

**COMMUNIQUÉ ON PUBLIC FINANCE UNDER THE CONSTITUTION OF
KENYA: THE EVOLUTION OF PUBLIC DEBT, PUBLIC SPENDING AND TAXATION**

HELD ON TUESDAY 21 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 second in the series of the joint webinars was held on 21 July 2020 with the theme ‘Public Finance under the Constitution of Kenya: The Evolution of Public Debt, Public Spending and Taxation.
3. The Panellists and participants were drawn from a diverse field representing various sectors including the government, civil society, academia and the legal fraternity.
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 panellists and participants acknowledged and noted THAT:**
 - a) Historically, the public finance system was underpinned by a weak institutional and legislative framework characterized by the concentration of power in the hands of the Executive, which in effect undermined the role of oversight bodies such as Parliament, oversight institutions, and even citizens in public finance management;
 - b) The Constitution of Kenya 2010 revolutionised the public finance system making it more accessible, transparent, equitable and accountable;
 - c) The Constitution established independent offices, such as that of the Auditor General, Controller of Budget, the Commission on Revenue Allocation, the Salaries and Remuneration Commission and the Central Bank of Kenya, to provide oversight of public finance management;
 - d) There have been statutory, regulatory and judicial interventions on equitable taxation, financing of devolution, the budgetary process, public borrowing, financial control and expenditure oversight;
 - e) Despite these developments, the country has performed dismally in the implementation of the letter and spirit of Chapter 12 of the Constitution;
 - f) Irresponsible fiscal borrowing and spending has tripled public debt from an estimated 2.1 trillion shillings in 2018 to about six trillion shillings in 2020, and led to a predatory tax system by both the National and County governments, in total neglect of the principle of equity in taxation, in effect imposing numerous tax burdens on Kenyans;
 - g) The principle of equitable sharing has not been followed in numerous occasions by the national government, even upon recommendation by the Commission on Revenue Allocation thus frustrating the financing of devolution;

- h) Public participation has been ineffective given the poor information sharing by governments, their limited engagement of the public and their failure to give or take into account feedback from the public;
- i) The government does not have a clear tax policy and therefore most tax decisions including tax exemptions and waivers, are done haphazardly without an ascertainable rationale, in total disregard of the constitution or even proper consultation with Kenyans affected by the tax measures;
- j) Parliament has not been effective in its oversight role, for example its failure to interrogate anomalies underscored in the Auditor General's reports, which has undermined the principle of checks and balances and the need for accountability;
- k) In addition, most Kenyans have been led to believe that finance matters are technical and difficult to understand, which has hindered their role in demanding accountability even as gross misuse of public funds continues to be the order of the day in the country;

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

A. The Executive to:

- i. Implement the constitutional principles on public finance spending, imposition of taxes and public borrowing;
- ii. Respect the role of the independent offices and commissions, and enhance their capacity to effectively perform their functions as stipulated in the Constitution and enabling legislations;
- iii. Establish a clear tax policy that meets the constitutional threshold;
- iv. Avail information to Kenyans on the criteria for tax waivers and provide a public record of each waiver and the reasons for it;
- v. Respect the objects of devolution and ensure that revenue sharing is done equitably and that the national government does not undermine the role of county governments by delaying the transfer of funds to them;
- vi. Support the county governments through capacity building on public finance management.

B. The Legislature to:

- i) Play its oversight role as mandated by the people of Kenya and in the Constitution;
- ii. Interrogate and act on the recommendations made by the Auditor General and the Controller of Budget in their reports;
- iii. Ensure that all the laws that are passed reflect the principles of public finance management as prescribed under Article 201;
- iv. Adopt legislation to prescribe the parameters of effective public participation in public finance management;

C. To the County Government:

- ii. Avoid predatory taxation, and adopt a clear taxation system that adheres to the Constitution;
- ii. Invest in enhancing their public finance management capacity;
- iii. Seal the gaps that provide opportunities for misappropriation and misuse of funds.



D. Independent Oversight Offices and Constitutional Commissions to:

i. Effectively and independently discharge their oversight mandates as prescribed in the Constitution and enabling legislation, free from national treasury and other external influences.

E. To Civil Society actors:

- i. Engage the public and different stakeholders on public finance and taxation and empower them to seek accountability from government;
- ii. Demand that the government respects the principles and values under the Constitution, such as transparency and accountability.

F. The General Public to;

- i. Be vigilant and push for accountability by the government on public spending, including an interrogation of public projects to ascertain their efficacy and value;

ICJ Kenya commits and undertakes to:

- i. Continue the discourse transformative constitutionalism, rule of law and good governance;
- ii. Collaborate with other civil society organisations and like-minded institutions to support the implementation of the Constitution, empower citizens and demand for transparency and accountability in public finance management.

Signed



Kelvin Mogeni
Chairman
ICJ Kenya