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A CONSTITUTIONAL AMENDMENT TO PERMANENTLY GUARANTEE NATIONAL UNITY AND STABILITY ON BASIS OF INCLUSIVITY

A PRESENTATION TO THE BUILDING BRIDGES INITIATIVE BY:

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The new constitution of Kenya 27th August, 2010 was hailed as one of the most modern and liberal constitutions in the world. It is very strong and elaborate on Bill of rights, Sovereignty of the People, Sharing of Power (Devolution) between the National Government and the County Governments, Clear separation of Powers between the three arms of the Government: The Legislature, The Executive and The Judiciary, with inbuilt checks and balances among them and within each of them. Judiciary services are shared both by the National and County Governments.

The new constitution first dealt with four major issues which had emerged problematic under the previous constitution. First democracy and human rights which are non-controversial in the new constitution. However, there is still serious complaints about what is perceived as non-inclusive distribution of power at the Centre and unfair distribution of revenue between the National and County Government.

Secondly, the creation of 47 County Governments was also intended to reduce the National energy spent on bitter competition for winning the Presidency and risks of violence on basis of ethnic groupings in the name of Political Parties.

Thirdly, Centralized Governance did not give People opportunities to get more involved in their governance, determination of the public services and provision of oversight over their execution.

Taking stock of what has happened since the promulgation of the New Constitution, 8 years ago, Devolution has worked fairly well in terms of sharing of power and resources between the National and the 47 County Governments. Nevertheless, the institutions of governance, public involvement and the management systems at the county level are still evolving.



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Considering the results of the 2013 Presidential election that were bitterly contested in the Supreme Court and the verdict of the Court that was accepted amid serious ethnic division overtones, it became clear that the New Constitution did not realize satisfactory ethnic inclusivity in the sharing of power at the National level.

Furthermore, the Presidential Election results of August, 2017 were nullified and the challenger, Hon. Raila Odinga, who ranked second, refused to participate in the repeat Presidential election in October, 2017. He urged his followers not to recognize the elected President Uhuru Kenyatta, thus pushing the Country into a very dangerous Political crisis that divided the Country through the middle on basis of ethnic alliances. Later, Raila was sworn in as a “Peoples President” by his followers. The problem was that this group constituted at least 40% of the population, therefore a great threat to the National Cohesion and Security.

At this point one is tempted to compare Kenyan ethnic disputes with other Countries, which have suffered chronic ethnic conflicts. Sometimes internal conflicts take the form of regions, religions, linguistics, racial or clan differences. Even in developed democracies ethnic conflicts still persist. In UK, except for its governance sophistication, Scotland remains a thorn in the flesh, Spain is faced with Catalonia crisis and Belgium has always to balance the differences between its French and Flemish citizens. Fiji, Malaysia, Sri-Lanka, Cameroun, DR Congo, Federal Republic of Nigeria, Ethiopia, Sudan, Mozambique, Ukraine, Turkey, Greece and Cyprus, have all had to deal with balancing ethnic interests.

When ethnic conflicts are not attended for a long time they end up as a disaster. For example Yemen, Somalia, Libya and Iraq are in such a situation. Former Yugoslavia was virtually dismembered.



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It is, therefore, important that we review the constitution without interfering with the 90% of the content which is very good by any standards. The primary objective of the review would be to ensure that the Leadership of the National Government is all inclusive as a permanent guarantee for National Cohesion and Unity. We should not shy away from being innovative with our democracy to institutionalize, through a constitutional amendment, the National Unity and Cohesiveness which was for two years brought about by the Rainbow Coalition of 2003 to 2005; the Grand Coalition of 2008 to 2013; and currently by the Hand Shake between President Uhuru Kenyatta and ODM leader , Hon Raila Odinga in the first round and reinforced later by the Presidents' handshake with the other opposition leaders, Hon. Kalonzo Musyoka, Hon. Musalia Mudavadi and Hon. Moses Wetangula.

The country is now in a positive mood. Parliament is not confrontational and is dealing with issues on their own merit rather than on partisan basis. There is no doubt that even without a clearly defined opposition in Parliament, as in the case of western democracies, a parliament is capable of checking the Executive and carrying its Legislative mandate effectively.

The innovation being proposed here for a Constitutional amendment to ensure permanent National Unity and Cohesion is that:

“Once the results of Presidential Elections are announced by the Electoral Commission, the candidate having the highest number of votes and the candidate with second highest number of votes will form a Government of National Unity.

The candidate with the highest number of votes will be sworn in as the President who will immediately appoint the second candidate as Prime Minister. They will share the cabinet posts and other state offices proportionate to the number of votes they won.

The office of the Deputy President will remain to deputize the President on State Matters and for Succession in the event the President is incapacitated or the position falls vacant before the end of the Presidential term.

The president will appoint members of the Cabinet with the Prime Minister recommending his nominees for the appointment by the President.



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The President will chair the Cabinet and will have the power to remove any Minister except the Prime Minister.

The Prime Minister will chair Cabinet committee meetings and will also coordinate Government functions under the Executive Authority of the President.

The Cabinet will merge the manifestos of both the President and the Prime Minister within the first month to ensure that the government is run on basis of one policy framework.

In Parliament, the Presidents' party will provide the leader of government business while the Prime Ministers' party will provide the deputy leader of government business. The parliament therefore will be more consultative in parliamentary business rather than confrontational while at the same time providing an effective check on the government.”

The Government of National Unity constituted as stipulated above will achieve:

- i. Unify the country as the combination of both the President and the Prime Minister will constitute atleast 90% of the electorate.
- ii. No ethnic group will feel left out of the National Government
- iii. Results of Presidential elections will no longer divide the Country on Ethnic lines.
- iv. Downs of economic cycles at election years will end and be replaced by long-term economic growth within a stable Political Environment.
- v. Competitive ethnic politics for power will be replaced by competition over strategies for Social-Economic transformation.

There will be no need for coalition government at the county level, because the power is already shared between parties on the basis of region dominance and there is ethnic cohesion within counties.

Author;

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