



THE NATIONAL COUNCIL OF CHURCHES OF KENYA

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FOR WANANCHI

GENERAL SECRETARIAT

Press Statement

Justice Be Our Shield and Defender

1. Introduction

The Executive Committee of the National Council of Churches of Kenya has met here at Jumuia Conference and Country Limuru over the last two days. We have reviewed the proposed draft constitution presented to Parliament and wish to share the following message:

2. Importance of the Constitution

The constitution is the document that defines how Kenyans will live and relate with one another. It therefore must be a document that secures the fundamental rights of all Kenyans and affirms opportunities for participation. The constitution must also be one that espouses and entrenches justice for all Kenyans. The words of Deuteronomy 16:20 are cardinal in the constitution making process of any nation, as they say: *"Follow justice and justice alone, so that you may live and possess the land the Lord your God is giving you."*

3. Message to Parliament

We call upon all the Members of Parliament to embrace this opportunity and act in a way to capture the aspirations of Kenyans and inculcate them in the draft constitution. What was presented in Parliament by the Committee of Experts through the Parliamentary Select Committee is a ceasefire constitution meant to address the interests of the political leadership rather than resolving the problems that have bedeviled Kenyans. We challenge the MPs to bring the constitution review clamour to an end by embracing a draft that addresses the needs of the poor, not just the fears and desires of the rich. Such can only be a constitution that embodies justice and equity for all people. May you always remember the words of Proverbs 29: 4, *"By justice a king gives a country stability, but one who is greedy for bribes tears it down."*

Kenyans have been disenfranchised in this process, and you as MPs must rise above personal, sectoral and party positions and complete the work Kenyans have begun. Kenyans are keenly watching how you handle the debate on the floor of the house. It will be reckless of the Members of Parliament to present a document that has not addressed cardinal issues voiced by Kenyans at the referendum in the belief that the desire for a new constitution outweighs the concern of Kenyans over the contents of the draft they finally endorse. Such a draft will be rejected, bringing adverse ramifications to the nation.

4. Mishandling of Cardinal Issues

The National Council of Churches of Kenya affirms the statements issued by the Kenya Christian Church Leaders on 1st and 17th of February this year. The leaders called for justice for all Kenyans, yet they were ignored by both the Committee of Experts and the Parliamentary Select Committee. We call upon all Kenyans to listen to the church for as the Bible says in Proverbs 28: 5, *"Evil men do not understand justice, but those who seek the Lord understand it fully."*

4.1 Right to life

We are greatly saddened by the attempts by the Committee of Experts to go back on the PSC draft and deceptively re-introduce abortion. We insist that the constitution must protect all human life which begins at conception and ends at natural death.

4.2 Legislature

We affirm the position of the Kenya Christian Church Leaders that the maximum number of elected and nominated representatives at National Assembly should be fixed at 250 and not be changed again.

4.3 Bill of Rights

The Bill of Rights in the constitution is the section that defines who a Kenyan is. It is what makes us equal by giving us the same rights and responsibilities. We therefore demand that Parliament:

- a) Restores the provisions that safeguard the rights of detained persons
- b) Facilitates the equality of all Kenyans by expunging exemptions given to persons professing the Muslim faith

Christians will neither be party to nor will they endorse a constitution that treats Kenyans unequally and unjustly.

4.4 State and Religion

It is clear to us that when the Committee of Experts realized the inconsistencies they had created in their draft, they deliberately removed the provisions that

- a) State and religion shall be separate
- b) The state shall treat all religions equally

This was malicious, and we demand that Parliament restores these two provisions alongside the principle that there shall be no state religion, and immediately remove the Kadhi Courts from the constitution because inclusion of the courts is unjust.

5. Truth, Justice and Reconciliation Commission

We in the National Council of Churches of Kenya are aware of the predicament plaguing the Truth Justice and Reconciliation Commission because of the damaging allegations made against its chairman Ambassador Bethuel Kiplagat. We are concerned that this should not derail the work of the Commission.

The National Council of Churches of Kenya therefore appeals that the due process of law be followed to examine and determine the culpability of the Chairman, Ambassador Kiplagat, against the serious allegations made against him.

6. Conclusion

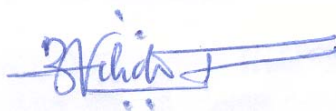
The National Council of Churches of Kenya recognizes that in the current constitution review process, the onus is on Parliament to give Kenyans a document they can embrace and adopt.

We sense that the Committee of Experts, the Parliamentary Select Committee and political operators are presuming that Kenyans will pass the draft produced, whatever flaws may be inherent in it, merely to turn a new page. We think this is a gamble that is not worth making and it will expose the country to instability.

Parliamentarians should note that Christians will not endorse a constitution that undermines our fundamental values, being fully aware of the warning given by God in Exodus 21: 2: *"Do not follow the crowd in doing wrong. When you give testimony in a lawsuit, do not pervert justice by siding with the crowd."*

As a nation, we have always prayed that God would make justice our shield and defender. We shall therefore NOT endorse a constitution that glosses over evident justice concerns persistently raised but ignored by the review organs.

Signed on this 3rd day of March 2010 at *Jumuia Conference and Country Home, Limuru.*



Rev Dr Charles Kibicho
Chairman



Rev Canon Peter Karanja
General Secretary



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GENERAL SECRETARIAT

The 1st Memorandum of the
National Council of Churches of Kenya
presented to the
Members of the Kenya National Assembly
pursuant to the
Constitution of Kenya Review Act 2008

Preamble

Following the deliberations of the Extra Ordinary Session of the Executive Committee of the National Council of Churches held from 1 – 3 March 2010 at Jumuia Conference and Country Home Limuru, we are pleased to make the following recommendations for consideration by the National Assembly as they debate the Proposed New Constitution tabled in the House on 2 March 2010:

CHAPTER ONE – SOVEREIGNTY OF THE PEOPLE AND THE SUPREMACY OF THE CONSTITUTION

Article 3(5) and (6) provides that all general rules of international law shall form part of the law of Kenya and the treaties and Conventions which are ratified by Kenya shall form part of the laws of Kenya. Considering that the Executive signs and ratifies Treaties and Conventions without reference to Parliament, we propose that Art 3(5) and (6) be deleted. All Treaties and Conventions must be domesticated through Acts of Parliament.

Art 8 provides that: "There shall be no state religion". However, previous draft constitutions had two important principles namely: that state and religion shall be separate and that the state shall treat all religions equally. These provisions were deleted mischievously to accommodate parochial and sectarian interests in the draft constitution. We propose that Art 8 is amended to read as follows:

- 8 (1) State and religion shall be separate.
- (2) There shall be no State religion.
- (3) The State shall treat all religions equally.

CHAPTER FOUR – THE BILL OF RIGHTS

Art 24(4) provides that the provisions of the Bill of Rights shall not apply to persons who profess the Muslim religion. This is unacceptable. No person should be denied or exempted from the provisions of the Bill of Rights whatsoever. We propose that Art 24(4) is deleted.

Art 25 provides for fundamental rights and freedoms that may not be limited. However, we are saddened that the right to life, which is the most important right in our view, can be limited. How can a person enjoy the other rights if his or her life is taken away? Kenyans value life. Therefore, the draft constitution should recognize and protect the sanctity of life. We propose that a new Art 25(e) is inserted to read as follows:

“(e) the right to life”.

Article 26 (4) provides that abortion is permitted if in the opinion of a health professional (1) there is need for emergency treatment, (2) the life or health of the mother is in danger, (3) if permitted by any other written law. This is unacceptable. We propose that Art 26(4) is deleted entirely.

Art 32 provides for the right to religion and opinion. Art 32 has omitted the right to propagate ones religion and the right to convert from one religion to another. We propose that a new Art 32(5) is inserted to read as follows:

“(5) Everyone has a right to propagate their religion or convert from one religion to another”.

Art 45(4)(a) provides for the right to marry and found a family under any personal law system. This opens the door for recognition of homosexual unions. We propose that a new Art 45(5) is inserted to read as follows:

“Art 45(5) same sex unions are prohibited”.

Art 49(5) provides for the right to access to any institution or facility without any discrimination on the basis of ones religion. We take great exception to these provisions particularly with regard to institutions and facilities established for the purpose of propagating a religion or faith. We propose that a new clause (6) is inserted immediately after clause (5) to read as follows:

(6) Clause (5) shall not apply to institutions and facilities that are established solely or partly for religious purposes.

Art 51 provides for the rights of persons detained, held in custody, or imprisoned. However, the provision is hollow and a sham since it pegs the same rights to on an Act of Parliament. The Government of Kenya has a track record of torturing and subjecting detainees, remandees and prisoners to inhuman treatment. We propose that specific rights of persons detained, held in custody, or imprisoned are recognized in the constitution.

CHAPTER 9 - EXECUTIVE

Art 156 provides for the office of the Attorney General. However it does not provide for the term of office. We propose that a new clause (8) be inserted to fix the term of the Attorney General to 8 years non-renewable so as to read as follows:

“(8) The Attorney General shall hold office for a term of eight years and shall not be eligible for re-appointment”.

CHAPTER 10 - JUDICIARY

Art 169(b) provides that subordinate courts include Kadhis courts. This is unacceptable. If the Proposed New Constitution shall contain any reference to Kadhis Courts, we shall REJECT the draft in total. To avoid another rejection of the draft constitution at the referendum, we propose that Art 169(b) be deleted and the words “religious courts” be inserted. This will ensure that any religion that desire to establish religious courts – such the Kadhis Court – have a provision in the constitution to rely on. Providing for Kadhis courts alone in a multi-religious society is a recipe for chaos, unfair, repugnant to justice and elevates one religion over all the faiths in Kenya.

Art 170 provides for the jurisdiction of the Kadhis Court. We propose that Art 170 is deleted. The jurisdiction of the Kadhis Court is already adequately provided for under the Kadhis Court Act Chapter 11 of the Laws of Kenya which will be consistent with Art 169 of the draft constitution.

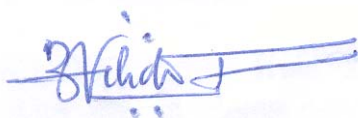
Section 31 of the Sixth Schedule provides that the functions of the Director of Public Prosecution shall be performed by the Attorney General until the DPP is appointed. This is unacceptable. We propose that section 31 of the Sixth Schedule is deleted and a new one inserted to the effect that the current Director of Public Prosecution continues in office until a new one is appointed under the new constitution to read as follows:

“31(5) The functions of the Director of Public Prosecutions shall be performed by the current Director of Public Prosecution until another one is appointed under this Constitution”.

Conclusion

NCKK will be very pleased if these changes are effected on the draft constitution currently being debated in Parliament. Consequently, NCKK and the Christian community will gladly endorse the draft constitution. However, if Parliament – like the Committee of Experts and the Parliamentary Committee – ignore or trivialise these fundamental concerns, Christians shall have no other option than to reject the Draft Constitution at the referendum.

Signed on this 3rd day of March 2010 at Jumuia Conference and Country Home Limuru



Rev Dr Charles Kibicho
Chairman



Rev Canon Peter Karanja
General Secretary

interest of Kenya at heart or are unable to see divisiveness of this issue. If they are serious and want us to accept the new constitution, let them delete all references to the Kadhis Court in the constitution.

Is it true that the Bill of Rights shall not apply to Muslims?

Yes. Muslims are the only Kenyans who are allowed to violate the Bill of Rights. Kenyans should not allow this to happen. Let every Kenyan be equal before the law of the land and particularly the Bill of Rights.

If Christians succeed in rejecting the Kadhis Court, will the Muslims unleash violence?

No. Christians and Kenyans in general should not allow themselves to be manipulated and intimidated by the threat of violence. Kenya is a democracy, Muslims must argue with ideas and the ballot box, not violence. In any case, it is hoped that Muslims in Kenya are peace loving and will respect the decision of Kenyans. The threat by some Muslim leaders to secede from Kenya is a matter that the security forces are able to handle.

What about abortion?

Abortion is the willful termination of a woman's pregnancy on the basis that it is unwanted. A woman may herself be under pressure because she desires to hide the fact or may be under pressure from other person(s) for the same reasons

When does life begin?

Life begins at Conception. All doctors who claim that life begins at birth are professionally untrustworthy, because the fetus in the mother's womb are usually alive. Whenever a fetus dies, it is always an emergency to operate and to remove it.

What do Pro-abortionists want?

Their interest is to make money from vulnerable women. In the course of the abortion process the life of the woman is endangered, their conscience and faith are trashed and they become guilty of murder.

What does God say about the life of the unborn?

The unborn babies are complete human beings created in the image of God. Any one who aborts them is a murderer. God called Jeremiah in the mother's womb (Jer. 1:4-5). When Mary after she became pregnant met Elizabeth, John leaped in her womb to rejoice at Jesus.

(Lk 1:41-44). God commanded that His people in the sixth commandment, 'Thou shalt not kill.' (Ex 20:13) Abortion is murder, the killing of the unborn innocents.

Does anti-abortion law hinder the practice of medicine?

No. The constitution allows a doctor, upon medical examination of a pregnant woman, to terminate a pregnancy if the life of the mother faces a medical condition that leads to the death of both mother and baby.

What about Marriage?

The Constitution must state that Marriage in Kenya is between two adults of the opposite sex. It must not allow any type of marriage which God calls an abomination. For us as Kenyans, let us pray that God blesses our men and women to form godly and healthy marriages.

What can I do as a Kenyan?

As a citizen of this nation you must make your voice heard on these matters! You also need to do the following:

1. You must read and understand the draft Constitution personally
2. Petition your Members of Parliament to delete all the sections referring to Kadhis Courts, or that introduce any unacceptable laws in the Constitution.
3. Register yourself as a voter, and ensure all your friends register as voters. If Kadhis Courts, pro-abortion laws are included in the constitution ensure that all your friends and yourself vote NO at the referendum.
4. Photocopy this paper and pass it to at least 10 more people in your area.
5. Pray that God will defeat all the efforts of the people seeking to perpetrate an injustice against Christians and other religions by entrenching the Kadhis Court in the constitution.

Issued by Christian leaders from all Church Denominations, all Umbrella Organizations and all other Christian Organizations in Kenya. These Include all Churches and organizations under the NCKK, the KEC, the EAK, the UCCK, FEICCK Contact: info.kcl2010@gmail.com

Kenya Christian Leaders Forum

Subject: No Compromise on Kadhis Courts, Life and Marriage issues in the Constitution

Why is a National Constitution important?

The Constitution of a nation is the most important governance document. It is the mother and father of all laws. Any law that is in conflict with the Constitution is null and void. It defines the people, their values and the nation and its destiny. Kenya's current constitution was written in London with the help of the British colonialist. It is under review to correct past anomalies and ensure justice, fairness and equity for everyone.

Why are Christians against Kadhis Courts in the Draft Constitution?

Christians are against the inclusion of Kadhis Courts because it is an outright injustice to other religions. Kenya is a multi-religious society! Christians' objections to the inclusion of Kadhi Courts were ignored by the government, the Constitution of Kenya Review Commission, the BOMAS gathering, the Committee of Experts and most recently the Parliamentary Select Committee. Christians are left with no choice but to vote against the new Constitution unless the Courts are removed.

Are Christians against Muslims?

No. Christians are not against Muslims. They are against injustice and unfairness in the draft constitution perpetrated by the Government and the review organs.

Why didn't Christians request for Christian Courts?

Christians seek for a just society for all Kenyans, not only the rights of Christians. They advocated for an effective executive with an accountable President, an effective Parliament, an efficient judiciary, and respect for the **rights and responsibilities that promote an equitable, just and moral values based society**. The Constitution must set up a Judiciary that is good for all Kenyans.

How come Kadhis Court was not identified as a contentious issue by the Committee of experts?

Christians submitted thousands of memoranda to the Committee of Experts rejecting the inclusion of Kadhis courts in the constitution.

The Committee of Experts deliberately refused to identify Kadhis Courts as a contentious issue. Instead, the Committee of Experts that was supposed to be impartial, was partisan and openly campaigned for inclusion of Kadhis Courts in the constitution. We now think it was deliberate because Muslims have dominated the Committee of Experts and the Parliamentary Select Committee.

Are there Christian MPs in Parliament who can speak for Christians the way Muslim MPs do?

There are Christian members of Parliament, but they have been silent. They have not stood for what is right and just. Church leaders are calling on Christian MPs to stand up and be counted. In future, we urge you as a citizen to vote for those people who will not sit by and watch as our country is sold out. Meanwhile, Christians must organize themselves under the Lords guidance and speak the truth even if MPs fail us.

So what do Christians want?

It is not what Christians want but rather what Kenyans want. Kenyans want a constitution that defines how society is organized on the basis of justice, truth, fairness, effective checks and balances, and an effective bill of rights for all Kenyans. With regard to religion, it should be one that provides for *freedom of worship* to people of *all faiths* under the Bill of Rights. The Constitution of Kenya must remain *neutral* with regard to religion, in order to offer equal protection to the people of all religions.

Why are Christians opposed to Kadhis courts yet they have not harmed any body?

The fact that the Kadhi Courts did not harm non-Muslims does not mean it was right for them to be included in the Constitution. It was wrong and discriminatory against the people of other faiths from the beginning. Kenyans' patience since independence must not be taken for granted. It is time to correct all wrong things. Muslims should by now be an integral part of the Kenyan community not requiring special treatment or protection! The constitution must not divide the people along religious or other lines. Kenyans want one nation, one land, one law that caters for all irrespective of religious affiliation. This is the practice in stable democracies around the world. We should not let a new constitution to perpetuate past injustices. Christ said: *And no one pours new wine into old wineskins. If he does, the wine will burst the skins, and both the wine and the wineskins will be ruined. No, he*

pours new wine into new wineskins" (Mark 2:22). Inclusion of Kadhis Courts in the new constitution is like pouring new wine into old wineskins. It will burst the skins.

Who qualifies to be a Kadhi?

A Kadhi is a Muslim judge or magistrate. While many claim that the Kadhi is a purely judicial officer who serves in a Kadhis Court, they in Kenya they perform religious functions. The Chief Kadhi declares the beginning of Ramadhan a major Muslim religious festival. As an officer of government, it is discriminatory that, to be a Kadhi, one must profess the MUSLIM RELIGION. This means even if a Christian possesses knowledge of the MUSLIM LAW applicable to any SECTS OF MUSLIMS, he cannot serve as a Kadhi, meanwhile Muslims can preside over cases of non Muslims!

What law does Kadhis Court enforce?

Kadhis Courts enforce Islamic law commonly referred to as Sharia. *Sharia* is the Arabic word where our *Kiswahili* word *Sheria* is borrowed from. *Sharia* is the law system based on the the Koran, the Sunna, older Arabic law systems, parallel traditions, and the work of Muslim scholars over the two first centuries of Islam.

What are the implications of the inclusion of Kadhis Courts in the Constitution?

The inclusion of Islamic Sharia courts in the constitution divides Kenyans along religious lines. It would reinforce two classes of Kenyans, Muslims and the rest. Kenyans are seeking a constitution that unites.

Is the draft constitution Christian?

No. The draft Constitution is a collection of all just and fair laws from any source where they may be found. It draws from Judeo-Christian principles of equality, fairness, justice and equity does not make it Christian! These are values recognized by people from all religions, ethnic communities or professional backgrounds. We as Kenyans do not want a Christian or Muslim or Hindu constitution. We want a Kenyan constitution made by all Kenyans for all Kenyans. Unfortunately, as it is now, the constitution appears to be Islamic! It

mentions the word Muslim 6 times, and Kadhis 5 times. It does not mention the word Christian at all!

What have Christians proposed?

That the Constitution recognizes every Kenyans freedom of worship. That every Kenyan worships and submits to the religion they choose at their own cost and not government's cost. We appeal that all religious beliefs and practices be left to the Churches, Mosques and Temples where they belong.

Did Jomo Kenyatta agree with the Sultan to entrench Kadhis Court in the constitution?

No. Kenyatta undertook to the Sultan of Zanzibar to only preserve the jurisdiction of Kadhis courts. The Kadhi was to operate in the ten mile Coastal strip. While Section 66 of the current constitution provides that the Chief Kadhi and the Kadhis "*shall each be empowered to hold a Kadhis court having jurisdiction within the former Protectorate or within such part of the former Protectorate as may be so prescribed*", the government violated the constitution and established Kadhis Courts in areas which are outside the ten mile coastal strip like. Christians filed a case in court to challenge this wanton violation of the constitution of Kenya.

If Christians succeed in rejecting the constitution during the referendum, will we not still have Kadhis Courts under the current Constitution any way?

Christians are actively involved in this matter and will not stop at a No vote at the referendum. Christians filed a case in the High Court in 2004 to declare Kadhis Court unconstitutional. The hearing ended in February 2009. It is regrettable that time has lapsed and the High Court is yet to deliver the judgment. Christians will next sponsor a motion in Parliament to amend the current constitution to delete section 66 which provides for Kadhis Court.

Should Kenyans reject the draft constitution just because it has Kadhis Courts?

Yes. If you had a soda with a small amount of poison, would you drink it? Let us not be deceived by people who either do not have the