ALL KENYAN MOOT COURT COMPETITION

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14TH EDITION OFFICIAL RESEARCH QUESTION AND E-JOURNAL BACKGROUND

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Theme: ***Reclaiming Constitutionalism: Advancing Human Rights and civic freedom in an age of surveillance and economic austerity***

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RECLAIMING CONSTITUTIONALISM THROUGH RESEARCH

The promulgation of the 2010 Constitution marked a significant milestone in the country's history, offering a beacon of hope for a more just and equitable society. This landmark document embodied a promise of the rule of law, transparency and a guarantee of the basic rights and fundamental freedoms. Drafted in response to a dark past characterized by extra-judicial killings, media censorship, rampant corruption and misuse of state machinery, the framers of the Constitution deliberately designed it to safeguard the sovereignty of the people and offer a bedrock of good governance.

However, 15 years down the line, the very foundations of constitutionalism are being tested with more citizens advocating for its actualization. According to the African Center for Open Governance (AfriCOG) only 18% of Kenyans are satisfied with the implementation of the Constitution to date (Read more). Serious concerns have been raised about its efficacy in restoring order and upholding the rule of law in the country. In particular, questions have emerged over pressing issues such as: **Fiscal Sustainability and Economic Governance, Police Brutality, Extrajudicial Killings and Arbitrary Arrests, Sexual Gender-Based Violence (SGBV) in times of Civic Resistance, Media Freedom and Investigative Journalism, Data Protection in an Era of Digital Surveillance, The Implications of the Rapid Rise of Artificial Intelligence(AI), Child-Online Protection, Environmental Justice and Reclaiming Constitutionalism**

Regarding Fiscal sustainability and economic governance, the government's financial decisions and expenditure have been under intense scrutiny and debate with public debt soaring to approximately 11.5 trillion Kenyan Shillings (Read more).

This astronomical figure has sparked widespread outrage amongst the public, with a tidal wave of discontent being expressed over unsustainable borrowing and misuse of funds. Despite the country's public debt skyrocketing, proliferation of odious debts, illicit financial flows and grand corruption schemes have taken root. Meanwhile socio-economic rights remain elusive, casting doubt on the government's spending priorities. Notably, more than half of the national budget is now dedicated to debt servicing, leaving limited resources for the welfare of citizens and underscoring the need for fiscal reforms.

As a result of poor fiscal governance and massive Constitutional violations, the citizens have been at loggerheads with the government and have expressed dissent through protests and online activism. However, they have been met with the unlawful deployment of the police, with reports of extrajudicial killings, unlawful arrests, excessive use of force, and enforced disappearances. The tragic cases of the late Albert Ojwang (Read more) and the late Boniface Kariuki (Read more) exemplify the alarming rise in institutionalized police impunity being a mere fraction of the numbers that have been recorded over time. The unlawful deployment of police in civic resistances has eroded public trust and raises critical questions on the government's commitment to safeguarding human rights.

On accountability, the deliberate concealment of police motor vehicle number plates, the use of masked officers, and deployment of police in civilian clothing complicate efforts to identify perpetrators of police brutality and extrajudicial killings. Although the doctrine of command responsibility is designed to hold senior officials criminally liable for crimes committed by their subordinates, in practice only junior officers are being targeted while shielding the senior officers who issue the orders. Oversight institutions such as the Independent Policing Oversight Authority

(IPOA) and the Office of the Director of Public Prosecutions have been criticized especially with regard to the delays in prosecution and the handling of police brutality cases.

SGBV has also been deployed as a political tool in the civic space in Kenya. For instance, during the 25th June 2025 anniversary protests, cases of gang rape and sexual violence were reported, allegedly targeting women in order to discourage their participation in civic resistance (Read more). This is not an isolated incident. (SGBV) has been consistently witnessed and reported over the years; from the post-election violence in 2007-2008 to subsequent election campaigns and protests yet justice for survivors remains elusive (Read more). These recurring violations appear to be both opportunistic and intentional; a tool wielded not only to exploit moments of instability but also to gag dissent and silence women's voices. Further, alarming cases of femicide, which are surfacing across the country and amplified through cyberspace, have sparked demands for vigilance and justice for victims. Civil society organizations and human rights defenders have strongly condemned these heinous acts, calling for accountability, justice and a comprehensive review of Kenya's legal and institutional framework to address the crisis.

The media has been instrumental in exposing the above Constitutional violations through investigative journalism, public discussions and live coverage drawing the attention of the citizens, as well as the regional and international community to the state of human rights in Kenya. This notwithstanding, the government has been accused of interfering with media freedom through intimidation, restrictive regulations, shutdowns, and the arrest of journalists. For instance, during the 25th June 2025 Anniversary protests of 2025, the Communications Authority of Kenya issued a directive halting the live coverage of the demonstrations (Read more). In another example, the government reportedly ordered the removal of a BBC documentary on the 2024 Finance Bill

protests, which had utilized investigative journalism to expose the conduct of security officers. (Read more). These events have sparked debate on the extent of the freedom of the media in the country

Beyond traditional media, other technological advancements have also significantly shaped constitutional democracies. Social media platforms have become central to disseminating information, sharing ideas as well as organizing civic engagements. However, much like the media, their use has reportedly been subjected to government censorship and surveillance, raising serious concerns about the right to privacy and data protection for the digital users and their freedom of expression vis-à-vis state justifications such as national security and tax enforcement (Read more).

Additionally, the emergence of Artificial Intelligence has further complicated this landscape. AI tools have been used to spread misinformation and disinformation, including through the creation of deep fakes, while also violating data protection rights through biometric tracking and exploitative training practices. The absence of a robust legal framework to regulate the deployment of artificial intelligence leaves significant gaps, creating avenues for systemic constitutional violations.

These technological advancements have raised grave concerns on the protection of the most vulnerable populations particularly children. Child-cyber-bullying, online grooming, digital validation, and child-specific deep fakes have been reported to distort their dignity and social development. This calls for heightened digital protection of children through regulation, digital literacy and holding the perpetrators accountable.

Beyond the shrinking democratic space, the question of climate justice and environmental protection has become a developing issue globally with Kenya positioning itself as a prime destination for green development. Various programs have been rolled out in dedication towards environmental conservation, including the ESG compliance frameworks, climate adaptation and mitigation programs as well as carbon trading projects. Nonetheless, these projects have come at the expense of constitutionally guaranteed rights and fundamental freedoms.

The initiatives are mostly established in communally owned land especially in the Arid and Semi-arid areas. Unfortunately, these communities have not benefited equitably from them. More often than they have suffered forced evictions, destruction of property and displacement, disrupting their livelihoods and cultural ties. Additionally, many of these projects are often implemented without adequate consultations with the communities or proper Environmental Impact Assessments. Accountability mechanisms on the other hand have been weakened by measures such as granting climate adaptation entities like the Global Center for Adaptation sweeping immunity from lawsuits and domestic scrutiny (Read more). Meanwhile, the government has been lackadaisical in implementing court decisions that seek to restore community rights, for instance the Ogiek case. These dynamics underscore the growing tension between environmental conservation and the protection of community rights

Reclaiming constitutionalism necessitates a deliberate and multi-focal strategy to reinvigorate the state's accountability to citizens. The need to assert our sovereign role and revitalize democratic mechanisms of accountability, participation and rights arises. We are called to robustly advance human rights and civic freedoms against the systemic erosion of social welfare.

RESEARCH THEMES

In light of the above, the 14th Edition of the All Kenyan Moot Competition (Research category) and Volume (IV) of the E-Journal invites submission of research papers and articles based on the following themes:

1. **A critique of Kenya's fiscal governance focusing on its borrowing practices, spending priorities, budgeting processes and how these affects the realization of socio-economic rights.**
2. **An analysis of Kenya's democratic space: Application of the Command responsibility doctrine and assessing accountability mechanisms in cases of police brutality, extrajudicial killings, unlawful arrests and enforced disappearances**
3. **Addressing Sexual and Gender Based Violence in Kenya in times of civic resistance and the femicide crisis: Challenges, perceptions and policy recommendations**
4. **A reflection on media freedom and the role of investigative journalism in advancing constitutionalism**
5. **Kenya's Artificial Intelligence Landscape: An Analysis of the impact of the deployment of AI and the need for effective regulation**
6. **An analysis of the balance between state surveillance and the protection of digital Human Rights**
7. **Assessing Child Online Protection Initiatives in Kenya and evaluating their Efficacy**
8. **Co-opting Green Development in Kenya: An Evaluation of the tension between Environmental Conservation and Community rights**
9. **Reclaiming Constitutionalism: Bridging the gap between Constitutional Ideals and Practical Implementation**

N.B.

Kindly note that the best research papers will be incorporated into Volume (IV) of the AKMCC E-Journal alongside scholarly articles from interested authors.

Researchers participating in the AKMCC 14th Edition research competition can access the rules and guidelines on the AKMCC website.

In case of any clarification or concern please do not hesitate to reach out to the undersigned:

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