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# KatibaNews

## The birth of a new Republic


# IEBC election date

## The raging debate

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# ABOUT THE MEDIA DEVELOPMENT ASSOCIATION

The Media Development Association (MDA) is an alumnus of graduates of University of Nairobi's School of Journalism. It was formed in 1994 to provide journalists with a forum for exchanging ideas on how best to safeguard the integrity of their profession and to facilitate the training of media practitioners who play an increasingly crucial role in shaping the destiny of the country.

The MDA is dedicated to helping communicators come to terms with the issues that affect their profession and to respond to them as a group. The members believe in their ability to positively influence the conduct and thinking of their colleagues.

The MDA aims at:

- Bringing together journalists to entrench friendship and increase professional cohesion;
- Providing a forum through which journalists can discuss the problems they face in their world and find ways of solving them;
- Organising exhibitions in journalism-related areas such as photography;
- Organising seminars, workshops, lectures and other activities to discuss development issues and their link to journalism;
- Carrying out research on issues relevant to journalism;
- Organizing tours and excursions in and outside Kenya to widen journalists' knowledge of their operating environment;
- Publishing magazines for journalists, and any other publications that are relevant to the promotion of quality journalism;
- Encouraging and assist members to join journalists' associations locally and internationally;
- Creating a forum through which visiting journalists from other countries can interact with their Kenyan counterparts;
- Helping to promote journalism in rural areas particularly through the training of rural-based correspondents;
- Advancing the training of journalists in specialised areas of communication;
- Create a resource centre for use by journalists;
- Reinforcing the values of peace, democracy and freedom in society through the press;
- Upholding the ideals of a free press.

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- Advocacy and lobbying;
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- Initiating the setting up of a Media Centre which will host research and recreation facilities;
- Working for the development of a news network;
- Providing incentives in terms of awards to outstanding journalists and journalism students;
- Inviting renowned journalists and other speakers to Kenya;
- Networking and liking up with other journalists' organisations locally and abroad.

This newsletter is meant to:
1 Give critical analysis of democracy and governance issues in Kenya.

2 Inform and educate readers on the ongoing Constitution Review Process.

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# IEBC election date
# The raging debate

The promulgation of a new Constitution in August 2010 was a paradigm shift in the electoral process. Previously, the President could dissolve the National Assembly at any time thereby precipitating a General Election to be held. The terms of Parliament and the Executive were co-terminus since the Cabinet was drawn from MPs. This scenario was altered in the new Constitution.

By Macharia Nderitu

There were different interpretations on when the first lawful election could be held under the Constitution. This led to the filing of several suits in the High Court and the Supreme Court of Kenya seeking the court's guidance on the date of the first election under the new Constitution.

The suit in the Supreme Court was filed by the Independent Electoral and Boundaries Commission seeking an advisory opinion on when the first election would be held. In light of this application, the High Court stayed the other suits relating to the election date pending the hearing and determination of the suit before the Supreme Court.

The Supreme Court decided that although it has jurisdiction to issue the advisory opinion as requested, it noted that since it was a court of last resort, it was appropriate that the High Court should be granted the first opportunity to determine the dispute. The Supreme Court referred all the cases relating to the first election under the Constitution to the High Court for directions and hearing.

The High Court directed that Petition Numbers 65, 123 and 185 of 2011 would be heard together. The court noted that elections were an important milestone in the implementation of the Constitution since they provided a chance for renewal and change and an opportunity to test the capacity of Kenyans to embrace change. The court noted that political leadership elected under the Constitution will have to conform to the values and principles enshrined therein.

IEBC chairman Isaack Hassan and former Justice and constitutional affairs Minister hon. Mutula kilonzo (now Minister for Education) during the launch of the IEBC report in Nairobi.

## Referendum

The issues for determination identified by the Court included when the next elections should be lawfully held; whether an amendment to the Constitution affecting the term of the President can be proposed, enacted or effected into law without a referendum being held; whether the unexpired term of existing MPs includes terms and conditions of service; whether the President has power to dissolve Parliament under the Constitution; whether the court has jurisdiction to hear and determine the matter; and which body has the responsibility to fix the election date.

An interested party, Yash Pal Ghai, submitted that the court had no jurisdiction to determine abstract questions regarding the Constitution where there was no dispute between two or more discernible parties. He stated that no date for the next elections had been announced and therefore there was no dispute about an actual or proposed election date. He submitted that the Transitional Clauses were part and parcel of the Constitution and that the President had no power to dissolve the National Assembly under the Constitution.

Further, he stated that dissolution of the Grand Coalition Government under the National Accord and Reconciliation Act would not precipitate the holding of a general election. The dissolution would not affect the term of Parliament, which was separate from the Executive under the new Constitution.

## Petitioners

Prof Ghai and a petitioner, Hon John Haroun Mwau, submitted that a lawful election could only be held within 60 days after the expiry of the term of Parliament. The term of Parliament would terminate on January 14, 2013 and the elections could thus be held on or before March 15, 2013.

The Attorney General argued that having regard to traditions and practices of elections in Kenya, the election should be held on a date in December 2012. It was argued on behalf of Milton Imanyara and two other petitioners that the court should determine that the election date was clearly fixed in the Constitution as the second Tuesday of August in every fifth year. It was upon the IEBC to ensure that it was ready to conduct the election in August 2012. Parliament would stand automatically dissolved 60 days before the said date of elections.

**he Supreme Court decided that although it has jurisdiction to issue the advisory opinion as requested, it noted that since it was a court of last resort, it was appropriate that the High Court should be granted the first opportunity to determine the dispute. The Supreme Court referred all the cases relating to the first election under the Constitution to the High Court for directions and hearing.**

The court held that the dispute related to the date when the first lawful election should be held under the Constitution. Indeed, the Supreme Court, in referring the matter to the High Court, had determined that the High Court had jurisdiction to determine the matter. The proper role of the court was to interpret the articles in the Constitution and the Schedules relating to the date of the first election under the Constitution in a manner that sustained and upheld the Constitution.

The former constitution provided that Parliament shall unless sooner dissolved continue for five years from the date when the National Assembly first met after dissolution and shall then stand dissolved. This provision of the former constitution was not preserved in the Constitution. The President was deprived the power to dissolve the National Assembly at will.

The objective of the Constitution is to promote rule of law and create certainty in the affairs of the State.

The court declined to use precedent and tradition to guide the fixing of an election date. Such an approach would result in re-introduction of the culture of using the election date as a secret weapon. Section 8 of the National Accord and Reconciliation Act provides that the Act shall cease to apply upon dissolution of the 10th Parliament, if the Coalition is dissolved, or a new Constitution is enacted, whichever is earlier.

## Conclusion

The Act is saved under section 12 of the 6th Schedule of the Constitution, but nothing in the Act triggers conduct of the General Election upon the dissolution of the Grand Coalition. The court noted that section 9(2) of the 6th Schedule alluded to the possibility of a general election being held before 2012. This implies that the dissolution of the Grand Coalition by the Principals would lead to the holding of a general election.

In conclusion, the court held as follows:

a) The constitutional body charged with the responsibility of fixing the date of the first elections under the Constitution was the Independent Elections and Boundaries Commission.

b) The first General Election under the Constitution could be lawfully held as follows:-

i. Within 60 days from the end of the term of the 10th Parliament, that is to say from 15th January 2013. The elections could therefore be lawfully held at any time before 15th March 2013.

ii. In 2012, within 60 days from the date of dissolution of the Grand Coalition Government by the President and the Prime Minister in writing.

## Critique

The High Court has been criticised for failing to set a definite date for the election. The Constitution clearly vests the duty of organising and managing elections on IEBC and the High Court has no role in setting a definite date of the election. The determination that the term of the 10th Parliament will terminate on 14th January 2013 has been criticised as unlawful extension of the term. However, no mechanism for dissolution of Parliament was retained in the Constitution by the Committee of Experts. The term of Parliament can only terminate through effusion of time.

The Court recognised that the 6th Schedule to the Constitution recognised the possibility of holding elections in 2012 and stated that it would be lawful for the President and the Prime Minister, as the Principals in the Grand Coalition to dissolve it in writing and precipitate an election. The President has stated that the election will be held at a time that conforms to the judgement of the court while the Prime Minister has spoken in favour of a December 2012 election date.

Attorney General Githu Muigai.

IEBC wrote to the Principals requesting that they indicate the date when they proposed to dissolve the coalition. The said request was ignored by the Principals. The IEBC thereafter set March 4, 2013 as the date for the next elections.

In retrospect, it may be impossible to organise an election for the second Tuesday of August 2012. The IEBC has finalised the delimitation of constituency boundaries. The challenges to the proposed boundaries are being heard by the High Court. The IEBC will thereafter conduct voter registration and education. IEBC is procuring electoral materials. With only four months to the August date, IEBC may not be ready to conduct an election, which is radically different from previous elections, as each voter will vote for six different candidates.

Most political parties have not complied with the Political Parties Act, 2011. Only four out of 47 political parties have been fully registered with the deadline looming in April this year. About 15 others have applied for full registration, which is yet to be approved. Many Kenyans have not been issued with Identity Cards that will facilitate registration of voters.

The December 2012 election date proposed by the AG and the Prime Minister has no legal backing. If the Constitution intended that the first election should be held in December 2012, this should have been expressly provided for in the Transition Clauses. The August and December 2012 dates would not have been possible without solving the question of dissolving the National Assembly, whose term was preserved in the 6th Schedule.

## Options

Any alteration of the election date would require an amendment to the Constitution. The Cabinet had authorised the publication of a Constitutional Amendment Bill that proposed that the date of election should be the third Monday of December every fifth year. The Bill was published before the court delivered the judgement. However, the Bill received limited support with the Parliamentary Committee on Implementation of the Constitution cautioning against amending the Constitution at this very early stage. Some MPs vowed to oppose the Bill if it was tabled for debate in Parliament. It was unlikely that the Bill would garner the required majority of 2/3 of MPs in the House.

The Government did not build the political consensus required to facilitate enactment. The views of MPs were partly driven by the need for self-preservation with most MPs favouring an elongated term in Parliament. The Grand Coalition did not fully support the Bill due to its internal wrangling. The mistrust has escalated due to the ICC trials against four Kenyan suspects.

The Constitution anticipates the possibility of holding the General Election in 2012 in the 6th Schedule of the Constitution. This was the basis of the court finding that the dissolution of the Grand Coalition would precipitate an election. However, without consensus between the two Principals, it is unlikely that they would agree on a date of dissolving the Coalition.

With the announcement by IEBC of an election date and the wrangling in the Grand Coalition, the only possibility to change the election date is through an amendment to the Constitution. The amendment is unlikely to attract the support of 2/3 MPs required to enact it. The public is not keen to support piecemeal amendments to the Constitution before its full implementation.

## Calendar

The Grand Coalition is the Executive arm of the Government. Members of the Executive, including the President and the Prime Minister, are part of Parliament. The new Constitution completely separates the Executive from Parliament. However, in the period before the first election, the term of Parliament was preserved. Under the former constitution, the President could dissolve Parliament at any time leading to the holding of elections.

This provision was not retained in the Constitution. This means that Parliament has power to set its calendar without interference from the Executive. Indeed, the term of Parliament will in future terminate on the date of the election, which has been fixed in the Constitution. The 10th Parliament first sat on January 14, 2008 after the 2007 elections. Its term of five years expires on January 14, 2013.

The 6th Schedule to the Constitution anticipates that the first elections can be held in 2012. The court determined that the dissolution of the Grand Coalition established under the National Accord and Reconciliation Act by the President and the Prime Minister would occasion the dissolution of Parliament and precipitate a general election. Since the term of Parliament and the Executive are not co-terminus, the dissolution of the Executive will not lead to dissolution of Parliament. Sitting MPs will demand compensation for the reduced term. It is, therefore, anticipated that the 10th Parliament will serve its full term and the elections will be held on March 4, 2013, resulting in reduction of the term of the 11th Parliament. KN

Most political parties have not complied with the Political Parties Act, 2011. Only four out of 47 political parties have been fully registered with the deadline looming in April this year. About 15 others have applied for full registration, which is yet to be approved. Many Kenyans have not been issued with Identity Cards that will facilitate registration of voters.

# Real impact of ICC ruling on forthcoming elections

By Ivy Wasike

The ICC ruling delivered by Her Ladyship Justice Ekaterina Trendafilova on January 23, 2012 was received with mixed feelings and signals both in the political arena and the country as a whole. Rumours had been rife before the ruling was delivered that the court had a difficult task as acquitting either William Ruto or Uhuru Kenyatta who had already declared their interests to vie for presidency in the next general election would be suicidal for the country.

Thus, the BBC predicted that the destiny of the two was intertwined. If one was to be acquitted, both would be and if one was to be charged, both would be. Out of the "Ocampo Six" the destiny of the two lay in each other and indeed on that 23rd day of January, it came to pass that Hussein Ali and Henry Kosgey were acquitted and Uhuru, Ruto, Sang and Muthaura's charges confirmed.

The four were confirmed on a majority decision. Anxiety heightened as it generally seems The Hague Court has the power to determine Kenya's destiny although that is not the case at all. It is worth noting that as early as 2010 when Prosecutor Luis Moreno-Ocampo visited Kenya on December 17, Kenyan politicians were warned not to interfere with witnesses. It was clear that the politicians were meddling with the International Court's process.

## Ocampo Four

The General Electionwill be held early next year, which will be quite decisive elections like the 2002 elections as President Kibaki will be retiring and they will be the first elections under the new Constitution. Many aspirants have shown their quest to run for the presidency, but this article is interested in Uhuru, Ruto and Prime Minister Raila Odinga.

Immediately the ruling was read, the now "Ocampo Four" held press conferences. In the political arena, the key people also had their comments. The President ordered the Attorney General to form a legal committee to draft the Government's response. The Vice President expressed solidarity with the four whereas the Prime Minister stated that the accused were innocent until proven guilty and further added that he hoped justice would prevail. His words carried much ambiguity as he also

Judge Ekaterina Trendafilova.

clearly showed that he did not "sympathise" with the four.

All the accused indicated that they would lodge an Appeal against the ruling, which they did but unfortunately Justice Trendafilova and Justice Tarfusser dismissed the application. Despite this members of the Gema communities who met on March 23, 2012 under the umbrella of Gema Cultural Association indicated amongst other declarations that they would collect over two million signatures to support the appeal and if need be they would appeal to the UN General Assembly. Their proposed appeal lies in having the ICC slate the hearings after the general election.

Immediately thereafter, the Kamatusa group (Kalenjin, Maasai, Turkana and Samburu) leaders met in Eldoret and also pledged amongst other things to collect more thanthreemillion signatures to petition for Ruto. However sevenMPs allied to Raila did not attend this forum in Eldoret.

## Political destiny

These political reactions clearly show that the politicians are also of the opinion that the ruling will determine Kenya's political destiny. They are thinking of the impact this had on their political careers too, which has clearly determined the show of solidarity or the aloofness. The rejection of the application to appeal on the chamber's decision brought closer the looming reality to the politicians that the chances of Ruto and Uhuru standing for presidency hang on a balance and thus there has to be a plan B, which would entail political re-alignments. Thus the show of solidarity is carefully planned too.

Scenarios have already started unfolding and will continue to as long as the ICC case moves a step further. Since the confirmation of the Ocampo four, the political prospects of Uhuru and Ruto seem to have tightened and Raila's weakened. However, members of both the Kalenjin and Kikuyu tribes have also split with some showing their solidarity with Raila.

Technically Ruto is still part of ODM though he is in the G7 Alliance. In the Kikuyu community there are those politicians calling themselves "the Kikuyu elite" who have declared their solidarity with Raila and have rubbished the GCA forum held in Limuru. The forum made several declarations notably, the re-settlement of IDPs, presumption of innocence of the accused until proven guilty, indicated that a threat to peace was looming if Kenyans were not guaranteed an all inclusive election and in coming up with a political vehicle they intended to convene a National Coalition to protect the interests of their community and safeguard the future of the nation.

## Aggrieved

These declarations amongst others had many silent connotations. It was not indicated what "an all inclusive election" meant and neither what "protection of the community's interests" would entail. An analysis of the declarations shows that the community was set to ensure that by whichever means its preferred candidate, that is Uhuru, pursued the presidential bid and would be deeply aggrieved if he was barred.

The Kikuyu elite's reaction stating that the meeting was archaic, anachronistic and divisive and their support for Raila can be translated to mean that the said elites seem to be analysing the ICC issue very keenly. Even before the ruling, the said elites had already started leaning towards Raila — including those who earlier on never saw eye to eye with him. These elites have massive wealth and control the economy one way or the other.

These Kikuyu elites seem to appreciate the fact that in the event Ruto and Uhuru are barred from vying for presidency, there will be much political re-alignment.Currently, the political landscape is being held in abeyance due to the constitutional ambiguity on whether the two aspirants can vie for presidency.

The Leadership and Integrity Bill (2012) has been designed to fill in the ambiguities of Chapter 6 of the Constitution. If the Bill is passed as it is, it can disqualify Ruto and Uhuru as Section 12 states inter alia that a person who has been adversely mentioned in an inquiry report adopted by Parliament shall not qualify for appointment or election to a state office.

## Seasoned

This is irrespective of whether the matter he/she is mentioned in has or has not been resolved. Therefore even though the ICC question may not have been resolved, the two aspirants may be locked out. If they are, chances of coalitions being formed between Ruto and Uhuru's supporters in order to lock out Raila are very high. This can be a great challenge to Raila, but a plus to Vice President Kalonzo Musyoka and George Saitoti who has been watching behind the scenes. These two are more seasoned in politics than Raphael Tuju and Eugene Wamalwa, also presidential aspirants.

Political annointing? Deputy Prime Minister Hon. Uhuru Kenyatta (left) and Elforet North MP Hon. William Ruto during a prayer session.

However the Kikuyu elites seem to be viewing Tuju, Wamalwa and Musyoka. With massive wealth stashed away, these politicians would prefer endorsing a candidate they "seem to know and who is more seasoned" and Raila is the best option as they seem to be ready to deal with the devil they know than the angel they do not in Wamalwa and Tuju. Musyoka is generally not trusted in the political arena, as he is perceived to be an opportunist.

The new cabinet appointments also seem to shed some light on the political re-alignment that is taking place. Uhuru relinquished his cabinet post but is still a member of the cabinet by virtue of his Deputy Prime Minister office. Wamalwa, an 'Ocampo four' sympathiser and compromise candidate for G7 was appointed to hold the docket of Minister for Justice and Constitutional Affairs in the wake of the Leadership and Integrity Bill.

This also makes him the second senior most Member of Parliament in Western Province after Musalia Mudavadi.He is to check Mudavadi, the key opponent to Raila in ODM. Mutula Kilonzo, who publicly showed no sympathy to the Ocampo four, was transferred to the Ministry of Education just after steering the publication of the Integrity and Leadership Bill. Njeru Githae who leans towards Uhuru was confirmed as the Finance Minister. Moses Wetangula, who leans towards Mudavadi, was demoted to Ministry of Trade. These cabinet positions already show the realignment taking place in both ODM and PNU as a result of the ICC ruling.

## Demoted

Further, in the event Uhuru and Ruto or either one of them wins, they will emerge triumphant and may get massive public following. If they do not, then the same will mean the death knell to their political career. Uhuru has already shown his hand in the presidential bid following the recent cabinet shuffle that saw the non-sympathisers being demoted.

But the prospects for the two major presidential hopefuls seem to be growing dim as the ICC is also set at winning public credibility and already it has been applauded for the progress it is making. It will, therefore, strive to do something as it has been accused of doing nothing since 2002.

Despite all these, one thing is sure — Ruto's and Uhuru's destiny is now intertwined and whether or not they are barred, they seem to have a common enemy and whatevervehicles they will declare by April 30, their destination is to ensure one of them wins the presidency and if not, a person of their choice does so. KN

# Devolution as a contentious issue

On August 2010, Kenya joined the ranks of the few nations in the world to have changed its constitution in times of peace. The constitution sought to resolve corruption, ethnic conflicts, insecurity, political uncertainty and poverty among other ills that had plagued the country. Devolution of power, a central pillar in the new Constitution, was envisaged to decentralise power and resources with the aim to achieve proper social and economic development for regions that were hitherto underdeveloped and marginalised.

By Albert Irungu

Before devolution of power became a reality, majimbo also known as regionalism was relentlessly proposed as the solution to the poor state of governance Kenya faced. Majimbo was an idea conceived by colonialists just before independence. Majimbo was meant to divide the country into ethnic blocks and for the settlers to acquire a jimboor region for themselves. The colonialists' idea was to isolate themselves from Kenya's independent state.

Devolution of power is different from majimbo in that it is not about dividing the country into regional ethnic blocs, rather it is breaking down the State into 47 counties that will support the decentralisation of power from the traditional power systems and brokers to county governments. These counties will bring development to the grassroots and involve citizens' participation in government.

Since the day Kenya became an independent state, she has experienced ethnicisation of the state that has seen particular regions develop due to their connection with the Government in power. Some regions have seen their resources mismanaged even where their natural resources make a substantial contribution to the country's income.

The coastal region, for example, attracts huge income to the country due to its tourism industry, but it remains one of the poorest regions. Its education, health and income levels are deplorable, as little or none of its tourism earnings are re-invested back in the region.

## Headache

As with the constitution-making process, there are people who even after the coming of the new Constitution still feel that a devolved system of government is not the magic bullet to Kenya's social, economic and historical injustices. However, because there is no turning back now that

Chairman of the Commission on Revenue Allocation Mr. Micah Cheserem.

devolution has become a reality, its implementation is promising to become a headache, especially now that the country has shifted to county system.

Devolution, according to its proponents, promises to bring fair and equitable distribution of natural resources, ensure participation of people in their governance at a local level and guarantee transparency and accountability of government.
One of the weakest links in devolution is the absence of clear national oversight on the affairs of the counties.

The Constituency Development Fund (CDF), a previous method of decentralising resources from the national government, has been streamlined by the presence of a strong national oversight body and clear procedures. However, no national mechanism has been established for county resources. Without a strong national oversight in the management of county resources, they many experience the same level of misuse currently faced by the Local Authorities Trust Fund (LATF).

The cost of running these counties also pose a challenge to the about to be implemented devolved structure of governance. In addition, majority of the counties will demand new or specialised human capital not available before. How to build the need capacities will be challenging to many of these counties.

## Ambitious

There is also the fear that counties will inherit the corruption currently experienced in the central government. County governments will have the autonomy to run their own affairs once county elective posts have been filled. It will be important that past inefficiencies and mismanagement that were previously experienced by local authorities are not transferred to the county government.

The Constitution of Kenya creates an ambitious County Government structure that is based on principles of democracy, revenue reliability, gender equity, accountability, and citizen participation. It provides a two-tier system of government (national and county). From the outset, Article 1 (4) of the Kenyan Constitution recognises the fact that the sovereign power of the people is exercised at both the national and the county levels.

In the Fourth Schedule, the Constitution further creates 47 counties as outlined in the First Schedule with delineated functions and responsibilities. Although the county governments will be separate from the national government, with their own responsibilities, counties and the national government will need to work together. So, Article 6 of the Constitution says that the national government and county governments must consult and cooperate with each other.

## Bills on Devolution

The two-tier system of governance will require the passing of many other laws in order to support the full implementation of the devolved system. There are currently five Bills that have been passed into law that cover the devolution of power. They are The Independent Electoral & Boundaries Commission Act, 2011; The Independent Offices (Appointment) Act, 2011; The Supreme Court Act, 2011; The Judicial Service Act, 2011 and The Vetting of Judges and Magistrate Act, 2011.

Out of the six pieces of legislation drafted by the taskforce on devolution and presented to the Ministry of Local Government for further development and enactment by Parliament, only The Urban areas and Cities Act 2011 has been passed.

The other five are Devolved Government Bill, 2011; Transition to County Governments Bill, 2011; Intergovernmental Relations Bill, 2011; Intergovernmental Fiscal Bill, 2011; and the County Governmental Bill, 2011.

## Conflict

The bone of contention between the County Government Bill and the Constitution is the fate of the Provincial Administration and the role of county governments in security matters. Issues related with security and who is in charge of security are some of the conflicting clauses in the Bill.

For example, there is a clause that gives county governor powers to chair national Security Council meetings and enact a sub-clause that establishes an intergovernmental forum chaired by the governor responsible for harmonisation of service rendered in the county.

Articles 262 (the Sixth Schedule) section 17 of the Kenya Constitution 2010 provides that, “within five years after the effective date, the national government shall restructure the system of administration commonly known as the Provincial Administration to accord with and respect the system of devolved government established under this Constitution”.

The Constitution clearly gives the county government the administrative function of restructuring the Provincial Administration. In respect to this clause, Parliament integrates the functions and

Kenya Revenue Authority headquarters in Nairobi.

operations of the Provincial Administration under the domain of the County Government, as envisaged in the County Government Bill.

The different interpretation of this clause by Parliament and the Executive has taken the Bill back to square one, as President Kibaki refused to assent the Bill into law and instead returned it to Parliament.

## Looking ahead

With proper management of resources within their reach, county governments promise success and more rapid and balanced economic and social development. The current centralised structure of governance has led to concentration of economic activities to particular regions, leading to uneven development.

In the devolved structure, having regional and district governments spread throughout the country will provide greater incentives and opportunities for economic and social development outside the traditional urban centres and new centres of growth will emerge with greater opportunities for employment and investments.

In the centralised system, the current discovery of oil in Turkana County, for example, would have benefitted a few individuals while the residents languished in poverty. With their own properly managed county government, the profits from this resource will provide people of Turkana opportunities to improve their collective welfare unlike before.

The current system is one that accords the president with enormous powers and with little accountability to the people. In the past and since Independence, Kenya has experienced negative ethnicity, political patronage as the presidency has been used to settle scores and award loyalty especially to the ethnic communities in favour with the powers that be.

## Vision 2030

The exclusion of many regions and communities from accessing State resources made the presidency a prize objective of politics. With devolution, there will be different political offices providing more citizens' participation in politics. Communities or regions previously sideline will have a say on matters that affect them. It promises to offer a balance of power between the central government and county governments.

Devolution of power has been a success in countries like the United Kingdom where there has been an overall improvement of social and economic welfare of the citizens. United Kingdom transformed into a devolved system of governance 12 years ago and it is reaping the fruits.

Devolution may not solve all the country's problems, but with greater separation of powers, a stronger Parliament, a truly competent and independent Judiciary, independent institutions that are both independent and well resourced, Kenya will make positive steps towards achieving goals it sets like Vision 2030. KN

# Implementing land reforms
# Anticipated pitfalls

By *Katiba News* correspondent

Land was identified as an underlying cause of the political crisis that gripped Kenya after the 2007 General Election. The Kenya National Dialogue and Reconciliation Team, under the chairmanship of HE Kofi Annan, stated that the land question required an urgent solution to ensure future stability of the country.

The need for a solution was emphasised by previous outbursts of ethnic based violence in1992, 1998 and 2002, which were all termed as 'land clashes'. The violence in 2007 was related to land disputes, especially in the Rift Valley Province.

Land was part of the recommended Agenda Four reforms and it was a central aspect of the constitutional review process. In the past, the power to allocate public land was centralised in the President, and his delegate, the Commissioner of Lands. Perceived historical injustices by some communities added the impetus of land reform.

In 2000 and 2003, the Government appointed the Njonjo and Ndung'u Commissions of Inquiry. The Njonjo Commission identified proposals on land law reform, revision and consolidation while the Ndung'u Commission identified illegal and irregular allocations of land since Independence. These reports provided a basis for acceleration of land reforms.

Mr. John Ndung'u, former chairman of the Ndung'u Commission on Illegal and Irregular Allocation of Public Land.

## Land titles

The Ndung'u Commission report recommended the development and adoption of a National Land Policy through a consultative and inclusive process. The policy was adopted by Parliament. Other recommendations included computerisation of land records, vesting of the power to allocate public land on the National Land Commission, harmonisation of land laws, establishment of a Land Titles Tribunal to review all titles to public land, and creation of an inventory of public land.

Kenya's land question can be traced to occupation by colonialists. The Legislative Council enacted the Crown Lands Ordinance in 1902. The Ordinance granted the Crown, and her local representative the Governor, power to allocate land. At the time, Kenyan communities did not have a formalised land tenure system.

The colonial government therefore deemed all land as available for allocation to settlers. This problem escalated with the completion of the Kenya-Uganda Railway. The

colonial government actively encouraged settlers to settle and farm in Kenya. Such settlers were assured allocation of land, especially in the White Highlands.

After Independence, there was no effort by the Government to correct the pre-independence injustices. The problem has never been resolved and has continued to escalate. The squatter problem in the Coast Province resulted from the failure by the Government to ensure that the residents have secure tenure. Most of the land is owned by absentee landlords who do not reside on it or carry out any productive activity.

## Ethnic clashes

The current loud protests by the Mombasa Republican Council are related to the failure to resolve these historical injustices. There have been ethnic clashes in the Rift Valley Province since 1992 primarily related to land use and occupation. The Maasai have in the past protested the 'treaties' of 1904 and 1911, which were signed between the British Government and the Maasai Oloibon, Olonana. The community of the Maasai, not being a sovereign state, was incapable of signing the agreements or treaties of this nature.

Other historical land claims relate to illegal and irregular allocation of public land in violation of the law. Such allocations did not comply with Government's Land Act and other laws, especially in regard to land that had already been allocated for public use, for example for school, hospital, health centres, forests or national parks. Such land was not available for reallocation.

The incoherent land policy will affect the exploitation of natural resources. This may be manifested in the recent discovery of oil in Turkana County. The commercial viability of the oil has not been ascertained.

However, since the Government has not surveyed and registered land in the arid and semi arid areas, there is likely to be a dispute on the ownership of the land where the resource was found. A similar impact will affect the planned infrastructural projects in the north of Kenya, including the Lamu Port-South Sudan Transport Project.

## Violations

A majority of complaints lodged before the Truth Commission relate to land —up to 60 per cent. The Truth Commission has conducted hearings on human rights violations and will identify institutional reforms necessary to assist Kenya complete its transition, among other objectives. Due to its limited mandate and period in which it is expected to complete its hearings, the commission cannot implement long-term reforms. It has endeavoured to work in tandem with other commissions to ensure that the complaints and grievances are resolved.

The commission will forward these complaints to the National Land Commission.

Some of the grievances before the Truth Commission relate to trust land, which was vested in county councils in the former constitution, public land and unregistered community land. The commission is a constitutional one that is structured as an advisory organ. The administrative land reforms will be implemented by the Cabinet Secretary in charge of matters relating to land. The commission must monitor the work of the Cabinet Secretary to ensure land reforms are realised.

TheNational Land Policy has informed the constitutional and legal reforms relating to land.

The Minister for Lands has published three Bills intended to effectuate land reforms contemplated in the Constitution. These Bills are the Land Bill, the National Land Commission Bill and the Land Registration Bill, which are set to be enacted before April 26, 2012.

The Bills have consolidated the laws relating to land by creating a uniform statute on the substantive land law and establishing a uniform land registration system. The Constitution has limited the role of the National Land Commission to an advisory and monitoring role. The only substantial role granted to the commission is allocation of public land. The commission must monitor the Cabinet Secretary in charge of land matters to ensure that the administrative bottlenecks that define land transactions are resolved.

## Misallocation

This will include digitisation of land registers and setting of targets to complete land transactions. The Minister has further proposed a Community Land Bill, which is being drafted. The mischief that the Bills intend to cure include misallocation of public land; mechanism for compulsory acquisition of land; absentee landlord and land hoarding; settlement of squatters, internally displaced persons and refugees; elimination of delays in service delivery; historical land injustices; matrimonial property; indefeasibility of title; access to land by vulnerable groups; and subdivision of land to small and uneconomical units.

The Bill clarifies the functions of the National Land Commission,

which is established in the Constitution. Among its functions include to manage public land on behalf of national and county governments, recommend national land policy to the national government; to advice the national government on a comprehensive programme of land registration; to conduct research related to land, to assess tax on land and premium on immovable property; to alienate public land on behalf of national and county governments; to monitor the registration of all interests and rights in land; and to develop and maintain an effective land information management system at a national and county levels.

The commission shall within five years of commencement of the Act or on its own motion or upon complaint by the county or national government review all grants or dispositions on public land to establish their propriety or legality. A person who appears to have an interest in the grant or disposition shall be served with a notice of review and shall be provided an opportunity to appear before the commission and inspect the relevant documents.

The commission shall hear all the parties and make a determination. If the commission determines that the title was acquired in an unlawful manner, it shall recommend to the registrar the revocation of title and to the national and county governments the payment of compensation to the aggrieved party.

## Legislation

Where the commission determines that the title was irregularly acquired, it shall take the appropriate steps to correct the irregularity and make consequential orders. An order for revocation of title shall not be issued against a *bona fide* purchaser for value without notice of defect in the title. The commission shall recommend to Parliament appropriate legislation for investigating and adjudicating of historical land injustices within two years.

The Bill is intended to revise, rationalise and consolidate the registration of titles to land, and to give effect to the principles and effect of devolved government in land registration. The National Land Commission shall designate areas as registration units. The commission shall be at liberty to vary the limits of such units, which shall be subdivided into registration sections.

Each land registry shall maintain a land register in the form prescribed by the commission, a cadastral map, parcel files containing instruments and documents that support entries in the register, plans, which shall be geo-referenced, a presentation book, which shall record all application numbers consecutively, an index of the proprietors, and a register and file of powers of attorney. Each registration unit shall maintain a community land register.

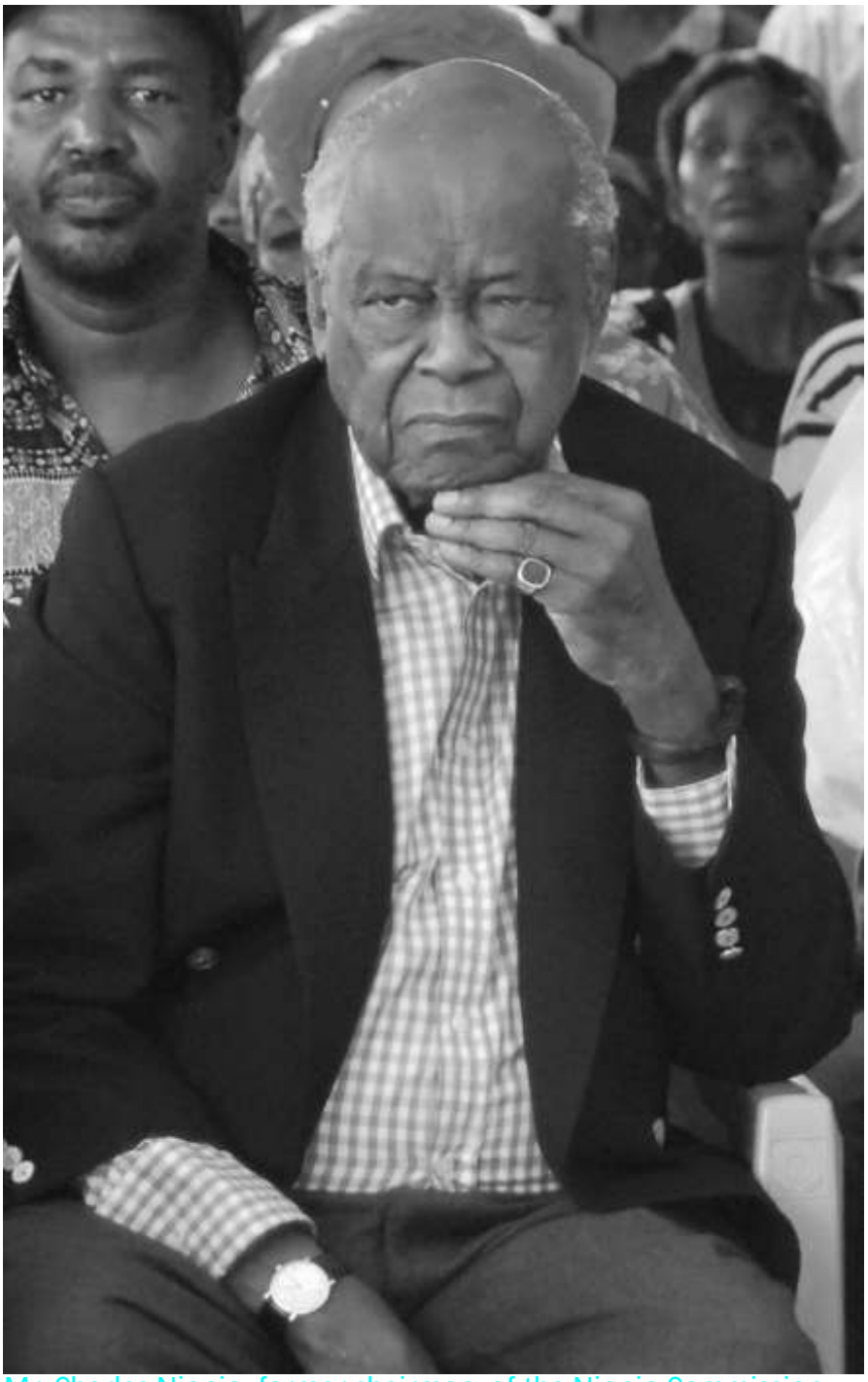
The Registrar shall make the information in the register accessible to the public by electronic or other means. The Bill recognises absolute ownership and leasehold interest in land. The certificate of title shall be *prima facie* evidence of ownership. The title of the proprietor shall not be subject to challenge except on the grounds of fraud or misrepresentation or where title is acquired illegally or unprocedurally or through a corrupt scheme. The Bill provides that spousal rights over matrimonial property shall be an overriding interest that will not require to be noted on the register.

## Co-tenant

The Registrar has the right to rectify an error or omission not materially affecting the interest of any proprietor or with the consent of all parties, or upon resurvey of the land, if the dimensions are found to be incorrect. Any person affected by the decision of the Registrar shall have a right to be heard. Where land is held by two or more persons, each such person, known as a co-tenant shall be entitled to receive a copy of the title to that land.

Where matrimonial property is to be charged, the spouse, who is registered as the owner, shall procure the consent of the other spouse to charge the property. The registers established under the Transfer of Property Act, the Registered Land Act, the

The Ndung'u Commission report recommended the development and adoption of a National Land Policy through a consultative and inclusive process. The policy was adopted by Parliament. Other recommendations included computerisation of land records, vesting of the power to allocate public land on the National Land Commission, harmonisation of land laws, establishment of a Land Titles Tribunal to review all titles to public land, and creation of an inventory of public land.



Mr. Charles Njonjo, former chairman of the Njonjo Commission of Inquiry into the Land Law System of Kenya.

Registration of Titles Act or the Land Titles Act shall be deemed to be a land register established under the Bill.

The documents issued to the proprietors of various interests of land shall be deemed valid under the Bill. The commission shall hold public land in trust for national and county governments. The commission shall hold all community and trust land subject to Land

Consolidation Act and Land Adjudication Act. The Bill proposes to repeal the Transfer of Property Act, the Registered Land Act, the Registration of Titles Act or the Land Titles Act.

The Bill gives effect to Article 68 of the Constitution, revises, consolidates and rationalises land laws, provides for sustainable administration and management of land and land based resources. Land shall be categorised as private, public and community land.

The Bill promotes the values of equitable access to land; security of land rights; sustainable and productive management of land resources; transparent and cost effective administration of land; conservation and protection of ecologically sensitive areas; elimination of gender discrimination in law, customs and practices;and participation, accountability and democratic decision making and alternative dispute resolution.

## Land adjudication

The forms of land tenure shall be freehold, leasehold, co-tenancy, partial interests and customary land rights. The Cabinet Secretary responsible for matters relating to land shall develop policies on land on recommendation of the commission, coordinate country physical planning, facilitate implementation of the national land policy, set standards in service in land sector, and regulate service providers and professionals.

Title to land may be acquired through allocation, land adjudication, compulsory acquisition, prescription, settlement programmes, transmission, transfers and long-term leases. The commission shall establish a database for all public land, which shall be geo-referenced and authenticated. Allocation of public land by the commission shall be through public auction, drawing of lots, tenders, request for proposals and exchanges of equal value.

The commission may issue licences for use of public land. It shall prepare an annual report and

identify and evaluate the allocation of public land and grant and user agreements made by the commission. The commission shall manage community land. A contract for sale of land shall be in writing and witnessed by a person who was present when the parties signed the agreement. A transfer of land shall take effect immediately. Any sale of matrimonial property without the consent of the other spouse shall be voidable at the instance of the spouse who was not notified of the sale.

Where consent required of the Lessor by the Lessee, such consent shall not be withheld unreasonably. The power of a Lessor to determine a Lease by re-entry of forfeiture shall cease to apply. The remedies of a Lessor shall include termination of a lease for failure to pay rent and application to court for an order of possession of land and buildings comprised in the lease. The Lessor may issue a notice for termination of lease indicating the amount due, the period in which the breach should be remedied, and consequences of failure to remedy the breach.

## Memorandum

A lessee who is unlawfully evicted shall not be obligated to pay rent. A charger shall be required to issue a notice to the chargee on increase or reduction of interest on the amount due under the charge. The period of the charge may be altered through a memorandum to the charge signed by both parties. In the event of a default, the chargee shall issue the charger a notice to pay the amount due indicating the nature of default, the outstanding amount, the consequence of failure to remedy and the right of the charger to apply for relief.

The notice by a charger to exercise his power of sale shall be served on the commission, proprietor of the land upon which the Lease subject to the charge has been granted, the spouse of the charger, subtenants of the charger, co-owner of the charger and guarantor of the debt. The chargee shall owe the charger a duty of care to ensure that where a sale is undertaken, the sale should not be 25 per cent or below the market value.

A fraudulent sale by a chargee may be declared void by the court. The chargee may subdivide property, sell by private treaty or sell by private auction, with the price being paid in full or in instalments. Any sale by public auction shall be advertised. The chargee may purchase the property with the leave of the court.

The Cabinet Secretary, on behalf of the national government, or a County Executive Member, on behalf of the county government, may submit a request to compulsorily acquire a property to the commission. The commission shall have power to inspect the land and assess suitability and compensate the owner in the event of any loss resulting from such entry. The commission shall pay full and just compensation to any person interested in the land before the national or county government takes possession. The commission may grant a person land in lieu of a monetary award. It shall conduct an inquiry on the applicable compensation.

## Disputes

The Bill makes provision for easements, rights of way, cancellation of easements, public rights of way and communal rights of way. Where a public right of way is created over private land, the proprietor of such land shall be compensated. The court shall have power to enforce a public right of way and right of entry. Any disputes arising from enforcement of the Act shall be determined by the Environment and Land Court.

The Bill creates the Land Compensation Fund, which shall be applied to compensate any person who as a result of implementation of the Act by the national or county government suffers any loss or injury affecting the ownership of land. Where a person occupies public land unlawfully, the commission shall give the occupant a notice to vacate the land.

The commission shall carry out a scientific study to determine the economic viability of maximum and minimum acreages for private land. The report of the study shall be tabled in Parliament. The Cabinet Secretary shall prescribe rules for maximum and minimum acreages based on the report. The commission and the Cabinet Secretary shall make rules for implementation of the Act. The Bill proposes to repeal the Wayleaves Act and the Land Acquisition Act.

The Bills are an effort to resolve the land question in Kenya. They are a commendable effort to simplify and consolidate land law. However, the Bills delegate the resolution of historical injustices and the capping of the maximum and minimum land sizes to Parliament and the National Land Commission. The implementation of the laws will fall upon the Cabinet Secretary and the National Land Commission. This process must be monitored carefully to ensure the public realises the fruits of the new laws. KN

# The forgotten institution

By Guandaru Thuita

Ever since the promulgation of the new Constitution, reforms in the Judiciary have been impressive. It is now headed by a great reformist whose performance is above par. Its infrastructural and human resource capacity has been enhanced and its judicial officers are undergoing vetting in order to instill public confidence.

Unfortunately, judicial reforms have not been seen in any other institution that deals with determination of disputes save for the Judiciary. The Business Premises Tribunal, the Rent Restriction Tribunal, the Cooperative Tribunal and the Industrial Court in particular largely escaped the torpedo of reforms blown by the Constitution.

It is not clear why the Industrial Court and its members were "forgotten" in the ongoing judicial reforms yet they were dysfunctional just like the mainstream courts, if not more. The jurisdiction of this court covers nearly all adults since most are either employees or employers. For that reason its composition should befit the enormous task it has. The current five Judges serving the entire country are obviously overworked, perhaps underpaid, recruited in a non-competitive process and definitely unsuitable to either deliver the country to Vision 2030 or implement the rights of workers under Article 41 of the Constitution.

The darling of workers rights, COTU Secretary General Mr. Francis Atwoli.

Subsequent to an advertisement of 15 positions of Judges of the Industrial Court, the court and the crisis brewing in it came to light. The sitting judges of the court are reported to have gone on a go-slow to protest the impending loss of their jobs. In addition, questions of legitimacy of the court were raised owing to the fact that the Judges have never been sworn in as required of every State Officer under Article 74 of the Constitution.

This negative news on the courts has placed it on the national radar thus justifying an examination of its background, performance, the proposed changes and best practices for such a specialised court.

## Background of the industrial court

In 1965, the newly formed Independent Government was grappling with the growing number of strikes and in an endeavour to forestall their escalation created the Industrial Court under the Trade Dispute Act,

Cap. 234 (Repealed) Laws of Kenya. The mandate of the court under the Act was limited to hearing only disputes referred to it by the Minister for Labour; registration of Collective Bargaining Agreements (CBAs) and the promotion of the spirit of tripartism between Government, employers and employees.

Workers and employers only had access to the court after exhaustion of all mechanisms in the labour office and when a labour officer referred the dispute to the Court. Filing of cases was therefore minimal and for the first three decades after its establishment, it was manned by only one judge, Justice Saeed Cockar.

The first major upheaval occurred in 2007 when Parliament passed five pieces of legislations that related to labour issues and these included the Employment Act 2007, the Labour Institutions Act 2007, The Work Injury Benefits Act, The Labour Relations Act and The Occupational Safety & Health Act, 2007.

The Labour Institutions Act repealed the Trade Disputes Act and re-established the Industrial Court. It widened the court's jurisdiction to handle all employment matters to the exclusion of every other court and it was no longer necessary for a dispute to be referred by the Minister for Labour. In addition, the Act officially put an end to the battle of supremacy between the High Court and the Industrial Court by restating that its awards shall have the same force and effect as a judgement of the High Court.

Further changes were ushered in via Article 162(2) of the Constitution, which directed Parliament to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations and through this provision, The Industrial Court Act, Act no 20 of 2011 was passed.

## Evaluations of the industrial court

It is apparent that the Industrial Court was forgotten in even more ways. Other than scattered statements and commentaries, there seems to be noofficial assessment of this court by the Government, the Law Society of Kenya, the Federation of Kenya Employers, the Central Organisation of Trade Unions (Cotu) or any other recognised body.

The Federation of Kenya Employers (FKE) has been the most forthright in demanding a total overhaul of the Industrial Court system. Itlamented the failure of government to appoint a principal judge, criticised the contradictory decisions of the court over same issues, highlighted confused state of affairs in the court, expressed disappointment in the backlog of cases, blamed the Government for starving the Ministry of Labour of funds to fully operationalise the court, called for the urgent review of the penal powers of the court and decried the permanent bias in favour of employees in the court.

Lawyers raised concern over the calibre of the judges presently sitting at the court, the inherent delays in the proceedings and delivery of awards, the lack of publication of decisions by the courts in law reports thus leading to obscurity in the official position of the court on various points and the failure to expand the court even in light of a flood gate opened up under the new Constitution.

## Vetting & proposed changes

The Constitution of Kenya under Section 23(1) of the 6th Schedule provided for legislation to establish mechanisms and procedures for vetting of the suitability of all judges and magistrates who were in office on the effective date.

The Constitution did not specifically distinguish between judges serving in the Judiciary and those serving at the Industrial Court. However, the Vetting of Judges and Magistrates Act apparently provides for vetting of judges who were serving in the Judiciary only and "forgets" or makes no reference to those in the Industrial Court.

Pundits may, however, say that the judges of the Industrial Court need not be vetted because they were not to be retained in the new dispensation since the proposed Act was wholly replacing the Industrial Court and upon enactment of the Industrial Court Act 2011, new personnel would be appointed through a competitive process that embraces the

Under Section 29 of the Industrial Court Act, the Chief Justice is empowered to designate a judge in a County or a Magistrate as a Judge of the Industrial Court. This will enhance decentralisation of the court from Nairobi to the County level. However, this decentralisation is ripe to challenge as being unconstitutional.

Chapter on Leadership and Integrity. Accordingly, it is clear that no vetting or retention of the sitting Judges will take place. Any sitting judge who desires to continue serving will have to apply afresh.

However, a number of changes are not only proposed but have now been given effect by Legislation. First, at least 15 judges will be appointed to this court up from the present five through a competitive public process undertaken by the Judicial Service Commission.

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The judges and registrars are now directly subject to the supervision of the Chief Justice and the Judicial Service Commission unlike in the past when they were answerable to the Minister for Labour. For the first time the judges of the court shall have security of tenure and the process of their removal will be synonymous with the removal of a judge in the mainstream Judiciary.

Out of the 15 judges, it would be expected that pursuant to Article 232 of the Constitution, at least five of the judges will be women, thus breaking from a past that had no woman judge. Instead of sitting in Nairobi with occasional rotation in the country, the court is expected to have various stations throughout the country though no facilities for this purpose have been noted.

The Court has further been given exclusive original and appellate jurisdiction over all matters relating to employment and labour between employers and employees, employers and a trade unions; employers' organisation and trade unions; disputes between trade unions; disputes between employer organisations; disputes between a trade union and a member thereof; disputes between an employer's organisation or a federation and a member thereof; disputes concerning the registration and election of trade union officials; and disputes relating to the registration and enforcement of collective agreements.

For the first time alternative mechanisms of dispute settlement are encouraged including conciliation, mediation and arbitration and the court is vested with the discretion to direct parties to attempt these alternative mechanisms.

Unlike in the past, judges shall validly hear matters alone without the assistance of members whose input was not clear. However, in


What a crying shame! Doctors on strike in Nairobi.

matters of great national importance, the court may sit in a bench composed of an uneven number of judges.

## Best practices

Globalisation has made its impact in the field of Industrial Relations. With the movement of labour and capital, there are growing numbers of expatriate employees, foreign labour, multinational companies and foreign companies in the country. In an increasingly competitive global environment, disputes between labour and management should be resolved expeditiously and in a harmonious way. The Industrial Court should, therefore, follow the international best practices to resolve disputes between labourers and management.

Labour Courts are found the world over. However, they are more prominent in the fast developing countries especially those in South America and Asia. An analysis of the effectiveness of the courts reveals that the main factors depend on both the Legal Framework and the resources at the disposal of the courts.

The human resource to man the technical aspects of the courts particularly judges must be persons of high integrity and competency. Adequate resources also require to be placed at the disposal of the courts to enable it acquire state of the art facilities including court rooms, library and other work stations, which will simplify the workload.

In addition, many countries have fully embraced ICT and have computerised the court registry and adopted international best practices in records management. ICT is a tool in the modernisation of the court process and enhances transparency. Industrial Courts such as those in Mexico and Brazil have launched the *e Industrial Court that involves creation of modules for* the registration, the case management module, the award, the enforcement, the reports and the forms.
They also have a public portal (website) that enables one to establish the status of a case including requests for postponements, the documents which have been filed, the hearing, the awards handed down and the collective agreements registered.

On the Legal framework, many countries have established a very elaborate area upon which a labour court can exercise its powers. For instance, the Nigerian Law vests the Labour Court with powers to exercise jurisdiction in matters relating to international treaty or protocol ratified by the country relating to employment. The court also has power to appoint a public trustee over trade unions or employer's organisation when there is a dispute as to their composition or their finances. The Kenyan Court lacks these two powers.

An amazing aspect of countries with established labour courts is that they have a hierarchy of specialised courts to deal with labour matters only. In that regard, they have a trial court and a specialised appeals court. For instance, the Brazilian federalised labour courts system has the Superior Labour Courts at the apex, Regional Labour Courts (*Tribunais Regionais do Trabalho - TRT's*) at common appeal level, and the Trial Labour Courts (*Varas do Trabalho*) in the first instance level. In South Africa too, there is the trial court and the Labour Appeals court. However in Kenya, it is only the Industrial Court, which is specialised but an appeal will be handled by a non-specialised court.

In order to reduce the amount of time spent on hearings, the rules and the courts worldwide encourage ascertainment of the issues of fact and issues of law in dispute, use witness statements as part of theexamination-in-chief and the courts are more or less inquisitorial in their approach rather than adversarial.

The International Labour Organisation in its guidelines on settlement of disputes encourages states to adopt alternative disputes mechanisms including conciliation, mediation and arbitration. In fact, it goes to the extent of asking for state funded methods of alternative dispute settlements.

A missing aspect on the Kenyan law, which seems to be a common hallmark in other jurisdiction, is the provision for the appointment of Ad Hoc Judges. Countries like Indonesia provide for the appointment of Ad Hoc Judges to serve for maximum terms of five years. This may be effective in reducing the initial backlog of cases existing.

The legal framework in the Industrial Court Act has embraced most of these best practices. Through it, the number and quality of judges has been enhanced; access to justice has been entrenched and the court fees remain minimal; alternative means of settlement are encouraged and delay has been addressed. With these reforms, it is hoped that the Industrial Court will now enable Kenyan workers and employers to achieve justice in their respective causes. KN

# THE KONRAD ADENAUER FOUNDATION IN KENYA

Konrad-Adenauer-Stiftung is a German political Foundation which was founded in 1955. The Foundation is named after the first Federal Chancellor, Prime Minister and Head of Federal Government of the then West Germany after World War II. Konrad Adenauer set the pace for peace, economic and social welfare and democratic development in Germany.

The ideals that guided its formation are also closely linked to our work in Germany as well as abroad. For 50 years, the Foundation has followed the principles of democracy, rule of law, human rights, sustainable development and social market economy.

In Kenya, the Foundation has been operating since 1974. The Foundation's work in this country is guided by the understanding that democracy and good governance should not only be viewed from a national level, but also the participation of people in political decisions as well as political progress from the grass roots level.

## Our aims

Our main focus is to build and strengthen the institutions that are instrumental in sustaining democracy. This includes:

- Securing of the constitutional state and of free and fair elections;
- Protection of human rights;
- Supporting the development of stable and democratic political parties of the Centre;
- Decentralisation and delegation of power to lower levels;
- Further integration both inside (marginalised regions in the North/North Eastern parts) and outside the country (EAC, NEPAD); and
- Development of an active civil society participating in the political, social and economic development of the country.

## Our programmes

Among other activities we currently support:

- Working with political parties to identify their aims and chart their development so that democratic institutions, including fair political competition and a parliamentary system, are regarded as the cornerstones for the future development in Kenya.
- Dialogue and capacity building for young leaders for the development of the country. Therefore, we organise and arrange workshops and seminars in which we help young leaders to clarify their aims and strategies.
- Reform of local governance and strengthening the activities of residents' associations. These voluntary associations of citizens seek to educate their members on their political rights and of opportunities for participation in local politics. They provide a bridge between the ordinary citizen and local authorities, and monitor the latter's activities with special focus on the utilisation of devolved funds.
- Introduction of civic education to schools and colleges. We train teachers of history and government in civic education. In addition, we participate in the composition of a new curriculum on civic education.

Our principle is: Dialogue and Partnership for Freedom, Democracy and Justice.

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# MEDIA DEVELOPMENT ASSOCIATION

## Media for Change