
AGLI - Report from Kenya - July 17, 2010
My Take on the Kenyan Constitutional Referendum

Dear All

As many of you know, on August 4 there will be a vote in Kenya on a new constitution to replace the one enacted at the time of independence in 1963. This has created a lot of controversy here in Kenya and the potential for further violence. In this report, I just want to give my opinions on the pro's and con's of the constitution that is being proposed. In most cases my opinions are very different from those being debated in the country.

PROs:

1. Women's Issues - All women should vote for this constitution because it gives them many rights that they do not have under the current constitution. The most important is that the current constitution does not give any marital property rights to women. If the husband dies, all property - land, housing, animals, etc - is taken by the father-in-law, brother(s)-in-law, or sometimes stepsons-in-law. The wife and her children are completely dispossessed. I personally know of two cases where this has happened. The new constitution will give wives property rights. I am not naive enough to think that this will happen immediately if the constitution is passed as it will probably take generations for this to be implemented by women's rights groups. The new constitution will form a senate which will have one female senator from each district. Again don't jump up and down too much because while almost half of the senators will be women, the male powers-to-be have seen that the senate will have few actual powers. Lastly, there is a provision that will be of great benefit to me personally. Currently, for a Kenyan spouse to have a dependent, the spouse must be the husband. In other words only Kenyan men can have dependent foreign wives. I cannot be a dependent of Gladys' because, while she is a Kenyan, she is a female. The new constitution will equalize this.

In the discussion here in Kenya, I have not seen much mention about women's issues by the Yes campaign, the No campaign, or women's rights organizations. It is my feeling that one of the real reasons the fundamentalist churches and the Catholics are against the new constitution is because of this substantial expansion of women's rights. But they can't come out and attack this so they are using other extraneous issues. The women's rights groups probably see what they are getting, but don't want to announce it too broadly so as not to elicit a counter-reaction from the men.

2. Land issues - The new constitution will considerably strengthen the allocation of land in the country. Under the current constitution, the president could just hand out land to his cronies; which both Presidents Kenyatta and Moi did liberally with their henchmen. Public land which has been illegally given out will be repossessed. Is it surprising that former President Moi and his

henchmen are leaders in the No campaign? This is another underlying issue with the churches because many of them were given illegal lands by the former regimes.

3. Salaries and benefits of Members of Parliament - Under the current constitution members of parliament have given themselves some of the highest payments of anyone in the world. Currently they are demanding another large raise before the referendum. Under the new constitution they will not have the right to raise their salaries and benefits.

CONs:

4. Districts - The current nine provinces of Kenya will be broken into 47 districts so that government will be closer to the people. Each district will have its own governing body and will also elect the governor. While in theory this is a good idea, in practice here in Kenya it will increase ethnic division. The result of this cutting up of the provinces will be that many smaller tribes (such as the Kisii) will have their own "district" which they will control. Already a boundary commission is visiting parts of the country to hear complaints about the boundaries between districts. So if a district is mostly one ethnic group but some of them have become a majority as a small part of the next district, they want to change the boundary so that they can be with their "tribesmen". This is a recipe for continued conflict and violence in the country. What little is said about this issue is mostly in support of it. Kenya wants to be balkanized. Also the city of Nairobi with 10% of the population of the country (very mixed ethnically) will be only one district.

5. Abortion - This constitution, I understand from the papers, will be the only one in the world (except the Vatican) which will have the statement "life begins at conception". This kind of statement should not be in a constitution because it is a political statement not a statement on governing. The constitution will allow abortion to save the life of the mother. This is one of the reasons the Catholic and fundamentalist churches state as their reason to vote against the constitution. They claim that this is a statement of abortion on demand; in order to claim this they have to say that what is written does not mean what it says. I object because it would still be illegal to have an abortion due to child defilement (great problem here in Kenya), incest, rape, or for any other reason. Annually there are an estimated 300,000 abortions in Kenya, 25,000 admittances to hospitals for complications from botched abortions, and 2000 deaths in hospitals from botched abortions (plus I suspect many more women who die without going to a hospital).

6. Death penalty - The death penalty remains in the new constitution. I have two objections to this. First, those Christian churches who speak so much about abortion have not complained one bit about the taking of a real life by execution. The other reason is that Kenya has not executed anyone since 1987, but they continue to put people on death row ("condemned men" as they call it here). I just read in the paper of a man given a death sentence for stealing \$150 worth of goods. If in fact there are not going to be any executions in the country, then the constitution should say this. One of the problems in Kenya is that too many people don't think that laws matter; one does what one likes to do regardless of the law. So having a law that will not be used continues this mode of thinking.

I predict that the new constitution is going to pass with about a 75% yes vote. Actually there are

polls in Kenya on the issue and in the latest poll 62% claim they will vote yes, 20% no, and 18% undecided. If the undecided either don't vote or break 3 to 1 for yes as the rest of the population, then the total yes vote will be around 75%.

Yet if the new constitution wins, numerous new conflicts and fights will develop; for instance, on trying to gut the land reform issues in the new constitution, the boundaries of the new districts, women trying to obtain their property rights when their husbands die, etc. If the new constitution happens to lose, then there probably cannot be another chance to approve a new constitution before the 2012 election. Then that election will be prone to violence like the one in 2007.

Let us pray for a peaceful campaign period and election on August 4 without rigging where the population accepts the results. The Quaker Peace Network will have a number of election observers including myself.

Peace,
Dave