

<b>Nyamira Centre for Leadership</b> (in formation)		
Nyamira Civic Forum on Draft Constitution June 17, 2010		Patron: Dr Matunda Nyanchama <a href="mailto:matunda@matunda.org">matunda@matunda.org</a> <a href="http://www.matunda.org">www.matunda.org</a>

## Remarks from the Workshop Sponsor

A question to ponder!

*"There is one thing stronger than all the armies in the world, and that is an idea whose time as come."* – Victor Hugo

The question is whether constitutional reforms underway is an idea whose time has come!

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It is my pleasure to be part of discussions on constitutional change in Kenya and especially at the grassroots where such information and knowledge are deeply needed. As residents of Nyamira and citizens of this dear country, it is our duty to understand well the proposed Draft Constitution so that we can act accordingly. Doing so would allow us to make an informed choice when we say YES or NO.

The Kenyan constitution establishes how power in Kenya is exercised. It is meant to be a deal between citizens and those who hold power on behalf of the citizens. It is therefore important that we are well-informed; we need to know what powers exist, who would wield those powers and how well they are likely to serve the interests of the nation.

As well, we need to understand whether there are enough checks and balances to tame rogue use of power. Remember that *power corrupts and absolute power corrupts absolutely!*

The existing constitution, agreed upon in Lancaster in the lead up to independence, was crafted by our Founding Fathers and the departing British Colonial Administration. It was largely a compromise between the departing colonial power and independence leaders with little involvement of *mwananchi*. Like in many countries, our Founding Fathers did the best they could in the circumstances. We must be grateful to them for putting on a good fight and securing Kenyans' freedom.

Since it came into being at independence, the constitution has been amended several times over. Often, amendments have been done at the whim by those in power; and usually with an intention of consolidating and hence retaining power. A good example is the 1982 amendment of Section 2(A) which made KANU the sole political party in Kenya. Clearly, the government of the day wanted to shut out competitors in the political space. Yet competition of ideas is necessary for a functioning democracy where *mwananchi* is supposed to be the final arbiter.

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Note that nowhere did the Kenyan *mwananchi* have a say in the creation of independence constitution or the amendments it has undergone to date. All that time, *mwananchi* has been a spectator in the process.

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Agitation for constitutional change has been happening for many decades now. In that struggle, many Kenyans have paid dearly falling into trouble with the powers of the day. Many were detained without trial while others were prosecuted and given summary sentences. Lives were lost in the agitation for change even as the government of the day repressed such expression.

In a word, Kenyans have paid a price to get to where we are today. As we consider which way to vote, we must bear this in mind. These struggles MUST not be in vain.

And opportunity presents itself where we are now. Like in 2005, we are being asked to choose a new order or remain with what exists today. We must make a choice; it is a choice that we would live with for many years, perhaps decades, to come. It is therefore important that we make that choice from an informed point of view.

This forum was convened in part to create that understanding. It is my hope that you will take the opportunity to learn a lot, share your understanding and that of others so that you will go home better informed and better prepared to make a choice.

Most of you represent groups that you belong to. I am sure that you will share your lessons with your group members after the seminar. I want to challenge you to make sure that you ask as many questions in areas where you are in doubt. It is necessary that, when you go home, you know the answers to the issues that concern you; and that any doubts you have would be addressed; and any gaps in the information you have, would be closed.

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No constitution is perfect. It is also true that we cannot all agree on all things all the time. There are going to be some aspects of the constitution that we don't like; and we are going to live with some of those aspects. One can call it the price for living in a plural society; the compromise we need in order to cohabit together as a nation and one people.

In the end, some of you may say NO to the proposed constitution. That too is your democratic right. You would be choosing the *status quo*.

What, however, would be the consequences of such a choice?

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For that, I take you back to the 2005 referendum on the constitution widely termed as the *Kilifi Draft* or *Wako Draft*.

In the referendum debate of the time, a lot was said which led to substantial national polarization? There was fallout in government ranks that persisted into the 2007 General and Presidential Elections. And we know what happened thereafter! The history of the near-collapse of the country is there for us all to learn from. Think about the consequences of replaying the 2005 referendum and post-referendum events.

Now suppose that the proposed constitution had won the day in the 2005 referendum? What would have happened in the 2007 Presidential Elections?

With the results published by the defunct Electoral Commission, the two top presidential candidates would have been forced to go for a run off, as no one scored 50% that would have been required to win. We Kenyans would have had a chance to decide the winner in a more peaceful manner than the debacle that we endured. Clearly, the law of unintended consequences holds here: *"actions of people always have effects that are unanticipated or unintended."*

There is more that could be said about what would have been. I leave that to historians to determine. From the one example given, I am sure that the lessons of history are NOT lost to us.

Please bear the foregoing in mind when you choose NO.

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So what is new in the proposed constitution that advances Kenya that is NOT in the old one? And why should we change at all?

The proposed constitution would advance the sharing of power through devolution and ensure a government that is close to the people. And indeed, were it to come to effect, the proposed constitution would increase your access to representatives. Not only would you have a Member of Parliament and Councillor representing your interests but also a County Governor and Senator. Your issues would thus find a hearing both locally (in the county) as well as nationally – in Parliament and Senate.

The proposed constitution also advances rights on many fronts, including individual rights, property rights, rights of children and many more.

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It attempts to bring gender balance and would assure better representation of women in the political process. This would enrich the political decision-making process and make us a better country.

There is more, the proposed constitution would advance the independence of the Judiciary, remove conflict from legislature and curb executive power. In future, no minister would be an MP at the same; any elected MP selected for a cabinet position would have to resign and thus reduce conflict of interest that is pervasive.

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Some people may disagree with such conclusions. It is their democratic right to do so. However, it is also one's duty to persuade them to see things the way one understands the issues.

We MUST also respect those with differing opinions. Holding different opinions does not mean they are enemies. Never! Such people help one clarify one's stand and hence the reasons for choosing YES or NO. No one should vilify any person for taking a stand contrary to one's stand. In a democracy there have to be different points of view; and indeed, if all people agreed with each other all the time, it means that only one person may be thinking. And for the sake of our national well-being, our nation needs thinking people!

Other people may fear that the changes being proposed are too drastic. And that the future would not be predictable were the proposed constitution to come into place. Fear of failure alone MUST not cause rejection of the constitution. Only if you find the end-result unacceptable should you reject the proposed constitution. Remember, however, it is said:

*"It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change."*

As such we must choose between changes presented to us and adapt to a new order or retain the *status quo*. In doing so, remember the words of St Augustine:

*"If you would attain to what you are not yet, you must always be displeased by what you are. For where you are pleased with yourself there you have remained. Keep adding, keep walking, keep advancing."*

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If at the end of today's session you are convinced that we need change, then you should note those issues of concern so that they can be fixed in the future. As President Mwai Kibaki said recently, we should NOT split hairs about making

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changes after the constitution is passed. The fact is that we would have a more just order than we do presently.

Remember, Kenya is NOT the only nation to create a new constitution way past its independence. We have a number of precedents. A good example is Canada that did their constitutional repatriation in 1980. Before that, the country was governed by the British National Act of 1867.

Since the repatriation, Canada has faced experiences that would offer Kenya a number of lessons. These include clarifying issues of contention via the court system and ensuring that parliament passed laws that are in line with the constitution.

We too can do it! We just need to have national interest and well-being in mind. Thinking as one people, aiming at collective common good, we would also succeed.

Friends, the moment to make history beckons. We just need to embrace it to bring change. We also have a choice of retaining the *status quo*.

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Let me wish you the very best of deliberations. I am sure that you will go home more enriched than when you came. Make sure to share your knowledge with your groups. Remember that *you don't light a candle and put it under the table*. Go back and shine. In the process, you would provide light for others so that they too can make an informed choice when August 4, 2010 comes. In the process you would have advanced Kenya's national cause.

And when that day comes, vote the national interest. Ask yourself what is best for Kenya. Ask yourself how we can build a stronger nation with greater accountability? Ask yourself which of the two choices would assure better exercise of power by those you elect?

Tigara buya. Ntororane. Buna Mogusii atebete: *Banto 'mbaumerani, 'mbitunwa bitakoumerana; naende inyora buna: binto 'mbiang'ora, 'nsagasaga bikwanga.*

Signed  
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