

**COMMUNIQUE ON TRANSFORMATIVE CONSTITUTIONALISM UNDER KENYA'S
CONSTITUTION: *HAVE WE ACHIEVED THE TRANSFORMATION SOUGHT BY THE
KENYAN PEOPLE?***

HELD ON TUESDAY 14 JULY 2020

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) and Strathmore University Law School have partnered to host a series of weekly webinars dubbed the “*Katiba @ 10 Series*”.
2. The first in the series of the Joint webinars was held on 14 July 2020 with the theme ‘Transformative Constitutionalism Under Kenya’s Constitution: *Have We Achieved the Transformation Sought by the Kenyan People?*’
3. The Panelists and participants were drawn from a diverse field representing all sectors including the government, civil society, the legal fraternity and the private sector.
4. The participants and the general public joined the webinar on our social media platforms and online streaming services including YouTube, Twitter, Facebook and WhatsApp.
5. **The panelists and participants acknowledged and noted THAT:**
 - a) The Constitution of Kenya 2010 was a product of a protracted and negotiated process that produced a consensus document that was intended to correct historical injustices, address abuse of power, economic and political marginalization and other societal ills which had characterized Kenya’s political regimes;
 - b) Transformative constitutionalism is the underlying theory that embodies Kenya’s Constitution and captures the aspirations of the Kenyan people. Its long-term goal is to transform Kenya’s political, social and economic frameworks, institutions and re-engineer the direction taken by the State;
 - c) Transformative constitutionalism creates the bedrock which seeks to move Kenya from repression, despotism, and citizen subjugation to a future of renewed ethical values, respect for human rights, citizen emancipation, revitalized and accountable institutions;
 - d) Kenyans desire a country, where resources are equitably distributed, institutions function independently and decisions are made on the basis of fairness, equality and opportunity for all;
 - e) Kenyans expressed this desire in the values captured in the preamble and across various articles of the Constitution which set the standards of accountability;
 - f) While there has been a steady movement towards the realization of some of the constitutional aspirations, there is a need to reflect and consolidate the gains made so far with a view to improve the lives of Kenyans;
 - g) Despite the existence of a progressive and robust chapter on Bill of Rights and the values binding on all persons, numerous vices such as violation of human rights, poverty and corruption are still persistent;

- h) Kenyans, including the political class, are yet to embrace and practice the constitutional values, which set the tone for constitutionalism; shaping behaviors, attitude and character;
- i) Our political culture has failed to match our constitutional values, letter and spirit of constitutional aspirations;
- j) There are gaps in the oversight roles and functions between the three arms of government, independent offices and commissions which has undermined the Constitution;
- k) The situation is further compounded by gross disobedience of court orders which has obscured the Judiciary's oversight role and as a custodian of the rule of law in the country;
- l) While great strides have been made in addressing gender equality on issues such as ownership of property by women and rights in marriage, the realization of the two-thirds gender rule in elective and appointive positions remains elusive;
- m) Devolution has failed to deliver on the promise of inclusion, socio-economic development, equitable distribution of resources and improved service delivery. County governments are still riddled with corruption, nepotism, tribalism, inefficiency, misplaced priorities, greed and selfishness, lack of accountability for public funds and total disregard for the rule of law
- n) The realization of the transformative spirit of the Constitution requires more commitment and respect by all persons; including state officers, public officers, public entities and obligates the holders of such offices to uphold the values and the spirit of the Constitution at all times.

6. Therefore in the view of the foregoing, ICJ Kenya calls upon:

A. The Executive to:

- ii. Respect the rule of law and ensure that all Kenyans enjoy their fundamental rights and freedoms as envisaged under the Constitution;
- ii. Respect all arms of government, and in particular, obey all court orders issued by the judiciary.

B. The Judiciary to:

- i. Promote the realization of the aspirations of the Constitution by making bold judicial decisions that advance human rights, rule of law and justice;
- ii. Promote access to justice by ensuring that courts are easily accessible to all citizens.

C. County Governments to:

- i. Promote active citizen participation in county government processes aimed at advancing human rights and constitutionalism;
- ii. Put in place the necessary infrastructure for the full operation of devolved functions;
- iii. Enhance accountability and transparency for revenue collected at the county levels and take the necessary steps towards enhancing their revenue capacity and reduce overreliance on the share of revenue from the national government;
- iv. Establish a culture of respect for the rule of law, inclusivity and transparency in their actions.



D. The Legislature to:

- i. Play its oversight role as envisaged by the Constitution;
- ii. Amend and/or repeal laws that do not align with the Constitution;
- iii. Enact enabling legislations that implement constitutional aspirations.

E. Civil Society Organizations to:

- i. Exercise vigilance and hold leaders to account and demand for better service delivery from the government;
- ii. Conduct constitutional litigation to advance human rights;
- iii. Conduct civic awareness on constitutional implementation and support citizen participation in constitutional processes.

F. The General Public to:

- i. Hold the political class to account for the realization of the constitutional aspirations and transformation;
- ii. Demand an end to impunity, corruption, misuse of power, inequality and demand access to better services, among others, as captured in the Constitution of Kenya.

G. ICJ Kenya commits and undertakes to:

- i. Continue to foster the discourse on transformative constitutionalism and the rule of law;
- ii. Support all arms of government to achieve their constitutional mandates;
- iii. Partner with like-minded organizations to support implementation of the Constitution and public participation in constitutional processes.

Signed



Kelvin Mogeni
Chairman
ICJ Kenya