

ANNUAL REPORT 2000

FOREWORD

This year's Annual Report offers yet another opportunity to share with you Kituo Cha Katiba's (KCK) achievements for the year 2000 and its hopes and aspirations for the years ahead.

In furtherance of KCK role in making constitutions in the East African region living documents, and in recognition of the instrumental role civil society plays, Kituo Cha Katiba has consolidated and enhanced her collaboration with governments as well as existing initiatives and networks including NGOs at the national, regional and international levels.

Further, Kituo Cha Katiba's activities have targeted the Youth, who as the leaders of today are in dire need of knowledge about constitutionalism and good governance. Similarly, the training of NGO Board members has become part of the organisation's mandate.

Through the support of The Ford Foundation, Kituo Cha Katiba in collaboration with the Centre for Democracy and Development (CDD) was proud to have co-ordinated the pioneer group of six women lawyers to attend a Masters Programme on Governance, Democracy and Development in the United Kingdom. This programme is intended to broaden and enhance the approach of women activists to constitutionalism, development and activism.

This year also marks the launch of the *State of Constitutionalism in East Africa*, a yearly publication, by professionals from the region. It is intended to provide a comparative analysis of the state of constitutionalism in each of the three East African countries, and valuable information and insight into the issues of constitutionalism and good governance, of critical relevance to academics, scholars, politicians and society in general. Additionally Kituo Cha Katiba has embarked on the collection of books and publications, (archival and contemporary on constitutionalism. It has also pursued the electronic transmission of information via web-site, open for use by members of the public.

On behalf of the Executive Board and the Secretariat, I wish to extend our appreciation to the Ford Foundation, and in particular to Prof. Julius Ihonvbere and Dr. Tade Aina for their tireless and relentless support to the organisation.

I am confident that this year's report will give a brief overview of the achievements which form a firm foundation, for a prosperous future for Kituo Cha Katiba.

Solomy B. Bossa
Chairperson.

ANNUAL REPORT 2000

A. BACKGROUND AND INTRODUCTION

Mission and Vision

Kituo Cha Katiba (KCK) was established in 1997 with the mission of promoting multi-inter disciplinary communication, dialogue and action on constitution making and democratic governance in the East African Region. That mission was to be accomplished, through basic and applied research, information dissemination, public debate, advocacy, activism and training.

KCK provides a mechanism and neutral forum for activists, academicians and politicians to engage in dialogue, self reflection and critical debate over a wide variety of issues that are of critical contemporary relevance. The ultimate aim of the organisation is to promote the active participation of civil society in good governance and to inculcate a culture of constitutionalism where the constitution will become a living document that reflects the aspirations and needs of the common people. Civil society must therefore be empowered to act in partnership with government and to hold the vested power accountable. Recognising that the success of democratic governance lies in rooting it in the hearts and souls of men and women, KCK promotes the capacity of stakeholders to address democratic behavior as a lynch pin of their everyday relations.

Organisational structure

KCK is a regional centre primarily working through liaison officers in each of the three East African countries. KCK compliments the individual national initiatives, that are already existent in the region. It collaborates with existing institutions and organisations for the purposes of implementing its activities, depending on the issue at hand and the objectives of the partner.

KCK's Niche and Comparative Advantage

Regionalism : KCK is a regional centre that applies a multi-disciplinary and regional focus to constitutional development. The tendencies of NGOs and governmental organisations is to respond to constitutional questions in a fashion that meets the exigencies of the moment or that addresses a particular crisis. These efforts are local in nature and often represent short term solutions. Few institutions are equipped with the capacity or design to adopt long term perspectives on constitutional issues, and to consider them within the framework of general constitutional development. In an era of globalisation, there is considerable scope for enhanced collaboration and cooperation between countries that share so much in common. The signing of the Treaty for the Establishment of the East African Community strengthens KCK's advocacy at the regional level. The unity and development of East Africa can no longer be left to the leadership of the countries that comprise it. To be sustainable there must be considerable involvement of the people of the region in determining the context of their governance. KCK plays a supportive and facilitative role for any stakeholder with a similar mission, and aims at adding value to the work of all parties.

KCK's Strategic Objectives

1. **To educate various sections of the public in good governance and constitutionalism by strengthening civil society as social capital through information collection, dissemination and supporting the teaching and research about constitutionalism and governance.**
2. **To network with civil society organisations and governments to strengthen good governance and constitutionalism in the region.**
 - ☞ To provide a focal point from which the different East African stakeholders interact as a platform of cooperation, to both obtain and supply information and to act as a one - stop repository of information on constitutionalism.
 - ☞ To strengthen the linkages between international, regional and national stakeholders.
 - ☞ To maintain a data bank of all stakeholders on constitutionalism, as a point of contact and interaction.
 - ☞ To establish a web-site on *Constitutionalism in East Africa : Makerere University and Kituo Cha Katiba*.
3. **To monitor the process and progress of constitutional development in the region through:**
 - ☞ Publication of “The State of Constitutional Development in East Africa : A comparative analysis.”
 - ☞ Documentation of the positive and negative progress made in the legislature, the interpretation of the constitution by the courts of law and a review of government policies in the area.
 - ☞ Publication of newspaper articles on topical constitutional issues to enable the populace discuss and act from an informed point of view.
4. **To empower the people of East Africa to lobby and advocate for good governance, constitutional development and constitutionalism, and to use KCK’s expertise and strategic placement to access policy makers.**
 - ☞ To act as a think tank to develop new ideas that promote the creativity and originality of African thinking.
 - ☞ To promote gender equality and equity as a component of constitutionalism.
 - ☞ To target policy makers, and address them on issues drawn from civil society, and thus act as a conduit between government and civil society.
 - ☞ To provide a broad-based initiative for influencing law and policy.
 - ☞ To offer a neutral forum for dialogue amongst stakeholders with varied interests and differing views.

B. THE BOARD

Hon. Lady Justice

Solomy B. Bossa: High Court Judge

Uganda

Prof. Kivutha Kibwana: Center for Law and Research
Kenya International (CLARION)

Dr. Willy Mutunga: Kenya Human Rights Commission
Kenya (KHRC)

Ms. Betty Murungi: International Center for Human *Kenya* Rights and
Democratic Development (ICHRDD)

Prof. Chris Maina Peter: Faculty of Law University of *Tanzania* Dar es
Salaam:

Mr. Evod Mmanda: Legal and Human Rights Center
Tanzania (LHRC)

Ms. Pili Mtambalike: Tanzania Media Women
Tanzania Association (TAMWA)

Fr. John Mary Waliggo: Uganda Human Rights
Uganda Commission (UHRC)

Dr. J. Oloka Onyango: Dean of Law, Makerere University

Uganda

C. THE SECRETARIAT

- **Executive Director :** Ms. Maria Nassali

- **Assistant Accountant:** Ms. Ann Nakonde

- **Secretary:** Ms. Margaret Kalule

- **Office Assistant:** Mr. George Matovu

- **Professional Guards:** Alert Guards

CONSULTANTS

KCK has relied on the services of consultants to dispense with specific tasks within a specified period, as a more feasible and cost effective way of implementing its activities. This was influenced by the varied nature of the tasks, as a multi-interdisciplinary organisation. The consultancies are coordinated by the Executive Director.

- Program Officers : Ms. Edith Kibalama : Information Development and Management

- Ms. Damalie Nakate : Conference Coordination and Youth

D. INSTITUTIONAL STRENGTHENING AND REVIEW OF ORGANISATIONAL GUIDELINES

A wave is under way seeking accountable and transparent leadership and behavior in civil society organisations which require them to be strengthened as watch dogs for government action. Simultaneously, established procedure enhances the performance of an organisation by making it more effective and time conscious. It is in this regard that KCK reviewed its procedures and regulations in tandem with the exigencies of the day, with particular focus on its position and role as a regional centre.

Accordingly, KCK contracted the services of a Management Consultant to review its Constitution, Articles and Memorandum of Association, and guidelines, and harmonise them to reflect the decisions of the Board. The consultant also advised on the staffing position and networking policy of the organisation in order to effectively and efficiently act as a regional centre. It was generally recommended that KCK should employ a skeleton staff for running the Secretariat and contract the services of other persons depending on the programmatic needs of the day.

1. RESEARCH AND DOCUMENTATION

i) Strengthening the Information and Documentation Centre

KCK acts as the East African first call for information relating to constitutional issues in each of the three countries of the region. Such a Centre would facilitate the constitutional process and monitoring in the 3 East African countries, and the outer region, for purposes of a comparative review. A lot has been done in the region without sufficient opportunity to learn from each others' experience. KCK will therefore facilitate the process, by being a market place; a one stop repository of information on constitutionalism. The Centre is in the process of compiling a Data Bank of all stakeholders, with the aim of creating closer linkages between them, as a contact place to facilitate a process where it is possible to know who is doing what. This would further strengthen the enrichment of each others' visions and objectives through sharing of experiences and information.

Further, individual academics have produced much material both of a theoretical import and practical value to the processes of constitutional reform and debate. Unfortunately, this information rarely transcends the walls of the academia. The documentation center would encapsulate the varied dimensions of constitutional reform and transition that are taking place within the region and bring them within a single framework.

KCK has to date collected archival information from the colonial period to the present, from each of the three East African countries. This activity is enhanced by use of electronic means of storage and transmission.

Over 150 books on Constitutionalism and governance, and other related text have so far been acquired. We acknowledge the contributions of Prof. Julius Ihonvbere of The

Ford Foundation, New York, Prof. John Mbatia of Weber State University and Prof. Ebere Onwudiwe of Central State University of Ohio, for the books they have contributed gratis to KCK.

A number of students from The Faculties of Political Science and Law of Makerere University have started to utilise the resource Centre. This has also provided us with an opportunity to hold discussions on contemporary issues. The Information and Resource Centre provides a useful forum for the training of trainers for secondary schools. The students graphic description of constitutional issues is very analytical and useful in depackaging complex issues.

The following offers a vivid example

Uganda held a referendum on the type of governance the country should follow. On one side was the “no-party system’ Movement, symbolised by a bus. On the other side, was the advocates of Multipartism, symbolised by a dove.

In discussing the contemporary issues, the students raised the following questions?
Bus : Who determines the seating, the route; who holds the steering wheel; how is the fare assessed? Is there an opportunity to disembark when one has reached their destination, and how?

Flying Bird : What is the value of a flying bird without any tangible benefit accruing therefrom? How far can it fly before it needs to be replenished and how? Should the bird fly so high or be in contact with the people on the ground.

ii) State of Constitutionalism in East Africa 1999

This publication is meant to review constitutional developments in each of the three East African countries viz, Kenya, Tanzania and Uganda, during the year 1999. The individual reviews were undertaken by able nationals of the respective countries whose intimate acquaintance with the state of constitutionalism in their countries is evident in their accounts, namely : Dr. Bazaara Nyangabyaki, Director, Centre for Basic Research (CBR) for Uganda; Prof. Kivutha Kibwana, Director, Centre for Law and Research (CLARION) for Kenya; and Prof. Chris Mania Peter, University of Dar-es-Salaam for Tanzania. The quality control and editing was undertaken by Prof F.W. Jjuko of Makerere University and President of the Free Movement (FM).

The information on which the reviews are based was gathered from diverse sources such as interviews, newspapers and other publications, court decisions and legislation. This being the first review of the progress of constitutionalism in the three countries – it is

intended that the exercise will be undertaken annually – they have been preceded by synoptic highlights of the constitutional histories of the three countries, so as to place the strands of constitutional development in 1999 in historical context.

In spite of the different levels of animation of civil society in the three East African countries, it is precisely in the context of its activities that the significance of the idea of an annual review of the state of constitutional development lies. Such reviews will not simply constitute a record and its evaluation. To a great extent they will act like mirrors and a resource through which East African civil society - the true engine and motive force for durable constitutionalism -- will be able to examine itself, compare and co-ordinate levels of organisation and activities, celebrate the milestones on the road to constitutionalism of their respective countries and press more urgently and coherently reluctant states and ruling parties for positive change. This is because the reviews show that the states and ruling parties now also recognise the inevitability of change.

As it is, the developments in 1999 are instructive and offer both positive and negative lessons for the various countries, especially when each country's experiences are laid side by side. The opportunity to borrow and exchange ideas and practice is enormous. In this way we can move together and for ever put behind us, to use a phrase in one of the reviews, the "years of demobilization of civil society." One hopes that in the end these experiences will spill beyond the horizons of East Africa and spread their liberating spirit to a continent whose stunted constitutionalism has caused untold misery to the African people.

iii) Documenting the Constitution-making Process in Uganda (1988-1995)

This program involves documenting the constitution making process that led to the 1995 Uganda Constitution. It is being undertaken by Hon. Justice Benjamin Odoki, who chaired the Uganda Constitutional Commission and is currently the country's Chief Justice.

The process of constitutional reform has been the subject of discussion and comment by various people within and outside Uganda. Most of what has so far been written has been taken from published sources supplemented by field research. There is a mass of unpublished material that contains a lot of information giving more insight into the process. This study provides the researcher who was intimately involved in the process as Chairman of the Uganda Constitutional Commission (1989 – 1993) to tell the story from the horse's mouth and explore the other side of the constitutional making process. It shall explain the intention of the Commission in drafting particular proposals, as well as its hopes and expectations.

The study will also enable the researcher to evaluate the contribution of the Constituent Assembly which discussed and approved the Draft Constitution, and the role played by various stakeholders, but also to discover how they influenced the process and how they benefited from it.

The study shall increase knowledge about the efficacy of constitutional reform processes and their contribution to democratisation, constitutionalism, respect for human rights and sustainable socio-economic development. The study is a valuable autopsy of the process to help identify the shortcomings in the Constitution. The lessons to be drawn from the process need to be articulated to guide future constitutional development and processes both outside and in Uganda.

The research is timely because the constitution has undergone five years of rigorous implementation which can help to assess the success of the process. The problems being experienced by the implementation of the Constitution will be examined to identify their cause and how they can be overcome. These problems affect the viability and credibility of the Constitution as an instrument of democratisation and constitutionalism. It is therefore necessary to re-examine the objectives of the process and to determine whether or not those objectives were carried out and achieved by the promulgation of the new Constitution. This shall not only build confidence in the process but will hopefully also promote acceptability and legitimacy of the Constitution.

In conclusion, the proper understanding and effective implementation of the Constitution is vital to Uganda's democratic and constitutional development, and should provide the necessary environment for peace, stability and sustainable development. The results of the study will be of great benefit to Government in implementing the Constitution, the public in understanding it, the courts in interpreting it, scholars and students in studying it, and civic society in relying upon it.

In a nutshell the overall goal of the study is to promote the process of democratisation and constitutionalism in Uganda. Specifically, the study shall fulfil the following objectives :

- Undertake a case study of the methodology of the constitution making process in Uganda.
- Explain the underlying reasons, forces and justification for the Commission's constitutional proposals which are not apparent from the published records, reports and literature.

- Identify and evaluate the shortcomings, failures and problems experienced by the Constitutional Commission with a view to ascertaining how they affected the outcome and how they could have been avoided.
- Examine and evaluate the structure and work of the Constituent Assembly in the discussion and adoption of the Draft Constitution and to assess its precise contribution to the process.
- Critically examine the 1995 Constitution in order to evaluate whether it achieved the goals of the process and to recommend any necessary constitutional reforms.
- Examine the problems being experienced in the implementation of the new Constitution with a view to recommending how they could be avoided or overcome.
- Provide technical guidance and first-hand information to countries and organisations involved in the process of constructing new constitutional orders.

iv) Contributing to the Referendum Debate :

Kituo Cha Katiba has continued to act as a watch dog for constitutionalism in East Africa. This it has done through acting as a think tank by providing a rational and constructive analysis of issues. Prof Kivutha Kibwana as an East African wrote a critique on the debate of the referendum in Uganda, which was published in the Monitor Newspaper.

Prof. Kibwana relied on the story of Solomon with the two women fighting over a baby and appealed to Ugandans not to undermine the country's nationhood, current level of peace and security and painful reconstruction of constitutionalism. He foresaw a clear advantage if President Yoweri K. Museveni's NRM government initiated multipartyism during his stewardship, to enable parties develop on ideological lines, as a way of ultimately vanguishing sectarian politics. He appealed to Ugandans, to *let the baby Uganda survive and not be cut into two or more parts; it continues to be one of the growing babies in Africa*. The predictions of the author were prophetically experienced during the period preceding the Presidential Elections of 2001.

Training

i) Leadership Training

KCK in collaboration with the Centre for Democracy and Development (CDD) in United Kingdom is coordinating a program for the leadership training of women lawyers in East Africa. The fellowship program is a joint initiative of Dr. Tade Aina and Dr. Joseph Gitari of The Ford Foundation Nairobi, and Prof. Julius Ihonvbere of The Ford Foundation New York. The program aims at widening the capacity to use law as an instrument for the promotion of human rights, democratisation, and social change. Furthermore, the program seeks to promote more interaction and solidarity among the

three women lawyers' associations; FIDA (U), FIDA (K) and TWLA on one part and KCK and CDD as advocacy centers on the other.

The program further aims at taking advantage of the emancipation agenda that calls for the representation of women in decision making. It is acknowledged that participation of women in vast numbers per se may not change the nature of the democratic function from that of a patriarchal model to one based on egalitarianism, where there is no change nor questioning of the ideological framework. In addition, the lack of comprehensive information has been used as a pretext to constrain the participation of women lawyers in vying for government leadership positions. Many women lawyers are reluctant to join the field of politics, which is dominated by men. Therefore the program facilitates women in East Africa to join the debate in order to influence thoughts and practice of policy makers, by redefining political participation.

The following are the specific objectives :

- ☛ Promote the professional and intellectual growth of the three associations to utilise the constitution in achieving gender parity, in instituting cases of public litigation and the provision of appropriate legal counsel.
- ☛ To develop African women jurisprudence and voices in human rights and democratic studies, as well as lay a foundation for challenging the existing ideological framework upon which patriarchal political participation is based.
- ☛ To research and assist in analysing the critical constitutional questions that involve gender and engage the policy arena in the analytical debate.
- ☛ To provide engendered empirical and analytical data, grounded in African experiences as a lobby tool for engendering the political content and process.

In the year 2000, six women lawyers enrolled for the program at the Universities of Sussex and Leeds in the United Kingdom, namely : Ms. Vum Ligate, Ms. Enid Nambuya, Ms. Beatrice Ngozi, Ms. Lillian Keene, Ms. Robina Namusisi and Ms. Miriam Namutebi.

ii) *Domesticating Democracy*

KCK is in the process of developing a training tool kit on constitutionalism and good governance for NGOs targeting grassroots communities. Sponsored by SNV, the programme shall be replicated to suit other countries.

It is a widely accepted fact that issues of constitutionalism and good governance must be made directly relevant to the every day experiences of the people before they are internalised, in order to lead to the transformation of the political framework.

Despite the above consensus, the grassroots community often misconceive politics as something removed from the majority of the people, to be practiced and understood by the elite. Furthermore, most of the current initiatives in good governance primarily target the Local Councillors (LCs), the leaders themselves, and not the people. Basically the citizens are targeted towards election time, with the aim of compelling them to participate in the electoral process, through campaigning and voting for “others”. This approach does not challenge the structural impediments that curtail the growth of good governance in the country, at large.

The manual aims at sharpening the citizen’s inquisitive and analytical outlook to society, as well creating a preparedness of adopting personal behaviour and self sacrifice in the interest of a democratic culture. Democracy and good governance have to begin with the basic unity of society ; the family.

Objectives

- ☞ To develop the grassroots communities voices in constitutionalism and good governance, as well as lay a foundation for challenging the existing ideological framework that makes them spectators in their self determination.
- ☞ To widen the capacity of NGOs in disseminating information on constitutionalism good governance as a tool of social change.
- ☞ To develop a resource kit that may be adapted to the grassroots communities.

We acknowledge the immense contribution of *the Democracy for All* program and the *Participative Development Initiative*, of South Africa Durban in developing this manual. They readily offered KCK their materials and consented to their being localised to suit East Africa. We particularly recognise the contribution of Mr. Chuck Scott of the Street Law Project and Ms Ashish Ramgobin of *the Participative Development Initiative*.

iii) Training of HURINET Executive Board.

The training targeted the Executive Board of HURINET, a network of Human Rights Organisations in Uganda. The training enhanced KCK’s image as a facilitator in democratic governance. Focus was placed on consensus building, team building , and

the role of the Board in the democratic governance of NGOs. The participants reviewed the objectives of the workshop and were appreciative that they had been achieved. The participatory training methodology used was also commended.

NETWORKING

i) Regional Conference on Citizens, Communities and Constitutionalism

KCK in collaboration with the Secretariat for The East African Community (EAC) co-hosted an International Conference on Citizens, Communities and Constitutionalism in East Africa, from 17th-19th July 2000, in Arusha - Tanzania. The Conference was supported by the Ford Foundation, as a follow-up to the International Conference on Constitutionalism in Africa," hosted by the Faculty of Law, Makerere University, held in October 1999. The Secretary General of the EAC H.E. Ambassador Muthaura officiated as Guest of Honour, and Professor Mahmood Mamdani of Colombia University gave the keynote address.

The goal of the conference was to develop the capacity of stakeholders to influence the active participation of citizens in democracy and good governance, and to empower citizens to hold governments accountable and responsive to their needs and to the protection of their rights. The conference provided a forum for dialogue and sharing of experiences with the aim of learning from each other's challenges, mistakes and best practices.

Approximately 180 delegates drawn from grassroots communities, national, regional and international organisations were in attendance. The institutions represented at the conference included the legislature, the judiciary, human rights commissions, community based organisations, non-governmental organisations, professional associations and line ministries. Individuals identified for their activist role and contribution to constitutionalism in Africa also attended.

The conference was structured into working committees, following the three thematic conference sub-themes:

- Community Development and Social Change
- Law and Access to Justice.
- Regional Collaboration.

The working groups provided meaningful discussion and in-depth analyse of the emerging issues in constitutionalism. In addition, this enabled delegates to participate in

areas of interest and relevance to them and enhanced the exchange of ideas and encouraged networking.

The Working Group on “Community Development and Social Change” made recommendations on how to ensure that social change furthers the cause of social justice. It was strongly recommended that the role of civil society is to ensure that governance promotes social justice. Practical ways and alternative models of engaging the community in constitutionalism were explored. Delegates shared their experiences in balancing the needs of their target groups vis-à-vis the community and made recommendations on how collective or community rights can be advanced and protected through constitutions.

The Working Group on ‘Law and Access to Justice’ extensively discussed the concepts of law, access and justice, and identified common factors currently affecting access to justice in the region. A catalogue of success stories and best practices was made. Varied experiences in imparting legal skills while simultaneously promoting the capacity of participants to respond to the lived realities of their localities, suitable models of various learning experiences, judicial activism and constitutionalism were discussed.

The Working Group on “Regional Collaboration” critically reviewed and assessed the factors affecting regional networking. It proposed a way forward for the creation of a genuine East African Citizenry. Further the complexities of cross-national collaboration of various interest groups; balancing the critical and divergent needs of the partners ; sustaining a network and justification and structures of regional collaboration, formed part of the Group’s discussion.

The delegates were exposed to comparative regional experiences highlighting constitutional trends in each of the four sub-regions of the continent. Participants shared country and regional experiences of constitutional development, identified commonalities and drew lessons from the different constitutional processes.

Mamdani “Democracy is not about who governs and how they are chosen. More important, it is about how they govern the institutions through which they govern and the institutional identities through which they organise different categories of citizens. The core colonial legacy is at the root of our dilemma: the form of the state. The only way out is to rethink the institutional legacy of colonialism, the idea that we must define political identity, political rights and political justice first and foremost in relation to indigeneity.”

Summary of Conference Recommendations

General Recommendations

- a) In order to understand the breakdown of political institutions, the eruption of internal conflict and crises of the state in post colonial Africa, one has to rethink and understand the institutional-political legacy of colonial rule. This involves more than focusing on the economic impact of colonialism and includes examining the legacy of colonial rule and its enforced distinction of identities and corresponding rights.
- b) It is important to understand how identities form in order to devise solutions to problems caused by race, ethnicity and citizenship as cultural, economic, biological and political identities: economic identities are a consequence of the history of development of markets; cultural identities result from the development of communities that share a common language and meaning. Thus political identities are distinct from economic and cultural identities. Political identity is specifically a result of the history of state formation and is inscribed in law.
- c) Indigeneity should be de-linked from identity and citizenship. Indigeneity has been used since colonialism as a test for justice, and a determining factor in defining the entitlement of any person. The continued indigenous definition of citizenship has led to ethnic clashes and unravelled nationalist movements focussing on rights and entitlements.
- d) The on going national and regional constitutional developments like the East African Community, should be used as entry points in order to dismantle the vestiges of the colonial state, effect social change and redefine the relationship between the citizens and the state.
- e) The notion of custom has to be rethought. Colonialism defined custom as unchanging, singular and despotic by diffusing all power in the Chief. The absolute power of the chief emphasised force such as corporal punishment to coerce subjects to follow it. Custom has to be rethought as plural, multiple, diverse and dynamic. Thus meaningful reproduction of custom has to be through consent rather than coercion.
- f) Democracy is not only about who governs and how they are chosen, but also about the institutions through which they govern, and the institutional identities by and through which they organise different categories of citizens.

- g) In order for a sizeable citizenry to effectively participate in the governance of their countries: the fundamental concepts of democracy and good governance that define identities and related rights such as citizenship must be clarified and used to stop the disenfranchisement of sections of citizenry. All citizens including vulnerable and marginalised groups like women and youth must be mobilised and empowered to shape national and regional agendas at every stage of the process of social change.
- h) Activists must take positive action to improve people's lives by developing innovative solutions; initiating more dialogue; networking and building partnerships and learning from best practices. To ensure the full participation of all citizens, the major gap between the citizens' survival needs and their ability to participate in constitutional processes must be bridged.
- i) State institutions that are accountable to communities must be built and supported by positive and progressive laws.

Recommendations for KCK

- KCK should establish a database of best practices and lessons learnt should be created for the benefit of promoting greater networking and learning from each other. KCK should set up web- site to ensure continuous interaction.
- KCK should initiate the setting up of a representative committee of East Africans to discuss the way forward on the implementation of the Treaty, and coordinate dialogue between the EAC and representative organisations.
- KCK should use Article 127 (4) of the EAC Treaty as an initiative to formalise a mechanism through which civil society organisations can work with EAC, so that the EAC Treaty can provide for civil society engagement and the representation of interest groups.
- The Conference output should be disseminated to all EAC states through the EAC secretariat.
- KCK should disseminate information on the simplified EAC Treaty to communities.
- Promote more regional meetings that encourage discussion and focus on relevant issues.

Recommendations for Civil Society

- **On self-reflection**

Civil Society Organisation should engage in an internal dialogue and self-reflection process on issues of:

- Constructing visions and programmes that directly link the wider struggle for social change and democratic governance with the every day struggles for subsistence.
- Formulating agendas that emerge directly from priorities set by people at the community level.
- Operating and adhere to practices of accountability, self-regulation and transparency that they champion.
- Constructing creative strategies for long-term self-reliance and sustainability.
- **On Lobbying and Advocacy**
 - Serve as a pressure group and watchdog for good governance and accountability of the state to the demands of the people. This includes lobbying Parliament to promote public dialogue on issues of critical concern to the public.
 - Promote restraints on executive and legislative powers in both the Constitutions and the practices of national governments.
- **On Programmes and Strategies**
 - Emphasise the development of holistic strategies of addressing critical problems;
 - Engage all groups, including men, women, youth, elderly and disabled as heterogeneous groups with different needs and ensure true representation of their interests.
 - Promote capacity building of communities aimed at building a capacity for self-help and sustainable engagement at the local level and enhancing the organisational and leadership capacities of the communities.
- **On Access to Justice and Promotion of Good Governance**
 - Civil society organisations should facilitate access of citizens to their Constitutions through translation and dissemination into local languages.
 - Establish endowment funds for civic education at national and regional levels and lobby for public funding (from government, corporate sector, etc.) and lobby governments to continue and improve civic education programmes in schools and universities.

- ➔ Initiate training of paralegals for improved access to justice to the poor and other marginalised groups and increase the use of progressive and creative alternative dispute methods.
- ➔ Use and publicise public interest litigation cases.
- **On Networking, Partnership Building and Information sharing.**
- ➔ Develop strategies for promoting productive dialogue between civil society and the organs of the state (the Executive, Legislative and Judicial at district, national and regional levels), the media and donors
- ➔ Disseminate and share simplified information obtained through research in workshops and conferences in creative ways.

Recommendations for the EAC

- ➔ Expand the jurisdiction of the East African Court of Justice (provided for in article 23) to cover human rights and constitutional issues related to the EAC (Treaty/Co-operation), or formation of an East African Human Rights Court or an East African Constitutional Court.
- ➔ Amend the EAC Treaty to enact a standard Bill of Rights that conforms to the key international human rights instruments.
- ➔ Ensure harmonisation of laws within the three countries in order to establish similar standards in accordance with progressive principles and to achieve equitable participation in the affairs of each country.

Recommendations for National Governments

- **On Communication/Language:**
- ➔ Adopt Kiswahili as a lingua franca for East Africa in order to encourage regional and ethnic collaboration since Kiswahili is one of the languages accepted by the EAC Treaty. A deliberate policy to promote Kiswahili and incorporate it into the educational curricula should be made.

- **On Access to Justice and Human rights**

- ➔ Translate and disseminate the Constitution at the grassroots levels.
- ➔ Incorporate human rights, civic education and constitutional law in school curricula right from primary to tertiary level in order to foster constitutionalism and rights awareness.
- ➔ Redirect the training of lawyers to become more socially responsible, by encouraging continuous legal education for lawyers, law enforcement agencies, the judiciary to keep abreast with new legal developments.
- ➔ Reduce the level of technicality of court procedures; introduce Small Causes and Family Courts with simpler procedures as a means of facilitating access to the law by the majority of the people.

- **On the EAC**

- ➔ Harmonise domestic laws in conformity with the Treaty.
- ➔ Make budgetary provision for adequate funding to support EAC related activities such as Treaty dissemination and establishment of the institutions
- ➔ Create space for civil society engagement in all organs of the EAC.
- ➔ Require equal representation of men and women from national delegations of Members of Parliament and other actors to the EAC Parliament, as well as representation of marginalised groups like the youth and the persons with disability.

ii) Workshop on Constitutional Development in East Africa

The Workshop was held on November 17th 2000 in Kampala - Uganda. It was supported by The Ford Foundation. The workshop was officiated by the Minister of Justice and Constitutional Development, Hon. Joash Mayanya Nkangi. Ms. Olatokunbo Ige, Legal Officer for Africa, International Commission of Jurists (ICJ) gave the keynote address. The workshop was attended by 115 participants drawn from the East African region, representing the judiciary, the legislature, cabinet ministers, parliamentarians, academicians, lawyers and human rights activists.

The workshop was precipitated by the amendment of the Constitution of Uganda of 1995, on August 30th 2000. The amendment was made after two days' deliberation by Parliament, without due consultation of the people, yet Article 1(1) of the 1995

Constitution of Uganda provides that “*power belongs to the people*”. The amendment in effect reinstated parliamentary immunity from external interference. Accordingly, before any evidence concerning parliamentary proceedings can be used in any court of law or judicial organ, or any Member of Parliament or officer can testify in court, Parliament has to give its approval. This amendment renders the judiciary impotent in questioning parliament and thus unable to act as a check and balance to both the Executive and Legislative arms of government. This threatens the core of the cardinal principle of the rule of law and the separation of powers.

In Kenya, the constitutional reform has reached a stalemate, with the two parallel processes, one led by government and the other people driven, led by religious groups, failing to reach consensus on critical issues. In Tanzania, the widely opposed White Paper is still acknowledged by government as its own engineered reform process. In Zanzibar, there is an attempt to amend a non-existent constitution, and the contested election results of 2000 have sprouted unprecedented violence on the island.

In response to the above political context, Kituo Cha Katiba organised a one day workshop with the following objectives :

- To re-affirm international recognition of the cardinal principles of the rule of law and separation of powers
- To strengthen the participation of lawyers in constitutional development and constitutionalism
- To provide a neutral forum for dialogue between government and civil society
- To share experiences in constitutional development and collectively identify opportunities present within each country and the region at large

Workshop Recommendations

Participatory constitutional making process and Constitutional Development

Constitutional development is a complex process that necessitates the participation of everybody. At all times the constitution must be used as an anchor to promote fairness and individual rights.

The Executive should create a conducive environment for participation that upholds the supremacy of the constitution and respects the parameters within which each arm of government as well as the people operate. Likewise, civil society must be moulded into an active partner in ensuring a culture of constitutionalism, as recent developments in Bosnia and Côte d'Ivoire have demonstrated, rather than being a mere recipient of government efforts or a victim of government excesses.

The constitution making process should be people centred by actively involving all citizens and grassroots communities in its development or reviews, to meet the aspirations of the people and achieve a national consensus on all critical issues. The constitution must be availed to the people so that it does not remain a purely legal document that cannot be linked to the lives of the people.

Rule of Law and Separation of Powers

Among the key tenets of constitutionalism is the rule of law. This provides that the powers exercised by government must have a legitimate foundation based on authority conferred by law and secondly that the law should conform to certain minimum standards of justice in order to protect the individual from tyranny of the government.

The rule of law and separation of powers should operate in conformity with universally acceptable cardinal principles.

Legal Activism

Lawyers must continue to play a vigilant role in guiding the development of the constitution whereby courts are respected and used to promote justice, fairness for all parties and to ensure the supremacy of the people.

Judicial Activism

An independent Judiciary is a lynch pin for the protection of rights, which must oversee that both the Legislature and Executive act within the law. Judges should be trained in order to develop jurisprudence through legal interpretations.

Workshop Outputs

- Effective political participation often depends on the amount of power a group possesses in a given social order and how well it can organise itself. This workshop offered constitutional activists in the East African region an opportunity to reflect on their experiences and devise a collective strategy to advocate for the upholding of the cardinal constitutional principles.
- The workshop therefore offered civil society an opportunity to organise itself in order to influence constitutional development. The Uganda Law Society was encouraged to institute a case against government, in respect of the unconstitutionality of the amendment. In addition, a number of cases were instituted by private citizens. The significance of this initiative does not lie in winning the cases, but in demonstrating civil society's willingness and attempts to defend the constitution. This has the net effect of making governments aware that civil society is watching and therefore it is prompted to act accountably.
- KCK was able to build on the grassroots discontent and analyse the issues of contention. According to the public polls in Uganda, only 16% of the respondents were satisfied with the manner in which the Ugandan Parliament is conducting itself. Additionally, KCK linked the national issue with the regional agenda of constitutionalism. Thus, international and regional support and participation, such as the ICJ and the East African Law Society, was mobilised in order to put the issues in perspective and to use publicity as an activist tool. To this end in her key note address, Ms. Ige emphasised the universality and acceptance of the cardinal principles of the checks and balances of the three arms of government. Each of the Presidents of the national Bar Associations of Kenya, Uganda and Tanzania gave comparative analysis of constitutional development in their respective countries. Furthermore, this had the effect of putting the issue in a regional perspective and called for collective resources to address the problems. The unity of the international and regional stakeholders strengthened the advocacy of a seemingly national question. Unity is strength. It is the argument of Kituo Cha Katiba that the constitutional amendment does not only affect Uganda but would have adverse effects on the co-operation of the East African Community and the African continent currently engaged in constitutional reforms.
- The workshop recommendations were widely disseminated and it is hoped that they shall be used in educating the public about the universality of the cardinal principles of the rule of law and constitutionalism.
- The conference provided a neutral ground for government and varied stakeholders with seemingly conflicting but complimentary interests, such as government and civil society. In his opening remarks the Minister of Justice commended Kituo Cha Katiba for initiating dialogue with the objective of understanding each other. Furthermore, the participants critiqued each other in a vibrant, open but equally respectful debate. There was acceptance of weakness and commitment to improve the situation. We are proud that Kituo Cha Katiba, among other actors, influenced the establishment of a Constitution Review Commission that shall in effect adopt a consultative and participatory approach to constitutional reform.

iii) *Womens' Caucus for Gender Justice*

We continue to enjoy an amicable and very nurturing working relationship with the Women's Caucus for Gender Justice, courtesy of Ms. Betty Murungi. KCK has been represented in influencing of policy at the international arena.

The Women's Caucus, is a network of individuals and groups committed to strengthening advocacy on women's human rights and helping to develop greater capacity among women in use of the International Criminal Court, (ICC) the Optional Protocol to CEDAW and other mechanisms that provide women avenues of and access to different systems of justice.

Gains for the Womens' Caucus :

- ✓ The ICC Statute includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence as constituting grave war crime. This paves the way for recognition of sexual violence as constituting other violations such as torture. These sexual acts can be committed both in war and peace, and can be committed against a group.
- ✓ Enslavement is included under crimes against humanity. Enslavement, is defined as exercise of any power attaching to the right of ownership over a person, including trafficking of women and children. Trafficking is more broadly defined because it is not limited to the purpose of sexual exploitation.
- ✓ The Statute clearly uses the word gender. Accordingly in the application and interpretation of law, the court must be consistent with internationally recognised human rights.

The courts can refer to human rights treaties and the prohibition of discrimination based on gender in interpreting the law. This means that judges can refer to CEDAW.

- ✓ The Statute requires that fair representation of females and male be taken into account in the selection judges, staff in the office of the prosecutor and other organs of the court. Additionally, legal expertise on violence against women or children must be taken into account.
- ✓ The Prosecutor is required to appoint advisers with legal expertise on specific issues including sexual and gender violence. This allows for Women's NGOs to provide information to the Prosecutor, which might not be forthcoming if left to the women victims because of the shame attached to these crimes.
- ✓ The Statute provides for the creation of a Victim and Witness Unit within the Courts' registry to provide protective measures, security arrangement, counselling and other appropriate assistance for the witnesses, victims and others at risk on account of their testimony.
- ✓ A separate provision on the protection of victims and witnesses requires the court to take appropriate measures, including proceedings in camera or allowing the presentation of evidence by electronic means, to protect the safety, physical and psychological well being, dignity and privacy of victims and witnesses, taking into account such factors as age, gender, health and nature of the crime, particularly where the crime involves sexual or gender violence.

Having made such gains at the international arena the challenge is to extend these positive developments to the national and grassroots level where violations occur. In August 21st –27th 2000, the Women's Caucus for Gender Justice, undertook a Training of Trainers Course in Cape Town, South Africa, with the objective of assisting and supporting national law reform efforts against gender violence. The training targeted organisations in Africa. What remains to be done is to take the training to the regional and national levels.

iv) *The Urgent Action Fund*

On October 12th 2000, Kituo Cha Katiba hosted a round table discussion between women organisations and The Urgent Action Fund.

The occasion was officiated at by Hon. Jane Frances Kuka, Minister of State in charge of Disaster Preparedness, and attended by over 60 representatives from NGOs, ministries and the donor community.

The Urgent Action Fund is a project of the Tides Foundation, San Francisco, California, USA. It provides immediate financial support for unanticipated and urgent opportunities to advance the human rights of women within the context of the Beijing Platform for Action. The delegation comprising of Ms. Betty Murungi and Ms. Julie Shaw, were on a familiarization tour of both working and potential partners in Uganda. The purpose of the roundtable discussion was to inform stakeholders about funding opportunities with the Urgent Action Fund and also to inform the fund about the activities and challenges faced by women in addressing emergency situations. Each of the stakeholders' organisations was given an opportunity to discuss its activities in the field and identify areas of possible collaboration that warrant funding.

KCK was able to demonstrate its role as a facilitating centre that contributes to the advancement of the partner organisation, through resource mobilisation and ultimately the achievement of its objectives.

v) *Youth Programme*

We have continued to enjoy an amicable working relationship with the Patron of the Uganda Schools Prefects Club, Mr. Julius Birungi, who has involved KCK in the Uganda Schools Prefects Club's activities. This has provided insights into the vibrancy of the activities of youth and subsequently influenced the design of the Youth Program. Accordingly, Kituo Cha Katiba provided resource persons to the Students Convention, held at St Lawrence Citizens' Secondary School on October 21st 2000. We were ably represented by Ms Nakate and Ms. Kibalama, Programme Officers at KCK. The Convention brought together 11 schools and over 200 student leaders. The purpose of the conference was to promote ethical leadership among the youth. The Convention recommended that Kituo Cha Katiba establish an education program on constitutionalism among the students' clubs. Kituo Cha Katiba was also awarded a certificate of honour for our contribution to the Uganda Secondary School Prefects Clubs.

Again, we have held captivating discussions on current political issues, which were conducted through a Youth Debate held at St. Mary's College Kisubi. This reaffirmed the need for KCK to groom youth into democratic citizens, as leaders of today. This is an initiative that shall be extended to other schools through seminars and debates, inter-school competitions.

vi) *Conferences and Meetings*

KCK was invited as one of the model grantees in East Africa to address the Board of Trustees of the Ford Foundation in New York, under the program on Pluralism and Governance portfolio in the Governance and Civil Society Unit of the Peace and Social Justice Program is a relatively new portfolio with an international mandate. Its overall goal is to support governmental arrangements that constructively promote pluralism in diverse societies required to promote tolerance, inclusion, and participation of all persons

KCK was represented by the Executive Director, Maria Nassali.

KCK has actively participated in the dialogue on constitutionalism around the world, particularly in Africa. Namely:

- i) *Democracy in Africa* conference, organised by Institute for Democracy in South Africa (IDASA). 17th –18th April 2000. KCK made a presentation on ‘*The Role of Civil Society in Democratisation: Gender*’
- ii) *Constitutional Making in Southern Africa* conference, organised by SARIPS 26th –28th July 2000. KCK participated as a discussant under the panel, ‘*Africa Regional Experiences in East and West Africa*.’
- iii) *Constitutionalism and State Re-construction in West Africa* conference, organised by the Committee for the Human Rights (CDHR) September 13-15th 2000. KCK made a presentation on *The Constitution as a Living Document : Strategies for Post Constitutional - Making Civic Education*
- iv) *The Third World in the 21ST Century : Lessons From the Past and Perspectives on the Future* conference organised by the Association of Third World Studies, October 19th –21st 2000. KCK made a presentation on *Gender and Constitutionalism*.
- v) *Constitutionalism and Society in Africa* conference organised by the *Department of Political Science Ohio*, November 5th –8th 2000. KCK made a presentation on *Women under the 1995 Constitution*.

Participation in the above fora has helped in broadening and strengthening the debate on democracy on the continent and has created the basis for more comprehensive discussions; strengthened the network of deliberators on democracy who work outside governments; determined possible synergies among debates in different countries and regions on the continent and undertaken an audit of constitutional development.

There are many similar issues within the region, warranting the need for African countries to influence each others’ processes. Indeed, democracy in Africa is not a theoretical issue, nor does it only concern governance but also social development. The populace expect democracy to deliver social goods and

reduce poverty. Furthermore, in the absence of strong opposition, civil society has acted as a check on government and has ably voiced the needs of the populace and marginalised groups. A robust civil society is the lynch pin for development and democracy. However, civil society should neither assume the role of the state, as guarantor of individual rights nor replace the state, but must act in partnership with the state, and collaborate with regional organisations like COMESA, OAU and the EAC to monitor democracies and set minimal standards of observance.