




PRESENTATION BY OTIENDE AMOLLO

**Member
Committee of Experts**

METHODOLOGY

- Appointment of the committee of experts.
- Amendments to the Act
- Reconstitution of the COE into ad hoc committees.
- Clustering of the various parts of the (Draft) constitutions along themes, study groups and related areas (5 clusters were isolated)
- Each cluster assigned to a group and each group was required to study and make presentation.
- Each group was required to identify differences between the three drafts, areas of contention not on the face of the draft documents, real contentious issues, agreed issues and possible options for resolution.
- **SUB COMMITTEES – Research, Drafting, Civic Education and Finance & Administration**



IDENTIFICATION OF THE CONTENTIOUS ISSUES

- Considering all the documents of the CKRC
- Considering all the previous draft documents
- Considering the documents that emerged after the Bomas draft
- Considering all other relevant circumstances and reports
- Considering the views of the public on what they thought as being contentious
- Taking cognizance of the 2005 referendum, post election violence and the National Accord



THE CONTENTIOUS ISSUES IDENTIFIED

1. The Executive & Legislature (System of Government)
2. Devolution of Powers
3. Bringing the Constitution into Effect

Additional Issues

Land

Kadhi Courts

HOW THE COMMITTEE INTENDS TO RESOLVE CONTENTIOUS ISSUES

- By Considering Public Views
- Through Thematic Consultations
- Sectoral Consultations
- Experts Engagement
- Internal discussions & Agreement by Consensus by
COE
- Consultation with Reference Groups

GUIDING PRINCIPLES IN THE RESOLUTION OF THE CONTENTIOUS ISSUES

- **Section 4** of the Constitution of Kenya Review Act, 2008 (*Sets out the object and purpose of the Review of the Constitution*)
- **Section 6** of the Constitution of Kenya Review Act, 2008 (*Sets out the principles and Values that will guide the Review Process*)



Principles Developed by the Committee

- The need to unify and strengthen the Nation of Kenya
- Need to constrain executive power, embracing the separation of powers, with checks and balances;
- Need to de-centralize power;
- Need to avoid dangerous and acrimonious presidential/National elections and avoid winner-take-all elections;
- Need to deepen democracy, and an accountable government;
- Need for an effective Government;
- Need for a stable Government;
- Need for equity in distribution of resources;
- Need to strengthen and regulate political parties;
- Need for ethnic, regional and gender balance.

THE KENYAN CONTEXT

- The ethnic context and regional/conflict
- The post – poll violence the National Accord & the Constitutional Amendments
- Inequitable distribution of Resources by Government and in Natural resources
- Impunity, in its historical context
- The fact of making a constitution to face a referendum barely 5 years after the last draft was rejected in the referendum
- Historical agreements and Concessions
- Imbalanced constituencies, in number, size and economic empowerment, politicization of boundaries
- Need for accommodation in a multi-ethnic, multi-racial and multi-religious society that is Kenya
- Historical exclusion of women and minorities
- Control of institutions of state by the president.