

## PARLIAMENT IS YET TO SUPPORT THE DRAFT CONSTITUTION

Written by Duncan Ogaro Mikae

Monday, 05 April 2010 14:19 - Last Updated Sunday, 11 April 2010 16:59

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While we talk on matters constitutional, we have to understand the path that we have taken in the review process.

**With respect,**

I will not be fair enough if I will not honour the unnamed heroes of Kenya in the constitution making process who suffered in fighting for our rights during the Moi Era, these include Paul Muite, then a government critic and chair of the Law Society of Kenya (LSK); Masinde Muliro, a former Cabinet minister and a FORD member; Oginga Odinga, a former Vice President, Martin Shikuku and Philip Gachoka, both FORD members; and three Nairobi lawyers, James Orengo, Japheth Shamalla and Gitobu Imanyara, then an editor of the *Nairobi Law Monthly*. They faced charges of violating the Public Order Act when they were fighting for us.



**The constitution Review,**

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The demand by Kenyans for a new constitution for the last two decades opened deliberations about the appropriate constitution to be adopted to replace the existing constitution, **In response to the** public demand for a new constitutional that would demand respect for human rights, accountability on the part of the Government and an embodiment of democracy, the Constitution of Kenya Review Commission began the process of constitutional re-view in 2003

This was followed by conversations that took place in the context of round tables, workshops, conferences and other engagement platforms organized by CKRC with other stakeholders whereby the leaders in the current government and previous regimes together with the opposition parties of the said time were engaged. The parties to these conversations failed to agree explicitly to accept modifications and inclusions in the drafts that they crafted. The process led to three draft constitutions: The Constitution of Kenya Review Commission Draft submitted to Bomas Constitutional Conference which was commonly known as the 'Ghai Draft', the Constitution Conference Draft also called 'The Bomas Draft' and the Proposed New Constitution 2005 which was named 'Wako Draft'. The Wako Draft was voted on in the 2005 referendum but it did not meet the expectations of majority of Kenyans hence it was rejected. While the Wako Draft was assumed to be best in various fields, it had major limitations, though the biggest problem that I can site to day and anytime asked is that the Wako Draft was not a draft representing the views and desires of the common mwananchi my people of Bungoma included, it was a document that was an imposition by the government or those in government with the main aim of fine tuning tools to help them grip to leadership when the country was so much in need of change of guard. There was an omission of involvement of the general public here. After this we had the Post Election Violence after the disputed Presidential elections of 2007, Kenya witnessed its worst moment in history when there was widespread violence in the country. Negotiations mediated by the African Panel of Eminent Persons helped achieve a consensus which culminated to the National Accord. In order to achieve lasting peace and prosperity, the accord under Agenda Four requires a new Constitution for Kenya to be enacted. This gave a new push to the search for a new constitution. Parliament enacted the Constitution of Kenya (Amendment) Act, 2008 and the Constitution of Kenya Review Act, 2008 to serve as the legal framework for achieving a new constitution. It is after through these developments that we now have a document that is waiting for a referendum vote.

## Why All this History?

In writing this I want you to understand where we are coming from and where we are heading.

After the Commissioners or any persons mandated with Constitution review are through, they are supposed to come back to the people that will be governed by that law to fine tune the 'bad' clauses and input omissions that might have not been captured by the mandated body, this in constitution making is usually termed as 'period of public consultation'. The development of our Draft Constitution rests with the Committee of Experts CoE whose members were selected by the country's leadership 'who in this case represent the common mwananchi' In our case it is the CoE that did 'public consultation' through getting audience from several resourceful groups, political parties and the public in general, in doing this we can credit the draft constitution in hand basing on the fact that it is well representing.

In some countries an elected assembly has primary responsibility for debating, amending, and adopting the draft. But in our case we have to ratify this document as a people before it is adopted, parliament is only mandated to make amendments in the final draft so as to enable us vote on a uniting draft rather than a dividing one since politicians are known for their divisive tactics in every opportunity they get to out do each other. So far in parliament it is only the Parliamentary Select Committee headed by

Abdikadir Mohammed

that can win my respect, this is because this group of youthful leaders managed to come up with an agreement that never tore us down as previous committees for the same did, any other

Mp Claiming recognition is not only insincere but insensitive, this I say because many media houses have been lauding the legislators for passing the draft in parliament forgetting that this was as a result of public pressure and that of the two principles who personally were in parliament to support the draft. The other reason why I cannot credit these legislators at this stage is because they never made any important amendments that were expected just because they were out to outsmart each other for their selfish interests rather than representing the needs of me and you. Though I am not rigid in accusing the Mps I have left an open window for embracing them because I know they can still amend their historical mentality of going against anything that is for the betterment of the common people, they can do this by ensuring we have a **'yes vote'**

in the coming referendum.

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Ratification being the final step in the constitution writing process, we can only say our politicians actually rose above their interest in helping Kenya realize a new constitution if they will unanimously campaign for it and put aside their selfish interests which are hidden behind the phrase 'contentious issues', anything short of that will only portray them as hypocrites who only passed the draft in parliament only to decampaign it in the referendum later.

I am down on my knees praying that our politicians will be traversing the whole republic drumming support for this document that promises to break the status quo and bring a new political dispensation to the people. In my prayers I will also not forget to pray for my fellow Kenyans and the people of my small village of Mashambani so that God can open their eyes to unite against any politician that will come with contrary campaigns as opposed to our collective desire for a new constitution. I rest my case.