

News and Events

Three women and the referendum

By Tom Kagwe



The date for the National Referendum on the Proposed New Constitution (PCK) is on 4th August 2010; and it is approaching very fast. The ‘greens’ (those in favour) and the ‘reds’ (those opposed to) are busy campaigning. They are even breaking the law by campaigning ahead of the day provided for by the Constitution of Kenya Review Act. Already, there is friction between and within both ‘camps’. In this midst, everyone is angling themselves to either get into power or stay in power come the next elections.

Further, there are those campaigning for this colour by day, but by night, for the other colour. Yet others have been said to belong to ‘yes/no/yes/no’ camp; meaning they are undecided or simply playing to the gallery. Similar to a prayer, which usually has three answers from the Lord (yes, no, or wait) they are hoping that the referendum will have the choice of voting ‘wait’. But they are mistaken. The referendum question is whether you approve or disapprove. There is no ‘wait.’

Within this confusion are three women, who are the ‘Wanjiku-type’. They are totally left out of the debate. Not knowing where to go or who/what to vote for, they are suffering from confusion. Like any other electoral process, the referendum is posing yet another challenge. The challenge of what to vote for, whom to vote for, and why to vote: especially given that the last time they cast their ballot, Kenya went up in flames. The three women are typologies of many Kenyans who are bewildered. They are abstracted for purposes of illustrating why you need to make an informed choice come the referendum day.

**Abstract Kenyans**

The first Kenyan is a village-woman, who occasionally visits a major town for her ‘shopping’. She is a widow. Let us call her Atieno. The other Kenyan is a town-dweller living in an informal settlement in Nairobi. She is a devout Christian. Let us call her Ndeti. The other Kenyan is a city resident living in a manicured estate in a major town. She is a business-woman. Let us call Cherotich. The three women live in different environments. But there are things they share.

Atieno has been farming on her 1/4 acre plot for 20 years, and of course the harvest has reduced over the years. She cannot afford to buy cheap and subsidized fertilizer that the government offered to the market last year, since it was stolen and diverted to other sources by some high-level individuals in the Ministry of Agriculture working with some corrupt businessmen. Atieno’s husband died a decade ago, and for that whole time, the brothers of the deceased have

In this Issue:

- Three women and the referendum
- Land and property ownership key to policy formulation
- Integrity in leadership and legislature in the proposed constitution
- Our seed is under threat

Announcement

The Social Transformation and Strategies (STS) programme of Jesuit Hakimani Centre has been invited to Kariobangi (a Nairobi suburb) for a workshop on 8th and 9th July 2010. The theme will be “Peace-building, healing and reconciliation; co-existence and a positive outlook towards elections.” The participants will come from Kariobangi Women Promotion Training Institute. Seventy six participants are expected!

threatened her with eviction. She has seven children and two grandchildren whom she supports.

Ndeti, a devout Christian, earns her living through sale of vegetables and 'githeri tayari' at the informal settlement. Her husband, as usual in these settlements, is a drunkard who rarely comes home with anything other than the foul smell of the illicit brew. Once in a while, he gets arrested by the Administration Police attached to the local Chief's office. Ndeti has to use her meagre day's income to bribe the Chief of the location to set her husband free. The Chief's 'police' occasionally come calling for bribes so that they skip her husband in the occasional swoops. One of her children is in a local secondary school situated in the slum. The other children do not go to secondary school since she cannot afford fees for more than one child.

Cherotich, on the other hand, is quite above the other two women. She lives comfortably in a leafy suburb. She is a divorcee. She has two kids to take care of. They are both in the university. The father, a rich politician, has refused to pay for their upkeep. The judiciary has not helped Cherotich to protect her rights and those of her children as provided for in the Children's Act (Laws of Kenya). The father has bribed almost all court clerks to 'secure' the file of the case in a place that Cherotich cannot access. Cherotich is desperate because her business is not doing well because of the slow-down of the economy since the post-election violence.

### Messages

All these three women (Atieno, Ndeti and Cherotich) are being bombarded with messages about the new constitution. Ndeti, the devout Christian, has been asked to vote NO because Kadhis' Courts have been incorporated in the proposed constitution. Since she belongs to one of the Evangelical Churches in the neighborhood, her Sunday preacher says nothing else about the new constitution: only Kadhis Courts.

Atieno has heard that the proposed law provides for 'abortion of demand.' She is very particular about the issue, having given birth to seven children. She had one miscarriage too. She wonders why abortion is in the new constitution. She is also wondering whether miscarriage is abortion. Finally, Cherotich has heard that land is really 'contentious'. She is being told that her small land, on which her business stands, will be taken away once Kenyans pass the new constitution. All these messages have been relayed to these women through different means of

communications by various people in the society.

To Cherotich, despite her problems with a politician-husband who has absconded from her kids, she is being told by some local politician that she must vote NO because she must protect her land. No one has told her that her land is secured property and that only land grabbers who acquired land fraudulently and non-citizens should be worried. Not her. The NO proponents have not told her how the judiciary is being restructured to ensure an independent judicial service commission; a supreme court; and how vetting of judges (no matter some faults in the process) could help her access justice for herself and her children.

To Atieno, all she sees is an advert carried by the Church which states that: "choose life...vote NO". Yet, she is not told about what circumstances warrant a health professional to terminate pregnancy. She has not been told what the draft says about her children's rights, about her socio-economic rights to better housing, education, healthcare, water and so forth for her and her children. Atieno has not been told what will happen to those who are corrupt: especially those who are fond of stealing fertilizer from government stores. She has not been told by the NO team that all public leaders will not steal her fertilizer and if they do, the judiciary is capable of prosecuting such characters. She has not been told that her land on which she lives, not even brothers-in-law will evict her. She has a right to be there. To her, these are real needs.

Finally, Ndeti is not being told how the provincial administration will be 'restructured' to ensure that it is phased out in five years to bring a more accountable system that she will vote in. She is not being told that tomorrow's 'Chief's Police' will be under a professional, one-command centre, and that they must respect human rights and fundamental freedoms. Just like Atieno, no one has mentioned to Ndeti about her future right to housing or those rights that obtain for her children.

### Ties that bind

What is clear from the above is that these three women are in a fix. Instead of debating the proposed constitution with wisdom, some lies and half-truths are being peddled across the country. The three women share some ties. First, there are people out there being economical with the truth. Instead of telling Atieno, Ndeti and Cherotich the real issues, some people have decided to campaign on single-issues as if that is all the new constitution is about. These single-issue lobbyists are doing this purposefully: to defeat the new

constitution, which seeks to promote social justice.

Second, there are those who are using religion to destroy rather than to build. Why would a ‘man of God’, in Ndeti’s Evangelical Church refuse to preach the Gospel and concentrate on someone else’s ‘gospel’? Is Ndeti’s preacher incapable of the prophetic mission given to him in Matthew 28:19, which states that: “...go and make disciples of all nations, baptizing them in the name of the Father, the Son and of the Holy Spirit”? The preacher is callously laying the blame on ‘expanding Islam’ instead of examining himself why his missionary strategies are not working in converting more people to Christianity.

Finally, all these three women have not been told about what is in store for them as women: That at least 1/3 of all parliamentary seats will be theirs; that their youthful children will have a place in society; and that their children’s rights will be protected better in future. If women are the backbone of families and societies for that matter, then Atieno, Ndeti and Cherotich need to know that they are not mere receptacles of this ‘false wisdom’. They must make a point of accessing the document, reading it, and making informed choices. But that can only happen if the Committee of Experts and civil society pull up their socks to make sure this is possible. Let Atieno, Ndeti and Cherotich make the correct decisions that affect their life.

*The writer is the Programme’s Coordinator /Acting Deputy Executive Director at Kenya Human Rights Commission, Nairobi*

## Land and property ownership key to policy formulation

By Phares Mugo

One of the basic human rights articulated by the United Nations is the right to own property. This is a fundamental right that cannot be denied any citizen. The right to protection of this property is another right articulated by the same organization and one which it further stresses should be guaranteed by the government of the day. With this right to own property come the rights of movement and association. These relate to where one owns the property and the 'society' within which he lives. This then means that though land is just one of the facets that affect the rights of Kenyans, there are other rights that come with it and which should be safeguarded as much as possible.

The issue of land in Kenya therefore takes a back-seat from the centre stage as the issues here do not just refer to land only but to rights which define the very humanness of its citizens. In the Kenyan constitution, one is guaranteed free movement from one corner of the country to the other, where to settle, do business or just for leisure. This should therefore guide the direction the land policy formulation takes. The land issue in Kenya seems to be central to the very being of the people. Indeed in some communities, one is not considered of any consequence among his peers if he does not own any land. This is because, apart from the few nomadic tribes, most Kenyans are farmers, be they small scale or large scale and therefore this is an issue that touches on their very survival.

However, there is a major disparity in the distribution of this most important commodity within the country, with the majority holding only small plots while a few people own large tracts of land. Though the country covers a large surface area, only a third is arable and it is sad that about half of this land lies in the hands of a few powerful families. Most of it has been left fallow and is of no economic use to anyone.

It is no wonder then that the issue of land was central to the chaos that rocked this country in 2008 after the disputed 2007 general elections. Some ethnic communities felt that others had invaded 'their areas' and grabbed land from them.

What they did not realize is that the people they accuse of taking their land away from them were themselves victims of land 'injustices' that date back to pre-colonial Kenya. This may have brought about the feeling of being boxed in or the 'xenophobic' feeling that caused the ethnic bloodletting we witnessed in early 2008.

If one were to revisit the question of land distribution in Kenya and take an in-depth analysis, for example the Ndung'u Report, there is damning evidence that most land that has been obtained by politicians over the years is land that was meant to benefit Kenyans. What has however happened is that only those who were politically connected gained from this land and as such hapless Kenyans were left with nowhere to turn to.

To tackle this issue, there has to be measures taken to ensure that all arable land within Kenya is firstly, utilized to the maximum for the benefit of all, and secondly, that no individual owns more than a certain amount of land that would be laid down by the new land policy and the proposed constitution of Kenya (2010). This would limit the ownership of land to certain moral level whereby individuals would be prohibited from owning huge tracts of land at the expense of their fellow citizens. So as to build a mechanism that will ensure that there will never again be any Kenyan killed because of land in the future, a land policy formulation needs to also come up with measures that would make it hard for an individual to acquire whether legally or otherwise, more land than is laid down by law.

All life is sacred and the death of an individual for a few acres of land is wrong but at the same time communities living with people from other ethnic groups in their midst should be made to understand that Kenya belongs to all of us and that there is no crime in one owning land where someone's ethnic community is a minority. They should be made to understand that there are other rights tied to the ownership of this land and that violating one of these rights affects other rights too.

*The writer is the Programme Officer (Research Agenda Setting and Influencing) and Acting Director of Jesuit Hakimani Centre.*

## **Integrity in leadership and legislature in the proposed constitution**

**By Paul Odhiambo**

**A**s the debate on the proposed constitution goes on, it is imperative to highlight various chapters in the proposed law. In this piece, we shall look at some outstanding issues in chapters six, seven and eight. Chapter six (Leadership and Integrity) of the proposed constitution underlines values, guiding principles of leadership and integrity and ethical ideals that state officers should inculcate in discharging their public office. Any state officer is expected to demonstrate respect for the people, bring honour to the nation and dignity to the office and to promote confidence in the integrity of the office (Article 73(1)). The current constitution does not have a chapter on Leadership and Integrity. However, pieces of legislation enacted when National Rainbow Coalition government took over power in 2003 deal with some aspects of leadership and integrity. Two obvious legislation are: Public Officer Ethics Act (2003) and Anti-Corruption and Economic Crimes Act (2003).

Guiding principles of leadership and integrity (Art. 73(2)) include election on the basis of personal integrity; competence and suitability, or election in free and fair elections; objectivity in decision making without being influenced by favouritism, nepotism or any other corrupt practices; selfless service based on public interest and honesty in the execution of public duties; accountability to the public; and discipline and commitment in the service to the citizens. In order for the guiding principles of leadership and integrity to be a reality, there is a need for public officers to be persons of high moral integrity.

The proposed constitution also stipulates that there should be no conflict between personal interest and public/official duties. Further, state officer should not compromise public interest in favour of his/her personal interest. State officers should also not demean the public offices they hold. They are required not to maintain a bank account abroad unless allowed by an Act of Parliament.

In the proposed law, the State officers will be restricted from (Article 77) participating in any other gainful employment. Further, State officers shall not be allowed to hold office in a political party.

Moreover, a retired State officer shall not receive remuneration from public funds other than as contemplated in clause (3). In addition, a State officer who is receiving a pension from public funds shall not hold more than two concurrent remunerative positions (for instance, chairperson, director or employee of a State-owned company or a state organ).

### **Electoral system and process**

Part one of chapter seven (Representation of the People) deals with the electoral system and process. Electoral system is very critical since it determines how free and fair elections can be managed and conducted in a liberal democracy. The legitimacy of a democratic government depends on the popular support it enjoys from the citizenry. This means that electoral process should ensure that polls are conducted in a manner that the candidates who get majority of the votes are declared as the winners. For electoral system to deliver free and fair elections, the electoral body/authority should be impartial, independent, efficient and transparent.

Electoral process should also enhance stable democracy such that conflicts and competing interests are managed amicably. The proposed new constitution intends to establish a proportional representation in order to address the problem of winner-takes-all electoral process that has dominated Kenya's politics since independence. The proposed law intends to increase participation of women and other special groups in legislative assembly at both levels: national and county governments. If the proposed constitution gets a green card on 4th August this year, it will also be the first time that persons who do not belong to political parties will contest elections as independent candidates.

In order for the electoral process to be more effective, the proposed law has set certain principles for electoral system to be more effective (Article 81) namely; freedom of citizens to exercise their political rights; not more than 2/3 of the members of elective public bodies shall belong to the same gender; fair representation of persons with disabilities; universal suffrage based on the aspiration for fair representation and equity of vote; and free and fair elections: (by secret ballot, free from violence, intimidation, improper influence); election should be conducted by an independent body; transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.

Chapter eight (Legislature) of the proposed constitution has six parts namely; Establishment and

role of Parliament; Composition and membership of Parliament; Offices of Parliament; Procedures for enacting legislation; Parliament's general procedures & rules; and Miscellaneous. Some of the features in the legislature are: bicameral parliament; promotion of women representation; promotion of representation of marginalized groups; the date for election of MPs is fixed ; Parliament regulating its own calendar; right to petition parliament; and right to recall non-performing legislators.

In the proposed law, Kenya shall have a bicameral chamber namely: the National Assembly and the Senate. Roles of the National Assembly (Art. 95) are representation of the people of the constituencies and special interests in the National Assembly; deliberation on and resolving issues of concern to the people; enacting legislation; determining the allocation of national revenue between the levels of government; appropriating funds for expenditure by the national government and other national State Organs; exercising oversight over national revenue and its expenditure; reviewing the conduct in office of the President, the Deputy President and other state officers and initiating the process of removing them from office; exercising oversight of State organs and approving declaration of war and extensions of state of emergency.

On the other hand, the roles of the Senate (Article 96) include; representing the counties and serving to protect the interests of the counties & their governments; participating in the law-making function of Parliament by considering, debating and approving Bills concerning counties; determining the allocation of national revenues among counties and exercising oversight over national revenue allocated to the county governments; and participating in the oversight of State officers by considering and determining any resolution to remove the President or DP from office in accordance with Article 145 of the proposed constitution.

### **Composition and membership of Parliament**

Membership of the National Assembly (Art. 97) shall comprise 299 elected MPs from constituencies; 47 women, each elected from each county; twelve nominated MPs from parliamentary political parties to represent special interests: youth, persons with disabilities and workers and the speaker, who is an ex officio member. On the other hand, the Senate (Art. 98) shall consist of forty-seven (47) members elected from the 47 counties, sixteen (16) women nominated by political parties according to

their proportion of members in the Senate, a man and a woman representing the youth, a man and a woman representing the persons with disabilities and the speaker who shall be an ex officio member.

The proposed constitution has some features that might enhance representation and good governance in the country. Such features include promotion of representation of marginalized groups (Art. 100), right to recall MPs (Article 104), public access and participation (Art. 118), right to petition Parliament (Art. 119) and independent candidatures (Art. 85) among others. If the proposed constitution is passed, there will be a need for the legislators to work together and enact laws that could facilitate the implementation of the new constitution. It is, therefore, important that Kenyans read the proposed by themselves to clearly understand the contents of the proposed law. Effective civic education could also help both literate and illiterate citizens in understanding the nitty-gritty of the proposed law.

As Kenyans move closer to the referendum date, it is high time emphasis was also put on the moral values that aspiring candidates should have before they are elected to public office. The good laws could only make sense if political leaders perceive leadership as a service for the common good of all the citizens. The electorate must endeavour to choose persons of high moral integrity to political offices. In that way, good leaders will respect the spirit and the letter of the law!

*“Africa needs saints in high political office: saintly politicians who will cleanse the continent of corruption, work for the good of the people, and know how to galvanize other men and women of good will from outside the Church to join hands against the common evils that beset our nations.”* From the Final message of the Second African Synod, November 2009.

*The writer is the Editor at Jesuit Hakimani Centre, Nairobi*

## **Our seed is under threat: Let's recover, save, and replicate the indigenous seed**

**By Betty Prissy Muasya**

Over 1.4 billion people in developing countries depend on farm-saved seeds as their primary seed source. Three-quarters of the world's farmers routinely save seed from their harvest and exchange seed with their farm neighbors. Through this system, there has been assurance of seed security and food security.

We are currently living in a world of increasing corporate interest and influence. Nowhere is this more evident than in the seed sector. Driven by what has been best described as a pathological requirement to provide economic returns to shareholders, giant agrochemical corporations like Syngenta, Monsanto and Bayer are vying for ownership and control of the agrarian equivalent of the Holy Grail - seeds and seed production - the fundamental root of agriculture and ultimately of our society.

Why? The promise of unending economic returns is too great for these corporations to ignore and as a consequence they are pursuing a number of expensive and socially questionable tactics. These tactics include the development and patenting of seeds and seed technology, the acquisition of smaller seed breeding companies, and by lobbying governments to formally acknowledge corporate interest and investment in their federal seed and plant breeding legislation and policies. This corporate activity is here with us and Genetically Modified Organisms (GMOs) push into our farms and food system is major evidence.

This seed system - now an industry - is being transformed, succumbing to the effects of patent law and other intellectual property regimes, corporate consolidation, government maneuvering and cutbacks further encouraging the participation and interest of profit-hungry transnational corporations who are given more responsibility for the maintenance of this public interest by our seemingly feeble government.

In the words of Devlin Kuyek, author of the report *Stolen Seeds*, "our public goods are being destroyed to make way for private profit and the seed saving and plant breeding practices at the heart of our seed

system are being criminalized." And in the process, thorny but critically important issues of sustainability, of fairness, of social and ecological responsibility and citizenship are being overlooked or dismissed.

### **Solution to our Seeds and Food Security**

- The protection and preservation of indigenous/traditional seed is fundamental in ensuring food security. As Christians we have a duty to preserve and take care of our environment.
- Remember the creation order in Genesis, man was overall and charged with the responsibility of overseeing other creation-of course responsibly.
- Let's start now to identify and save our indigenous food crops, shrubs and forests trees next door just the way you are saving some coin for the future.
- The promotion of resilient crops like millet sorghum, yams and cassava is important to ensure food security.
- Educate and alert Women on the "Threat of our seed" since they play an important role in seed saving and breeding, this is being threatened by multinationals promoting Genetically Modified seed.

*The writer works at Participatory Ecological Land Use Management Association (PELUM-KENYA)*

## ANNOUNCEMENT

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Jesuit Hakimani Centre is the social justice, research and advocacy centre of the Eastern Africa Province of the Society of Jesus. The province comprises of Ethiopia, Kenya, Sudan, Uganda and Tanzania.

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Contact us

Jesuit Hakimani Centre,  
P.O. Box 214, 00625 Nairobi  
phone: +254 20 3597097  
web: [www.jesuithakimani.org](http://www.jesuithakimani.org)  
email: [admin@jesuithakimani.org](mailto:admin@jesuithakimani.org),  
[hakimani@gmail.com](mailto:hakimani@gmail.com)