



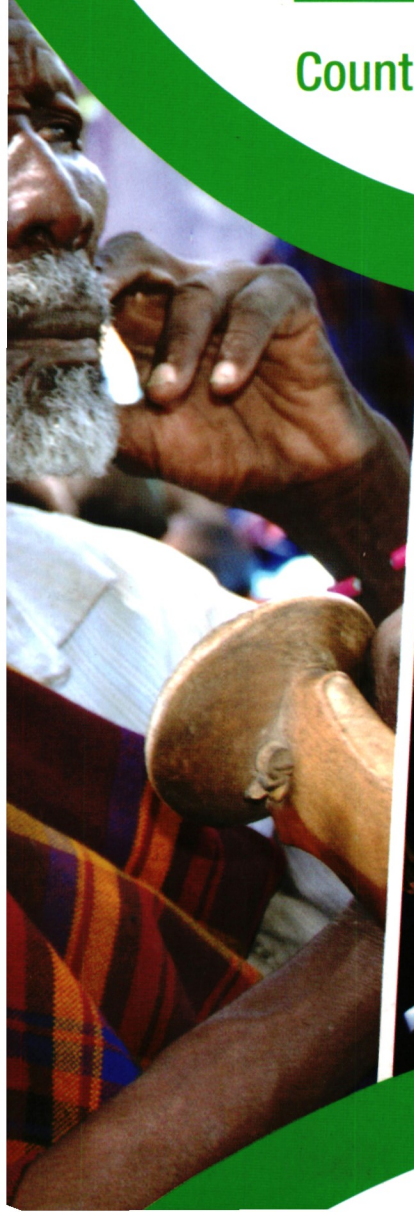
Commission for the Implementation  
of the Constitution

Utekelezaji wa katiba, jukumu la wote

2013 - 2014

# ANNUAL REPORT

Counting the Milestones



SEPTEMBER 2014

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DEPUTY SPEAKER

2013 - 2014

# ANNUAL REPORT



Counting the Milestones

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## MESSAGE FROM THE CHAIRPERSON



The period July 2013 to June 2014 (2013/2014) marked a turning point in the history of Kenya. The country celebrated fifty years of independence, transitioned to a new system of governance with two levels, i.e., the National Government and County Government characterised by a National Executive with non-political Cabinet Secretaries, a bicameral Parliament consisting of the National Assembly and Senate, and forty-seven County Governments each with a County Executive and County Assembly. Having seen the successful take off of the system of devolved government and the assumption of new office holders at both levels, the governments embarked on discharging their respective mandates while at the same time getting a deeper understanding of their constitutional

mandates and that of other state organs. The period was therefore characterised by consultative meetings and stakeholder engagements to establish partnerships and set priorities.

In line with its reporting mandate, the Commission tracks and reports on progress of implementation through preparation of quarterly and annual progress reports. This Annual Report summarises the highlights of activities undertaken by CIC in discharging its mandate. It is organised into the following four pillars on which effective implementation of the Constitution and the system of devolved government is anchored:

- i. Policies which are compliant with the letter and spirit of the Constitution;
- ii. Laws which are compliant with the letter and spirit of the Constitution;
- iii. Effective institutional frameworks and administrative procedures; and
- iv. Respect for the Constitution and the rule of law by all.

Development of legislation required under the Fifth Schedule to the Constitution is, as shown in this report, largely on course with the exception of six pieces of legislation whose timelines were extended by the National Assembly. However, as we continue to review and develop legislation, some challenges have emerged that, if not dealt with, might derail the implementation process. These include delays by the National Executive to develop and submit Bills to the CIC for review in accordance with Article 261, amendment of laws that introduce unconstitutional provisions and failure to adopt the consultative process prescribed in Article 110 of the Constitution by Parliament. In addition there have been numerous attempts to amend the Constitution and claw back on gains made by the people of Kenya when adopting the Constitution of Kenya, 2010.

On devolution, our assessment of progress made so far indicates that the foundation for the realization of the objects and principles of devolved government has been set. If all stakeholders expedite the review of existing policies, legislations, administrative procedures and institutional processes, devolved units of government will spearhead Kenya's realisation of socio economic rights and improved governance. The advent of devolved governments resulted in the realignment of the political scene and power struggles within and between different arms and levels of governments. Challenges in a transition process are inevitable. To move forward, any problems should be approached with impartiality and sobriety and addressed in a manner that supports the aspirations of the people of Kenya. Above all, to facilitate devolution, oversight institutions must exercise their powers with professional acumen and in accordance with the Constitution. It is also important that the two levels of government employ the intergovernmental relations framework for consultation and co-operation in working together. The people of Kenya deserve and must receive enhanced services from all state organs and public institutions.

As we celebrate the principles of equity and inclusiveness, it is disconcerting that, more than three years after promulgation of the Constitution, marginalised communities for whom the Equalization Fund was created, continue to face marginalisation exacerbated by the continued delay to disburse the Equalization Fund. The Disbursement of the Equalization Fund should be treated with the priority it deserves.



The past year has seen calls for a review of the Constitution through a referendum. The Constitution under Articles 255, 256 and 257 gives citizens the right to review the Constitution, if necessary, through a referendum. That is a discretion we must exercise with caution. Amendment of the Constitution should not be the quick fix to all unfulfilled demands and expectations. The Commission was mandated by the framers of the Constitution to monitor facilitate and oversee the development of the relevant institutional framework necessary for the implementation of the Constitution for a period of 5 years. In so doing, the framers of the Constitution sought to dedicate the first five years of the Constitution to promoting a culture of constitutionalism and rule of law, and embedding respect for the letter and spirit of the Constitution in the national psyche. The Commission strongly believes that issues of concern, if any, can be adequately addressed without resorting to amendment of the Constitution. Surgery has never been the first line of treatment for any malady. Good physicians will, as a matter of preference, recommend less invasive methods of intervention.

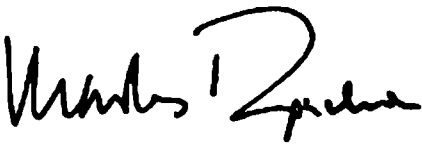
Another potential impediment to the implementation of the Constitution is the socio-economic audit of the Constitution and the debate on the national wage bill, both of which, unfortunately, seem bent on finding fault with offices created under the new Constitution. It is misleading to imply that the system of devolved government is responsible for the increase in the country's wage bill. By the time county governments came into place, the horse had already bolted. Of course, prudent use of national resources is of paramount importance and as a nation, we must, prioritize national programmes.

Over the years, the budgetary allocation to CIC has, in blatant disregard of Article 249(3) of the Constitution, continued to shrink even as the mandate of the Commission continues to expand, especially with the establishment of county governments. Notwithstanding an inadequate budget, CIC managed to discharge its mandate with support from stakeholders and development partners. Words cannot express the Commissions' gratitude to our development partners. The Commission also appreciates the support received from the people of Kenya, non-state actors, the National and County Governments and Chairpersons and Members of Constitutional Commissions in the discharge of the Commission's mandate.

As the Commission prepares to complete its term as stipulated in the Constitution, the Commission intends to explore options for ensuring a sustained focus on the implementation of the Constitution post 31st December 2015, particularly on matters relating to the implementation of the system of devolved government. This will include exploring existing institutions that will take up CIC's mandate and ensuring the documentation and preservation of records is done for use as reference materials.

This report and indeed the Commission's discharge of its mandate were made possible by the dedication and commitment of the Members and staff of the Commission. I thank all Members of the Commission and staff for their individual and collective efforts that contributed to the success of the Commission's activities and programmes. We must continue to serve the people of Kenya in accord with the National Values and Principles of Governance as stipulated in the Constitution.

On behalf of the Commission, I submit this Annual Report for the period 2013/2014 which indicates that overall, we as a nation are on course to achieving some of the aspirations of the people of Kenya as expressed in the Constitution. I take this opportunity to welcome feedback and engagement with the Commission on the contents of the report.



Charles Nyachae,  
**CHAIRPERSON**

## STATEMENT FROM THE SECRETARY / CHIEF EXECUTIVE OFFICER



The Commission for the Implementation of the Constitution is pleased to present its third annual progress report since its inauguration in January 2011. As I look at the progress made by the country over the past four years, I am proud of the achievements made by the Commission and its implementing partners towards the implementation of the Constitution of Kenya, 2010. Supported by a dedicated Secretariat, the Commission has managed to achieve major milestones in defending, upholding and protecting the letter and spirit of the Constitution. As is required by the Constitution and the Commission for the Implementation of the

Constitution Act 2010, CIC has been preparing and submitting progress reports on the implementation of the Constitution. During the year under review, the Commission has been able to carry out its role of monitoring, facilitating and overseeing the activities that are key to achievement of its mandate.

In carrying out its activities, the Commission had great and invaluable support from our development partners who augmented the resources provided by the Exchequer. A number of the partners supported us through agencies, including United Nations Development Programme (UNDP), Swedish International Development Cooperation Agency (SIDA), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), Danish International Development Agency (DANIDA), United States Agency for International Development (USAID), United Nations High Commission for Refugees (UNHCR), United Nations Office of the High Commissioner for Human Rights (OHCHR), International Development Law Organization (IDLO), World Wide Fund for Nature (WWF), Open Society Initiative for Eastern Africa (OSIEA), State University of New York (SUNY-Kenya), the International Republican Institute (IRI), UN Women, United Nations Office on Drugs and Crime (UNODC), International Budget Partnership (IBP) and Mercy Corps Kenya. The Commission highly appreciates the support and looks forward to continued cooperation for the benefit of the people of Kenya.

The Commission also appreciates the support it got from the National and County Governments, Constitutional Commissions and Independent Offices which enabled it to carry out its mandate successfully. We were able to meet our targets during the year under review due to the assistance offered by these institutions. As we move towards the end of CIC term, there will be a lot of activities related to exit strategy that will require continued partnership. The CIC team will thus count on all its stakeholders and partners to offer the necessary cooperation and collaboration in meeting the expectations.

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J. N. Kosure

**SECRETARY/CHIEF EXECUTIVE OFFICER**

## EXECUTIVE SUMMARY

This report marks the fourth year since the Constitution of Kenya, 2010 came into effect drastically changing the country's governance system. The period under review was the first full year of transition to the system of devolved government. To date, significant progress has been made in the implementation of the Constitution and especially with regard to the system of devolved government. The Commission continues to undertake its mandate of overseeing the implementation of the Constitution as envisaged in the Constitution as well as the CIC Act. The Commission's work is guided by its Strategic Plan 2013-2015 and implemented mainly through Stakeholder Engagement, Advisory Opinions, Judicial Interventions, and Monitoring and Reporting on constitutional implementation.

During the reporting period (July 2013-June 2014), the following milestones were realized in the overall implementation of the Constitution:

- a. Enactment of required laws, especially those specified in the 5th Schedule to the Constitution.
- b. Operationalization of the County structures and systems e.g. County Executive and County Assembly, as envisaged by the Constitution.
- c. Second phase of transfer of functions to County Governments
- d. Allocation of funds to the Counties based on the constitutional division of revenue and the preparation of inaugural budget by Counties.
- e. Counties established their Executive Committees and County Public Service Boards.
- f. County Assemblies were also fully constituted by nominating members to fulfil the gender rule and marginalized groups' requirement.
- g. County Governments developed their County Integrated Development Plans (CIDPs) which informed the preparation of their budgets.
- h. County Governments developed the various laws required to guide delivery of the assigned functions.
- i. Majority of the Counties established units of decentralization at the sub-county and ward level and appointed Administrators to oversee their management.
- j. Establishment of intergovernmental structures, for example the Summit, the Council of Governors, Intergovernmental Budget and Economic Council.

In accordance with its mandate, the Commission realized progress as highlighted below:

### **a. Review and Development of Policies**

The Commission engaged with various Government Ministries, Departments and Agencies (MDAs) in the review and development of their policies.

### **b. Development and Review of Legislation**

The Commission reviewed legislation as required by the Fifth Schedule to the Constitution within the specified timelines. This was in exception of six legislations whose timelines were extended by the National Assembly for a period of nine months. The Commission also reviewed legislative proposals for the Amendment of various laws.

### **c. Review and Development of Administrative Procedures and Institutional Frameworks**

The Commission reviewed regulations, participated in the development of several guidelines by the National and county Governments and developed a number of Information, Education and Communication (IEC) materials. Additionally, the Commission supported the effective operationalization of institutional frameworks at the National, County and intergovernmental levels.

### **d. Judicial Intervention**

The Commission was involved in ten cases regarding the interpretation or application of the Constitution.

### **e. Stakeholder Engagement**

The Commission held stakeholder engagements of which key among them included the forums for Constitution Implementation Oversight Committee, and Governors and Senators aimed at making clear the mandates and roles of these institutions and offices. Similarly, the Commission conducted young people's and teachers' forums in the Counties to sensitize them on their roles in the implementation of the Constitution.

### **f. Working with Constitutional Commissions**

The Commission continued to work with other Commissions and independent offices to ensure respect for the letter and spirit of the Constitution.

### **g. Protecting Constitutionalism and Sovereignty of the People**

This was achieved through issuance of media statements, public advisories and judicial interventions.

### **h. Implementation of the System of Devolved Government**

The Commission reviewed the revised Devolution Sessional Paper, conducted an assessment of the status of system of devolved government as at the end of June 2014, and conducted county visits to monitor the implementation of the Constitution.

### **i. Quarterly reporting**

The Commission prepared and submitted quarterly reports to the Parliamentary Constitution Implementation Oversight Committee (CIOC) on progress in the implementation of the Constitution.

## **Challenges and Impediments to the Implementation of the Constitution**

Despite the progress made in implementing the Constitution during the reporting period, the implementation process was not devoid of challenges and impediments. Among these are: inadequate civic education for citizens which hinders their effective participation in National and County Governance; delays in remission of funds to County Governments, persistent disregard of the legislative process of Bills as well as failure to develop policies that would anchor the legislation; underfunding of commissions, delay in development of required regulations and inadequate legislative capacity in the County Governments.



## ABBREVIATIONS

AG	Attorney General
CDF	Constituency Development Fund
CAJ	Commission on Administrative Justice
CARPS	Capacity Assessment and Rationalization Programme of the Public Service
CEC	County Executive Committees
CIC	Commission for the Implementation of the Constitution
CIDP	County Integrated Development Plan
CIOC	Constitution Implementation Oversight Committee
CRA	Commission on Revenue Allocation
DPP	Director of Public Prosecutions
EACC	Ethics and Anti-Corruption Commission
ESD	Education for Sustainable Development
IBEC	Intergovernmental Budget and Economic Council
IBP	International Budget Partnership
ICZM	Integrated Coastal Zone Management
IDLO	International Development Law Organization
IEBC	Independent Electoral and Boundaries Commission
IEC	Information, Education and Communication
IFMIS	Financial Management Information System
KEWOPA	Kenya Women Parliamentary Association
KLRC	Kenya Law Reform Commission
K-NICE	Kenya Integrated Civic Education
KWS	Kenya Wildlife Service
LAPFUND	Local Authorities Provident Fund
LAPTRUST	Local Authorities Pensions Trust
MCAs	Members of County Assemblies
MDAs	Ministries, Departments and Agencies
NGEC	National Gender and Equality Commission
NIS	National Intelligence Service
NLC	National Land Commission
PBB	Programme Based Budgeting
PFM	Public Finance Management
PSC	Public Service Commission
RPP	Registrar of Political Parties
SRC	Salaries and Remuneration Commission
TA	Transitional Authority
TIPs	Transition Implementation Plans
WDF	Ward Development Funds
WWF	World Wildlife Fund





## CHAPTER ONE

# MANDATE AND STRATEGIES OF THE COMMISSION

### 1.1 Mandate

The Commission for the Implementation of the Constitution (CIC) is established under Section 5(1) of the Sixth Schedule to the Constitution and derives its mandate from Sections 5(6) and 15(2)(d) of the Sixth Schedule to the Constitution, Section 4 of the Commission for the Implementation of the Constitution Act 2010, and Sections 15 and 16 of the Transition to Devolved Government Act, 2012. These provisions spell out the functions of the Commission to include:

- a. Monitoring, facilitating and overseeing the development of legislation and administrative procedures required to implement the Constitution;
- b. Co-ordinating with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement the Constitution;
- c. Reporting every three (3) months to the Constitutional Implementation Oversight Committee on:
  - Progress in the implementation of the Constitution;
  - The preparation of the legislation required by the Constitution and any challenges in that regard;
  - The process of establishing new commissions;
  - The process of establishing the infrastructure necessary for the proper operations of each County including progress on locating offices, Assemblies and establishment and transfer of staff;
  - Any impediments to the process of implementing the Constitution.
- d. Working with each Constitutional Commission to ensure that the letter and spirit of the Constitution is respected;

- e. Monitoring and overseeing the transition process to devolved government and ensuring that the system of devolved government is implemented effectively.
- f. Exercising such other functions as provided for by the Constitution or any other written law.

The Commission is further obligated to observe the objects of Constitutional Commissions and Independent Offices as set out in Article 249 (1) of the Constitution, which are:

- a. Protecting the sovereignty of the people;
- b. Securing the observance by all State organs of democratic values and principles; and
- c. Promoting constitutionalism.

In discharging its mandate, the Commission is also obliged to observe, promote, respect and protect National Values and Principles of Governance as stipulated in Article 10 (2) of the Constitution.

In facilitating public institutions to implement the Constitution, CIC's role encompasses advising on capacities required of public officers, facilitating the development of these capacities, spearheading change management in the institutions, as well as supporting initiatives aimed at ensuring adequate public participation in development of their policies, legislation and administrative procedures.



▲ CIC Commissioners during the launch of 2012/2013 Annual Report in Wundanyi, Taita Taveta County.

## 1.2 The Commission's Strategic Direction

To guide the discharge of its mandate, the Commission has been implementing its Strategic Plan for the period 2013-2015, whose Mission, Vision and three Strategic Results are:



## Vision

“A united and prosperous Kenya in which everyone respects, upholds and defends the Constitution.”

## Mission

“To ensure that policies, laws, structures, systems and administrative procedures developed and applied at all levels are consistent and in accord with the letter and spirit of the Constitution of Kenya”.

## Strategic Results

1. A respected, well-functioning and independent Commission effectively delivering on its mandate;
2. Increased constitutional compliance among state actors; and
3. Increased constitutional compliance among citizens and non-state actors;

As elaborated in the Strategic Plan, the Commission applies the following strategies in delivering on its mandate:

### 1. Advisory Opinions

Occasionally, the Commission issues advisory opinions to the public on issues pertinent to compliance of Executive decisions, Policies, Legislation and Administrative Procedures to the letter and spirit of the Constitution.

### 2. Codification and Dissemination of Best Practice

The Commission engages in research on emerging issues and identifies best practices at the local, regional and international levels relevant to implementation of the Constitution. These are shared with stakeholders and referred to in the process of developing policies, legislation and regulations.

### 3. Stakeholder Engagement

In the discharge of its mandate, the Commission facilitates stakeholder and public participation through meetings with implementing agencies, working with Constitutional Commissions and Independent Offices and public forums from which the Commission receives submissions.

### 4. Judicial Interventions and Public Interest Litigation

The Commission at various instances seeks guidance and intervention of Judicial Courts through legal proceedings in cases of misinterpretation or improper application of constitutional provisions.

### 5. Monitoring and Reporting on Implementation of the Constitution

The Commission develops and issues to all public institutions guidelines for reporting on the progress in the implementation of the Constitution. It receives implementation progress reports from various public institutions, which are analysed to form part of the quarterly and annual reports submitted to the President and the Constitution Implementation Oversight Committee (CIOC).



Stakeholders Roundtable Meeting on the Public Audit Bill at CIC offices. Present were senior officers from the National Treasury, Auditor General's Office, Kenya Law Reform Commission and CI



## CHAPTER TWO

# DEVELOPMENT OF POLICIES, LEGISLATION AND ADMINISTRATIVE PROCEDURES

During the reporting period the Commission, working with the Kenya Law Reform Commission (KLRC), the Office of the Attorney General, other relevant state organs, non-state agencies and citizens, reviewed the development of policies, legislation and administrative procedures. The review sought to ensure compliance with the letter and spirit of the Constitution, cognizance of the system of devolved government and identification of any potential conflict with laws, policies and regulations that exist. This Chapter provides an update on the status of the policies, legislation and administrative procedures reviewed by CIC during the reporting period.

### 2.1 Review and Development of Policies

Policies provide the foundation upon which legislation and administrative procedures should be anchored. It is therefore important that National and County Governments develop policies before legislation. In addition, the Fourth Schedule to the Constitution specifies the policies that the National Government is expected to develop in alignment with the provisions of the Constitution. During the reporting period, the Commission engaged with various Ministries, Departments and Agencies (MDAs) in the review and development of policies as summarised in Table 1.



Table 1: Summary of Policies Reviewed by the Commission in the FY 2013-2014

	<b>Policy Name</b>	<b>Originating MDA</b>	<b>Objective of the Policy</b>	<b>Status of the Policy</b>
1	Kenya Health Policy 2014-2030	Ministry of Health	To give direction on improvements in the overall status of health in Kenya in line with the Constitution, global commitments and the Vision 2030.	Revised Draft submitted to the Ministry of Health for finalisation.
2	Policy on Ambulance Services in Kenya	Ministry of Health	To provide mechanisms for the reduction of time lapse between injury and other medical emergencies and the provision of medical attention.	Concept Paper reviewed and recommendations submitted to the Ministry of Health.
3	Policy on Public Participation	Office of the Attorney General (Department of Justice)	To provide mechanisms for citizens to participate meaningfully in the affairs of national and county governments.	Concept Paper reviewed and recommendations submitted to the Department of Justice.
4	National Policy on Culture and Heritage, 2009	Ministry of Sports, Culture & the Arts	To ensure that all persons can express culture and heritage in all facets of their lives as well as ensuring equal access for all cultures to art and to specific technological knowledge pursuant to Article 11 of the Constitution.	Policy reviewed and recommendations submitted to the Ministry of Sports, Culture and the Arts, which subsequently submitted it to the Cabinet for approval.
5	National Policy on Older Persons and Aging	Ministry of Labour, Social Security & Services	To ensure that older persons are treated as valuable members of the society and their rights and interests are recognized and promoted in line with Article 57 of the Constitution.	Policy reviewed and comments submitted to the Ministry.
6	Water Policy	Ministry of Environment, Water & Natural Resources	To anchor water sector reforms in line with the provisions of the Constitution, to accommodate the diverse social and economic interests of all state and non-state actors, and of the diverse range of consumers of water services at County level.	Policy reviewed and recommendations made.

	<b>Policy Name</b>	<b>Originating MDA</b>	<b>Objective of the Policy</b>	<b>Status of the Policy</b>
7	Wildlife Conservation and Management Policy	Ministry of Environment, Water & Natural Resources	To provide for the protection, conservation, sustainable use and management of wildlife in Kenya.	Policy under review by CIC.
8	National Education for Sustainable Development (ESD) Policy	Ministry of Environment, Water & Natural Resources	To enhance the role of education and learning for equitable, efficient and sustainable utilisation of the country's resources and strengthen the legal and institutional framework for effective coordination and management of ESD in Kenya.	Policy reviewed and recommendations made.
9	Integrated Coastal Zone Management (ICZM) Policy	Ministry of Environment, Water and Natural Resources	To promote integrated planning and coordination of coastal development across the various sectors.	Policy reviewed and recommendations made.
10	National Environment Policy	Ministry of Environment, Water & Natural Resources	To guide the country's efforts in addressing the ever-growing environment issues.	Policy reviewed and recommendations made.
11	National Wetlands Conservation and Management Policy	Ministry of Environment, Water & Natural Resources	To ensure wise use and sustainable management of wetlands in order to enhance sustenance of the ecological and socio-economic functions of Kenya's wetlands.	Policy reviewed and recommendations submitted to the Ministry.
12	Arid and Semi-Arid Lands Policy	Ministry of Devolution & Planning	To facilitate and fast track sustainable development, and address developmental gaps in Northern Kenya and other arid lands.	Policy reviewed and recommendations submitted to the Ministry.

	<b>Policy Name</b>	<b>Originating MDA</b>	<b>Objective of the Policy</b>	<b>Status of the Policy</b>
13	Review of the Devolution Sessional Paper	Ministry of Devolution & Planning	To address the opportunities and challenges brought forth by the implementation of the system of devolved government and to use them to inform the development of other policies in relation to the functions of County Governments and the coordination between National and County Governments	Policy reviewed and recommendations submitted to the Ministry.
14	Policy Framework on Coordination of National Government Functions at the County Level	Executive Office of the President	To strengthen the delivery of National Government functions at the County level.	Policy Framework and Executive Order reviewed and recommendations submitted to the Ministry.
	Executive Order No. 3/2014	Executive Office of the President	To provide for detailed information on the manner of coordination of National Government functions at the County level.	
15	Sessional Paper No. 14 of 2012 on Reforming the Education and Training Sectors in Kenya	Ministry of Education, Science & Technology	The review process of the Policy seeks to establish, among others, whether the policy meets the requirements of the Constitution, addresses current and emerging issues in the Kenyan and global education contexts, and to provide possible scenarios for approaching the implementation of the Policy.	Policy is under CIC review.
16	Medium Term Plan 2013-2017 (MTP II)	Ministry of Devolution & Planning	To implement the second five-year phase of the Kenya Vision 2030.	The Plan finalised and launched by the Ministry.



Policy Name	Originating MDA	Objective of the Policy	Status of the Policy
17		<p><b>Fourth Schedule Policies:</b></p> <p>The Fourth Schedule to the Constitution provides the following policies as functions of the National Government. As appropriate, the Ministries are encouraged to facilitate the development or finalisation the following policies to aid in the implementation of the Constitution:</p> <ul style="list-style-type: none"> <li>(a) Agricultural Policy</li> <li>(b) Education Policy (Sessional Paper No. 14 of 2012 on Reforming Education and Training Sector in Kenya)</li> <li>(c) Energy Policy</li> <li>(d) Foreign Policy</li> <li>(e) Health Policy</li> <li>(f) Housing Policy</li> <li>(g) Labour Standards</li> <li>(h) Language Policy</li> <li>(i) Monetary Policy</li> <li>(j) National Economic Policy</li> <li>(k) National Public Works Policy</li> <li>(l) Principles of land planning and the co-ordination of planning by the Counties</li> <li>(m) Tourism Policy</li> <li>(n) Veterinary Policy</li> </ul>	

## 2.2 Review and Development of Legislation

The Fifth Schedule to the Constitution provides the legislation and their timelines to be enacted by Parliament as provided under Article 261 to facilitate the implementation of the Constitution. This enactment is on course as detailed in Annex 1, except for the six laws whose timelines have been extended by Parliament for a period of nine months. Table 2 provides a summary and status of legislation reviewed by CIC during the FY 2013/2014, including those whose timelines have been extended by Parliament.

**Table 2: Summary of Legislation Reviewed by the Commission in the FY 2013/2014**

	Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of Legislation
1	Freedom of the Media (Article 34)	Three years	Ministry of Information Communication & Technology	The Media Council Act, 2013	Enacted in December 2013
2	Family (Article 45)	Five years	AG (Justice)	Marriage Act 2014	Enacted in May 2014
		Five years	AG (Justice)	Matrimonial Property Act, 2013	Enacted in December 2013
		Five years	AG (Justice)	Protection Against Domestic Violence Bill, 2013	Awaiting second reading in the National Assembly.
3	Fair Administrative Action (Article 47)	Four years	Ministry of Interior & National Coordination (Prisons)	Fair Administrative Action Bill, 2014	The Bill reviewed and recommendations submitted to the AG. Enactment period extended for nine months
4	Fair Hearing (Article 50)	Four years	Ministry of Interior & National Coordination (Prisons)	The Victims Protection Bill, 2013	The Bill was reviewed and recommendations submitted to the National Assembly. Enactment period extended for nine months.

	<b>Chapter and Articles</b>	<b>Constitution Timeline</b>	<b>Responsible Ministry/ Department</b>	<b>Title of Legislation Developed</b>	<b>Status of Legislation</b>
5	Rights of persons detained, held in Custody or Imprisoned (Article 51)	Four years	Ministry of Interior & National Coordination	The Rights of Persons Deprived of Liberty Bill, 2014	The Bill was reviewed and recommendations submitted to the AG. Enactment period extended for nine months.
6	Community Land (Article 63)	Five years	Ministry of Lands, Housing & Urban Development	The Community Land Bill, 2013	Under review by CIC
7	Agreements Relating to Natural Resources (Article 71)	Five years	Ministry of Mining	Mining Bill, 2014 (Art. 60, 62(1)(f), 66(2), 69 & 71	The Bill was reviewed and recommendations submitted to the AG. Awaiting debate at the National Assembly
8	Legislation Regarding the Environment (Article 72)	Four years	Ministry of Environment, Water & Natural Resources	Environment Management and Coordination (Amendment) Bill 2014	The Bill was reviewed and recommendations submitted to the AG
9	Public Participation and County Assembly Powers, Privileges and Immunities (Article 196)	Three years	Parliament	The County Assemblies Powers and Privileges Bill, 2014 (to repeal Section 17 of the County Governments Act, 2012.)	The Bill was reviewed and recommendations submitted to Parliament.
10	Accounts and Audit of public Entities (Article 226)	Four years	The National Treasury	Public Audit Bill 2014	The Bill was reviewed and recommendations submitted to the AG. Enactment period extended for nine months.
11	Procurement of Public Goods and Services (Article 227)	Four years	The National Treasury	Public Procurement and Asset Disposal Bill 2014	Enactment period extended for nine months. Under review by CIC.



Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of Legislation	
12	Values and Principles of Public Service (Article 232)	Four years	Public Service Commission	Values and Principles of the Public Service Bill 2014	The Bill was reviewed and recommendations submitted to the AG. Enactment period extended for nine months.
13	Other Legislation Required by the Constitution	Five Years	National Treasury	The Government-Owned Entities Bill	Bill reviewed and recommendations submitted to the AG.
14	Other Legislation Required by the Constitution	Five Years	Parliament (Private Member Bill – National Assembly)	Legislative Proposal for the Amendment of the Universities Act, 2012	Bill reviewed and recommendations submitted to the AG.
15			Parliament (Private Member Bill – National Assembly)	Legislative Proposal for the Amendment of the Constituency Development Fund Act, 2013	Enacted in September 2013.
16			Parliament (Private Member Bill – National Assembly)	Legislative Proposal for the Amendment of the Public Procurement and Disposal Act, 2005	The Bill reviewed, recommendations submitted to Parliament.

## 2.3 Regulations

During the reporting period, the Commission received and reviewed a number of Regulations from various MDAs to operationalize the provisions of various Acts of Parliament. The details of the Regulations and their status are outlined in Table 3.

Table 3: Summary of Regulations Reviewed by the Commission in the FY 2013/2014

Title of Regulation		Enabling Act	Responsible Ministry/ Department	Status of Regulations
1	The Kenya Defence Forces Regulations	The Kenya Defence Forces Act, 2012	The Kenya Defence Forces	Regulations reviewed and recommendations submitted to the AG.
2	National Intelligence Service Regulations (The NIS Procedures for Administration of Part IV of the Public Officers Ethics Act)	Public Officers Ethics Act, 2003	The National Intelligence Service Council	Regulations reviewed and recommendations submitted to the AG.
3	The National Police Service Commission (County Policing Authority) Guidelines, 2013	The National Police Service Act 2011.	National Police Service Commission	Regulations reviewed and recommendations submitted to the National Police Service Commission
4	Guidelines on Conduct of Business of County Policing Authority, 2013	The National Police Service Act 2011.	National Police Service Commission	Regulations reviewed and recommendations submitted to National Police Service Commission.
5	The National Government Coordination (General) Regulations	The National Government Coordination Act, 2013	Ministry of Interior and Coordination	Regulations reviewed and recommendations submitted to the Ministry of Interior and Coordination.
6	The Leadership & Integrity Regulations	The Leadership & Integrity Act, 2012	The Ethics & Anti-Corruption Commission	Regulations reviewed and recommendations submitted to the AG.
7	The Public Finance Management Regulations	The Public Finance Management Act, 2012	The National Treasury	Under review by CIC.

## 2.4 Development of Guidelines

As part of its mandate of facilitating the development of administrative procedures, CIC participated in a number of stakeholder engagements and gave its input to various implementing partners in development of the following guidelines.

### 2.4.1 Guidelines for the Secondment of Public Officers to County Governments

The Commission and the Inter-Agency Committee on development of guidelines for public officers seconded to the County Governments developed the guidelines to address emerging issues related to seconded officers. The following guidelines, which address the following areas, were finalised, gazetted by the Transition Authority and shared with all County Governments.

- a. Rationalization of the public service during transition period.
- b. Terms and conditions of seconded staff.
- c. Training and development of seconded officers.
- d. Discipline of seconded officers.
- e. Transfer of service and of officers.
- f. Pension
- g. Establishment and abolition of offices during transition period
- h. Re-deployment and release of seconded officers during the period of secondment

### 2.4.2 Guidelines on County Pension Scheme

The Council of Governors constituted a technical committee chaired by the Retirement Benefits Authority to research and recommend a pension scheme that would best serve the needs of the counties. The committee in which CIC was a member submitted a report to the Council of Governors recommending the following:

1. The Umbrella Scheme should be established under an Act of Parliament to safeguard the scheme against any arbitrary changes to any aspects of the scheme. This will give it a national outlook and will protect public interest.
2. The new Umbrella Scheme will be under the management of a new Board of Trustees established pursuant to the Act of Parliament establishing the scheme.
3. Dissolve the Local Authorities Provident Fund (LAPFUND) and Local Authorities Pensions Trust (LAPTRUST) schemes to all employees of the County governments and ensure preservation of all the accrued rights of members under these schemes.
4. Merge the administrative services of the two schemes, LAPFUND and LAPTRUST. The resultant organization will provide administration services to the two closed funds currently managed by LAPTRUST and LAPFUND as well as the new Umbrella Scheme.
5. The legislation will determine how to deal with former employees of LAPFUND and LAPTRUST.
6. The Funds managed by LAPFUND and LAPTRUST will not be merged until the two levels of government settle all the liabilities.



7. Establishment of the Scheme will follow the standards set up by Retirement Benefit Authority and Treasury Circular No. 18/2010.
8. Upon adoption of these recommendations, the Council of Governors will appoint an Interagency Technical Committee with the mandate to hire legal services to draft the law establishing the Umbrella Scheme and to oversee its implementation.
9. Transition Authority, in consultation with relevant Ministries (National Treasury, PSC, Ministry of Devolution (DPSM) and the Council of Governors to issue guidelines on how the staff will transit to the new scheme.

In June 2014, the Council of Governors informed all County Public Service Boards of the resolution to endorse LAPTRUST, which was to be rebranded into a County Pension Fund, as the scheme of choice to offer retirement benefits to public servants at the County Level.

### 2.4.3 Performance Contracting Guidelines

The Ministry of Devolution & Planning organized a review of Performance Contracting Guidelines for the Financial Year 2014/2015 in preparation of the 11th Cycle Performance Contracts for implementation. The Commission worked with the Ministry to institutionalize implementation of the Constitution in Performance Contracting. As a result, the 11th Edition Performance Contracting Guidelines includes improved indicators on Compliance with Constitutional and other Statutory Obligations, which entails compliance with, and enforcement of the Constitution and other statutory obligations.

Public institutions are therefore required to undertake an audit to establish the extent of compliance and enforcement using indicators listed in "Performance Contracting Guidelines for the FY 2014/15, 11th Edition.

### 2.4.4 Joint National and County Governments Capacity Assessment and Rationalization Programme

The Institutional Framework for the Joint National and County Governments Capacity Assessment and Rationalization Programme of the Public Service (CARPS) was gazetted on 2nd May, 2014 (Gazette Notice No. 2919). An Intergovernmental Steering Committee and an Inter-Agency Technical Committee were established (with CIC representation) to implement the programme. The Programme is expected to make the public service lean, efficient and effective.

### 2.4.5 Implementation of Supreme Court Advisory on Two-Thirds Gender Rule

Articles 27(8) and 81(b) of the Constitution require that "not more than two-thirds of members of elective public bodies shall be of the same gender". It is the responsibility of the State therefore to take legislative and other measures to implement this requirement. However, the Supreme Court Advisory No. 2 of 2012, advised that the gender equity principle could not be immediately enforced in the National Assembly for the March 2013 general elections. Consequently, the AG convened a meeting attended by representatives from the Commission on Administrative Justice (CAJ), Kenya Women Parliamentary Association (KEWOPA), National Gender and Equality Commission (NGEC), Registrar of Political Parties (RPP), National Assembly, Ministry of Devolution and Planning and CIC. The meeting mandated NGEC to facilitate the development of a comprehensive framework towards implementation of the two-thirds gender rule by August 2015.

## 2.5 Public Communication on the Implementation of the Constitution

As part of its mandate to inform the public on the implementation of the Constitution and in particular the implementation of the system of devolved government, CIC developed and disseminated to the National Government, County Governments and members of the general public the following IEC materials

### a) Poster on Constitutional Implementation by County Governments

To inform and guide implementers of the Constitution, CIC developed a poster which highlights and summarises the basic legal, administrative and institutional structures required to facilitate efficient and equitable delivery of services and prudent use of public resources. The poster (see Annex 2) is founded on the principle expressed in Article 1 of the Constitution, i.e. all sovereign power belongs to the people of Kenya and shall be exercised either directly or through their democratically elected representatives. The poster, launched in Bungoma in January 2014 has been distributed to County Government offices, National Government, Constitutional Commissions and Independent Offices and other non-state actors. To discharge their functions effectively, public officers are required to familiarise themselves with the Constitution and the policies, legislation and administrative procedures required to implement the Constitution.

### b) County Assemblies Handbook

The Commission developed a handbook titled "County Assembly Members: Their Roles and Responsibilities". The handbook was launched in Bungoma in January 2014 and has been distributed to all the Counties. It gives basic guidance to County Assembly members on their roles and acts as a guide for future orientation courses to Members of County Assemblies. It contains an overview of the role of Counties and of Members of County Assemblies and details the various offices and bodies that are involved in governing a County, with a focus on MCAs and summarises the nature of the work of the MCA.

### c) Handbooks on Public Finance Management

The Commission has noticed a gap in the way members of the public understand critical aspects of public finance management under the Constitution and the Public Finance Management Act, 2012. To simplify finance management for the public's understanding, CIC working with the International Budget Partnership (IBP) developed two guides for the public;

1. "50 Things Every Kenyan Needs to Know About Public Finance under the Constitution".
2. "50 Things Every County Government Official Needs to Know about Public Finance Under the Constitution"

These publications have been released to the public, with the second publication specifically targeting the 47 County Executive Members responsible for Finance, the 47 County Assembly Speakers, the Ministry of Devolution & Planning, the National Treasury, the Council of County Governors and a number of civil society organizations. In addition, a publication on 20 key questions titled "Your County budget - a Citizen Tool for Reading and Understanding County Budgets" has been published and is awaiting dissemination to the public.

### d) Guidelines for the Inclusion of Persons with Disabilities in Mainstream Society

During the reporting period, the Commission finalized and launched its first publication on disability rights titled, "Guidelines for the Inclusion of Persons with Disabilities in Mainstream Society". The guidelines aim to assist state and non-state agencies in the formulation, review and implementation of policies, legislation and administrative procedures towards the effective implementation of constitutional rights of persons with disabilities.





▲ CIC Chairperson, Mr. Charles Nyachae with Members of the Disability Caucus of Parliament launching CIC's Guidelines for Inclusion of Persons with Disabilities in Mainstream Society.

### e) Training Curriculum for Beneficiaries of the Affirmative Action Principle within the County Assembly

In the March 2013 general elections, only 16 women out of the 290 Members were elected to the National Assembly; no woman was elected in the positions of the 47 Governors and the 47 senators. Of the 47 Deputy Governors, only 8 are women. At the same time, only 76 of the 1450 elected MCAs, are women. On the other hand, only 2 persons with disabilities were elected to the National Assembly and 1 to the Senate, while none was elected as Governor. All the 18 women in the Senate were appointed on account of affirmative action. Six women were appointed to the Cabinet, but no person with disability was included.

From these data, it can be concluded that the Kenyan society still has a long way to go in being persuaded to include women, persons with disability and persons from marginalized groups in mainstream governance positions. Against this background, CIC developed a curriculum during the reporting period to train Members of County Assemblies who are beneficiaries of the principle of affirmative action. The curriculum would guide them in exercising their mandate, utilize the opportunities available to them and demonstrate the value of the constitutional and human rights principle. The expected output of application of the curriculum is well-informed women, persons with disabilities and marginalized community members elected in County Assemblies who positively influence County legislative and other constitutional implementation agenda.





## CHAPTER THREE

# IMPLEMENTATION OF THE SYSTEM OF DEVOLVED GOVERNMENT

Devolution remains the most complex and the least understood aspect of the Constitution of Kenya, 2010. The Kenyan system of devolved government consists of a National Government and forty-seven County Governments which, although distinct and interdependent, are expected to work in consultation and cooperation. The Fourth Schedule to the Constitution prescribes the functions of each level of Government. The effective implementation of devolution therefore requires a comprehensive and well-coordinated system-wide strategy among the levels, arms and departments of Government.

The period under review was the first full year of transition to the system of devolved government and was marked by County Governments assuming the majority of their functions, which were not transferred during the first phase. This chapter therefore reviews the progress made in implementing the system of devolved government in Kenya during the Financial Year 2013/14.

### 3.1 Operationalization of the System of Devolved Government

Following the March 4, 2013 General Elections, the National Government and the County Governments were established, marking a significant stage in the implementation of the system of devolved government. County Governments were operationalized as the centres of devolving powers and economic resources to Kenyans.

The functions and powers of the National Government and the County Governments, respectively, are set out in the Fourth Schedule of the Constitution. Under Article 186 of the Constitution, these are:

- a. Exclusive functions and powers, that is, as set out in the Fourth Schedule, unless otherwise transferred from one level of government to the other level under Article 187 of the Constitution.
- b. Concurrent functions and powers, that is, conferred on more than one level of government (National and County)



- c. Residual functions or powers, that is, not assigned by the Constitution or national legislation to a County, which repose in the National Government, but may be assigned to the County Governments through national legislation.

### 3.1.1. National Government

Article 6(3) of the Constitution provides that a national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service. During the reporting period, in addition to the development of various policies and legislation, a framework for strengthening the delivery of National Government functions at the County level was launched. The framework was informed by the National Government Coordination Act, 2013 and provided for a mechanism through which the President can direct and co-ordinate the functions of ministries and other government departments as provided under Article 132(2)(b) of the Constitution. The framework provides that the County Commissioners assisted by the Deputy County Commissioners coordinate implementation of National Government functions at the County level.

This development sought to restructure the Provincial Administration outside Section 17 of the Sixth Schedule to the Constitution, which provides that "within five years after the effective date, the national government shall restructure the provincial administration to accord with, and respect the system of devolved government established under the Constitution". As such, there is need for a comprehensive review of the Provincial Administration system by August 2015 in order to meet the provisions of the Constitution of Kenya.

### 3.1.2. County Governments

The Constitution gives the County Governments the executive and legislative authority and mandate to raise revenue, develop policies and make own budgets for the purpose of devolving services and improving the welfare of its people. During the reporting period:

- Counties established their Executive Committees and County Public Service Boards.
- County Assemblies were fully constituted by nominating members to fulfil the gender and marginalized groups requirement.
- County Governments developed their County Integrated Development Plans (CIDPs) that informed the preparation of their budgets.
- County Governments developed various laws required to guide delivery of the assigned functions. However, these laws have not been reviewed to ascertain their compliance with the letter and spirit of the Constitution.
- Majority of the Counties established units of decentralization at the sub-county and ward levels and appointed administrators to oversee their management.

## 3.2 Policy and Legislative Reforms

The formative years of Kenya's system of devolved government are focused on developing and implementing effective policies and laws that will facilitate the achievement of the objectives of devolution as envisioned



in the Constitution. It is primarily the responsibility of government executives at both levels of government to initiate the review/development of policies, legislation and regulations, guided by the functions assigned. A devolution policy ought to inform the development of policies in relation to the functions of County Governments and the coordination between National and County Governments. Effective policies on devolution ensure that County Governments have the incentives, adequate funds, technical expertise, and management capacity to provide services.

Pursuant to its Constitutional mandate, the Commission worked with various government ministries, agencies and departments on the review and development of policies, legislation and administrative procedures. Key among the policies reviewed by the Commission was the Revised Devolution Sessional Paper developed by the Ministry of Devolution and Planning. This was a successor to the initial policy that was developed in 2010 before the coming into being of County Governments. The revised Devolution Sessional Paper seeks to address gaps in the previous policy.

A significant observation was that the Revised Sessional Paper fails to adequately address the conflict of roles between both levels of Government that have arisen in the past year.

### 3.3 Intergovernmental Relations

Cooperation as envisioned in the Constitution requires cultural and attitudinal change where each level of government recognises and respects the unique role either level plays and works together to realise the principles and objects of devolution as well as the broader “letter” and “spirit” of the Constitution of Kenya. This would translate into each level of government undertaking its functions as stipulated in the Fourth Schedule to the Constitution while consulting and cooperating as appropriate to ensure that service delivery meets the needs and aspirations of Kenyans as articulated in the Constitution. This would further be evidenced in policy, legal and other institutional frameworks that facilitate the envisioned devolution of power, resources and functions.

A key measure towards the realisation of the envisioned intergovernmental relations is the establishment of a robust and strengthened institutional infrastructure. The County Government Act 2012, the Inter-Governmental Relations Act 2012, the Urban Areas and Cities Act 2011 and the Public Financial Management Act 2012 establish frameworks for consultation and cooperation between National and County Governments and amongst County Governments.

During the reporting period, Inter-Governmental Sectoral Forums were established to enhance inter-sectoral consultation and collaboration between National and County Governments. The National-County Government Coordinating Summit, Council of Governors, the Inter-Governmental Budget and Economic Council, and the Inter-Governmental Sectoral Forums held various meetings pursuant to their mandates. These structures have facilitated consultations between national and county governments to address emerging transitional issues such as resolving challenges, human resource capacity assessment and rationalisation as well as other strategic, operational and administrative concerns.

While some of the Inter-Governmental Sectoral Forums such as Health and Finance held regular meetings, others remained largely dormant. The Commission observed that the intergovernmental structures operationalized have facilitated increased consultation in public financial management, staffing, education development, and health sector and disaster management issues.

## 3.4 Public Finance Management – Status of Implementation of the System of Fiscal Decentralization

The Public Finance Management Act, 2012 operationalizes Chapter 12 of the Constitution of Kenya. It provides the structure and institutions that support the system of fiscal decentralization, striving to reform the management of public resources by making the process more effective, transparent, participatory, accountable and service delivery oriented. With the Act, it was expected that there would be public finance sector re-engineering, automation of financial systems and processes, introduction of multiyear budgeting and programme-based budgeting, among other developments.

### 3.4.1 Operationalization of the Public Finance Management Act

The Public Financial Management Act (2012) specifies the roles and responsibilities of institutions that have their mandates on management of public funds. It provides for the management and oversight of public funds both at the National and County level in the following areas: budget preparation, implementation and reporting, cash management, public borrowing, intergovernmental fiscal relations, public participation, and increased transparency in the budget process.

The implementation of the PFM Act has witnessed the establishment of the Intergovernmental Budget and Economic Council (IBEC) pursuant to the provisions of Section 187 of the Act. The IBEC has been instrumental in providing a forum for negotiations between the National and County Governments on diverse issues ranging from the Division of Revenue, Borrowing by County Governments to Cash Disbursement to County Governments on the basis of revenue allocated under the County Allocation of Revenue Act. The Intergovernmental Budget and Economic Council has provided a platform through which different levels of government have come together and ironed out possible differences in the context of revenue sharing and other fiscal relations.

To a great length, the impact of the PFM Act has been witnessed in the following areas:

#### 1. Budget Preparation and Execution

The County Governments prepared their first budgets in the FY 2013/2014, largely in an environment constrained of time, capacity and to a large extent lacking effective public participation as required under the law. A majority of these budgets were unbalanced. The Commission on Revenue Allocation and Controller of Budget advised on the requisite correctional measures needed to be undertaken by the Counties in terms of reviewing their budgets for the sake of funding.

Some of the 2013/14 problems re-emerged in the Financial Year 2014-2015. They are largely symptomatic of the inadequate capacity and preparatory plans that were in place to manage the transition to devolved system of governance. The transition ought to have been adequately provided for to minimize the occurrence of some of the budget and financial disruptions that were witnessed especially in the Financial Year 2013/2014.

Budget formulation is also guided by County Development Plans, whether annual or mid-term. According to the law, no public monies can be expended outside of a planning framework. Thus, majority if not all Counties have developed their County Integrated Development Plans (CIDP) as a guide to the development of their annual plans and optimization of resources towards the larger development needs of the county. Both the CIDP and the Budget Estimates have been prepared by the County Executive and submitted to the County Assemblies for discussion and approval.

## 2. Budget Implementation

To a large extent, the implementation of budgets at both the National and County levels has been undertaken as per the requirements of the PFM Act. There have been increased levels of desirable results in the midst of reports by various institutions including the Controller of Budget and the Auditor General of some incidences of misplaced budget priorities and leakages. The implementation of the budgets has also raised the need for studies on their performance, especially in the context of service delivery. Is the Kenyan public having its expectations met within the realms of service delivery? If not, why and which are the possible areas for improvement?

There have been several complaints raised by the Counties on the adoption of the Integrated Financial Management Information System (IFMIS) as the financial platform for the implementation of the budget. They have expressed their reservations on the suitability of IFMIS based on allegations of connectivity outages. Others have decried the fact that IFMIS has not been sufficiently modified to take into account the peculiarities of the system of devolved governance. The Commission has implored the National Treasury to ensure that IFMIS being the system that has been prescribed in line with the requirements of the Public Finance Management Act is effective and efficient. The onus therefore is on National Treasury to ensure that IFMIS respects and promotes the distinctiveness of the National and County levels of government.

## 3. Programme Based Budgeting

The PFM Act requires programme based budgeting (PBB). It is expected that by the current financial year 2014/2015, both the National and County Governments shall develop programme based budgets which require the budget to be organized around a set of programs, and usually subprograms, with clear policy objectives. Each program has a set of indicators and targets, and is based on an economic classification that clearly identifies the different categories of expenditure, such as that dedicated to personnel, goods and services, or infrastructure.

However, it must be borne in mind that the County Allocation of Revenue Act 2014 has deferred the operationalization of Program Based Budgets by the County governments to the Financial Year 2015- 2016.

## 4. Public Participation

This is a core principle under the Constitution. It requires that members of the public are not only consulted but are equally involved in budget preparation especially in planning and review of budgetary estimates. The County Budgets and Economic Forum serves as a means for consultation on plans and budgets, and also broader matters of economy and finance. At the County level, both the County Executive through the committee member in charge of finance and the County Assembly through the committee of the county assembly in charge of matters relating to the budget are bestowed with the responsibility of conducting public participation in the budget process. This includes dealing with the formalities relating to the set-up of the County Budget and Economic Forum, reaching out to, and taking and consolidating views of members of the public in county planning and budgeting.

Majority of the Counties during the period under review included members of the public in their budget preparation, though there has been lots of criticism of the relevance and depth of participation conducted. The most affected area was in the preparation of the County Integrated Development Plan (CIDP), which is a five-year County development plan that details the planning and development priorities of the County.

## 5. Revenue Allocation and Transfers

In the Financial Year 2013/2014, the Counties shareable revenue stood at KSH 190 billion, and conditional allocations amounted to KSH 20 billion, totalling to KSH 210 billion to the Counties (Ref. County Allocation



of Revenue Act, 2013). Out of the total conditional allocation of KSH 20 billion, 16.6 billion was meant for donor-funded projects and the balance of KSH 3.4 billion meant for level 5 hospitals (See Annex 3).

Following the enactment of the County Allocation of Revenue Act 2013, a number of counties received their first allocations of shareable revenue in the month of September 2013. This was due to two reasons:

1. The County Allocation of Revenue Bill was assented to on the 26th of August 2013.
2. There was a precondition that ought to have been satisfied to the extent that Counties, especially those that had unbalanced budgets, were first to revise their budgets.

Also, there have been misunderstandings between the County Governments and Parliament over the accounts that are being used for revenue distribution between the National and County Governments. Even though the law provides that the basis for revenue sharing shall be the last audited accounts approved by Parliament, the division of revenue for the Financial Year 2013/14 was predicated on the audited accounts for the year 2008/2009. In the Financial Year, 2014/2015, the basis of division of revenue has been the audited accounts for the 2009/2010 Financial Year. This is notwithstanding the fact that according to the Auditor General, audit-related tasks are pretty current even though the accounts for the years subsequent to 2009-2010 are still pending in Parliament for approval. This makes the Counties feel that they have been denied more funds than they would have otherwise received had the division been based on more recent accounts.

In the same financial year, the National Government through the National Treasury by way of supplementary budgets revised the conditional allocations initially indicated in the County Allocation of Revenue Act, giving some Counties more funds and reducing that of others. Additionally, by the close of the financial year, the conditional allocations on donor-funded projects to Counties had not been disbursed. It is not clear what the full import of the same will be, but all indications are that Counties are not going to receive the same even as we currently implement the 2014/2015 budget.

This Financial Year was also marked with notable delays in the remission of funds from the National Government to the County Governments. For instance, between February and April 2013, Counties never received their allocations as agreed in the funds disbursement schedule negotiated under the auspices of the IBEC. Through the County Allocation of Revenue Act 2013, the requirements of the Public Finance Management Act that transferred funds to Counties on quarterly basis was amended and replaced with a monthly cash disbursement. This has caused problems for Counties in terms of planning and execution of development projects.

The commencement of Financial Year 2014/2015 witnessed delays in the remission of funds to the County Governments largely occasioned by failure of the Senate to pass the County Allocation of Revenue Act (2014) within the time period stipulated under the law. With respect to the Division of Revenue Act, 2014, the County Governments shareable revenue stands at KSH 226 billion, which is to be equitably shared amongst the 47 County Governments. Unfortunately, it had to take the intervention of various institutions including the Senate, Commission on Revenue Allocation, Controller of Budget, Council of Governors, and the Intergovernmental Budget and Economic Council, to offset the financial crunch that had beset County Governments. The financial crunch was predominantly attributable to the delay by the Senate to consider and pass the County Allocation of Revenue Act, 2014.

## **6. Revenue Collection**

The Constitution assigns the County Governments the power to raise their own revenue with respect to the services that they provide. Thus, the County Governments have the onus of putting into place programs for revenue mobilization and administration. According to the Commission on Revenue Allocation, the revenue performance in the Counties has declined compared with what the local authorities were collecting. The

Counties are yet to device and deploy effective revenue raising measures that would ensure that over time they realize their revenue potential. Others have argued that this reality might also be as a result of leakages that the Counties are yet to seal.

## 7. Institutional Disputes

The period under review has also witnessed serious misunderstandings amongst institutions that have their mandates impacting or related to the budget process both at the National and County level. The most notable was the misunderstanding between the National Assembly and the Senate wherein the Senate rightly felt that the National Assembly in consideration of the Division of Revenue Act had excluded them. With respect to the Division of Revenue Act, 2013, the Senate went to the Supreme Court seeking an advisory opinion with the intention of wanting the court to affirm their role in the Division of Revenue process. The Supreme Court did agree with the Senate and proceeded to highlight the role of the Senate in the Division of Revenue process.

There have also been institutional disputes pitting Members of the County Assemblies against the Commission on Revenue Allocation and the Controller of Budget. The dispute stems from the fact that in exercise of the powers conferred to them under Article 216(2) of the Constitution, the Commission on Revenue Allocation did set fiscal limits for County governments which in fact never augured well for a number of County Governments and especially the County Assemblies, who in turn proceeded to Court suing both the Commission on Revenue Allocation and the Controller of Budget for enforcing adherence to these limits.

In the reporting period, we also did witness disputes between the Governors and Senators over accountability for public funds. The dispute was mainly over whether the Governors have to personally appear before the Senate to account for the funds received or they can have their respective officers in charge of the various dockets appear. The Senators have sent out personal summons to the Governors to appear whilst the Governors challenged the same arguing that their officers are good enough in terms of dealing with the issues raised. In fact, this particular issue saw the Senate give directives that funds under the 2014/2015 Financial Year not to be released to Bomet, Kisumu, Kiambu and Muranga Counties. The constitutionality or otherwise of such a directive as issued by the Senate is yet to be tested. The implication of such a directive in the event that it is implemented might have far-reaching impact in the affected Counties, seriously undermining service delivery.

## 3.5 Civic Education and Public Participation

### 3.5.1 Civic Education

Civic education seeks to have an informed public that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding and ownership of the Constitution. It is a requirement for both National and County governments to undertake civic education. Sections 99 of the County Government Act, 2012 provides the purpose and objectives of civic education, while section 100 provides the design and implementation of civic education programmes and the institutional framework for civic education. Further, Section 101 requires County Governments to develop legislation that provide the requisite institutional framework for purposes of facilitating and implementing civic education programmes.

At the national level, a civic education committee was constituted by Transition Authority to steer the development and implementation of a National Civic Education Programme. The committee has representatives from the Ministry of Devolution and Planning, Office of the Attorney General, the Transition Authority, Uraia,

AmkeniWakenya and CIC. During the reporting period, the committee developed a civic education curriculum and reviewed civic education materials prepared by various stakeholders. The curriculum is currently being piloted in selected Counties.



▲ Commissioner Philemon Mwasaka addressing the public in Wundanyi, Taita Taveta County

The Commission has also designed various strategies of informing and educating the people of Kenya on their roles in the implementation of the Constitution. This includes engagement of the youth through the young people's forums and sensitization of teachers in the Counties. This is discussed in Chapter Five.

At the County level, an assessment<sup>1</sup> conducted by CIC at the end of the reporting period showed that only six Counties had established civic education units. Seventeen Counties had not developed the legislation and requisite institutional framework required to facilitate implementation of civic education.

It is evident that there are many disjointed initiatives towards civic education resulting to duplication, misinformation and lack of quality control. This calls for CIC to undertake its role of reviewing all civic education materials to ensure that they accord with the letter and spirit of the Constitution.

### 3.5.2 Public Participation

As already indicated in this report, public participation is a core principle under the Constitution. It is an important component of decision making of the governance process. Article 10 of the Constitution recognizes public participation as one of the National Value and Principle of Governance and further mandates Parliament and County Assemblies under Article 118 and 196 respectively, to facilitate public participation in the legislative and other business of Parliament/Assembly and their committees.

Notably, one of the objects of devolution (Article 174(c)) seeks to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. Further, the Constitution and the County Government Act, 2012 require that

<sup>1</sup>Assessment of the Implementation of the System of Devolved Government- from Steps to Strides



National and County Governments develop legislation and establish modalities and platforms to facilitate citizens' participation in public governance.

From the assessment of operationalization of County Governments, County visits and other interactions with Counties, it is found that the level and forms of public participation vary from one County to another. To date most Counties are yet to holistically define public participation and develop the requisite legal framework and structures. Only slightly more than half of the Counties reported having established structures for citizen participation while only five Counties had developed Community/Public Participation Bills. Further, in some Counties, public participation remains a public relations exercise. For example, failure to share with the public the relevant information prior to meetings has been a hindrance in facilitating objective and effective public participation. Consequently, ineffective/absence of public participation affects the contents and legality of bills passed at the National and County level as well as the overall governance of the country.



▲ CIC Staff Members





Chairpersons of the Constitutional Commissions and Independent Offices in one of their Forums



## CHAPTER FOUR

# PROMOTING CONSTITUTIONALISM AND WORKING WITH CONSTITUTIONAL COMMISSIONS & INDEPENDENT OFFICES

Chapter 15 of the Constitution lists ten (10) Commissions and two (2) Independent Offices and sets out a three-fold mandate for Constitutional Commissions and Independent Offices in Kenya. The objects of the Commissions and the Independent Offices are to:

- a. Protect the sovereignty of the people;
- b. Secure the observance by all State organs of democratic values and principles, and;
- c. Promote constitutionalism.

The Independent Offices, that is the Controller of Budget and the Auditor-General's Office derive their independence from the provisions in Chapter 15, while the independence of the office of the Director of Public Prosecutions (DPP) is established by Article 157 and secured in Article 158 of the Constitution.

The Commission for the Implementation of the Constitution has been given an additional important mandate of "working with each constitutional commission to ensure that the letter and the spirit of this Constitution is respected." Constitutional Commissions and Independent Offices are subject only to the Constitution and the law; and are independent and not subject to direction or control by any other person or authority. However, such independence may be varied by an amendment to the Constitution through a referendum.

## 4.1 Delivering as One

The Constitutional Commissions and Independent Offices adopted a cooperative and consultative approach in the discharge of their specific mandates. To streamline the working arrangements between the Commissions, a framework for working together was developed and adopted by the Forum of Chairpersons. This will facilitate working together and participation in activities and consultative meetings convened by Constitutional Commissions and Independent Offices.



The framework provides for a four-step implementation approach that focuses on the following issues:

- a. Development of a shared strategic focus;
- b. Strengthening of the Governance structure and processes at three levels, that is, the Chairpersons' Forum' as a collaborative body to lead in the implementation process; exploring mechanisms for working together within individual Commissions as well as at the members and Secretary/Chief Executive level as well as Secretariat levels and forming functional technical teams between CIC and each Constitutional Commission;
- c. Defining Performance accountability issues: developing and implementing a results-based monitoring and evaluation framework; and
- d. Instituting Stakeholder engagement to foresee and manage risks, build value, increase trust, increase knowledge of impacts, and enable innovation.

Through these arrangements, the following key activities have been undertaken.

### 1. The Forum of Chairpersons of Constitutional Commissions

The Forum of Chairpersons brings together chairpersons of all Constitutional Commissions under Chapter 15 of the Constitution and Independent Offices. The Forum has also co-opted the heads of other related institutions. During the reporting period, the Forum, chaired by Chairperson, CIC, held a number of meetings to address issues of common concern including; security, human rights, implementation of the system of devolved government, budgetary allocation to Commissions, order of precedence for members of Commissions, appointment of members of Commissions and implications of Executive Order No. 2. of 2014.

Two key concerns are worth highlighting:

#### i. Appointment of Commission Members

The Forum noted that, notwithstanding statutory timelines for the appointment of members of Commissions in case of a vacancy, the timelines had not been observed. As a result, many Constitutional Commissions, by June 30th, were not fully constituted. The following list shows vacant positions that call for appointment of members.

No.	Commission	Vacant Position (s)
1	Teachers Service Commission	Six (6)
2	National Gender and Equality Commission	One(1)
3	National Police Service Commission	Two (2)
4	Kenya National Commission on Human Rights	One(1)
5	Judicial Service Commission	One(1)
6	National Cohesion and Integration Commission	Nine (9)

## ii. Budgetary Allocations to Commissions

Article 249 (3) of the Constitution of Kenya 2010 requires Parliament to allocate adequate funds to enable each Independent Office and Commission to perform its functions. An adequate budget for Commissions would create an enabling environment for the Commissions' as they seek to enforce and protect constitutional provisions as laid out in the Constitution. The Forum noted that Constitutional Commissions and Independent Offices were not adequately funded, contrary to the Constitution. The Forum appointed a team to consult with the Cabinet Secretary to the National Treasury. However, the meeting with the National Treasury did not resolve in a concrete proposal on how funding will be guaranteed. The Forum will escalate to the President and relevant Parliamentary committees.

## 2. Chairpersons' Annual Conference

The Chairpersons' Forum convenes an annual conference to give members an opportunity to take stock of what had been achieved individually and collectively. In August 2013 the Forum, under the then leadership of Chairperson, CAJ, convened the second annual conference for Constitutional Commissions and Independent Offices. The conference whose theme was 'Devolution and Good Governance: The Role of Constitutional Commissions', considered successes and challenges and made proposals on how members could discharge their mandates to facilitate devolution. The issues discussed at the meeting included:

- a. Progress and challenges in devolution.
- b. Independent oversight, superintending of National and County governments.
- c. Enhancing cohesion and inter- and intra-institutional dispute handling mechanisms
- d. Ensuring affirmative action in elective and appointive positions
- e. Human rights, good governance and integrity in public office
- f. Challenges and prospects in managing elections in Kenya.

The chairpersons Forum will continue to offer a platform for inter-agency consultations and cooperation.

## 3. The National Council on the Administration of Justice

The National Council on the Administration of Justice (NCAJ) provides another avenue through which the Commissions can work together. It is an interagency organ that brings together various state and non-state organs playing a critical role in the reform of administration of Justice. The Commission for the Implementation of the Constitution, a co-opted member of the NCAJ, participates in meetings and other events convened by the NCAJ. In the reporting period, the NCAJ, at one of its Council meetings considered the criminal cases of public interest, and noted that there were some weaknesses in the justice chain that required to be addressed and noted the need to sensitize all court users; committees. In one of the cases (the Agneta Case in Bungoma) for example, notwithstanding that the victim of a robbery with violence informed the authorities of the threat with death if she reported the matter, she was not accorded any protection resulting to her death and that of her children on the very day that the accused person was released from remand custody.

The Commission also convened a meeting with the Bungoma Court Users' Committee to understand how the committees facilitated access to justice. It was apparent that court users' committees have enhanced cooperation and coordination among different stakeholders and agencies in the justice sector. The deliberation also revealed that more needs to be done especially in devolving resources and services such as witness protection to the Counties.



## 4.2 Protecting Constitutionalism and Sovereignty of the People

Under Article 1 of the Constitution, all sovereign power belongs to the people of Kenya and is exercised only in accordance with the Constitution. This sovereign power may be exercised directly or indirectly through democratically elected representatives. Although the sovereign power is delegated to the three arms of government, the executive and legislative function is exercised under a devolved system of government in which power is shared between two levels of governments, that is, the National Government and 47 County Governments.

Under Article 249(1) (a) of the Constitution, Constitutional Commissions and Independent Offices have a collective mandate to protect the sovereignty of the people. This power can be exercised individually or collectively when there is a particular issue that threatens the sovereignty of the people. Some mechanisms in which CIC enhances this protection are by:

- Ensuring that the legislative, institutional and administrative frameworks are responsive to the needs of the people.
- Participating in stakeholder consultations with both state and non-state actors to promote constitutionalism.
- Issuing public advisories and statements where the Constitution has been violated or is under threat of violation.

During the reporting period, CIC issued media statements and public advisories advising on various constitutional issues. Table 4 highlights some of the Public Advisories.



▲ CIC Commissioners and Senior staff members in a working session



Table 4: Summary of Public Advisories Issued by CIC during the FY 2013/14

Constitutional issue	Highlights in the public advisory
<p>The Constitution of Kenya (Amendment) Bill, 2013</p> <p>(Amendment of Article 260 of the Constitution)</p>	<p>The Bill sought to amend Article 260 to exclude Judges, Magistrates, MPs and MCAs from being State Officers. The amendment would:</p> <ul style="list-style-type: none"> <li>• Preclude them from the application Chapter Six of the Constitution and the National Values and Principles of Governance, thus undermining the sovereignty of the people,</li> <li>• Interfere with the functions and independence of Chapter 15 Commissions,</li> <li>• Cause constitutional crisis in the setting of salaries of Judges and Magistrates, MPs and MCAs, impacting negatively on the wage bill.</li> <li>• Have an effect on the functions of Parliament.</li> <li>• Substantively change the Constitution and hence affect the implementation of many other Articles in the Constitution including Articles 1, 73, 74, 75, 76, 77, 78, 79, 88, 94, 95, 96, 99, 103, 127, 172, 184, 193, 194, 230, 233, 234, 235, 251, and the Third Schedule to the Constitution among others.</li> <li>• Amount to indirectly rewriting the Constitution, which requires a referendum (Article 255(1)).</li> </ul>
<p>Amendment of the County Governments Bill, 2013</p>	<p>The County Governments (Amendment) (No.2) Bill, 2013 proposed to amend the County Governments Act, 2012. The proposal provided for the establishment of County Development Boards in each county. In the advisory, this is an affront to devolution.</p> <ul style="list-style-type: none"> <li>• The creation of the boards, as proposed, would violate the letter and spirit of the Constitution.</li> <li>• The Bill contradicts other devolution legislation including the County Government Act, 2012, The Intergovernmental Relations Act and The Public Finance Management Act, 2012 passed after extensive public consultation.</li> <li>• The Bill mixes the responsibilities of the legislature and the executive arms of the government and muddles the principle of separation of powers.</li> <li>• The proposed Boards would be a duplication of the functions of already established forums and would compromise the wider and more representative structures set out in the existing legislation.</li> </ul>
<p>Kenya Information and Communications (Amendments) Bill, 2013</p>	<p>The Bill contained some unconstitutional provisions. With advice of the Commission, the President referred the Bill to Parliament proposing various proposals for amendment. Subsequently, the Commission issued a public advisory on the refusal by the President to assent to the Bill noting that:</p> <ul style="list-style-type: none"> <li>• The Memorandum by the President addressed the unconstitutional provisions in the Bill.</li> <li>• The Commission advised that Article 34(5) of the Constitution required Parliament to enact a legislation that provide for the establishment a body independent of control by government, political interests or commercial interests.</li> <li>• Further, the Commission noted that it was important for the proposals by the President to ensure that the proposed media regulatory body reflects the interests of all sections of the society, sets media standards and regulates and monitors compliance with those standards.</li> <li>• Some media houses wanting theirs to be the only interests involved in regulating the media is unconstitutional. Article 34(5) is clear on the independence of any regulating organ from “commercial interests” and reflecting “all sections of society”.</li> </ul>

Adjournment/Suspension of Sittings by County Assemblies	<p>Members of County Assemblies had refused, failed and or neglected to hold sittings as a strategy of negotiating for improved terms and conditions of serve. The advisory urged them to resume their duties, that:</p> <ul style="list-style-type: none"> <li>• The purported strike/go slow by state officers could lead to failure by County Governments to discharge their mandate and trigger takeover of County Government functions by the National Government.</li> <li>• CIC urged MCAs to resume their duties and pursue matters of welfare and remuneration through channels that do not seek to undermine the Constitution.</li> </ul>
Threat to Arrest Journalists over the Westgate Attack	<p>The advisory stressed that;</p> <ul style="list-style-type: none"> <li>• The alleged threat to arrest journalists for exercising rights under Article 33 of the Constitution was counterproductive to the purposes of Article 34(2) (b).</li> <li>• The Article prohibits the State from penalizing any person for any opinion or view or the content of any broadcast, publication or dissemination.</li> <li>• There is need to follow the Constitution and the law that regulates broadcast when addressing alleged violation of the right to freedom of expression by the media.</li> </ul>
County Ward Development Fund	<p>In most County Assemblies, MCAs were establishing Ward Development Funds equivalent to the Constituency Development Fund. The Commission:</p> <ul style="list-style-type: none"> <li>• Gave an advisory, by way of a legal opinion, on the illegality of the Ward Development Funds (WDF) Bills formulated by the County Assemblies.</li> <li>• Issued an advisory to the office of the Controller of Budget indicating that the WDF Acts as formulated were not only illegal but also incapable of being funded under the County budgets.</li> </ul>
Impeachment Process in Respect of the Governor for Embu and the Rule of Law	<p>In the advisory, the Commission:</p> <ul style="list-style-type: none"> <li>• Raised concerns regarding the impeachment process in relation to the Governor of Embu County.</li> <li>• That the process was carried out in brazen disregard of the rule of law.</li> <li>• That both the County Assembly of Embu and the Senate proceeded with the debate on the impeachment of the Governor, despite and in complete defiance of court orders stopping the process pending the determination of cases filed in court by the Governor.</li> </ul>

<p>Threats to the Rule of Law by Various Institutions</p>	<p>The Commission gave this press statement in response to issues and controversies arising over the respective powers of several institutions and the implications of the exercise of their said powers. The advisory sought to clarify:</p> <ul style="list-style-type: none"> <li>• The supremacy of the Constitution</li> <li>• Accountability under the Constitution</li> <li>• Powers of the Senate to Summon Public Officials</li> <li>• Separation of Powers</li> <li>• Power of Interpretation of the Constitution and the Law</li> <li>• Respect for Rule of Law</li> <li>• Implications for the Failure to Comply with the Rule of Law</li> <li>• Threats by Parliament on Various Organs</li> </ul> <p>The Commission, while noting possibilities of jurisdictional conflicts between the three arms of government, expressed a need for restraint as each level exercises its powers to ensure that it does not interfere with the exercise of another organ's powers in recognition of the principle of separation of powers.</p>
<p>Public Participation on the Government Owned Entities Bill, 2014 and the National Sovereign Wealth Fund Bill, 2014</p>	<p>The Commission issued this statement in the media to:</p> <ul style="list-style-type: none"> <li>• Seek views from the public on the Government Owned-Entities Bill, 2014 and the National Sovereign Wealth Fund Bill, 2014.</li> <li>• To give the people of Kenya an opportunity to participate in the law-making process as required under Articles 10, 232, 131, 132, 153, 179, 183, 226, the Fourth Schedule of the Constitution and other existing legislation.</li> </ul>

## 4.3 Stakeholder Engagement

In addition to consultations ordinarily undertaken in the course of developing and reviewing policies, legislations or regulations, CIC also held other stakeholder engagements as discussed in this section. These engagements are divided into those organised and facilitated by CIC and those into which CIC was invited and participated.

### 4.3.1 Engagements Facilitated by the Commission

#### a. Women Representatives Caucus

The Commission facilitated a meeting with the Caucus of 47 Women Representatives and the Media to discuss the constitutional role of County Women Representatives, elected under Article 97(1)(b) of the Constitution. A number of issues were raised for deliberation including the lack of clarity on the functions of Women Representatives; limited facilitation for Women Representatives with the necessary tools and equipment to undertake their roles and the fact that no measures had been undertaken to effectively realize the affirmative action principle under Article 27 of the Constitution.





▲ Commissioner Catherine Mumma in a Women Caucus discussing the constitutional role of County Women representatives

## b. The Young People of Kenya County Forums

The Commission organised 5 youth forums in Ruiru, Nakuru, Bomet, Eldoret and Kapenguria bringing together young people (18-25 years) from 18 neighbouring counties. The forum informed and sensitised young people on their role in the implementation of the Constitution focusing on the system of Devolved Government; expectation of public officers; virtuous leadership; sovereign power of the people and opportunities available to young people. The participants developed action plans on how to champion constitutional implementation in their respective Counties.

## c. Forums for Teachers

The Commission held various workshops for teachers in Bungoma, Marsabit, Kilifi, Lamu and Tana-River Counties. The objective of the workshops was to enhance teachers' awareness on the Constitution and their role in its implementation. The teachers resolved to share the lessons learned with their colleagues and establish Constitution Implementation of the Constitution Clubs (CIC Clubs) in schools. The main topics covered included the role of the public service and the citizenry (particularly teachers) in the implementation of the Constitution; provisions of the Constitution and related Acts regarding implementation of the devolved system of government, the education sector, land-related issues (particularly addressing historical injustices) and the Provincial Administration.

## d. Forum with Governors and Senators

The Commission facilitated a forum for Governors and Senators. The forum, whose theme was "To enhance collaboration modalities for effective implementation of the system of devolved government", identified areas and issues for collaboration between Senators and Governors and prioritised legislation for operationalization of service delivery by the County governments.

### **e. Retreat with the Constitutional Implementation Oversight Committee of Parliament**

Section 4 of the Sixth Schedule to the Constitution mandates CIOC to receive regular reports from CIC on the implementation of the Constitution, the legislation process, the process of establishing the Commissions, infrastructure to implement devolution, and challenges and impediments in the course of implementing the Constitution. The Commission organised two meetings with CIOC to discuss quarterly reports, and also to create a mechanism for proactive engagement in overseeing the implementation of the Constitution. The meetings discussed and agreed on the following: (i) the need for an inclusive procedure for developing legislation, (ii) the sectors needed to develop required regulations to implement the Acts be identified and tasked to develop the regulations to avoid delays, (iii) CIC to submit additional reports to CIOC chairperson and make presentations at quarterly meetings with CIOC, (iv) CIOC asked to facilitate the establishment of institutions envisaged in the Intergovernmental Relations Act, 2012 and (v) CIOC tasked to facilitate adequate financial support for Commissions. It was resolved that CIC and CIOC were to work jointly to realize constitutionalism across government, and foster open communication within a framework of mutual trust and respect.

#### **4.3.2 Participation in Other Stakeholder Engagements**

During the reporting period, the Commission was invited to participate in various meetings in different capacities, some of which are listed below.

- i. County Executive Committee Members responsible for Education to develop a common understanding on County priorities, dynamics and challenges in matters concerning education and the role of information, communication and technology in the education sector within the context of the devolved system of government system.
- ii. Development of Legislation for Alternative and Traditional Dispute Resolution Mechanisms. The Judiciary organised a meeting on the promotion of traditional/informal dispute resolution mechanisms and the role of the councils of elders in promoting access to justice. The meeting explored the viability, challenges and possibilities of interfacing, establishing and operationalizing indigenous alternative dispute resolution systems to enhance the realization of Article 48 of the Constitution on Access to Justice.
- iii. The National Conference for Children with Disability which focused on the interface between the education-for-all policy, and the disability rights as provided for in the Constitution and other existing National and International frameworks. The conference provided an opportunity for a clear understanding of the opportunities, challenges and impediments likely to be faced in the education sector, following the inclusion of the rights for persons/learners with disability in the Basic Education Act, 2013.
- iv. The Kenya Law Reform Commission organised a meeting on the audit and prioritization of existing legislation for conformity with the Constitution. The meeting recommended that, in addition to the legislation identified for prioritization under the Fifth Schedule to the Constitution, KLRC identify legislation, policies and administrative documents from MDAs that may require amendment in order to conform to the Constitution.
- v. The University of Nairobi, CIC and EACC launched the University of Nairobi Project on Knowledge and Implementation of the Constitution as part of a Rapid Results Initiative. This was to assist the University to implement the Constitution and act as an ambassador to the process of implementation. The exercise involved sensitization of the University leadership, staff, faculty and students on the Constitution of Kenya.
- vi. World Wild Fund organised a Natural Resource Governance Conference for stakeholders to



discuss the Mining Bill. The major issues discussed included:

- Powers and checks given to various institutions including discretionary powers given to the Cabinet Secretary.
- Institutional structure needed to show the separation of functions in regard to policy, regulation, and dispute resolutions.
- Resource and revenue sharing procedures, and
- Land rights versus mineral rights, and land rehabilitation and environmental protection and conservation practices.

#### 4.3.3 Specific Challenges Facing Constitutional Commissions

- a. Failure to fill vacant positions on time. Some commissions face the risk of being inquorate due to the unfilled vacancies.
- b. Underfunding of Commissions, which is a potential impediment to the implementation of the Constitution
- c. Conflict of roles between some ministries and commissions performing complementary roles, e.g., National Land Commission and Ministry of Lands and Housing.



▲ Forum for teachers held in Lamu County during on of the CIC County visit



## 4.4 Litigation Status as at June 2014

The Commission, in exercising its mandate and promotion of constitutionalism, seeks the court's guidance through legal proceedings in cases of real or perceived misinterpretation or misapplication of the Constitution. The Commission was involved in the following cases during the year. A summary of the status is in Annex 4.

1. High Court Petition No 593 of 2014, Okiya Omtatah & Another vs. Council of Governors & Others
2. High Court Petition No 74 of 2014, International Legal Consultancy Group vs. The Senate and Clerk of the Senate
3. Supreme Court Ref No 2 of 2014 (Advisory Opinion), National Land Commission
4. Supreme Court Ref No 1 of 2014 (Advisory Opinion), The Council of Governors , The Senate and Clerk of the Senate
5. High Court Petition No 237 2014, Mary Wanjohi Mungai vs The Hon. Attorney Genral & Others
6. High Court Petition No 113 of 2014, Counties Association of Kenya vs The Hon. Attorney General & Others
7. High Court Petition No 71 of 2013, The Institute for Social Accountability (TISA) vs. The Hon Attorney General & Others
8. High Court Civil Appeal No 280 of 2013, Bishop Donald Kisaka Mwawasi vs. The Hon Attorney General & 2 others
9. High Court Petition No 560 of 2013, Kenya Tea Development Agency Holdings Ltd vs. CIC & the Attorney General Supreme Court Ref No 2 of 2013 (Advisory Opinion), The Speaker of the Senate and the Attorney General and Others
10. High Court Petition No 496 of 2013, CIC vs. The National Assembly of Kenya & 2 others

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## CHAPTER FIVE

# CHALLENGES, IMPEDIMENTS AND RECOMMENDATIONS

The process of implementing the Constitution faced a number of challenges. This chapter contains a summary of those challenges, impediments and recommendations.

## **a. Limited Civic Awareness on the Constitution**

Majority of Kenyans are yet to internalize the provisions of the Constitution due to limited civic education. This makes it difficult for the people to identify violations and defend the Constitution.

### ***Recommendation:***

The National Government and County Governments should develop and implement a comprehensive civic education and capacity building programme for the citizenry and state officers charged with the responsibility of implementation or oversight.

## **b. Limited Public Participation**

There has been limited public participation in policy, legislative, planning and budget development processes. Lack of a public participation framework robs the people of Kenya of their constitutional right to participate in the making of important decisions that affect them.

### ***Recommendation:***

National Government fast track the finalisation and operationalisation of the public participation framework. Subsequently, County Governments develop relevant frameworks to facilitate public participation at County level.



### **c. Disregard of Constitutional Procedure during Development and Processing of Bills**

Article 110(3) of the Constitution requires that before either House considers a Bill, the Speakers shall jointly resolve any question as to whether the Bill is concerning the Counties and whether it is a Special or Ordinary Bill. This has however not been the case. Some of the Bills where there has not been concurrence between the Speakers of the National Assembly and Senate and therefore have not been referred to the Senate include:

- The Water Bill, 2014
- The Mining Bill, 2014

#### ***Recommendation:***

Establishment of a joint standing committee of Parliament that facilitates consultations and cooperation between the Speakers and Clerks of the Senate and National Assembly to ensure that in respect to the Fourth Schedule to the Constitution, Bills concerning County Governments pass through the Senate.

### **d. Overlap in Formulating Legislative Proposals**

While appreciating the prerogative of Parliament to legislate, there is an emerging trend where private members Bills appear to render efforts by state departments to formulate policy and legislative proposals irrelevant, notwithstanding the resources employed in the process.

#### ***Recommendation:***

Members of Parliament should liaise with the respective executives to ensure that all legislative proposals are made in line with the Constitution.

### **e. Deficiencies in Capacity-building for the Implementation of the Devolved System of Government**

The Fourth Schedule to the Constitution assigns the responsibility of capacity building and technical assistance of the Counties to the National Government. Further, Section 15(2)(ii) of the Sixth Schedule requires the National Government to assist County Governments in building their capacity to govern effectively and provide the services for which they are responsible. However, though the Ministry of Devolution and Planning developed a capacity building framework, this has not been rolled out. The effect has been:

- Uncoordinated approach to capacity building and training programmes by different training institutions to Counties.
- Duplication of capacity building efforts and resources between various stakeholders.
- Perception that only Counties require capacity building, yet the National Government too requires capacity building.
- Uptake of capacity building initiatives by implementing agencies without due regard to establishing capacity building needs.

#### ***Recommendation:***

The National and County Governments implement a clear capacity building framework with proper coordination mechanisms on the implementation of the constitution.

## **f. Development of Legislation without Supporting Policies**

International best practice demands that policies precede legislation. However, in the implementation of the Constitution of Kenya, 2010, there has been more focus on review/development of legislation without policies that support them. As a result, there is likelihood of having conflicting legislation.

### ***Recommendation:***

National and County governments should adopt a legislative process that prioritises policy making before legislation.

## **g. Conflicts of Roles between Ministries and Commissions**

There have been a number of conflicts on the roles and mandates between ministries and commissions. For example, the conflicts between the National Land Commission and Ministry of Lands, Housing and Urban Development, and that between the Teachers Service Commission and Ministry of Education, Science and Technology, have negatively impacted service delivery.

### ***Recommendation:***

The roles of these institutions are assigned in the Constitution. There should be cooperation and consultation among these institutions.

## **h. Political Interference and Threats to the Legitimacy of Commissions**

Political interference in the functions of some Commissions such as that which was witnessed during the setting of benefits of MPs and MCAs by the Salaries and Remuneration Commission (SRC).

### ***Recommendation:***

There should be respect for the independence of the mandates of Constitutional Commissions and Independent Offices.

## **i. Challenges on Devolution**

Since devolution took effect after the March 4th 2013 elections, it has faced a number of challenges, including:

- i. Lack of cooperation and coordination between different levels of government, e.g., County Assemblies and the County Executives, the Senate and Governors, Senate and the National Assembly, derailing implementation of devolution.
- ii. Unfinished functional analysis and costing leading to functions being transferred without accompanying resources/budgets.
- iii. County boundary disputes
- iv. Delays in establishment of required structures and disparities in terms of service.
- v. Delayed development of County Transition Implementation Plans – The guidelines for counties to prepare Transition Implementation Plans was one of the Phase I activities that the Transitional Authority (TA) was supposed to undertake. The Commission supported TA to develop and issue guidelines to the Counties. By the end of the financial year, about half of the Counties had submitted their plans. For CIC to monitor implementation and transition activities, Transition Implementation Plans (TIPs) are very critical.

***Recommendation:***

The various arms of the government need to work together to identify and establish the requisite devolution structures for effective service delivery.

**j. Disregard for Court orders**

There have been instances of disregarding court orders by state organs.

***Recommendation:***

It is imperative that all institutions respect court orders as constitutionalism requires all parties to operate within the rule of law.

**k. Failure to Operationalize Some Institutional Structures**

In some Counties, critical County structures such as County Public Service Boards took longer to be fully operationalized. This affected service delivery in cases such as, for example, delayed recruitment of staff impeding service delivery that goes with the occupants of these offices. There has been reported disparity of terms of service among the staff, including remuneration, pension and other benefits, between National Government and County Government employees. There are also reported inadequacy of personnel in the offices of procurement, finance and internal audit.

***Recommendation:***

County Governments should fast-track the operationalization of all County structures as provided for in the Constitution and devolution-related laws. The Salaries and Remuneration Commission, Public Service Commission and the County Public Service Boards should also fast-track the harmonization of the terms of service in the public service sector.

**l. Weak Intergovernmental Relations and Institutional Structures**

Article 189(4) of the Constitution provides for a framework for cooperation between the County Governments and between the County and National Governments. The delayed establishment of key intergovernmental structures such as the Intergovernmental Relations Technical Committee is affecting functioning of the Summit and County Intergovernmental Forums. Similarly, failure to operationalize in some Counties the County-based intergovernmental relations structures as provided for in the County Governments Act, 2012 means lopsided consultations, i.e., only those mechanisms established at the National level are used yet some issues should be handled at the County level.

***Recommendation:***

There is need to establish and strengthen the requisite intergovernmental relations structures and fast-track the establishment of the technical committee.





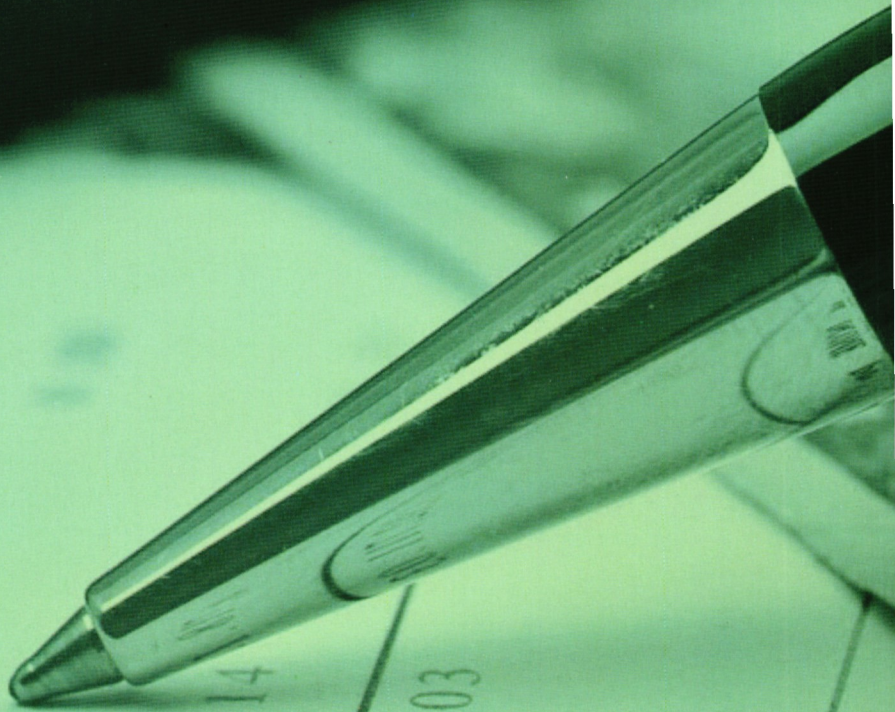
CIC Commissioners and Kilifi Members of County Assembly during the CIC County Visit



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## CHAPTER SIX

# FINANCIAL REPORT AND STATEMENTS FOR THE YEAR ENDED JUNE 2014

(Excerpts of the Financial Statements)

Prepared in accordance with the Accrual Basis of Accounting Method under the International Public Sector Accounting Standards (IPSAS)



## STATEMENT OF FINANCIAL PERFORMANCE

For the year ended 30 June 2014

	Note	2013-2014	2012-2013
		Kshs	Kshs
<b>RECEIPTS</b>			
Proceeds from Domestic and Foreign Grants	3	23,370,232	-
Transfers from National Treasury	3	415,000,000	451,241,920
Other Revenues		19,500	3,683,340
<b>TOTAL REVENUES</b>		<b>438,389,732</b>	<b>454,925,260</b>
<b>PAYMENTS</b>			
Compensation of Employees	4	161,181,409	130,388,524
Use of goods and services	5	229,594,536	241,490,736
Social Security Benefits	6	81,520	25,400
Acquisition of Assets	7	8,496,131	71,535,876
<b>TOTAL PAYMENTS</b>		<b>399,353,596</b>	<b>443,440,536</b>
<b>SURPLUS</b>		<b>39,036,136</b>	<b>11,484,724</b>

The accounting policies and explanatory notes to these financial statements form an integral part of the financial statements. The Commission financial statements were approved on 25th September 2014 and signed by:



**Chief Executive Officer**



**Head of Finance**

## STATEMENT OF FINANCIAL POSITION

As at 30 June 2014

COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION			
	Note	2013-2014	2012-2013
		Kshs	Kshs
FINANCIAL ASSETS			Restated
Cash and Cash Equivalents			
Bank Balances	8	4,331,560	5,856,013
Cash Balances		-	-
Cash Equivalents		-	-
advances outstanding	9	33,022,843	4,229,283
		-	
Receivables		1,681,733	2,684,856
<b>TOTAL FINANCIAL ASSETS</b>		<b>39,036,136</b>	<b>12,770,152</b>
LESS: FINANCIAL LIABILITIES			
Accounts Payable		-	-
TOTAL FINANCIAL LIABILITIES		-	-
<b>NET FINANCIAL ASSETS/(LIABILITIES)</b>		<b>39,036,136</b>	<b>12,770,152</b>
REPRESENTED BY			
Fund balance b/fwd		-	-
<b>Surplus/Deficit for the year</b>		<b>39,036,136</b>	<b>12,770,152</b>
Prior year adjustments		-	-
<b>NET FINANCIAL POSITION</b>		<b>39,036,136</b>	<b>12,770,152</b>

The Financial Statements set out on pages 10 to 26 were signed on behalf of the Commissioners by:



Chief Executive Officer



Head of Finance

Date..... 25th September 2014

Date..... 25th September 2014

## STATEMENT OF CASHFLOWS

	Note	2013 – 2014	2012 - 2013
		Kshs	Kshs
<b>CASH FLOW FROM OPERATING ACTIVITIES</b>			
Receipts for operating income			
Proceeds from Development partners	3	23,370,232	-
Transfers from National Treasury	3	415,000,000	451,241,920
Other Revenues		19,500	-
Payments for operating expenses			
Compensation of Employees	4	(161,482,349)	(130,388,524)
Use of goods and services	5	(229,594,536)	(241,490,736)
Social Security Benefits	6	(163,040)	(50,800)
Adjusted for:			
Changes in receivables		(34,302,616)	(5,603,311)
Changes in payables		-	-
Adjustments during the year		-	-
<b>Net cashflow from operating activities</b>		<b>12,827,691</b>	<b>77,391,889</b>
<b>CASHFLOW FROM INVESTING ACTIVITIES</b>			
Proceeds from Sale of Assets	8	-	-
Acquisition of Assets	19	8,496,131	71,535,876
<b>Net cash flows from Investing Activities</b>		<b>8,496,131</b>	<b>71,535,876</b>
<b>CASHFLOW FROM BORROWING ACTIVITIES</b>			
Proceeds from Domestic Borrowings	6	-	-
Proceeds from Foreign Borrowings	7	-	-
Repayment of principal on Domestic and Foreign borrowing	21	-	-
<b>Net cash flow from financing activities</b>		<b>-</b>	<b>-</b>
<b>NET INCREASE IN CASH AND CASH EQUIVALENT</b>			
Cash and cash equivalent at BEGINNING of the year		-	-
Cash and cash equivalent at END of the year	8	<b>4,331,560</b>	<b>5,856,013</b>



## STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

	Original budget	Adjustments	Final budget	Actual on comparable basis	Performance difference
	2013-2014	2013-2014	2013-2014	2013-2014	2013-2014
Revenue	Kshs '000	Kshs '000	Kshs '000	Kshs '000	Kshs '000
Property taxes	-	-	-	-	-
Public contributions and donations	23,370,232	-	23,370,232	23,370,232	
Fines, penalties and levies					
Licenses and permits					
Government grants and subsidies	415,000,000	-	415,000,000		-
Rendering of services					
Sale of goods					
Finance Income					
Gains on disposal, rental income and agency fees					
<b>Total Income</b>	<b>438,389,732</b>	<b>-</b>	<b>438,389,732</b>		<b>-</b>
Expenses					
Compensation of employees	161,181,409	-	161,181,409		-
Goods and services	192,054,458	-	192,054,458		-
Finance cost					
Rent paid	46,117,728	-	46,117,728	46,117,728	-
Taxation paid					
Other payments					
Grants and subsidies paid					
<b>Total Expenditure</b>	<b>399,353,596</b>	<b>-</b>	<b>399,353,596</b>		<b>-</b>

# Annexes



## Annex 1: The Fifth Schedule Legislation Development Status, June 2014

### FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
<b>Chapter Two: Republic</b>				
1	Legislation in respect of culture (Article 11 (3))	Culture		Yet to be developed
<b>Chapter Three: Citizenship</b>				
2	Legislation on Citizenship (Article 18)	Immigration	The Kenya Citizenship and Immigrations Act, 2011	Enacted in August 2011
		Immigration	The Kenya Citizens and Foreign Nationals Management Service Act 2011	Enacted in October 2011
<b>Chapter Four: The Bill of Rights</b>				
3	Freedom of the Media (Article 34)	Three years	Ministry of Information Communication & Technology	The Media Council Act, 2013 Enacted in December 2013
		Five years	Attorney General (Justice)	Marriage Act 2014 Enacted in May 2014
4	Family (Article 45)	Attorney General (Justice)	Matrimonial Property Act, 2013	
		Attorney General (Justice)	Protection Against Domestic Violence Bill, 2013	In Parliament (National Assembly) awaiting Second Reading
5	Five years Five years Consumer Protection (Article 46)	Four years	Private member's Bill	Enacted but requires review to comprehensively give effect to Article 46



## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
6 Fair Administrative Action (Article 47)	Four years	Ministry of Interior & National Coordination (Prisons)	Fair Administrative Action Bill, 2014	Reviewed recommendations and forwarded to the Office of the Attorney General. Period of enactment extended by Parliament for nine months.
7 Fair Hearing (Article 50)	Four years	Ministry of Interior & National Coordination (Prisons)	The Victims Protection Bill, 2013	Reviewed during its pre-publication stage and submitted its recommendations to the National Assembly in November 2013. Period of enactment extended by Parliament for nine months.
8 Rights of Held in custody or Detained (Article 51)	Four years	Ministry of Interior & National Coordination	The Rights of Persons Deprived of Liberty Bill, 2014	Reviewed and forwarded recommendations to the Attorney General in May 2014. Period of enactment extended by Parliament for nine months.
9 Kenya National Human Rights and Equality Commission (Article 59) One year One year	One year Attorney General (Justice) Attorney General (Justice)	Attorney General (Justice) The National Gender and Equality Commission Act, 2011 The Commission on Administrative Justice Act, 2011	Kenya National Commission on Human Rights Act, 2011 Enacted in August 2011 Enacted in August 2011	Enacted in August 2011

## Chapter Five: Land and Environment

10 Community Land (Article 63)	Five years	Land, Housing & Urban Development	The Community Land Bill, 2013	Under review by CIC
11 Regulation of land use and property (Article 66) Eighteen months	Five years Land, Housing & Urban Development	Land, Housing & Urban Development The National Land Commission Act, 2012 (Article 67)	Enacted April 2012	

## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
12	18 months Land, Housing & Urban Development	Land, Housing & Urban Development	The Land Registration Act, 2012 (Article 68)	Enacted April 2012
13	18 months Agreements Relating to Natural Resources (Article 71)	The Land Act, 2012 (Article 68)	Enacted April 2012	
	Five years Legislation Regarding Environment (Article 72)	Environment, Water & Natural Resources	Awaiting debate and passage by Parliament (National Assembly).	
14	Four years	Mining Bill, 2014 (Art. 60, 62(1)(f), 66(2), 69 & 71)	Environment Management and Coordination (Amendment) Bill 2014	Reviewed and submitted recommendations to the Attorney General for final drafting.

### Chapter Six: Leadership and Integrity

15	Ethics and Anti-Corruption Commission (Article 79)	Attorney General (Justice)	The Ethics and Anti-Corruption Commission Act, 2011 (Article 79)	Enacted in August 2011
16	Legislation on Leadership (Article 80)	Attorney General (Justice)	The Leadership and Integrity Act, 2012 (Article 80)	Enacted in August 2012

### Chapter Seven: Representation of the People

17	Legislation on Elections (Article 82)	IEBC	The Elections Act, 2011	Enacted in August 2011
18	Electoral Disputes (Article 87)	IEBC	The Elections Act, 2011	Enacted in August 2011

## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

	Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
19	Independent Electoral and Boundaries Commission (Article 88)	One year	AG (Justice)	The Independent Electoral and Boundaries Commission Act, 2011	Enacted in July 2011
20	Legislation on Political Parties (Article 92)	One year	Registrar of Political Parties	The Political Parties Act, 2011	Enacted in August 2011
<b>Chapter Eight: The Legislature</b>					
21	Promotion of Representation of Marginalised Groups (Article 100)	Five years	Devolution		To be developed
22	Vacation of Office of Member of Parliament (Article 103)	One year	IEBC	The Elections Act, 2011	Enacted in August 2011
23	Right of Recall (Article 104)	Two years	IEBC	The Elections Act, 2011	Enacted in August 2011
24	Determination of Questions of Membership of Parliament (Article Specification 105)	Two years	IEBC	The Elections Act, 2011	Enacted in August 2011
25	Right to Petition Parliament (Article 119)	Two years	Parliament	The Petition to Parliament (Procedure) Act, 2012	Enacted in August 2012
<b>Chapter Nine: Executive</b>					
26	Power of Mercy (Article 133)	One year	Interior & coordination	The Power of Mercy Act, 2011	Enacted in August 2011
27	Assumption of Office of President (Article 141)	Two years	Interior & coordination	The Assumption of the Office of the President Act, 2012	Enacted in August 2012



## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles		Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
<b>Chapter Ten: Judiciary</b>					
	System of Courts (Article 162)	One year	Judiciary	The Industrial Court Act, 2011	Enacted in August 2011
28	One year	Judiciary	The Environment and Land Court Act, 2011	Enacted in August 2011	
	One year	Judiciary	The Supreme Court Act, 2011 (Article 163)	Enacted in June 2011	
29	Removal from Office (Article 168) (of Judges)	One year	Judiciary		
30	Judiciary Fund (Article 173)	Two years	Judiciary		Provided for in the Judicial Service Act, 2011
	Vetting of Judges and Magistrates (Sixth Schedule, Section 23)	One year	Judiciary	The Vetting of Judges and Magistrates Act, 2011	Enacted in August 2011
31	One year	Judiciary	The Judicial Service Act, 2011	Enacted in August 2011	
<b>Chapter Eleven—Devolved Government</b>					
32	Speaker of a County Assembly (Article 178)	One year	Devolution & Planning	County Government Act, 2012	Enacted in July 2012
33	Urban Areas and Cities (Article 183)	One year	Devolution & Planning	Urban Areas and Cities: The Urban Areas and Cities Act, 2012 (Article 184)	Enacted in August 2011
	Support for County Governments (Article 190)	Three years	Devolution & Planning	County Government Act, 2012	Enacted in July 2012
34	Three years	The National Treasury	Public Finance Management Act, 2012 (Article 190)	Enacted in July 2012	
	Three years	Devolution & Planning	Intergovernmental Relations Act, 2012 (Article 190)	Enacted in February 2012	
35	Removal of a County Governor (Article 181)	18 months	Devolution & Planning	County Government Act, 2012	Enacted in July 2012

## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
36	Vacation of Office of Member of County Assembly (Article 194) 18 months 18 months 18 months	Devolution & Planning Leadership and Integrity Act, 2012 (Article 194) Elections Act, 2011 (Article 194)	County Government Act, 2012 (Article 194) Enacted in August 2012 Enacted in August 2011	Enacted in July 2012 Enacted in July 2012. A policy on Public Participation is under development by Department of Justice in AG.
37	Public Participation and County Assembly Powers, Privileges and Immunities (Article 196) Three years	Parliament	County Government Act, 2012 (Article 196)	Further, in April 2014 a County Assemblies Powers and Privileges Bill was developed by the Senate to make for more comprehensive provisions of the powers and privileges of county assemblies. Consequently, the Bill proposes to repeal Section 17 of the County Governments Act, 2012. CIC reviewed the Bill and forwarded its recommendations to Parliament in July 2014. The Bill awaits debate and passage by Parliament.
38	County Assembly Gender Balance and Diversity (Article 197) Three years	IEBC	County Government Act, 2012 (Article 197)	Enacted in July, 2012
39	Chapter Eleven (Article 200 and Sixth Schedule, Section 15) 18 months 18 months	Devolution The Intergovernmental Relations Act, 2012 The County Government Act, 2012	The Transition to Devolved Government Act, 2012 Enacted in February, 2012 Enacted in June, 2012	Enacted in February, 2012

## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
<b>Chapter Twelve: Public Finance</b>				
40	18 months	The National Treasury		Provided for in the Public Finance Management (PFM) Act, 2012
41	One year	The National Treasury		Provided for in the PFM Act, 2012
42	One year	The National Treasury		Provided for in the PFM Act, 2012
43	One years	The National Treasury	The Commission on Revenue Allocation Act, 2011 (Article 215)	Enacted in August 2011
44	Two years	The National Treasury	The Public Finance Management Act, 2012	Enacted July 2012
45	Four years	The National Treasury	Public Audit Bill 2014	Reviewed the Bill and forwarded recommendations to the Attorney General. Period of enactment extended by Parliament for nine months.
46	Four years	The National Treasury	Public Procurement and Asset Disposal Bill 2014	Under review by CIC. Period of enactment extended by Parliament for nine months.
47	One year	The National Treasury	The Salaries and Remuneration Commission Act, 2011	Enacted in August 2011



## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
<b>Chapter Thirteen: Public Service</b>				
48	Values and Principles of Public Service (Article 232) Four years Public Service Commission	Public Service Commission	Values and Principles of the Public Service Bill 2014	Reviewed and forwarded recommendations to the Attorney General June 2014. Period of enactment extended by Parliament for nine months.
49	Establishment of the Teachers Service Commission (Article 237)	The Public Service Commission Act, 2012 Teachers Service Commission	Enacted August 2012 The Teachers Service Commission Act, 2012	Enacted in August 2012
<b>Chapter Fourteen: National Security</b>				
50	National Security Organs (Article 239) Two years Two years	National Intelligence Service National Security Council Act, 2012 (Article 239) Kenya Defence Forces Act, 2012 (Article 232, 239 / 241)	National Intelligence Service Act, 2012 (Article 239/242) Enacted in August, 2012 Enacted in August 2012	Enacted in August 2012
51	Command of the National Police Service (Article 245) Two years	Interior & National Coordination Independent Police Oversight Authority Act, 2011	National Police Service Act, 2011 (Article 245) Enacted in November 2011	Enacted in August 2011

## FIFTH SCHEDULE TO THE CONSTITUTION LEGISLATION STATUS

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
<b>General: Any other legislation required by the Constitution</b>				
52	Five years	Ministry of Foreign Affairs & International Trade	Treaty Making and Ratification Act, 2012 (Article 2 (6))	Enacted in Dec 2012
53	Ministry Labour & Social Security	The Social Assistance Act, 2013 (Art. 43 (1)(e))	Enacted in January 2013	
54	Ministry of Education	Basic Education Act, 2013 (Art. 53)	Enacted in January 2013	
55	Ministry of Internal Sec	National Government Coordination Act, 2013 (Art. 131 (1) & 132 (3)(b))	Enacted in January 2013	
56	Attorney General Five years	The Independent Offices (Appointment) Act, 2011 (Article 156 & 248)	Enacted in August 2011	
57	The National Treasury	The County Governments Public Finance Management Transition Act, 2013 (Sect. 15 of sixth schedule)	Enacted in January, 2013	



# Annex 2: Poster On Constitutional Implementation by County Governments



## Introduction

The transformative Constitution of Kenya, 2010 ushers in far-reaching reforms in governance and introduces a devolved system of government in which power (including the power to make decisions in a participatory process), functions, services and resources are devolved and decentralised in accordance with the fourth schedule to the Constitution. The devolved system is comprised of the national and forty seven county governments. This calls for extensive policy, legislative and institutional reforms that in turn require formulation of regulatory administrative procedures, all of which must be well understood and applied. The introduction of unprecedented national values and principles to which all must adhere dictates change in the manner in which executive authority shall be exercised for the benefit of the people of Kenya at national and county levels.

In addition to the transformation of Kenya's governance structures, the Constitution sets ethical standards and prescribes national values and principles that bind public officers in discharge of their constitutional and statutory functions and delivery of services by each sector. This poster highlights the basic legal, administrative and institutional structures required to facilitate efficient and equitable delivery of services and prudent use of public resources. It outlines the national values and principles prescribed in Articles 10, 27, 174, 201 and 232, among others.

The poster is founded on the principle expressed in Article 1 of the Constitution, namely, that all sovereign power belongs to the people of Kenya and shall be exercised either directly or through their democratically elected representatives. Article 1(3) sanctions delegation of sovereign power to: (a) Parliament and the legislative assemblies in the county governments; (b) the national executive and the executive structures in the county governments; and (c) the judiciary and independent tribunals. The sovereign power of the people is, therefore, exercised at: (i) the national level; and (ii) county level. Although these levels of government are distinct and independent, they are required by Article 6 to conduct their mutual relations on the basis of consultation and cooperation. In order to discharge their functions effectively, all public officers at these levels, and the people of Kenya generally, are required to familiarise themselves with: (a) the Constitution, which is the supreme law of the land by which all persons and state organs are bound (Article 2); (b) policies and legislation; (c) administrative procedures, required to implement the Constitution.

## Constitutional Implementation by County Governments

### KNOW YOUR COUNTY

- What is the population size of your county, its composition, density and distribution by gender, age, disability, youth, minority and marginalized groups? (Article 100, CoK)
- What is the size of your county and the distinct land use patterns?
- What are the factors that determine marginalization in your county? (Articles 56, 203, 204 CoK)
- What percentage of the total population is able to reasonably access clean and safe water, basic health service, different levels of education, food security, basic housing and social security? (Article 43 CoK)
- What are your county's ecological and climatic conditions?
- What are the key economic activities in your county?
- What are the key resources in your county?
- Where are the resources found and what are their quantities?
- What are the key natural and historical resources?
- What are the key development indicators for your county by sector?
- What are the key issues of concern in your County, as identified in consultation with the people? (Article 174 CoK)
- Which development projects are on-going in the different sectors?
  - What percentage is from nationally raised revenue?
  - What percentage of the projects are supported by:
    - grants from donors and grants from the national government
    - loans from donors
    - Public Private Partnerships
    - Public Benefit Organizations
  - Which are inter-county and inter-governmental projects?
- Does your county have a comprehensive inventory of your county's assets and liabilities?
- Which community based organizations and Public Benefit Organizations operate in your county?
- Does your county have a system of recording and storing population statistics in conformity with respect of the Constitution?

### FUNCTIONALIZATION OF THE COUNTY ASSEMBLY

- Has your county assembly developed its standing orders to guide its legislative process? (Sec. 14(1) and 7 CG Act)
- Has your county assembly developed its requisite committees to effectively play its role? (Sec 14(1)(4-6) CG Act)
- Has your county assembly developed a framework in line with Article 185 of the Constitution to ensure adequate exercise of its oversight role in relation to:
  - reports of county executive nominees
  - vetting of county executive nominees
  - approval of budgets, plans and policies
  - facilitating representation and participation the people of their wards and oversight over the county executive?
- Has your county assembly established and functionalized the necessary administrative structures to facilitate effective operations? (Sec 13 -14 CG Act)
- Has your County Assembly developed procedures to guide on its legislative role in relation to other players including the legislative proposals by the county executive (Article 183 CoK s. 15 and 88 CGA)
- Has your County Assembly developed procedures to facilitate petitions by the public from the county assembly?
- Has your county assembly developed a framework to ensure implementation of chapter 6 and the Bill of Rights in the county? (Article 73 CoK)
- Is your county aware that the High Court has jurisdiction to determine the constitutionality of any legislation enacted by the county assembly and in the case of bye laws, whether it is inconsistent with the enabling Act? (CoK art. 165(3)(d))

### FORUMS FOR INTERGOVERNMENTAL RELATIONS

- Inter-County Relations**
- Has your county developed the necessary framework to guide relationships with other county governments?
  - Is your county involved in any inter-county projects or agreements? (CG Act 2012 s. 118 & 203(1f))
  - Has your county assembly formed any joint committees with any other county assembly? (CG Act 2012 s.14(5))
  - Has the Council of Governors developed the necessary mechanisms to facilitate realization of relevant inter-county activities or agreements as contemplated in section 20 of the Intergovernmental Relations Act?
- County-National Government Relations**
- Has your county developed the necessary framework to guide relationships with the national government including:
    - Any agreements for the guaranteeing of loans
    - Management of concurrent functions
    - Management of functions transferred in accordance with Art 187
    - Management of conditional grants from the National Government
  - Participation at Intergovernmental Budget and Economic Council (CoK Articles 204(3)(b), 212, 213; IGR Act 2012: s.23)
- Have you signed any intergovernmental agreements with the National Government?**
- Has your county intergovernmental forum been established for the harmonization of services rendered in the county and coordination of development activities by the National and county government within your county? (CG Act, 2012: s.54)
  - Have any joint committees between your county government and the national government been established to undertake any activity within the County? (Art. 6, 189 CoK/IASC Act s6(5), 201(1)(j), 118
  - Have adequate arrangements been made for representation of the views of your county in the Intergovernmental Budget and Economic Council (PFM Act 2012: s 187)- take to PFM
- County Assembly and County Executive relations:**
- Do your County Assembly and County Executive adequately observe the principles of separation of power as required by the Constitution? (CoK, Articles 175(a) and 185(3))

### KNOW YOUR FUNCTIONS

- Has your county undertaken capacity assessment for delivery of its functions? (Sec 24 (1d), TDGA)
- Has the County developed a framework for service delivery on its functions? (Sec. 24(b) TDGA)
- Which functions from the 4th Schedule to the Constitution have been transferred to your County? (4th Schedule CoK, Section 15 of the 6th Schedule CoK, Sec 23 and 24 TDGA, Sec 5 CGA)
- Which functions from the 4th Schedule to the Constitution have not been transferred to your County? (Sec 23 and 24, TDGA)
- Are the particulars of each functions (functional analysis) clear to your County Government? (Article 186 CoK, Sec 7 TDGA)
- Where a function has not been transferred, have reasons for lack of transfer been communicated? (Sec 23 (6), TDGA)
- What is your County doing in order to prepare for the transfer of any outstanding functions? (Section 15 of the 6th Schedule CoK, Sec 24 (6) TDGA)
- Has the National Government transferred any of its functions to your county government for implementation under Article 187? If so, what are these functions and why?
- Has your county transferred any of your functions to the national government to implement under Article 187 CoK? If so, what are these functions and why?
- Do you know that you are ultimately responsible for all your county functions irrespective of whether they are transferred?
- Are you aware that definitions which should guide your interpretation of the transfer of functions are the ones which existed in August 2010?
- Has your county identified functions that are concurrent to the national and county governments? (Art 186 (2) CoK). If so, which are these functions and is there an intergovernmental agreement on the delivery of the function(s) with the national government?
- Has your county government put in place a monitoring framework to monitor and evaluate the delivery of functions? (Art 186 & 187 CoK)
- Has your county identified any functions that will be performed through mechanisms which have not been put in place for their implementation? (Sec 24, IRA)
- Has your county identified any projects to be undertaken through inter-county or inter-governmental arrangements? If so, what mechanisms have been put in place for their implementation?

### PLANNING FOR THE COUNTY DEVELOPMENT

- Does your county have a planning framework including planning unit, minimum standards for the delivery of its services which adhere to the National Government Standards as well as the relevant statistics? (CGA 2012 s. 104 – 106, ICGA 2012 s.117, Articles 21 and 43)
- Has your county government prepared an Integrated Development Plan, County sectoral plans, County spatial plans and Cities and urban areas plans including annual and operational work plans? (CGA 2012 s. 107-111)
- Has your county government determined the amount of resources required to implement its development plan?
- Has your county prepared action plans and budget based on the integrated development plan? (CGA 2012 s. 113)
- What is the size of your county development budget? How much of it is funded from the revenue raised nationally (Art 201)
- Does your County have strategies to raise funds to bridge development budget deficits? (CoK Article 209-214)(j) Has your county undertaken a capacity assessment to give effect to section 102-103 CG Act to facilitate the delivery of its plan?
- Has every sector under the leadership of the CECs developed plans and strategies to be employed to deliver services as provided in the county development plan?
- Does your County and the CECs have a framework for service delivery to implement the county and sectoral specific plan? (TDGA 2012 s.240)(b)
- Does the County have a monitoring and evaluation framework to track progress of the implementation of its plans? (Sec. 47 CGA 2012)

### PUBLIC PARTICIPATION

- Has your county put in place frameworks to ensure participation of the public in the formulation and development of county policies, plans and legislation? (CoK Article 10, 118, 196 and 212(d); CGA 2012 s. 88, s. 90, s.91, s.113, s.115, 119)
  - Has your County developed structures that will enable the people to realize their right to petition the county assembly? (CG Acts.15 s.88, Art 196)
  - Has your county put in place mechanisms to promote transparency and accountability of public officers in their delivery of services to the public? (CoK Article 102)(c); CGA 2012 s.60(c), 65, 116(2))
  - Does your county have a policy, legislation and procedures to facilitate access to information by citizens in compliance with the Constitution? (CoK Article 35; CGA 2012 s.41, s.87, s.95, s.96.)
  - Has your County established mechanisms to facilitate civic education in the county? (CGA 2012: s.100(1))
  - Has your county government developed laws and policies and designed affirmative action measures, structures and programmes to ensure participation of the minority and marginalized groups in the county? (CoK Articles 27, 53-57, 100, 227; CGA 2012 s.35, s.97)
  - Has your county put in place mechanisms for participation of governments to established modalities and platforms for participation of the people's representative members of the National Assembly and Senate? (CG Act 2012: s.91(f))
  - Does your county participate in intergovernmental forums on inter-sectoral issues? Has any agreement been made?
- Access to the Justice System**
- Has your county established Court Users Committees to facilitate public participation in the delivery of judicial services?
  - What role if any, can your county government play in supporting the Judiciary in its programmes to ensure access to justice for all on disputes arising in relation to county government functions? (Articles 48 and 159 CoK)
  - Has your county taken any steps to consult with the judiciary with a view of establishing administrative structures to support traditional and community based dispute resolution mechanisms recognized by local communities in line with Article 11 of the Constitution?
  - Is your county government aware that it can request the Supreme Court to give an advisory opinion with respect to any matter concerning the county government? (CoK art. 163(6))
  - Is your county aware that the High Court exercises supervisory jurisdiction over any person, body or authority exercising a quasi-judicial function in the county? (CoK art. 165(6))
  - Is there a High Court located within your county and is the Office of the Chief Registrar and Magistrates' Court accessible to the people in your county? (Judicial Service Act 2011 s.8(1)(I) and CoK art. 61(3))
- Security Sector**
- Has your county established a County Policing Authority in line with the National Police Service Act and Article 244(e) of CoK to cooperate with national security organs on matters of security affecting the county?

### Conclusion

This flier has been developed by the Commission for the Implementation of the Constitution. The Commission for the Implementation of the Constitution (CIC) is mandated, under Sections 5(6) and 15(2)(d) of the Sixth Schedule to the Constitution, to monitor, facilitate and oversee the development of legislative and administrative procedures required to implement the Constitution of Kenya, 2010 and to monitor the implementation of the system of devolved government effectively. In addition, Article 249 of the Constitution requires CIC to protect the sovereignty of the people, secure the observance by all state organs of democratic values and principles and to promote constitutionalism.

### THE COUNTY STRUCTURES

- County Executive Committee (CEC)**
- Is your County Executive Committee in place and functional? (Articles 179 and 183 CoK; s.35-37 CGA)
  - Have each of your CEC's determined the necessary structures for delivery of services in each sector?
  - Is each CEC familiar with their functions under the County Government Act?
  - Has your county determined and established county executive structures/offices necessary for effective and efficient delivery of services for each of the county functions? Article 235 CoK, 4th Schedule to the CoK s. 46 & 59 CGA)
  - Has each CEC familiarized themselves with the sector under their charge and developed the necessary sectoral strategy to deliver on their functions?
  - Have the CECs developed a framework and mechanism for participation in inter-county and intergovernmental forums?
  - Has your CEC designed performance management plan to evaluate performance of your county public service and the implementation of county policies? (s.47, CGA 2012)
- County Public Service Board**
- Is your County Public Service Board in place? (s.56-59, CGA 2012)
  - Does your county government have a functional Human resource policy that complies with the requirements of the Constitution and national legislation, including those which prevent misuse and misappropriation of public funds? (CoK Article 190 (2), 201, 225, 226(5) PFM Act s.104, s.105(1)(i), s.107)
  - Is your County familiar with and applying the necessary frameworks for the preparation budgets including county integrated development plans, debt management the county fiscal strategy paper and the budget review and outlook paper for the county? (CoK Article 220; PFM Act s. 107, s.125)
  - How is your County addressing any challenges relating to the preparation of budgets?
  - Has your County established the County Budget and Economic Forum? (CoK 201(a), 220(2)(c), PFM Act 2012 s.137)
  - Are you as a public officer familiar with your responsibilities under chapter 12 CoK, PFM Act, any PFM county laws and regulations?
  - Are you as an Accounting Officers, Chief Officers and Department Heads, AIE Holder in the County, applying your responsibilities under chapter 12 CoK, the PFM Act 2012? (PFM Act 2012 s.147, s.148-156)
  - Have you as a County Treasury and County Assembly put in place a consultative mechanism has the to facilitate public participation on matters relating to public finance? (PFM Act 2012 s.65, s. 104(1)(j), s.109s.122)
  - Have you as the County treasury put in place measures for the publicisation of information on County financial matters? (PFM Act 2012 s.108(4), s.116(11), 117(8), 118(4), 119)
  - Has your County treasury established a record of all loans made to the county government? (PFM Act 2012, s. 112)
  - Has your County treasury prepared statements on the county debt management strategy (PFM Act 2012 s. 123)
  - Has your county developed the relevant laws and guidelines, regulations and systems to guide county procurement in line with the Constitution and national legislation? (PFM Act 2012 s.121, s.141(7), CoK 227)
  - What policies and laws has your county put in place to effect the affirmative action policy in respect to procurement to ensure inclusion of previously marginalized groups under Art. 227 CoK?
  - Has your county developed a framework in line with sections 138 - 144 PFM Act and related laws (CoK Articles 201(c), 212, 213, 220(1)(c); PFM Act 2012: s. 65, s. 107(2d, 2e, 3, 4), s. 123, s.141-145 CG Act 2012: s.8(1)(d) for:
    - Receiving and administration of grants and donations
    - Borrowing
    - Loan and debt management
    - Cash management
    - Participating at Intergovernmental Budget and Economic Council
  - Does your county government prepare cash flow projections as per s.127 of the PFM Act 2012?
  - Is your county assembly aware that it may only make changes to a budget if the changes fall within the fiscal strategy paper of the county?
- Decentralized Units**
- Has the County defined and established decentralized units? - Article 89, 176 CoK
  - Are the decentralized units functional?
- Cities and Municipalities**
- Have the county urban areas and cities been identified and established? - (Art 184 CoK, Urban Areas and Cities Act, 2011 : s.54, CGA 2012)
  - Are they functional? (s.12 & s.20 UACA 2011)

### COUNTY POLICIES, LAWS AND ADMINISTRATIVE PROCEDURES

- Has your County developed policies for the implementation of the county functions in the different sectors? (Articles 185, Fourth Schedule CoK, Section 5 CGA)
- Has your County developed county legislation to guide the implementation of the county functions in the different sectors? (Articles 183, 185, Fourth Schedule CoK, Section 5 CGA)
- Has your County developed any subsidiary legislation, regulations, guidelines, circulars, codes for the operationalization of the county functions in the different sectors?
- Have your County policies, laws and administrative procedures incorporated the national values and principles of the constitution (Articles 10, 27, 54-57, 227(2) chapter 6, Articles 174, 175, 196, 201, 233)?
- Have your County policies, laws and administrative procedures incorporated the relevant provisions of the national policies and legislation? (Article 191 CoK)
- Have your County policies, laws and administrative procedures incorporated the provisions of the relevant ratified international treaties that require domestication and operationalisation? (Article 2, 21(4), CoK)
- Has your County government developed policies, laws and administrative procedures to implement the Bill of Rights and in particular to ensure progressive realization of Economic and Social rights under article 43? (Articles 19, 20, 21, 43, Chapter 4 CoK)

### Principles Applicable to Public Officers

- Do you know that you are obliged to respect, uphold, and defend the Constitution which is the supreme law of the Republic? (Article 2&3 CoK)
- Do you know that the power the State organs exercise is power delegated to them by the people of Kenya? (Article 1)
- Do you know that the authority assigned to you as a State or Public officer is to be exercised in a manner consistent with Article 73 of the Constitution?
- Do you know that you are required to serve all people equally, impartially, honestly, transparently, and in a disciplined and committed way? (Art. 73, 232 CoK)
- Do you know that if you commit certain offences in a public office you may never qualify to work with government for up to ten years? (Art 75 (3) CoK; Secs. 48-49 of LIA)
- Do you know that if you do not account for or use prudently and responsibly public funds and/or use public funds contrary to the law or instructions, you make good the loss in addition to being liable for the loss whether or not you are still in office? (Article 201 CoK)
- Do you know the responsibilities of your office under the PFM Act 2012? (Sections 147-156)
- Do you know that you need to visit all areas of your county in order to better serve the people and your office?
- Are you aware that giving county business to your relative amount to conflict of interest, contrary to the Constitution and the Leadership and Integrity Act? (Art. 10, 75 & 226(5) CoK) s.4 LIA 2012)

### COUNTY PUBLIC FINANCE MANAGEMENT

- Does your County have a County Treasury with all requisite officers? (PFM Act s.104, s.106)
- Has your County determined and passed the laws and/or regulations relating public finance management? (PFM Act 2012, Sections 126, 101, 103, 107-112, 120, 127, 139, 141, 144, 146, 149, 150, 154, 155, 156, 160, 178, 182, 187, 200, 201, 205 and 207)
- Does your County government have a financial management system that complies with the requirements of the Constitution and national legislation, including those which prevent misuse and misappropriation of public funds? (CoK Article 190 (2), 201, 225, 226(5) PFM Act s.104, s.105(1)(i), s.107)
- Is your County familiar with and applying the necessary frameworks for the preparation budgets including county integrated development plans, debt management the county fiscal strategy paper and the budget review and outlook paper for the county? (CoK Article 220; PFM Act s. 107, s.125)
- How is your County addressing any challenges relating to the preparation of budgets?
- Has your County established the County Budget and Economic Forum? (CoK 201(a), 220(2)(c), PFM Act 2012 s.137)
- Are you as a public officer familiar with your responsibilities under chapter 12 CoK, PFM Act, any PFM county laws and regulations?
- Are you as an Accounting Officers, Chief Officers and Department Heads, AIE Holder in the County, applying your responsibilities under chapter 12 CoK, the PFM Act 2012? (PFM Act 2012 s.147, s.148-156)
- Have you as a County Treasury and County Assembly put in place a consultative mechanism has the to facilitate public participation on matters relating to public finance? (PFM Act 2012 s.65, s. 104(1)(j), s.109s.122)
- Have you as the County treasury put in place measures for the publicisation of information on County financial matters? (PFM Act 2012 s.108(4), s.116(11), 117(8), 118(4), 119)
- Has your County treasury established a record of all loans made to the county government? (PFM Act 2012, s. 112)
- Has your County treasury prepared statements on the county debt management strategy (PFM Act 2012 s. 123)
- Has your county developed the relevant laws and guidelines, regulations and systems to guide county procurement in line with the Constitution and national legislation? (PFM Act 2012 s.121, s.141(7), CoK 227)
- What policies and laws has your county put in place to effect the affirmative action policy in respect to procurement to ensure inclusion of previously marginalized groups under Art. 227 CoK?
- Has your county developed a framework in line with sections 138 - 144 PFM Act and related laws (CoK Articles 201(c), 212, 213, 220(1)(c); PFM Act 2012: s. 65, s. 107(2d, 2e, 3, 4), s. 123, s.141-145 CG Act 2012: s.8(1)(d) for:
  - Receiving and administration of grants and donations
  - Borrowing
  - Loan and debt management
  - Cash management
  - Participating at Intergovernmental Budget and Economic Council
- Does your county government prepare cash flow projections as per s.127 of the PFM Act 2012?
- Is your county assembly aware that it may only make changes to a budget if the changes fall within the fiscal strategy paper of the county?

### The Key County Devolution Related Laws

- The Constitution of Kenya, 2010 - CoK, 2010
  - The Elections Act 2011
  - The Transition to Devolved Government Act, 2012 - TDGA, 2012
  - The Urban Areas and Cities Act 2011 - UACA, 2012
  - The Public Finance Management Act 2012 - PFMA, 2012
  - The County Governments Act, 2012 - CGA, 2012
  - The Intergovernmental Relations Act, 2012 - IRA, 2012
  - The Leadership and Integrity Act, 2012 - LIA, 2012
  - Other national laws that affect counties
- In addition, see specific laws relating to each function - please see [www.cickkenya.org](http://www.cickkenya.org) and [www.kirc.go.ke](http://www.kirc.go.ke)

In everything you do, consideration must be given to the national values and principles as they affect all the people of Kenya, current and future generations. Due consideration should be given to:

- Are all the above being applied and is the application in accordance with the national values and principles of the Constitution and respecting the bills of rights?
- Are citizens informed of their rights? Are they receiving services?



MURANG'A COUNTY  
SENATE OFFICE  
P. O. BOX 895 - 10200  
MURANG'A

## Annex 3: Equitable and Conditional Transfers from National Government to County Governments – FY 2013 / 2014

No	County Name	Total Equitable Share of Revenue	Conditional Allocation	Grand Total
1	Baringo	3,247,853,215.00	382,555,501.00	3,630,408,716.00
2	Bomet	3,442,638,623.00	272,582,727.00	3,715,221,350.00
3	Bungoma	6,180,666,881.00	334,595,329.00	6,515,262,210.00
4	Busia	3,412,404,160.00	266,369,417.00	3,678,773,577.00
5	Elgeyo Marakwet	2,392,011,591.00	744,501,814.00	3,136,513,405.00
6	Embu	2,807,082,691.00	557,198,402.00	3,364,281,093.00
7	Garissa	4,221,433,715.00	475,032,960.00	4,696,466,675.00
8	Homa Bay	4,121,429,825.00	1,604,785,613.00	5,726,215,438.00
9	Isiolo	2,235,583,337.00	187,893,545.00	2,423,476,882.00
10	Kajiado	3,227,409,859.00	284,382,199.00	3,511,792,058.00
11	Kakamega	6,515,510,758.00	840,702,017.00	7,356,212,775.00
12	Kericho	3,295,019,652.00	317,792,977.00	3,612,812,629.00
13	Kiambu	5,458,860,860.00	805,574,808.00	6,264,435,668.00
14	Kilifi	5,442,533,482.00	377,885,641.00	5,820,419,123.00
15	Kirinyaga	2,587,865,089.00	242,055,751.00	2,829,920,840.00
16	Kisii	5,188,303,957.00	635,954,331.00	5,824,258,288.00
17	Kisumu	4,155,298,066.00	711,380,679.00	4,866,678,745.00
18	Kitui	5,315,309,833.00	519,086,118.00	5,834,395,951.00
19	Kwale	3,748,952,670.00	280,447,997.00	4,029,400,667.00
20	Laikipia	2,523,013,037.00	234,821,897.00	2,757,834,934.00
21	Lamu	1,500,755,102.00	99,237,004.00	1,599,992,106.00
22	Machakos	4,950,617,061.00	523,080,848.00	5,473,697,909.00
23	Makueni	4,366,239,078.00	354,912,725.00	4,721,151,803.00
24	Mandera	6,550,232,929.00	230,310,408.00	6,780,543,337.00
25	Marsabit	3,795,591,042.00	272,856,567.00	4,068,447,609.00
26	Meru	4,749,444,426.00	758,421,849.00	5,507,866,275.00
27	Migori	4,269,095,296.00	490,967,787.00	4,760,063,083.00
28	Mombasa	3,801,758,313.00	545,817,618.00	4,347,575,931.00
29	Murang'a	3,917,395,471.00	404,431,503.00	4,321,826,974.00
30	Nairobi	9,505,766,405.00	390,470,421.00	9,896,236,826.00
31	Nakuru	5,936,313,837.00	1,024,998,693.00	6,961,312,530.00
32	Nandi	3,477,901,827.00	408,946,759.00	3,886,848,586.00
33	Narok	3,867,590,331.00	278,791,611.00	4,146,381,942.00
34	Nyamira	3,038,643,767.00	278,440,754.00	3,317,084,521.00
35	Nyandarua	3,150,207,289.00	284,911,755.00	3,435,119,044.00
36	Nyeri	3,254,175,229.00	817,147,697.00	4,071,322,926.00
37	Samburu	2,598,153,222.00	206,938,875.00	2,805,092,097.00
38	Siaya	3,653,579,335.00	318,012,871.00	3,971,592,206.00
39	Taita Taveta	2,420,630,003.00	205,852,212.00	2,626,482,215.00
40	Tana River	2,914,328,551.00	204,478,573.00	3,118,807,124.00
41	Tharaka Nithi	2,294,827,947.00	139,762,124.00	2,434,590,071.00

No	County Name	Total Equitable Share of Revenue	Conditional Allocation	Grand Total
42	Trans Nzoia	3,729,874,627.00	193,134,230.00	3,923,008,857.00
43	Turkana	7,664,402,594.00	229,995,474.00	7,894,398,068.00
44	Uasin Gishu	3,796,628,687.00	270,261,206.00	4,066,889,893.00
45	Vihiga	2,831,564,442.00	196,974,298.00	3,028,538,740.00
46	Wajir	5,290,052,180.00	357,469,372.00	5,647,521,552.00
47	West Pokot	3,155,049,726.00	437,777,043.00	3,592,826,769.00
<b>TOTAL</b>		<b>190,000,000,000.00</b>	<b>20,000,000,000.00</b>	<b>210,000,000,000.00</b>

Source: County Allocation of Revenue Act, 2013

## County Equitable Allocations in the Financial Year 2014 / 2015

No.	County	Allocation Ratio	FY 2013/14	FY 2014/15
		Column A	Column B	Column C
1	Baringo	1.71%	3,247,853,215	3,863,235,929
2	Bomet	1.81%	3,442,638,623	4,094,928,045
3	Bungoma	3.25%	6,180,666,881	7,351,740,390
4	Busia	1.80%	3,412,404,160	4,058,965,160
5	Elgeyo/Marakwet	1.26%	2,392,011,591	2,845,235,405
6	Embu	1.48%	2,807,082,691	3,338,951,297
7	Garissa	2.22%	4,221,433,715	5,021,285,023
8	Homa Bay	2.17%	4,121,429,825	4,902,332,476
9	Isiolo	1.18%	2,235,583,337	2,659,167,127
10	Kajiado	1.70%	3,227,409,859	3,838,919,643
11	Kakamega	3.43%	6,515,510,758	7,750,028,857
12	Kericho	1.73%	3,295,019,652	3,919,339,552
13	Kiambu	2.87%	5,458,860,860	6,493,171,749
14	Kilifi	2.86%	5,442,533,482	6,473,749,201
15	Kirinyanga	1.36%	2,587,865,089	3,078,197,373
16	Kisii	2.73%	5,188,303,957	6,171,351,762
17	Kisumu	2.19%	4,155,298,066	4,942,617,611
18	Kitui	2.80%	5,315,309,833	6,322,420,839
19	Kwale	1.97%	3,748,952,670	4,459,281,644
20	Laikipia	1.33%	2,523,013,037	3,001,056,878
21	Lamu	0.79%	1,500,755,102	1,785,108,726
22	Machakos	2.61%	4,950,617,061	5,888,629,113



No.	County	Allocation Ratio	FY 2013/14	FY 2014/15
23	Makueni	2.30%	4,366,239,078	5,193,526,432
24	Mandera	3.45%	6,550,232,929	7,791,330,792
25	Marsabit	2.00%	3,795,591,042	4,514,755,670
26	Meru	2.50%	4,749,444,426	5,649,339,059
27	Migori	2.25%	4,269,095,296	5,077,975,631
28	Mombasa	2.00%	3,801,758,313	4,522,091,425
29	Muranga	2.06%	3,917,395,471	4,659,639,002
30	Nairobi	5.00%	9,505,766,405	11,306,858,928
31	Nakuru	3.12%	5,936,313,837	7,061,088,726
32	Nandi	1.83%	3,477,901,827	4,136,872,273
33	Narok	2.04%	3,867,590,331	4,600,396,333
34	Nyamira	1.60%	3,038,643,767	3,614,387,064
35	Nyandarua	1.66%	3,150,207,289	3,747,088,370
36	Nyeri	1.71%	3,254,175,229	3,870,755,753
37	Samburu	1.37%	2,598,153,222	3,090,433,118
38	Siaya	1.92%	3,653,579,335	4,345,836,528
39	Taita	1.27%	2,420,630,003	2,879,275,722
40	Tana River	1.53%	2,914,328,551	3,466,517,358
41	Tharaka Nithi	1.21%	2,294,827,947	2,729,636,922
42	Tranzoia	1.96%	3,729,874,627	4,436,588,158
43	Turkana	4.03%	7,664,402,594	9,116,605,188
44	Uasin Gishu	2.00%	3,796,628,687	4,515,989,340
45	Vihiga	1.49%	2,831,564,442	3,368,071,550
46	Wajir	2.78%	5,290,052,180	6,292,377,858
47	West Pokot	1.66%	3,155,049,726	3,752,849,041
<b>GRAND TOTAL</b>		<b>100.00%</b>	<b>190,000,000,000</b>	<b>226,000,000,000</b>

Source: County Allocation of Revenue Act, 2014

## Annex 4: Status Update on Litigation as at June 30th 2014

Item	Particulars of case/Application	CIC	Advocates Representing CIC	Nature of Complaint	Status
1	High Court Petition No 71 of 2013 The Institute for Social Accountability (ISA) vs. The Hon. Attorney General & Others	1st Interested Party	Nderitu & Partners	The Petitioner challenged the proposed disbursement of the Constituency Development Fund to Members of the 10th Parliament to enable them complete various projects before the 2013 general elections. The President assented to the CDF (Amendment) Act, 2013 on 13th September 2013, necessitating the amendment of the Petition.	The Matter comes up for Hearing on 27th August 2014.
2	High Court Civil Appeal No 280 of 2013 Bishop Donald Kisaka Mwawasi vs. The Hon. Attorney General & 2 others	3rd Respondent	No Representation	On 28th January 2013 Hon. David Majanja held that a person who holds dual citizenship is disqualified under the Constitution to contest elective office. The Appellant was dissatisfied with the judgement and appealed against the decision.	Judgment was delivered on 6th June, 2014
3	High Court Petition No 593 of 2014 Okiya Omtatah & Another vs. Council of Governors & Others	2nd interested party	V A Nyamodi & Co Advocates	The Petitioner sought the annulment of Legal Notices numbers 137-182, issued by the National Government on 9th August, 2013, purportedly transferring Level 2, Level 3, Level 4, and Level 5 national referral health facilities from the National Government to County Governments.	Judgment was delivered on 6th June 2014 where the court:-  Declined to define 'National referral facilities' and County health facilities' on the ground that that was the role of the national government through the Executive.  Held that issues of transition are best left to the relevant state agencies such as the Commission for the Implementation of the Constitution and Transition Authority.  The Petitioners have filed a Notice of Appeal against the judgment.

Item	Particulars of case/Application	CIC	Advocates Representing CIC	Nature of Complaint	Status
4	<p>High Court Petition No 74 of 2014</p> <p>International Legal Consultancy Group vs. The Senate and Clerk of the Senate</p>	Interested party	Muriu Mungai & Co Advocates	<p>The Petition challenged the summons to appear before the Senate's Standing Committee on Economic and Financial Affairs issued to nine Governors and County Executive Committee Members for Finance and County Accounting Officers to answer questions on County financial management. The Court ordered that the Petition be transferred to the Kerugoya High Court where the Petition was consolidated with Petition No 8 of 2014.</p>	<p>In its judgment delivered on 16th April 2014, the Court declined to issue a permanent injunction to restrain the Senate from summoning County Governors, County Executive Members and Accounting officers at the County level and held that</p> <p>The Court had the jurisdiction under Articles 159(1), 160(1) and 259 of the Constitution to ensure that Parliament complies with the Constitutional requirements in carrying out its functions.</p> <p>The Senate can summon Governors, County Executive Members of Finance and County accounting officers to appear before it and answer to questions on County Government finances in so far as the National revenue allocated to the respective county is concerned, but such power should not be exercised in an arbitrary and capricious manner.</p> <p>The Senate's power of oversight under Article 96(3) is limited to National revenue allocated to the County Governments.</p> <p>The judgment be brought to the immediate attention of the Attorney General.</p>

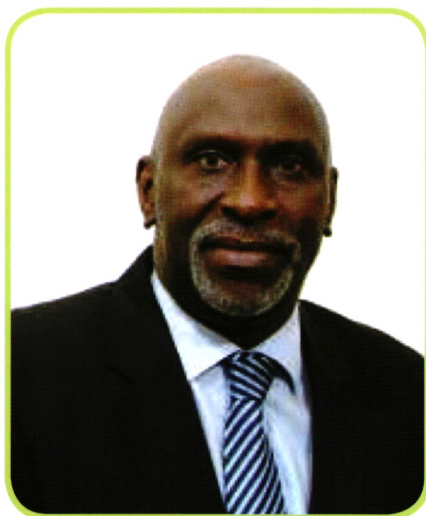


Item	Particulars of case/Application	CIC	Advocates Representing CIC	Nature of Complaint	Status
5	<p>Supreme Court Ref No 2 of 2014 (Advisory Opinion)</p> <p>National Land Commission</p>	V. A Nyamodi & Co Advocates	5th Interested Party	<p>The National Land Commission sought an advisory opinion to clarify the functions and powers of the Ministry of Lands, Housing and Urban Development on the one hand and the functions and powers of the National Land Commission as stipulated in various laws. The advisory opinion was sought on the following issues:-</p> <p>Land administration and management functions</p> <p>Land taxation and revenue</p> <p>Human resource/staff</p> <p>Land registration and issuance of titles</p> <p>National Land Information Management System (NLIMS)</p> <p>Transfer of assets</p> <p>Private land</p> <p>Land settlement fund</p> <p>The 1st and 2nd Interested Parties namely the Attorney General and the Ministry of Lands, Housing and Urban Development filed a Notice of Preliminary Objection challenging the jurisdiction of the Supreme Court to entertain the reference. They argued that the Supreme court's jurisdiction to render an advisory opinion was restricted and confined to matters concerning County governments and that the High Court is the right judicial forum for the adjudication of the controversy concerning issues of constitutional and statutory interpretation.</p>	<p>The matter is still on going and the court has not issued a ruling of the Preliminary Objection.</p>
6	<p>High Court Petition No 560 of 2013</p> <p>Kenya Tea Development Agency Holdings Ltd vs. CIC &amp; the Attorney General</p>	1st Respondent	Chiuri Kirui & Rugo Advocates	<p>The Petitioner is challenging the eligibility of state officers and/or public officers holding directorship positions in its board and its shareholding companies. The Petitioner deems that as a violation of Chapter 6, Article 77 (1) of the Constitution of Kenya on restriction of such officers from participating in any other gainful employment.</p> <p>The Council of Governors sought a constitutional interpretation of the oversight powers over the County Government on financial management of funds at the devolved government level. Specially; the respective scope and role of the County Assembly and Senate in exercising oversight mandate and the responsible officers to be held accountable at the County Government.</p>	<p>CIC argued that it had been wrongly enjoined in the matter as it was not the commission designated in Chapter Six of the Constitution, for ensuring compliance and enforcement of the provisions of Chapter six. The Court made an order expunging CIC from the Petition and thus excusing it from participating in the proceedings.</p> <p>The matter will be mentioned on 27th August, 2014.</p>
7	<p>Supreme Court Ref No 1 of 2014 (Advisory Opinion)</p> <p>The Council of Governors, The Senate and Clerk of the Senate</p>	Interested Party	Muriu Mungai & Co Advocates	<p>The Council of Governors sought a constitutional interpretation of the oversight powers over the County Government on financial management of funds at the devolved government level. Specially; the respective scope and role of the County Assembly and Senate in exercising oversight mandate and the responsible officers to be held accountable at the County Government.</p>	<p>The matter will be mentioned on 27th August, 2014.</p>

Item	Particulars of case/Application	CIC	Advocates Representing CIC	Nature of Complaint	Status
8	Supreme Court Ref No 2 of 2013 (Advisory Opinion) The Speaker of the Senate and the Attorney General and Others	2nd Amicus Curiae	Nderitu & Partners	The Senate in an Application filed on 13th June 2013, sought an Advisory Opinion on whether the National Assembly faulted in amending the Division of Revenue Bill, 2013 before submitting it for assent.	The Court opined that the Division of Revenue Bill, 2013 related to County Governments thus required the Senate's contribution and that the Speaker of the National Assembly erred to disregard the Senate's input. The court advised that the dispute resolution mechanisms ought to be invoked to settle the disagreement.
9	High Court Petition No 496 of 2013 CIC vs. The National Assembly of Kenya & 2 others	Petitioner	Chiuri Kirui & Rugo Advocates and Oraro & Co Advocates	The Petitioner challenged the proposed Constitution of Kenya (Amendment) Bill, 2013, which sought to amend the definition of State Officers in Article 260 of the Constitution.	The court found the petition premature and dismissed it.
10	High Court Petition No 237 of 2014 Mary Wanjuhi Mungai vs. The Hon. Attorney General & Others	2nd Respondent	No Representation	The Petitioner sought, among others  A declaration that the Marriage Act 2014 was unconstitutional in as far as it provided for certification of cultural marriages without consulting the first or older wives.  A declaration that the said Act was unconstitutional in as far as it neither recognised nor provided for Baha'i marriages.	Matter was scheduled for hearing on 19th September, 2014
11	High Court Petition No 113 of 2014 Counties Association of Kenya vs. The Hon. Attorney General & Others	1st Interested party	No Representation	The Petitioner challenged the move by the Deputy Speaker, Kiambu County Assembly from contesting for the position of Speaker after the Speaker was ousted.	The matter was scheduled for hearing on 4th April 2014 but not listed before any Judge. The matter is still pending hearing and determination.

## Annex 5: Structure of the Commission

### Chairperson and Commissioners of the Commission

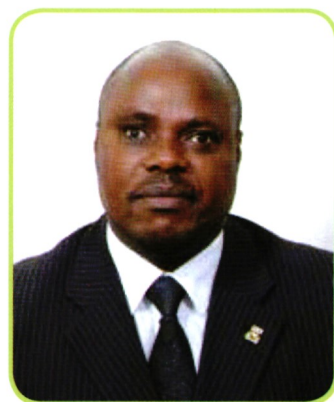


Mr. Charles Nyachae  
**Chairperson of the Commission**



Dr. Elizabeth Muli  
**Vice-Chairperson, and Convener of the  
 Executive and Security Thematic Area.**

Coordinates the implementation of Chapters 9 and 14 of the Constitution that deals with the Executive and Security respectively.



Dr. Imaana Kibaaya Laibuta  
**Convener of the Judiciary and Constitutional  
 Commissions Thematic Area.**

Coordinates the implementation of Chapter 10 on the Judiciary and Chapter 15 on Constitutional Commissions and Independent Offices.





Prof. Peter Wanyande

**Convener of the Devolved Government Thematic Area.**

Coordinates the implementation of Chapter 11 of the Constitution and Section 15(2)(d) of the Sixth Schedule to the Constitution, on Devolution.



Mr. Kamotho Waiganjo

**Convener of the Public Finance Thematic Area.**

Coordinates the implementation of Chapter 12 of the Constitution, which deals with Public Finance Management.



Ms. Catherine M. Mumma

**Convener of the Bill of Rights and Citizenship Thematic Area.**

Coordinates the implementation of Chapters 3 and 4 of the Constitution, on Citizenship and the Bill of Rights, respectively.



Dr. Ibrahim M. Ali

**Convener of the Land and Environment Thematic Area.**

Coordinates the implementation of Chapter 5 of the Constitution on Land and Environment.



Dr. Florence Omosa

**Convener of the Representation of the People and the Legislature Area.**

Coordinates the implementation of Chapters 7 and 8 of the Constitution on Representation of the People and the Legislature respectively.



Mr. Philemon Mwaisaka, EBS, SS

**Convener of the Public Service and Leadership Area.**

Coordinates the implementation of Chapter 6 on Leadership and Integrity and Chapter 13 of the Constitution on Public Service.

## Senior Management Team



**Mr. Joseph N. Kosure**  
Secretary/CEO



**Ms. Esther D. Kodhek**  
Director of Programmes



**Ms. Rose M. Macharia**  
Director of Management Services



**Mr. Mugita Gesongo**  
Head of Monitoring and  
Evaluation



**Ms. Margaret Akutekha**  
Head of Internal Audit



**Mr. Kennedy Malinda**  
Head of Supply Chain Management



**Mr. Howard Olume**  
Head of Human Resources



**Ms. Bevin A. Bhoke**  
Head of Communications



**Mr. Felix Ongaga**  
Head of Finance



**Ms. Elizabeth K. Obiero**

Principal Programme Officer,  
Organizational Development &  
Institutional Strengthening



**Mr. James O. Wagala**

Principal Programme Officer,  
Organizational Development &  
Institutional Strengthening



**Ms. Sophia K. Sitati**

Senior Programme Officer



**Mr. Fredrick O. Oromo**

Senior Supply Chain  
Management Officer



**Ms. Christine N. Kuria**

Senior Programme Officer-  
Citizenship and Bill of Rights  
Thematic Area



**Ms. Caroline J. Gaita**

Senior Programme Officer,  
Judiciary and Constitutional  
Commissions Thematic Area



**Ms. Edith C. Cheramboss**

Senior Programme Officer,  
Public Service and Leadership  
Thematic Area



**Ms. Mary G. Orwa**

Senior Programme Officer,  
Representation of the People and  
The Legislature Thematic Area



**Ms. Ruth M. Muthui**

Senior Programme Officer,  
Judiciary and Constitutional  
Commissions Thematic Area



**Mr. Abdirazak A. Abdi,**

Senior Programme Officer, Land  
and Environment Thematic Area



**Ms. Valerie N. Okumu**

Senior Programme Officer, Devolved  
Government Thematic Area



**Ms. Lucy M. Gaithi,**

Senior Programme Officer,  
Monitoring and Evaluation





**Mr. Kephias O. Okach,**  
Senior Programme Officer,  
Monitoring and Evaluation



**Mr. Timothy K. Kariuki**  
Senior Programmes Officer,  
Monitoring and Evaluation



**Mr. Victor Odhiambo Akuom**  
Senior Programmes Officer,  
Public Finance Thematic Area



**Mr. Jeremiah Nyakundi**  
Senior Programmes Officer



**Ms. Natasha N. Kimani**  
Programmes Officer, Executive and  
Security Thematic Area

**MURANG'A COUNTY**  
**SENATE OFFICE**  
**P. O. BOX 895 - 10200**  
**MURANG'A**



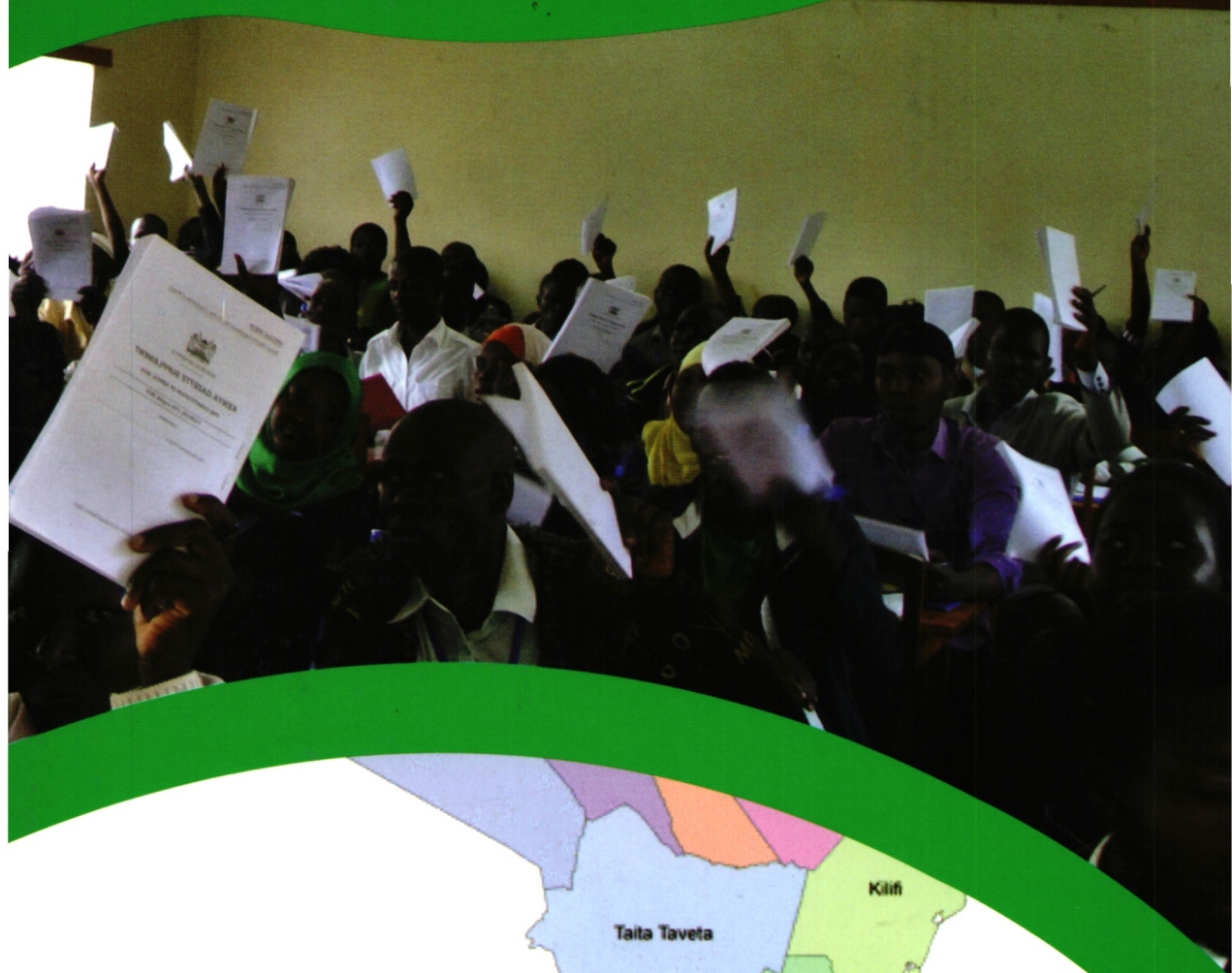
# Commission for the Implementation of the Constitution

Utekelezaji wa katiba, jukumu la wote

Turkana

Marsabit

Mandera



Taita Taveta

Kiifi

Kwale

Mombasa