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# QUARTERLY REPORT

JULY - SEPTEMBER 2015



Commission for the Implementation  
of the Constitution

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*Paper laid on  
The Table of the  
Senate on 11/02/16  
by Sen. Mutula  
Kilonzo Jr.  
LAD  
11/02/16*

# JULY-SEPTEMBER 2015 **QUARTERLY REPORT**



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 Commission for the Implementation of the Constitution

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# MISSION AND VISION OF THE COMMISSION

## 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.

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# EXECUTIVE SUMMARY

Sections 5(6)(c) and 15(2)(d) of Sixth Schedule to the Constitution of Kenya 2010 and Section 4(a) of the Constitution for the Implementation of the Constitution (CIC) Act, 2010 require CIC to submit to the People of Kenya, Parliament and the President quarterly reports on:

- a) The progress in the implementation of the Constitution; and
- b) Any impediments to the implementation of the constitution;

Further, Section 25 of the CIC Act, 2010 requires the Commission to prepare and submit progress reports to the Constitution Implementation Oversight Committee (CIOC) and the President on:

- a) The implementation of the constitution;
- b) Any impediments to the implementation of the constitution;
- c) Any legal and administrative measures to address specific concerns identified by the Commission; and
- d) Any other information relating to its function that the Commission considers necessary.

This report covers the period between July to September 2015 and, in line with CIC's reporting mandate, provides highlights on:

- a) The preparation of the legislation required by the Constitution and any challenges in that regard;
- b) The process of establishing and operationalization of the infrastructure and systems necessary for the proper operations of devolved system of government;
- c) Challenges to the process of implementing the Constitution and recommendations thereon.

During the reporting period, the Commission continued to work with various government ministries, departments, agencies and county governments on review and development of policies, legislation and administrative procedures. Working with relevant agencies, the Commission worked on three policies, which include; Kenya Health and Gender and Equality Policy, Policy on National Police Service Commission Gender Mainstreaming, and National Policy for Sustainable Development of Northern Kenya and other Arid Lands

The Commission reviewed a number of Bills, which were processed by both the National and County Assemblies and the Senate. 22 bills were gazetted by both the National assembly and the Senate and reviewed by CIC including; Community Land Bill 2015; The Culture Bill, 2015; Legislative Proposal: The Kenya National Examination Council (Amendment) Bill, 2015; Legislative Proposal: The Elections (Amendment) Bill, 2015; The Irrigation Bill, 2015; The Central Bank of Kenya Bill, 2015; Public Service Commission Bill, 2015; The Investigation and Adjudication of Historical Land Injustices Bill, 2015; The Magistrates' Court Bill, 2015; Judiciary Fund Bill, 2015; High Court Organization and Administration Bill, 2015; The Court of Appeal (Organization and Administration Bill), 2015; The Persons with Disability Bill, 2015; The Kenya Defence Forces (Amendment) Bill, 2015; The Occupational Therapists (Training, Registration and Licensing) Bill, 2015; The Clinical Officers (Training, Registration and Licensing) Bill, 2015;

The Pwani National Referral Hospital Bill, 2015; The Law Of Succession (Amendment) Bill, 2015; The Election Laws (Amendment) Bill, 2015; The Constitution Of Kenya (Amendment) Bill, 2015; The Two Thirds Gender Principle Bill, 2015; The Nyeri Health County Act

On regulations, activities carried out included: Review of legal, policy and institutional framework for fighting corruption in Kenya; Restructuring of Provincial Administration; Review of the Health as a devolved function guidebook; Sharing and validation of County data reports on Integrating the Rights Based Approach to health for Bungoma, Nyeri and Kitui Counties; Publication on Public Participation; Publication on Affirmative Action manual

To assess implementation of the system of devolved government and specifically the devolved functions, the Commission undertook an assessment of the uptake of devolved functions among all the 47 counties.. The analysis shows that counties have taken up all the devolved functions with the exception of a few that require further. Overall the county governments are on course in terms of the establishment of the necessary structures including systems, offices, plans and laws.

The report highlights some of the major challenges and impediments to constitution implementation, which include; tendency to re-centralize the powers of key organs to the presidency; Conflicting mandates between institutions; Supremacy wars; Separation of executive and legislative powers.

The challenges specific to the counties include; operationalization of intergovernmental relations structures; management of agricultural training centres and mechanisations stations, unconstitutional county laws; disparities in staff remuneration; public participation as well as gaps in laws among others.

To address some of the challenges, it is recommended that;

- a) The county governments need to do detailed capacity needs assessment to establish actual capacity gaps. Subsequently, clear, focused capacity building plans should be developed and implemented by both the National and County Government.
- b) The AG office and the Kenya Law Reform Commission should provide more technical support to counties on drafting their legislation.
- c) All institutions should respect the Constitution and follow due process of settling disputes.
- d) Structured civic education programmes be developed and implemented by both levels of government.
- e) Resources, including adequate funds should be sent to counties in good time to facilitate the implementation of functions. Funds to be disbursed on quarterly as opposed to monthly basis.
- f) Parliament should allow the Commission sufficient time to review the proposed legislation and regulations and to conduct public consultation in compliance with Article 261(4) of the Constitution.
- g) Political leaders should actively engage in promoting peace and security in the affected counties.

# LIST OF ABBREVIATIONS

ADR	Alternate Dispute Resolution
AG	Attorney General
CAJ	Commission on the Administration of Justice
CEDAW	Committee on the Elimination of All forms of Discrimination Against Women
CIC	Commission for the Implementation of the Constitution
CIOC	Constitution Implementation Oversight Committee
COK	Constitution of Kenya
CPA	County Policing Authority
EACC	Ethics and Anti-Corruption Commission
IBEC	Intergovernmental Budget and Economic Forum
IEBC	Independent Electoral and Boundaries Commission
IDLO	International Development Law Organization
IPOA	Independent Policing Oversight Authority
IRA	Insurance Regulatory Authority
KDF	Kenya Defence Force
KLRC	Kenya Law Reform Commission
KNBS	Kenya National Bureau Of Statistics
KPOSB	Kenya Postal Office Savings Bank
NACC	National AIDS Control Council
NIS	National Intelligence Service
NLC	National Land Commission
NPS	National Police Service
NPSC	National Police Service Commission
PFM	Public Finance Management
TA	Transition Authority
TDR	Traditional Dispute Resolution
TIP	Transition Implementation Plan
TSC	Teachers' Service Commission
UNHCR	United Nations High Commissioner for Refugees
UNPSA	United Nations Public Service Awards

# MESSAGE FROM THE CHAIRPERSON

## INTRODUCTION

The end of term for the commission is fast approaching. The vision of the Commission still remains that of a united and prosperous Kenya, in which everyone respects, upholds and defends the Constitution. While carrying out the Commission's responsibilities the July- September, 2015 quarterly report, has documented the experiences of implementing the Constitution and lessons learnt within the period with the ultimate aim of sustaining the vision of the commission. Achieving the success in the full implementation of the Constitution has continued to be dodged by challenges; however, it is our belief, that the commitment of implementers and high expectations by Kenyans will ensure the achievement of this feat moving forward.



As noted before in the previous quarterly reports, the structures and systems already in place by both levels of government continues to take shape and making public service delivery to Kenyans more accessible and improved. During the reporting period, the Commission earnestly continued working with both the levels of government and other stakeholders to facilitate development of requisite legislations according to the procedure spelt out in Article 261(1) and (4) of the Constitution, and review of existing legislation to align them with the new dispensation. At the County level, we have noted efforts by county assemblies to expand their scope in legislation development towards other required legislations for county public service delivery. It is indeed commendable to observe the determined attempt by the citizen to inform the legislative process, through petitions and the initiative of the assembly and the executive to reach out to the people on budgetary issues. Nevertheless, both arms of county governments have decried the costs involved, as they are prohibitive. A joint approach is proposed as it not only cuts down on the costs, but also streamlines the process and issues are lessened due to joint agreements reached in the process.

We appreciated the progressive achievement of the implementation of the Constitution, albeit with glaring challenges and impediments that the country continues to face in the process. As highlighted in the report, challenges to the process of implementing the constitution continue to persist. Tendency to re-centralize at the national level still affects the effective implementation of functions assigned to the County government. There is a critical need to expedite the functional analysis process to allow for functions to be delivered as anticipated under the 4<sup>th</sup> Schedule to the Constitution. The turf wars between the National Land Commission and the ministry of lands has also loudly demonstrated the challenges of the implementing process. Whereas the powers of the two institutions are well cut out in the letter of the law, the two institutions have failed to work together, oftentimes working at cross purposes. Understanding and respect for the functional and institution integrity of institution of government is key to the effective implementation of the constitution.

In presenting this report we remain proud of the people of Kenya for remaining patient but relentlessly continuing to demand the best out of the implementation process. In conclusion, I wish to affirm that the Commission remains as ever focused in the discharge of their mandate for the benefit of Kenyans now and for the future generation.

# PART ONE

## 1. MANDATE OF THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

The Commission for the Implementation of the Constitution (CIC) is established under Section 5(1) of the Constitution as an independent organ to monitor, facilitate and oversee the implementation process of the Constitution of Kenya 2010. Its mandate is set out in Sections 5(6) and 15(2) of the Sixth Schedule to the Constitution, Section 4(a) of the CIC Act, 2010 and Section 15 of the Transition to Devolved Government Act, 2012. Specific functions include;

- a) Monitoring, facilitating and overseeing the development of legislation and administrative procedures required to implement the Constitution;
- b) Co-coordinating 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;
  - i) Progress in the implementation of the Constitution;
  - ii) The preparation of the legislation required by the Constitution and any challenges in that regard;
  - iii) The process of establishing new commissions;
  - iv) 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;
  - v) 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 ensure 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.

Besides addressing necessary legislation, and administrative procedures, the Commission is required to monitor, facilitate and oversee the development of policies to bring them into compliance with the letter and spirit of the Constitution.

Under Article 249(1) the Constitution, in common with other Chapter 15 Constitutional Commissions, CIC is also required to protect the sovereignty of the people, secure the observance by all state organs of the democratic values and principles and promote constitutionalism.

This report is prepared and submitted pursuant to the commissions reporting mandate under the Constitution and the Commission for the implementation of the Constitution, 2010.

# PART TWO

## 2. ACHIEVEMENTS

This section covers the achievements made in the development and review of policies, legislation and administrative procedures, as well as progress made by public agencies in the implementation of the Constitution.

### 2.1 Review and Development of Policies

#### a) Audit of the Kenya Health Gender and Equality Policy

During the quarter under review, the Commission received the Kenya Health Gender and Equality policy seeking to address the scanty understanding of gender concepts and the linkages to health and health-related systems, identify and analyze key issues and provides the framework to embed gender in Kenya's health system structures, policies and programs, thus making the sector responsive to specific gender needs.

The Commission audited the policy and sent its comments to the Permanent Secretary of Health. No constitutional concern was raised.

#### b) Audit of the National Police Service Commission Gender Mainstreaming Policy

During the quarter under review, the Commission received the National Police Service Gender Mainstreaming Policy, which promotes equal opportunity and treatment of both men and women in the police service and mechanisms on reporting sexual harassment in the service.

The Commission audited the policy and recommended the policy to flow in the conventional framework of a policy document which details the purpose of the policy, the situation analysis, proposed strategies and interventions, implementation arrangements and arrangements for monitoring and evaluation. The Commission further recommended that the policy needed to draw a clear nexus with the service standing orders and that the finalization of the policy should await the promulgation of the National Gender Policy.

#### c) National Policy for Sustainable Development of Northern Kenya and other Arid Lands

The Commission with the support of IDLO engaged a consultant to review the policy. Among other activities, the consultant was supposed to carry out stakeholder forum. The Stakeholder forum was held on 8th October 2015 in Nairobi and various stakeholders attended to discuss the policy.

Lack of public participation during the development of the policy came out very strongly as most of the stakeholders were not very convinced on whether public participation was put into consideration. They insisted that there should be visits to these counties of concerns so as to collect their views on the policy.

Challenges that affect these Arid and Semi Arid regions, did not come out clear in the policy the stakeholders agreed unanimously that the policy should come up with at least three or four challenges that when dealt with can cover all challenges altogether. For instance one of the proposals made was good governance. They argued that when the leadership is very transparent and resources are used as required then most problems such as health, transport infrastructure and water and sanitation would be addressed.

The policy is still under review at CIC.

## 2.2 Review and Development of Legislation

The Commission works with both levels of government and other stakeholders to facilitate development of new legislation according to the procedure spelt out in Article 261(1) and (4) of the Constitution, and review of existing legislation to align them with the new dispensation. This section presents Bills received and reviewed by the Commission during the reporting period. Annex 1 provides a cumulative update of the status of development of the Fifth Schedule Legislation.

### (a) Community Land Bill 2015

Commission with the financial support from IDLO engaged a consultant to review community land bill 2015. Community land Bill 2015 was developed to give effect to Article 63 (5) of the Constitution; providing for the recognition, protection and registration of community land rights; management and administration of community land; and the role of county governments in relation to unregistered community land. The deadline for this law was 27th August 2015 but has since been extended by parliament for another one year to allow for more consultations.

The enactment of this law was delayed mainly by supremacy battles between the County and National Government on control of community land and lack of agreements on the role of the county government and the national government in relation to the community land. There also existed conflict between the national assembly and the senate, the ministry and NLC on who was to deal with community land. Further, there was perception of limited involvement of key stakeholders leading to delay in its completion.

Commission have also participated in parliament departmental committee on land Retreat in Mombasa to review the land laws amendment bill, community land bill, and physical planning bill. The commission has shared the recommendation with parliament

### (b) The Culture Bill, 2015

The Bill seeks to give effect to Article 11 of the Constitution by providing for the promotion and protection of culture and cultural heritage of communities.

Following internal review of the initial version of the Bill which was submitted to CIC on 30th April 2015, , the Commission decided that there was need for the Ministry and other players to clarify as to which bill(s) were August 27th 2015 deadline bills with respect to Article 11 (3). This is because the Commission had received at least 3 bills on the article. Subsequently, a roundtable meeting was held between CIC, the office of the Attorney General, the Kenya Copyrights Board, the Ministry of Sports, Culture and the Arts and the Kenya Law Reform Commission on 16th May 2015.

The meeting observed that a number of Bills had already been proposed for the purposes of implementing Article 11 of the Constitution, namely: the Languages Bill 2015, the Protection of Traditional Knowledge and Traditional Cultural Expressions Bill 2015, the National Culture and Arts Bill, 2015 and National museums and heritage Bill. In processing the Bills, CIC was not clear as to whether all the bills were responding to Article 11 (3) (a) of the Constitution and whether there was harmonisation between the Bills.

Following the meeting, it was agreed that the Ministry of Sports and Culture would provide clarity on whether Article 11(3)(a), i.e. compensation or royalties to communities for use of their cultures and cultural heritage, is to be implemented through one piece of legislation or various legislations, and which ones these are and when they would be ready for processing.

The Ministry clarified that only two Bills were required to implement Article 11(3)(a) of the Constitution, i.e. The Protection of Traditional Knowledge and Traditional Cultural Expressions Bill 2015 and The National Culture and Arts Bill, 2015, and that they would be sending a revised version of the latter. The revised Bill was submitted to CIC on 9th July 2015, after which the Bill was reviewed and released to the Attorney General for preparation for tabling before Parliament on 27th July 2015.

### **(c) Legislative Proposal: The Kenya National Examination Council (Amendment) Bill, 2015**

CIC received a legislative proposal on the Kenya National Examination Council (Amendment) Bill, 2015. The legislative proposal seeks anchor the existence and practice of structured ranking of schools and candidates in legislation. It therefore seeks to amend the KNEC Act, 2013 by giving power to the Kenya National Examination Council to rank and make regulations for the ranking of institutions and candidates based on their performance at the national examination set and conducted by the Council at basic level.

CIC submitted an advisory to the National Assembly in September 2015 recommending for the deletion of this proposal. This recommendation was based on the view that basic education should ideally bring about holistic realization of the full potential of all learners, whose capabilities and gifts vary, and should be equally nurtured. As such, all learners in public schools should have access to quality and similar facilities, equipment, infrastructure, trained teachers and receive equitable funding so as to allow them to excel in any school across the country, ranking notwithstanding. CIC therefore felt that:

- (a) Ranking of schools based solely on performance during national examination is likely to lead to detrimental effects on a child's holistic education, which should also take into account other areas of excellence such as sports, music, arts, etc.
- (b) The ranking of schools and candidates based on performance in either the Kenya Certificate of Primary Education and the Kenya Certificate of Secondary Education will also limit a well-rounded approach to education as teachers, parents and children are likely to focus solely on examination based learning at the expense of development of other areas of learning.
- (c) The proposed ranking of schools and candidates may limit the provisions of Articles 27, 43 and 53 of the Constitution by breeding unhealthy competition between schools, which may in turn fail to admit students based who garner perceived low marks in national examinations.

### **(d) Legislative Proposal: The Elections (Amendment) Bill, 2015**

The National Assembly's departmental committee on justice and legal affairs organised a two-day retreat, on 2nd and 3rd October 2015 to deliberate on amendments to the electoral laws with a view to streamlining the electoral structures prior to the next general elections. The legislative proposals reviewed were: the Elections (Amendment) Bill, 2015 and the Constitution of Kenya (Amendment) Bill, 2015. The key issues of discussion centered on the role of the Judiciary and IEBC in the electoral dispute resolution mechanisms. Hence, the amendments sought to bring clarity to the mandates of the two institutions.

### **(e) The Irrigation Bill, 2015**

The Irrigation Bill, 2015 seeks to amend and consolidate the law relating to sustainable development and management of irrigation for socio-economic development in the country; to align existing irrigation laws to the Constitution of Kenya 2010 and to repeal the Irrigation Act.

CIC held a roundtable meeting on 30th September 2015 to review the provisions of the Bill. During the meeting, a number of key institutions, e.g. the National Irrigation Board and the Council of Governors, reported to not having been consulted during the legislative development. Consequently, on 6th October 2015, the Ministry of Water and Irrigation withdrew the Bill to allow for further consultations. As of 9th November 2015, the Bill was yet to be submitted to CIC. CIC will therefore finalise on the initial Bill and submit its comments for consideration as the revised Bill is being reviewed.

### **The Central Bank of Kenya Bill, 2015**

This is a bill meant to give effect to article 231 of the Constitution with respect to the establishment of the Central Bank. The Bill was taken through the motions of review including the involvement of principal stakeholders to wit the National Treasury and the Central Bank of Kenya.

Unfortunately, at the tail end of the bill review process, which normally calls for the conduct of a roundtable meeting comprising of the principal stakeholders in the bill, Kenya Law Reform and the Attorney General, was not held. This mainly stemmed from the fact that the National Treasury argued that the bill was not a constitutional bill and therefore there was no need to hold the roundtable meeting on the bill.

As an institution, CIC took up the matter with the relevant committee of parliament under whom the matter falls for purposes of resolution of the dispute and further directions. It is CIC's contention that the Bill is a constitutional bill and therefore subject to the process outlined in the consideration of bills aimed at the implementation of the Constitution. This means that the involvement of the CIC including the conduct of the roundtable cannot therefore be dispensed with.

### **(f) Public Service Commission Bill, 2015**

The Commission received the Public Service Commission (Amendment) Bill, 2015 from the Office of the Attorney General. The Bill seeks to include regulations on the Public Service and repeal the Public Service Commission Act, 2012. In 2012, legislation establishing the Public Service Commission was enacted, however, it did not anchor the regulations in the legislation. The Commission reviewed regulations developed under Section 31 of the Public Service Commission Act, 2012 and during a meeting held in August 2014, it was agreed that a comprehensive law should be put in place. The Commission will finalize the review of the Bill in the next quarter.

### **(g) The Investigation and Adjudication of Historical Land Injustices Bill, 2015**

The Commission finalized the review of the Investigation of Historical land injustices Bill, 2015 and forwarded the Bill to the Office of the Attorney General for onward transmission

### **(h) The Magistrates' Court Bill, 2015**

Initially developed and reviewed in 2012, the Bill was submitted to the Commission with proposed amendments. The improvements are designed to align the bill with the constitutional requirements for parliament to enact legislation to govern the organization of the Court as provided in Article 169 (1) and (2) of the Constitution.

The Magistrates' court bill seeks to confer jurisdiction, functions and powers on the magistrates' courts and to provide for the procedure of the magistrates courts. It also seeks to give effect to articles 23 (2) which requires parliament to enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation, infringement of, or threat to , a right or fundamental freedom in the Bill of Rights.

### **(i) Judiciary Fund Bill, 2015**

The Bill seeks to re-enact the section in the Judicial Service Act that made provision for the administration of the Judiciary Fund established under the Constitution. It makes comprehensive provisions on the administration of the fund, the budgetary process, authority to incur expenditure, etc.

CIC reviewed and improved the Bill to ensure alignment with the Constitution and PFM Act on matters relating to funds of state organs.

### **(j) High Court Organization and Administration Bill, 2015**

CIC reviewed the Bill to ensure compliance with the letter and spirit of the Constitution. The Bill seeks to give effect to Article 165 (1) (a) and (b) of the Constitution and to provide for the organization and administration of the High Court of Kenya and for connected purposes.

### **(k) The Court of Appeal (Organization and Administration Bill), 2015**

The Bill seeks to give effect to article 164 (1) (a) and (b) of the Constitution, which requires parliament to enact legislation for the organization and administration of the Court of Appeal. The Bill was forwarded the office of the Attorney General for publication.

### **(l) The Persons with Disability Bill, 2015.**

CIC carried out review of the bill, which seeks to align the existing legislation with the Constitution. In reviewing the Bill, the thematic team and the stakeholders consulted sought to address themselves to the issue of mainstreaming and inclusion of disability rights; the scope of the proposed legislation; nature of the National Council, in terms of composition, functions, qualifications and tenure of members; the proposed PWD Development Fund I terms of management, compliance with the PFM Act and accountability; working relationship between the Council and other state organs, including the Cabinet Secretary and also the penalties applicable for offences. The extent to which the the UN Convention on the Rights of Persons with Disability should be covered in the Bill was also discussed at length.

The Bill was subjected to a roundtable attended by the implementing partners, together with representatives of the Ministry of Labour and Social Services, led by the Principal Secretary and members of the Council.

The commission held a consultative forum at Maanzoni Hotel in July 2015 to discuss the proposed PWD Bill, 2015. At the meeting, stakeholders gave their comments on the proposed bill and these were factored in while reviewing and redrafting the Bill.

### **(m) The Kenya Defence Forces (Amendment) Bill, 2015**

The Commission reviewed the draft Kenya Defence Forces (Amendment) Bill, 2015 as submitted by the Cabinet Secretary for Defence, in August 2015. Upon its review, the thematic area established that though the majority of the Bill was compliant to the letter and spirit of the Constitution, there were some clauses that were inconsistent with the Constitution. CIC met with the Cabinet Secretary for Defence, Ambassador Raychelle Omamo and with representatives of the Kenya Defence Forces, to discuss the clauses that needed to be amended in order to ensure that the Bill was consistent with the letter and spirit of the Constitution. The meeting took place on the 20th of August, where CIC submitted its advisory on the areas that needed to be amended.

### **(n) The Occupational Therapists (Training, Registration and Licensing) Bill, 2015**

During the quarter under review, the Commission received the Occupational Therapists (Training, Registration and Licensing) Bill, 2015 making provisions for the training, registration and licensing of occupational therapists, regulate their practice, provide for the establishment, powers and functions of the Occupational Therapy Council of Kenya.

The Commission reviewed the Bill and recommended that the National Government is responsible for setting standards and that a body regulating occupational therapists is in existence and that the Bill needs to strengthen the existing body and not create a new body.

### **(o) The Clinical Officers (Training, Registration and Licensing) Bill, 2015**

During the quarter under review, the Commission received the Clinical Officers (Training, Registration and Licensing) Bill, 2015 making provision for the training, registration and licensing of clinical officers, regulating their practice and providing for the establishment, powers and functions of the Clinical Officers Council of Kenya.

The Commission reviewed the Bill and advised that the National Government is responsible for setting standards and that a body regulating Clinical Officers is in existence and that the Bill needs to strengthen the existing body and not create a new body.

### **(p) The Pwani National Referral Hospital Bill, 2015**

During the quarter under review, the Commission received the Pwani National Referral Bill proposed by Hon. Sharriff Nasir. This Bill seeks to convert the Coast General Hospital to a National referral hospital.

The Commission reviewed the same and advised that the Bill was unconstitutional for the reason that the Coast General Hospital is a county facility and conversation of it to a National referral ought to be through an agreement as stipulated by Article 187 of the Constitution and not through an Act of parliament among other reasons.

### **(q) The Law Of Succession (Amendment) Bill, 2015**

During the quarter under review, the Commission received the Law of Succession (Amendment) Bill, 2015 seeking to amend the Law of Succession Act. The commission is still reviewing the Bill as it received the Judiciary working committee comments recently.

**(r) The Election Laws (Amendment) Bill, 2015**

During the quarter under review, the Commission received the Election Laws (Amendment) Bill, 2015, a Bill seeking to amend various laws relating to elections to give effect to Article 81(b) of the Constitution.

The Commission advised that the Bill be revised to align it with the provisions of the Constitution and review the language to make it gender neutral in line with the language of the Constitution. The Commission further suggested the inclusion of all interest groups mentioned in Article 100 of the Constitution on the provisions proposing actions for the promotion of gender equity and inclusion, and the extension of the requirements on political parties to the nomination of candidates to the position of governors.

**(s) The Constitution Of Kenya (Amendment) Bill, 2015**

During the quarter under review, the Commission received the Constitution of Kenya (Amendment) Bill, 2015 seeking to amend the provisions of Article 81 of the Constitution by making the not more than two-thirds of the members of elective public bodies be of the same gender, progressively.

The commission reviewed the Bill and found no issue of constitutional concern.

**(t) The Two Thirds Gender Principle Bill, 2015**

During the quarter under review, the commission received the Two Thirds Gender Principle Bill, which was aimed at amending various laws to give effect to Article 100 of the Constitution to promote the representation in parliament of women, youth, persons with disabilities, ethnic minorities and marginalized communities in elective and appointive positions.

The Commission reviewed the same and found no issue of constitutional concern.

**(u) The Nyeri Health County Act**

During the quarter under review, the Commission received the Nyeri Health County Bill, 2015. The Bill sought to provide for the implementation of section 2 of Part 2 of the Fourth Schedule to the Constitution on county health.

The Commission reviewed the same and before the commission shared its comments with Nyeri County, the Bill was enacted. Despite the enactment, the Commission sent its comments highlighting some sections of the Act that were unconstitutional and advised the County not to operationalise the unconstitutional sections. The Commission further advised the County that the unconstitutional clauses ought to be amended after six months of the enactment of the Act.

## **2.3 Review and Development of Regulations and Administrative Procedures**

During the reporting period, the Commission received and reviewed a number of regulations from various institutions to operationalize the provisions of various Acts of Parliament. These are summarised in this section.

### **(a) Taskforce on the Review of legal, policy and institutional framework for fighting corruption in Kenya**

The attorney general appointed a Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya, vide Gazette Notice No. 2118 of 30th March, 2015 (published in The Kenya Gazette (Special Issue) of 31st March, 2015. CIC was part of the taskforce which was required to examine the legal, policy and institutional framework for fighting corruption with a view to recommending appropriate interventions for enhancing the fight against corruption in the country.

The taskforce reviewed the existing legislation, policies and administrative procedures and made recommendations on the framework that should be put in place. It is expected that in the next quarter, the report of the taskforce will be forwarded to the President.

### **(b) The Restructuring of Provincial Administration**

The Commission is currently reviewing the draft report on the restructuring of provincial administration, as submitted by the Ministry of Interior and Coordination of National Government.

Section 17 of the Sixth Schedule to the Constitution stipulates that the National Government shall restructure the provincial administration to accord with and respect the system of devolved government established under this Constitution within 5 years. This report therefore takes stock of the restructuring activities undertaken by the Ministry since the promulgation of the constitution on 27th August 2010.

In order to effectively review the report and in line with the Constitutional principles of public participation, the Commission invited relevant stakeholders to participate in a forum that was held on the 22nd of September. In addition to the above, the Commission, through an advertisement placed in two newspapers of National Circulation, invited members of the public to submit their views on the report to the Commission.

The Commission is currently collating all comments and shall hold a roundtable meeting on the report with the Ministry of Interior and Coordination of National Government and other relevant stakeholders, in October.

### **(c) Review of the Health as a devolved function guidebook**

During the quarter under review, the Commission partnered with the Council of Governors in coming up with a guidebook on implementing health as a devolved function. The Commission in partnership with Council of Governors organized two stakeholders meeting with county executives, chief officers of health for the 47 counties and other health stakeholders to review the health as a devolved function guidebook. The meetings were successful as the guidebook was reviewed chapter by chapter and new contents added.

### **(d) Sharing and validation of County data reports on Integrating the Rights Based Approach to health for Bungoma, Nyeri and Kitui Counties**

During the quarter under review, the Commission met with the National oversight committee on the pilot project of modeling the integration of the constitutional values and principles in health service delivery in Bungoma, Nyeri and Kitui Counties. The Commission presented the research findings for their inputs and comments before presenting to the three counties.

The Commission further visited Bungoma, Nyeri and Kitui counties and presented the data collected together with the findings on integrating the right based approach in the delivery of health services and validated the data collected.

### **(e) Publication on Public Participation**

The hallmark of the Constitution of Kenya is the commitment to promote a society where citizens are active players in the affairs of their Country. The Constitution recognizes public participation in Article 10, as a national value and principle of governance and further mandates parliament in Article 118, to facilitate public participation in the legislative and other business of parliament. It is with this in mind that the thematic area came up with a Public Participation Guidebook.

The Commission finalised on the Public Participation booklet, engaged a designer and printer with a view of having the booklet edited, designed and printed.

### **(f) Publication on Affirmative Action manual**

The preamble to the Constitution recognizes that all Kenyans need and desire a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. Accordingly, the Constitution of Kenya 2010 commits to nurturing and protecting the well-being of the individual, the family, communities, the nation as well as the environment. It respects the diversity of the country's populace and holds all people as equal amongst each other and accountable for their own actions.

In this regard, the Constitution guarantees each individual certain rights for example, the Constitution explicitly guarantees rights to women and persons with disabilities including the requirement that affirmative action programmes be implemented to enhance their inclusion and participation in the legislative process. This prompted the Commission to come up with the Affirmative Action Manual intended for use by trainers training beneficiaries of the affirmative action principle within the County Assembly.

The Commission finalised on the Affirmative Action Manual, engaged a designer and printer with a view of having the manual edited, designed and printed. A soft copy of the booklet has been submitted to the designer and printer and editing is underway.

## PART THREE

# 3. IMPLEMENTATION OF THE SYSTEM OF DEVOLVED GOVERNMENT

Section 15(2) (d) of Sixth Schedule to the Constitution mandates the Commission to monitor the implementation of the system of devolved government. Thus in this section, the Commission reports the progress and challenges in the implementation of the system of devolved government.

### 3.1 Consultation with the County Governments

During the same period under review, the Commission was contacted by various counties to give advisories on quite a number of disputes revolving around the budget process at the county level. The most notable was the dispute in Bomet County that arose with relation to the county budget process pitting the executive against the assembly to the extent that the dispute culminated in the production of two different County Appropriation Bills. Based on the request of Bomet County in light of this dispute, CIC did give its advisory that spelt out the parameters of the law and how the dispute stood with respect to the law.

### 3.2 Second Assessment of Implementation of Transferred Functions.

CIC undertook the second assessment of implementation of transferred functions by county governments. The second assessment took place between June to August, 2015 and covered all forty-seven (47) counties. The assessment was one of the ways through which CIC could discharge its mandate under Section 15 of the Constitution. The assessment also enable CIC to determine how county governing were performing their functions. In addition to interviews with county officials and staff, CIC teams also interviewed members of public to assess their perception of service delivery by county governments.

The activities involved in making the assessment a success were, visits to county government offices and collecting data using data collection methods such as questionnaires, interviews, FGDs among others. The main respondents were the County Secretaries, CEC Members, County Assembly clerks, County Assembly speakers, secretaries to County Public Service Board, County executive members of various county governments and members of the public. The method was meant to encompass and represent members of a given county, make it unbiased and as factual as possible.

After the assessment the findings were analyzed and consolidated into a report of the second assessment. The findings portrayed significant progress in the implementation of the transferred functions as compared to how they had performed in the first assessment.

The objectives of the assessment were to assess the effectiveness of the system of devolved government during the second year of implementation; identify achievements, challenges and lessons learnt and make recommendations to address the challenges. Summaries of the findings of the assessment are summarized below.

## Functional Analysis, Transfer and Implementation Effectiveness

### Agriculture function

Findings show all counties are implementing agriculture functions transferred. They have developed frameworks and structures for delivery of agricultural services down to the ward levels. Among the achievements reported were increased food production and access of extension services by farmers. The major challenges reported included resistance to change and lack of motivation lack of operational machineries and vehicles and poor infrastructure.

### Health Services

Health function is fully devolved and counties are implementing all the components of health services. Some counties have developed legislation while others have adopted national laws. Some of the notable achievements include increased number of health facilities plus mobile health clinics across counties, improved access to health care services through procurement of machines and equipment for hospitals, improved access to emergency medical services, improved quality of antennal care and skilled delivery services, scaled up implementation of community health strategy and improved staffing. Several challenges were however reported including; undefined functions, challenges in employment of health personnel, frequent industrial actions, management of level five hospitals and delays in procurement of health commodities.

### Cultural Activities, Public Entertainment and Public Amenities

Most counties interviewed reported that they were not implementing the betting control and licensing components because it has not been fully unbundled. The counties also claimed that they couldn't implement betting control and licensing because the licensing laws are under the jurisdiction of the national government.

### County transport function

Most counties have recorded increased roads networks. Counties have procured various equipment such as graders, backhoe loaders, rollers, wheel loaders, etc., to facilitate construction of roads. The main challenge noted was the disharmony between the County Government, KENHA, KURA and KERRA with most counties visited contesting the section of Gazette Notice No. 116 of 2013 that retained these institutions at the National Government. Further, it was said that the collaboration between these agencies and County Transport departments was weak, leading to duplication of roles and wastage of resources.

### Trade Development and Regulation function

Most counties have developed policies, legislation and regulations to facilitate full implementation of this function although some counties are using national laws as they work on their county specific legislations. Counties have established financial products to help small traders, revived cooperative movements and built modern market shades (kiosks). Challenges under this function were common challenges but mostly internal (in counties) such as funding challenges and staff demoralization. On cooperative movement, counties seem to suggest that a common Act should guide the movement since it has common characteristics in the country.

### Control of Air Pollution, Noise Pollution, Other Public Nuisances and Outdoor Advertising

This function is fully devolved. The results reported by counties include reduction regulation of noise by issuance of noise pollution and excessive vibration permits. Some of the challenges

include lack of awareness on dangers associated with pollution among the public, corrupt and political interference; inadequate treatment plants for water waste water, lack of proper disposal sites, and inadequate central sewerage facilities.

### County Planning and Development

Counties said that the Gazette Notice No. 116 of 2013 does not adequately define the function. Does it include physical planning and economic planning? Currently, some counties are not handling gas, energy and boundary surveying components. The counties have also set up county planning units as sections under CEC Finance. Some results reported were reduced land disputes, economic empowerment through land development, land security through provision of title deeds, enforcement of building standards, and youth empowerment among other. Most of the challenges reported under this function relate to physical planning components

### Pre-primary education, home craft centres and childcare facilities

Counties are implementing all the components of this function except the home craft centre. They have developed various policies, laws and other structures in education sector. This function was found to be one of the most successful in most counties. Education funds have been established and scholarships given to deserving students. Citizens have benefited in terms of reduced burden of education fees. The major challenge cited by most counties was the pending court case filed by KNUT and TSC on recruitment of ECD teachers.

### Specific National Government Policies on Natural Resources and Environmental Conservation

Among the achievements reported include reclamation of degraded areas, tree planting and afforestation, relocation of dumpsites to suitable locations and garbage collection, construction of sewerage treatment systems, among others. The major challenge was the delay by Kenya Forest Services and Kenya Wildlife Services to devolve, which seemed to be under the control of the national government.

### County Public Works and Services

Counties are developing frameworks but currently are using national government laws and by-laws. Counties reported having registered various achievements, which include; storm water drains and sewerage plants rehabilitation, designed various irrigation projects, water pans (for runoff water harvesting), boreholes, purchased water well drilling rigs, piped water as well as water kiosks among other. The communities reported to have benefitted greatly in terms of improvement in water and food sufficiency, sanitation and general cleanliness especially in towns including unclogging of storm water drainage. Major challenges that were reported in this function were basically on staffing and technical skills especially engineering and water systems designers.

### Firefighting services and disaster management

Some counties reported to be in the process of coming up with Bills on fire services and disaster management. Among the challenges in this function were lack of proper firefighting equipment, inadequate skilled staff, and lack of negative attitude/perception of the community towards the fire fighters, and lack of a direct and toll free emergency lines.

### Control of Drugs and Pornography

In some counties, it is not being fully implemented especially the pornography component. Some counties have had major joint campaigns on drugs with NACADA. Others have established IC platforms to share information on drugs and pornography. Some are collaborating with an

using NEMA and NACADA regulations to deal with drug menace. The major challenges include lack of awareness on the hazards posed by drug and pornography and weak enforcement of the law since the enforcers usually collude with culprits to defeat the course of the law.

### **Inventory of Government Assets and Liabilities**

Although there has been delayed completion of the exercise, county governments through Joint Inventory Committees have made considerable progress towards finalizing the audit of assets and liabilities. In cases where counties have prepared two set of inventories.

### **Legal, Policy And Institutional Frameworks**

The assessment revealed that most of the policies developed by counties are still under development, some passed over to county assembly for approval. Similarly, there are many Bills being developed. It was largely reported that the laws developed have been effective in facilitating service delivery in their counties, although some counties reported that they were facing administrative challenges such as slow pace of development of the legislation, with majority citing lack of adequate technical personnel, limited time for policy development, financial constraints, and delays in gazettment of legislation by government press and political interference in the prioritization of county government activities.

### **Human Capacity Deployment and Development**

All counties have established functional County Public Services Boards. Major achievements established of offices, recruitment of staff, and development of the code of conduct and relevant manuals and policies for promotion, disciplinary procedure, and human resource management.

Most counties said they had undertaken a capacity needs assessment either themselves or by the Transition Authority. Others indicated that the assessment was done by virtue of their participation in the Capacity Assessment and Rationalization of the Public Service (CARPS) Programme by the Ministry of Devolution and Planning.

### **County Planning**

Development of county plans as required in the County Government Act, 2012 varied significantly across the counties. Most were showed a great advancement in the finalization and approval of County Development Plans, TIPs and CIDPs as compared to the first assessment. Other plans such as County Sectorial Plans, County Spatial Plans, Cities and Urban Areas Plan are either not started or in early stages. Challenges reported in the implementation of these plans included; plans were very ambitious and therefore difficult to implement, inadequate funds, irregular flow and delay in disbursement of funds from the national treasury, poor costing of functions in the counties, political interference, etc.

### **Financial Systems and Structures**

All the counties have installed the IFMIS but few had decentralized IFMIS to the sub-county level. Benefits reported from decentralized financial management systems include prompt payment for goods and services procured by the county government, enhanced accountability and efficiency in service delivery and easier decision making processes. Revenue collection was done at the sub-county level and facilitation of the decentralized units was in terms of floats and vouchers, which are then posted in the IFMIS at the County level.

### **Intergovernmental Relations**

Generally collaboration between the national and county governments has gradually improved with counties reporting that there has been increase in consultation and reduction of conflicts.

Counties have established County Intergovernmental Forums and County Policing Authorities to facilitate the collaboration. The Intergovernmental Budget and Economic Council meetings were well attended by the County Executive Committee members responsible for finance. The Intergovernmental disputes vary across counties, including boundary disputes, resources located at the boundaries, asset sharing, posting staff to counties and withholding of funds by the national government, etc. Potential areas of dispute majorly relate to access and use of resources, boundary disputes and sharing of revenue and resources along county border markets.

### **Establishment of Decentralized Units**

Most counties have decentralized services to sub-counties. Some have established ward offices and hired ward administrators and only a few had established villages. Most counties are putting in place infrastructure, structures and systems at the sub-county and ward levels. The major challenges indicated are inadequate infrastructure and structures, inadequate funding, inadequate capacity of staff and conflicts between national government administrators and county administrators at sub-county, ward and village levels.

### **Establishment of Cities, Towns and Municipalities**

Most of the counties have not carried out the classifications citing lack of clarity in the Urban Areas and Cities Act, 2011.

### **Civic Education, Citizen Service Centres and Public Participation,**

Most counties have not yet established civic education units as required in the law. There are structured frameworks for systematic civic education in the counties. It was also found that most counties have not established citizen service centres and in most cases, those that said they have; they were in the form of customer care desks, units in the communication offices, etc. Huduma centres by the national government are used in counties where they have been established. Public participation appears to be gaining momentum, but again mainly used in planning and budgeting.

### **County Assemblies – Oversight, Representation and Legislative Roles**

Counties have put up the necessary measures, structures and activities in order to execute their mandate. Departmental and sectoral committees have been established and MCAs trained and sensitized to undertake their roles. To ensure effectiveness in their representation roles, MCAs have set up ward offices to receive views from the public.

Notwithstanding, the strides made by county governments, county governments reported a number of challenges affecting the discharge of their mandates. Some of the challenges identified include, inadequate skilled technical personnel coupled with a bloated workforce and disparities in remuneration strained inter-governmental relations, transferred and seconded officers who did not have appropriate skills, inadequate financial resources, inappropriate policy frameworks and failure to disburse the equalization fund for the marginalised counties.

The report of the second assessment was launched on 27th August 2015 in Kisii County. Thereafter copies of the report were forwarded to county assemblies, county executives, the national executive and legislature.

### **3.3 Preparation for the Establishment of an Institute for Constitutionalism and Governance**

Following a resolution of the CIC workshop on deepening constitutionalism at which it was proposed that an institute on constitutionalism would be established to be hosted by Maseno University, CIC attended a meeting of the technical team established to oversee the establishment of the institute.

The meeting, held at Maseno University considered the modalities for establishment of the institute and agreed that Maseno University should expedite the paper work and other processes required to establish the institute as a means of ensuring that the academia sustained discourse on constitution implementation and devolved governance.

### **3.4 Meeting with the Transition Authority**

On 28TH September, 2015 CIC had a meeting with Transition Authority. The objective of the meeting was to ensure that as the term of CIC comes to an end, the CIC end of term report would have input from all the key actors in the implementation of the constitution. The Transition Authority gave a detailed account of activities it had undertaken and challenges experienced in the course of discharging its mandate. TA undertook to forward a comprehensive report on the discharge of its mandate to CIC.

### **3.5 Meeting with Intergovernmental Relations Technical Committee**

On 30th September 2015, a team from the Intergovernmental Relations Technical Committee paid a courtesy call to CIC. The meeting discussed a number of issues including the mandate of CIC and how it had discharged its functions. One of the issues that emerged during the meeting was that the provisions establishing the IGRTC in the Intergovernmental Relations Act did not give the Committee the requisite power and authority to effectively discharge its mandate.

## PART FOUR

# 4. PROMOTING CONSTITUTIONALISM AND PROTECTING SOVEREIGNTY OF THE PEOPLE

Constitutionalism requires that the Constitution of Kenya, which was legitimately promulgated, be respected at will by the very people who voted for it. Article 249 of the Constitution obligates CIC (and other Constitutional Commissions and Independent Offices) to observe objects of:

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

This section presents a summary of public advisories, media statements, stakeholder engagements and litigation undertaken by the Commission or jointly with other institutions during the reporting period.

### 4.1 Stakeholder engagements

#### 4.1.1 Working with the Registrar of Political Parties

On 21st August 2015, the Registrar of Political Parties convened a meeting to develop a work-plan for the development and review of proposed amendments to the Political Parties Act, 2011. The meeting brought together the following implementation partners: The office of the Registrar of Political Parties, the office of the Attorney General, Commission for the Implementation of the Constitution and the Electoral Institute for Sustainable Democracy (EISA). The RPP informed the meeting that a number of amendments had been proposed to the Act by various institutions and MPs. It was therefore agreed that it would be more efficient to comprehensively review the Act and consolidate all proposed amendments, as opposed to the piece-meal approach that had been taking place so far. The meeting therefore agreed on the approach and timelines for the review of the Political Parties Act, 2011.

#### 4.1.2 Status of Implementation Reports

Pursuant to its Constitutional mandate to monitor the implementation of the Constitution, the thematic area wrote to relevant institutions mandated under Chapters 9 and 14 of the Constitution, to submit reports detailing the status of implementation of the Constitution in their relevant institutions. The reports were required to highlight the successes and challenges faced by the institutions in implementing their mandates under the Constitution. Several institutions have submitted reports that are currently under review. They include:

- a.) the National Police Service;
- b.) the National Police Service Commission;
- c.) the Directorate of Criminal Investigations; and
- d.) the Power of Mercy Committee.

Upon completion of review of the documents, the thematic area shall convene meetings with the relevant institutions in order to discuss ways in ensuring the effective implementation of the Constitution.

### 4.1.3 Intergovernmental Budget and Economic Council (IBEC) meetings

Section 187 of the Public Finance and Management (PFM) Act, 2012 establishes the Intergovernmental Budget and Economic (IBEC) to provide a forum for consultation and cooperation between the national and county governments on budget and economic issues.

The Commission was involved in quite a number of Intergovernmental Budget and Economic Council (IBEC) meetings. Beyond discussions on the financing of the devolved system of governments, these meetings equally brought out various aspects of the PFM Law and Regulations, which ought to be reviewed for better implementation of the principles of public finance as enumerated under the Constitution (enumerate some of the aspects identified-Victor).

## 4.2 Litigations

During the reporting period, the Commission was involved in the following court cases of interest to the public:

- 1) **High Court Petition No 403 of 2015:** CIC vs. The Speaker of the National Assembly, filed on the 23rd of September, 2015. The Commission is requesting the court to declare the provision of the National Assembly standing orders Order No. 66 is void to the extent that it is inconsistent with the right to a fair trial enshrined in Article 50 (1) as read with Article 25 of the Constitution.

The matter is yet to be concluded.

- 2) **High Court Petition No 182 of 2015:** Centre for Rights Education and Awareness vs The Attorney General & CIC. The Petitioner alleges that the Respondents have failed, refused and or neglected to prepare the relevant Bill(s) for tabling before Parliament for purposes of implementation of Articles 27(8) and 81 (b) as read with Article 100 of the CoK, 2010

The Respondents have violated their obligation under Article 261 (4) and gone against the Supreme Court Advisory Opinion Reference No 2 of 2012 (to enact legislation to meet the constitutional principle in the above mentioned Articles by 27th August, 2015)

Judgment was delivered on 26th June, 2015 directing the Respondents to within forty (40) days prepare the relevant bills for tabling in Parliament for purposes of implementing the above mentioned clauses.

- 3) **High Court Petition No 381 of 2014:** The Council of County Governors vs. The Senate, The National Assembly, CIC and Others. The Petitioner sought a declaration that the provisions of Section 91 (A) of the County Government (Amendment) Act, 2014 that established County Development Boards which would be constituted in the manner stated in the said Act and undertake functions outlined in Section 91A (2) of the Act were unconstitutional for violating Articles 6(2); 95, 96, 174(1), 175, 179(1), 179(4), 183(1), 185(3) and 189(1) of the Constitution. The basis of the challenge is that through the County Development Boards, Senators and members of the National and County Assemblies would be undertaking executive functions at the County level.

Judgment was delivered on 10th July 2015 declaring The County Government (Amendment) Act, 2014 unconstitutional, null and void.

### **4.3 Public Advisories (Bevin to provide)**

#### **ANALYSIS OF REPORTS FROM MINISTRIES, DEPARTMENTS AND STATE AGENCIES ON THE IMPLEMENTATION OF THE CONSTITUTION**

The Commission developed a reporting framework for submission of quarterly reports by all state organs. Though irregular, government institutions submitted quarterly reports on the status of implementation of the Constitution. During the period of July to September 2015, the Commission received progress report from the Insurance Regulatory Authority. The report analyses progress made in; familiarization with the Constitution, integration of the constitution implementation into the performance contract, comprehensive audit of government policies, legislation and guidelines, domestication of international instruments as well as development and implementation of change management strategy.

#### **ACTIVITIES FOR THE NEXT QUARTER**

1. Preparation of CIC exit report
2. Convene a meeting with the council of governors to discuss assessment report.
3. Convene a meeting with the county assembly speakers and clerks to discuss assessment report.
4. County visits to discuss the assessment report with technical officers in county governments.
5. Review and analyse TA monthly and quarterly reports.
6. Finalization of the health booklet to guide implementers in the health sector
7. Launch of the Public Participation Publication Guidebook
8. Launch of the Affirmative Action Manual
9. Launch of the pilot project reports on integration of right based approach in service delivery in Nyeri, Bungoma and Kitui Counties:

## PART FIVE

# 5. CHALLENGES AND RECOMMENDATIONS

This part represents a summary of the challenges and impediments to the implementation of the constitution and also proposes recommendations.

- (i) **Tendency to re-centralize the powers of key organs to the presidency.** Example; The Police Service Act has already been amended and the powers to hire the Inspector General given back to the presidency.

**Recommendation:** there is need to stick to the constitutional provision of independence of institutions

- (ii) **Conflicting mandates:** The turf wars between the National Land Commission and the ministry of lands has also loudly demonstrated the challenges of the implementing process. Whereas the powers of the two institutions are well cut out in the letter of the law, the two institutions have failed to work together, oftentimes working at cross purposes.

- (iii) **Supremacy wars:** The war between the senators and members of the national assembly, senators and governors and governors and Members of County Assembly are the greater symptoms that confront the implementing process.

- (iv) **Separation of executive and legislative powers:** Bills that claw back on the constitution are tabled in Parliament e.g. the County Governments (Amendment) (No.2) Bill published on August 16, 2013 proposing to amend the County Governments Act, 2012, by inserting a new section to provide for the establishment of County Development Boards, comprising all elected persons and leaders in each county to approve development plans before implementation by the county executive.

# ANNEXES

## Annex 1: The Fifth Schedule Legislation Development Status

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Chapter Two: The Republic				
Legislation in respect of culture (Article 11 (3))	Five years	Culture		Reviewed by CIC
Chapter Three: Citizenship				
Legislation on citizenship (Article 18)	One year	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
Chapter Four: The Bill of Rights				
Freedom of the media (Article 34)	Three years	Ministry of Information Communication and Technology	The Media Council Act, 2013	Enacted in December 2013
Family (Article 45)	Five years	Attorney General (Justice)	Marriage Act 2014	Enacted in May 2014
	Five years	Attorney General (Justice)	Matrimonial Property Act, 2013	Enacted in December 2013
	Five years	Attorney General (Justice)	Protection Against Domestic Violence Bill, 2013	In Parliament (National Assembly) awaiting second reading
Consumer protection (Article 46)	Four years	Private member's Bill	Consumer Protection Act, 2012 (Article 46)	Enacted but requires review to comprehensively give effect to Article 46
Fair administrative action (Article 47)	Four years	Ministry of Interior and 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.

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Fair hearing (Article 50)	Four years	Ministry of Interior and 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.
Rights of persons detained, 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.
Kenya National Human Rights and Equality Commission (Article 59)	One year	Attorney General (Justice)	Kenya National Commission on Human Rights Act, 2011	Enacted in August 2011
	One year	Attorney General (Justice)	The National Gender and Equality Commission Act, 2011	Enacted in August 2011
	One year	Attorney General (Justice)	The Commission on Administrative Justice Act, 2011	Enacted in August 2011
<b>Chapter Five: Land and Environment</b>				
Community land (Article 63)	Five years	Land, Housing & Urban Development	The Community Land Bill, 2013	Under review by CIC
Regulation of land use and property (Article 66)	Five years	Land, Housing & Urban Development		
	Eighteen months	Land, Housing & Urban Development	The National Land Commission Act, 2012 (Article 67)	Enacted April 2012

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Legislation on land (Article 68)	18 months	Land, Housing & Urban Development	The Land Registration Act, 2012 (Article 68)	Enacted April 2012
	18 months	Land, Housing & Urban Development	The Land Act, 2012 (Article 68)	Enacted April 2012
Agreements relating to natural resources (Article 71)	Five years	Environment, Water & Natural Resources		Not yet developed
	Five years	Mining	Mining Bill, 2014 (Art. 60, 62(1)(f), 66(2), 69 & 71)	Awaiting debate and passage by Parliament (National Assembly).
Legislation regarding environment (Article 72)	Four years	Environment, Water & Natural Resources	Environment Management and Coordination (Amendment) Bill 2014	Reviewed and submitted recommendations to the Attorney General for final drafting.
<b>Chapter Six: Leadership and Integrity</b>				
Ethics and anticorruption commission (Article 79)	One year	Attorney General (Justice)	The Ethics and Anti-Corruption Commission Act, 2011 (Article 79)	Enacted in August 2011
Legislation on leadership (Article 80)	Two years	Attorney General (Justice)	The Leadership and Integrity Act, 2012 (Article 80)	Enacted in August 2012
<b>Chapter Seven: Representation of the People</b>				
Legislation on elections (Article 82)	One year	IEBC	The Elections Act, 2011	Enacted in August 2011
Electoral disputes (Article 87)	One year	IEBC	The Elections Act, 2011	Enacted in August 2011
Independent Electoral and Boundaries Commission (Article 88)	One year	AG (Justice)	The Independent Electoral and Boundaries Commission Act, 2011	Enacted in July 2011
Legislation on political parties (Article 92)	One year	Registrar of Political Parties	The Political Parties Act, 2011	Enacted in August 2011
<b>Chapter Eight: Legislature</b>				

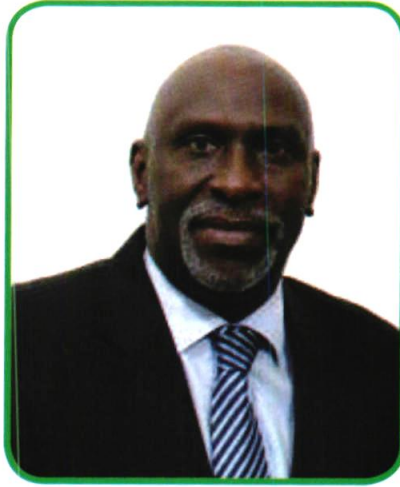
Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Public participation and county assembly powers, privileges and immunities (Article 196)	Three years	Parliament	County Government Act, 2012  (Article 196)	Enacted in July 2012.  A policy on Public Participation under development by Department of Justice in AG.  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. 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.
County assembly gender balance and diversity (Article 197)	Three years	IEBC	County Government Act, 2012  (Article 197)	Enacted in July, 2012
Chapter eleven (Article 200 and Sixth Schedule, section 15)	18 months	Devolution	The Transition to Devolved Government Act, 2012	Enacted in February, 2012
	18 months	Devolution	The Intergovernmental Relations Act, 2012	Enacted in February, 2012
	18 months	Devolution	The County Government Act, 2012	Enacted in June, 2012
Chapter Twelve: Public Finance				

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Revenue Funds for county governments (Article 207)	18 months	The National Treasury		Provided for in the Public Finance Management (PFM) Act, 2012
Contingencies Fund (Article 208)	One year	The National Treasury		Provided for in the PFM Act, 2012
Loan guarantees by national government (Article 213)	One year	The National Treasury		Provided for in the PFM Act, 2012
Establishment of the Commission on Revenue Allocation	One years	The National Treasury	The Commission on Revenue Allocation Act, 2011 (Article 215)	Enacted in August 2011
Financial control (Article 225)	Two years	The National Treasury	The Public Finance Management Act, 2012	Enacted July 2012
Accounts and audit of public entities (Article 226)	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.
Procurement of public goods and services (Article 227)	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.
Establishment of the Salaries and Remuneration Commission (Article 230)	One year	The National Treasury	The Salaries and Remuneration Commission Act, 2011	Enacted in August 2011
Chapter Thirteen: Public Service				

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Promotion of representation of marginalised groups (Article 100)	Five years	Devolution		To be developed
Vacation of office of member of Parliament (Article 103)	One year	IEBC	The Elections Act, 2011	Enacted in August 2011
Right of recall (Article 104)	Two years	IEBC	The Elections Act, 2011	Enacted in August 2011
Determination of questions of membership of Parliament (Article Specification 105)	Two years	IEBC	The Elections Act, 2011	Enacted in August 2011
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>				
Power of mercy (Article 133)	One year	Interior & coordination	The Power of Mercy Act, 2011	Enacted in August 2011
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
<b>Chapter Ten: Judiciary</b>				
System of courts (Article 162)	One year	Judiciary	The Industrial Court Act, 2011	Enacted in August 2011
	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
Removal from office (Article 168) (of Judges)	One year	Judiciary		
Judiciary Fund (Article 173)	Two years	Judiciary		Provided for in the Judicial Service Act, 2011

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Vetting of judges and magistrates (Sixth schedule, Section 23)	One year	Judiciary	The Vetting of Judges and Magistrate Act, 2011	Enacted in August 2011
	One year	Judiciary	The Judicial Service Act, 2011	Enacted in August 2011
Chapter Eleven—Devolved Government				
Speaker of a county assembly (Article 178)	One year	Devolution & Planning	County Government Act, 2012	Enacted in July 2012
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
	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
Removal of a county governor (Article 181)	18 months	Devolution & Planning	County Government Act, 2012	Enacted in July 2012
	18 months	Devolution & Planning	County Government Act, 2012 (Article 194)	Enacted in July 2012
	18 months	Devolution & Planning	Leadership and Integrity Act, 2012 (Article 194)	Enacted in August 2012
Vacation of office of member of county assembly (Article 194)	18 months	Devolution & Planning	Elections Act, 2011 (Article 194)	Enacted in August 2011
	18 months	Devolution & Planning		Enacted in August 2011

## Annex 3 : Members of the Commission



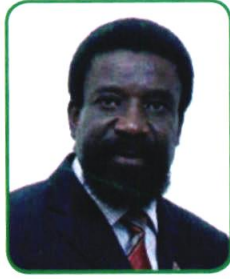
**Mr. Charles Nyachae**  
**Chairperson of the Commission**



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



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



**Prof. Peter Wanyande**

Convener of the Devolved Government Thematic Team.

Coordinates the implementation of Chapter 11 of the Constitution and Section 15(2)(d) of the Sixth Schedule to the Constitution, which deals with devolved governments



**Mr. Kamotho Waiganjo**

Convener of the Public Finance Thematic Team.

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 Team.

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 Team.

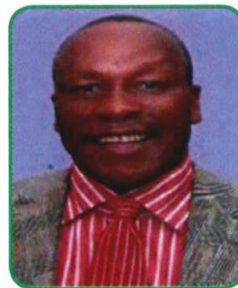
Coordinates the implementation of Chapter 5 of the Constitution on land and environment



**Dr. Florence Omosa**

Convener of the Representation of the People & the Legislature Team.

Coordinates the implementation of Chapters 7 and 8 of the Constitution on representation of the people and the legislature respectively.



**Mr. Philemon Mwasaka, EBS, SS**

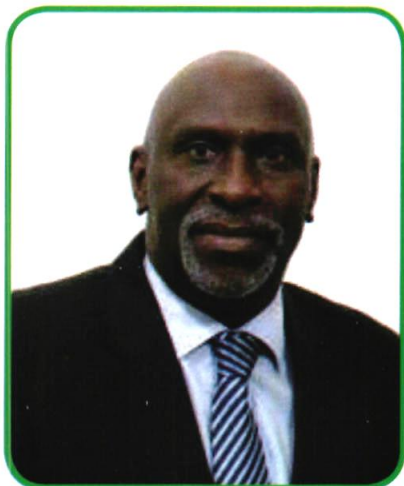
Convener of the Representation of the People & the Legislature Team.

Coordinates the implementation of Chapter 6 on leadership and integrity and Chapter 13 of the Constitution on public service

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Values and principles of public service (Article 232)	Four years	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.
		Public Service Commission	The Public Service Commission Act, 2012	Enacted August 2012
Establishment of the Teachers Service Commission (Article 237)		Teachers Service Commission	The Teachers Service Commission Act, 2012	Enacted in August 2012
<b>Chapter Fourteen: National Security</b>				
National security organs (Article 239)	Two years	National Intelligence Service	National Intelligence Service Act, 2012 (Article 239/242)	Enacted in August 2012
	Two years	Interior & National coordination	National Security Council Act, 2012 (Article 239)	Enacted in August, 2012
	Two years	Kenya Defence Forces	Kenya Defence Forces Act, 2012 (Article 232, 239 / 241)	Enacted in August 2012
Command of the National Police Service (Article 245)	Two years	Interior & National coordination	National Police Service Act, 2011 (Article 245)	Enacted in August 2011
	Two years	Interior & National coordination	Independent Police Oversight Authority Act, 2011	Enacted in November 2011
General: Any other legislation required by the Constitution				

Chapter and Articles	Constitution Timeline	Responsible Ministry/ Department	Title of Legislation Developed	Status of the Legislation
Other Legislation	Five years	Ministry of Foreign Affairs & International Trade	Treaty Making and Ratification Act, 2012 (Article 2 (6))	Enacted in Dec 2012
	Five years	Ministry Labour & Social Security	The Social Assistance Act, 2013 (Art. 43 (1)(e))	Enacted in January 2013
	Five years	Ministry of Education	Basic Education Act, 2013 (Art. 53)	Enacted in January 2013
		Ministry of Internal Sec	National Government Coordination Act, 2013 (Art. 131 (1) & 132 (3)(b))	Enacted in January 2013
		Attorney General	The Independent Offices (Appointment) Act, 2011 (Article 156 & 24 8)	Enacted in August 2011
		The National Treasury	The County Governments Public Finance Management Transition Act, 2013 (Sect. 15 of sixth schedule)	Enacted in January, 2013

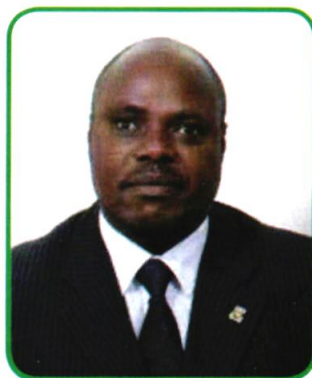
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**Mr. Charles Nyachae**  
**Chairperson of the Commission**



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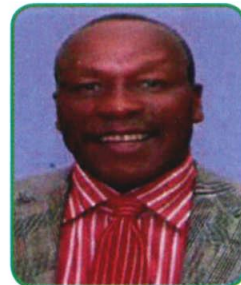
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Convener of the Representation of the People & the Legislature Team.

Coordinates the implementation of Chapter 6 on leadership and integrity and Chapter 13 of the Constitution on public service

# Annex 6: Senior Management Team



Joseph N. Kosure  
Secretary/CEO



Esther D. Kodhek  
Director of Programmes



Rose M. Macharia  
Director of Management Services



Mugita Gesongo  
Head of Monitoring and Evaluation



Margaret Akutekha  
Head, Internal Audit



Fredrick O. Oromo  
Head of Supply Chain Management



Howard Olume  
Head of Human Resource



Bevin A. Bhoke  
Head of Communications



James Oundo  
Head of Finance



Christine Ojode  
Head of Accounts



**Elizabeth K. Obiero**  
Principal Programmes Officer,  
Organizational Development &  
Institutional Strengthening



**James O. Wagala**  
Principal Programmes Officer,  
Organizational Development &  
Institutional Strengthening



**Sophia K. Sitati**  
Senior Programmes Officer, Office  
of the Chairperson



**Christine N. Kuria**  
Senior Programmes  
Officer-Citizenship and Bill of  
Rights Thematic Area



**Caroline W. Gaita**  
Senior Programmes Officer,  
Judiciary and Constitutional  
Commissions Thematic Area



**Edith C. Cheramboss**  
Senior Programmes Officer, Public  
Service and Leadership Thematic  
Area



**Mary G. Orwa**  
Senior Programmes Officer,  
Representation of the People and  
The Legislature Thematic Area



**Ruth M. Muthui**  
Senior Programmes Officer,  
Judiciary and Constitutional  
Commissions Thematic Area



**Valerie N. Okumu**  
Senior Programmes Officer,  
Devolved Government Thematic  
Area



**Lucy M. Gaithi**  
Senior Programmes Officer, M&E



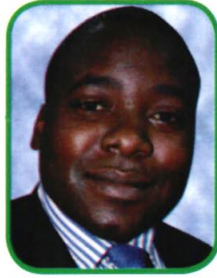
**Kephass O. Okach**  
Senior Programmes Officer, M&E



**Timothy K. Kariuki**  
Senior Programmes Officer,  
M&E



Victor Odhiambo Akuom  
Senior Programmes Officer,  
Public Finance Thematic Area



Jeremiah Nyakundi  
Senior Programmes Officer



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



Fatuma Mohamed  
Senior Programmes Officer,  
Land and Environment  
Thematic Area



Anwar Ahmed  
Programmes Officer,  
Citizenship and Bill of Rights  
Thematic Area

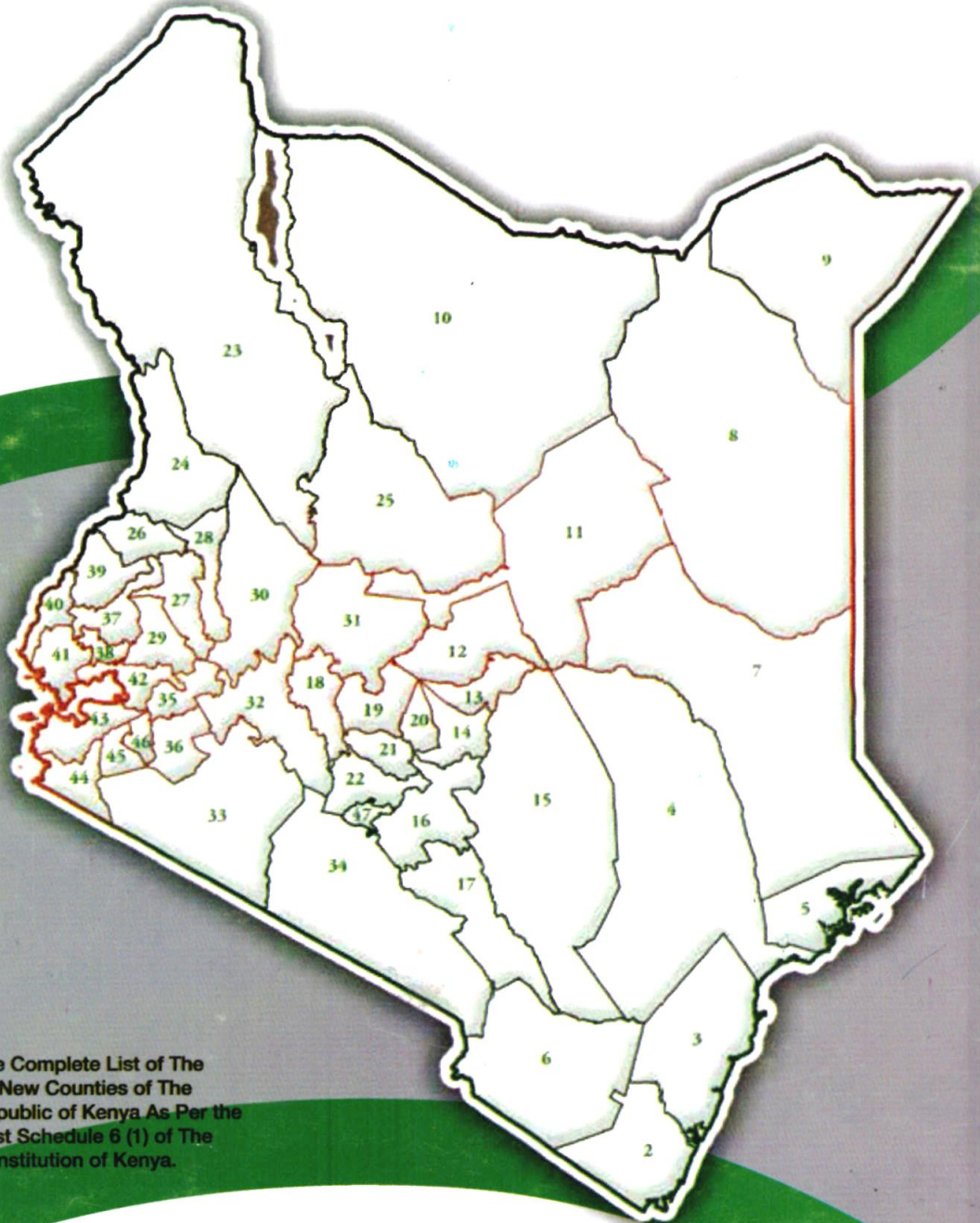


Samuel Abuta Nyakundi  
Head of Records

## Other staff

1)	Monica Wambua	Human Resource Officer
2)	Lauraine Onyango	ICT officer
3)	Janet Maiyo	Account Officer
4)	Alice Kaguongo	Assistant Internal Auditor
5)	Clement Kagiri	Assistant Internal Auditor
6)	Patrick Musonye	Procurement Officer
7)	Faith Kilonzo	Administration Officer
8)	Vashti Nadayat	Hansard Officer
9)	Pauline Kamurutu	Accountant
10)	Hassan A Hussein	Accountant
11)	Mercy Karanja	Executive Assistant
12)	Nina Kabayo	Executive Assistant
13)	Catherine Kahwai	Executive Assistant
14)	Rose Boit	Executive Assistants
15)	Pamela Mugei	Executive Assistant
16)	Rebecca Akoth	Executive Assistant
17)	Edward Omer	Transport Officer
18)	Riplan Lenagwanai	Senior Driver
19)	Isaac Mugambi	Senior Driver
20)	Benson Wetinid	Senior Driver
21)	Mustaph Kainga	Senior Driver
22)	Fredrick Kyalo	Senior Driver
23)	Peter Kariuki	Senior Driver
24)	Joseph Kariuki	Senior Driver
25)	Bryson Mwakio	Senior Driver
26)	Daniel Ngetich	Senior Driver
27)	Godwin Radiro	Senior Driver
28)	Tabitha Mburu	Receptionist
29)	Kevin Letuya	Accounts Assistant
30)	Edward Omondi	Accounts Assistant
31)	James Mburu	Legal Clerk
32)	Gordon Odhiambo	Clerical Officer
33)	Prisca Aluso	Clerical Officer
34)	Dorothy Mogiri	Stores Clerk
35)	Mary Munyao	Office Assistant
36)	Joyce Kadenge	Office Assistant
37)	Pamela Aloyo	Office Assistant
38)	Betty Awour	Office Assistant
39)	Chepkwony Myra	Intern
40)	Linda Ayimba	Intern
41)	Beatrice Mutanda	Intern
42)	Nelly Gitari	Intern
43)	Catherine Ndile	Intern
44)	Samuel Njoroge	Intern

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



The Complete List of The 47 New Counties of The Republic of Kenya As Per the First Schedule 6 (1) of The Constitution of Kenya.

- 1. Mombasa.
- 2. Kwale.
- 3. Kilifi.
- 4. Tana River.
- 5. Lamu.
- 6. Taita Taveta.
- 7. Garissa.

- 8. Wajir.
- 9. Mandera.
- 10. Marsabit.
- 11. Isiolo.
- 12. Meru.
- 13. Tharaka Nithi.

- 14. Embu.
- 15. Kitui.
- 16. Machakos.
- 17. Makueni.
- 18. Nyandarua.
- 19. Nyeri.
- 20. Kirinyaga.

- 21. Murang'a.
- 22. Kiambu.
- 23. Turkana.
- 24. West Pokot.
- 25. Samburu.
- 26. Trans Nzoia.

- 27. Uasin Gishu.
- 28. Elgeyo/ Marakwet.
- 29. Nandi.
- 30. Baringo.
- 31. Laikipia.

- 32. Nakuru.
- 33. Narok.
- 34. Kajiado.
- 35. Kericho.
- 36. Bomet.
- 37. Kakamega.
- 38. Vihiga.

- 39. Bungoma.
- 40. Busia.
- 41. Siaya.
- 42. Kisumu.
- 43. Homa Bay.
- 44. Migori.
- 45. Kisii.
- 46. Nyamira.
- 47. Nairobi City.