

KITUO CHA KATIBA

Annual Report



2015

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ABOUT KITUO CHA KATIBA

Kituo cha Katiba: Eastern Africa Centre for Constitutional Development (KcK) is a regional non-governmental organisation (NGO) registered under the 1989 Non - Governmental Organisations Registration Statute (as amended) and as a company limited by guarantee under the Companies Act of Uganda. It is also registered in Kenya and Tanzania Zanzibar and has its secretariat in Kampala, Uganda. KcK's mission is "To promote a culture of constitutionalism, where the constitution is a living document that reflects the aspirations and needs of women and men in democratic and participatory governance in Eastern Africa". The vision is "Constitutionalism that promotes good governance and democratic development in Eastern Africa". The organisation's current geographical focus is the East African Community (EAC) countries of Burundi, Kenya, Rwanda, Tanzania mainland, Tanzania Zanzibar and Uganda. It has a 7- member Board, which at the end of 2015 had 6 members: Mr Robert Turyahebwa (Board Chair), Ms. Jocelyn Nahimana (Burundi); Dr Tulia Ackson (Tanzania Mainland); Dr Sarah Ssali (Uganda); Rev. Fr Dr Kasirye Kato Andrew (Treasurer) (Uganda) and Mr Ali Uki (Zanzibar). Mr Ezra Mbogori's (Kenya) term had expired and the process of seeking a replacement had commenced.

A SNEAK VIEW OF EVENTS IN THE REGION

General elections took place in Burundi and Tanzania as Uganda prepared for hers in 2016. In Rwanda, discussions began on lifting presidential term limits. In Burundi civil unrest broke out over a third term in office of President Nkurunziza; there was an attempted coup; and thousands had fled the country while hundreds had been killed and arrested by the end of the year. The terrorist attacks in Kenya further put regional peace and stability in jeopardy. At the initiative of the United Republic of Tanzania (URT) an agreement on the establishment of the transitional government of national unity in South Sudan was signed to reunite the Sudan People's Liberation Movement (SPLM) party and to call for adherence to the ceasefire agreement of 1 February, 2015. Despite this, however prospects of a stable South Sudan remained in limbo. At the East African Community (EAC) level, integration efforts continued albeit more economic oriented. Overall, the developments surrounding constitutional and electoral reform and democracy across the region, raised fundamental questions about whether there is progress or retrogression.

At EAC level, efforts to bolster the region's economic growth continued. The Summit called for a study in modalities for the promotion of motor vehicle assembly, textile, and leather industries in the region. EALA proposed a number of amendments to the Competition Act; and the draft Bill on Anti-Counterfeit and Council directed for their urgent consideration. It also ordered finalisation for consideration the EAC Privately Funded Infrastructure Bill 2009; the Lake Victoria Basin Commission Bill 2009; the EAC Industrialisation Bill; Draft EAC Standardisation, Quality Assurance Metrology and Testing Act (Amendment) Bill; Bills to support the implementation of the EAMU Protocol and the EAC Disaster Risk Reduction and Management Bill 2013. A new international East African e-passport was launched as part of the programme to ease the free movement of people. In the same regard, Burundi and Kenya were directed to fast track the issuance of standardised machine readable national IDs by the end of 2016. A number of Protocols were approved and others signed among them the Protocol to operationalise the extended jurisdiction of the East African Court of Justice (EACJ) to cover trade, investment, as well as matters associated with the implementation of the protocol on the East African Monetary Union (EAMU); the EAC Protocol on Immunities and Privileges; and the modalities of appointment of EAC Eminent persons and special envoys. Outstanding council decisions and directives; and the delay in ratification of protocols remained key concerns, and directives were made for Partner States to assent to all bills due for assent and implement outstanding directives and decisions. Settlement of outstanding arrears of Partner States contributions to the EAC and their non attendance of Sectoral Council meetings were of equal concern. Burundi, Uganda and Tanzania were directed to settle their outstanding contributions for the year 2014/2015.


In pursuit of regional peace, efforts to bring peace to the South Sudan continued and the EAC Heads of State issued statements on the terrorist attack at Garissa University College, in Kenya in April and on the xenophobic acts in South Africa. There was also a directive for the expeditious implementation of the revised strategy for regional peace and security and counter terrorism, and the development of a roadmap for the operationalisation and sustainability of the Directorate of Peace and Security. Other developments included the establishment of a sub-committee of ministers responsible for EAC affairs to consider the concept note, terms of reference, roadmap for constitutional making process and determine the model structure of the political federation; a directive for the verification exercise for the admission of Somalia into the EAC to be finalised; costs ordered by the *East African Court of Justice (EACJ)* in the Sitenda Sebalu case to be settled; and for interviews of the position of Counsel to be conducted and the expeditious recruitment of the registrar of the EACJ. The

commencement of the East African Parliamentary Institute was deferred pending finalisation of the institutional review and the Cross Border Legal Practice Bill was declared untenable till the legal profession was fully liberalised under the Common Market Protocol.

The EACJ appointed new judges. Hon. Mr Justice Geoffrey Kiryabwire (Uganda) to replace Hon. Mr Justice James Ogoola in the Appellate Division; and Hon. Mr Justice Audace Ngiye (Burundi) to the First Instance Division to replace Hon. Mr Justice Butasi. Hon Lady Justice Monica Mugenyi (Uganda) replaced Hon. Mr Justice Butasi as Principal Judge. The tenure of the acting registrar was extended and the expeditious recruitment of the registrar ordered. Workshops to create awareness about the role of the EACJ in integration for judges and other stakeholders in the region were organised in Tanzania and Uganda; and the EACJ judges trained in arbitration in civil and common law systems.

The East African Legislative Assembly (EALA) approved the budget for the year 2015/2016. It admitted as its members the ministers for EAC affairs for Burundi, Tanzania and Uganda; two members from Rwanda; and one from Burundi; and Counsel to the EAC. It passed the EAC Civic Education for Integration Bill 2014; the EAC Non Tariff Barriers Bill 2015; the EAC Customs Management (Amendment) Bill 2015; the EAC Community Appropriation Bill 2015; the EAC Creative and Cultural Industries Bill 2015; the EAC Electronic Transactions Bill 2015; and the EAC Forest management and Protection Bill 2015. The EAC Persons with Disability Bill 2015 was proposed and a number of committee reports considered. Resolutions were adopted on the Garissa attacks; on the prevention of trafficking of persons; and to congratulate Uganda on acquiring national IDs and to Kenyan athletes on their exemplary performance at the Beijing athletes' championships. The East African Employers Organisation and East African Trade Union Confederation presented a petition calling for decisive actions to expedite the free movement of workers within the EAC. A petition of the EAC Youth sought for the establishment of National Youth Councils in Partner States where they did not exist; their operationalisation; and for Partner States to adhere to the African Charter on the Youth and to provide for youth representation in their respective national assemblies and at EALA. The East African Civil Society Organisation Forum (EACSOF) presented a collaboration framework on proposed engagement with EALA in plenary and annual meetings. Other EALA activities included an on spot assessment on the implementation of the Common Market Protocol in the region; a goodwill

mission to Rwanda and Tanzania to meet Burundian refugees; an observer mission on the presidential elections in Burundi in July; an observer mission on the October 2015 Tanzania general elections; a sensitisation workshop on sustainable development goals; a capacity building workshop on auditing processes; and the 10th meeting of the EAC Speaker's Forum in April 2015.

 **BURUNDI** lapsed into violence following the declaration by President Nkurunziza on 25 April to run for a third term in office which was deemed unconstitutional and against the spirit of the Arusha peace accord signed after the 1993-2006 civil war. Peaceful demonstrations broke out on 26 April and were met by widespread killings, arrests and organised attacks by security agencies. Private radio stations were closed and the activities of key civil society organisations and their bank accounts suspended. Thousands fled to neighbouring Rwanda, Tanzania and Democratic Republic of Congo (DRC). Despite the situation, the constitutional court approved the president's third term. Calls by the African Union (AU), the United Nations (UN) and the international community for the 25 June elections to be postponed were ignored. On 13 May, there was a failed coup by Godfroid Niyembere. This was followed by accusations by Burundi of Rwanda's conspiracy and financing the attempted coup and of recruiting rebels from among the refugees it hosted to destabilise Burundi. The AU condemned the attempted coup and called for the return of constitutional order. However the security situation degenerated further after the coup- there was a wave of defections of key people from various sections of society. On 21 July, President Nkurunziza was re-elected in an election boycotted by the opposition, and was sworn in on 20 August. His election was disputed and protests followed. On 11 December, 90 people were reportedly killed after an attack on 3 military sites. This situation prompted a UN Security Council resolution that ordered a probe into the widespread abuses and possible sanctions against the perpetrators of violence. Efforts by the AU to send peace troops to the country in mid December were rejected by government which equated it to an invasion. Political turmoil continued till the end of the year and along with it came untold economic retrogression.

RWANDA continued in its path of economic and social progress, buttressed by a number of legal reforms. It played host to over 70,000 refugees from neighbouring Burundi, and this remained so despite accusations by Burundi that it engineered the May coup d'etat. On the flip side, was the debate on constitutional amendment to grant President Kagame a third term in office. This met with stiff opposition internationally and domestically from opposition parties. But Parliament approved the amendments in November and were supported by a 98% majority vote by Rwandans in a referendum held on 18 December. The amendments came in force on 24 December. They allowed President Kagame to run for a third term in office in 2017 and reduced presidential terms from seven to five years, the latter to come into effect in 2024. President Kagame confirmed that he would seek re-election in 2017 and allowed a further two terms in office after 2024, which potentially allows him to remain in power until 2034. There were reports indicating silencing the opposition, trampling on media freedoms; arbitrary arrests limitations on association and political space during 2015. On 29 May, the British Broadcasting Corporation (BBC) Kinyarwanda services were indefinitely suspended by the Rwanda Utilities Regulatory Authority (RURA) on an accusation of "genocide denial" in the documentary, "Rwanda's untold story". Rwandan authorities were also accused of arbitrary arrests and detention by the police of poor, homeless or marginalised people at Gikondo Transit Center, and for pressing 'politically motivated charges' against top military officials who were charged with inciting insurrection and illegal possession of firearms; and the police on 5 September, of interrupting a meeting to elect a new executive committee of the League for the Promotion and Defense of Human Rights (LIPRODHOR), a human rights NGO. However government strongly rejected and dismissed the reports as routine accusations by Human Rights Watch.

UGANDA, 2015 was the eve of elections. The real race for the presidency was between the incumbent President Museveni, two time opposition contestant Kizza Besigye, and former premier Amama Mbabazi, a new entrant out of the 8 contestants. An attempt by the opposition to come together under The Democratic Alliance (TDA) to field a single candidate to oust President Museveni failed for lack of consensus. All parties including the ruling National Resistance Movement (NRM) faced challenges including internal strife and financial challenges. The imposition of nomination fees by the party near to the elections, excessive spending believed to be of

state resources, and the consequences of Mbabazi's candidacy all bedeviled the NRM. The expulsion of Amama Mbabazi as Secretary General meant management of the roadmap and develop a new set of regulations to guide party primaries by a new team. The NRM primaries were marred by nationwide malpractices and violence; a record election petitions arose and the many aggrieved candidates run as independents. The country's largest budget was passed with huge allocations going to defense and security amidst serious concerns of rampant corruption and high poverty levels in the country. Although calls for electoral reform came early, the amendment bill containing the proposals was tabled late and all proposals were ignored. Accusations of bias of the Electoral Commission (EC) persisted and escalated with the halting of Mbabazi's consultations and retirement of the voters' register used for the 2011 elections which was deemed illegal. The rights of freedom of assembly and association suffered immensely. There was heightened police brutality in the arrest and dispersal of crowds especially of the opposition; and the police was also accused of bias and illegal recruitment of crime preventers. There was also grave public concern over the manhandling and undressing by the police of Zaina Fatuma, a Forum for Democratic Change (FDC) female supporter. The increased use of social media and free expression in general came under threat with the arrest of Robert Shaka believed to have been behind the face book identity *Thomas Voltaire Okwalinga* on which anti government messages were posted.

Parliament enacted a number of laws. Positives included a clause in the Constitution (Amendment) Act to protect MPs who either leave one political party to join another or become independent within the last year of their term, and also prescribed a quorum of 7 for the constitutional court; and one in the Anti-Corruption (Amendment) Act which vested powers in the Director of Public Prosecution (DPP) and the Inspector General of Police (IGP) to apply for valuation or even confiscate property of a person convicted of corruption, which is expected to strengthen the fight against corruption. However the proposal to remove a member of the EC by a tribunal appointed by the president was unpopular because it was believed to buttress the president's control on the EC; the Registration of Persons Act provision to grant the EC permission to use the same information to 'compile, maintain, revise and update the voters register' was deemed misplaced as this was thought to be the exclusive mandate of the EC; and the significant reduction of loans for which government must seek parliamentary approval under the Public Finance and Management Act was considered a setback in the strive to improve accountability and reduce excessive spending by the executive.

Also the Non Governmental Organisations Amendment Act was considered which increased the size of the House to 458 members' condemned as gerrymandering, and worsening the already heavy financial burden of the country. The poor quality of representation, lack of accountability of members to the electorate and manipulation by the executive continued to mar the performance of parliament.

The judiciary grappled with the legality of the appointment of the deputy chief justice at the beginning of the year. Case backlog and staffing remained challenges. The appointment of new chief justice and a number of judges to the Court of Appeal however created some hope. Some outstanding decisions were also delivered. These included the *Uganda v. Thomas Kwoyelo case* which addressed the constitutionality of the trial of a former commander of the Lord's Resistance Army (LRA); the *Centre for Health, Human Rights and Development & 3 Others v. Attorney General in which* the political question doctrine invoked by the Constitutional Court was overruled and the justiciability of both the right to health and the National Objectives and Directives of State Policy in the constitution clarified; the *Mifumi (U) Limited v. the Attorney General and Kenneth Kakuru* case in which the practice of bride price was not found unconstitutional if it is not coerced, but the requirement to return bride price once a customary marriage breaks down; and the *Hon. Theodore Sekikuubo & 4 Others v. The Attorney General & 4 Others* case which clarified that an MP expelled from their party does not have to vacate parliament. In *Behangana Domaro & Anor v. The Attorney General* Court for the first time issued a structural interdict and invoked residual jurisdiction for compliance with its directives, when it ordered an investigation in allegations of torture by the police and a report from the DPP and IGP within six months. *Bernard Otim v. Uganda* distinguished the decision in *Kiiza Besigye v. The Attorney General* when court held that the accused's detention before trial was held to violate his right to liberty but not to a fair trial as the trial had not commenced. The parliamentary practice of passing motions, on its own volition, which adjusted upwards the emoluments of MPs, was declared unconstitutional in *Mwesigye Wilson v. The Attorney General and Parliamentary Commission*, while court, in *Kasozzi Robinson v. The Attorney General* faulted the legislature for delegating its powers to the line minister to pass laws that stipulate criteria for electing special interest group representatives in parliament.

TANZANIA MAINLAND

had elections which took place on both sides of the Union. The presidential race was between Pombe Magufuli the *Chama cha Mapinduzi* (CCM) candidate and Edward Lowassa opposition *Umoja wa Katiba ya Wananchi* (UKAWA) candidate, former premier, and former member of CCM. Overall, the elections were peaceful and calm. An increased number of women contested in various elective positions were registered and for the first time CCM nominated a woman to run for presidency and is now the first female vice president. A young female was also elected deputy speaker. However, there were concerns about the transparency and fairness of the elections. There were allegations of vote rigging, disenfranchisement, pre-ticking ballots in some parts of the country; delays to announce results of the rightful winners and continued concerns about the partiality of the electoral body. The Biometric Voter Registration System (BVRS) used for the first time is said to have disenfranchised many due to limited civic education on its use. Many students of higher learning institutions could not vote because a government closed them yet they constituted their polling centres. The electronic electoral tallying system was said to have been manipulated and presidential election results announced in favour of the CCM ruling party. State owned media was accused of biased in favour of CCM and cabinet ministers using their office to campaign. Public servants were allegedly threatened with loss of jobs if they did not support the CCM candidate. There were claims of intimidation through a public display of new police vehicles and anti riot gear a week before elections. Unnecessary use of force by the police was reported when Lowassa's entourage was bombed in Arusha and the police raids on civil society vote tallying centers where those operating them were arrested, charged and equipment confiscated. The nullification of the election results in Zanzibar brought in doubt the legitimacy of the president of the URT who is also voted for by Zanzibaris. Also queried was the validity of the Union Parliament without members of the Zanzibar House of Representatives. While President Magufuli's determination and pace to build a new Tanzania by cutting down public expenditure was appreciated, running the country without a cabinet for more than a month was seen as a bad practice; restrictions on foreign travel by public servants, a failure on the country's international obligations; and the summary dismissal of public officials, a violation of the law.

The election related court cases raised issues of independence of the judiciary. An example was the decision in *Amy Kibatala v. Attorney General and Director for Elections*, which declared only party agents and others authorised people not voters as authorized to remain in the vicinity of the polling stations. The exorbitant security for costs aggrieved candidates had to pay in election petitions were also castigated as intended to deny people their right to challenge election results.

The legislature on a positive note introduced the 14th Constitutional Amendment which established 30% women special seats representation in parliament. The House also rejected the Access to information and Media Services Bill for violating international human rights standards. On a low note however, the Petroleum Act, the Oil and Gas Revenue Management Act, and the Tanzania Extractive Industries (Transparency and Accountability) Act were enacted under the presidential certificate of urgency, without following due process. Also, the Statistics Act and the Whistleblower Act were sternly opposed for limiting freedom of expression; and the Cyber Crimes Act and the Electronic Transactions Act for violating the right to privacy and personal security, freedom of expression and access to information. There was also unease about the timing of the cyber law as it was believed to have been enacted to silence the youth- the main users of social media.

TANZANIA ZANZIBAR like the Mainland Tanzania had general elections in October 2015. CCM and the Civic United Front (CUF) continued to dominate Zanzibar politics. More citizens registered and the process was generally peaceful. A July redemarcation by the Zanzibar Electoral Commission (ZEC) of constituencies increased the number and created variances in population of the constituencies raising doubt as to the criteria used by ZEC. Elections were peaceful until the chairperson of ZEC on 28 October, unilaterally nullified the entire result and announced a re-election on dates to be determined. He claimed that the votes cast in some constituencies especially in Pemba exceeded the number of registered voters, and that some ballot boxes with cast votes had been illegally moved out polling stations. The nullification was condemned nationally and internationally and ZEC was urged to continue with the exercise of tallying the results and thereafter declare the winner. A dialogue to end the political turmoil failed and the impasse still ensued by the end of the year. The nullification of results had social, economic and political implications. There was fear of likely constitutional crisis especially regarding the

tenure of office of the president of Zanzibar. The Government of National Unity (GNU) between the CCM and CUF came under threat following the unsuccessful reconciliation between the presidential candidates of the two parties after the elections. Security deteriorated with incidents of explosions reported twice in the Zanzibar Municipality, which forced heavy deployment of security forces and in turn heightened fear and tension among citizens. The economy greatly suffered as a result of the withholding of aid to Zanzibar and Tanzania. Inflation rose and food prices spiraled. Checks on public spending by oversight bodies were reportedly affected by challenges of limited funding and good will on the part of government entities to implement them. Other post election concerns were that the Zanzibar House of Representatives was dissolved before the expiry of its five year term and by the end of the year Zanzibar had no legislature. The Union Parliament proceeded without the MPs from Zanzibar. Although the first female vice-president comes from Zanzibar, the number of women who run for elective positions in the 2015 election in Zanzibar was considerably low.

Even after the many constitutional issues surrounding the nullification of the elections, no constitutional case was filed at the High Court of Zanzibar. And although a number of amendments to the Constitution of Zanzibar had been anticipated to arise from the proposed Constitution of the URT, this never happened. While the referendum to pass the proposed constitution scheduled for April 2015 never took place, the Referendum Act passed by the Union Parliament to determine the issue of the new constitution of the United Republic was laid before the Zanzibar House of Representatives on 11 March amidst strong resistance from the opposition. It was passed but but thus far, the Zanzibar constitution was not been brought in line with the proposed Union constitution. A number of other laws were however enacted in 2015 namely: The Public Leaders Code of Ethics and Ethics Commission and Related Matters Act; the Public Private Partnership Act; the Zanzibar Disaster Risk Reduction and Management Act; Jeshi La Kujenga Uchumi (JKU) Security Guard Agency Act; Zanzibar Environmental Management Act; The Valuers' Registration Act, The Commission for Land Act; Zanzibar Arts and Censorship Council; The Finance (Public Revenue Management) Act; and The Appropriation Act.



marked 5 years since the promulgation of Kenya's 2010 Constitution. Ideally, the necessary laws to give effect to the constitution should have been enacted and at least 50% of campaign manifesto of the Jubilee Coalition implemented. Overall, key independent offices and commissions had been established and were operational. The President assented to a number of laws and a number of initiatives in furtherance of the governance of the country were undertaken. The Huduma Centres were expanded to 40 to allow easier citizens' access to various public services through an integrated technology platform. The National Youth Service (NYS) was revitalised and over 10,000 recruits passed out in April. Youth and women received project funding under the Uwezo Fund - a flagship programme under 'Vision 2030'. Other Vision 2030 projects namely the construction of a new terminal at the Jomo Kenyatta International Airport (JKIA); the Lake Turkana Wind Power project; and the construction of a Standard Gauge Railway (SGR) were implemented. The country's image and public confidence in its leadership were enhanced by the visits of President Obama and Pope Francis; the termination of the case against the president at the International Criminal Court (ICC), and the president's speech to the nation in which he apologised for wrongs of the current and previous governments and issued a confidential report that implicated senior government officials in corruption. However some actions of the executive undermined constitutionalism. Amendments to the Comptroller and Auditor General (Amendment) Bill on the procedure of hiring the IGP and the CJ that aimed to give the president a prominent role were viewed as unconstitutional. The proposal for the office of the Auditor General to submit its report to ministries before forwarding it to Parliament; amendments in the same Bill to grant the Public Service Commission (PSC) disciplinary powers over the Office of the Auditor General; and proposals to transfer the disciplinary role of the National Police Service Commission (NPSC) to the National Police Service Disciplinary Board under the Security Laws (Amendment) Act were all deemed to interfere with the impartiality and independence of the Auditor General and NPSC offices respectively. Furthermore, the appointment of members of the Ethics and Anti-Corruption Commission (EACC) and the NPSC delayed. There was non-adherence to the principle of public participation during the making of Bills and issues relating to their constitutionality as was the case for the Security Laws (Amendment) Act. The executive also disobeyed court orders. A case in point was its rejection of a court order to increase the wages of teachers on the basis that it had not been catered for in

the 2015/2016 national budget. The Jubilee Coalition used its numbers in the National Assembly to pass controversial motions such as the Security Laws (Amendment) Act. There was also disagreement between the executive at the national and county governments in contravention of the constitution. Despite the renewed vigour to fight corruption, the National Youth Service (NYS) and Eurobond corruption scams emerged. Projects listed in the Jubilee Coalition manifesto such as the delivery of free laptops to primary schools and the creation of employment for the youth remained pending. The termination of President Kenyatta's case at the ICC threatened cohesion in the Jubilee Coalition, with the United Republican Party (URP) accusing its counterpart The National Alliance (TNA) of insincerity to push for an end to the case of the deputy President William Ruto at the court.

Parliament enacted the Ethics and Anti-Corruption (Amendment) Act; Statute Law (Miscellaneous Amendment) Act; The Appropriation Act; and the County Allocation of Revenue Act. It vetted nominees to the executive at both the national and county levels and tried to ensure public participation in its processes. However it was accused of passing oppressive and unconstitutional laws such as the Media Council of Kenya Act and the Kenya Information and Communication Act; and of interfering with the work of other arms of government. Its proposals in the Comptroller and Auditor General (Amendment) Bill 2015 were said to undermine the independence of the Office. Meeting constitutional timelines for passing Bills was a challenge that sometimes resulted in motions to extend timelines. For example, Parliament failed to pass the constitutional gender requirement by August 27, 2015 as had been ordered by the Supreme Court. Battles ensued between the Senate and the National Assembly. There were also accusations of corruption against the committees of parliament including the Public Accounts Committee meant to provide oversight. The realignment of political interests by MPs midstream with some MPs from other parties working openly with the Jubilee was of concern.

In the judiciary, new courts were commissioned to speed up court processes and take justice closer to people. Training programmes continued under the Judiciary Transformation Framework. Research on various issues was conducted and publications released. A new Performance Measurement and Management System (PMMS) was launched in April 2015 to promote efficiency. A number of outstanding court decisions were also delivered. The *Eric Gitari v Non-Governmental*

Organisations Co-ordination Board & 4 others case underscored the right to freedom of association when it held that the refusal by the NGO Co-ordination Board to register the National Gay & Lesbian Human Rights Commission on grounds that homosexual intercourse is criminalised in Kenya unconstitutional. The judiciary also held actions of the executive and parliament unconstitutional as was the case for sections of the Security Laws (Amendment) Act; and declared the recruitment of police officers in July 2014 null and void. Despite the progress, corruption scandals affected the judiciary. The 'Shollei saga' still haunted the courts, and a Parliamentary Accounts Committee (PAC) report exposed massive corruption in the judiciary. The judiciary had battles with the other arms of government which affected its work and image. The ruling in **Institute of Social Accountability & another v National Assembly & 4 others** that declared the Constituency Development Act unconstitutional did not augur well with the National Assembly, which threatened to cut the budget of the judiciary and to enact a law to subject the judges and magistrates to fresh vetting. The judiciary was also attacked by the Senate for barring it from summoning the Governor of Makueni County to debate his impeachment which Senate interpreted as interference with its constitutional functions. The nullification by court of the impeachment of the Governor of Embu County after members of the County Assembly ignored a High Court order barring them from proceeding with it and after the Senate proceeded to recommend it on the same grounds was also viewed in similar light. In **Council of Governors & 6 others v. Senate**, the judiciary also came under criticism for an order that barred governors from appearing before a Senate Committee to explain issues regarding misappropriation of funds.

Some independent offices and constitutional commissions registered achievements. The EACC forwarded to the President a list of senior officials accused of corruption that was tabled in parliament and became the basis for full investigations. The Commission for the Implementation of the Constitution (CIC) engaged actively with various government ministries and departments, parliament and the public; reviewed new legislation and proposals for amendment of laws; and challenged unconstitutional laws in courts as was the case with the Security Laws (Amendment) Act. The Independent Electoral and Boundaries Commission (IEBC) successfully conducted various by-elections while the Kenya National Commission on Human Rights (KNCHR) condemned and exposed various human

rights violations including extrajudicial killings and forced disappearances by security agencies. Conversely, the IEBC was accused of failing to involve key stakeholders in the development of its strategic plan; *senior officials of the defunct Interim Independent Electoral Commission (IIEC) were implicated in the 'chickengate scandal'; and the EACC was widely criticised for failing to investigate fully the scam by the end of 2015.* CSOs constantly engaged policy makers to ensure pro people policies, transparency and integrity of leaders, and respect for human rights. They engaged in advocacy and civic education; challenged draconian and unconstitutional laws such as the Security Laws (Amendment) Bill; and monitored the devolution process as well as built capacity of county governments. Despite these efforts, CSOs were labelled anti-government. Specific laws were also designed for them such as the Security Laws (Amendment) Act and the Public Benefits Organisations law that aimed to restrict foreign funding to them. Fortunately some of the controversial provisions were rejected by Parliament and others declared unconstitutional. There were also limitations on freedom of expression when bloggers who criticised government on social media were harassed.

PROGRAMME ACHIEVEMENTS

● KEY PROJECTS

There were a total of 6 (six) grants in 2015. They were implemented in line with KcK's Strategic Plan and her three programmatic areas of *Research, Documentation and Dissemination; Networking and Advocacy; and Institutional Strengthening*.

The grants were:

- **Ford Foundation Grant No. 0147- 0247: Consolidation of Work on Constitutionalism and Good Governance in East Africa**

This was a two year grant of \$ 400,000 for the period 1 March 2014 to 28 February 2016, whose goal was to augment constitutionalism and good governance in the region by providing East Africans with relevant, accessible and up-to-date information in these areas. The specific objectives were to: contribute to the development of regional jurisprudence on presidential election court decisions in EA; document the progress and challenges affecting the constitutional, governance, democratic landscape in EA during 2014 and 2015; strengthen the capacity of civil society in the region with regard to their knowledge of the EAC; strengthen the training component of KcK's Education Centre; and to strengthen KcK's staff capacity.

Programme Activities: *A Comparative analysis of lead presidential election court decisions in East Africa (Kenya 2013) and Uganda (2001, 2006); The Annual State of Constitutionalism (ASC) Project; Strengthening the KcK Education Centre; and Institutional Support.*

- **OSIEA Grant No. OR2013-11312: Assessing the Contribution of Elections Management Bodies (EMBS) to Democracy and Good Governance in East Africa.**

This was a project for the sum of \$48, 000 (United States Dollars Forty Eight) only one year, for the period 30 December, 2013 to 30 April, 2014, but later extended to mid April- May 2015. Its key objectives were: to provide space for dialogue on EMBs contribution to the quality of citizens' participation in the public affairs in the region and key reforms required to ensure that EMBs fulfil their mandate in accordance with sub-regional, continental and international standards on establishment of EMBs; and to identify key reforms required to ensure that EMBs fulfil their mandate in accordance with sub-regional, continental and international standards. The major activity was the launching of the EMBs in East Africa Report - a comparative analysis, commissioned by AfriMAP and OSIEA that covers the five EAC member states. The launch aimed to provide space for dialogue over EMBs' contribution to the quality of citizens' participation in public affairs in the region and key reforms required to ensure that EMBs fulfil their mandate in accordance with sub-regional, continental and international standards.

Programme Activities: *a one day-Consultative/Learning Meeting with the NCRC, CRRT and other key stakeholders aimed at gaining a better understanding of the local context, the process, and progress of the NCRC in the constitution making process; and a final meeting with the NCRC to provide it with expert guidance and recommendations on specific identified areas relating to the constitution making process.*

- **Open Society Institute (OSI) Grant No. OR 2015-20369: Mobilising Citizens for Uganda's Forthcoming 2016 Elections**

The project for a total sum of \$ 150,000(United States Dollars One Hundred and Fifty Thousand) only, and was for a period of one year from 1 May, 2015 to 30 April, 2016. It was implemented by the Human Rights and Peace Centre (HURIPEC) of the School of Law, Makerere University as the lead organisation in collaboration with KcK. Overall, the project aimed to contribute towards Uganda's democratisation process by providing a critical assessment and evaluation of pre-election conditions and the potential contribution of the 2016

election. Its specific objectives are: to examine the relevance of citizens as bearers of rights in elections in Uganda; provide a forum for Ugandans to air their views on various key issues relating to elections in general and the upcoming 2016 general elections in particular, and to initiate dialogue with key stakeholders with varied interests and views in Uganda on the key governance and human rights issues that will influence the upcoming 2016 elections and recommended measures to ensure peaceful elections. The project also aimed to provide a neutral forum for activists, academics and politicians to engage in dialogue, self-reflection and critical debate over key governance and human rights issues that will affect the 2016 Uganda general elections; provide up-to-date analytical information about the pre-electoral process; and to enable critical actors in the region to share experiences and best practices with their counterparts in Uganda and to learn from each other's mistakes.

Programme Activities: *a survey on citizens' perceptions on elections and on the 2016 general election; a fact-finding mission on critical governance issues; a regional experience sharing and learning forum; dissemination of survey and mission findings through radio programmes and twitter; and printing a publication.*

- **Friedrich Ebert Stiftung (FES) Grant: *Two Decades of Advancing Rights and Interests of Youth and Workers under the 1995 Uganda Constitution: An Appraisal of a Journey.***

The one year project commenced on January 2015 till December 2016. Its goal is to contribute to the advancement of rights and interests of youth and workers in Uganda. It specifically aimed: to critically examine the performance of youth and workers MPs in the Parliament of Uganda in executing their mandate over the past two decades; study the role constitutional bodies have played in advancing the rights and interests of youth and workers in Uganda during the past two decades; and provide a forum to key stakeholders to independently review and discuss the performance of youth and workers MPs in the Parliament of Uganda towards meeting the needs of their constituency over the past two decades. Other objectives were to provide comprehensive up-to-date information on the performance of youth and workers MPs in Uganda and on the role of constitutional bodies in advancing the rights and interests of the two special groups over the past two decades; and identify practical

recommendations for a more robust and meaningful approach on how rights and interests of youth and workers can be delivered through legislative representation and the work of constitutional bodies.

Programme Activities: *a study to document how youth and workers MPs have performed over the last 2 decades since the 6th Parliament; a study to document the work of the constitutional bodies in addressing youth and workers special needs in the past two decades; a dissemination/validation workshop; editing of the reports; and advocacy meetings with various stakeholders to lobby for the implementation of findings.*

- **Freedom House (FH) Grant No. 15-AID053-R2: *Advocacy for Amendments to Uganda's 1995 Constitution.***

This was a 7-months grant from 1 April, 2015 to 31 October 2015 supported by the USAID Rights and Rule of Law, for the sum of \$ 15,000 (United States Dollars Fifteen Thousand) only. The goal of the project was to contribute to the constitutional review process that will lead to a constitution that guarantees fundamental rights and freedoms. Its objectives were twofold: to activate and inform public debate on key proposed constitutional amendments with the intention of influencing the final amendments to the Constitution; and to hold dialogues and discussion forums to present the proposed amendments to strategic law and policy making individuals and institutions.

Programme Activities: *publish and disseminate the Constitutional Amendment Reference Book; a pre-amendment public dialogue; a high level stakeholder advocacy forum; submission of proposed amendments to Speaker of Parliament; and radio panel discussions.*

- **Open Society Initiative for Eastern Africa (OSIEA) Grant No. 2013-11015: *Enriching the Constitutional Review process in South Sudan: Lessons and Good Practice from the Eastern Africa Region.***

This is a one year grant from 1 December, 2013 to 30 November, 2014, in the sum of \$40,000 (Forty Thousand) only, ultimately extended for one year from 18 October 2015 to 17 October 2016. Its goal is to contribute to the development of

an inclusive, just, equitable and durable constitution for the Republic of South Sudan (RoSS). The specific objectives are to enable a team of experts in constitution-making from EA to examine the process and progress of constitution making in South Sudan and provide critical input to it based on best practices and lessons from the region, and to provide a forum for members of the National Constitutional Review Commission (NCRC) and the Constitution Review Resource Team (CRRT) of RoSS to dialogue, learn and share best practices and lessons from experts in constitution making from EA.

Programme Activities: *a one day-Consultative/Learning Meeting with the NCRC, CRRT and other key stakeholders to gain a better understanding of the local context, the process, and progress of the NCRC in the constitution making process, and a final meeting with the NCRC to provide it with expert guidance and recommendations on specific identified areas relating to the constitution making process.*

PROGRAMMES ON THE BASIS OF THEMES

- **RESEARCH, DOCUMENTATION AND DISSEMINATION**

- ✓ **Research and Documentation**

FORD Grant No. 0147- 0247: Consolidation of Work on Constitutionalism and Good Governance in East Africa

The Annual State of Constitutionalism

A review and documentation of the progress, prospects and constraints relating to constitutional and human rights development across the region including at the EAC, was undertaken for the year 2015. The final manuscript for the ASC 2014 was ready by the end of the year, and papers for the ASC 2015 were commissioned. The authors for ASC 2015 were: Ms. Naomi N. Njuguna from Kenya (EAC paper); Dr Linda Musumba (Kenya); Mr Robert Kirunda (Uganda); Ms. Riziki Shahari Mngwali (Tanzania Mainland); and Mr Mussa Kombo Bakari (Tanzania Zanzibar). Drafts of the papers had been produced by the end of the year, and the editor, Prof. Mwesiga Baregu (Tanzania Mainland) commissioned.

Lead Presidential Election Court Decisions in EA

The report earlier developed in 2014 was reviewed by the team of experts which comprised Rtd. Hon. Lady Justice Eusebia Munuo (Tanzania); and from Uganda Hon. Lady Justice Lillian Tibatemwa Ekirikubinza; Prof. Frederick Ssempebwa and Dr. Busingye Kabumba; and a final draft forwarded to the publishers for copy editing and printing.

OSIEA Grant No. OR2013-11312: Assessing the Contribution of Elections Management Bodies (EMBS) to Democracy and Good Governance in East Africa

The report: *Election Management Bodies in East Africa: A Comprehensive Study of the Contribution of Electoral Commission to strengthening Democracy: A review by AfriMAP and Open Society Initiative for Eastern Africa*, 2015, was launched in Arusha Tanzania on 28 May. The event attracted 46 participants from the six (6) countries of the EAC, including representatives of EMBS, members of EALA, NGOs (national and regional), media, and academia. The contribution of EMBS to the quality of citizens' participation in the public affairs in the region; best practices, lessons and challenges



faced and areas of reform were discussed. Critical concerns as Tanzania prepared for elections and the violence in Burundi also formed part of the discussion. The deliberations at the launch enjoyed wide dissemination in both local and regional newspapers.

OSIEA Grant No. 2013-11015: Enriching the Constitutional Review process in South Sudan: Lessons and Good Practice from the Eastern Africa Region

However due to the civil war in South Sudan, no activities were implemented due to the continued civil war in South Sudan that ensued throughout 2015. However the team of experts continuously monitored developments in and relating to South Sudan.

FES Grant: Two Decades of Advancing Rights and Interests of Youth and Workers under the 1995 Uganda Constitution: An Appraisal of a Journey.

Studies to document how youth and workers MPs performance and to document the work of the constitutional bodies in addressing youth and workers special needs in the past two decades were undertaken. Literature reviews were undertaken beginning from June and field research conducted from 4 July to September. By the end of the year, draft reports for both studies had been compiled and preliminary preparations for the dissemination workshop to take place in early 2016 had commenced.

OSI Grant No. OR 2015-20369: Mobilising Citizens for Uganda's Forthcoming 2016 Elections

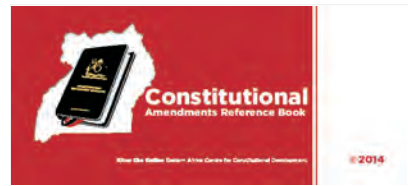
The survey on citizens' perceptions on elections and on the 2016 general election was conducted in 18 districts of Uganda from 13 July to 28 August, while the fact-finding mission on critical governance issues arising from the 2016 election was undertaken in Kampala from 17 - 21 August. Review meetings to agree on methodology and approach were held before the mission. Relevant literature, laws and policies were reviewed and formed part of the reports. By the end of the year, the reports had been synthesised and edited.

✓ Dissemination of Information

FH Grant No. 15-AID053-R2: Advocacy for Amendments to Uganda's 1995 Constitution

Proposals for the amendment of Uganda's 1995 Constitution generated by a team of constitutional experts in 2014 were published in May in *The Constitutional Amendment Reference Book*. They were disseminated on the KcK website and on radio in July. A public dialogue on the *Quest for comprehensive constitutional reforms in Uganda* was held on 22 May to disseminate, discuss and generate people's views about the proposals. The dialogue attracted 62 participants from a cross section of actors.

The meetings with Legal and Parliamentary Affairs Committee of Parliament held on 21 May and 5 June; the above mentioned public dialogue held in 22 May; and the High Level Stakeholder Advocacy Forum held on 17 September triggered extensive coverage in the print and electronic media.



OSI Grant No. OR 2015-20369: Mobilising Citizens for Uganda's Forthcoming 2016 Elections

The findings of the survey and fact finding mission were shared at a regional experience sharing and learning forum held on 30 October that attracted 46 participants from different backgrounds from Uganda. Mr George Morara Monyoncho -Vice chair Kenya National Commission for Human Rights (KNCHR), Ms. Praxedes Tororey Director Legal and Public Affairs, Independent Electoral and Boundaries Commission (IEBC), Kenya, Mr Victor Bwire Deputy CEO Media Council, Kenya, and Mr Humphrey Polepole, a civil society activist and former member of the Constitutional Review Commission of Tanzania also attended. The findings were also disseminated at a national stakeholders' forum held on 15 December. The reports were disseminated electronically on the HURIPeC and KcK websites.



● **NETWORKING AND ADVOCACY**

FH Grant No. 15-AID053-R2: Advocacy for Amendments to Uganda's 1995 Constitution

The team of constitutional experts that developed the proposals for constitutional reform presented them to the Legal and Parliamentary Affairs Committee of Parliament on 21 May and 5 June 2015, with a view to influencing its members to adopt and present them to the plenary.



A high level stakeholder advocacy forum to reflect on final constitutional amendment Act and its shortfalls and to draw strategies on the way forward was held on 17 September. It brought together 35 participants from the key ministries, constitutional bodies, NGOs and the academia. It among others recommended a sustained campaign and dissemination of clear and simple messages.



● **INSTITUTIONAL STRENGTHENING**

FORD Grant No. 0147- 0247: Consolidation of Work on Constitutionalism and Good Governance in East Africa

✓ **Strengthening the KcK Education Centre**

KcK's course on the *East African Community Organs, Institutions and Procedures*, was run in Dar es Salaam Tanzania from 11 to 13 February and was attended by 11 trainees: 6 from Tanzania Mainland, 3 from Tanzania Zanzibar; one from Uganda and one from Kenya. A team of high profile and knowledgeable facilitators from Kenya, Uganda and Tanzania facilitated the training.



✓ Staff

The staff was maintained, with Ms. Edith Kibalama as Executive Director; Ms Joyce Apio as Programme Manager; Ms Irene Aketch as Accountant and Mr Christopher Mbowa as office attendant.

KcK is grateful for the support of Mr Mohamed Mpuga Rukidi who supported programmes; Ms Sonia Nantongo who supported the organisation in the area of communications and IT; and Mr Micheal Mayambala in research as volunteers.

✓ The Board

Members

KcK bid farewell to **Mr Ezra Mbogori** of Kenya and **Ms Peace Turyahebwa** of Rwanda. Efforts to recruit a replacement for Kenya began. By the end of the year, out of its 7- member Board, KcK had: **Mr Robert Turyahebwa** (Board Chair), **Ms. Jocelyn Nahimana** (Burundi); **Dr Tulia Ackson** (Tanzania Mainland); **Dr Sarah Ssali** (Uganda); **Rev. Fr Dr Kasirye Kato Andrew** (Treasurer) (Uganda) and **Mr Ali Uki** (Zanzibar).

Meetings

A skype meeting of the Board was held on 7 October.

PARTNERS

KCK extends her gratitude to the Ford Foundation, Foundation Open Society Institute (OSIEA), Friedrich Ebert Stiftung (FES) and Freedom House (USAID) for their valued partnership.

FINANCIAL STATEMENT

Balance Sheet as at 31 December 2015

	UGShs	
Fixed Assets	109,340,830	24%
Current Liabilities	66,955,580	15%
Net Current Assets	272,417,783	61%

