

Removing Perennial Roadblocks: Kenya's New Constitution



The overwhelming passage of the new Kenyan constitution on August 4, 2010, represents a new dawn for Kenya and the citizens who have painfully and tirelessly fought for constitutional reforms for close to three decades. The 66.9 % majority emphatically underlines the singular desire for change from a 47 year old political system defined by, *inter alia*, an imperial presidency, incoherent and weak “devolution” structures and gross land and regional inequalities. These and many other concerns, led Kenyans to the polling stations to support the new constitution which promises to significantly curtail immense presidential powers and devolve power and resources to address gross inequality and poverty within and between regions. The decisive vote was a reflection of how badly Kenyans yearned for a rebirth, renewal and reinvigoration of the governance systems and structures to support and guarantee their well being, enjoyment of rights and good leadership. The new constitution has many appealing provisions to foster change and address the bottlenecks which have for a long time hindered effective development and distribution of resources in the country.

The dramatic reduction of presidential powers is the most salient feature that led to its wide acceptance by the Kenyans. Under the new constitution, the President retains the power to appoint and remove ministers (now cabinet secretaries), the attorney general, the secretary to the cabinet, permanent (now principal) secretaries, chief justice and ambassadors, but all must be approved by Parliament. The

President loses the power to determine the number of ministries, the dates of a general election, and the right to summon and dissolve Parliament.

By wielding these heretofore immense and unchecked powers, Kenya's post-independent presidents have blocked progress and wasted the opportunities presented at every moment to fully democratize and foster development. Kenyans enthusiastically embraced independence in 1963 as a gateway to their wellbeing, prosperity and freedom. However, this was not to be, as the founding President, Jomo Kenyatta, tactfully consolidated his powers by using public resources including land to ensure loyalty of his allies. Dissenting voices from left-wing politicians were either crudely punished or silenced through assassination. Above all, the regions and the people represented by dissenters were punished through denial of public services, which were controlled by a highly centralized corrupt system. Kenyatta's successor, Daniel Arap Moi, perfected the art of control during his uninterrupted 24 years rule, leaving the country with a crippled economy, polarized ethnic relations, and unacceptable levels of poverty and inequality.

In 1991, Moi had, under international pressure, opened up the *de facto* one party system to allow political opposition, although intimidation and corruption still won that election for him as well as the second one in 1997. But, hope for reforms and progress was renewed in 2002 following the election, for the first time, of an opposition President, Mwai Kibaki, and a government made up of a coalition of key reform icons and activists. Kibaki and his coalition were elected on the promise to deliver a new constitution in 100 days which would, among other reforms, limit the powers of the president. But, once he was ensconced in the presidency and its immense powers, Kibaki failed to honour the pre-election agreement which required him to expedite the reform process to pave way for the position of Prime Minister to go to one of the coalition partners. Thus, the constitutional debate in 2003 started on a platform of mistrust and divisions regarding, among other issues, presidential powers. This led to the defeat of a proposed new constitution in the 2005 referendum, and paved way for the disputed bloody 2007 election which left 1,133 people dead and 650,000 displaced from their land.

Other than reduction of presidential powers, the August 4 constitution significantly changes Kenya's governance landscape through creation of 47 counties, which will operate independently on financial and legislative matters. The bi-cameral National Assembly paves way for the Senate to represent the interests of the counties through debate and approval of all bills concerning the counties. 15 % of the Consolidated Fund (tax revenues) will be shared among the counties, thus making them independent of the central government. A progressive and ambitious bill of rights is another important feature and marks the beginning of the realization of all rights (civil, political, economic, social and cultural) and enjoyment of fundamental freedoms by all Kenyans irrespective of age, gender, sex, marriage and class. For the first time in Kenya's history, the constitution provides for special seats in all electable offices for women, youth, persons with disabilities and marginalized groups. This is incredible for a country

known to perennially oppress and ignore these groups and human rights defenders. In addition, it creates a number of commissions to handle issues such as human rights and equality, land, salaries, and remuneration of public officers, revenue allocation and national police.

The peaceful manner in which the referendum was conducted clearly points out that political violence is not a natural occurrence in Kenya; rather it is a creation of the political contenders in a bid to edge out their opponents. Unfortunately, it has always appeared like youth are the main perpetrators of political violence and associated crime. To demystify the myth, several groups designed various programs prior to and during the referendum. The Youth for *Katiba* (constitution) (Y4K) comprising young artists and musicians went round the country urging all young people to read and understand the contents in the constitution so as to make an informed choice. The message was meant to steer them away from divisive politics which are driven by power-hungry politicians. During the polls, a monitoring platform dubbed *ushabidi* (testimony) combined traditional monitoring with social media to enable people to report violence and any other malpractices witnessed in the polling centers. All the volunteers at the *ushabidi* headquarters were below 30 years. They received text messages (SMS) from all parts of the country reporting both positive and negative incidences observed. For negative incidences, they contacted the electoral officers within the polling centers to address the issues reported. Clearly, this shows that youth would not only be willing to see positive change, but would also want to take part in the processes of change, by making a positive contribution given their energy, innovativeness and swiftness.

Implementation of the new constitution holds great promise for the country which has been in transition for decades, with many stillbirths and unfulfilled expectations. Many will be hoping to see an end to pervasive ethnic polarization and conflicts as leaders join hands to support the proposed new legislations. It is unfortunate that the voting patterns seem to have followed past ethnic divisions, as voters supported their *de facto* “political kingpins”. There is compelling evidence to show that political leaders increasingly informed the choices that the citizens made. The choices were apparently not influenced by the stand of the church regarding contentious issues such as kadhi courts and abortion, or even the more attractive clauses on executive and devolution. The leading “no” proponents in the Rift Valley region, where land remains a contentious issues, galvanized their support around issues of land, convincing their supporters that they stood to lose their land to “foreigners” under the new constitution. The region has, in the multiparty era, been the epicenter of political and ethnic violence over historical unresolved land issues. The President and the Prime Minister were the main “yes” proponents and the new constitution received overwhelming support from their regions. Thus, there is still work to be done in mending the wounded relations between communities and giving people voice to shape the political and economic agenda of their regions and the nation. But, this constitution certainly opens the door for a new era of responsible and accountable government: a new “dawn” for Kenya.