

Political Café

Fostering a culture of substantive political discussions and policy debate in Kenya



Dispatches from the

**Political
Café 2009**

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2009

PUBLISHED BY:

Friedrich Ebert Stiftung (FES)
P. O. Box 14932
Nairobi, Kenya
Telephone: 254-020-3748338/9
E-mail: info@fes.or.ke

The Youth Agenda (YAA)
P. O. Box 10174-00100
Nairobi, Kenya
Telefax: 254-020-2022026
E-mail: info@youthagenda.org

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ISBN: 9966-957-31-6

Published 2010

DESIGN & LAYOUT
Sunburst Communications Ltd
Tel: +254-020-312328
E-mail: info@sun.co.ke

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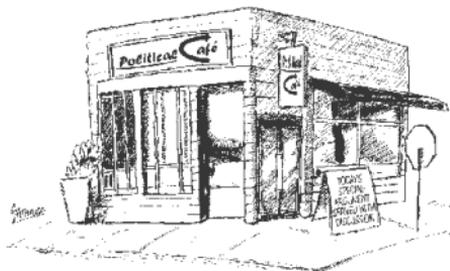
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Word From The Convenors

The debates and discussions documented in this third edition, of the Political cafe dispatch were informed by the political, social and economic developments in the country that called for participation and intervention by young people. During the year, the patrons made every effort to acquaint themselves with facts about these prevailing national circumstances, with a view to coming up with ideas and strategies that will enable them effectively respond to them.

Further efforts to review the constitution were mooted. In this regard, in tandem with the provisions of the Constitution of Kenya Review Act, a Committee of Experts (CoE) was formed to spearhead the constitutional review process. The Parliamentary Select Committee (PSC) on constitutional review also nominated nine lawyers to be considered by Parliament to serve in the proposed Interim Independent Constitutional Dispute Resolution Court (IICDRC). Parliament eventually approved and the President in consultation with the Prime Minister appointed the members of the court. The Cabinet proposed that the Truth, Justice and reconciliation Act 2008 (TJRC At) be amended so as to deal with suspected perpetrators of the post 2008 elections violence (PEV) instead of a special tribunal. This suggestion was informed by the realisation that a law providing for formation of a special tribunal to try suspects of post election violence could not possibly be enacted in Parliament, largely hostile to such a measure. There were divided views as to whether the TJRC was the right forum to resolve the issue of post election violence. A number of Cabinet members including the Minister for Justice, National Cohesion and Constitutional Affairs, Hon. Mutula Kilonzo, were against the idea. Regardless, debates

still rages on whether to take perpetrators of PEV violence to The Hague or form a local tribunal or have the issue settled under the auspices of the proposed TJRC process. The chief prosecutor of the International Criminal Court, Louis Moreno Ocampo visited the country and vowed to nail the perpetrators of PEV.

2009 could be summarised as a great year and sad year for the café. A great year in that the cafes were held as scheduled. Additional cafes were convened due to increased demand for more discussions especially as regards the Constitution. On account of the thrust of debates on the proposed constitution during the last two special cafes, it is fair to surmise that the cafes are fostering a culture of substantive political and policy discussions in Kenya. The choice of topics was diverse and a mosaic of social, political and economic discourses in the country: **Tackling the Energy Crisis, Report on the Implementation of Agenda Item No 4 of Kenya National Dialogue and Reconciliation Agreement, Sexual Reproductive Health Rights, Consolidating the Youth Movement, Demystifying the Marriage Bill of 2007, Towards Devolution of the 2009/10 Budget, Bringing Justice to an Ailing Kenya, Addressing the Challenges of Climate Change and Review of the Harmonized Draft Constitution.**

It was a sad year in the sense that the one of the most active members and patron of the café, Paul Oulu GPO, was assassinated.

Our acknowledgements go to the Youth Agenda and Friedrich Ebert Foundation who continue to host the Cafe. We are also grateful to the Cafe team: Caroline Kogi for providing leadership and developing most of the background notes, Elizabeth Kamau, Joseph Mutua and Eustace Kinyua for the efficient coordination. We also thank the Goethe Institute, through Barbara Reich and

Johannes Hossfeld, for providing the venue for the Café sessions. Dr Washington Makodingo, a regular member of the political cafe, put together this publication while Bosire Naymori edited it. we thank both of them for their deidication and professionalism.

We dedicate this report to the late Paul Oulu GPO who was an active member of the Political café and whose life was cruelly snuffed out by an assassin's bullet on Thursday 5th March 2009. GPO's passion was to inspire fundamental change among Kenya's diverse communities. Since 2008, the Café has increased its membership courtesy of the members of the Young People's Forum, an organization GPO established in Eastleigh. In recognition of GPO's contribution to the Café and other spheres of life, friends of GPO requested and held a session on **Consolidating the Youth Movement**.

Susan Kariuki
Youth Agenda

Collins Odote
Friedrich Ebert Foundation

The Political Cafe: A Worthy Cause

To their credit, the Café sessions continue to attract young people, who now attend the informal meetings and actively and zealously participate in the discussions. Perhaps they hope to emulate Barack Obama who was elected as the forty-fourth president of the United States of America! On the economic side, Obama's election has had the unintended effect of increasing tourists arrival in 2009, as witnessed in Mombasa and Kogelo village in Siaya district. Just as tourists were attracted to Kenya in 2009, the Cafe sessions were a tourist attraction to young people in Nairobi! This is a summary of the sentiments that some patrons made about the Café sessions in 2009.

“....through the previous cafes, YAA has refocused my commitment to the wellbeing of my community and enhanced my participation in the country's policy issues....mostly youth advocacy related issues, I am holding Cafes at Bomachoge already”, *anonymous*.

“I learn a lot from Political cafes and add value to the work I do at. If we don't talk about policies we will only have failed ourselves.” *anonymous*.

“Apart from gaining greatly with vast increase in knowledge and getting up to speed with issues that affect us as a nation the cafe has showed me into a community of individuals that are passionate and will steer our country to the change we have been dreaming of. I can make informed decisions on different issues we discussed”, *Aquila Afandi, Young People's Forum*.

“It is such a great and resourceful forum that can really take the nation forward. Personally I learnt a lot and it gives me the opportunity to interact with fellow youth who are determined to change this great nation.” *Diana Ochieng*, WOSWA Treasurer.

“.....I don't know where to start, I am who I am because of Political Cafes, I can stand somewhere and argue from a point of information. It is a unique initiative because you don't have to apply to attend, as long as you know your position in society, you will find your way there. To the organizers please decentralize the cafes!” *Paul Angwenyi*

“Political cafe has continued giving young people a platform to engage in the ongoing policy, legislation or basically, reform process for political, socio-economic and cultural development in Kenya. It is in cognizance of the above fact that the alarming rate of hooliganism, unemployment, poverty, among others escalated by draconian leadership and lack of transparency, accountability in systems of governance has critically been challenged by these young professional throughout the debate. The cafe has increased the visibility of young people to assert their role and demand for true democratic governance that respect the rule of law, equity and equality in resource allocation and meets the millennium gaps for the youth. However, the impact of the cafe has only been felt in the urban area leaving a crucial gap to the rural youth. The main challenge is to look into ways of taking discussion down and engage them at community level”. *Kevin Ogema*

“If we look back at the discussions we have had in the political Café, there are a lot of gains we have made so far. We proposed and got the presidential system. We discussed the sexual and reproductive health rights and we got them. We asked for the bill of rights

as proposed in the Bomas Draft to be cut and pasted in the new proposed draft, though some section have been removed, we are not very sad at what we have gotten. We have freedom of expression and association, the police must now show cause for arrests and young people who had been the main victims of arbitrary arrest will be protected by that. We discussed the Marriage Bill and it is now part of the constitution. We discussed the issue of impunity and we were irked by the usual route politicians love to take where the Kenya Anti Corruption Commission is frequently taken to court with the argument of being unconstitutional and we demanded it should be entrenched in the constitution. It is now entrenched in the constitution and cannot be challenged as was the case. Similarly young people took issues with the time the police are required to present a suspect in court which is 48hrs currently, we had seen that young people are harassed using this requirement and we proposed that this be reduced to 24Hrs. It is now taken as 24hrs in the draft constitution. The issue of having ministers appointed from outside parliament was proposed and passed in one of our political cafes. Therefore the Political café discussions have had important gains on the national political discourse of this country.” *Dr. Washington Makodingo*

Introduction

Bigger, better and more focused. That is how one patron described the 2009 Political Café sessions. Indeed, this season of the Café promised to be different. On the one hand, the country was grappling with various challenges, namely, energy crisis, drought and hunger. On the other hand; several mega corruption scandals were being reported. There was also a fresh push for the implementation of Agenda 4 items lurking in the background.

Having tackled topical issues like *The Marriage Bill 2007*, *the energy crisis*, *climate change* and review of the progress made on implementing Agenda 4 items, the Café concluded the year with two high powered special cafes on the *Harmonized Draft Constitution and this served* to inform the young people's position on the same. A key resolution of this was to push for a pure presidential system of government in the Harmonized Draft Constitution at a time when everybody else in the country was haggling over how to make the hybrid system work.

This dispatch breaks with tradition in the format of presentation. It includes a special section that evaluates the progress made on the issues discussed during the year. In this section, we track how both the general public and the government reacted to and/ or addressed the issues raised in the Café. We also compare the recommendations and/ or resolutions of the Café with the outcomes of these issues to put into perspective the relevance of the resolutions and/ recommendations of the Café. And as you will see, this approach is evidence of the relevance and high quality discussions that take place at the Café.



We dedicate this edition of the dispatch to our colleague and long term patron of the Café the late Comrade Oulu GPO, whose brutal assassination will forever remain one of the darkest days in the human rights movement in Kenya.

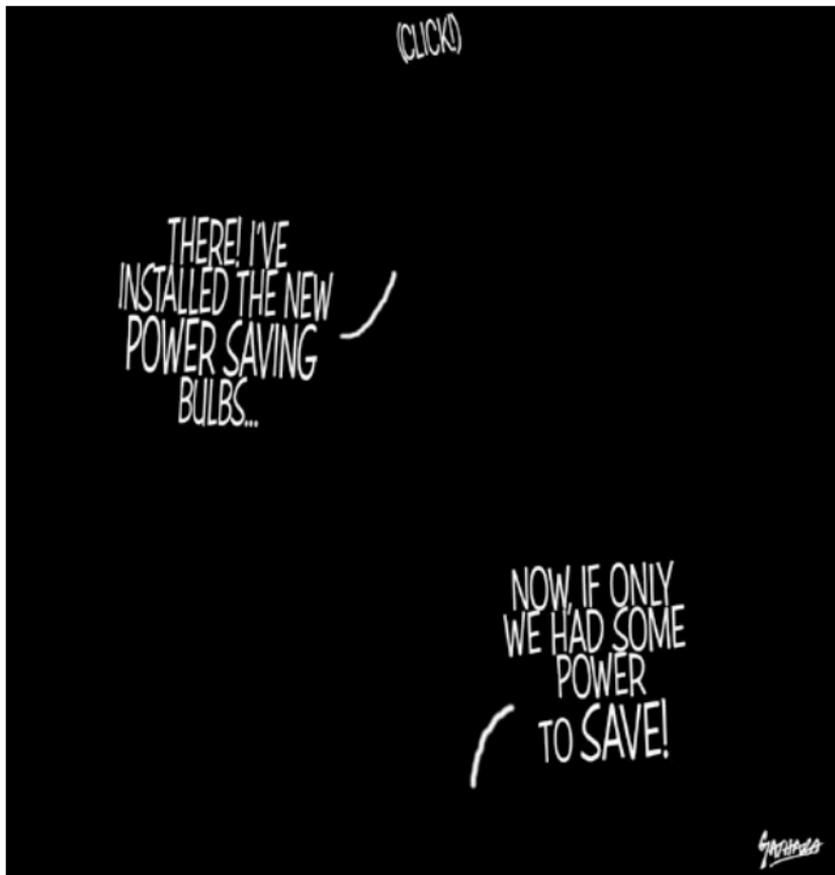
1. Tackling the Energy Crisis

Background

The importance of energy in a modern economy cannot be overemphasized. Energy is a scarce commodity the world over. Virtually every country in the world is struggling with an energy crisis of some sort. The emergence of China and India as economic giants has not helped the matter as they have between them half of the world's population. Fossil fuels are getting depleted faster than we can develop alternative sources of energy. In fact, there is a realistic possibility that oil and gas reserves could run out sooner than we could be ready for. Many international analysts see the Third World War being fought over energy.

Kenya's situation is not any different. The country can only meet 30% of her energy needs. 80% of this is highly dependent on hydro power which is becoming more unreliable especially as a result of reducing rains wrought by progressively devastating effects of climate change. Last year, Kenya continued to experience energy crises, for example, fuel shortages were experienced in December 2008 and January 2009, yet there attempts by industry players to remedy the situation.

The topic of energy had been slated for discussion at the cafes since 2008 for the reasons that, one, the levies and high prices of fuel prices have adversely affected motorists and commutes and, two, there have been allegations of corruption in the oil industries, the highlight being that involving Kenya Pipeline Corporation and Triton Limited.



The Debate:

The debate was organized around specific themes.

- a) **The Fuel Crisis:** Patrons were unanimous that the government was not doing enough to address the crisis. Patrons argued that it made no sense for Kenya Pipeline Corporation (KPC) and Kenya Petroleum Refineries Limited to schedule maintenances during peak times such as holiday seasons. It was also suggested that government, through KPC, should expand the capacity

of our reserves to cushion the country against such shortages. Since there had been discussions of some traders hoarding fuel to drive prices upwards, patrons strongly suggested that investigations be done and legal action taken against such culprits.

- b) **Price Controls:** The issue of whether or not to introduce price controls has dominated conversations in Kenya every time fuel prices have sky-rocketed. There seems to be a tendency in the oil industry to rapidly adjust fuel prices upwards every time world crude prices increase, but there is no corresponding reduction when the reverse happens. In fact, towards the end of 2008, fuel prices more than doubled in the span of one month. Majority of the patrons in the Café therefore felt that it was time the government introduced a price control regime in the oil industry to cushion the general public from unscrupulous traders. It was noted the Energy Regulatory Commission had mooted the idea of introducing a formula for determining the price of fuels. Strong views expressed against introduction of price controls. The argument was that once price controls were introduced in one sector, there would be a ripple effect on just about other sectors of the economy. It was argued that this would be catastrophic for a country trying to woo investors through free market to spur economic growth especially after the devastating effects of the post election crisis of 2007/08. An alternative proposal that seemed acceptable was for government to increase its investment in the National Oil Corporation. This would introduce sufficient competition in the market to force the other players to impose prices that are fair to consumers. The argument was that we could not, as a country, afford to fully liberalize this important sector of our economy.
- c) **Alternative Energy:** The meeting was unanimous that the government has not done enough in investing in alternative energy sources, especially wind and solar, for which the country has

huge potential. It was also felt that the government should put in place mechanisms to conserve the little energy we have. Patrons also asked government to do more in terms of incentives to encourage Public Private Partnerships to spur growth in the energy sector.

- d) **Independent Power Producers (IPP):** Whereas the importance of IPPs could not be downplayed, patrons felt that there was a likelihood that cartels were colluding to keep electricity prices high. Obviously this is turn was keeping prices of commodities high as industries were spending more on energy and passing the costs to consumers. Patrons felt that there was need for an independent audit to be carried out on the relationship between KENGEN and the IPPs.

Progress Report

A lot of developments happened in the country since we discussed this topic. These have impacted significantly the positions taken at the Café.

The positive developments included:

1. The government announced that it would introduce the use of energy saving bulbs in every household in the country. This measure is in tandem with the suggestion of the café for government to look into ways of conserving energy.
2. The setting up of wind power generation in Kajiado and some parts of Turkana. This was a major recommendation of the Café, which was unanimous that the country invests in alternative energy especially wind and solar. The café is emphatic more investments are needed in the alternative sources of energy so as to reduce reliance on the unpredictable and unreliable hydro power.

3. Mumias sugar entered agreement with KENGEN to sell them up to 30MW of power. The Café had suggested that the sugar industry invests in power production and it was therefore gratifying to note that Mumias was already doing that. It is however sad to note that KENGEN is still paying far much less money to Mumias as compared to other IPPs, which is a pity considering that power from Mumias is environmentally friendly.

The negative developments were:

1. The prices of electricity doubled over the year making power almost unaffordable.
2. There was a three month power rationing program with major towns including Nairobi going without power for as long as three days a week.
3. Two of Kenya's largest hydroelectricity dams were closed due to unsustainable low water levels. This in turn meant that IPPs were contracted to generate power and sell to KENGEN which in turn lead to the high cost of power.

To date, the following issues remain unresolved:

1. The Triton corruption scandal has not been resolved.
2. Not much has been done towards stabilizing fuel prices even though crude prices in the world markets are fairly low and stable.
3. KPC has yet to increase its capacity to hold reserve fuel or pumping fuel.
4. Electricity prices remain high even after the drought ended and water levels at our hydro plants rose. This is mainly because KENGEN entered into long term contracts with IPPs therefore keeping the cost of power generation high.

2. Report on the Implementation of Agenda Item No 4 of the Kenya National Dialogue and Reconciliation Agreement

Background:

One of the key recommendations of the Kenya National Dialogue and Reconciliation Process brokered by the Kofi Anan led team was to deal with long term issue affecting the country dubbed Agenda 4 including:

- undertaking constitutional, legal and institutional reforms
- tackling poverty and inequality, and combating regional development imbalances
- tackling unemployment especially among the youth
- consolidating national cohesion and unity
- the land question
- addressing transparency, accountability and impunity

The Issues

Is it possible that the National Dialogue and Reconciliation Process disenfranchises the people of Kenya? This is relevant because the two Principals of the Coalition were the leading candidates in the December 2007 General Election and supposedly on whose behalf Kenyans massacred one another. However, those who voted for them are not necessarily their supporters as a vote is an expression of confidence for a limited purpose – not a *carte blanche* for all manner of issues. It is important to appreciate that in the public eye, a great deal has changed – in terms of perception and standing of the parties now in Coalition Government and their leadership.



This has implications on the support they enjoy and the mandate they carry

1. Undertaking Constitutional, Legal and Institutional Reforms

It was agreed that comprehensive constitutional reforms are imperative if the country is to address the chronic institutional and legal weaknesses bedeviling it. The Café thus agreed to continue the push for a new just and democratic constitution.

2. The Land Question:

The patrons recommended two measures that would go along way in addressing problems in the land sector. First, it urged full implementation of the recommendations of the Ndung'u Report on illegal allocation of land. Secondly, it called for approval of the National Land Policy.

3. Tackling Poverty, Inequality and Regional Imbalances

Patrons agreed that budgetary allocation should be biased towards the areas that have perennially been ignored by previous governments. Patrons also agreed that until a comprehensive infrastructural overhaul is put in place especially in the transport, water and power networks, efforts toward alleviating poverty would not bear much fruit.

4. Tackling Unemployment among Young People:

The Kenya National Dialogue and Reconciliation process acknowledged the urgency and importance of addressing unemployment amongst the youth, which was identified as one of the key factors behind the post-election violence. The Café recommended several measures to help move this agenda forward:

Youth Fund: More needs to be done to educate young people on how to access this fund and make use of it in creating self-employment opportunities for young people.

Education System: There was unanimity that our education system has not done enough to encourage talent development and inculcate entrepreneurial abilities in young people. Patrons recommended a revision of the school curriculum to de-emphasize white collar jobs and put emphasis on self-employment and entrepreneurial development that further promote values and ethics.

Drug abuse was singled out as a destructive force among young people. Government was asked to do more to curb this vice so that young people could engage in more productive sectors in the economy. Youth organizations were also urged by the patrons to scale up their efforts to stop this vice in addition to increasing community vigilance.

The informal sector: Patrons agreed that more needs to be done to encourage meaningful participation of young people in this sector. It was strongly suggested that procurement laws should be made friendlier to allow for purchases from the informal sector to encourage growth.

5. Consolidating National Cohesion and Unity

Despite the formation of the National Cohesion and Integration Commission, not much seems to be happening in terms of promoting national harmony. Patrons recommended that young people be involved in coordinating joint peace and reconciliation initiatives countrywide. It was however noted that until we have equalized opportunities amongst different regions in the country, national cohesion shall remain a mirage. Patrons recommended that political, religious, media and civil society leaders should be encouraged to continue with on-going efforts to promote peace among different communities.

6. Addressing Transparency, Accountability and Impunity

A number of steps were identified that if taken would contribute to enhancing transparency, accountability, and eradicating impunity.

- a) The Youth need to be continuously vigilant in demanding for good governance
- b) National Accord- There is need for enhanced advocacy and education of Kenyans on the need for the full implementation of all aspects of the National Accord as failure to do so constitutes grounds for fresh elections
- c) Fundamental Rights: Individual rights must be respected by the government and any attempts to do otherwise must be resisted.

- d) National Debt: Kenyans need to demand for full accountability and transparency in all debts incurred by the government. This allows Kenyans to know what they owe, whom they owe and for what purpose.
- e) Generally, Kenyan citizens need to participate in the growth of its economy by participating in public policy.

Progress Report

1. Constitutional Reforms: There has been some progress in this regard. A Harmonized Draft constitution was released and the public now had the opportunity to interrogate its provisions. The Café was instrumental in harnessing young people's views that were finally submitted to the CoE for incorporation into the harmonized draft constitution. As the Café predicted, politicians have attempted to water down provisions touching on the matters of the youth, but the Café will not relent in fighting for its position. It must be noted, however, that the Café's wish for a pure Presidential System of government was realised.
2. As anticipated, attempts to pass a law providing for a local tribunal to deal with perpetrators of the PEV did not bear fruit. A Bill to this effect was defeated in Parliament and Hon Imanyara's attempts to introduce a new one were thwarted by consecutive lack of quorum to debate the Bill. The political class was clearly not interested in a local tribunal. The ICC Prosecutor took over the case and is waiting for the pretrial chamber to rule on his application to commence investigations on the PEV.
3. The National Land Policy was finally passed and we are awaiting its implementation. This was a welcome move given that the Café identified this as one of the key reforms necessary for the success of Agenda 4. Importantly, the provisions of the



National Land Policy were also incorporated in the Proposed Constitution of Kenya that is at advanced stages.

4. National Cohesion: A lot of strides have been made in attempts to foster national cohesion. It is however saddening to note that not much is being done in alleviating the plight of internally displaced persons (IDPs). Also worrying is the fact that political overtones are threatening to take us back to the violence witnessed in 07/08. The Café will continue to ask Kenyans to make every effort to keep the peace that we've been enjoying lately and live in cohesion. It is in this spirit that the youth of Kenya are taking a lead in monitoring the implementation of the National Cohesion and Integration Act of 2008.
5. Youth Unemployment: As the Café so aptly observed, the government does not seem to give much consideration to this

matter. The much hyped “*Kazi kwa Vijana*” initiative has failed miserably in tackling unemployment amongst young people. Reports indicate that this has turned out to be another cash cow for corruptly inclined individuals and indeed millions of shillings are claimed to have been lost this way. Nothing aptly describes this initiative like the derogative term, “*Kazi kwa Vijana – Pesa kwa Wazee*”.

6. Institutional Reforms: Several attempts have been made to strengthen our institutions. Police reforms are underway and we are watching and hoping that much more will be done in reforming the police force so that it becomes a citizen friendly police service.
7. Corruption: As the Café observed, not much has been done to address this vice. In 2009 alone, scandals reported could have cost the taxpayer upwards of Kshs 70 Billion. To make it worse, the Country’s top two leaders do not seem to read from the same script on how to tackle grand corruption.

3. Sexual and Reproductive Health Rights

Background:

Reproductive health implies that people are able to have a satisfying and safe sex life,, reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed of and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.

Reproductive health care is therefore defined as the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving reproductive health problems. It also includes sexual health, the purpose of which is the enhancement of life and personal relations, and not merely counseling and care related to reproduction and sexually transmitted diseases.” Bearing in mind the above definition, reproductive health rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning

reproduction free of discrimination, coercion and violence, as expressed in human rights documents. ...”

The Reproductive health rights of women in Kenya have been violated and continue to be violated. This is made worse by the ignorance of women towards their reproductive rights which renders them incapable of demanding for them, for instance, most women are unable to demand usage of contraceptives such as condoms during sex. As a result, the discretion of whether or not to use a condom is left to the men. This greatly increases the risk of HIV infection and unwanted pregnancy among women. This is illustrated by the Kenya Demographic and Health Survey of 2005, which shows that nearly two-thirds of persons living with HIV are women.

Inaccessible and ill equipped health centres force women to give birth without the help of qualified personnel thus increasing the risk of their baby (-ies) and/ or their own death. Also, cases of sexual violence against women and child defilement have been on the rise, especially after the 2007 Post Election Crisis. Unwanted pregnancies have led many women and girls to procure abortions which are mostly carried out in backstreet clinics by unskilled people. Such abortions are unsafe and pose a great danger to women. Many women have died of complications arising from these procedures. That abortion is illegal in Kenya has not improved the matter.

It is this sad status of women rights that compelled the Federation of Women Lawyers- Kenya (FIDA- K) and the Coalition on Violence against Women (COVAW) to draft the Reproductive Health and Rights Bill of 2008. The bill is intended to provide for the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children,

the right to information on reproductive health, the right to attain the highest standards of reproductive health and the right to make decision regarding reproduction free from discrimination, coercion and violence, and for connected purposes.

This Bill has elicited a lot of debate and more criticism than support mainly because of its intent to legalize abortion. All other provisions of the bill have been pushed aside as debates about legalizing abortion intensify.

It is against this backdrop that this discussion was held.

The Issues

Sexual and reproductive health rights are not respected in Kenya. The political, social and cultural environment in the country does not encourage the observance of these rights. The government is either unable or not particularly keen in availing better, well equipped and accessible health services to the people. In addition, the legal framework in the country is full of loopholes and is therefore unable to adequately cater for the sexual violence cases. Those violated wait for a very long time to get any form of justice if any. The Ministry of Health vaguely recognizes reproductive health and this means few resources go towards reproductive health services. International laws on violence against women that have been domesticated such as CEDAW are not implemented as they should, hence sexual violence persists.

Is it possible to realize a state of total respect and adherence to comprehensive sexual and reproductive health services in Kenya and what would it take to achieve this status?

It was clear that it might not be possible to realize total respect towards reproductive health in Kenya any time soon given the rate

at which fundamental rights continue to be violated. There is lack of political will to implement various laws and directives in the country, including those that deal with sexual and gender based violations. Various cultures in Kenya and religions do not agree with some aspects that accompany observance of reproductive health rights such as contraceptive use. The Catholic Church, for example, is opposed to usage of contraceptives including the use of condoms which provide protection against sexually transmitted diseases and unwanted pregnancies. The deeply patriarchal cultures make it impossible for women to negotiate for condom use or decide whether or not to have children. Young people should be at the forefront in raising awareness about reproductive health services to their fellow youth and the larger society. This would greatly reduce the lack of knowledge and apathy towards reproductive health services. In addition, young people should create open forums to discuss reproductive health and chart the way forward towards upholding the various rights on reproductive health. Moreover, community leaders should be trained on various aspects of reproductive health such as PEPs, post rape care and contraceptives so that they can pass this information to their fellow community members.

Should abortion be legalized and what limitations, if any, should be put in place in the ensuing legislation?

Opinion is fiercely divided on whether there should be legislation providing for abortion. The participants were also divided on whether abortion should be legalized or not. Proponents of legalizing suggested that abortion should be allowed in case of rapes or on medical grounds where the life of an expectant mother is in danger. In any event, abortion was happening anyway and so, legalizing it would ensure women have safe terminations of their pregnancies hence minimize deaths arising from crude abortions. Opponents argued that legalizing it would open it up for abuse

where people engage in carefree sex in the comfort that should pregnancies occur, they can easily get rid of them. The consensus was that the issue should not be whether or not to legalize abortion. Rather, it is obvious that by the time a woman is considering to have an abortion, it means that unprotected sex has already taken place, and the woman is already in danger of having contracted a sexually transmitted infection. Therefore, it was suggested that more focus should be placed on measures to prevent unprotected sex than those that seek to respond to the effects of unprotected sex. However,



there was a general consensus that the government should create choices for its people such as relaxing rules on adoption

Should appropriate and consistent condom use be advocated, and if so, to what extent?

Participants agreed that advocating for abstinence does not work. What would work therefore is serious advocacy on appropriate and consistent condom use. There should be more clarity on the role of government in advocating condom use. Citizens should also be made aware that condom use is their own individual responsibility and not the government's. Sexual responsibility does not belong to the government; rather, it is the responsibility of the individual who chooses to engage in sex. In addition, the role of sex for procreation and not only for pleasure should be emphasized so as to correct the views young children acquire from the media on sex, where sex is glorified as just a tool for pleasure. Parents should also teach their children on responsible sex and condom use and not wait for the government and NGOs to provide trainings and campaigns on safe sex. In addition, discussions about sex in the families should be made open and not treated as taboo subjects so that children can learn. The message about sex should also be changed from fear oriented to value and morals-oriented since the former has failed to stem irresponsible sexual behaviour.

Should emergency contraception be available indiscriminately to everyone irrespective of age?

By the time one is using emergency contraceptives, unsafe sex has already happened and the person could have contracted an STI or HIV. Making it inaccessible to teenagers might restrict those who are not already having sex from unsafe sex leaving out those already engaging in sex. A common misconception is that availability of contraceptives increases teenage sex and premarital sex. This

is not true as many political, social and economical factors have increased such 'illegal' sex. Unavailing emergency contraceptives will not reduce irresponsible sex. Instead, it might lead to a lot of unsafe abortions hence death. Participants therefore agreed that emergency contraception should be sold over the counter but under supervision where young people (below 18years) seeking to buy the drug undergo some counselling before it is sold to them.

To what extent should culture and religion determine the exercise of one's reproductive health rights?

African culture is very patriarchal and hence subjugates women in favour of men. Women are, for instance, taught to please men sexually and even alterations are made to their genitals e.g. the elongation of the labia among the Ugandan women which is meant to increase the sexual pleasure for men. Also, a woman does not have a say on whether to have sex or not. Polygamy does not protect women from HIV/AIDS. A polygamous man will spread the virus to all his wives. Practices such as Female Genital Mutilation were meant to reduce the libido of women. Traditionally, it was not in a woman's place to enjoy sex or want it, hence the mutilation of their genitals to expel such longings. Women in the African society do not choose whether or not to have children. It is automatic that one must give children to her husband, failure to which the woman may be sent back home.

However, some aspects of culture that furthered respect of reproductive health rights should be maintained. For instance, male circumcision was accompanied by teachings on responsible behaviour as adults. This in a way prepared men for their sexual roles and reduced cases of premarital sex. The teachings went hand in hand with the norms where it was virtually unheard of to rape or defile a child. It was a taboo and anyone found to have impregnated

a girl would pay a huge fine in addition to making the girl his wife. Defiling a child was unthinkable, and that would invoke the wrath of gods or excommunication thus preventing would be offenders from defiling.

Religion has failed to respond to changing times and talk about the real reproductive issues. It creates a wall where anything else but abstinence is being talked about. However, preaching abstinence has failed to stop risky sexual behaviours. Many are seeking crude abortions out of engaging in unprotected sex. Religion should facilitate forums about sex so as to demystify some beliefs about sex, correct people's views on sex and explain its stand vis-à-vis sexual relations.

There are instances where religion has aided in observance of reproductive health rights. Fear of repercussions of going against various religious tenets may have prevented instances of rape, defilement and engagement in unsafe premarital sex as well as sexually transmitted diseases.

The state is lax in protecting reproductive health rights and this reflects its way of protection of other human rights. An amicable solution to the abortion question might not be realized as long as alternatives to abortion such as setting up crisis pregnancies centres and easing adoption rules are not availed by the state. However, this is still a reactive approach, and urgent measures such as rigorous awareness campaigns that demystify sex and encourage responsible sexual behaviour should be taken. Ultimately, sexual responsibility is an individual's responsibility, and individuals need to be prepared to make informed choices about their sex life.

Progress Report

1. Campaigns, mainly by the religious groups have led to the incorporation of clauses explicitly outlawing abortion in the Proposed Constitution. On this issue, reason obviously lost to religious extremism.
2. On a positive note, reproductive health rights finally made it into the Bill of Rights chapter in the proposed Constitution.

4: Consolidating the Youth Movement

Background:

The youth movement in Kenya has in the recent past been riddled with a myriad of challenges. Key among these has been the lack of sustained forward momentum of the numerous youth organizations, networks and groups that exist. Secondly, is the inability of the youth movement to measure its gains and milestones. Thirdly, different leaders in the youth movement have on several occasions been accused of poor governance, corruption and lack of values in the conduct of the affairs of the organizations they lead. Lastly, young people seem to have an arch-enemy in the name of the government and in particular the police who violently stifle any effort the youth make towards seeking redress for their concerns.

Unlike the women movement, young people have on several occasions come out to argue on opposing ends of an issue that is of great concern to them and taking positions without consulting the wider Youth constituency, however questions are raised on who is legitimate to give positions on behalf of the youth movement.

The recent assassination of the two human rights defenders, Oscar King'ara and GPO Oulu, clearly indicate that young people are not safe. Increasingly, therefore, the ability and the platform for the Kenyan youth to enumerate their concerns as far as the challenges that face the country, such as insecurity, extrajudicial killings, famine, corruption and contribution to the Constitutional Review Process has been and continue to be severely impaired.

It would be self-defeating for the youth movement to attempt to address their predicament while at the same time maintaining the status quo in carrying out their activities. It was therefore important that Café provide an opportunity for young people to re-evaluate their engagement, assess their achievements and chart the way forward in strengthening the movement in addition to providing an opportunity for young people to develop common positions on current topical issues.

The Debate:

Some patrons observed that in the true sense of the word, there is no youth movement in Kenya, but fragmented groups of young people without a properly defined unity of purpose. It was also observed that there is very little, if any, quantifiable impact by the youth organizations. Young people who get access to policymakers hardly, if ever, use the opportunity to espouse and advance an agenda that could transform young people's lives. Instead, they use such opportunities to advance their individualistic and self-serving interests.

Several measures were recommended for strengthening the youth movement in Kenya:

1. A code of conduct be developed to guide youth in their different undertakings. This would provide a bare minimum framework that is acceptable and within which young leaders can engage. This would help in naming and shaming those found to operate outside the code of conduct as well as provide a track record of what young people have achieved.
2. A transition and succession plan which would involve mentoring other youth so that they can progress the movement.
3. Creating a sense of ownership in the youth movement. This requires people to rise and engage strongly and have a rallying

call, as only then can the youth avoid being taken advantage of by politicians. The need for a critical mass of those who are skilled in different areas to ensure that we have the impact that they desire.

4. National Youth Policy: It was agreed that young people should resist government attempts to force the policy down their throats as young people did not adequately participate in its formulation and missed out on the ideal framework of its operation.
5. Efforts must be made to unite young people and strengthen the youth movement in the country if their concerns are to be addressed.

The patrons recognized that they are dealing with a government that is not committed to fully embracing the human rights agenda. The government was accused of using underhand tactics, such as



labelling young people Mungiki, to justify its violence towards the youth. Fortunately, such high handed strategy could not possibly succeed as Human Rights advocacy is now entrenched in the country and has seeped down to the masses. Citizens have learnt their rights and are willing to demand them. The youth were exhorted to have the moral courage to stand up for their rights. In a word, they were urged to be true to their cause..

Progress Report

1. We were not able to achieve unity during the year. Nothing exemplifies this better than the engagements on the constitutional review where young people's views were as diverse as the number of youth organizations in the country. On a positive note, the Café was able to present a united document to the CoE.
2. We continued to witness the betrayal of young people's agenda by young politicians in parliament with some of them being implicated in several corruption scandals, for example, the maize scandal.
3. Insecurity continues to face young people with the Muranga massacre of young people grabbing headlines.
4. The increment of the retirement age to 60 years has not gone well with young people as it shows government's lack of commitment to tackle unemployment amongst young people. What's saddening was the deafening silence from youth organizations on this issue.
5. The National Youth Policy was passed without our participation and an interim office put in place. We should do better in terms of engagements in the future so that we could have substantive and lasting impact.
6. The National Youth Council Act was also assented into law on 31st December 2009 but failed to adopt critical proposals by young people.

5: Demystifying The Marriage Bill 2007

Background:

Responsive family law is vital for sustainable transformation of the society. This is because values and standards necessary for transformative leadership are imparted at the family level. It is therefore necessary to enact laws that are friendly and progressive to the family unit.

Marriage is a voluntary union. However, old, foreign and unclear laws on marriage with foreign values often clash with our own values hence complicating the process of legalizing marriages.

The Marriage Bill of 2007, being the first home grown marriage bill, has drawn sharp interest in the society. It provides an opportunity for Kenyans to set their own laws regarding marriage. The draft law prohibits compulsory dowry, recognizes cohabitation as equivalent to marriage for a couple who have lived together as man and wife for over two years and allows for polygamous marriages. It consolidates the current seven acts of parliament governing marriage. Therefore, if enacted into law, it will provide all the substantive and procedural issues, such as formalities of marriage, the status, rights and liabilities, relating to marriage.

The Debate:

1. **Cohabitation:** The Bill recognizes marriages by cohabitation and allows for their registration. Currently no Act of Parliament provides for marriage by cohabitation. Many young people are involved in such unions, and they therefore welcomed this

clause as one that catered for those unable to contract a marriage for whatever reason but were in unions which had even borne children. The patrons welcomed the clause as averting the injustice where men walked out of their families by claiming that they were not legally married, yet they stayed together as husband and wife for more than two years and even bore children.

2. **Dowry:** The Bill provides that one does not have to pay dowry to get married and that therefore marriage is a complete contract irrespective of the status of dowry. It does not however outlaw dowry and those able and willing still have the space to continue with the practice.
3. **Patrons** felt that this clause furthers fairness in marriage, where those financially able to and are willing to offer dowry to the bride's parents do so and those unable to should proceed with the marriage plans. This, the participants felt, would arrest cases of extortion where parents of the bride demand an exorbitant price



for dowry from the suitor who if unable to pay, can be denied marrying their daughter. It would also ease domestic violence where men feel that after paying dowry, they have bought their wives and therefore perceive them as their property or even slaves. The clause also takes into consideration the economic status of the young people, who have shelved marriage because they are unemployed or underemployed hence not financially able to pay dowry.

4. **Spousal Maintenance:** The Bill provides that where the Parties are separated, either spouse shall maintain the other. In the current laws, the husband has a duty to maintain a needy wife but there is no corresponding duty for the wife to maintain a needy husband. Participants expressed concern over women maintaining men, saying men's traditional roles as providers may make it impossible for them to accept maintenance from their wives. However, the patrons recognized the role of maintenance clause in bringing about gender equity by having women maintaining men.
5. **Polygamy:** The Bill provides that when one applies to the Registrar of Marriages to marry, one of the things a person has to indicate in writing is whether the marriage is intended to be polygamous or monogamous. There was a general consensus among patrons that the bill was clear enough on the polygamy clause, as a couple has to agree the kind of union that they want their marriage to be. This brings about a lot of fairness, where the woman has a say as to the kind of marriage she wants. Participants also welcomed the idea of decentralized marriage registries, where the Bill provides for Chief Registrars of Marriage. Currently, one has to go up to the District Registrar or the Attorney General's Chambers to contract a marriage, an expensive affair for some. In addition, the Bill recognizes all the marriages under it as having equal legal status. Presently, marriages under

the Marriage Act enjoy a superior status to those under the African Christian Marriage & Divorce Act. This brings in a sense of equality and justice for those married under the customary law and those under the civil law.

6. Patrons also urged the government to bring this bill to the House for debate as soon as possible to rationalize the institution of marriage.

Progress Report

1. Public opinion seems to agree with views expressed at the Café that this Bill is long overdue and that it goes a long way in addressing the issues around the institution of marriage.
2. The Marriage Bill remains a bill to date. This despite the fact that discussions on this it have probably been the most exhaustive of any bills published so far. The Café needs to push for this bill to be brought to the House for debate.
3. It emerged that dowry plays a major role in marriages. It is the one thing in our system that is intrinsically African and the general opinion, especially from women, is that it is a necessity.
4. On dual maintenance, a majority of women were predictably against it with men folk diametrically opposed to this view.
5. During the public debates mainly on FM radio talk shows and newspapers, two major questions and/ or concerns have arisen:
 - a. Is it realistic to expect a non-Muslim woman to willingly contract a marriage that could potentially be polygamous? And how does this augur with Christian practices?
 - b. Who should determine the amount of dowry to be paid or even whether dowry should be paid at all?
6. The big question however is, for how long is this going to remain a Bill?

6: Towards Devolution: The 2009/10 Budget

Background:

The 2009/2010 Budget acknowledged the domestic and global challenges against which it was formulated. In this regard, the Budget proposed measures which would “restore the economy to a higher growth path, expand economic opportunities, create employment, and strive to protect the livelihood of the poor and the vulnerable members of our society”. The Budget was aptly named “*Overcoming Today’s Challenges for a Better Kenya Tomorrow*”. The framework for the budget was based on maintaining a stable macroeconomic environment, developing key infrastructure, promoting equitable development, investing in environment and food security and strengthening governance. It sought to transfer a lot of resources directly to constituency based on the model of the Constituency Development Fund (CDF).

The July Political Café sought to interrogate the proposed devolution of funds as captured in the budget, the efficacy of the CDF as a concept and whether channeling of more funds through it was viable.

The Debate:

Patrons at the Café, like the rest of the Kenyans, were in agreement that the budget sounded different, especially the proposal to have development funds devolved on a model similar the CDF framework. This move came against a backdrop of the debate surrounding the contested clause in the proposed new constitution on devolution of powers, with Kenyans pondering whether the devolution of funds

is a step towards devolution of powers.

The devolution of resources was lauded as a novel idea, but there were concerns that the funds may , just as regards CDF funds, not be used in a transparency and accountability manner. A lot of money given under the aegis of the CDF have been. In addition, the current CDF structure makes the MP the sole originator of the projects to be implemented in his constituency, and the electorate has no say in the kind of projects they want. The Cafe proposed a recall clause for the CDF Committee to ensure its effectiveness and efficiency. It also proposed that there be introduced Annual General Meetings between the CDF managers and members of the public in order to assess the progress of the projects set up. In addition,



members of the public who are the beneficiaries of the CDF should be participate in deciding the projects to be funded. On the issue of whether this budget was a step towards devolution, the devolution of funds was viewed as a step towards devolution of power to the extent that wealth has been distributed from the centre and the common citizen ideally has a say in the management of funds.

However, the current structure of CDF is wanting as Community members are highly ignorant of the operations of the CDF and either by design or default, they do not actively participate in the running of CDF. Devolution must be through a strong and transparent system that guides the people, and CDF has not yet achieved that status. It is highly mismanaged and non inclusive and the CDF committees should have experts to ensure effective management of funds.

On development, patrons felt the budget focuses on the recurrent expenditure and not wealth creation. In addition, the expenditure is more than the money that the country has, and the government is already borrowing money to meet allocations in the budget. While the budget is ambitious, over-reliance on donor support is not a worthwhile undertaking especially in striving to achieve Vision 2030.

Given that agriculture is the backbone of the Kenyan economy, patrons felt that allocation towards the sector in the 2009/2010 budget was very minimal.

The budget allocates money to energy and infrastructure, and this a commendable attempt towards realization of the vision. The move to introduce the digital villages is welcome and ties up well with boosting the country's Information Technology sector in line with the vision.

Participants were however of the view that there was poor prioritization of issues in the budget , for instance, it allocates funds towards provision of computers yet electricity is not available in most rural areas.

The Café was also happy with yet another attempt to stop the use of fuel guzzlers by top government officials by directing that no public official should use a vehicle with an engine capacity of not more than 1800cc. Patrons hoped this directive would be implemented this time round.

Overall, devolution of funds to the constituencies is a good step towards the achievement of the Vision 2030, as the funds are a catalyst to local development. However, a strong CDF management mechanism is needed to aid in effective absorption and utilization of funds in the development agenda. Also, Community Based organizations and other such groupings need to be trained on monitoring and evaluation of the management of the fund.

Progress Report

1. The government finally implemented the directive to withdraw fuel guzzlers. The question however is whether the measure will reduce the expenditure.
2. Most of the stimulus funds have not been utilized due to lack of proper structures in the CDF framework. The Roads Fund, for example, has not been released because no CDF committee has submitted signatories to the ministry of Roads.
3. A CDF taskforce led by Hon Engineer Karue was put in place to review the CDF Framework and Act, but to date the Act has yet to be amended.

7: Bringing Justice and Reconciliation to an Ailing Kenya

Background:

This discussion was held against the backdrop of the impending visit by the ICC Prosecutor, Louis Moreno Ocampo, in an attempt to take over prosecutions of PEV cases. The debate on where to try the perpetrators, and which process provides justice and ends endemic impunity continues, with politicians giving the public mangled descriptions of the different options that exist. Regardless, the best judicial mechanism chosen should be one that promotes both justice and reconciliation, and not favour one at the expense of the other. It should also be one that incorporates Kenyans' own concepts of justice and reconciliation as this would establish a sense of ownership and develop a much deeper and stronger sense of justice among Kenyans.

The Debate:

Local Tribunal, ICC or the TJRC?

Patrons agreed that Kenya requires a local tribunal, ICC and TJRC as all play different roles in reforming Kenya. A local tribunal that meets international standards was the best option, but there was no hope of establishing such a local tribunal before the 30th September 2009 deadline. The ICC was a favourable option since it would be free from political manipulation and it would play a big role in ending impunity. However, the logistics of taking the witnesses to The Hague and protecting them and the inability of the court to prosecute every perpetrator were identified as some of the shortcomings of the ICC. Patrons recommended a tripartite

solution- a judicial system that employs the ICC, the local tribunal and the TJRC-to handle the PEV.

For any sense of justice and reconciliation to happen, there must be punishment. The ICC or the Special Tribunal managed by external expert actors ensures punishment of the offenders. Consequently, those who financed the violence and the political leadership should be tried by the ICC. After punishment, there is the community reconciliation, and the TJRC would bring about this reconciliation. The TJRC applies for those who admit to the guilt, and those who do not admit should be subjected to The Hague or the Special Tribunal in order to determine their guilt or innocence. Ultimately, the three options, the ICC, Special Tribunal and the TJRC should be utilized as they all bring about different forms of justice.

Need for TJRC and its mandate

Patrons were divided on Kenya's need for TJRC, with some agreeing on its importance but calling for extension of its period to more than the current two years to enable it effectively exhaust its mandate. Its mandate should remain the same, which is to address past injustices from 1963 to date.

There were yet others who thought that most of the problems bedeviling this country trace their origins in the pre-independence period and need to be addressed necessitating the need for extending the period.

The country needs a TJRC since some of the crimes committed can not be handled by the current judicial system. The TJRC, the patrons said, should be allowed to prosecute the more nefarious cases. It should address issues of land and gross human rights violations and this would ensure justice is done and seen to be done among



Kenyans. It should also have power to offer amnesty to witnesses as this will encourage witnesses to testify and bring the masterminds of violence to justice.

However, the opponents of the TJRC took issue with its process which involves people talking about the crimes they have committed and wondered loudly what the next step after talking would be. They also claimed that the country lacks publicly vetted people to head the TJRC since the method of recruitment does not inform the public on how those in the TJRC were chosen. Moreover, the judicial system remains weak and cannot help in resolving any issue outside the report developed and launched by the TJRC

committee. What the opponents of TJRC proposed was a genuine public apology from every Kenyan. Representatives from various ethnicities and politicians should apologize for the part they played in fuelling the violence. A TJRC, they argued, would be just another commission and would not interrogate issues deeply, as there lacks political will to see it's a success. They added that the country needs an enforcer who is pro-people, pro-democracy and can withstand political manipulation to push for reforms.

Building the capacity of judicial institutions to ensure they are independent and can handle cases of the magnitude of post election violence

There was a general consensus on the need to establish legitimacy in judicial institutions. The appointment of judges should be done by an independent judicial service commission. So as to ensure independence in the Judiciary, there should also be a budgetary allocation for the judiciary in the national budget as well as establishment of security of tenure for magistrates. The court registry should be computerized to improve efficiency.

Patrons recommended the inclusion in the Judicial Service Commission of persons who have not studied law and who would serve as jurists. They further recommended refresher courses to judges and magistrates to bring them up to speed with new precedents. There should be an increase in the number of women judges to enhance gender equality in addition to increasing the judiciary personnel.

Options that exist for the country to fight impunity

Patrons suggested that a way of achieving reforms in the political leadership was the reduction of the perks and benefits that a person gets once voted in parliament. The extremely high benefits serve to

corrupt politicians who do everything it takes, most of which are illegal, to ensure that they retain those benefits.

Patrons further observed that there was a need to define Kenyan values and then model our institutions along those values. The kind of values that children and young people adopt is from the political class which is very negative. Examples are tribalism and adoration of money and material acquisition. While we may want to model our reforms on values, the question is whether to look for and define values in the muddled society or wipe out the political role models so as to have clearer and cleaner values. Whatever the method, patrons observed that there is still something that can be salvaged from the rotten Kenya that we have today. There are still sane people in the country who can be groomed to become good leaders. Change comes gradually, and the requisite reforms as well as justice will be achieved eventually.

There was general agreement on the fact that every one of the Kenyan citizens is guilty of impunity, the difference is the level of impunity. Citizens get away with little 'sins' on a daily basis when they fail to observe simple rules like belting up in a public service vehicle. What the political leadership exhibit is impunity on a grand scale.

Kenyans should internalize the facts that impunity at whatever level is inexcusable and it leads to loss of human dignity. However, to effectively address impunity, there ought to be faith in the institutions, which though might be flawed, are not entirely rotten. Justice Waki was used as an example to further explain this since he works in the flawed judiciary yet he managed to successfully head the Commission of Inquiry on Post Election Violence (CIPEV) and

generate recommendations which all Kenyans agree with and are pushing for their implementation.

Patrons were also concerned about the safety of witnesses to crimes. Many people, especially the politically correct, have gotten away with heinous crimes because witnesses either refused to testify or disappeared altogether. An independent witness protection organ was recommended as one of the most effective ways of ending impunity.

Progress Report

1. The Proposed Constitution has made great strides toward addressing the concerns about the judiciary. The proposal to have all judges vetted received wide public support. Also supported were proposals to set up an independent judicial service commission and a Judiciary fund.
2. As the Café predicted, Parliament was unable to set up a local tribunal to try perpetrators of the PEV. The cabinet also refused to refer the Kenyan case to the ICC.
3. The TJRC has taken a long time to set up. It is currently faced with an acute crisis of confidence with its chair coming under immense public pressure to step down for allegedly being an insider in former oppressive regimes the TJRC is supposed to investigate.
4. The Cabinet has approved amendments to the Witness Protection Act to form an independent and autonomous Witness Protection Agency. This would go along way in addressing issues raised by the Café about safety of witnesses to the PEV and fighting impunity in general.

8: Addressing the Challenges of Climate Change

Background

Environmentalists have for years cautioned against wanton destruction of forests, water catchment areas and other natural resources, and it is only currently that their warnings are being accorded the attention they deserve. The recent changes in weather have impressed upon Kenyans the need to take care of their environment.

The degradation of the Mau Forest Complex (Kenya's largest water catchment area) through politically instigated illegal settlements and logging has compromised the government's ability to address global warming and climate change. The Mau case presents a good example of how human exploitative activities disrupt the ecological balance of an area as well as the effects of such degraded environment on the quality of life of the local people and indeed for the whole country's ecosystem. Drying up of rivers and increased conflict over water points, pasture and land are just some of the results of destruction of the Mau.

Climate change continues to affect the Kenyan social sphere. Migration in search of pastures for pastoralist communities has seen children drop out of the formal education system. Conflict over pasture and water has escalated, worsening the already poor security in the country. Drought related diseases and deaths are on the rise. Life has become harder in urban areas, as the shortage of water forces people to spend more of their meagre income on water.

A lot of time and money is wasted as a result of the devastating effects of climate change. More people spend more time looking for water and food, time that would have been utilized in building the economy. Lack of food and water and the onset of illnesses means many people fail to show up at work and those who do have low productivity rates. Lack of produce from the farm sets Kenya, which relies heavily on agriculture for exports, way back economically.

Continuous depletion of the environment could lower economic growth and increase Kenya's donor dependence. Wild animals could die and lakes could dry up hence drastically reducing tourism. Extensive sinking of boreholes without rain could deplete the underground water reservoirs.

It is against this background, together with the United Nations Framework Convention on Climate Change (UNFCCC) which was scheduled to take place in December 2009 at Copenhagen, Denmark, that we discussed Climate Change.

The Debate:

The Role of Political Leadership in Climate Change

Successive regimes have done little to conserve the environment. De-gazettement of forest cover and allocation of forests to private individuals during Presidents Kenyatta and Moi's regimes led to destruction of forests in the country. In addition, the failure of the Ministry of Energy in both these regimes to provide alternative energy sources has led to massive logging.

Political leadership considers manifestations of climate change such as drought as emergencies, and therefore puts in place emergency measures to address these effects. These measures which include

provision of relief food and sinking of a few boreholes are shallow and unsustainable. Despite Kenya experiencing drought in 1971, 1984 and 1992, this year's drought still caught the government unawares. There lacks comprehensive and long term drought mitigation measures in the country.

Industries that have adverse effects on the environment and on people's health have not been blacklisted by National Environmental Management Authority. These industries pour effluence into rivers and on land in addition to releasing toxic fumes in full knowledge of the NEMA. For instance, the Pan Paper Mills in Webuye was closed only this year, despite the health effects it has had on surrounding communities for decades.

Patrons were unanimous that the current political leadership has no capacity to deal with the effects of climate change. No concrete measures have been taken to either reduce our carbon emissions or even protect our rapidly deteriorating environment. Instead, political posturing is the order of the day. A change in political leadership might help in reversing the environmental degradation and locally instigated effects of climate change. Transformative, issue based and visionary leaders concerned about the future of the country would put in place sound measures of conserving the environment.

The Mau Controversy

Politicization of land since independence has immensely contributed to environmental degradation. Over the years, allocation of land has been used by politicians to create political niches. The Mau forest is Kenya's most important water catchment area that should have been protected. It was de-gazetted by the Moi government to



allocate land to the people considered cronies by the government and Kibaki continued with this legacy.

Land reforms as stipulated in the Ndung'u Land report and in the National Land policy should be implemented. There should be engagement of community members in dealing with land issues in the country, and the approach should be bottom up where community members create local ways of utilizing land and conserving the environment. The Mau coordinating secretariat should include community members to enhance ownership of the reclamation activities.

The constitution should be amended to remove the powers of the President to allocate land. In addition, there should be an

autonomous body that deals with land and environmental issues. The people living in the Mau should be evicted immediately and mechanisms put in place to compensate those who have legitimate claim to the land. Immediate cessation of destruction of trees in the Mau should be followed by planting of trees to replace those lost.

Addressing Climate Change

The government should work with other stakeholders to craft out strategies in educating the masses on the need to conserve the environment and encourage people to create localized ways of environmental conservation. It should also gazette all forests and maintain them. The government must put in place strict measures to curb illegal logging and mismanagement of industrial discharge. It should also encourage planting of indigenous trees and assist farmers in adopting new technologies in agriculture as well as planting of drought resistance crops.

The Ministry of Energy should explore other sources of energy as opposed to wood and water. It should encourage people to use bio charcoal and solar energy and create market for both. Additionally, environmental conservation should be made part of the school curriculum to inculcate conservation values in children as they grow up.

Individual Kenyans should take up the responsibility of managing their environment. They should plant trees, recycle waste and avoid polluting their environment. They should also be at the forefront in campaigning for a more responsive government with regards to the environment.

The Kenyan government should join the rest of the developing world in demanding for the developed world to cut down their

carbon emissions. They should also push for compensation from the developed world to help in mitigating the effects of climate change.

Progress Report

1. The Country faced one of the worst droughts last year with hundreds of people and thousands of livestock dieing. This was one of the few years that hydro power dams had to be shut down because of drought. When the rains came, it was accompanied by flash floods that claimed lives and destroyed millions of shillings worth of property.
2. A former Minister is quoted saying that he has never known rain to come from trees. This just shows the levels of ignorance in society about the climate. The Café should therefore continue the push for proper education of both the masses and the political leadership on the effects of climate change.
3. The Mau Forest has turned into political dynamite with political careers seemingly being made or destroyed on the issue. As the Café observed, the political class right from the Presidency does not seem the little bit interested in conserving the vital water tower.
4. On the international scene, Copenhagen was the biggest global event on the environment so far, attracting massive global and national attention. Kenya played a leading role in the preparatory processes and in the negotiations as well, and was ably represented by a strong government delegation. Both the President and Prime Minister were in attendance at various times. However, the Copenhagen talks virtually collapsed without any meaningfully binding resolution made to reverse the effects of climate change.

9. The Harmonised Draft Constitution

Introduction:

The history of constitution making in Kenya has been long and drawn out. There are many constitutional milestones in Kenya's history:

- 1963: Federal Constitution
- 1964: Republican Constitution
- 1969: *de facto* One-Party state
- 1982: *de jure* One Party State
- 1991: Multi-party democracy re-introduced
- 1997: Inter Parliamentary Party Group Amendments
- 2003: Constitution of Kenya Review Commission
- 2005: Referendum
- 2008: Agenda Four (4)

All these events did not provide the country with the best institutional and governance structures and therefore failed to enable Kenya achieve its full potential in fostering peace, economic growth and social harmony among its peoples. As a result, the current constitutional order does not fulfil the expectations of Kenyans. After a great clamour by the people of Kenya for a new constitutional dispensation, greater democracy, respect for human rights and accountability on the part of the Government, the CKRC started a process of constitutional review. The process led to three draft constitutions:

1. **The Constitution of Kenya Review Commission (CKRC) Draft submitted to the Bomas Constitutional Conference. (Ghai Draft)**
2. **The Constitution Conference Draft (Bomas Draft)**

3. The Proposed New Constitution (Wako Draft)

The Wako Draft was voted on in the 2005 referendum but it did not meet the expectations of majority of Kenyans. After the disputed Presidential elections of 2007, Kenya witnessed its worst moment in history when there was widespread violence in the country. Negotiations mediated by the African Panel of Eminent Persons helped achieve a consensus that led to the signing of the National Accord. In order to achieve lasting peace and prosperity, the accord under Agenda Four requires a new Constitution for Kenya to be enacted. This has given a new push to the search for a new constitution. Parliament enacted the Constitution of Kenya (Amendment) Act, 2008 and the Constitution of Kenya Review Act, 2008 to serve as the legal framework for achieving a new constitution.

The Review Act requires the Committee of Experts to finalize its work within twelve months. The draft produced in the review process must be passed by the National Assembly and then put to the people of Kenya in a referendum. On 17th November, 2009, the CoE, pursuant to Section 32 a (i) of the Constitution of Kenya Review Act, 2008, published a Harmonized Draft Constitution. The Café had two special sessions to discuss this draft constitution which formed a basis for the submissions made by young people to the CoE.

Patrons observed that it was time for Kenyans to get a new constitution. Over the two sessions, we agreed on a raft of recommendations, thus:

1. That we have a pure presidential system of government with clear checks and balances, among them:
 - a. Elected by a 50% + 1 votes



- b. A cabinet of no more than 20 ALL of whom must NOT be members of parliament. No more than two-thirds should be of the same gender
 - c. All appointments made by the President be subject to scrutiny and approval by Parliament
 - d. Appointments of Principal Secretaries should be a function of the Public Service Commission.
2. Patrons were very happy with the human rights gains consolidated in the Bill of Rights with a few proposals for amendments, thus:
- a. Article 40 on youth is too vague and does not mention the mechanisms the state shall put in place to promote the welfare of the youth. To remedy this, young people

proposed that the CoE replaces this article with article 39 of the Bomas Draft thus.

- b. That despite the article on the right to life should be retained “As-Is” to avoid splits that may come as a result of divergent views on abortion.
 - c. The reduction of the time the police should take before producing suspects in court from 48 to 24 hours to preserve the gains made.
 - d. To compel the police to produce a search warrant before seizing evidence to avoid unwarranted harassment of young people.
3. The introduction of dual citizenship is a plus especially for young people.
4. On representation of the people, patrons proposed a mixed member proportional representation to mitigate against the negative effects of the first-past-the-post system we currently have.
5. On the legislature, patrons had several proposals:
- a. That we retain the current 210 constituencies as elective areas
 - b. An additional 90 seats through party lists according to total votes received by each political party
 - c. Senators should be elected directly by the people through adult suffrage.
 - d. That the draft provides for review of the affirmative action clauses after ten years.
 - e. That it should provide for a clear election of youth MPs through the National Youth council which should be established in the constitution.
 - f. The Right of Recall (Article 131) is an intrinsic democratic

right that should NOT be left to parliament to legislate on. The Article should be clear on the reasons for and the thresholds required for recall to avoid malicious election losers from misusing this article.

6. On the Judiciary, patrons recommended the following:
 - a. That the Supreme Court should have exclusive and original jurisdiction on Presidential petitions
 - b. That Kadhi's Courts should be retained as in the Draft with amendments to remove the limitation of their jurisdiction to the "former protectorate"
7. On Devolution, patrons recommended:
 - a. A three-tier devolution structure
 - b. Reinstatement of the Regions as were in the Bomas Draft instead of the provinces as in the Draft
 - c. The number of young people to be nominated should be specified and NOT lump it together with marginalized groups.
 - d. Direct election of the County and Regional Governors by universal suffrage to avoid cronyism

Progress Report

The Proposed New Constitution (PNC) has taken into account quite a number of the recommendations of the Café, thus:

1. A pure presidential system has been adopted
2. Clear representation slots for young people in leadership positions
3. There is some semblance of mixed member proportional representation even though we would like much more.
4. Senators and governors will now be elected directly
5. Bill of Rights clause as proposed at Bomas

6. As the Café predicted, the opening up of the clause on the sanctity of life has made this the most contentious issue in the Proposed Constitution today.
7. Kadhi's Courts have been retained
8. On Presidential election petitions, the Supreme Court has been given original and exclusive jurisdiction which is a plus.
9. On devolution, the regional governments have been scrapped.

Conclusion

The year 2009 was indeed a qualitatively very productive year for the Café. We have had great discussions with stronger policy leanings. We have also seen a majority of the recommendations of the Café going in sync with the implementation agenda of major policy makers in the country. We must however, continue to improve on the follow up to these discussions to ensure that the Café creates a more central platform for engagement.

The Café is poised to become even more relevant this coming year with a variety of Agenda 4 items coming towards completion. With the constitution-making process headed for the penultimate stages, the need for more issue-focused debates cannot be overemphasized. Patrons will need to roll their sleeves as we battle misinformation as the country heads towards the Referendum.

Patrons recognized the absence of policy makers with the bare minimums of young members of parliament who would add value to the discussion and acquire technical support for enhanced discussions in parliament. Concerted efforts will be made moving forward invite the afro mentioned stakeholders and similarly share the café notes with relevant members including line ministries.

The need for the Café to expand to areas outside Nairobi has never been greater. The year 2010 will see the Café go regional as we strive to create more meaningful engagements outside of Nairobi to build a better, more informed citizenry.

