



CHRISTIAN PARTNERS
DEVELOPMENT AGENCY
Together in Development

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To the Executive Director,
Committee of Experts (CoE),
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Dear Dr. Eкуру Akuot,

RE: SUBMITTING WESTERN LEADERS MEMORANDUM ON THE HARMONIZED DRAFT CONSTITUTION

Christian Partners Development Agency (CPDA) is a non profit, non partisan, organization registered as a Non-Governmental Organization (NGO) under the NGO coordination act (1990) in 1993. CPDA was started as a relief organization during the 1985 drought that led to widespread famine in the whole of Kenya, but later changed its focus to governance and developmental activities. Our programmatic focus is in two categories; Governance and Democracy, and Integrated Food Security for Sustainable Livelihoods. These programmes are currently implemented in Kenya.

CPDA held 2nd Western Province Leaders Annual Forum, at Moi Girls Vokoli, Kisumu-Kakamega road at Chakali Junction -Kaimosi- Kapsabet road, on 10th and 11th December 2009. The forum was organised in partnership with the European Commission, Oxfam Novib, Farm-Africa, *Uraia*-Kenya National Civic Education Programme (NCEP), and *Amkeni Wakenya*-UNDP Civil Society Democracy and Governance Facility. This forum brought together an estimated 500 delegates comprising of key leaders from the province, Neighbourhood Assembly leaders, Mayors, civic leaders, media, key government agencies, Maendeleo ya Wanawake, youth leaders, religious leaders, Districts Reconciliation and Reforms Consensus Groups, Civil society organizations, professionals and students. All the 24 Members of Parliament from the

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region were invited but failed to turn up. However, a few sent their apologies and representatives.

The theme of forum was ***“Towards a new Kenya: Building Consensus on the Harmonized Draft Constitution and other reforms processes.*** The forum marked the climax of series of district workshops that CPDA undertook in preparation of communities’ effective participation on the reform process, particularly on the constitution. Through the workshops, CPDA *established Reconciliation and Reforms Consensus Groups* in Butere-Mumias, Bungoma, Mt Elgon, Teso, Busia, Kakamega, Lugari, and Vihiga- the larger districts of Western Province. These teams were instrumental in shaping the draft constitution debates.

This was a critical forum that culminated development of the Communiqué/Memorandum on the Harmonized Draft Constitution now presented to the Committee of Experts (CoE). In accordance with Section 32 of the Constitution of Kenya Review Act 2008, on behalf of the Western leaders, we critiqued and analyzed the Harmonized Draft Constitution of Kenya and hereby submit our recommendations (attached) to the Committee of Experts (CoE).

Kind regards.



Alice Kirambi
Executive Director,
Christian Partners Development Agency (CPDA)



RESOLUTIONS AND PROPOSALS ON THE HARMONIZED DRAFT CONSTITUTION BY THE WESTERN PROVINCE LEADERS ANNUAL FORUM: CONVENED BY THE CHRISTIAN PARTNERS DEVELOPMENT AGENCY (CPDA), AT MOI GIRLS VOKOLI, 10TH and 11TH, DECEMBER, 2009.

More than 500 leaders from the entire Western province met on 10th and 11th December 2009 at Moi Girls Vokoli, in Western Province. During the two day meeting the leaders carefully studied and reviewed the Harmonized Draft Constitution. The leaders therefore wish to submit the following Memorandum to the Committee of Experts.

Chapter One: Sovereignty of the people

The constitution should provide that in the event of gross misconduct and abuse of the sovereignty of the people, a citizen or group of citizens shall petition for the dissolution of such State Organ through a national referendum.

2. (4) Customary law should not be singled out and that phrase should be removed.

Chapter Two: The Republic Territory

Kenya's territorial boundaries must be well determined with co-ordinates rather than merely relying on international law. The Migingo and Pokot boundary issue have highlighted this problem. The coordinates used in the CKRC 2002 draft can be verified and used.

Chapter Three

The Chapter was approved by the Forum, but it would be advisable to review, synthesize and consolidate the values, principles and goals.

Chapter Four

Article 20: While acknowledging in Bill of Rights that the best interests of the child are of paramount importance in every matter concerning the child (Art. 41.4), children found in Kenya as a provision needs more elaboration in terms of investigation, verification and enforcement.

Chapter Five

The title to the chapter should be titled: Culture and Heritage.

Significance of Culture underscored.

Article 27 (b :) ...standards should be set for both modern and traditional and both should be tapped for development.

Article 27 (h): emphasis should be on organic systems of farming, foods and drinks in light of the invasion of Genetically Modified Organisms (GMOs).

Commission on Culture and Heritage should be re-instated as in Bomas in order to have a tool to implement our way of life, both traditional and modern in light of the negative effects of globalization. Commission should go to the grassroots level (devolved)

Utamaduni Day should be re-instated and entrenched as in the Bomas draft constitution for national recognition, while different communities can celebrate their culture at any time in the year. Culture and heritage is both a national, regional and county matter.

Chapter Six: Bill of Rights

Bill of Rights is well balanced, except for Article 38 on Gender which should be re-instated in full as in Bomas draft.

- *Gender Commission* should be separated from Commission on Human Rights as there is no rationale for having them together.
- Re-instate Sub Art 2, 3 and 4 of Article 37 in Bomas and 38 in Wako draft. Otherwise gender is less and less part of the Broad Affirmative Action (BAA) as conceptualized at Bomas and reflected in the categories of Youth, Disability, Marginalized, Older Persons, and Minorities. Gender has been abandoned to patriarchal inheritance and ownership of land and property in Harmonized Draft.

Chapter Seven: Land and Property

- Public Land and Community land needs clearer distinction and clarity. For instance, is a school compound whose land was given by the community classified as community land or public land?

Satisfied that the Chapter on Land and the Land Policy are in harmony.

Chapter Eight: Environment and Natural Resources

Art. 89: Ensure community participation (cf. Maragoli forest and Mau forest where untold damage was done while the communities stood by helplessly watching from the sidelines.)

Art. 92 (1) (2) (3) Language needs to be tighter: elaboration needed. Article is left hanging.

Art. 93: Should not be left to legislation. The Commission on Environment and Natural Resources be entrenched in the constitution and devolved.

Chapter Nine: Leadership and Integrity

Art: 94.1(a) add (v)--is accountable to the public for decision-making
(vi)--is responsible and accountable

Art. 95: ---swear an oath of allegiance to the people and the Republic of Kenya.

Art 96.3 ...and be prosecuted in a court of law and damages recovered.

Art 99: Commission should be endowed with powers to investigate and prosecute.

Chapter Eleven: Legislature

The roles and functions of the National Assembly and the Senate should be clearly spelt out, to avoid confusion and conflicts during the discharge of their legislative functions.

Art. 124 (e) marginalized and minorities should be prioritized and entrenched

Art. 125 (b) counties should cater for minorities and should be mentioned.

(c) Clearly provide for representation of the youth separately, as well people with disability.

Art. 143 Quorum threshold should be 50% of all members of Parliament.

Chapter Twelve: Executive

Art. 158.1 (b) (c) President should address Parliament as often as need may arise.

Art 158.2:

- The President shall appoint and dismiss the Prime Minister upon recommendation of parliament as consequent to a vote of no confidence in the Prime Minister or government.
- The President shall appoint and dismiss the Deputy President, Ministers and Deputy Ministers. (Deputy President is running mate of President. Can he be appointed or dismissed by the President without affecting the Presidency?)

Art 158.3 the State President May-----WITH APPROVAL OF PARLIAMENT appoint-----

(7)(b) Delete and.

(8)Report once a year is not adequate. Should be whenever necessary.

Art. 168: (1) and (2) Criminal; and civil proceedings: President should not be seen to be above the law.

Art. 169: Quorum should 50% as ¼ is not adequate.

Art. 178: and 183: Should ensure that President and Prime Minister are taxed like every other citizen.

Art. 184 (iii) The entire cabinet should be appointed outside parliament.

Chapter Thirteen: Judiciary

Art. 201: Appointment to the Supreme Court should ensure regional, cultural and gender diversity.

Art. 203: Constitutional Court not necessary. Supreme Court should handled constitutional matters.

Art. 208: Khadi's Court should not be entrenched in the constitution. Matters of personal law should be handled in the Mosque.

Chapter Fourteen: Devolved Government

Art. 215:

Regions should be increased for better representation. Bomas formulation better. 8 Provinces out. Proposed 16 regions.

Western Province should be divided into two regions: Upper /Northern, Western Kenya covering, Elgon, Bungoma, Teso, Busia and Mumias. Lower/Southern Western Kenya, covering Lugari, Kakamega, Butere and Vihiga.

Art 218:

The title should be Regional Governor NOT Director

The regional and deputy governor should be directly elected by the people not by colleges which are prone to abuse and manipulation.

Art. 222: Current district should be counties - 74 counties

Art. 240: Gender balance acceptable.

First Schedule: Regions and Counties

- Eight (8) Regions are too large. It is felt that the retention of the 8 provinces as they are is a travesty to the people's views which were overwhelmingly against the existence of the Province and all its connotations. It is also felt that this is a backdoor way of retaining the provincial administration which the people said they wanted out as it is dictatorial and that the people wanted to vote for their leaders. Provincial Administration can be re-deployed, apply for posts, or retire or look for other opportunities for livelihood.
- To make the Regions proximate and fulfill other objects and principles of Devolved Government. It is important to retain the fourteen (14) Regions which were negotiated at the National Constitution Conference and which take cognizance of the principles of boundary delimitation as in Articles 112 and 113 and livelihoods.

Chapter Fifteen: Public Finance

Art. 253: Borrowing conditions should be made public through disclosure and public discourse.

Art. 255: Public debt should be made public for scrutiny by the citizens.

Art.262: (5) audited books should be opened for scrutiny by the public.

Art. 263: (3) Provide sanctions and direct penalties including prosecution for those individual officers /institutions who are in breach of the measures of transparency and accountability and of the measures established in terms of Art. 263.1

Art.267

- Representation in the Revenue Commission should ensure gender equity and balance.
- Relevant professional bodies should be represented such as the Association of Certified Public Accountants, credible Civil Society organizations, LSK etc.
- Representative to the Commission should be appointed by the President and approved by Parliament.

There should be established commission/council to control public finance including monitoring and evaluation of public expenditure.

Economic and social council: should also be given the duty of formulating ways and means of alleviating poverty.

Industrial development: proposed that industries be established at the source of raw materials.

Economic, social and culture council: this is proposed because culture comprises a large part of GDP e.g. The current economic and social be renamed Economic, Social and Culture Council.

Chapter Sixteen: Public Service

NOTE: THERE IS NO PROVISION FOR THE APPOINTMENT OF COMMISSIONERS TO THE PUBLIC SERVICE COMMISSION.

- Appointments to the Commission should respect regional and gender diversity.

- Each Regional Assembly (from the proposed 16 regions) should nominate a representative to the Public Service Commission.
- Commissioners to the PSC should be appointed by the State President with the approval of Parliament.
- Recruitment, appointment and dismissal of personnel of the devolved governments should be undertaken by the Public Service Commission, upon recommendation of the devolved governments.

Art. 277: TSC should have branches at the county and regional level - responsible for the professional welfare of teachers in the devolved governments and for easier access.

Chapter Seventeen: National Security

Chapter should be re-drafted to secure the borders of Kenya in light of recent border crises.

Chapter Eighteen: Constitutional Commissions and Independent Offices

Should add to 11 proposed Constitutional Commissions

- Culture and Heritage Commission
- Gender Commission
- Environment and Natural Resources Commission

GENERAL RESOLUTIONS:

The Committee of Experts should not encourage, entertain or allow itself to be dragged into partisan politics, debates on non contentious issues.

1. The Committee of Experts should guard against overt influence by political forces within or outside Parliament that may undermine the wishes of the Kenyan people.
2. CoE should consider what the economic base of Kenya is to be for Chapter on Public Finance and Schedule on Taxation to be viable. Industrialization in Western Kenya would transform the Region.
3. The drafting of the final draft constitution, should be done in clear and simple language in English and Kiswahili that will render the document to easy interpretation.