

SPEECH FOR THE CABINET SECRETARY, MINISTRY OF DEVOLUTION AND ASALS, HON. EUGENE WAMALWA, EGH, DURING THE OFFICIAL OPENING OF THE ALTERNATIVE DISPUTE RESOLUTION REGULATIONS VALIDATION WORKSHOP AT PRIDE INN PARADISE, MOMBASA, ON FRIDAY MARCH 23RD, 2018.

Chair Senate Committee on Delegated Legislation, Hon. Samuel Pogishio

Chair National Assembly Committee on Delegated Legislation, Hon. Gladys Boss Shollei

Vice Chair Senate Committee on Delegated Legislation,

Vice Chair, National Assembly Committee on Delegated Legislation, Hon. Fatuma Gedi

All Honourable members of the two committees

Chief Administrative Secretary in the Ministry, Amb. Hussein Dado

Devolution Principal Secretary, Nelson Marwa

The Secretary, Devolution Affairs and Inter Governmental Relations

Ministry officials present

All Protocols observed,

Ladies and Gentlemen;

It is a pleasure to be here today to meet and interact with you Honourable Members as we engage on various issues relating to the development of the alternative dispute resolution regulations.

Let me take this opportunity to thank all of you for the role you have played and continue to play in supporting various devolution related legislation when presented on the floor of the House.

This meeting is very important as it accords us the opportunity to reflect on the devolution story, having walked the devolution journey for the last five years. From the deliberations here today, I believe we can come up with a common strategy to further deepen devolution in the next five years.

Honourable Members:

As you are all aware the Constitution of Kenya 2010, ushered in the devolved system of government and with it, new opportunities and challenges, which need to be systematically addressed in order to realize the full benefits of devolution.

Kenyans had and still have great expectations of devolution in changing their lives. Some of these expectations have been met while others are yet to be realized.

As the Ministry mandated to facilitate devolution in the country there is need therefore to partner with all stakeholders in exploring ways and means of making devolution work so as to meet these high expectations.

Honourable Members:

In the last five years of devolution experience, several challenges have been encountered, some of which require legislative interventions as a means of achieving permanent solutions. As a result of such challenges and misunderstandings between the two levels of government, we have witnessed

increased litigation between counties and the national government and its agencies on one part, among counties and between counties and the institutions within the counties.

While the Constitution provides for governments at each level to conduct their mutual relations, on the basis of consultations and cooperation, and for disputes to be settled through alternative dispute resolution mechanisms, this has sadly not happened.

Instead, we have witnessed enormous resources being spent to either institute and or defend judicial proceedings against each other. Such proceedings are not only against the spirit of the Constitution in managing disputes, but also lead to wasteful use of the scarce public resources.

This state of affairs if not checked threatens the gains from devolution as public funds get diverted to pay the high cost of litigation thereby disrupting the provision of normal public services to mwananchi.

Honourable Members:

In a bid to address this anomaly and stem the waste of public resources, the fifth meeting of the Summit directed the Intergovernmental Relations Technical Committee to carry out a study on the nature of inter and intra-governmental disputes, costs of litigation and mechanisms for dispute resolution among other issues.

The study revealed that the costs of litigation are a major constraint to development particularly in county governments as development projects have been unduly delayed and sometimes abandoned due to litigation.

In addition, it revealed that advocate fees charged for courts cases filed at the High court ranged between Kshs. 20 - Kshs. 30 million per case while some lawyers have even charged Kshs. 75 million per case in such litigation.

Honourable Members:

To address this concern in fulfilment of its mandate and in line with section 38 of the Intergovernmental Relations Act, 2012, my Ministry embarked on the preparation of the draft alternative dispute resolution regulations that we are validating today, in order to provide a road map that will ensure all intergovernmental disputes are settled amicably and only resort to judicial process when such mechanisms are exhausted.

It is hoped that this approach will enhance relationships not only between the two levels of government but also between County Governments and the various players and institutions within the counties.

Honourable Members:

In drafting these regulations, we have consulted widely and a multi-agency team comprising of the State Department of Devolution, the Attorney General's office, Kenya Law Reform Commission, Council of Governors and the Intergovernmental Relations Technical Committee has led these consultations.

This workshop today thus plays two roles: it enables us get feedback on the draft to help fine tune the regulations and also creates awareness on the mechanisms. I believe that with the requisite knowledge, aggrieved parties will not rush to the courts without exploring other alternatives available to resolve their disputes.

As I conclude, I want to wish you fruitful deliberations and at the same time call upon all of you to support my Ministry in carrying out this difficult but extremely important task. Together we can!

Thank you.

EUGENE WAMALWA, EGH
CABINET SECRETARY
23RD MARCH, 2018