
Members of the University Council,
The Vice-Chancellor, Prof. George Magoha,
Deans of Faculty and Distinguished Faculty Members,
Invited Guests,
Students,
Ladies and Gentlemen,

I am deeply honoured and privileged this afternoon by the invitation this premier institution of higher learning in Kenya - the University of Nairobi, has extended to me. It is indeed a great honour for me, the National Assembly, and Parliament of Kenya.

The topic I am going to speak to, that is, “The role of the National Assembly in the implementation of the Constitution of Kenya, 2010” aptly recognizes the critical role Parliament has been vested with in baby-sitting and creating the necessary frameworks to enable the implementation of the Constitution of
Kenya, 2010. It is equally a befitting topic for a country celebrating her 50th birthday.

Allow me at the outset to say that, constitution making and its implementation it is an enormous challenge that requires the coordination, consensus building, consultations and above political goodwill. It is not the arena for populism and political grandstanding.

Nevertheless, my presence here today reminds me of the nostalgia and memories I had 32 years (1981) as I did my undergraduate studies at the Law School. It is a reawakening to the simple act of acknowledging and appreciating that the University of Nairobi has mentored and shaped many brilliant and distinguished minds that continue to participate, deliberate and share ideas on key issues facing us as a nation. No doubt therefore the formulation of the Constitution of Kenya, 2010 was driven by the local expertise, some of whom are alumni of this great institution.

INTRODUCTION

The promulgation of the Constitution of Kenya, 2010 marked a shift in the trajectory of governance hitherto pursued in Kenya. The new dispensation will continue to shape Kenya’s political, social and developmental landscape for many years to come. Yet one cannot allude to the implementation of the constitution without making reference to the immense role it has vested Parliament with.

Perhaps it would be a good starting point if we take into perspective and understand the long-drawn agitation for constitutional reforms in Kenya. The first and foremost of the amendment which had far-reaching impact on constitutional review process in Kenya was the repeal of section 2(a) of the previous constitution in 1991. This opened the floodgates for political pluralism
and freedom of association and expression in the country which had long been curtailed under Kenya African National Union (KANU) single party era. Until then Kenya was a de-jure one party state.

Until then the twenty seven amendments to the independent constitution had systematically shifted power to an all-powerful executive presidency. The repeal of section 2(a) did not however provide a clear way for comprehensive constitutional reforms. It only expanded the democratic space upon which agitation for constitutional reforms could be pursued without falling victim of the dreaded “detention without trial” incarceration which the KANU regime used to silence dissidents and opponents.

Thereafter, piecemeal amendments to the independent constitution did not wither the push for constitutional reforms in Kenya. While the pre-1991 agitation was driven by individuals, the opposition political parties and civil society organizations took over the platform created by the repeal of section 2(a) to push for even greater constitutional reforms.

The Inter-Parties Parliamentary Group (IPPG) effort to reach a workable compromise through minimum reforms to the colonial Chief’s Act, and joint nominations by political parties to the Electoral Commission also did not dampen the agitation by opposition political parties and Civil Society Organizations (CSO). Indeed, constitutional review became a political campaign tool for both ruling and opposition political parties. In a nutshell, one can argue that “politics of the constitution” took centre stage in political party manifestoes, and this raised public expectations and awareness of the contents of the Constitution.

Contestations against this action were that it was not all-inclusive. This delayed the activities of the CKRC up till the year 2000 when it started its work. KANU’s ambivalence to the review process was such that the 2002 General Elections came when the review process was still on-going.

The light at the end of the tunnel came once the KANU regime was voted out and the National Rainbow Coalition (NARC) government came to power in 2003. The promise by the coalition was a new constitution within the first one hundred days in power. The period was not practical for a new Government and the enormity of the promise began to sink. Besides, this was a coalition of convenience and political ideologies pursued by the key political allies in the coalition were quite divergent. Nevertheless, the common pursuit of constitutional reforms gave birth to draft constitution in 2005. Subsequent subjection to a referendum in 21st November of that year resulted in its rejection.

The post-election violence (PEV) that erupted in the aftermath of the 2007 disputed General Election was the breaking point that eventually compelled the government and major political parties to yield to comprehensive constitutional reforms. The dispute over the presidential elections vote tally led to the deaths of 1333 Kenyans and internal displacement of close to half a million Kenyans mainly in the Rift Valley region. The subsequent National Reconciliation and Peace Accord recommended among other urgent measures, power sharing through formation of a coalition Government, and comprehensive constitutional reforms.

**THE NATIONAL ASSEMBLY**

The first serious attempt to involve Parliament in constitutional review process could be attributed to the IPPG in 1997. Any previous amendments by the National Assembly were a means to rubberstamp executive directives.
I will now shift gears and base my lecture to the specified role the National Assembly has been vested in the implementation of the constitution of Kenya, 2010.

From the onset, the National Assembly was at the core of the current constitution making. The central reference point of the National Assembly engagement was the Parliamentary Select Committee (PSC), which worked closely with the Committee of Experts to come up with the final draft of the proposed Constitution of Kenya. It is this draft which was subjected to the referendum in 2010.

Chapter 8 of the Constitution of Kenya establishes the Kenya Parliament which consists of the National Assembly and the Senate.

Article 95 of the Constitution outlines the role of the National Assembly which include among other roles representing the people of the constituencies and special interests in the National Assembly, and deliberating on and resolving issues of concern to the people.

Article 1(1) and 1(2) of the Constitution of Kenya 2010 states thus;

(1) “All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution”; and

(2) “The people may exercise their sovereign power either directly or through their democratically elected representatives”.

The above gives the basis upon which the representational aspect of the National assembly is anchored.

To achieve the above roles, the constitutional architecture provides for a National Assembly comprising:
(i) Two hundred and ninety members, each elected by the registered voters of single member constituencies;
(ii) Forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;
(iii) Twelve members nominated by parliamentary political parties according to their proportion of members of National Assembly, to represent special interests including the youth, persons with disabilities and workers;
(iv) The Speaker, who is an ex officio member.

IMPLEMENTATION OF THE CONSTITUTION OF KENYA, 2010

The Sixth Schedule of the Constitution brought the entire Constitution of Kenya, 2010 into force with immediate effect upon promulgation. Exception to this was section 2 of that Schedule.

The Sixth Schedule further established two crucial implementation organs, that is, the Commission for the Implementation of the Constitution (CIC) and the Constitutional Implementation Oversight Committee (CIOC) to lead the implementation process of the 2010 Constitution.

The constitution of Kenya, 2010 came with a detailed calendar of legislations that needed to be enacted. This therefore informed the direction the National Assembly was to take in ensuring that the constitution took effect and there was a seamless transition from the old constitution to the new one.

The Fifth Schedule which is supposed to give effect to article 261 (1) of the constitution outlines the series of legislation to be enacted by the National Assembly and the timelines for each of the legislation. This is an affirmation that the National Assembly is duly vested with the enormous task of implementing the Constitution of Kenya, 2010.
Further, the Constitutional Implementation Oversight Committee (CIOC) ranks as one of the implementation institutions for the Constitution of Kenya, 2010. It is a parliamentary committee vested with the overall mandate of overseeing the implementation of the constitution. The CIOC is established by section 4 of the sixth schedule to the Constitution of Kenya 2010.

By the time the tenth Parliament was dissolved, the National Assembly had enacted forty six (46) legislations guided by the timelines. This excludes the several amendments to the Elections Act (2011).

**The Committee System**

The committee system is one avenue through which the National Assembly has been effective in ensuring that the Constitution implementation is seamless. Allow me to belabor this point much deeper.

The dispensation arising from the Constitution of Kenya, 2010 prompted a shift to a presidential system. By implication, this meant that no Member of the National Assembly sat in the executive. Coupled with the now enhanced separation of powers, it has meant that most of the National Assembly work and interface with the executive and public is through the House Committees.

Pursuant to article 124(1) which states that, “Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees” the National Assembly has established House committees. These Committees fall under four broad categories: House Keeping (four); Standing Committees (seven); and Departmental Committees (12) and Ad hoc Select Committees. In executing their respective mandates, all these committees play a part in advancing the National Assembly role of implementing the Constitution of Kenya, 2010.
Among the standing committee of the National Assembly is the Committee on Appointments. This committee has been instrumental in vetting presidential appointees to the various constitutional offices, including those of Cabinet secretaries and Principal Secretaries.

**CHALLENGES FACING CONSTITUTIONAL IMPLEMENTATION BY THE NATIONAL ASSEMBLY**

Implementation of a new constitution is an uphill task for many countries. This is made worse by political intrigues and power play often driven by self-interest. The implementation of the Constitution of Kenya, 2010 by the National assembly has not escaped from this reality. This was quite evident with the series of back to back bills that sought amendments to the Elections act, 2011.

Away from this widespread phenomenon, other challenges that have come in the way of National Assembly implementation of the constitution are:-

(i) Interpretation of the constitution of Kenya 2010 – when viewed against the three arms of State, that is, Parliament, Executive and the Judiciary.

(ii) The one-third gender provision.

(iii) Presidential nominations under the constitution – recall the nomination of Justice Alnasir Visram as the new Chief Justice on January 29, 2011 without involving the Prime Minister and the Judicial Service Commission (JSC).

(iv) Conflict over mandate of Constitutional Commissions vis a vis entrenched bureaucracy e.g. the National Police Service Commission, The National Land Commission.
(v) Litigation challenges to Constitutional implementation – challenging the constitutionality of some provisions.

LINKAGES AND NETWORKS
The National Assembly or any of its organs cannot implement the constitution in isolation. Therefore, frontiers of beneficial and consultative engagements need to be explored. This is a formidable asset to any constitution implementation process.

Indeed, there exists a great opportunity for the National Assembly to engage with the academia in making the work of the National Assembly – constitutional implementation, included a reality. Article 125 (Power to call for evidence) epitomizes the entrenchment of a provision for Parliament to engage with the academia in the process of achieving its constitutional mandate. This provision is given effect by the National Assembly Standing Orders. Standing Order 191 (Powers and privileges and committees) and 203 (Engagement of experts) truly reflect the world view that we can engage to implement this constitution.

In this 21st century, legislation and policy making ought to be informed by research evidence. The national Assembly, having envisaged the need for research-evidence use had gradually built capacity of its technical departments (Parliamentary Research Services; Parliamentary Budget Office and Legal Services) to be able to research and advise the Assembly in all aspects of implementing the constitution.

It is however not possible for the Assembly to have all the in-house expertise that it requires to pursue constitutional implementation. This is why linkages and networks with the universities will be sought from time to time. I am sure that this is the right way to sustain mutually beneficial engagements.
Ladies and Gentlemen,
As I move to conclude my lecture, the words of James Madison, Fourth President of the United States, and principal contributor to the U.S Constitution, will deepen our perspective put of today’s interaction, I quote, “Knowledge will forever govern ignorance; and if people would govern themselves, they must first arm themselves with the power that knowledge brings”.

In my view, these words sums up the combined role of the National Assembly, the academia, and other key stakeholders in the implementation process of the Constitution of Kenya, 2010. The constitution is a public good, at the end of the day you do have a say which way the implementation goes.

THANK YOU AND GOD BLESS YOU.

The Hon. Justin Muturi, M.P.
Speaker of the National Assembly
Friday 8th November, 2013