



Devolution and Social Justice: Another World Is Not Only Possible, She's on Her Way

By Willy Mutunga



Nairobi, Kenya - AN END TO THE POLITICS OF DIVISION

On August 27, 2010, Kenya promulgated a progressive [Constitution](#) whose vision is social democracy. It's a vision of the promotion and protection of the whole gamut of human rights; the equitable distribution of political power and the resources of society; and the creation of a nation out of different ethnic groupings.

The Constitution aims to bring an end to the organisation of politics through division; cement agreement on national values and principles; promote integrity in public and private leadership; and build depersonalised national institutions.

The struggle to implement the progressive vision of this Constitution continues till today. The forces of the status quo who found this vision unacceptable are resisting its implementation at every step. As the latest stage in this process, Kenya will hold a general election on August 8, 2017. I was Chief Justice and President of the Supreme Court of Kenya from 2011 to 2016, so I've observed and participated in this process first-hand. Given the efforts of the political elite to resist the implementation of the Constitution, I became convinced that the judiciary had to play a pivotal role in defending and advancing it. We consciously developed a jurisprudence that promoted the

Constitution's robust implementation, and in that way the judiciary became a political actor.

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For almost the entire period since Kenya's independence on December 12, 1963, the country's politics have been organised around divisions: Ethnic, religious, racial, regional, clan and gender, generational, pastoralists versus agriculturalists, and most recently, divisions driven by xenophobia. The Kenyan elite have become so adept at the politics of division that elections are never about issues, and voters seem unable or unwilling to shed the blinkers of these differences.

Academics and activists on both side of the class divide shamelessly talk of the 'tyranny of numbers' Out of the 43 ethnic communities in Kenya, the 'Big Five' command over 70 per cent of the electoral vote — Kikuyu, Kalenjin, Luo, Kamba and Luhya. The politics of division is reflected in concrete terms in ethnic coalitions that are put together by the barons of these five communities. At the moment, three of them are members of the National Super Alliance, or NASA (Luo, Kamba and Luhya), while the other two form the Jubilee coalition (Kikuyu and Kalenjin). The graveyard of acronyms of Kenyan political parties since Independence makes for grim but humorous reading.

There is one pillar in the Constitution that gives me optimism: Devolution, which entails the equitable distribution of political power and resources. Kenya has 47 counties with governments led by elected Governors. The Constitution decrees that 15 per cent of all national resources must be shared between these 47 counties. The Kenyan Senate has come up with an equalisation formula that favours counties that hitherto have been marginalised.

Notwithstanding the very real issue of decentralised corruption, reports from these marginalised counties are encouraging. I believe that anti-corruption movements are gaining ground in these counties to safeguard the resources that are devolved to them. Demands for more resources are being made from the centre in the form of the executive, parliament, the Treasury and the Central Bank, since these national institutions have not justified their 85% lion's share.

DEVOLUTION TAKES CENTRESTAGE

Devolution, more resources for counties, and weakening the centre in financial matters are issues that will take centrestage in the forthcoming election. This will be a contest in which poverty eradication and the equitable distribution of resources should feature prominently. If so, this would be a great leap forward in the quest to strengthen Kenyan democracy.

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In this respect, I can already see the beginnings of a politics of humanity that is based on the equitable distribution of resources. Social movements in marginalised counties are gaining strength. Public participation in the use of resources is robust. Debates are taking place around the material needs of the people like education, employment, health, sanitation, housing, environment, foreign investment and corruption. There is a great imagination and consciousness emerging from the margins that sees the prudent use of resources as one of the keys to poverty eradication.

[I have been cautioned](#) about creating too much hope from what I see in marginalised counties. I [have been warned](#) not to create a fetish out of the Constitution, or of devolution. All I can say with certainty is that both ‘trains have left the station,’ and they will not be easily derailed.

This is not the first time we have heard of transformation from the margins. The Chinese revolutionaries talked of surrounding the cities from the rural areas. They talked of solidarities between workers and peasants on the basis of the material interests of their lives and livelihoods. And reading [Nina Eliasoph's recent Transformation piece](#) on the United States reminds me that such debates are happening right across the world.

I have no issue with improving access to consumer goods, jobs and services like health and education. I love them. What I hate is their inequitable distribution. Eliasoph touches on the same issue in her insistence that politics needs to ‘offer a vision of society in which everyone could enjoy things that look like the privilege of elites... a vision that shows how lessening the gap between the rich and poor’ could make these goods and services accessible to all.

RESIST SYSTEMS THAT PUT PROFITS BEFORE PEOPLE

In both Kenya and the US, the challenge is to resist systems that put profits before people. This challenge is centrally concerned with the equitable distribution of resources. It's about mitigating the harshness of systems that create extreme inequalities among people. I believe such visions are reflected in paradigms of human rights, social justice, and social democracy. In practical terms, it is about having a society in which everybody can enjoy at the minimum the rights, entitlements and opportunities that are currently enjoyed by elites.

History records numerous experiments in what was called welfare capitalism and social democracy after World War Two. In America, Eliasoph mentions the New Deal and the Great Society of Presidents Roosevelt and Johnson respectively. I believe one could add the meagre reinforcement of such state-driven projects in the US through corporate social responsibility and social justice philanthropy, which attempt to mitigate the costs and concentrated power of corporatism.

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Eliasoph is right. Such solidarities are possible notwithstanding divisions in society if ‘white rural people's suffering,’ as she puts it, is addressed as a political issue alongside the suffering of people of colour and low-income communities in cities. Institutionalised racism can be slowly dismantled by a politics of humanity in which resources are equitably distributed, and in which poverty knows no colour.

I know the challenges that stand in the way of this potentially transformative optimism. Neoliberalism and the engines that put profits before people provide serious barriers to progress. Even in Kenya, devolution faces serious challenges from the neoliberalism of the elites who benefit from it and its agents.

I want, however, to join my imagination with that of Eliasoph and others in projects of solidarity across national borders. This idea is not new. The slogan of the [World Social Forum](#) is ‘Another World is Possible.’ Indian activist [Arundhati Roy goes even further](#) by telling us that ‘Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing.’ We must not give up such revolutionary optimism.

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