

## THE CRITICAL ROLE OF THE JUDICIARY IN DEVOLUTION AND TRANSFORMATION

(Nairobi, 16.12.2015) The Judiciary Training Institute, the Council of Governors, the International Development Law Organization (IDLO), and Katiba Institute are proud to announce the launch of two key publications, examining the critical role of the judiciary in the devolution process in Kenya and the ongoing transformation of the country.

The new constitution of 2010 brought in a devolved governance system in Kenya, comprising of a national government and 47 county governments.

Five years into this process, in the first of two new publications, Kenyan legal experts explore the mandate of the judiciary in ensuring that devolution meets its stated objectives, bringing together different perspectives on devolved governance in Kenya in a compilation aimed at consolidating and enriching the emerging jurisprudence. The origin of this book emanated from judicial seminars that brought together scholars and practitioners - including judges from Kenya and other countries that have devolved systems of government, many of whom have contributed chapters to the book.

In the second - the first Law Report on devolution - relevant court decisions have been compiled into a case digest, which will serve as a practical tool for county governments and assist legal practitioners, scholars and others.

The launch of these two critical publications will assist the Kenyan Judiciary, County Governments, legal practitioners, and other key critical stakeholders – including civil society – on how devolution is supposed to work and is working. These publications will richly contribute to the continued development of the country's jurisprudence on the subject. Further, these publications are of great importance to judges and even non-lawyers who are actively delivering on the constitutional promise of devolution.

Speaking ahead of the publications' launch, Enid Muthoni, IDLO's Country Director in Kenya explained that 'the objectives of devolution in Kenya were borne out of the real challenges that ordinary Kenyans face, like underdevelopment, ethnic conflict, and lack of accountability in the use of state power and resources. As conflicts have arisen over aspects of the devolutionary process, we have seen Kenya's judiciary increasingly playing a critical role at the heart of the nation's transformation.'

A number of issues have come to the fore in Kenya during the first five years of devolution. Controversy and conflict, requiring judicial interpretation, have arisen over aspects of the process such as the distribution of functions between the two levels of government, division of revenue, and removal processes of county staff. It is widely expected that more such cases will end up in court, as various parties seek intervention on grey areas related to the interpretation and implementation of devolution.



‘We are seeing an emerging jurisprudence on devolution and related matters,’ says Hon. Justice Joel Ngugi, ‘the courts are setting standards and principles on many aspects of devolution. These will be relied upon now and in the future.’

A view echoed by H.E. Hon. Peter Munya, Chairman of the Council of Governors, ‘there is a need for the development of a common understanding and principles on the adjudication of devolution matters. Obviously, it is neither possible nor desirable to have concurrence by courts on every single issue related to devolution. However, it is important to reflect on the patterns of court decisions and use these as a basis for highlighting emerging relevant jurisprudence.’

The publications will be available digitally following Wednesday’s launch on the organization’s websites.

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## Notes

### **Judiciary Training Institute**

*The Judiciary Training Institute (JTI) is the organ of the Kenyan Judiciary which is responsible for meeting the training, research and capacity development needs of Judiciary staff. JTI performs this mandate in part through various training programs and seminars, public lectures, research, and other forms of discourses targeting all cadres of Judiciary staff, and, where appropriate, members of the academy, other organs of state and the public at large. As the Judiciary’s institute of higher learning, the JTI is leading the Judiciary, in line with Judiciary Transformation Framework, in facilitating the growth of jurisprudence and judicial practice as the lifeblood of the institution. The JTI is the judicial think tank: an institute of global excellence and the nerve centre of rich intellectual exchange. It interfaces between the Judiciary and contemporary developments in society, on the one hand, and learning interaction between the Judiciary and other agencies, on the other. The JTI provides the intellectual anchor in making Kenya’s courts the hearth and home of a robust and functional jurisprudence that meets the aspirations of Kenyans.*

### **Council of Governors**

*The Council of County Governors of Kenya is a non - partisan organization established in accordance with the provision of Section 19 of The Intergovernmental Relations Act. It comprises of the Governors of the forty-seven counties and its main functions are the promotion of visionary leadership; sharing of best practices and; offer a collective voice on policy issues; promote inter – county consultations; encourage and initiate information sharing on the performance of County Governments with regard to the execution of their functions; collective consultation on matters of interest to County Governments. Basically, through the Council, Governors identify priority issues and deal collectively with matters of*

public policy and governance at the County and the National levels. The Council operates under Committees in Thematic Areas which define engagement with The National Government agencies and other stakeholders.

### ***International Development Law Organization***

The International Development Law Organization (IDLO) is the only intergovernmental organization exclusively devoted to promoting the rule of law. IDLO works to enable governments and empower people to reform laws and strengthen institutions to promote peace, justice, sustainable development and economic opportunity. Its programs, research and policy advocacy covers the spectrum of rule of law from peace and institution building to social development and economic recovery in countries emerging from conflict and striving towards democracy.

IDLO has its headquarters in Rome, a Branch Office in The Hague, liaison offices for the United Nations in New York and Geneva, and country offices in Afghanistan, Honduras, Kenya, Kyrgyzstan, Liberia, Mongolia, Somalia, South Sudan and Tajikistan. Since its establishment in 1983, IDLO has worked with over 20,000 legal professionals around the world.

### ***Katiba Institute***

The Katiba Institute was established in 2011 to promote knowledge and studies of constitutionalism and to facilitate the implementation of Kenya's new constitution. Its activities include publications on the Constitution, workshops on constitutional issues, public interest litigation, development of the legal and judicial system, establishment of county governments, land reform, review of legislative bills to implement the Constitution, and promoting the participation of Kenyans in public affairs.