

Lessons from Kenya: The Referendum 04 August 2010

ZESN sent a delegation to Kenya to draw lessons on the constitutional review process and the referendum. Kenya has come a long way on its journey in making a new constitution and finally on the 4th of August 2010, the Kenyans voted for a new constitution. Kenya shares a number of similarities with Zimbabwe, namely that both were British colonies in the past, both have had a Lancaster House Constitutions, and more importantly that both currently have power sharing governments that emanated from the contested elections results. They also experienced post-election violence after their polls. Similar to Zimbabwe as part of the power sharing settlement they had to make a new constitution before elections which are scheduled in 2012 after all the laws had been made.

While the two countries share some similarities, they are unique in a number of ways. Notwithstanding these unique attributes, a number of lessons can be drawn from the Kenyan experience and this statement provides reflections on the lessons we can draw from the Kenyan experience.

- In their efforts to draft a new constitution, the Kenyans did not begin from scratch. They built on the progressive aspects of previous drafts such as the Bomas draft, the Guy draft and the Naivasha drafts, all drafts which had failed to sail through but from which they were able to sift through and get the positive aspects.
- There was a commitment from the onset that Kenyans would do participate in the referendum meaningfully. This was ensured through the provision of civic education by the Committee of Experts and the civic society groups.
- A Committee of Experts was set up to be in charge of the drafting of a new constitution and this committee was responsible for taking submissions from the public in written form. After this process, the committee presented the first draft to the citizens to make comments on. It is interesting to note the stage at which the people participated in the process. Drafts of the constitutions were disseminated in a number of languages and millions of copies were circulated for people to make their submissions.
- Kenya had a clear road map for the review process and there were timeframes for each activity that were adhered to, hence they were able to keep the timeframe for the drafting of the new constitution and putting it to referendum within the agreed timeframes.
- More importantly, the constitution review process for Kenya was rooted in an act of parliament entitled the Constitution of Kenya Review Act of 2008 which provided benchmarks for the constitution making process and the manner in which it would be done. In addition, Kenya had comprehensive referendum regulations

which had been made by the newly sworn in Interim Independent Electoral Commission (IIEC), an Electoral Code of Conduct and an Election Offences Act for political parties enshrined in an Act of Parliament. All these legal provisions provided for a transparent and open process that increased the credibility, openness, transparency and inclusiveness of the review process and the IIEC.

- There was a strong political will to follow the provisions of the legal framework that had been put in place for the review process. ZESN noted that all stakeholders were consulted in all processes; there was constant dialogue and collaboration between the IIEC, civic society, media, and the Committee of Experts. This solid relationship made processes such as accreditation of observers less cumbersome.
- The success of the referendum was a function of number of factors. There was the political will to follow the spirit of the laws that had been enacted specifically for the constitutional review process.
- Violence early warning systems were put in place by civic society organisations to provide early warnings for possible violent hotspots and deter the ensuing of violence. These were published in state and private media.
- The IIEC ensured that over 10000 observers were accredited for the referendum in order to protect the integrity of the vote.
- Agents for the green (groups in support of the constitution) and reds (groups opposed to the draft constitution) were accredited to monitor the processes.
- Campaigns for the constitution and against the constitution were closely monitored for the presence of hate speech and any aspects that violated the Electoral Offences Act.
- Results were announced timeously and in some polling stations counting was done live on television. The process of tabulating results was open and results were announced within 48 hours.
- While there was opposition to the draft constitution especially on issues of abortion and Islamic courts these issues did not take away the fact that the Kenyan constitution was a progressive document crafted in an inclusive and participatory manner by all stakeholders.

In conclusion, ZESN observed that the constitution review process in Kenya was grounded in a solid legal framework with benchmarks that provided timelines and specifications for the conduct of the process. Processes were not left to chance. In addition, institutions responsible for the review and the conduct of the referendum that is the committee of experts and the IIEC respectively were independent in the carrying out of their mandate and were open to the scrutiny of civil society and all stakeholders.