

# ‘Constitution-making from the middle’: Notes for Opening Remarks by the Rt Hon Patricia Scotland QC, Secretary-General of the Commonwealth

Today, Kenyans mark a great milestone - the 10th Anniversary of the Constitution of Kenya, 2010.

The people of Kenya celebrate the Constitution because it is progressive, autochthonous and more importantly, it is about justice. Any good law is about justice, and for justice.

The book we launch today as part of the 10th Anniversary celebrations is about this struggle for justice. Dr Willy Mutunga, the author of *‘Constitution-making from the middle’* who has also represented me as my special envoy in the Maldives, is one of the selfless people that sacrificed their lives to lead Kenyans in this struggle for a more just society.

I am delighted to be part of the celebrations to mark not only the 10th Anniversary of the Constitution but also the new edition of Dr Willy Mutunga’s book.

Willy Mutunga was not only Kenya’s first Chief Justice in a new constitutional dispensation. His legacy teaches Kenya, Africa and indeed the whole Commonwealth two essential aspects of how to build a sustainable rule of law system.

First, he institutionalised judicial independence by resisting pressure from any extra judicial source or power and allowed judges ample latitude to decide according to law guided by their good conscience and a sense of justice.

Second, he understood democracy, freedom and the importance of key structures that guaranteed their sustainability.

For Dr Mutunga, identification within the nation is the thread that puts the tapestry together - identification links everyone up. Identification keeps the nation together. That is why constitutions must be the genuine result of that togetherness that originates in the social dialogue.

Identification is a hard and uphill task in plural or multicultural societies. The greatest headache in a pluralistic setting is achieving that sense of identification that makes us feel we are together.

Mutunga's book is about a time in history when Kenyans sought a way to waive the tapestry of law, they sought constitutional reforms... a time when they sought human rights for themselves, a democratic space, when they sought an end to corruption, when they sought to establish the rule of law.

Willy Mutunga is one of those great Kenyans who sacrificed their lives, careers and even personal honour to lead Kenyans in this struggle for reforms. He was not alone and several of those great Kenyans are here in this webinar. I would like to mention with special affection Prof Yash Pal Ghai, who has done so much for the rule of law across the Commonwealth. Prof Luis Franceschi has told me so much about Prof Ghai and his wife Jill, and also about many of the great Kenyans with whom I am honored to share the screen today.

You all fought for, pushed and steered the political momentum which resulted in a comprehensive constitutional reform at the end of the millennium. Your efforts conceptualised Kenya's beautiful 2010 constitution.

The struggle continues. The greatest challenge is implementation. As a black woman and a former AG of the United Kingdom, I always challenged all my colleagues to think of law as a tool for justice. Justice is the goal and anything short of this will be a betrayal to our professional promise. Only when justice becomes a reality we will be able to breathe.

I am delighted to be among the people gathered here today to mark not only the 10th anniversary of the Constitution of Kenya but also this publication and you, Willy. I wish you all a fruitful reading. Go forth inspiring young minds, creating change and demanding accountability. Only this can secure Africa's future and a better world for our children's children.

Thank you very much and may God bless Kenya and the Commonwealth.





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