

DIALOGUE REFERENCE GROUP

Reconciling and Restoring Kenya Through Structured Dialogue

CONSTITUTIONALISM, NOT JUST A CONSTITUTION: A SCORECARD ON CONSTITUTION OF KENYA 2010

PREAMBLE

The law, epitomized by the Constitution, is the glue that binds citizens of a nation. When that glue is weakened, the nation falls apart, and people suffer. Appreciating this, religious leaders in Kenya have been at the forefront of protecting and defending the rule of law and adoption of moral values. We draw much inspiration from the words recorded in Deuteronomy 17: 18 – 19

Also it shall be, when he (the king) sits on the throne of his kingdom, that he shall write for himself a copy of his law in a book, from the one before the priests, the Levites. And it shall be with him, and he shall read it all the days of his life, that he may learn to fear the Lord his God and be careful to observe all the words of this law and these statutes.

And also from the Quran Sura 4 Verse 135

O you who believe! Stand out firmly for justice as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be he rich or poor, Allah is a Better Protector to both (than you).

1. Aspirations of Kenyans

For more than three decades, Kenyans pushed for, fought for, and some even died demanding for a new constitution for our beloved nation. They aspired for a Constitution that would ensure justice, peace, security and liberty for all; a Constitution that treats all Kenyans as equal, provides equal opportunities, and ensures equitable distribution of

responsibilities and resources. Kenyans aspired for better government, national cohesion, and stability of the nation. Have these been achieved?

It is with this in mind that we have met here at Ufungamano House to celebrate and commemorate ten years from the day the Constitution of Kenya 2010 was promulgated, and to draw up a scorecard on its implementation.

2. Weakening Accountability

This Dialogue Reference Group is appalled at the downward spiral of descent into the madness of uncontrolled corruption being witnessed in our nation. This trend is immoral and is contrary to the teachings of God, and we fully condemn it.

The information in public arena indicates that the country has received more than 190 billion Kenya Shillings to deal with the Covid-19 pandemic. However, there has been great lack of transparency and accountability in the expenditure of these funds, which has lent credence to the accusations that most of the money has been misappropriated. It is inconceivable for us that a Kenyan can sit and plot how to steal money meant to save the lives of Kenyans!!

The reports of corruption touching on the Covid-19 funds are a condemnation on the Executive and Parliament, who have a sworn duty to protect the lives and resources of Kenyans. We remind you that every time you abet corruption by failing to exercise your oversight mandate, you are breaking your oath of office.

Procedurally, we note that corruption in Kenya is perpetuated by bureaucratically instigated opacity in public finance manifested by:

One, lack of details on expenditure information provided to Parliament

Two, lack of information on procurement

Three, lack of a comprehensive information portal accessible to the public on Covid-19 funds, and

Four, Lack of information on acquisition and distribution of Covid-19 related materials

To remedy this, we call upon His Excellency the President to cause the relevant ministries and departments to:

- i) Provide to the public details of all funds received through taxation, donations, grants, and loans and earmarked to the Covid-19 pandemic response
- ii) Provide to the public detailed expenditure information on all funds and donations earmarked for Covid-19 pandemic response
- iii) Publish the names of companies and beneficiaries of Covid-19 procurement processes, social protection programmes and distribution of testing kits and Personal Protection Equipments acquired by the government through purchase or donation
- iv) Immediately institute prosecution of all persons who are implicated in the misappropriation of Covid-19 pandemic response funds

On their part, we call upon all the Members of Parliament to end their perpetual partisan and ethno-centric bickering and execute their constitutional mandate of overseeing national revenue and its expenditure. For once, rise up and protect the lives and interests of Kenyans, as is required of you by Article 94 (4) of the Constitution of Kenya 2010.

3. Readiness for 2022 General Elections

We are greatly concerned that politically, Kenya is exactly where it was in 2015. Though we are a mere 21 months to the next General Elections, we do not have a functional elections management body, the constitutionally required electoral boundaries review has not been undertaken, the voters' register has not been updated, the operational, procedural and philosophical shortcomings that hampered the 2017 General Elections have not been addressed meaning that they will come to play once more, and political actors are blatantly whipping up ethnic emotions while enforcement agencies watch helplessly.

While we remember the mediation we undertook in 2016 to resolve the crisis touching on the Independent Elections and Boundaries Commission so as to safeguard the 2017 general elections, this is a role we passionately hoped and prayed no one would ever need to play again.

We therefore call upon Parliament to fulfil the promise made in 2016 and put in place necessary amendments to the Independent Elections and Boundaries Commission Act to

provide for replacement of Commissioners who leave office, and to safeguard the appointment of the Commissioners from political party influences. The leadership and operational crisis at the IEBC must be brought to an end without further delay so that the preparations for 2022 General Elections are undertaken by a body that elicits public confidence that it can deliver free and fair polls.

On their part, we call upon the National Police Service, the Kenya National Commission for Human Rights, and the National Cohesion and Integration Commission, to enforce the law against any persons who engage in hate oriented political mobilisation.

4. Constitution of Kenya 2010 Scorecard

Today, we join Kenyans in marking 10 years since the new constitution was promulgated. In the lead up to the referendum of 2010, some of the institutions represented here in the DRG advised Kenyans not to vote for the draft. Nonetheless, we accepted the results of the referendum and publicly committed to support the implementation of the Constitution, awaiting an appropriate time to address the issues they had reservations about.

Over the last ten years, we have monitored the implementation of the Constitution of Kenya 2010, and heartily appreciate the different institutions that have embraced the new dispensation.

We have in this meeting undertaken a detailed review of the implementation of the Constitution, and prepared a Chapter-by-Chapter Scorecard that highlights the achievements and pending work. We will share this with the public.

We nonetheless wish to highlight the following overall concerns regarding the implementation of the Constitution:

- i) Lack of civic education and weak inculcation of the Constitution and Constitutionalism in the lives of Kenyans, leading to weak demand from citizens for fidelity to the Constitution
- ii) Though Kenyans embraced devolution as a means of reducing the overlordshipness of the central government, the Executive is currently clawing back on the gains and is growing larger every day. The oversight role of Parliament has been severely eroded, reducing both houses to mere rubber-stamps of the Executive, while the Judiciary constantly claims that it is being intimidated.

- iii) The National Values espoused in the Constitution have not been integrated in national life, and Kenyans continue to suffer from the effects of leadership that lacks ethics and integrity
- iv) Constitutional Commissions have largely underperformed, with accusations that appointment to their boards are largely made to reward political party cohorts which reduces their commitment to the mandates of the bodies
- v) Elections are still divisive, violent, expensive, and mostly lack transparency and fairness

Recognizing this, we reiterate that for a better Kenya, we require a greater sense of constitutionalism, not necessarily a different constitution. With this in mind, we recommend:

- a) **To all Citizens**, please familiarize yourself with the Constitution, and actively engage in oversight of its implementation. We especially encourage you to hold the Recall Clause as your safeguard to hold Members of Parliament and County Assemblies to account when they derogate the Constitution. Please determine in your hearts to forthwith reject all corrupt leaders.
- b) **To the Presidency and the Executive**: Deal decisively with corruption and resist the temptation to manipulate the other arms of government, and we especially urge you to complete the process of appointment of the 41 judges nominated by the Judicial Service Commission. Push for a culture of constitutionalism, morals, values and ethics to take root in the nation to replace the current culture of corruption, greed and lawlessness.
- c) **To Parliament**: Enact all the outstanding laws required to ensure constitutionalism takes root. We especially bring to your attention the need to pass a law to actualize the Two Thirds Gender Rule.
- d) **To the Judiciary**: Deal decisively with impunity, and weed out judicial officers who engage in corruption. All the holy writings speak strongly against corruption on the part of judges, who are meant to uphold justice. We strongly recommend immediate commencement of the recruitment of the next Chief Justice so that the process is not affected by political emotions as we draw closer to the 2022 elections.

- e) **To County Governments:** Stop devolving corruption and focus on service delivery, knowing that Kenyans supported establishment of the counties so as to bring services closer to the people.

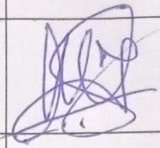
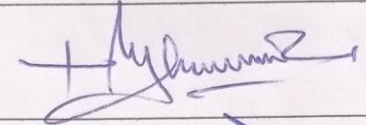
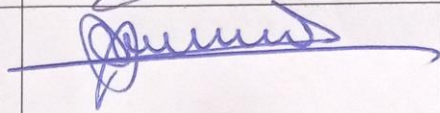
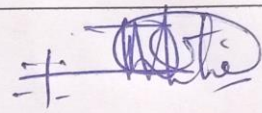

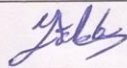
5. Conclusion

We conclude by remembering that the Constitution of Kenya 2010 recognizes the supremacy of the Almighty God of all creation. As we commemorate 10 years of the implementation of this Constitution, we request each Kenyan to take a moment and pray to God with the words of our National Anthem:

O God of all Creation, Bless this Our Land and Nation, Justice be our shield and defender. May we dwell in unity, peace and liberty, plenty be found within our borders.

May God bless Kenya now and forever more:

Signed on this 26th day of August 2020 at Ufungamano House, Nairobi:

Institution	Name	Signature
Evangelical Alliance of Kenya	BSP NGUNTORI MWARA	
Hindu Council of Kenya	Kotamrao Sujatha	K. Sujatha
Kenya Conference of Catholic Bishops	MOST. REV. MARTIN KIMANI MUSONDE	
National Council of Churches of Kenya	REV CANON CHRIS KINYAMBU	
Organisation of African Instituted Churches	Rev. Fr. Joseph Muki	
Seventh Day Adventist Church	Pr. Jeremy M. Marandi on behalf of Dr Marandi	
Shia Asna Ashri Jamaat	ZAHED ABAS KHIMSI	
Supreme Council of Kenya Muslims	Abdalla Kamwana	