

COMMUNIQUE ON LAND AND ENVIRONMENT UNDER THE CONSTITUTION OF KENYA: *QUESTION ANSWERED?*

HELD ON TUESDAY 11 AUGUST 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 weekly webinars facilitate public deliberations on various chapters of the Constitution and evaluate achievements and challenges faced during the 10 years since the promulgation of the Constitution 2010;
3. The fifth in the series of the joint webinars was held on 11 August 2020 under the theme, ‘*Land and Environment under the Constitution of Kenya: Question Answered?*’ to discuss the problems in land and environment in Kenya and seek practical solutions to one of the most emotive and contested issue in Kenya’s legal and political history;
4. During the webinar, the panellists and participants who were drawn from all sectors including the academia, civil society, the legal fraternity and members of the public, participated in the discussions and contributed through the ICJ Kenya and Strathmore University social media platforms and online streaming services.
5. **The panellists and participants acknowledged and noted:**
 - a) THAT land is an important factor in the social-economic and political development of the country, yet it remains the most unequally distributed resource amongst Kenyans;
 - b) THAT the inequities engulfing the management and distribution of land in Kenya continue to pose a significant challenge towards the realisation of sustainable growth and development especially for minority and marginalised groups;
 - c) THAT since independence, the management and distribution of land in Kenya has been subject to several legal and policy reforms that were propagated by both colonial and post-colonial regimes which sought to dispossess Kenyans of their land and serve personal and political interests rather than address historical land injustices and existing inequalities in distribution;
 - d) THAT law and policy reforms on land and environment have been slowed down due to political undertones and approaches that have riddled the process;
 - e) THAT reports by commissions of inquiry and investigations on issues of land in Kenya, which acknowledged that indigenous marginalised and minority communities, especially at the Coast and the Rift Valley, have suffered the most and longest, are yet to be implemented by successive governments;
 - f) THAT the perpetual land injustices and inequitable exploitation of resources have had a direct detrimental effect on the environment and further posed a great threat to indigenous communities inhabiting affected areas. As a result, land and environmental rights remain the epicentre of ethnic conflicts which perpetually plague the country;

- g) THAT despite the existence of a progressive constitution which contains robust and elaborate frameworks on environment, land and natural resource management, coupled with various policies and legislations, land contentions and violations on environmental rights continue to persist;
- h) THAT even as the 2010 Constitution placed Kenya as a pioneer in the inclusion of the right to a clean and healthy environment within its Constitution as stipulated in Article 42, Kenya faces immense challenges in the implementation of environmental rights including lack of political will and the broader global warming threat;
- i) THAT while the existing normative and institutional frameworks embrace the principles, ideals and spirit of equity and equality, there is need to integrate other non-legal strategies to ensure meaningful realisation to the letter and intention of the constitution concerning the protection of land and environment in Kenya.

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

A. Parliament to:

- i. Implement the recommendations of relevant reports by Commissions of inquiry and investigation on land issues aimed at addressing historical land injustices including the Truth, Justice and Reconciliation Commission (TJRC), the Commission of Inquiry into Land Law systems (Njonjo Land Commission Report), Commission of Inquiry into the Illegal/Irregular Allocation of Public Land (Ndung'u report), and the Commission of Inquiry on Post-Election Violence report (Waki Report), amongst others;
- ii. Fast track the enactment of pending legislation before the National Assembly aimed and enhancing environment, land and natural resource management;
- iii. Promote public participation in the formulation of laws and policies on environment, land and natural resource management.

B. The National Land Commission to:

- i. Effectively respond and discharge its mandate in a transparent and accountable manner;
- ii. Promote inclusive land governance intended to ensure effective and consistent public involvement and participation in land reform processes;
- iii. Ensure that land distribution and management initiatives prioritise the needs of the minority and marginalised groups;
- iv. Harmonise the existing legislations guiding the administration and management of land in Kenya to ensure consistency in implementation and fair application;
- v. Undertake a comprehensive audit of the resettlement programmes that have already been implemented since independence to establish the extent to which they benefited the landless;
- vi. In consultation with local communities, civil society, the religious sector and local leaders, the commission should embark on an inclusive, comprehensive, consultative and realistic process of redressing historical injustices.

C. The Judiciary to:

- i. Ensure timely delivery in the administration of justice in environmental and land-related matters;
- ii. Increase demand for budgetary allocation to meet public demand and human resources needs including the appointment of judges to arbitrate on land and environment matters;



- iii. Strengthen the Environmental and Land Court to ensure public trust and confidence in the judicial process in adjudication on matters relating to land and the environment.

D. The National, County Governments and related agencies to:

- i. Ensure that justice, access to information and public participation is prioritised especially in the implementation of large-scale development projects currently being undertaken on land which have the potential to negatively affect the land and environment;
- ii. Strengthen institutions provided in the Constitution of Kenya, 2010 to protect land rights and rights to a clean and healthy environment;
- iii. Undertake restitution, resettlement and redistribution of land as well as protection of the environment in Kenya in line with the spirit and ideals of the Constitution of Kenya, 2010.

E. Legal practitioners including law students to:

- i. To consider the wider socio-economic and political context and history of environmental law, policies and administration to have a holistic and multi-faceted approach in addressing conflicts related to land and environment.

F. Civil Society actors to:

- i. Increase vigilance in monitoring the distribution and allocation of land in Kenya;
- ii. Advocate for effective involvement of the public in the administration and management of land in Kenya;
- iii. Increase public awareness and sensitisation of land rights and rights to clean and healthy environments;
- iv. Sustain advocacy on land reforms in Kenya to ensure equitable access and distribution of land in Kenya.

G. The general public:

- i. Communities in affected areas to self-organise, mobilise and develop ideas and pragmatic steps towards monitoring violations as well as demand for accountability for violations on land and environmental rights.

H. ICJ Kenya commits and undertakes to:

- i. Continue to advocate for restitution, resettlement and redistribution of land in Kenya in line with the spirit and ideals of Article 60 of the Constitution of Kenya, 2010;
- ii. Interrogate and promote policy and legislative reforms on land and environment in line with constitutional imperatives and regional frameworks;
- iii. Promote and protect the land ownership rights of minority and marginalised groups.

Signed



Kelvin Mogeni
Chairman
ICJ Kenya