

## **GENERAL ELECTIONS DEPENDED ECONOMY: IS THE CONSTITUTION THE SOLUTION?**

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### **OPENING STATEMENT**

The Constitution is not by itself per se, the solution, a Constitution is never an end in itself, it is a means to an end - but more on this latter.

### **A BRIEF HISTORICAL PERSPECTIVE**

In order to appreciate why Kenya is where it is today economically, socially, politically and on the issues of governance and accountability, it is useful to look back to where we have come from, where we might have taken the wrong turning, where the rain, as Chinua Achebe would say, began to beat us. Doing so will help us understand where we are today and why. This should in turn help us not to keep repeating the mistakes of the past or in other words help us to stop history from repeating itself.

Time does not permit me to do justice to this very important issue of our Nations history and I intend to merely highlight important milestones in that journey.

After many years of colonial repression, Nationalists like Jesse Kamau, James Beuttah and others got together and resolved to send a petition to the King of England to draw his attention to the injustice committed by his

subjects on the locals in forcibly grabbing their land and turning them to squatters and servants on land they previously owned. They wanted their land back. At first, political freedom or independence was not on their minds. The return from the 2<sup>nd</sup> World War of Kenyan Africans including Dedan Kimathi who had fought alongside whites and benefited from education as part of the war effort greatly changed the dynamics. These returning soldiers no longer held white people in awe. They had seen them terrified in battlefields. They saw they were human. Sometimes, the African soldiers exhibited more courage than their white counterparts. Back home the oppression continued. Discrimination continued, colour bar it was called. At the entrance to White Rhino Hotel in Nyeri, a plaque, unfortunately removed recently during renovations proudly proclaimed “Dogs and Africans Not Permitted.” I say unfortunately because, in my view, such plaques should be preserved as part of our history. How will future generations ever learn what the forefathers went through if we erase and re-write history. The Mau Mau war was born. It included not just Kikuyus but Kenyans from every corner of the Republic.

The compelling and core values driving this struggle for the 1<sup>st</sup> liberation were social and economic justice. Giving everyone an equal opportunity. Ethnicity was not an issue.

At independence in 1963 following a struggle in which thousands lost their lives, many others tortured in unmentionable ways in detention camps, the Independence Dream of Social and Economic justice was betrayed. The 1<sup>st</sup> President was not amongst the original core group of Nationalists. He was sent by them to England to present the petition to the King because James

Beuttah could not go having been then recently transferred to Kampala by his employer, the Post Office. It was Beuttah, who suggested that Johnston Kamau, later to be known as Jomo Kenyatta, be sent in his place because Kenyatta had command of the Kings English. After Independence, Jomo Kenyatta sidelined Mau Mau war Veterans and other Nationalists. He instead chose to govern with the loyalists and sons of the colonial chiefs, creating an elite class, which simply stepped into the shoes of the white colonizers. Social and economic justice for the masses who were the majority was lost sight of. Land grabbing, corruption, politics of patronage, intolerance, dictatorship and political assassinations were all well in place by 1964, hardly a year into independence. Pio Gama Pinto was assassinated in February 1965 because of questioning land grabbing.

We began to dismantle the Independence Constitution, the Lancaster House Constitution in 1964. Constitutional Institutions like Parliament, Judiciary, the Civil Service, and Police etc which act as checks and balances in a functioning democracy were all weakened with power being transferred to the Executive President making this institution an Imperial Presidency. All the other institutions were constitutionally subordinated to the Presidency. After Kenyatta passed away in August 1978, the 2<sup>nd</sup> President Daniel Toroitich arap Moi merely carried on in the 2<sup>nd</sup> Republic with norms established in the first Republic. He kept the promise he made to Kenyans when he took over in 1978, *atafuata Nyayo za Kenyatta*. In some ways he exceeded expectations in “fuatarining” those Nyayos. The rest as they say is history.

## **SECOND LIBERATION**

The excesses of the Moi regime following the jolt he got with the attempted coup of August 1982, a short 2 months after he made Kenya a *de jure* one-Party State via the notorious Sec. 2A, eventually fuelled the clamour for change leading to the repeal of Sec. 2A in 1991. Other achievements in the early '90s were the freeing of the airwaves and the repeal of Exchange Control laws. The structures of the One Party Dictatorship however remained in place. Only a New Constitutional dispensation could dismantle these. Despite the gains made in the early '90s Moi and KANU remained in power for another 10 years.

## **ANOTHER FALSE START**

In the December 2002 elections, the “opposition” agreed on what they had failed to agree upon in 1992 and 1997, one-compromise opposition candidate against Moi and KANU; Kenya’s 3<sup>rd</sup> President, Mwai Kibaki. The expectation was that the “opposition” now in power would deliver on a New Constitution and the re-structuring of the Institutions thus returning Kenya to a country governed by the Rule of Law, not Personal Rule. Betrayals on the ‘MOU’ and power sharing led to the fallout which in turn resulted in the standoff and the defeat of the Draft Constitution in the 2005 Referendum.

The attempt to enact a minimum package of constitutional and legal reforms to ensure free and fair elections in 2007 was blocked leading inevitably to the “PEV.” It is the Kofi Annan led team’s forced power sharing arrangement, which has given us the New Constitution promulgated in August 2010.

The 1<sup>st</sup> Republic (1963 – 1978) under Mzee Jomo Kenyatta, the 2<sup>nd</sup> Republic (1978 – 2002) under retired President Moi and now the 3<sup>rd</sup> Republic under President Mwai Kibaki, all have one common denominator, ideologically they have been right wing, pro-status quo and conservative concerned mainly with the interests of the few at the top end including capital owners, banks, insurance companies, large land-owners etc. Despite the rhetoric, little meaningful concern has been given to the social economic needs of the majority.

If truth be told, since 1963, leaders and their cohorts have taken power to loot the country's resources and to feather their own nests at the expense of the majority. Even with the current regime, while there are undeniable achievements, free primary education and infrastructural revival come to mind, the fundamentals remain the way they have been since 1963. High-level corruption has probably gone up, only this time round, it is more sophisticated. Despite these positive developments pertinent questions should not be over-looked. Given the high levels of corruption, are we satisfied that every shilling finds its way into the road construction and other infrastructural rehabilitation? Is a budget for road maintenance set aside? Some of the roads now being re-carpeted were once shining tarmac but were constructed without budgets for maintenance. Tarmac is expensive business. It should go hand in hand with a maintenance budget being set aside.

Let us now go back to the opening statement; a constitution is a means to an end.

The re-structuring of Institutions of State like the Legislature (Senate and the National Assembly), the Judiciary, the Civil Service, the Police and now the Devolved Government is expected to end the over-concentration of power in an Imperial Presidency and thus bring about balances, checks and accountability. Faithful implementation of the New Constitution will create the enabling political, economic and social environment for the exploitation of Kenya's resources and especially the human resource, one of the most important for any economic take-off.

How do I suggest that Kenya re-arranges her priorities in terms of economic and social planning?

Again on account of time constraints, I can here only give examples:-

1. **We must get Kenya out of aid dependency & guard our own tax funds.** There is no example anywhere in the world of a country which rose from being a third world country/economy to a 2<sup>nd</sup> or 1<sup>st</sup> world country while being dependent on aid from the World Bank, IMF and bilaterals; yet today since 2008 we have borrowed a facility of up to USD 700 million from the IMF – purely for the so-called budget of payments support – i.e. to import (more on this later). South Korea, Malaysia, Thailand and Singapore are must case studies for Kenya.

The loans repayment simply chokes economic growth. If the principle is agreed upon, then the strategies can be worked out. Donors including the World Bank and the IMF have over the years given out loans in the full knowledge that large percentages of the

same were being stolen or that the recipient country would never be able to repay. They have been complicit in high-level corruption. An example of this became apparent only last year when it was admitted in Parliament that in October 2011, the Treasury wrote a letter committing to refund Kshs 2.5 billion to the World Bank and other donors for fraudulent use of their funds. Yet we have never heard the World Bank demanding refunds of stolen counterpart Government funds (i.e. Taxpayers funds) on the same projects. The projects if you want to know were:

Program	Amount to be refunded
Education Fast Track Initiative	2.19 billion
Kenya Education Sector Support Program	347 million
Western Kenya Community Driven Development & Flood Mitigation Project	50.8 million
Arid Lands Program	40 million
National Statistical System Project	42 million
Arid Lands Program	40 million

Considering that donors contribute only 10% of our development expenditure per annum, if these losses on only 6 projects by the way were extrapolated by ICPAK the amounts of taxpayers' funds going missing quietly are staggering. On this account alone, such donors as the World Bank should be prevailed upon to give appropriate

discounts and rebates and accept negotiated figures in full and final settlement of their loans. This would go hand in hand with an aggressive policy of pursuing and repatriating looted funds abroad as documented in for example the Kroll Report.

2. **High Levels of Corruption in Procurement & Corrupt Debt.** If there is political will to contain high level corruption, Kenya would have an additional 40% or thereabouts of its budget available for injection into economic growth. This is no exaggeration, in 2010; the Permanent Secretary for Finance told Parliament's Agricultural Committee (which was looking into the infamous Kshs 4 billion maize scandal) that each year the procurement budget is decimated by 30% through wasted mismanagement and corruption. A pending independent forensic audit into the National Budget and External Debt Registers – ordered in May 2009 – has yet to commence.

The last attempt at cleaning the external debt registers was in 2001 by the Lazard Brothers, and since then new debts including at least 8 Anglo Leasing related debts have been posted in it. I would say that ICPAK should be at the forefront of demanding independent forensic audit of Kenya's debt registers, internal and external which is a must. Treasury treats these as "State Secrets." We for example need to know how 9 years ago when retired President Moi left office, our total debt stood at Kshs. 700 billion. Today, it is climbing up to almost double this amount, at Kshs 1.2 Trillion. Any bogus debts after the forensic audit must be expunged and recovered from those who might have been lining their pockets through such bogus debts. Remember



for every debit there must be a corresponding credit as you Accountants are wont to say.

In the case of bogus debts, the credits are in the pockets of a few but the debits, the repayment is in the pockets of us all. As a last example I looked through a list of loans that was tabled in Parliament in 2006, and found 22 different railway related loans amounting to over Kshs 11 billion – including a single loan of Kshs 101 million for something called phase 1 of the Kerio Valley Railway Project Phase I (1985). Now you and I know that such loans are being repaid from taxpayers' money although everyone knows we only have the Railway line laid by the Colonial Masters back in 1896-1902. Only last year the Ministry of Transport told Parliament that not a single inch of track has been added to Kenya's Railways since 1902.

3. **Value Adding Our Exports to redress the balance of trade.** The bottom line for a country's economic takeoff is for that country to export more than it imports. For this to happen, focus has to be on value adding. All over the world, the dominant tea is Liptons, an English company, yet England does not grow tea. The financial benefits from the intellectual property Lipton accrue to England, not to Kenya, where tea is grown. Coffee is a similar story. Take another example. We mine rubies in Taita Taveta. They are exported in raw form. In Thailand, they process their rubies, produce ornaments and export them in finished form. In addition to value adding, they provide employment. One could go on and on.

4. **Harvesting Rain Water.** In cycles of every three years or so, Kenya has to beg or import food. Since independence, we have never been food self-sufficient. If in terms of priorities the huge loans we have borrowed over the years had gone into rain harvesting, subsidizing irrigation, extending results of agricultural research (generally good) to the farmers who are the end consumers of such research, Kenya would not only be food self-sufficient but have the surplus to feed the region and beyond.
5. **Mineral Exploration.** It is commendable that coal exploitation in Mwingi and Kitui is on going. Iron ore the deposits of which exist in parts of Mbeere and Mwingi need exploitation. But we need to ensure that there is transparency in the allocation of concessions and community participation/ benefits from what riches lie underneath the ground. We must ensure that the environment is protected too.
6. **Policy on Banking.** A free market economy is not synonymous with absence of policy and regulation. Banking is too important an industry to the growth of a country's economy that intervention at policy level including appropriate incentives to target lending to particular areas is called for. We want Kenya to become a nation of homeowners. Today there are approximately 15,000 active mortgage accounts in a country that in 2009 had more than 8 million households. We must find a means of expanding banking services and the money to lend to Kenyans all over Kenya; to invest in Kenyans all over Kenya. These Kenyans are not short of enterprise. After all they have survived all these decades largely on their own in

self employment. Imagine if it were possible to lend young Kenyans a hundred times more than the current youth enterprise fund. This is possible without corruption. But together with the banks, we must find a means to maintain a low interest regime – a consistent interest rate regime – these things are possible; but not in an environment of rampant corruption and insider dealings.

Policies designed to release economic opportunities to the majority should be the priority. Policies which will guarantee each Kenyan a minimum decent quality of life in terms of food, housing, health care, education and employment is the end to which the New Constitution should lead us. The high levels of crime and insecurity will then become manageable.

I rest my case.

**P.K. Muite, S.C.**