

ANNUAL REPORT 2001

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 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 great 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 advocacy at a 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 of constitutionalism and governance.**
- 2. To network with civil society organisations and governments to strengthen good governance and constitutionalism.**
 - To provide a focal point from which the different East African stakeholders interact as a platform of cooperation, to both obtain and supply information ; a one - stop repository of information on constitutionalism.
 - To strengthen linkages between national regional and national stakeholders
 - To hold a data bank of all stakeholders in constitutionalism, as a point of contact to facilitate a process where it is possible to know who is doing what.
 - To establish a web-site on *Constitutionalism in E. Africa : Makerere University and Kituo Cha Katiba.*
- 3. To monitor the process and progress of Constitutional development in the region through the publication of “The State of Constitutional Development in East Africa : A comparative analysis.”**

- To annually monitor the progress of constitutional development in the East African region by documenting the progress made in the legislature, the interpretation of the constitution by the courts of law and a review of government policies in the area.
 - To publish 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 placement to access the policy makers.**
- To act as a think tank to develop new ideas that promotes the creativity and originality of African thinking.
 - To widely publicise both the positive and negative issues of good governance and constitutionalism in the region.
 - To target policy makers, and address them on issues drawn from civil society, and thus acts 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

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

Fr. John Mary Waliggo : Uganda Human Rights Commission

Prof. Kivutha Kibwana : Center for Law and Research International

Dr. Willy Mutunga : Kenya Human Rights Commission

Ms. Betty Murungi : International Center for Human Rights and Democratic Development

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

Mr. Evod Manda Legal and Human Rights Center

Ms. Pili Mtambalike Tanzania Media Women Association

C. THE SECRETARIAT

- Executive Director : Ms. Maria Nassali
- **Assistant Accountant/Accounts Clerk: Ms. Ann Nakonde**
- **Secretary : Ms. Margaret Kalule**
- **Office Assistant : messenger / Driver : Mr. George Matovu**
- **Professional Guard : Alert Guards**
- **Consultants.**

KCK has relied on the services of consultants to dispense with specific tasks within a specified period, as 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.

African Constitutionalism : Kituo Cha Katiba and the Faculty of Law, Makerere University : Web-site Consultant : Mr. Edward Balidawa

- Information Assistants ; To collect all the information on constitutional making in the respective countries : Mr. Evod Maanda and Mr. Njuguna Waititu.
- Program Officers : Ms. Edith Kibalama : Information development and Management
- Ms. Damalie Nakate : Conference Coordination and Youth Program Officer

D. INSTITUTIONAL STRENGTHENING

Review of Organisation Guidelines

There is a wave for accountable and transparent leadership and behavior in civil society organisation strengthen its as watch dog for government actions. Simultaneously established procedure enhance 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 to make them 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 the Constitution, Articles and Memorandum of Associations, and guidelines and harmonise them to reflect the decisions of the Board. She 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 shall employ a skeleton staff for the running of the Secretariat and contract the services of other persons depending on the programmatic needs of the day.

E. ACTIVITIES

1. Research and Documentation

i) Strengthening of the Information and Documentation Centre

The need for a regional Documentation and Information Centre was underscored by at least almost all stakeholders, in view of the existing gap. KCK would act 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 had been done in the region without sufficient opportunity to learn from each others' experience. KCK therefore facilitates a 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' vision 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 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 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.

We have acquired over 150 books on Constitutionalism and governance, and other related text. We seek to acknowledge the contributions of the Prof Julius Ihonvbere of The Ford Foundation, New York, Prof John Mbaku 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 Faculty of Political Science and Law 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 training of the trainers for the secondary schools. The students graphic description of constitutional issues is very analytical and useful in depacking complex issues.

BOX 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 the a bus, and on the other was the Multi -Partism , symbolised by a flying bird? 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 worth 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 / ground the people END BOX

ii) State of Constitutionalism in East Africa 1999 (Insert Prof Jjuko's paper)

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 for Uganda, Prof. Kivutha Kibwana, Director Centre for Law and Research, 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 University of Makerere and President Free Movement .

The information on which the reviews are based is garnered from diverse sources such as interviews, newspapers and other publications and from court decisions and legislation. These being the first reviews 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 constitution developments in 1999 in historical context.

In spite of the different levels of animation of civil society in East Africa 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 constitute simply a record and its evaluation. To a great extent they will act like mirrors and a resource through which East African civil society – which is 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 it is also evident from the reviews that the states and ruling parties also now 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 the country 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.” And one hopes in the end these experiences will spill beyond the horizons of East Africa to spread their liberating spirit to a continent whose stunted constitutionalism has caused untold misery to the African people.

iii) Documenting the Constitutional Making in Uganda 1988-1995

This program is to enable Hon. Justice Benjamin Odoki to write his experience in the constitutional making process.

The political and constitutional history of Uganda is characterised by anarchy. The Independence Constitution of 1962 was abrogated in 1966, and an interim Constitution of 1966 put in place to enable the Prime Minister to consolidate his power. In 1967 the Republican Constitution was introduced. It created an executive President with excessive powers and abolished federalism, thus introducing a centralised government. Constitutionalism was eventually thrown overboard in 1971 when General Idi vested all power in himself, ruling by decree and military force. Idi Amin was overthrown in 1979 by a combination of Tanzanian and Ugandan exiles in Tanzania who

formed the Uganda National Liberation Front (UNLF). After unsuccessful coalition Governments by Yusufu Lule and Godfrey Binaisa, a Military Commission under Paulo Muwanga assumed power in 1980. The UPC rigged the elections of 1980, and was subsequently overthrown in 1985 by General Tito Okello, until January 1986, when Museveni captured power. The National Resistance Movement (NRM), used the Ten Point Programme to govern the country, suspending parts of the Constitution including Parliament and political parties thus instituting the no-party system.

With such a turbulent transfer of power, the making of the new constitution had an instrumental role of restoring and sustaining constitutional governance and guaranteeing the basic rights and freedoms of all people. Accordingly, in 1986, a Ministry of Constitutional Affairs was established to make arrangements for the formulation of a new Constitution. In 1988, the National Resistance Council (the interim Parliament) enacted the Uganda Constitutional Commission Statute, to provide a framework for the constitution-making process. A new Constitution was made through wide consultation and popular participation of the people of Uganda, from 1988 to 1995. The Constitutional Commission gathered the views of the people, and incorporated them in Report and Draft Constitution, which was debated and approved by the specifically elected people's representatives who formed the Constituent Assembly.

The process has been the subject to discussion and comment by various people within and outside Uganda, and various writers and constitutional framers. 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 which contain a lot of information giving more insight into the process. This study provides the researcher who was the Chairman of the Uganda Constitutional Commission (1989 – 93) to tell the story from the horses mouth and explores the other side of the constitutional making process. It shall explain the intention of the Commission in drafting the particular proposals, as well as its hopes and expectations for the future. The study will also enable the researcher to evaluate the contribution of the Constituent Assembly who discussed and approved the Draft Constitution, and the role played by various players, stakeholders and 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 in Uganda and outside. Neither has there been adequate comparison between the Ugandan process and similar processes elsewhere to assess how unique the process in Uganda was and why it was largely successful.

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 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 also promote acceptability and legitimacy in the Constitution.

In conclusion, the proper understanding and effective implementation 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 the 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 :

- To undertake a case study of the methodology of the constitution making process in Uganda.
- To explain the underlying reasons, forces and justification for the Commission's constitutional proposals which are not apparent from the published records, reports and literature.
- To 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.
- To 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.
 - To critically examine the 1995 Constitution in order to evaluate whether it achieved the goals of the process and to recommend any necessary constitutional reforms.
 - To examine the problems being experienced in the implementation of the new Constitution with a view to recommending how they could be avoided or overcome.
 - To 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 the acting as a think tank to thorny issues 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, by courtesy of Charles Onyango Obbo.. (INSET paper scan)

He 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 initiates multipartyism during his stewardship, to enable parties develop on ideological lines, as a way of ultimately vanquishing sectarian politics. He appealed to Uganda, 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 have been very prophetically lived in the period preceding the Presidential Elections of 2001.

2. Training

i) Leadership Training

KCK in collaboration with Centre for Democracy and Development (CDD), 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 a ideological tool for human rights, democratisation, and social change. Furthermore, the program seeks to promote more interaction and solidarity among the three women lawyers' associations 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 on its own may not change the nature of 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 to influence thoughts and practice of policy makers, by redefining political participation.

Thus the program broadens the thinking and expertise of lawyers in constitutional, development, monitoring and auditing and activism. This is intended to strengthen civil society capacity to act as partners and monitor of government action. It was acknowledged that traditional training at the three Faculties of Law at Makerere, Nairobi and Dar-es-Salaam largely ignores social, economic and political realities and as a result restricted the training of lawyers for the court-room and private practice. Hence most lawyers have constrained their participation to interpreting the law and settling of disputes, despite the fact that legal rights are beginning to form the basis for a solid agenda of emancipation through-out the world.

The primary aim of the program is to develop a pool of women legal activist who shall use the law as an ideological tool for social change, accumulate knowledge, information and skills that would make them feel more confident in competing in a field that has originally been conceived as "political." It is further hoped that training of women in governance issues

would enable them to influence the mapping out of political space that is favourable to women, and offer a valuable human resource to offer intellectual services to the region.

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.
- 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 the engendering the political content and process

In the year 2000, six women lawyers enrolled for the program at the University 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. This program is sponsored by SNV. It 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. In addition the citizens have to adopt personal behaviour and practices that promote the ethos of constitutionalism and good governance right from the home, to the workplace, to the community and to the nation 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.

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. Further, 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 elections 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 primarily targets the NGOs working with grassroots communities in Mpigi and Luwero District, as trainers of trainers. It attempts to apply principles of democratic governance to the family as the basic unit of society. The manual is unique in that it starts from the basic experiences of the people as basic human being and focuses its analysis with reliance on the Ganda culture. It is the objective of the manual to dispel the misconception of culture as being alien to African tradition, yet there are cultural practice which are imbued with humanism, and as relate to democratic governance. Focussing on the culture aims at building on existing knowledge base of the beneficiary, the grassroots communities, in order to promote a common understanding of and acceptance of the issues raised. This approach has the advantage of enriching the conceptual understanding of critical issues of good governance, democracy, and an appreciation that every day views are part of the broad framework of constitutionalism; that law deals with the practical problems of their every day life and the sanctity of the human being.

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 *Democracy for all* program and the *Participative Development Initiative*, of South Africa Durban in developing this manual. They readily offered KCK their materials and agreed that they could be localised to suit East Africa. We particularly recognise the contribution of Chuck Scott of Street Law Project and Ms Ashish Ramgobin of *Participative Development Initiative*.

iii) Training of HURINET Executive Board.

The training target the Executive Board of HURINET, an network of Human Rights Organisations in Uganda. The training enhanced KCK image as a facilitator in democratic governance. Focus was placed on consensus building, team building , and the role of the Board in democratic governance of NGOs. The participants reviewed the objectives of the workshop and were appreciative that they had been achieved. They commended the participatory training methodology used.

3. 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 Citizen, Communities and Constitutionalism in East Africa, from 17th-19th July 2000, in Arusha. The Conference was supported by The Ford Foundation. The Arusha Conference was a follow-up to the International Conference on Constitutionalism in Africa,” hosted by the Faculty of Law, Makerere University of Uganda, 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 empower citizens to hold governments accountable and responsive to their needs and the protection of their rights. The conference provided a forum for dialogue and sharing of the 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 in 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 discussions and in-depth analysis 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 fore most 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) Understanding democracy:
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

- 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
CSOs should engage in an internal dialogue and self-reflection process on issues of:
 1. Constructing visions and programmes that directly link the wider struggle for social change and democratic governance with the every day struggles for subsistence.
 2. Formulating agendas that emerge directly from priorities set by people at the community level.
 3. Operating and adhere to practices of accountability, self-regulation and transparency that they champion.

4. Constructing creative strategies for long-term self-reliance and sustainability.
- ◆ On Lobbying and Advocacy
 1. 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.
 2. Promote restraints on executive and legislative powers in both the Constitutions and the practices of national governments.
 - ◆ On Programmes and Strategies
 1. Emphasise the development of holistic strategies of addressing critical problems;
 2. Engage all groups, including men, women, youth, elderly and disabled as heterogeneous groups with different needs and ensure true representation of their interests.
 3. 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
 1. Civil society organisations should facilitate access of citizens to their Constitutions through translation and dissemination into local languages.
 2. 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.
 3. 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.
 4. Use and publicise public interest litigation cases.
 - ◆ On Networking, Partnership Building and Information sharing.
 1. 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

2. Disseminate and share simplified information obtained through research in workshops and conferences in creative ways.

Recommendations for the EAC

1. 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.
2. Amend the EA Treaty to enact a standard Bill of Rights that conforms to the key international human rights instruments.
3. 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:

1. 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

1. Translate and disseminate the Constitution at the grassroots levels.
2. 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.
3. 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.
4. 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

1. Harmonise domestic laws in conformity with the Treaty.
2. Make budgetary provision for adequate funding to support EAC related activities such as Treaty dissemination and establishment of the institutions
3. Create space for civil society engagement in all organs of the EAC.
4. 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. It was supported by The Ford Foundation. The workshop was officiated at by the Minister of Justice and Constitutional Development, Hon. Joash Mayanya Nkangi. Ms. Tokunbo Ige, Legal Officer for Africa, International Commission of Jurists 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 a 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. For instance, 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 established of a Constitution Review Commission that shall in effect adopt a consultative and

participatory approach to constitutional reform.

In conclusion, constitutionalism means that constitutions cannot be suspended, circumvented or disregarded by the organs of government and can only be amended by procedures that give will to the people acting in a constitutional mood. All principles of separation of powers no matter how innovative have to be based on universal minimum standards of respect of the rights of the people.

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, 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, Women's Caucus for Gender Justice, undertook a Trainer of Trainers Course in Cape Town, South Africa, with the objective of assisting and supporting national law reform efforts against gender violence. The training target Organisations in Africa. What remains to be done is to take the training to the regional and national levels.

iv) Urgent Action Fund

On October 12th 2000, Kituo Cha Katiba hosted a round table discussion between women organisation 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 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 time 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 the stakeholders about funding opportunities with the Urgent Action Fund and also to inform Urgent Action Fund, about the activities and challenges faced by women in addressing emergency situations. Each of the stakeholders' organisation 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 network, 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 the 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 designing of the Youth Program.

Accordingly, Kituo Cha Katiba was as 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. 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. We were also awarded a certificate of honour for our contribution to the Uganda Secondary School Prefects Clubs.

Again, we have held very captivating discussion on the current political issues, through a Youth Debate held at Debate 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 can be expanded to other schools through seminars, debates, inter-school competition.

vi) ***Conferences***

KCK has actively participate in the dialogue of constitutionalism around the world, particularly in Africa. This has helped in broaden and strengthen the debate on democracy on the continent and create the basis for a more comprehensive discussions; strengthen the network of deliberators on

democracy who work outside the governments; determine possible synergies among debates in different countries and regions on the continent and undertake an audit of constitutional development.

There are many similar issue within the region, warranting the need for the African counties 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. Further in the absence of a strong opposition, civil society has acted as a check to government and has ably voiced the needs of the populace and marginalised groups. A robust civil society is 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.

- 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 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*.

If men were angels, no government would be necessary. If angels were to govern men, neither external or internal controls on government would be

necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this : you must first enable the government to control the governed and in the next place oblige it to control itself. James Madison in the Federalist Cited in Schwella 1991

Experience has taught us that the absence of a strong civil society to counter state power leads to the concentration of raw power in the hands of the state. In other words the state lacks the capacity to control itself, hence the role of KCK.

END