

Reaching a turning point



In 2010, after many years of struggle, Kenyans finally managed to negotiate the groundbreaking 2010 Constitution. Its focus on basic rights, participation, accountability to citizens and public service provides the basis for defining the role of the State as central to constructing an economy that fulfils the promise of equity, participation and basic social and economic rights. By making popular participation and service delivery the core politics of sustainable development, the people will transform themselves into a new revolutionary force. In environmental terms, the new Constitution is also a step forward since it establishes the right of every Kenyan to a clean and healthy environment.

Social Development Network

Prof. Edward Oyugi, Philip Thigo, John Kipchumbah,

Ayoma Matunga

United Nations Millennium Campaign (UNMC)

Charles Abugre

Kenya Treatment Access Movement (KETAM)

James Kamau

SEATINI

Oduor Ong'wen

KENDREN

Wahu Kaara

Daraja-Civic Initiatives Forum

Esther Nzioka

CLAN- Migori

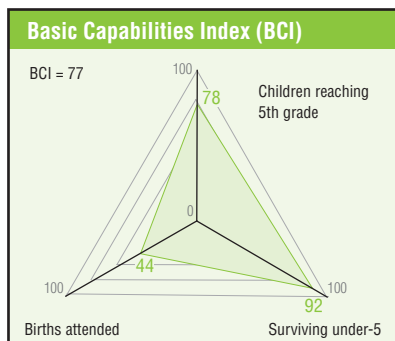
William Oloo Janak

Reality of Aid

Vitalice Meja

In December 2010, following years of struggle for true sovereignty and citizenship, the people of Kenya managed to negotiate a new social contract in the form of a ground-breaking Constitution. The path to the 2010 Constitution has been neither straight nor smooth, with constitutional reform a major issue since the country gained independence. Attempts to amend the 1963 Constitution intensified in the late 1990s and early 2000s, but succeeded only after the outbreak of post-election violence in early 2008 and the intervention of the African Union through a mediation team headed by then UN Secretary-General Kofi Annan. The Constitution was presented to the Attorney General on 7 April 2010, officially published on 6 May 2010 and put to a referendum on 4 August 2010. Approved by 67% of Kenyan voters, it was promulgated on 27 August 2010.

This new Constitution promises a transformative agenda that, if fully realized, will bring about a new political-economic framework in which the country could break from the neo-patrimonial system (in which patrons use State resources to secure the loyalty of clients in the general population) bequeathed to them by neo-colonialism. Its four transformative features are: an expanded Bill of Rights and a promise to address inequality and marginalization;¹ far-reaching devolution of public authority; a chapter on leadership and integrity founded on the principles of selfless public service, discipline and accountability;



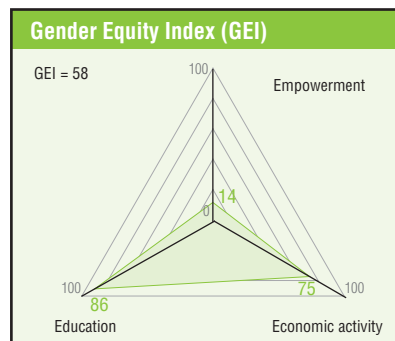
and a value system based on the sovereignty of the people and a culture of human rights.

If properly implemented, the Constitution will offer Kenyans a unique opportunity to obtain straight answers to two long-standing questions, hitherto the source of intermittent and violent sub-national conflicts: what is the concrete meaning of being a Kenyan citizen and what does the State offer to the majority of the people? The 2010 Constitution's focus on basic rights, participation, accountability to citizens and selfless public service also provides the context for defining the role of the State as central to constructing an economy that fulfils the promise of equity, participation and basic social and economic rights.

This will enable Kenya to break free from the stranglehold of neo-liberal policies imposed through various means including conditions for development aid, political arm-twisting, asymmetric multilateral obligations and the collusion of local interests with foreign agendas. It will also help to address the issue of widespread corruption. For example, recent social audits reveal that the benefits of both the Local Authorities Trust Fund (LATF) and the Constituency Development Fund (CDF) hardly reached their primary stakeholders. Most of the funds earmarked for them have been embezzled by the members of Parliament and their cronies who were supposed to manage these resources on behalf of citizens.

What the new Constitution has to offer

The new Constitution presents a holistic and rights-based approach that guarantees equitable social development rooted in the productive capacities of the society as an alternative to the current paradigm that is based on rent seeking. It implies a new political economy based on popular participation not only



in the mechanics of politics but also in the shaping of the economy and the sharing of the benefits of value-added production. Such a political economy will seek to rebalance corporate sector interests with the social development objectives of citizens and the State's obligation to provide a social protection floor for all sectors of society. It suggests a new State that is both democratic and developmental.

A democratic developmental State will separate the public and the private domains so that those who provide public services cannot at the same time be in the private sector. This is essential to avoid conflicts of interest and for the State to balance the public good with the profit motive. A democratic developmental State will steer the economy away from unproductive rent seeking into value-added production based on building the productive capacities of its citizens. It will intervene to ensure that profits arise from productive activity and innovation and in this process not only redirect but also reshape them. It will focus on employment creation, not just aggregate growth, and will ensure that the growth process is itself distributive and aimed at enhancing well-being. It will use taxation as its main source of financing development, as a tool for redistribution and redirection of incentives and as a means of enhancing citizen agency.

The new Constitution also seems propitious regarding environmental issues. For example, Section 42 of Part 2 ("Rights and fundamental freedoms") states: "Every person has the right to a clean and healthy environment, which includes the right a) to have the environment protected for the benefit of present and future generations (...), and b) to have obligations relating to the environment..." , while article 69 states that "the

¹ The Bill of Rights goes beyond the usual political and civic rights to include economic, social and cultural rights. *New Constitution of Kenya*, Nairobi, 2010, p. 4.

State shall (...) ensure sustainable exploitation, utilisation, management and conservation of the environmental and natural resources, and ensure the equitable sharing of the accruing benefits.² This is a considerable step forward in a country with so many environmental challenges including desertification, soil erosion, deforestation, water shortage and water pollution.³ For example, up to 16.8 million people (43% of the population) have no access to an improved water source,⁴ while 80% of the arid and semi-arid areas of the country are rapidly becoming deserts, primarily because of the mismanagement of natural resources.⁵

Kenya prior to the Constitution: food, financial and fuel crises

Accusations of irregularities in the 2007 presidential election triggered a wave of political, economical and social unrest that, in combination with the global financial crisis, ravaged the economy during the years that followed. More than USD 500 million were lost in the stock market on just the first day of 2008, and millions of dollars were also reported missing by business leaders.⁶ Targeted violence escalated against ethnic minorities and all around the country people took to the streets protesting against electoral manipulation.

This situation drove gross domestic product (GDP) per capita growth below zero that year, and the impact of the financial crisis was immediately felt on food prices, trade (with imports and exports declining steeply) and investments as gross fixed investment plummeted from an already dismal level. The social consequences of these multiple shocks were even more dire, with rising unemployment (65% in 2010)⁷

and sharply increasing income poverty, hunger and malnutrition (with at least 100,000 children at risk of extreme malnutrition).⁸ While the poor suffered, owners of real estate, bankers and telecommunications service providers experienced a boom,⁹ exposing the folly of neo-liberal capitalism as it cushions the rich from the vagaries of its cyclical crises and punishes the poor with its skewed reward structure.

The response to the crisis followed a similar pattern, with immediate and significant capital injection by the State into the financial system, quickly lifting stock prices and boosting high-value real estate businesses while investment in social infrastructure and in the conditions of the poor trickled down slowly if at all.

The "light touch regulation" promoted by the World Bank in Kenya and the accompanying mismanagement of capital account policies have ensured that the domestic financial systems no longer support the productive sector and small and medium-sized enterprises. The destabilizing effect of short-term capital flows and the unpredictable behaviour of the market have held the national economy hostage to the whims of itinerant speculative capital. The crisis has exposed the current neo-liberal development paradigm as being driven by the exclusive interests of big business and its multilateral capacity to promote inequitable growth that leads to increased unemployment.

Resetting participation boundaries

The new Constitution guarantees public participation in governance – the "red meat of politics," as the saying goes, without which democracy is fatally undermined. It is an approach to citizen empowerment that is becoming a vital element of democratic theory and

practice. Inspired by the spirit of the African Charter on popular participation in development and transformation and equally, in the Kenyan case, driven by the letter of the newly promulgated Constitution, the basic principles underlying the practice of stakeholder engagement inform the ongoing discourse on the management of sustainable societies.

As a central principle of public policy-making, "public participation" presupposes that all levels of government seek to build citizen and stakeholder involvement into their respective policy-making processes and activities. This means breaking down the artificial boundaries between legal professionals and ordinary citizens. True citizenship is basically a political relationship, requiring respect for the common good and a specific role in society that is based on responsibility to a polity rather than specific interests.

It is time for citizens to reclaim their sovereignty as agents of policy-making that can convert their social development needs away from the hegemonic interests into the popular will.

The State should be forced to remove its mask of a neutral executor of the public will and be made to become an instrument in the service of the productive sectors of society and not as a shield for the parasitic interests of the ruling classes. By making popular participation and service delivery the basis of the politics of sustainable development, people will, at the same time, be bridging the widening gap between the tasks that ordinary citizens have to perform and those that are considered the prerogative of the elites. Through participation and collective action, Kenyans will transform themselves into a new revolutionary force. ■

2 M. McDermott, "Kenya Grants Environmental Rights in New Constitution," *Tree Hugger*, (January 2011), <www.treehugger.com/files/2011/01/kenya-grants-environmental-rights-new-constitution.php>.

3 P. Orengo, "Parts of Kenya Slowly Turning into Desert," *The Standard*, (16 August 2010), <www.standardmedia.co.ke/InsidePage.php?id=2000016338&cid=4>; EcoMerge, *Kenya's Soil Erosion Leads to Famine*, (31 May 2010), <ecomerge.blogspot.com/2010/05/kenyas-soil-erosion-leads-to-famine.html>; Mongabay.com, *Kenya Forest information and Data*, <rainforests.mongabay.com/deforestation/2000/Kenya.htm>; Water.org, *Kenya*, <water.org/projects/kenya>; and AllAfrica.com, *Kenya: Rampant Pollution of Rivers Worries Ngilu*, (23 March 2011), <allafrica.com/stories/201103240499.html>.

4 Water.org, op. cit.

5 P. Orengo op cit.; EcoGeneration, *Desertification in Kenya*, (29 November 2009), <eco-generation.org/activities/news/view.html?boardno=47&cat1=&cat2=&thread=588&no=588&page=71&search=&keyword=>>.

6 CNN World, *Civil unrest damaging Kenya's economy*, (3 January 2008), <articles.cnn.com/2008-01-03/world/kenya.economy_1_kenyan-shillings-nairobi-stock-exchange-mwai-kibaki?_s=PM:WORLD>.

7 M. W. Muthee, *Tackling Youth Unemployment in Kenya*, (Washington DC: Woodrow Wilson International Center for Scholars, September 2010), <www.wilsoncenter.org/index.cfm?fuseaction=news.item&news_id=634085>.

8 T. McConnell, "Recession Worsens Kenyan Famine," *Global Post*, (2 April 2009), <www.globalpost.com/dispatch/kenya/090401/recession-worsens-kenyan-famine?page=full>.

9 Kenyan real estate blog, *Analyzing the Real Estate Sector in Kenya*, <www.kenyaluxuryhomes.com/apps/blog/entries/show/5890863-analyzing-the-real-estate-sector-in-kenya>; Kenya Buzz, *Kenya's Very Healthy Banking Sector*, <kenyabuzz.com/lifestyle/business/item/567-kenya-s-very-healthy-banking-sector>; C. Mungai, "Is Kenyan African Silicon Valley?", *Talk Afrique*, (26 February 2011), <www.talkafrique.com/science-and-technology/kenyan-ict-african-silicon-valley>.