



# Kenya Needs Raila Odinga's Constitutional Reform Initiative

By Yash Pal Ghai



Last week, I was in a taxi trying to rush home in the afternoon to avoid the infamous Nairobi traffic. Unfortunately, my hurry didn't bore fruit because eventually I was caught up in the snarl-up. It was so heavy I considered walking home, but it was raining heavily. Looking outside, I could see thousands of soaked pedestrians, running as fast as they could in the rain. Noticeably, almost all cars had one occupant, or possibly two including the driver. It struck me, could we not solve the problem of our traffic congestion if we prohibited vehicles with less than four passengers from using the highways during specified hours, and instead use taxis and, better still, buses, to move people around - saving both time and money? This approach worked in Singapore and elsewhere. Would our aristocracy prohibit it?

The second thought made me most angry: the rich people were doing alright in their limousines, but the infinitely harder workers were left to walk in the heavy rain, seeing home only in the dark, with the limousines heedlessly splashing more muddy water on them as they sped past. For the ordinary *mwananchi*, many would arrive home from work completely wet for a miserable salary. Surely, I thought, we did not adopt the People's Constitution to increase the disparities between them and the tycoons. Why are our politicians and the government doing nothing about these disparities? Have they no sense of the injustice the poor face daily?

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My cabbie was moved by my anger. And after realising the role I had played in Kenya's constitution making process he changed the subject. Like other young people who I spend some time with, he was full of anger at the way the politicians, forming ethnic oriented parties, exploit the voters of their own tribe. "If only", he said, "the Constitution had prohibited ethnic parties, we would not have got this manipulation. Parties would have been formed along policy issues, we would have been the better". Somewhat cruelly I read to him Article 91 of the Constitution which explicitly prohibits parties based on ethnicity. Of course, parties are not explicitly ethnic, but we - including the IEBC and the Registrar of Political Parties seem unable to work out how to prevent essentially ethnic parties from operating in Kenya.

It is now crystal clear that, by and large, politicians care only for themselves. They steal from the coffers of the state or seek bribes from the rich and poor alike. Look at their approval of obscene compensation to former MPs who lost elections, and who doubtless made a great deal of money while they were MPs in the first place.

They have, for the most part, ignored constitutional values and objectives. This is the basis of the unity among them, regardless of party. And despite manifestoes that few read, including politicians themselves, there are in fact no real differences in policy between politicians. This too is obvious from the camaraderie between members of the two major parties following the March 9<sup>th</sup> 'handshake' between Uhuru Kenyatta and Raila Odinga. Does the handshake represent nothing more than a settlement of minor differences within the same class regarding the sharing of the loot?

### **The Odinga Initiative**

In the current Kenyan political landscape, Raila Odinga is the most distinguished and thoughtful of politicians. He is completely committed to constitutional values and objectives and indeed had a hand in their formulation. His proposals are wide-ranging, though politicians, particularly Deputy President William Ruto and his friends, have unthinkingly interpreted his agenda in terms of their own careers. In particular, the future presidential prospects of their newly acknowledged hero, William Ruto. Contrary to his position during the Bomas process, Ruto now doubtlessly opposes the parliamentary system because he perceives it as Uhuru Kenyatta's way of getting out of his promise to sponsor Ruto's presidential candidacy in 2022. Thus the persistent reminders by his proxies about how he secured the Kalenjin vote for Uhuru in 2013 and 2017. A number of eminent politicians are supporting the handshake in the expectation of high office. No surprise that our politics are barren of ideas and progressive policies.

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It is true that Raila has proposed important constitutional changes: a shift from the presidential to a prime ministerial system, and the re-organisation of devolution to give people greater power to organise their lives. Both national and county level politicians are upset purely because the changes would affect them adversely. This again shows the pre-occupation of Kenyan politicians with their

own benefits - and the barrenness of their politics.

I regard his constitutional proposals as of great significance - and to his list, I would add the electoral system so that we shift from first-past-the-post to the proportional representation system proposed by the Constitution of Kenya Review Commission (CKRC) - much fairer for a multi-ethnic state.

But now I turn to his other objectives: achieving the *values* of the Constitution - an approach shown by few other politicians. For all too long, as he and Uhuru reminded us in their handshake press release, "Ethnic antagonism and divisive political competition have become a way of life... Our people are crying out for leadership that shows the [constitutional] path to dignity, prosperity and security". They note also that "Our political system has been unable to respond to feelings of alienation in sections of our people".

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The Kenyan people have longed for the priorities that Raila and Uhuru have set for the state. Among them is social and economic security. UhuRaila favour leadership that makes "a practical effort to ensure that those who are hungry or in distress are aided" - something that politicians never think of.

They also commit themselves to eradicating corruption, recognising that "it destroys lives, public trust and prosperity... It is undermining our public and private institutions, and will destroy them and our aspirations as a nation".

They also recognise the importance of human rights - our Constitution has perhaps the most extensive and balanced Bill of Rights in the world. To quote them, "There is no Kenyan whose rights should be compromised no matter the interests against them. Kenyans have struggled hard for these rights and they are not for anybody to take for granted. At the same time, to attain and protect our rights, we must embrace our responsibilities. The two can never be separated if we are to have either".

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## **So where are we?**

Much of the current public debate touches on Raila's proposals for constitutional amendments. In principle I support them, but my studies have shown that no government in Kenya has shown much regard for the Constitution. There is so much that is good in the Constitution as it is, that if it were to be honoured and implemented, Kenyans would enjoy a life of freedom, dignity, harmony, social justice, equality, and participation, as citizens of a united country. Maybe we should give Uhuru and Raila the chance to implement the Constitution, and show us theirs are not mere empty words.

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