

*“Democracy releases the energy needed for development”*  
Njeri Kabeberi

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***Policies and Politicians: Leadership under the new Kenyan Constitution***

Jambo!

It is wonderful to note such a huge public interest in the discussion this morning under the heading: A Nation Reflects. You are living through an important transformation and occasions for reflection are important to assess where have we come from and where do we want to go. Although I always enjoy to come to Kenya and follow the political evolution of your beautifully country closely, when I was invited to introduce a debate under the heading A Nation Reflects, I did not hesitate for a moment to accept.

Yet, it is with humility that I accepted the invitation, because as a non-Kenyan who feels closely associated with all of you working towards democratic reforms, I always advocate that political reform processes have to be driven from the inside to be sustainable and not from the outside. Democracy can not be exported but need to grow through the interactions of citizens and political elites within countries. Yet, with so many friends in this room, I feel not inhibited to speak freely and look forward to engage in debate with you.

In this introduction I hope to share some of the perspectives I have learned in my career in supporting national reform processes for the advancement of democracy at the various continents and raise challenges that may inform the discussions today.

My association with your country dates back to the period immediately after Independence when I was student at that time. I don't need to recall the milestones in your political history over the past decades, except the momentous occasion at Uhuru park, August last year, when your new constitution was promulgated. The struggle for a new constitution that started in the early 90s, had finally reached the finish line. It took twenty long years, but then I realized that Kenya is of course the nation of long distance runners, so perhaps this explains why the process took so much mileage.

I was privileged to be among the hundreds of thousands Kenyans who came to celebrate what was referred to as the "second liberation" and the beginning of the Second Republic of Kenya. The genuine excitement of the people present was very tangible. Whereas the constitution making had been a bumpy ride – to say the least - the referendum in August 2010 had given an unequivocal "yes" by a substantial majority of your citizens, giving the Constitution an uncontestable legitimacy.

With this constitutional hill climbed, you are now in the process of climbing the next hills to use a metaphor once introduced by Nelson Mandela when he said that he had always thought that once he had climbed the hill of defeating apartheid, the rest would fall in place, only to discover that the next hills to be climbed were waiting for him.

When I referred to the fact that you are living through an important transformation, I was alluding to the current process of translating the constitutional provisions into 49 pieces of legislation. It is another major challenge because these pieces of legislation are political in nature but technical in how they are written up. It must be difficult for ordinary citizens to follow the implementation of the process and be assured that the aspirations so well laid down in the new Constitution are well anchored in the specific 49 pieces of legislation.

This challenge is the more complex since it runs parallel with the implementation of other items on the NARA Agenda 4 and, also, with the run up to the general elections that shall take place in only 15 months from now, August 2012. It must be difficult for citizens to see the forest of transformation through the many trees that are being planted or removed. Yet, the value of forums such as this is to debate the process as it unfolds and to keep the fire burning of deepening democracy in Kenya.

## Leadership under the new Constitution

Coming to the theme of this introduction, leadership under the new Constitution, the key concept and the fundamental change in relation to the past, is formulated in the opening chapter, chapter one of the Constitution. It is the section on Sovereignty of the People which states in the very first article: All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. This is what you have decided, power rests with the people of Kenya. It can only be exercised at the will of the people. That is what democracy is about. Governance at the service of the people and only exercised applying the rules of the game as promulgated in the Constitution, the highest law of the land.

This principle is further elaborated in Chapter 6 of the constitution on Leadership and Integrity. Some of you may know the text by heart already, but let me state the text for those who have not memorized the text of the Constitution yet. The very first article of this chapter, article 73 reads:

Authority assigned to a state officer

(a) is a public trust to be exercised in a manner that:

- is consistent with the purposes and objects of the Constitution;
- demonstrates respect for the people;
- brings honor to the nation and dignity to the office; and
- promotes public confidence in the integrity of the office; and

(b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

It represents a watershed in the relationship between elected officials and the citizens of Kenya. Leadership should be or should become mindful that they hold office at the service of citizens, while citizens need to learn to hold the office bearers accountable for the manner in which they exercise the power granted to serve the public interests. Citizens will need to learn how to peacefully use the instruments provided for in the new Constitution in the relationship with elected leaders.

What is expected from leaders under the new Constitution is, in my opinion, very clear and does not need much elaboration. The challenge is how to move from the past practice of power vested in the president (as under the first amended Kenyan Constitution) and citizens being subjects of the political leadership, to the 180degrees reversed situation. That is not simply a matter of switching a button or replacing the current leadership with a new set of leaders.

## Wider historical context

We need to acknowledge the historical context and internalization processes that created a 'strong men' political leadership culture and resulted in abuse of power and patronage to the benefit of the few over the well-being of the nation.

But how to move from A to B or from the old leadership culture to the new and to ensure that the leaders will change political behavior in conformity with the fundamentals of the Constitution? In addressing this question, let me first put this transformation into a wider African perspective. Kenya is not the only country in the middle of a transformation.

The 'strong men' practice was inherited from colonial rule and at the time when African nation obtained their Independence. At that time, the conventional thinking the world over, not in the least within the global financial institutions such as the IMF and WB was, that modernization necessary to uplift the hardships of the poor and destitute, would be achieved through rapid economic growth. Political liberalization was something for another day. Economic development first, democracy later. The Cold War between East and West basically froze that situation until the beginning of the 90s when African nations started one by one to return to multiparty systems of democracy.

Today, there are 17 states in sub-Sahara Africa which all have become emerging democracies (including Ghana, Mali, South Africa, Botswana, Mozambique, Zambia and Tanzania, with 6 states (which includes Kenya) on the brink of joining the group of 17. This means almost half of the 48 countries of sub-Sahara Africa, qualify as emerging democracies, countries that during the past 20 years have combined democratic reforms and political liberalization with consistent levels of economic growth, averaging 5,6%, resulting in the substantial improvement in basic health and education services. They outperform autocratically governed countries, many of which qualify today as failed states. The new road to modernization is combining democratic reform with economic reform, they are two sides of the same coin. Or as Njeri Kabeberi, the dynamic executive director of CMD-K once said, *democracy release the energies for development rather than fighting each other.*

This new modernization paradigm is manifesting itself in the Arab streets today. People no longer want to be ruled autocratically or accept corruption and abuse, they want their dignity to be restored as citizens and be governed

democratically so to be able to invest their energies in economic and social development. The revolutions in Tunisia and Egypt has put the focus internationally back on democracy, not as a Western concept, but as a system of government that respects the dignity of its citizens. A powerful message from Tahrir square in Cairo, actually similar to the spirit of the people at Uhuru Park (“the Kenyan Tahrir moment”) last September. We are witnessing a new wave of democracy in parts of the world previously considered unfit for democracy. The wave is marked by ordinary people, in particular the youth driving peaceful processes of change, by respect for the integrity of the processes within each country and by openness to share lessons on how to climb the new hills we encounter. Hopefully, this new wave will ultimately result in an end to what some constructed to be a clash of cultures.

Following this brief overture in the broader international context, let me now return to the key question on how to move from A to B in changing the leadership culture. In the remainder of the introduction I’ll offer four lessons relevant in addressing this question.

## **1. The importance of continued dialogues**

The first is the need for continued dialogue, for continued engagement of political leadership who have been raised in political practices in which the winner takes all rather than reaching out across political divides, in which permanent competition is the heartbeat of politics rather than the search for accommodation and, when necessary, for reconciliation. Democratic leadership should be a combination of the three functions and not exclusively one of them. Continued dialogue is specifically important at times of transformation because you are entering a new political dispensation that not only requires substantial levels of trust in how the new rules are applied, but also more substantial levels of consensus about the vision of what policies need to be pursued to ensure that the Second Republic delivers on the expectations of its citizens.

When the country was at the brink of collapse over the contested outcome of the last presidential election, it were leaders from political parties, civil society, professional organizations, academia, the media and some faith groups that joined forces to analyse the crises and find a common way forward to restore peace, justice and truth in your country. The platforms established under the most difficult circumstances at that time, including the CMD-Kenya Oversight Board launching the *State of the Nation* programme, the National Civil Society Congress, the Multi-Sectoral National Salvation Forum, the women forum

Vital Voices (and vital they are!) and the Kenyans for Peace, Truth and Justice, became the backbone that kept Kenya together and opened the way for Agenda 4 which resulted in the new Constitution and the second liberation.

The complexities of the implementation of the transformation, require a continued dialogue in various platforms to create trusted relationships between the key political formations and between the political formations and important sectors of Kenyan society. As was the case in South Africa, in Chile, in Indonesia, in the countries of Central and Eastern Europe that transformed to democracy, this continued dialogue helped to sink in the values of democracy that can be summarized as unity in diversity.

Inclusive dialogues that should not be limited to the political elite in the strict sense of the word, but should preferably be expanded to all major sectors of society, such as the health, education, and the formal and informal economic sectors. Continued dialogue platforms facilitate the construction of democracy, brings unity in diversity, and need to be sustained over a longer period of time to become internalized. I greatly respect the work of the organizations I have just mentioned, and I apologize if I have not mentioned others I am not so familiar with. I urge you to continue your dialogues to overcome divisions and work towards agreement about joint agendas for addressing the challenges of the transformation process.

## **2. The importance of political systems/regulations providing incentives for political behavior**

The second lesson learned is that the rules laid down in the Constitution and implemented in the new laws, determine to a large extent the political behavior of leaders. What incentives do the rules provide for clean politics, for politics based on clearly defined policies rather than personalities, for politics that do not aggravate ethnic divisions but overcome them, for politics on the basis of merit rather than money?

It may appear to sound somewhat idealistic that there are options to contain some of the vices of politics but, yes, electoral systems matter, political party bills and political party funding regulations impact on political behavior of leaders. The choices made for these systems do affect the behavior of political leaders. If you want gender parity in the political arena for example, as achieved in some African and European countries today, the shape of your electoral system is crucial. First past the post systems of electing your MPs in single member constituencies, is an obstacle to achieve greater gender parity.

Hence if certain political behavior is pursued, or negatively put, if you want to move away from political behavior that caused violent conflict, the systems you choose matter.

If you want to avoid politicians running around at the time of the nomination process trying to buy their nominations regardless of party loyalties, as happened in the November 2007 elections, the nomination process needs to be clearly spelled out and regulated. For good reasons a lot of attention is spent on the management of free and fair elections, but surprisingly little to the nomination process. And yet, it sets the ball rolling for the type of leadership one encounters in elected offices after the election.

Adherence to party platforms with identified policies give people a choice and guarantee that these policies will be pursued after elections. Without party platforms and cohesive political parties, the political arena will remain somewhat of a market place for the highest bidder. And let us remind ourselves, that today's citizens all around the world are becoming increasingly impatient with parties without clear platforms and not delivering what they preach.

### **3. The importance of introducing accountability mechanisms**

The third lesson learned is the importance of training citizens in the skills of keeping their elected officials accountable. Accountability is a key concept in democracy if the opening sentence of your Constitution is taken at heart. Accountability is the antidote for abuse of power and assurance that power is exercised on the authority of the will of the people. Effective mechanisms for keeping elected officials accountable are perhaps the most important factor to contribute to a new style of leadership.

Because of available time, I shall not go into horizontal accountability between the different arms of government at the national level, but zoom in on the new level of government in Kenya, the counties. The devolution of power to 47 counties under the new Constitution opens a whole new chapter in the political history of your country.

Other countries have proceeded Kenya in implementing such a fundamental change in governance. Indonesia implemented a far reaching decentralization of governance following its transition to democracy in 1998. And India, extended democracy to the local level 15 years ago. Ghana is attending to this

issue of decentralization in the constitutional review process that is currently underway in that country.

Bringing government closer to the people, is an important step in the consolidation of democracy. But it is also a step that creates profound challenges of its own. The problems encountered at national level in governance, have a tendency to be replicated at the local level, multiplying or proliferating the issues at stake. However, it is unavoidable and is a process that needs to be addressed seriously to assure that devolved government serves the interests of people better throughout Kenya.

The challenge is to assure a fair balance of power at the local level and to assure that county councils are well equipped and trained in serving the interest of the development of the county and to prevent corruption and abuse of power by the executive branches of county government. That local officials, civil society groups and the private sector will learn to peacefully use the levers of democracy as granted under the Constitution. Again, putting the institutions in place is one thing, but to make them perform (the software) on the basis of the aspirations laid down in the constitution is quite another challenge given the number and vast geographic spread of the counties.

But here, the use of the new social network technology through mobile phones, the electronic and print media can be instrumental for training local citizens groups to monitor the performance of the different layers of the county governments in future. You have gained already experience with establishing networks that extend to the county level in monitoring elections. I like to encourage you to continue investing in innovative ways of monitoring the performance and keeping local governments at county level accountable to avoid them starting at the wrong foot as happened in other countries that implemented devolved government.

Another innovation that you may also consider, is the introduction of positive incentives for the leadership which future governors and councils will demonstrate (in terms of consistency with the leadership qualifications in the constitution). Good performance could be rewarded with extra resources for example, bad performance with less resources: *more for more and less for less*. Counties could also be publicly ranked in performance for example, using peer pressure and 'shaming and naming' another incentive to belong to the best performing counties.

#### **4. The importance of leadership Codes of Conduct**

The fourth lesson learned is that political leaders themselves can enter into enforceable code of conducts to publicly state their personal commitment to abide by the new political behavior embodied in the Constitution. Political leaders across the political spectrum in a number of countries have entered in such Codes, sometimes for the purposes to commit themselves to regulate behavior during election campaigns, but today also for the period in-between elections. It is a powerful demonstration of the commitment of leaders, that they voluntarily enter into such codes rather than be regulated through the codes drafted by others such as electoral commission.

The political party leaders in Ghana have shown the way in this respect, agreeing on a Code of Conduct, signing the Code in a public meeting that receive wide media coverage. The exercise was repeated at provincial levels to ensure that the national code was followed through to the grass-root level. Attached to the Code, an agreement with civil society organizations was reached to monitor the implementation of the Code and to report any transgressions when happening. It went a long way to new interactions between political leaders. As one of the leaders noted, we have learned to disagree without becoming disagreeable. The closely contested general elections in 2008 were contested peacefully including the subsequent peaceful handover of power from President Kufour (NPP) to President Mills (NDC).

#### **Conclusion**

In conclusion, I like to restate that the Constitution requires a watershed change in the leadership practice that needs to happen. Power rests with the people who authorize elected officials to govern on their behalf and be accountable to them.

The transformation you have undertaken with the adoption of the new modern Constitution, requires continued dialogues between the political parties, the parties, civil society and the private sector to lower the levels of distrust and invest in more inclusive accommodation of interests and consensus about the policies to meet the expectations of the Kenyan people for peace, social justice and prosperity. Keeping government accountable, both at the national but also at the new local county level, is the best assurance to bring about a new political leadership practices that conforms with the aspirations embodied in the Constitution.

A successful transformation process will positively impact on the perspectives for future social and economic development. It will enhance stability in your beautiful country, avoid new violent political conflicts, and position Kenya firmly, as a proud nation once again, in the global community of democracies.

I wish you, all leaders within your own spheres of responsibility, success to climb the hills of transformation. Nelson Mandela showed us what responsible leadership is and I quote his call when he received the Nobel Peace price in 1993: "*I dream of an Africa which is at peace with itself*". Let's live his dream!

Asante sanel!

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