

**PRESS STATEMENT BY THE PARLIAMENTARY SELECT COMMITTEE ON CONSTITUTION REVIEW ON THEIR DELIBERATIONS ON THE HARMONISED DRAFT CONSTITUTION JANUARY 18-28, 2010**

We would like to bring to the attention of Kenyans that the Parliamentary Select Committee has been meeting to deliberate on the harmonized draft constitution with a view of developing consensus on issues therein.

We want to report that after nine days of deliberations-sometimes well into the night-we have reached major agreements on the draft on issues that appeared to have divided us in the past and have made it difficult for us to get a new constitution.

Members of the committee have undertaken very delicate negotiations and all decisions were arrived at through consensus. There has been no voting on any of the issues.

We have agreed on all chapters, with the following highlights-

**The Republic**

- Kenya's territory should be specifically defined and not left to International law
- We did not see the need to identify Nairobi as the capital in the Constitution

**Citizenship**

- Dual citizenship allowed. A citizen of Kenya by birth does not lose his citizenship by acquiring another citizenship.

**Bill of Rights**

- First, second and third generation rights provided for.
- Consumer rights entrenched;
- vulnerable groups within society including women, older members of society, persons with disabilities, children, youth and members of minority and marginalized communities recognized;
- Authority of the court to uphold and enforce the Bill of Rights;
- Freedom of expression upheld, save for matters like propaganda for war, incitement to violence, hate speech, pornography, advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or one that is based on any prohibited ground of discrimination;

- Political rights retained, right to property, labour relations also retained
- The family recognised as the natural and fundamental unit of society and the necessary basis of social order.
- Freedom and independence of electronic, print and other media of all types are guaranteed

### **Representation:**

- The committee adopted the general principles for the electoral system and processes.
- Independent candidates will be allowed.
- The Electoral Commission and the Boundaries Commission should be merged.
- Constituencies be fixed at a maximum of 349 constituencies, as follows: - 80 additional elective constituencies; 47 (special elective seats for women, one per county) and 12 nominated seats. The criteria for delimitation agreed on.

### **Judiciary**

- Independence of judiciary enhanced including creation of an independent Judicial Service Commission with financial autonomy.
- Supreme Court as highest court in the land to have 7 judges
- Constitutional Court deleted
- Appointment of the Chief Justice and other judges be initiated by JSC, nominated by President and approved by Parliament.
- Removal of any judge will be after a report by a tribunal to be chaired by the speaker in case of the Chief Justice and a person appointed by the President in case of any other judge.
- Subordinate courts retained including Kadhis' Courts and Court Martial.

### **Public Service**

- Public Service Commission, Judicial Service Commission and Parliamentary Service Commission retained.

- Auditor General Retained as an independent office.
- Teachers Service Commission.

### **National Security**

- Three organs of National Security namely Kenya Defence Forces, National Intelligence Service and Kenya Internal Security Services-the latter to include the Kenya Police and administration police, and headed by Inspector General;
- Creation of National Security Council to be chaired by President

### **Executive: Presidential System**

- Separate Executive and Legislature
- President elected by universal suffrage, 50%+1, 25% in more than half of the counties;
- President serves not more than two five year terms,
- Is not a Member of Parliament.
- Ministers to be from outside Parliament but vetted by Parliament and appointed by the President.
- National executive of the Republic to comprise the President, the Deputy President and the rest of the Cabinet
- No office for Prime Minister
- National executive to reflect the regional and ethnic diversity
- The President to be a symbol of national unity-Head of State and Government, the Commander-in-Chief of the Defence Forces and chairperson to the National Security Council.
- The President not to hold any other State or public office including any elected or appointed office within a political party.
- President to address the opening of each newly elected National Assembly, address a special sitting of Parliament once every year and may address the National Assembly at any other time;
- President to appoint ministers, deputy ministers high commissioners, ambassadors, and diplomatic and consular representatives with the approval of the National Assembly, but president may dismiss them

- Once every year, the President to submit a report to National Assembly on the progress made in fulfilling the international obligations of the Republic.
- Election of the President to be held separately from the National Assembly elections
- Any eligible voter is qualified to run for Presidency
- Parliament may impeach President
- A Member of Parliament who is appointed as a Minister or Deputy Minister to resign as a Member of Parliament.
- Secretary to the cabinet retained
- Majority and minority leaders to enjoy powers in parliament, equivalent to cabinet ministers
- Appointments to constitutional offices to be confirmed by Parliament
- Parliament to have its own calendar
- Impeachment [on violation of the constitution/criminal/constitutional issues]
- Running mate – if President vacates office running mate to serve remainder of term, if running mate serves more than half the original term, to be construed as full term
- President to be nominated by a political party or be an independent candidate
- Cabinet of not more than 25 including the President and Vice President
- Not more than two-thirds of Cabinet to be of either gender.
- The Cabinet to reflect the regional diversity of Kenya
- President to have power to establish offices (other than constitutional offices) in the public service
- Prerogative of mercy retained

### **Land and environment**

- Three categories of land identified-Public, community and private.
- Non citizens holding land should not exceed 99 years lease hold

- National Land Commission retained
- Protection and conservation of environment upheld

### **Devolved Government**

- Two-tier system-National and counties
- There shall be 47 counties
- One person elected per county to the Senate through universal suffrage by the counties.
- Senate will be the lower house
- Equalisation fund to be created an evolved fund secured in the Constitution.

### **Conclusion**

Constitution making is a very delicate process that is bound to excite contending passions so sometimes when you have witnessed us caucusing it was with a view of developing consensus.

The fact that we are here together is a clear testimony that we have resolved all contentious issues as a team. This is a consensus decision reached in accordance with Section 32 (C) and 33 (1) of the Constitution of Kenya Review Act.

The committee wants to make it very clear that whatever it has engaged in is within its mandate as provided for by the Constitution and Standing Order.

Finally, we will be handing over the draft constitution and our report to the Committee of Experts tomorrow afternoon so that they can revise it taking into account the achieved consensus.

**Hon. Mohamed Abdikadir, MP**

**CHAIRPERSON**