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**International Centre for Policy and Conflict**

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## **PRESS STATEMENT**

### **(Summary of the Proposed Constitution Analysis Report)**

**Friday July 16<sup>th</sup>, 2010**

### **PROPOSED CONSTITUTION: WANJIKU BLUEPRINT FOR THE REBIRTH OF THE KENYAN NATION-STATE**

A comprehensive constitutional review has been a priority of the reform movement on the political arena in Kenya since 1990. While the piecemeal reforms of 1991 resulted in the re-introduction of a multi-party system of government, it failed to produce and establish a constitutional democracy.

The repeal of Section 2A of the constitution allowed for the legal existence of “multiparty democracy”. But it left in place laws which undermined the principles necessary for a functional multi-party system. Many of these laws were holdovers from the colonial period, especially the emergency era. These laws have continued to be used to undermine and attack citizens’ civil liberties, entrench bad governance, corruption and impunity, and safeguard an imperial presidency.

The historical failure of the current constitution to protect democracy and fundamental rights, and the absence of an effective Bill of Rights leave Kenyans dangerously exposed to the tyranny of Parliament and the Presidency.

The International community-brokered National Accord of 2008 recognized the fundamental defects of the current constitution and declared constitutional reforms a necessary pre-condition for securing future political stability of Kenya. The Accord also saw a new constitution as key to introducing crucial institutional and electoral reforms, and starting a genuine national process of reconstruction, reconciliation and social cohesion.

The Proposed Constitution, now heading to the referendum, therefore forms the bridge between this ruinous past and a national rebirth.

The vision articulated by the reform movement was first and foremost of constitutionalism as a mechanism for checking state power. Second, the reform movement envisioned certain substantive values expressive of the liberal democracy. These include individual sovereignty and rights, limited government, and checks and balances against executive power, especially with regard to promoting and preserving the supremacy of parliament and the judiciary.

Kenyans have had a clear vision of creating a modern 21st century state. However, the political leadership has remained a stumbling block.

Kenyans are ahead of their leaders. But they have allowed themselves to be dragged and caged by the very people with selfish and partisan interests and short-term political expediency. With the wisdom of hindsight it can be seen that the perils which face the Proposed Constitution are not insurmountable.

Kenyans are on the verge of realizing the fruit of their struggle to democratize their Country. They cannot accord those who have erected road blocks to once again derail the completion of the constitutional reforms. It is necessary that Kenya gets a new constitutional dispensation in order to begin in earnest the genuine national reconstruction and reconciliation.

**IN THIS REGARD, the International Center for Policy and Conflict has done an independent analysis of the Proposed Constitution, produced a brief analysis report and made the following conclusions:**

1. The Committee of Experts facilitated structured and principled negotiations allowing all stakeholders to canvass for their positions. The Proposed Constitution is a negotiated constitutionally settlement that virtually factors and guarantee each and every citizen accommodation of their core concerns. It offers the key building blocks of taking Kenya to the next of democratization and development.
2. The Proposed Constitution secures **the Sovereignty of the People** instead of the sovereignty of the government.
3. It shall entrench **the Supremacy of the Constitution** instead of the supremacy of Parliament and the Presidency.
4. The progressive and expanded Bill of Rights will finally secure the principle of **the inherent, indivisibility, interdependence and inalienability of rights and freedoms**.
5. Kenyans are guaranteed the basis of building a democracy where the dignity of every citizen shall be the centrepiece of governance policy. This will fundamentally alter the basis of state policy and budgeting in Kenya and effectively address the inequalities that exist in Kenya today.
6. The Proposed Constitution enhance platforms of people's participation in governance including stronger political parties, better representation of the people and the avenues of legislation will secure **Popular Participation**.
7. **National Values and Goals** articulated in the Proposed Constitution offer the standards against which to regulate the behaviour of all citizens and public officials alike. It is intricate to understand how we have survived under the old constitution that we are about to get rid of.
8. The **Separation of Powers** between the Judiciary, the Legislature and the Executive shall ensure that rights are protected, justice delivered, opportunities and security enhanced for all Kenyans.
9. The Proposed Constitution introduces the vertical and horizontal **Checks and Balances** especially with the entrenchment of key constitutional commissions will give Kenyans great value for money. It will also check impunity and facilitate a new culture of governance under a clean, lean, effective, accountable and responsive government

because the sanctions for violations of the rules shall be severe. This is the secret to ensuring the rule of law is upheld.

10. The elaborate provisions for the **non-discrimination, the diversity and inclusivity** of all Kenyans by recognizing their ethnic, regional, religious, gender and even intergenerational diversities is a major pillar for building a more cohesive, united, tolerant, proud and peaceful nation.
11. The **principle of Equity and equality** is the hall mark of this Proposed Constitution. We encourage Kenyans to see the opportunities this new constitution will present in unlocking the great potential within the nation.
12. **The public finance and public service chapters** enhance equity in a significant manner. The National Revenue Commission and the principles guiding budgeting offer Kenya a major platform for embracing the value of equity and justice. The needs of Kenyans will be responded to more meaningfully and purposefully at both local and national level.
13. The provisions of the **principle of Devolution** are remarkable. Kenyans will now witness a vibrant social and economic life in all the constituencies and counties since resources have been significantly devolved. County governments with significant and meaningful powers will enable every Kenyan to participate in creating a productive state and a fair socio-economic system.
14. The **vetting of all senior civil servants**, the requirement that cabinet ministers be appointed from outside Parliament and the securing of the independence of public services from being excessively politicized shall greatly secure **public service neutrality and professionalism**. This will lead to a more responsive and effective government and is huge leap forward.
15. The Proposed Constitution provides for **equal protection of and before the Law**. With separation of powers and the entrenchment of the rule of law, the corrupt and rogue state agencies shall become a thing of the past. Indeed equal protection of and under the law shall become a reality. The **national security apparatus** are subjected to **civilian authority and accountability**.
16. We have witnessed repugnant distortions and misinformation following the approval and adoption of the Proposed Constitution by Parliament without amendments and its publication by Committee of Experts. These are around ten areas: Abortion, Kadhi's courts, land, devolution, rights of armed servicemen, denial of counties to certain minority ethnic communities, the vetting of judges, the provincial administration, the role of the senate and the argument that there are too many representatives and governments. All these arguments are not based on known principles for assessing the acceptability of a new constitution. They cannot therefore overshadow the key gains by the people of Kenya.

We cherish right of a person to express dissent. But it is necessary such a dissent be based on accuracy, principle, honesty and integrity.

Finally we call upon the people of Kenya and our international friends to work with the Committee of Experts and the Interim Independent Electoral Commission (IIEC) in carrying out effective civic and voter education to ensure a PRODUCTIVE and PEACEFUL REFERENDUM. Further, we are urging religious and political leaders to exercise restraint in their political rhetoric in order to build the necessary bridges for uniting the country towards and after referendum.

Thank you

**Signed by**

**Njeri Kabeberi**

**Chair, Board of Directors, International Center for Policy and Conflict**

**Ndung'u Wainaina, Executive Director**

