

COMMUNIQUÉ ON DEVOLUTION UNDER THE CONSTITUTION OF KENYA
A CASE OF PROGRESS OR REGRESS

HELD ON TUESDAY 28 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 third in the series of the joint webinars was held on 28 July 2020 with the theme **“Devolution under the Constitution of Kenya: A case of progress or regress”**.
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 panellists and participants acknowledged and noted THAT:**
 - a) Kenyans’ desire for a new constitutional dispensation can be traced back to the effects of concentrating power in the presidency. This resulted in increased abuse of office and a feeling that regional inequalities in development were the result of how power and resources were distributed by successive regimes.
 - b) The Constitution of Kenya 2010 was adopted as part of long-term measures to address the long-standing issues and other root causes of the violence witnessed in the country after the December 2007 election;
 - c) The Constitution provided for national and county levels of government, which were distinct but inter-dependent. The county governments were established on the principle of devolution of power;
 - d) Devolution is one of the most transformative changes to Kenya’s governance system brought about by the Constitution of Kenya 2010;
 - e) Kenya adopted a new Constitution in August 2010 with a view to building a new society and breaking away from the past;
 - f) The Constitution provided an opportunity to address the challenge of inequities in development, poor governance, and service delivery;
 - g) The Constitution provided opportunities for better development and realisation of the aspirations of the people;
 - h) The Constitution presented strong, independent, accountable government organs and public institutions;
 - i) The Constitution recognises the people as the ultimate source of sovereign power and the basis of exercise of State authority;

- j) There are gaps in the oversight roles and functions between the three arms of government,
- k) The Constitution provides for avenues through which people can participate in decisions affecting them;
- l) The Constitution addresses Kenya's socio-economic challenges in a number of ways. It introduces devolution of power and establishes county level of government for this purpose;
- m) The Constitution provides that sovereign power is delegated to the three traditional arms of government (Executive, Legislature, and Judiciary), exercised at the national level and the county level;
- n) These objects show that devolved government in Kenya aims at addressing imbalances in development, promoting equitable allocation of public resources, and access to services;
- o) The Constitution provides for transfer of resources to the devolved units in a fair and equitable manner;
- p) The Constitution provides for free exercise of democratic will to Kenyans.

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

A. The Executive to:

- i. Fully implement the Constitution especially on devolution;
- ii. Respect the objects of devolution and ensure that revenue sharing is done equitably and that the national government is not undermining the role of county governments by delaying the transfer of funds to them;
- iii. Embrace the spirit of the Constitution on accountability on public finances;
- iv. Government agencies and regional development authorities be restructured to align to the devolved system of government;
- v. National government to release devolved functions to county governments as provided in the Constitution;
- vi. Involve county governments especially when making policies that affect county governments;
- vii. Adopt transformative justice;
- viii. Establish framework to guide intergovernmental fiscal transfers and allocation of resources between the two levels of government;
- ix. Provide for support to county governments to enable them perform their functions effectively;
- x. In collaboration with the Senate develop policy on devolution and a legal framework on collaboration and cooperation between the Senate and the county governments;
- xi. Engrain public participation in decision making at the executive level;

B. The Legislature to:

- i. Play its oversight role as mandated by the people of Kenya and in the Constitution;
- ii. Adopt legislation to prescribe the parameters of effective public participation especially on matters pertaining county governments;
- iii. Involve county governments especially when making legislations that them;
- iv. In consultation with the Council of Governors develop a legal framework to guide formation and operation of regional economic blocs;



- v. Engrain public participation in decision making at the national assembly.

C. The County Governments to:

- i. Decentralise the county government functions to the smallest units at the county level;
- ii. Ensure sustainable exploitation utilisation, management and conservation of the environment and natural resources and ensure equitable sharing of accruing benefits;
- iii. Develop and adopt new models of accountability at the county level;
- iv. Seal the gaps that provide opportunities for misappropriation and misuse of funds;
- v. In consultation with the senate develop a legal framework to guide formation and operation of regional economic blocs;
- vi. Engrain public participation in decision making at the county levels.

D. The Senate to:

- i. Work closely with the commission on revenue authority.
- ii. Be proactive especially on policy making.
- iii. Push for a decentralisation policy to bring an understanding of mind between the national and County governments.
- iv. In collaboration with the Executive develop policy on devolution and a legal framework on collaboration and cooperation between the Senate and the county governments.

E. Civil Society Organisations to:

- i. Engage the public and different stakeholders on devolution 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 on 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



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Chairman
ICJ Kenya