not made the radical recommendations he made the State would not even now be interested in this matter. It could have already been forgotten because many of those who died, in the estimation of the elite, are people of no consequence.

The actions of the government are really in line with the fact that it is not interested in justice for the victims of post election violence. **KN**

Restructuring public administration

It is usually hard to let go off something that has been part of your life for as long as you can remember. But sometimes a new beginning ends up bringing renewed life to a place or situation that had outlived its usefulness. With the new Constitution, the provincial administration as we know it is set to be relegated to history. But what will come in its stead?

By *Katiba News* correspondent

The system of administration in Kenya commonly known as the Provincial Administration has its roots in 1902, when the Colonial Government, through the Legislative Council enacted the Village Headman Ordinance.

This Ordinance allowed the Government to appoint village headmen who acted as its agents in the areas occupied by Africans, then derisively called 'natives'. The functions of the system at the time was to collect taxes, maintain law and order, pacification of Africans, render lay judicial services and participate in legislation of by-laws in the local authorities.

This administrative technique was intended to legitimise the policies of the Colonial Government by giving semblance to an inclusive and participatory policy making and governance process. The headmen were later renamed chiefs and remained objects of hate by Africans throughout the Colonial period as they were seen as collaborators of the Colonial Government, which Africans were resisting.

The village headman was the principal instrument of the Regional Agent, who was later designated as the District Commissioner (DC). The DCs were white colonialists. This system was modelled in the traditional African chief. Without a formal policing unit, the headman relied on village bullies to carry out his orders, which often times were unpopular and resisted. Since the headman did not derive authority directly from the residents, there was bound to be conflict. These village bullies took the role of the native police by enforcing the orders of the headman and

arbitrating disputes on delegation by the headman. The headmen, and later chiefs, acted as the eye and ear of the Colonial Government in the 'native' areas.

The Local Native Councils were later established in 1924 to act as advisory units for the DCs, enact by-laws on levying of taxes and on agriculture and education. Establishing the African Tribunal Courts, which were mandated to hear and determine disputes under the African customary law, later reformed the dispute resolution role of the headman. These tribunals, however, often relied on English law and were under the administrative supervision of the DCs, to whom appeals against the decisions of the Tribunals were referred.

Africans

A system of policing in the native areas was formalised through the Tribal Police Ordinance, which was enacted in 1929. This law gave recognition to the loosely constituted and untrained village bullies. This force was transformed into the Administration Police under the command of the DCs and the Chiefs and was expanded in the 1950s to counter the Mau Mau insurgency in the areas occupied by Africans.

At the time, the Kenya Police was used largely in the urban areas and areas occupied by the colonialists, like the White Highlands. During the recently concluded constitutional review process, Kenyans have

been debating on the need to retain or abolish the Provincial Administration. This system currently consists of Provincial Commissioners (PCs), DCs, District Officers (DOs), Chiefs and Assistant Chiefs. These officers are essentially civil servants who are supervised by a Permanent Secretary in the Office of the President. In their functions, they are assisted by the Administration Police.

The roles played by the system are development coordination at the grassroots, maintenance of law and order, conflict resolution and coordination of State functions. The development coordination role essentially enables the officers to indirectly supervise officers deployed in their geographical areas from other ministries. Further, the PCs and DCs control the Treasury from which all Government funds are deposited or withdrawn.

The PCs, the DCs and DOs chair the Provincial, District and Divisional Security Committees respectively. These committees are made up of representatives from the security agencies in the area and

----- page 11



What next? Provincial Commissioners in a past event.

from page 10

usually monitor the security situations. The officers also supervise development programmes in the area and liaise with and coordinate other civil servants posted at the district and provincial levels. Their functions, therefore, cut across ministries.

There is scant reference to the system in the former Constitution. The boundaries of districts are created under the Districts and Provinces Act. This Act recognises 46 districts and Nairobi Area out of the over 250 districts which have been established by the President to date through Gazette Notices. Parliament has not approved the creation of these districts, which are established as a Schedule to the Act. The High Court has stated that the districts have not been created following the correct legal procedure. The 47 districts have, through the new Constitution, been converted into counties. The Act establishes seven provinces and Nairobi Area.

New structure

Clause 17 of the Sixth Schedule to the Constitution provides that within five years after the effective date, the national government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved government established under the Constitution. This provision is recognition that there will be a duplication of roles



Head of Public Service Commission
Ambassador Francis Muthaura

The Local Native Councils were later established in 1924 to act as advisory units for the DCs, enact by-laws on levying of taxes and on agriculture and education. Establishing the African Tribunal Courts, which were mandated to hear and determine disputes under the African customary law, later reformed the dispute resolution role of the headman.

between the Provincial and District Commissioners, who have hitherto played a role similar to the now to-be-elected Governors of the counties and that the duplication may lead to conflict.

The Constitution has established counties, which shall be governed by a directly elected Governor. The Governor shall appoint a County Executive Committee. The legislative matters of the county shall be performed by a County Assembly with power to make certain by-laws. The officers serving in the Provincial Administration have been solely accountable to the appointing authority, who is the President, and have at times acted in a manner that is oppressive to the public, hence the resentment on their retention.

There have been complaints about the abuse of powers by the Provincial Administration. For example, during the clamour for reinstatement of a multiparty state, the officers were used to routinely collect intelligence and disrupt meetings organised by what the then Government called 'dissidents'. During the single party era some of the officers acted like agents of the then ruling party Kanu and zealously implemented party policies and programmes at the grassroots level.

The concept of harambee was further widely abused by the officers to harass the public and for self-enrichment of the administrators. The administrators were prone to arbitrarily order the

arrest of citizens and hence were viewed as part of the oppressive Government that violated the rights of Kenyans.

Abolish

With the establishment of counties, the retention of the Provincial Administration as currently constituted will undermine the functioning of the counties. The law must clearly delineate what role, if any, the Provincial Administration will play. The Constitution does not outrightly abolish the units of the Provincial Administration. Such law must also define clearly how the central government, which will control 85 per cent of the national budget, will implement its programmes at the grassroots. The county governments are a contrast to the district and provinces, which are agents of the central government.

The roles of the county and national governments are constitutionally demarcated and none of the levels derive power from the other. The devolved governments are intended to ensure national stability through checks on the powers of potentially autocratic national governments. The counties will mobilise resources locally and receive at least 15 per cent of the national budget. Since the counties elect their Governors directly, the political fortunes of the Governors are not tied to the fortunes of the President as is the case with the Provincial Administration.

Political ramifications

The Provincial Administration acts as the formal mechanism for Government decision-making and a means for political influence. During the era of the late

→ page 12

President Kenyatta, the PCs, who were very powerful, were routinely used to carry out hatchet jobs on behalf of politicians. The Provincial Administration was in charge of the electoral process, with DCs serving as the Returning Officers for all constituencies in a particular district.

Any candidate who was unwanted by the system would be frustrated by the officers at all the phases of the electoral period. The administrators have all along acted as a tool for politicians to implement and drive their agenda. With a restructured and perhaps more professional system, the politicians, especially those in power, will be robbed of a handy tool, which they have been misusing to propagate their political agenda.

The system has been characterised by high level of centralisation and bureaucratic method of work. The Public Service Commission, which was involved in interviewing and promoting the appointees, was composed of commissioners appointed solely by the President and its operations were not transparent.

The Provincial Administration should be reformed to avoid conflict between the administrators and the County Governors. Such restructuring will best be carried out once the law on the devolved governments is passed. Further, persons serving in the Provincial Administration are not well suited to recommend the type of restructuring that is envisaged by the Constitution. The new Constitution has not defined how the schedule of functions reserved for national government would be decentralised to the grassroots level if the Provincial Administration was abolished, especially services like citizenship and registration, security and police, economic and monetary policy.

Prescribed

The Provincial Administration that will be established after the restructuring must be accountable and responsive to the needs of the public. Such reforms must give due consideration to the structure and functions of the system, the level and quality of performance, the work methods and

procedures, the number and distribution of the personnel, suitability of personnel, effectiveness, integrity and patriotism, probity, accountability and value for money and adherence to ethical standards prescribed under the Public Officer Ethics Act and Chapter Six of the Constitution.

Public participation in the restructuring process will be a necessary and vital ingredient. The system, which is a colonial relic, must be restructured to conform to the dictates of the increased accountability, improved service delivery and transparent and open government envisaged under the new Constitution.

The Administration Police has been restructured under the new Constitution and placed under a joint Inspector General of Police with the Kenya Police. This means that the Administration Police will be obliged to respect the rights of the citizenry and ensure that they act professionally. Under a different command, the Administration Police will not be obliged to implement orders from the officers in the Provincial Administration, especially where such decisions are not supported by law.

South Africa

South Africa has nine provincial governments. The provinces have 30 to 80 members of the legislative assembly. The executive of the province is made up of the Premier who is elected by the Provincial Assembly and Executive Members appointed by the Premier. Decisions of the Executive Council are made through consensus. The Provincial Assemblies may pass laws on health, education and housing, which must conform to the national laws. The Provinces participate in drafting of National Legislation through the National Council of Provinces, which is the second chamber of Parliament. This structure resembles a system of devolution and not Provincial Administration.

Uganda

Article 179 of the Constitution of Uganda provides for creation of new districts based on effective administration and need to bring services closer to the people. The district serves as the unit of administration after the nation state. The districts have

increased from 17 in 1971 to 34 in 1990 and to 79 as of 2006. The districts are created at the sole discretion of the President.

The reasons advance for the creation of the districts are ethno-linguistic conflict management, patronage and electoral politics, improvement of service delivery to boost development outcomes and inability of the central government to resist the demand for new districts. There is little evidence that the creation of new districts has enhanced the rate of development in Uganda. The Regional District Commissioners are appointed by the President. There are no devolved government units in Uganda which may compete or conflict with the districts.

United States of America

Public administration in the US can be traced to the reign of Woodrow Wilson. He first formally recognised public administration in an article entitled 'The Study of Administration', where he wrote that it is the object of administrative study to discover what government can properly do and how it can do these proper things with the utmost possible efficiency and at the least possible cost.

Wilson advocated for the separation of politics and administration, the comparative analysis of political and private organisations, improving efficiency with business-like practices and improving the effectiveness of public service through management and by training civil servants, and merit-based assessment. The separation of politics and administration has been the subject of lasting debate in America.

The different perspectives regarding this dichotomy contribute to differentiating characteristics of public administration. The American system is merit based with little interference from politicians. Senior public servants are vetted and approved by Congress. The country is divided into states, which are semi autonomous and constitutionally defined. Most local functions are carried out by the States. **KN**

The writer is a Nairobi based Advocate.

Katiba briefs

August 25th - The process of implementing the new law begins in earnest after the Cabinet approved the publication and tabling in Parliament of the Commission for the Implementation of the Constitution Bill, 2010.

An attempt by a polling agent to thwart plans to bring the new Constitution into effect fails after the dismissal of a case filed by Ms Mary Ariviza by Lady Justice Hannah Okwangu.

Aug 26th - With the clock ticking fast towards promulgation of the new Constitution, a group plans to take a unique walk in the footsteps of freedom icons. The group plans to host a copy of the document near the spot where the national flag fluttered at the dawn of independence in 1963.

Aug 27th - Today's celebration at Uhuru Park have been dubbed the single biggest event since Independence Day December 12, 1963. The nation looks forward to the event that will transit its laws from one generation to another.

Aug 28th - The long awaited dawn finally arrives at 10.30 am and, for a while, it looks grey and bleak. But when the sounds of gunfire cracked through the grey skies, ricocheting thunder and billows of smoke, it appeared to melt overbearing rain clouds momentarily revealing glints of light at Nairobi's Uhuru Park. The future, after all, looks bright.

Aug 30th - Kenyans are asked to remain vigilant and ensure that the new Constitution is implemented to the letter. Prime Minister Raila Odinga says that with the promulgation of the new law, it is up to Kenyans to shape their own destiny.

September 1st - Observers say the local business environment in Kenya is set to improve following the promulgation of the new Constitution.

Sep 2nd - President Mwai Kibaki assures Kenyans in the diaspora that the new

Constitution will enable them enjoy the rights and privileges provided both in their country and their respective countries of residence through the provision of dual citizenship.

Sep 4th - Panic grips the Provincial Administration following news the Government has set in motion plans to dismantle and restructure the system.

Sep 5th - Veteran politicians and new entrants lay the groundwork for what promises to be big political contests across the country as candidates line up for the new positions at County level.

Sep 6th - Raila Odinga asks Kenyans to take advantage of opportunities that will be created by the new Constitution to improve their lives.

Sep 9th - The passage of new laws and rallying MPs to support the implementation of the Constitution are top on the Government's agenda. This is because Kenyans have great expectation on the new Constitution, says President Kibaki when he met the Board of the National Democratic Institute.

Sep 10th - Lawyers clash over the Government's appeal for international assistance to draft requisite bills to implement the new Constitution.

Sep 15th - Envoys from the European Union call on the government to quickly create two teams needed to implement the new Constitution.

Sep 16th - The Bill that will establish a team to guide implementation of the new Constitution is finally published. Consequently, Parliament can debate and enact the proposed law when it resumes its sittings on September 28.

Sep 20th - The debate on the future of the provincial administration takes a new turn after PM, Raila Odinga, says there are no positions for provincial commissioners, district commissioners and district officers

under the new Constitution. However, the PM says that the administrators currently in office will not be sacked but will get new posts in the newly created Counties.

Sep 22nd - Cabinet ministers are told to stop meddling in the implementation of the new Constitution. The reform caucus group of MPs says ministers were causing confusion on implementation and should leave it to the two committees assigned for the job and accused them of planning to hijack the process.

Sep 25th - President Kibaki says Kenyan's feat in overcoming political difficulties and implementing far reaching reforms that led to enactment of a new Constitution is a great source of inspiration to other nations in the region and beyond.

Oct 4th - Justice Minister Mutula Kilonzo is expected to introduce the first three Bills on the implementation of the new Constitution in Parliament amid bickering over the team's membership.

Oct 6th - MPs unanimously approve a list of their colleagues to serve on a team that will oversee implementation of the new Constitution.

Oct 7th - The Committee of Experts on Constitution Review is set to leave office after achieving their Herculean mandate.

Oct 18th - The Parliamentary Oversight Committee on Implementation of the Constitution kicks off its work with discussion on the formation of various commissions.

Oct 19th - The Committee on Implementation of the new Constitution says nearly Ksh 4 billion is required to implement the Constitution. The committee states Ksh 3.6 billion will be spent in the next two years and added that it was concerned the Government had not yet committed any cash to the process.

Courtesy of national press. Compiled by Ms Monica Gachui.

The Hague beckons

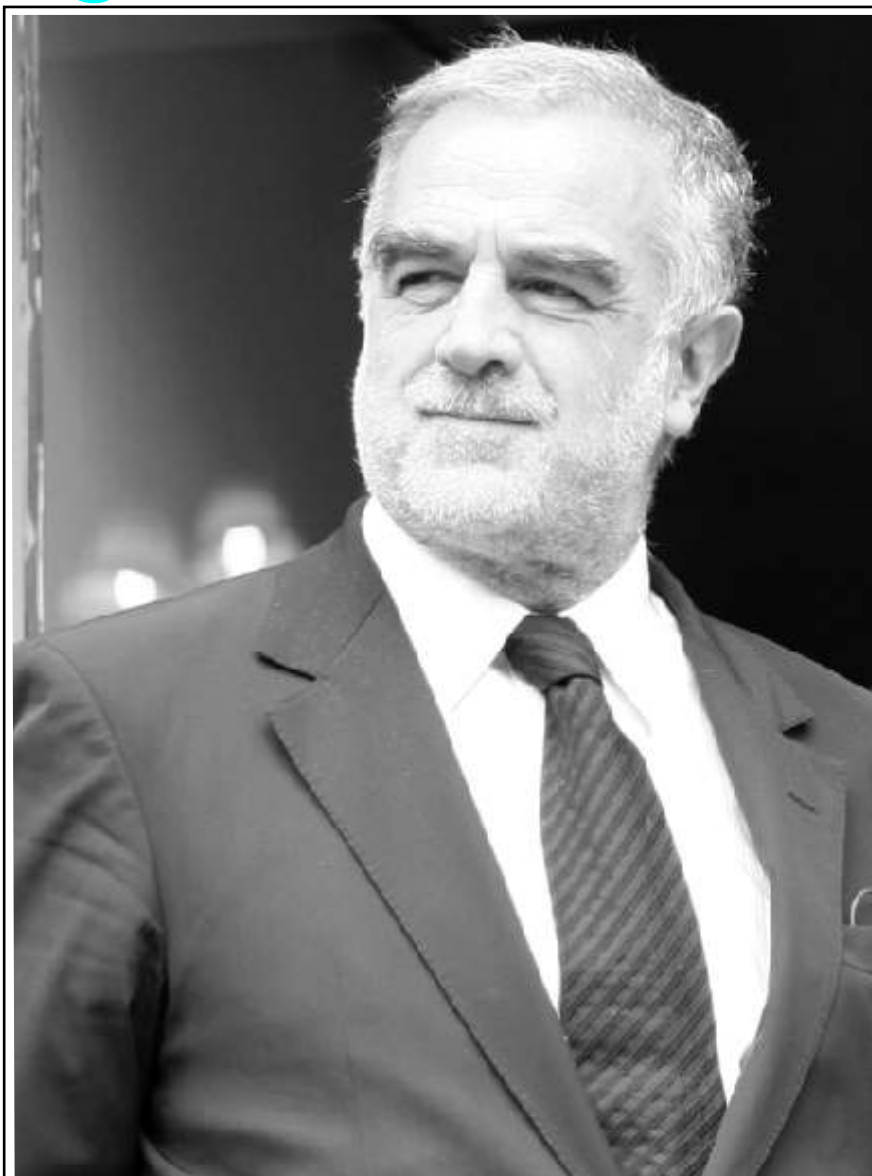
For those who thought the Prosecutor of the International Crimes Court, Mr Luis Moreno Ocampo, was bluffing when he stated he is now firmly on our case, the writing is on the wall. With the recent flurry of activities between Ocampo and his team, suspects of the 2007 post election violence have started squirming on their seats. Does Ocampo mean business this time round?

By Albert Irungu

The International Criminal Court (ICC) has for a while been the cause of sleepless nights for politicians who suspect they are in the Luis Moreno-Ocampo's list of personalities who bear the highest responsibility for the 2007 post-election violence. It has been over a year now since the ICC showed interest in the violence that happened in Kenya. With its investigation into what happened nearing completion, the real work of bringing the suspects to justice is about to commence.

Much has been talked about the ICC. It is a permanent international tribunal established in 1998 to prosecute individuals accused of genocide, war crimes, and crimes against humanity.

The court came into being in 2002. Kenya became one of the 155 countries to ratify the treaty in 2005. The Court



The international jailer, ICC Prosecutor Luis Moreno-Ocampo

has established itself in Kenya in readiness to prosecute suspects responsible for the deaths of more than 1,500 and the internal displacement of over half a million Kenyans. At the height of the worst ever post-election violence in Kenya, former UN Secretary General Kofi Annan with a team of eminent persons mediated and led the warring political parties in creating the National Accord and Reconciliation Act of 2008 that enabled power sharing.

As part of the resolutions to reform institutions which had failed Kenya in the time of need, a Commission of Inquiry into Post-Election Violence (CIPEV) led by Judge Phillip Waki was constituted. This Commission was the outcome of the Kenya National Dialogue and Reconciliation Accord of February 28, 2008, negotiated by Annan and the Panel of Eminent African Personalities. In addition, an agreement known as Agenda Item 4 was passed, which called for the establishment of a number of bodies of

→→→ page 15

from page 14

inquiry to address justice and accountability and longer-term issues of governance and the rule of law.

Criminal acts

Its mandate was threefold: to investigate the facts and surrounding circumstances related to acts of violence that followed the 2007 presidential election; investigate the actions or omissions of state security agencies during the course of the violence and make recommendations as necessary; and to recommend measures of a legal, political or administrative nature, as appropriate, including measures to bring to justice those persons responsible for criminal acts.

The commission successfully accomplished its mandate and handed its results to Annan at the end of 2008. As part of its recommendations, the Commission had required Parliament to set up a local tribunal to bring to justice perpetrators of the violence failure to which the Committee of Eminent Persons would hand over the report to the ICC to pursue the suspects. Parliament had 60 days in which it was to pass the required laws. However, time elapsed without any intervention from Parliament.

Much has been talked about the ICC. It is a permanent international tribunal established in 1998 to prosecute individuals accused of genocide, war crimes, and crimes against humanity.

The court came into being in 2002. Kenya became one of the 155 countries to ratify the treaty in 2005. The Court has established itself in Kenya in readiness to prosecute suspects responsible for the deaths of more than 1,500 and the internal displacement of over half a million Kenyans.

On November 2009, the ICC chief prosecutor requested permission from a three-judge bench that presides over the Pre-Trial Chambers to conduct formal investigation of post-election violence crimes. In March 2010, the Pre-Trial Chambers granted Mr Ocampo a go ahead to initiate investigation into crimes against humanity in Kenya.

Using "proprio motu" powers (meaning "his own accord") under Article 15 of the Rome Statutes, Ocampo began investigation. Over the last several months, he has been interviewing potential witnesses, providing witness protection and collecting evidence of the crimes. Ocampo also used evidence collected by international and national non-

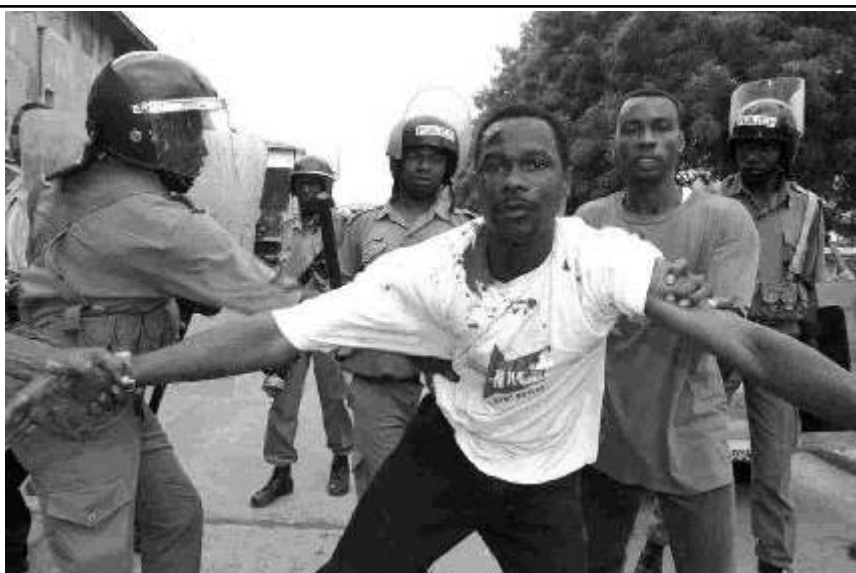
governmental organisations as well as the Government.

Diplomats

In May 2010, Ocampo met with victims, civil society groups, communities and politicians where he gathered many statements from potential perpetrators, victims, and witnesses that will aid his investigation in the future. To further consolidate its work in the country, Silvia Arbia, the Registrar of the ICC was in Kenya to sign an agreement that would grant ICC judges, prosecutors, investigators, administrators and other staff the same status enjoyed by foreign diplomats.

It will give them powers and privileges to move in and out of Kenya, the right to deploy its own armed officers, to import goods duty free and enjoy protection against arrest and prosecution. Through signing this agreement, the Government unconditionally gave the ICC leeway to set up a court in the country to conduct its trials if it deemed it right to do so.

Ocampo also began investigation on the culpability of state security agencies during the violence period where a lapse in the chain of command saw some members of the force rape and kill unarmed civilians. Even with the assurances of cooperation from the Government, Ocampo still faces hurdles in his work, the latest being the



This man received instant justice the Kenyan way!

----- page 16

In May 2010, Ocampo met with victims, civil society groups, communities and politicians where he gathered many statements from potential perpetrators, victims, and witnesses that will aid his investigation in the future. To further consolidate its work in the country, Silvia Arbia, the Registrar of the ICC was in Kenya to sign an agreement that would grant ICC judges, prosecutors, investigators, administrators and other staff the same status enjoyed by foreign diplomats.

from page 15

curtailing of his efforts to obtain high level minutes of security meetings that took place during the violence period.

These minutes can provide an insight into various aspects of police operations during the violence period, including on crucial information on the deployment of police forces in the hotspots prior, during and in the immediate period after the violence. In addition to the documentation, Ocampo's desire to interview the heads of the various security agencies has been met with much resistance. The Attorney General, however, has given orders that the officers should adhere to summons. The officers on their part, afraid to give information that would incriminate them, have agreed to do so under supervision from their legal representatives and in the presence of an appointed Kenyan High Court Judge.

With 400 witnesses already flown out of the country, Ocampo has covered his bases and is not leaving anything to luck. Majority of those who were also victims have been flown to secret destinations in order to protect their identities. The witnesses form the pillars of the ICC case.

Expected progress

Before Ocampo can have a case preferred against the suspects of the post-election violence, he has to discover more witnesses and collect evidence, which will be crucial in having a water tight case against these suspects. In the remaining

months of this year, the prosecutor plans to visit the hotspots again to gather more evidence.

Before the end of the year, Ocampo will present his findings on the investigation he has been conducting to the Pre-Trial Chambers who will then indict the suspects. The warrants of arrest will either be open or sealed depending on the will of the Government to hand over the suspects.

The Government signing an agreement with the ICC is an indication that it is committed to take the ICC process seriously and is ready to cooperate fully with the body until it completes its work. With such legal bindings, it would be impossible for the Government to back out of handing over any indicted suspect.

Currently, a prominent personality who suspects they might be indicted has written a letter to the ICC offering to appear willingly at The Hague for questioning. Through the office of the Minister for Justice, the Government has promised to hand over the suspects, six of whom are ministers in the current Government. The office is voicing a resolution made in a Cabinet meeting in which the Government promised to fulfill its international obligations as per the International Crimes Act.

Vacuum

The political implications of the indicting and arrest of the personalities responsible

for post-election violence will be huge. These personalities who bear the highest responsibility are also politicians who bear clout in their various political parties. Hence, their departure to The Hague means there will be a vacuum in political leadership. As the saying goes, nature abhors vacuum.

Thus, amidst the protests of ethnic targeting, there will be politicians who will see this as an opportunity to rise to power and even contest for the presidency; a chance they might not have had previously. At the moment, suspects through their supporters have begun the oldest trick in Kenyan politics of claims of ethnic targeting. The Party of National Unity, for example, has complained that the ICC was targeting one community from Central Kenya in the investigation.

This is a sign of similar protests to come as the count down to the arrest of these suspects nears completion. A positive attribute from the presence and work of the ICC in Kenya means the country will experience violence free elections, a departure from the past. The threat of prosecution for funding, organising and participating in electoral malpractices has become real.

Parliament has passed the Prevention of Organised Crime Bill 2010, which imposes jail sentences ranging from 14 years to life imprisonment to anyone who performs or threatens to kidnap, extort money, commit violence or recruit others into a gang. The implication of such a law is that anyone found sponsoring or recruiting people to gangs for electoral violence as it has been in the past will face severe consequences. **KN**

The writer is a Communication Officer with the African Health and Population Research Consortium in Nairobi.

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.

Contact address

Konrad-Adenauer-Stiftung
Mbaruk Road No. 27
P.O. Box 66471
Nairobi 00800, Kenya.

**MEDIA
DEVELOPMENT
ASSOCIATION**

**Media for
Change**