



Commission for the Implementation
of the Constitution

Utekelezaji wa katiba, jukumu la wote

Quarterly Report for the period

April to June 2012

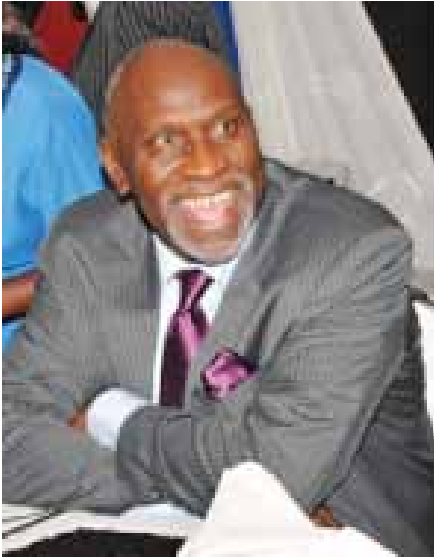
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Abbreviations And Acronyms

ALGAK	Association of Local Government Authorities of Kenya
APSEA	Association of Professional Societies in East Africa
CBK	Central Bank of Kenya
CIC	Commission for the Implementation of the Constitution
CIOC	Parliamentary Constitutional Implementation Oversight Committee
CREAW	Centre for Rights, Education and Awareness
CSOs	Civil Society Organisations
EAC	East African Community
IEBC	Independent Electoral and Boundaries Commission
JSC	Judicial Service Commission
KLRC	Kenya Law Reform Commission
KNCHR	Kenya National Commission on Human Rights
NCAJ	National Council on the Administration of Justice
NCIC	National Cohesion and Integration Commission
NGOs	Non-Governmental Organisations
NORAD	Norwegian Development Agency
PFM	Public Finance Management
WWF	World Wildlife Fund

Foreword



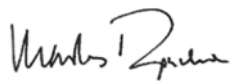
The Commission for the Implementation of the Constitution (CIC or the Commission) is mandated to report to the Parliamentary Constitution Implementation Oversight Committee, the Head of State, the Prime Minister and the people of Kenya. This report presents the developments between April and June 2012 marked by a number of milestones in the constitution implementation process. These include the enactment of three land laws: the National Land Commission Act, the Land Act and Registration of Land Act. These laws will change the landscape of land administration and management in Kenya. The Commission and other stakeholders in the constitution implementation have moved the process forward through preparation of legislation, policies and other administrative procedures.

We can confidently report that progress, especially on the legislative front, has been tremendous. Significantly, the Office of the Prime Minister, hosted a special roundtable on the implementation of the Constitution at which different stakeholders made commitments that will move the efforts forward. It is anticipated that a follow up roundtable will be convened to evaluate progress in fulfilment of the commitments by different stakeholders.

We have and continue to undertake all necessary measures to ensure that the rights and benefits bestowed on the people of Kenya through the Constitution are realized through the full and faithful implementation. Unfortunately, there have been a number of challenges and potential impediments to the implementation of the Constitution. One of the glaring challenges to the implementation process is the irregular appointment of county commissioners. The appointments were challenged in court, declared, unconstitutional, nullified and flagged as an alarming danger with potential to reverse the gains introduced by the Constitution. Another challenge was numerous proposals by the National Assembly to use the Statute Law (Miscellaneous Amendments) Bill to amend crucial provisions of the Elections and Political Parties Acts: to waive the educational requirements for serving and previous elected officials in contravention of Articles 27 (on non-discrimination), 116(3) and 10 (which prescribes democratic ideals violated in this process); to allow candidates seeking elective office to stand for one or more elective offices, which conflicts with Article 201 (prudent use of public funds, which multiple candidature would misuse through consequent wasteful by-elections); and to legalize party hopping by current members of Parliament despite clear prohibitions on the same by Article 103 and Section 40 of the previous Constitution under which the MPs were elected. Evidently, the proposed amendments were clearly not intended for law reform, but rather to secure the personal interests of some of the current Members of Parliament.

In response, we have been steadfast in pointing out the violations through official channels of communication as the first step and where necessary, through the media and judiciary, in order to alert the people of Kenya to any attempted deviations from the Constitution.

As we move closer to the next general elections, which are the first under the new Constitution, vigilance on remaining consistent with the Constitution is paramount. Now more than ever, our eyes must be fixed on the ultimate goal of full and faithful implementation of the Constitution.



Charles Nyachae
Chairperson

Executive Summary

The adoption and subsequent promulgation of the Constitution of Kenya 2010 came with rejuvenation of hope in the rule of law, an assurance that rights and freedoms would be protected and promoted, and a promise of good governance. The realisation of this promise however largely depends on the participation of the Kenyan people in the process of implementation of the Constitution. In order for the people to participate effectively in the implementation process, it is essential that they internalize the principle of constitutionalism and recognise how application of the Constitution impacts their day-to-day lives. Moreover, there is the ever-present danger of the process of implementation being hijacked by people who are interested in maintaining the status quo. This calls for constant vigilance from Kenyans to protect their right to full participation in governance and to ensure faithful implementation.

Through past reports, members of the public have been brought increasingly up to date on the progress and as a result, they are engaged in monitoring the constitution implementation process. The level of awareness on the Constitution among the public has observably improved as demonstrated by the levels of participation in recent public forums organized by the Commission. Nonetheless, more work needs to be done in raising public awareness. Moreover, despite the early electoral campaigns and the International Criminal Court (ICC) issues taking centre stage in media coverage, the public seems to have trained its attention on pushing for consistent implementation of the Constitution. Indeed, local media stations can play a pivotal role in mainstreaming vigilance on constitution implementation in their programs. The relevant government agencies and the public should occasionally be invited for discussion on issues relating to constitution implementation.

Despite the challenges faced in the second quarter, the Commission was able to make significant progress and draw critical lessons, key among which were: the importance of monitoring of constitution implementation process as a mainstream activity. In addition, there is value in building both vertical and horizontal networks in constitution implementation.

This report presents a detailed exposition of the implementation of the Constitution in the second quarter of 2012 to enable the public to appreciate the progress and implications thus far, giving them a stronger platform for continued and effective participation in implementation of the Constitution. Specifically, this report highlights the preparation of legislation, policies, and administrative procedures; the achievements, challenges and impediments in implementation during this period; and the mechanisms employed in addressing these challenges and impediments. Ultimately, the report aims to strengthen citizen vigilance as the key anchor for constitutionalism.

1 Introduction

This Report covers the activities of the Commission for the Implementation of the Constitution (hereinafter “CIC” or the “Commission”) for the second quarter (April to June) 2012. It is the sixth report in the series.

The main part of the Report presents the activities of the Commission (both Commission-wide activities and activities under the eight thematic areas); the challenges and impediments to constitutional implementation; and recommendations on how to improve the implementation process. Various annexes compliment the main report. In particular Annex VI and Annex VII provide an update on the status of enactment of constitutional implementation laws, including information on pending bills and all the legislations that have so far been enacted.

2 Overview of CIC Activities

2.1 Commission-wide Activities

The Commission's work is structured along thematic areas for efficient and effective delivery on its mandate. In addition, the Commission continues to organize and participate in Commission-wide activities. These include; stakeholder engagements, public advisory opinions, study tours and institutional development activities.

2.1.1 CIC Engagements with Stakeholders

► Prime Ministers Roundtable on the Implementation of the Constitution

The Office of the Prime Minister in partnership with the Ministry of Justice, National Cohesion and Constitutional Affairs and the Commission successfully hosted a special roundtable meeting on implementation of the Constitution. The objective of the roundtable meeting was to review the progress made in implementation, identify the lessons learned and discuss important areas of focus in moving forward. The meeting identified the following thematic issues for deliberation:

- Entrenching constitutionalism;
- Elections;
- Realisation of socio-economic rights; and
- Devolution;

During the roundtable meeting, in-depth discussions were held in five working groups on each of the issues identified. Devolution was discussed in two working groups. The working groups made commitments towards the full implementation of the Constitution under the thematic issues discussed. (A matrix of commitments made by participants is contained in Annex V.)

► Meeting with the Speaker to the National Assembly on By-Elections

On the 21st of February 2012, the Kangema constituency seat fell vacant due to the demise of the Member of Parliament, Hon. John Michuki. Ordinarily, the Speaker of the National Assembly would have declared the seat vacant and issued writs within sixty days of seat falling vacant. However, the Speaker was unable to issue the writs because the National Assembly and Presidential Elections Act (Chapter 7 of the Laws of Kenya) had been repealed by the Elections Act, 2011 and the Elections Act had no provision to regulate the conduct of by-elections before the first general elections under the new Constitution. The Speaker therefore convened a meeting to explore ways of resolving the matter.

During the meeting it was considered that Section 2 (1) of the Sixth Schedule to the Constitution suspends the application of Chapter Seven and Chapter Eight of the Constitution, until after the first elections under the Constitution are held. However, in conducting the first general elections under the Constitution, Chapter Seven, which deals with electoral processes and Chapter Eight, which deals with election of the National Assembly and the Senate, shall apply.

The meeting proposed that an amendment of Section 112 of the Elections Act would resolve the dilemma and provide direction on how to conduct by-elections during the remainder of the

term of the 10th Parliament where the need arose, prior to conducting the first general election under the Constitution. Subsequently, Miscellaneous Amendment Bill amended the Elections Act, 2012 paving way for the Kangema by-elections and others, which may arise before the next general elections.

► **County Visits**

The Commission visited twelve counties to deliberate on issues relating to the family unit and family protection in general, and the provisions of the Marriage Bill 2012, Matrimonial Property Bill 2012 and the Protection against Domestic Violence Bill 2012 (Family Protection Bill 2012) in particular.

The public forums were convened pursuant to CIC's mandate to monitor, facilitate, coordinate and oversee the development of legislation, policies and administrative procedures required to implement the Constitution and to ensure public participation and uphold the sovereignty of the people. The report on the county visits is detailed below in the Thematic Area on Bill of Rights and Citizenship.

► **Public Engagement Forum in Kajiado County**

Throughout the Constitution Implementation process, the Commission recognizes the sovereignty of the people and endeavours to carry out public and stakeholder consultations to ensure that the principle of public participation is upheld. On 1st May 2012, the Commission convened a forum to engage with people of Kajiado County at Oloitoktok. The overall objective of the forum was for CIC to interact with the people of Kajiado County in critically discussing and appreciating the constitution implementation process. Specifically, the Commission sought to:

- i. Educate the local citizens broadly on constitutional issues and specifically address issues that directly affect their daily lives;
- ii. Provide an understanding of the devolved government structure;
- iii. Provide an understanding of the transition to devolved government process and procedures;
- iv. Provide an understanding of the citizen's role in the constitution implementation process and how they can engage with both the national and county governments in informing decisions and demanding accountability from the leadership.

The public engagement forum was successful as the objectives were realized and lessons learnt by the Commission in terms of an informed insight into the people's understanding of the Constitution thus far. It also highlighted areas for improvement in future engagements with the public.

► **Meeting with key Stakeholders on the Swahili Version of the Constitution**

As a follow up to the meeting convened by the Attorney General, the Commission convened a meeting with key stakeholders to deliberate on ways to ensure implementation of Article 7 of the Constitution, which declares Swahili the national language of Kenya. The Commission noted the need to expedite the mechanisms of producing a Swahili version of the Constitution and the bilingual publication of legislation, policies and administrative procedures. The meeting included key stakeholders such as the Kenya Law Reform Commission (KLRC), National Council for Law Reporting, Ministry of Justice, National Cohesion and Constitutional Affairs, State Law Office and the Institute of Kiswahili Research at Kenyatta University.

The meeting recognized that the matter is of national importance and recommended that the office of the Prime Minister should convene a high level meeting of all Ministers and other stakeholders towards charting a way forward. CIC will obtain a copy of the proceedings of the Conference organized by the Institute of Kiswahili Research, which captured the views of stakeholders who participated in the Constitution making process.

► **Panel of the Wise Meeting on Strengthening Political Governance for Peace, Security and Stability In Africa**

The African Union (AU) Panel of the Wise, with the support of the AU Commission, and in collaboration with the Nairobi-based African Leadership Centre, held a workshop on 27th to 29th April 2012, to generate concrete recommendations on the status of implementation and relevance of the AU instruments relating to democracy, governance and the rule of law. The AU Panel of the Wise is one of the key components of the AU's peace and security architecture.

The purpose of the meeting was to explore opportunities for strengthening the democratization process in Africa to ensure that the commitments made by member states in AU instruments are upheld and implemented. The Commission was invited to the forum and the Chairperson represented the Commission at the workshop.

► **Benchmarking Tour to Canada**

CIC scheduled a visit with the Canadian government as a model study on devolved government. Canada has a federal system and a parliamentary government. The Executive branch of government is composed of the Queen (represented by the Governor General), the Cabinet and the administration. Its role is to operate, implement and enforce all the laws created by the legislative branch. The Legislative branch consists of the Queen (the House of Commons and the Senate). The House of Commons is the major law-making body composed of elected representatives. The Senate has Senators appointed by the Governor General upon the Prime Minister's recommendation. The Senate votes on legislation passed in the House of Commons. All laws must pass through the Senate. The Judicial branch of government is made up of courts at the national, provincial and territorial levels.

Among the key issues of interest to the CIC were:

1. The relationship between the bicameral parliamentary system and regional assemblies;
2. Planning and execution of the human rights based approach in public service and in leadership;
3. Organization and regulation in the Executive and the security sector to achieve accountability and respect for the rule of law;
4. Devolved government; and,
5. Public finance management.

The CIC delegation held consultative meetings with Elections Canada, Privy Council on Intergovernmental Affairs, Council of Ministers of Education, Ministry of Aboriginal Affairs, Ontario Women's Directorate and the Municipal Council in Toronto.

Key lessons for Kenya from the Canada visit:

- For the devolution system to operate effectively, each institution must understand and play its role.

- Some of the primary ways that the government can manage citizen expectations of the constitution implementation process are through:
 - a. Enhancing the public's understanding of the Constitution through realistic and objective civic education on the laws, administrative structures and what is expected to be achieved; and
 - b. Continued engagement with the public on the constitution implementation roadmaps, achievements, obstacles and challenges.
- There is need to ensure that we do not create conditions by which devolved government units exercise exclusively control over their territories.
- Confidence in the electoral system can be built by ensuring that the values of participation, fairness and transparency, among others are observed and adhered to.
- Intergovernmental relations between the devolved governments should be formalized to avoid disruptions. To do so, Kenya should look to other countries' experiences of formalization.
- As a way of regulating campaign finances, it is essential that Independent Electoral and Boundaries Commission (IEBC) work closely with the political parties and candidates to determine the spending limits during campaign periods.
- IEBC should work closely with persons with disabilities and other marginalized groups to understand challenges they face during voting in order to enhance access to voting.

► Inter- Agency Study Tour to Brazil

The CIC together with the Parliamentary Committee on Constituency Development Fund, the Constituency Development Fund Board and the Local Authority Transfer Fund participated in a benchmarking visit to Brazil, to further their understanding of the operation of devolution, transition to devolved government and the implementation of socio-economic rights. Brazil has 3 levels of government: federal, state and municipal.

Lessons learnt on devolution from study tour include:

- Effective operation of devolved government system requires all levels of government and key institutions to work in harmony and in a cooperative relationship, with each playing its role effectively and complementary to others;
- There should be consultation and transparency in government activities;
- Citizen participation and public oversight should be encouraged;
- Decisions should be made within the legal framework;
- National values that support the new dispensation and the reforms envisaged by the Constitution should be promoted;
- Social and economic policies and programs that are relevant to the prevailing environment should be developed;
- Social inclusion and income redistribution should be enhanced;
- The Government should enhance investment opportunities for its citizens;
- Government policies and actions should encourage and promote growth;
- It is essential to develop a culture of legislating and constitutionalising national issues that are considered important; and
- The Government should avoid arbitrary changes in decisions and actions merely for political reasons.

2.1.2 Advisory Opinions

The Commission's role of monitoring of implementation of the Constitution involves monitoring the different actors as they implement the Constitution. This entails pointing out any infractions of the Constitution to the offending party and sometimes informing members of the public of the infraction. This is done through the Commission's advisory opinions in the print media and on the CIC website.

In the second quarter, the Commission issued three advisory opinions on matters that were of public interest. These included opinions on sitting Members of Parliament changing their sponsoring parties before their term is over; -the proposed amendments to the Elections Act 2011; and the appointment of county commissioners. (Copies of the Advisory Opinions are contained in Annex I and II).

2.1.3 Audit of Laws, Policies and Procedures

The Executive plays a central role in the implementation of the Constitution. Through the Commission's intervention, the Head of Public Service issued a circular on implementation of the Constitution in April 2011, providing guidance to all in the Public Service on steps to be followed to ensure the full implementation of the Constitution, including how to engage with the Commission.

As part of its monitoring mandate, the Commission has developed a reporting toolkit for submission of reports by state organs and agencies. We have revised the reporting tool to standardize reports and facilitate more comprehensive reporting by Ministries and Institutions.

Since the issuance of the circular and the Commission's direct engagement with different actors in the Executive, independent offices and other Commissions, the reporting and feedback received have been impressive. The Commission has commenced an analytical review of the reports for purposes of compiling a detailed report on the implementation activities of different state organs. The report will go a long way in putting the implementation agenda in perspective and mapping a structured way forward in the constitution implementation process.

2.1.4 Public Interest Litigation

In line with its mandate CIC monitors implementation of the Constitution and endeavours to promote and protect constitutionalism, rule of law and the sovereignty of the people CIC has been involved in various cases on the implementation of the Constitution. The cases are at different stages of determination.

a. Constitutional Petition No. 65 of 2011

Case for Determination of the Date for the Next General Elections

(In the matter of the construction, interpretation and determination of the actual date of the next general elections – between Milton Mugambi Manyara & others (Petitioners) and the Attorney-General and others)

The petitioners moved to Court to have a number of perceived grey areas around the date for the first general elections under the new Constitution interpreted and determined by the Court. The Court considered the issues and gave judgment to the effect that the IEBC had the legal authority to set the date for the first general election.

However, a civil society organisation, the Centre for Rights, Education and Awareness for Women appealed against the High Court decision. The Court of Appeal is scheduled to give its judgement on 30th July. Pending the Court of Appeal decision, the High Court decision is valid and the reference point for determination of the election date. The IEBC set 4th March 2013 as the date for the first general elections under the new Constitution.

**b. Constitutional Petition No. 208 of 2012 and Judicial Review No. 207 of 2012 (Consolidated)
Case for the appointment of County Commissioners**

(In the matter of the Appointment to the Offices of County Commissioners under the Constitution of the Republic of Kenya (Between Centre for Rights Education & Awareness (CREAW) and others and the Attorney General and others)

The Petitioners, CREAW and six others questioned the constitutionality of the appointment or deployment by the President of 47 county commissioners and sought a judicial review of the action. The President had appointed the 47 county commissioners – 10 women and 37 men – by Gazette Notice 6604 of 11 May 2012. The suit challenging the appointment was filed on 17 May. The first Gazette notice was then revoked by a subsequent Gazette Notice 6937 of 23 May, which replaced the words “appointment” with “deployment” and “appoint” with “assign.” The court in delivering its judgment on 29th June 2012 held that:

- i. The President had no power to appoint or deploy county commissioners as was purported by Gazette Notices 6604 and 6937, and therefore these appointments/deployments were in contravention of the Constitution, thus null and void
- ii. Had the President had the power to make such appointments or deployments, the appointments or deployments violated Articles 10 and 27 of the Constitution on the two-thirds principle.

**c. Constitutional Petition No. 94 of 2012
Case to Clarify the Procedure for the Preparation of Legislation to Implement the Constitution**

(In the matter of Article 89 of the Constitution and in the matter of the delimitation of constituency and ward boundaries and in the matter of the Independent Electoral and Boundaries Commissions Act, 2011 and in the matter of the National Assembly and Constituencies and County assembly wards order, 2012 (legal notice no. 14 of 2012) and in the matter between Republic versus the Independent Electoral and Boundaries Commission)

The IEBC conducted a constituency and ward boundaries delimitation exercise in 2011 and release its report in the first quarter of 2012. The report was challenged, leading to filing of over 120 cases. The Chief Justice Dr. Willy Mutunga appointed five judges of the High Court to hear and determine the cases. The cases came up for hearing on 4th June 2012. The petitioners

challenged the jurisdiction of the five-person Bench to hear and determine the cases as per Article 89(10) of the Constitution. In addition the Court's was asked to interpret Article 89(10) of the Constitution and give directions on whether the word "review" in the Article refers to judicial review of the IEBC's decisions on boundaries.

The Court determined that:

- i. The five-judge bench constituted by the Chief Justice was constitutional and adhered to the provisions of Article 89(10) of the Constitution and had jurisdiction to hear the cases;
- ii. "Review" under Article 89(10) of the Constitution refers to judicial review and therefore, where IEBC will be found to have overstepped authority conferred on it by the Constitution the Court would issue appropriate orders.

The court's decision on jurisdiction and on review paved way for the regional hearings and determination of the 120 cases.

The court was scheduled to deliver all judgments by 9th July 2012.

d. Constitution Petition No. 137 of 2011

Case to determine whether MPs should Pay Tax

(In the matter of Payment/Variation/Waiver/Variation of Taxation by Members of Parliament and State/Public Officers and in the matter of the Principles of Public Finance: Openness, Equality, Fairness, prudence and Responsibility in the Application and imposition of Taxation (between Rev. Dr. Timothy Njoya & others and the Attorney-General and others)

Rev. Timothy Njoya and others sought the Court's interpretation of Articles 210, 201 and 230 of the Constitution along with its transitional clauses on whether Members of Parliament as state officer were exempt from paying tax and whether the Executive had the power to exempt any state officer from paying taxes. In addition, they sought the courts opinion on whether the Government using public resources to meet Members of Parliament tax burden would be unconstitutional. Finally, they sought judgement on whether the Members of Parliament opting to derail or frustrate debate or passage of bills intended to implement the Constitution in response to Kenya Revenue's Authority demand for tax payment was unconstitutional and illegal.

The matter was forwarded to the Chief Justice to appoint a three Judge bench and to issue further directions.

2.1.5 Institutional Development Activities

In line with its strategic outcome results CIC has continued to strengthen its Secretariat. To this end, it has initiated a various measures to continuously bolster the Secretariat. This includes hiring of more staff members when required and sponsoring staff for continuing professional development.

► Training in Socio-Economic Rights

The Commission sponsored training for two staff members at the Geneva Academy of International Humanitarian Law and Human Rights on professional training in Economic, Social and Cultural Rights. The Geneva Academy is part of the Graduate Institute of International and Development

Studies and the University of Geneva. The Academy has offered the course over the last four years through teaching that blends traditional seminar-type lectures and guest speakers with practical exercises and first-hand experience on issues such as the work of the United Nations Committee on Economic, Social and Cultural Rights.

The trainings are targeted for human rights advocates, national human rights institutions and government representatives. They are aimed at supporting the work of professions with advanced experience on socio-economic rights by providing technical skills on how to approach monitoring of socio-economic rights, how to present data effectively, and how to build advocacy strategies, which make use of the mechanisms of the relevant UN bodies.

The topics covered in the course included:

- State obligations for the economic, social and cultural rights (ESC rights)
- The role of the Committee in monitoring economic and social and cultural rights
- The work and methods of Socio-Economic Rights Special Procedures
- The World Health Organization and the right to health
- The role of national human rights institutions in monitoring ESC rights
- Litigating ESC rights at the national and regional levels
- Mechanisms of holding non-state actors accountable
- Using indicators to monitor ESC rights
- Monitoring and data collection
- Data visualization and advocacy methods for communicating ESC rights
- Human rights impact assessments
- Analyzing budgets to monitor ESC rights

The training comprised of 15 participants, three of whom were from Kenya. The Commission sent two researchers to institute. The five-day training comprised of lectures and a case study, which was geared towards putting into practice the lessons learned from the lectures. The participants had a chance to meet with one of the Committee members of the Committee on Economic, Social and Cultural Rights. The participants also attended a Committee session on its consideration of the Ethiopia Country Report regarding Ethiopia's implementation of its obligation under the Covenant on Economic and Socio Cultural Rights.

3 Thematic Activities

CIC thematic teams continue the drive implementation of the Constitution. In the second quarter of the year, the thematic teams successfully concluded critical implementation activities towards realization of the mandate of the Commission. This section provides a summary of the various activities undertaken by the thematic areas during the reporting period. For each thematic area, the report gives an update on the status of bills or enactment of laws, engagement with stakeholders, donor support and highlights the challenges and achievements of the quarter. It also provides a synopsis of the planned activities for the third quarter of 2012.

3.1 Activities under the Bill of Rights and Citizenship Thematic Area

The Citizenship and Bill of Rights thematic area derives its mandate from Chapters Three and Four of the Constitution of Kenya and is geared towards ensuring effective implementation of the Bill of Rights as provided in Chapter Four of the Constitution as well as the human rights principles reiterated in all the chapters of the constitution. The broad objective of the thematic area is to monitor, facilitate and oversee the integration of human rights and its principles in all State policies, laws and administrative procedures by implementers in all sectors.

► Status of Development of Bills

a. Immigration Related Bills:

1. The Identification and Registration of Persons Bill 2012;
2. The Births and Deaths Registration Bill 2012;
3. The Refugee Bill 2012

The Identification and Registration of Persons Bill 2012; and Births and Deaths Registration Bill 2012:

The Identification and Registration of Persons Bill 2012 and Births and Deaths Registration Bill 2012 are among the five bills that were forwarded to CIC. They are all aimed at reforming the registration of persons and immigration systems. As highlighted in previous reports, a stakeholder meeting that had been held to review the bills proposed the amalgamation of the Identification and Registration of Persons Bill 2012 and Births and Deaths Registration Bill 2012 into a single law to consolidate the registration system.

Following a meeting held between CIC and the Ministry of Immigration in the last quarter, it was resolved that the Ministry of Immigration would consolidate the two bills and the policies before forwarding them to CIC for an audit and onward transmission to Cabinet. The Ministry is currently working on consolidating the bills.

The Refugee Bill 2012:

CIC is keen on ensuring that the Refugee Bill is processed together with the bill consolidating the registration system. The Refugee Bill 2012 will therefore be reviewed together with the consolidated bill on the registration system, which is scheduled to be undertaken in the third quarter.

The revised drafts of the bills will be subjected to a final stakeholder review, to be held in the next quarter. This will be followed by a CIC internal plenary and roundtable for final review.

b. Family Law Bills:

1. Marriage Bill 2011;
2. Matrimonial Property Bill 2011;
3. Protection Against Domestic Violence Bill 2011

In the first quarter of this year, CIC under the thematic area facilitated a number of technical and stakeholder consultations on the Family Law Bills. The stakeholder consultations elicited various concerns particularly by faith-based organizations over some of the provisions in the bills resulting in the need for further consultations. In this regard, CIC scheduled county visits to be undertaken in the quarter under review before finalization of the review process of the bills.

The county visits which were undertaken between 11th and 14th June 2012 were organized to give members of the public in the different counties, an opportunity to deliberate on the provisions of the bills, while also giving them a chance to raise their concerns and recommendations so as to achieve a consensus on the concerns raised by the different interest groups. In conducting the county forums CIC partnered with the Commission on Administrative Justice, National Commission on Gender and Equality, Ministry of Gender, Children and Social Development and the Ministry of State for Immigration and Registration of Persons. Due to resource constraints, the teams covered 12 of the 47 counties, which were chosen ensuring among other factors, regional balance and representation from different religious groups and ethnic communities. The group was divided into 5 teams, which covered Lamu, Kilifi, Garissa, Makueni, Kitui, Siaya, Vihiga, Nandi, Kericho, Nakuru, Meru, Muranga and Nyandarua counties. Final consultations are scheduled to be held in Nairobi in August 2012 at the KIA with the top leadership of the faith-based institutions and traditional elders to be drawn from different communities with unique practices on marriages.

Marriage Bill 2012

Under the Marriage Bill 2012, the issues for discussion related to the most appropriate way to devolve the services of the institutions providing marriage services such as the Registrar of Marriages. Other issues were, how to determine valid and invalid customary marriages for purposes of registration, the kind of evidence to be produced to recognize valid customary marriages; the handling of informal unions (cohabitation), among other things. The teams also sought views from the public on methods and evidence that should be produced prior to dissolution of customary marriages by the registrar of marriage. Also discussed extensively was the consequence of abolishing dowry; and polygamy and polyandry vis-à-vis the constitutional principle of equality.

Recommendations from members of the public included ensuring that institutions mandated with registration of marriages are decentralized to the lowest level. It was also proposed that the Sheikhs should also be allowed to facilitate registration of marriage due to their proximity with the members of the public.

Matrimonial Property Bill 2012

With regards to the Matrimonial Property Bill 2012, the team sought to establish the public understanding of matrimonial property and whether it should include ancestral/ community land

and inheritance. Furthermore, whether property acquired during marriage should be registered jointly to the spouses, how property acquired before marriage should be treated by the spouses, whether there is need for prenuptial agreements, and the statutory restrictions that should be imposed to ensure that matrimonial property is not given out as security for a loan without the consent of both the spouses.

Recommendations included joint registration of matrimonial property, which covered any moveable and non-moveable property acquired by either spouse to a marriage; recognition of the cultural view that ancestral property is held in trust for future generations; exclusion of properties acquired before marriage from the definition of matrimonial property; among others. Interesting suggestions were also made on possible formulae to be used in determining ownership of matrimonial property in polygamous marriages.

Protection against Domestic Violence Bill 2012

The team sought views from the public on the persons who qualify to be in a domestic relationship and therefore should be protected against domestic violence, as well as on the best way to ensure family protection against domestic violence. Other issues discussed related to the institutions that should be involved in addressing domestic violence apart from the police, the protection measures that the government should adopt to address domestic violence and whether there is need to establish safe homes or shelters fully equipped with integrated services for the victims of domestic violence. This also raised the issues of a specific fund to help deal with issues of domestic violence. There was interest in how the benefits of the Bill would be equally accessed and enjoyed in all counties.

The communities highlighted the need for the Kenyan society to shun domestic violence and for protection against domestic violence, and the value of contextualizing interventions to the different circumstances and environments (urban, rural, cultural, religious etc). A holistic approach, which draws from the strengths in religion, community culture was emphasized. Some were of the opinion that the Bill should be limited to the protection the nuclear family (the spouse and the children) while other extended members of the family and persons living with the family, including house-helpers, could seek protection from other laws including the Penal Code, the labour laws etc. Others were of the view that the list of members proposed for protection under the bill should include brothers and sisters and other members of the extended family in line with the customary situations.

c. Ratification of Treaties Bill

The Ratification of Treaties Bill still awaits the second reading before Parliament. As mentioned in the report for the previous quarter, CIC will continue to monitor parliamentary debates on the Bill.

d. Freedom of Information Bill 2012 and Data Protection Bill 2012

CIC received the Freedom of Information Bill 2012 and Data Protection Bill 2012 from the Ministry of Information and Communication in the first quarter. The Ministry also developed an explanatory memo to enable stakeholders to appreciate the complexities relating to the Data Protection Bill 2012. CIC under the Bill of Rights and Citizenship thematic area facilitated a stakeholders' forum to deliberate on the provisions of the two bills.

In the second quarter, CIC held an internal plenary meeting to review the bills and made further proposals for incorporation during the processes of incorporating stakeholder recommendations. The bills await a final review meeting before they are forwarded to the Attorney General for onward transmission to Cabinet.

e. Consumer Protection Bill 2011

The Consumer Protection Bill is among the laws listed in the Fifth Schedule of the Constitution, for enactment within four years in order to give effect to Article 46 of the Constitution. The Bill was brought to the attention of CIC when it was brought to Parliament in December 2011 as a private member's bill moved by Hon. Jakoyo Midiwo. Upon discussion with the MP, it was agreed that the CIC proceed to facilitate discussions with stakeholders on this bill.

CIC has facilitated various stakeholder and technical review forums on the Bill. The Bill in its initial form had only covered a few sectors. The Bill should provide general principles on consumer protection, which will guide different sectors in developing regulations to govern the sectors. The Bill needs to ensure creation of protection mechanisms for consumer by all sectors. The Bill elicited interest from the finance, manufacturing, hospitality, and aviation sectors among others, many of whom asked for ample research to ensure proper linkage with the regulatory and protection systems in their sectors.

f. Development of a framework on Public Participation

Article 10 (1) and (2)(a) of the Constitution obligates all State organs, State officers and public officers to apply the principle of public participation in making policies, enacting laws or interpreting laws and the Constitution.

Public participation aims to bridge the gap between the government, civil society, private sector and the general public, building a common understanding on the local situation, and on priorities and programmes. It encourages openness, accountability and transparency and is thus at the heart of inclusive decision-making. Public participation is therefore one of the key constitutional values that CIC is keen to ensure is entrenched.

In order to give effect to the principle, the thematic area has been in consultation with the Ministry of Justice, National Cohesion and Constitutional Affairs and civil society organizations on the development of the most suitable framework for public participation. Clearly, well-developed strategies for public participation will build trust and confidence in the systems, promote accountability, strengthen commitment of all stakeholders towards improved governance, and directly limit the potential for corruption and bad leadership. A technical forum is scheduled for September 24th – 27th 2012, aimed at creating an environment that will facilitate dialogue that will provide guidance on the most suitable framework for public participation.

► Other Thematic Activities for the Second Quarter

a. Elaborating a Roadmap for the implementation of Socio-Economic Rights:

CIC has previously held meetings with different government ministries and the Prime Minister on the establishment of a mechanism that will facilitate coordinated and joint planning of different sectors to ensure optimum and prudent use of resources for better service delivery while also ensuring progressive realization of socio-economic rights.

As CIC continues to wait for a meeting with the President on the establishment of an inter-ministerial team that will set the standards for effective realization of socio-economic rights, the Commission continues to engage with implementers on the progressive realization of socio-economic rights. At the Prime Minister's roundtable meeting held on 27th June 2012 to discuss the status of implementation of the Constitution, one of the roundtable meetings comprised of in-depth discussions on theme on realization of Socio-Economic Rights.

The roundtable brought together some of the key actors in realisation of socio-economic rights, including Ministers and Permanent Secretaries of the Ministries of Education, Housing, Health, Planning and Agriculture, and the Kenya National Commission on Human Rights (KNCHR) as panellists. The Ministries of Special Programmes, Gender, Children and Social Development, and Water were participating. Also participating were representatives of the private sector and civil society. Ms. Wambui Kimathi, former commissioner with the KNCHR, moderated the roundtable.

The meeting provided an opportunity for the implementers to share information on progress and achievements as well as challenges. It was encouraging to note that the implementing Ministries are making efforts to apply a rights approach in the delivery of the services in their sectors. One of the glaring challenges was the fact that most had not designed strategies to map the country and determine the best way to facilitate the equitable access to services by Kenyans in all counties.

b. Development of a guide for the implementation of human rights.

CIC is developing a manual that will guide implementers on the integration of constitutional and human rights principles, such as equality, equity, affirmative action, and public participation in relevant policies, laws and administrative processes. It will also guide on the implementation specific rights relevant to each of these sectors.

The first draft of the easy-to-read guide has been consolidated and CIC is currently consulting with the implementers across the different sectors to give feedback and ensure that the guide is easy to read and can be utilized in their day-to-day implementation roles. Once the different sectors have reviewed the first draft of the manual, it will be subjected to a technical forum for review and final editing prior to its publication. CIC has scheduled to launch the implementation guide at the end of first quarter of 2013, which will allow for finalization of all the scheduled activities.

c. Engagements with Ministries on the effective implementation of the Constitution

In order to ensure effective implementation of the Constitution by all implementers CIC has divided the 42 ministries and the parastatals under the 8 CIC thematic areas. During this period, the thematic area held a meeting with the Ministry of Public Health and Sanitation and the Ministry of Medical Services and established that the key activities that the ministries of health undertake include:

- i. Development of the Position Papers, which elaborate the Ministries' understanding of their role under the Constitution.
- ii. Development of the Health Policy which is pending cabinet approval.

- iii. Development of the Health Bill 2012, which is yet to be forwarded to CIC for audit.
- iv. Review of existing legislation in the Health Sector.

In addition, the Bill of Rights and Citizenship thematic area audited the reports submitted to CIC by the Ministries clustered under the CIC's thematic area to review the status of implementation of the Constitution. From the audits it was established:

- i. **Ministry of State for Immigration and Registration of Persons** has developed the Kenya Citizenship and Immigration Regulations 2012, which CIC is yet to review. Further the Ministry is currently working on consolidation the Registration of Persons and Identification of Persons Bills into one law. The consolidated bill will be submitted to CIC together with the policies relating to registration as well as the Refugee Policy, which relates to the Refugee Bill 2012.
- ii. **Ministry of Special Programmes** has developed various policies, which are awaiting Cabinet approval. These include the Internally Displaced Persons (IDP) Draft Policy, Disaster Management Draft Policy, Fire Management Policy Disaster Risk Reduction Strategy for Kenya, Gender Mainstreaming Policy and the Disability Mainstreaming Policy. The Ministry is also working on the review of the National Aids Control Act and the HIV/AIDS Bill.
- iii. **Ministry of East Africa Community** has audited the EAC laws and their effect on the laws of Kenya in order to establish conflict of the laws and has developed an audit report. The Ministry has also developed a Status on draft Miscellaneous Amendment Bill.
- iv. **Ministry of Justice, National Cohesion and Constitutional Affairs** is the Ministry in charge of constitutional matters and a partner with CIC on implementation matters including procedures and deadlines for enactment of Bills under the Constitution. The Ministry is also coordinating the national civic education programme on the Constitution and is also the ministry in charge of human rights having spearheaded the development of the National Policy and Action Plan on Human Rights. They are also in charge of Constitutional Commissions. In this regard one of the concerns for the CIC thematic area is the delays in engagement of the commissioners of the KNCHR, EACC and National Cohesion. The Ministry is currently undertaking development and review of the National Anti-Corruption Policy, Legal Aid and Access to Justice Policy, and the National Values Policy.
- v. **Ministry of Foreign Affairs** is currently developing various policies and laws, including the draft Foreign Policy; Gender Policy; Consular Policy; Evacuation Policy; and Administration of Voting Rights for Diaspora Policy. Among the laws under review and development are the Privileges and Immunities Act, the Foreign Relations and Diplomatic Representation Bill, and the International Cooperation Fund Bill. The Ministry is also reviewing its administrative procedures including the Anti-Corruption Policy, Revised Scheme of Service for Foreign Service Personnel, Foreign Service Regulations, Opening of Diplomatic Stations, Appointment of Ambassadors and High Commissioners, Posting Orders for Foreign Service Personnel and the Recruitment Procedures for Lower Cadres.

- vi. **Ministry of Youth Affairs and Sports** is working on the development of the National Policy on Youth Polytechnics and Vocational Sector; Policy on Youth Volunteerism and Community Service, and Policy on Youth Internships and Employment. Laws under review include the National Youth Service Act, the National Youth Council Act, the Youth Fund Act, the Youth Development Act, the Sports Bill, and the Anti-doping Bill.
- vii. **Ministry of State for National Heritage and Culture** is currently developing the Libraries Policy, Language Policy, Records Management Policy, Music Policy and reviewing the National Culture and Heritage Policy. The laws under review by the Ministry are the Kenya Cultural Centre Act, Public Archives and Documentation Service Act, National Museums and Heritage Act, and NGO Coordination Board Act while those under development are the Heritage and Culture Bill, Languages of Kenya Bill and the Kenya Heroes Bill.
- viii. **Ministry of Gender, Children and Social Development** is reviewing the Community Development Policy, National Social Protection Policy, National Gender and Development Policy, National Policy on Persons with Disabilities, National Policy on Older Persons and Ageing, and National Policy on Children. The laws under review are the Persons with Disabilities Act, Female Genital Mutilation and Cut Act, Children Act, Counter-trafficking in Persons Act, Self-help Group Act and the Women's Enterprise Fund Act. The Ministry is also developing the Foster Care and Guardianship Regulations in support of the Children Act.

The thematic area has scheduled continue periodic consultation meetings with the Ministries and parastatals clustered in the thematic sector to monitor progress of implementation and to work in partnership with the Ministries to ensure effective implementation of the

► **Constitution Donor support/Engagement of consultants**

The thematic area continued to receive donor support for some of its activities from IDLO.

► **Challenges faced by the Citizenship and Bill of Rights thematic area**

One of the key challenges faced by the thematic area was the lack of involvement in the development of Kenya Citizenship and Immigration Regulations 2012 in contravention with the procedures agreed upon by the CIC, AG, KLRC and the CIOC. As an institution mandated to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution, CIC should be involved in the development of administrative procedures before are gazetted. This is to ensure that they are compliant with the letter and spirit of the Constitution.

► **Recommendations – addressing the challenges:**

- CIC will still review the Kenya Citizenship and Immigration Regulations and to point out any discrepancies- with the Constitution.
- CIC recommends that institutions such as the Office of the Attorney General should ensure compliance with the letter and spirit of the Constitution including involvement of the CIC in administrative procedures that give effect to the constitutional provisions.
- CIC also calls upon members of the public to scrutinize such regulations that could be used to circumvent or undermine the full implementation of the Constitution.

► **Activities for the next quarter.**

1. Plenary and Roundtable meetings on the Freedom of Information Bill 2008 and the Data Protection Bill 2009
2. Stakeholder consultations on the revised Registration Bill which consolidates the Births and Deaths Registration 2011; Identification and Registration of Persons 2011, and on the Refugee Bill 2012;
3. Stakeholder Consultations and Internal review of the Marriage Bill 2012; Matrimonial Property Bill 2012; Protection Against Domestic Violence Bill 201
4. Consultations with implementers on the review of the first draft of the implementation guide on the bill of rights and constitutional principles in the public service
5. Stakeholder consultations on the Consumer Protection Bill
6. Stakeholder consultations on the development of a framework to give effect to the principle of public participation
7. Review of the policy on health
8. Preparatory consultations on subsequent meetings with women in marginalized regions (Pokot, Turkana) to discuss inclusion of women and utilization of the gender quotas stipulated in the Constitution.
9. Meetings with respective Ministries and their parastatals on effective implementation of the Constitution

3.2 Activities under the Land and Environment Thematic Area

The Land and Environment thematic area draws its mandate from Chapter Five of the Constitution, which provides the framework and principles on managing Land and Environment. The thematic area is tasked with monitoring, facilitating, coordinating and overseeing the implementation of Chapter Five. The following ministries deal with aspects of land and environment issues: the Ministry of Lands, the Ministry of Environment and Mineral Resources, the Ministry of Forestry and Wildlife, the Ministry of Water and Irrigation, Ministry of Livestock Development, the Ministry of Northern and Arid Lands, the Ministry of Regional Development and the Ministry of Tourism. There were several important developments under the land and environment thematic area in the second quarter.

► **Status of Policies, Administrative Procedures and Legislation**

On April 2012, the President assented to the three key land bills under the Constitution. These are the Land Act, The Land Registration Act and the National Land Commission Act.

The Land Act gives effect to Article 68 of the Constitution, and seeks to revise, consolidate and rationalize land laws. It also provides for the sustainable administration and management of land and land based resources. The Land Registration Act revises, consolidates and rationalizes the registration of titles to land, and gives effect to the principles and objects of devolved government in land registration. The National Land Commission Act details the functions and powers of the National Land Commission, qualifications and procedures for appointments to the Commission; and gives effect to the objects and principles of devolved government in land management and administration.

► Review of Laws, Policies, and Administrative Procedures in the Environment and Natural Resources Sector

The thematic area with the support of IDLO has commissioned an additional consultant to assist the Commission to consolidate and ensure integration of the various policies, bills and administrative procedures from the ministries, departments and parastatals within the environment and natural resources government sector.



This entails liaising with the sector actors to effectively map out their planned initiatives and focus these to ensure coherence in their policies and legislation and conformity with the Constitution. The Consultant will also be responsible to facilitate internal as well as external discussions and debates on the status and future direction of environment and natural resources sector in the country.

► Retreat on the National Irrigation Board

The National Irrigation Board held a two-day retreat on re-aligning and re-organizing of the National Irrigation Board under the Constitution of Kenya 2010. The retreat was held in Mombasa.

The retreat facilitated brainstorming and development of a proposal for the Irrigation Bill that is currently being developed.

CIC participated in the meeting along with Kenya Law Reform Commission (KLRC) and made a presentation on the approaches and reform initiatives suitable for advancing the irrigation agenda within the new dispensation.

One of the outcomes of the meeting was to establish a special committee to incorporate the proposals and finalize the Bill.

► Environmental Civil Society Organizations Conference

The Commission participated in a one-day Environmental Civil Society Organizations' Conference themed, *"Expanding space for environmental civil society in the new constitutional dispensation in Kenya."* The Conference aimed at helping civil society leaders to engage in a stimulating debate and adopt a practical outlook on the future of natural resource governance in Kenya. The Conference was co-hosted by WWF-Kenya Country Office and National Environment Civil Society Alliance of Kenya with support from NORAD/WWF Norway.

The Conference took note of the opportunities presented by the Constitution of Kenya, which provides a new platform for all sectors to speak and act complementarily in the development and implementation of policies and legislations that address the current challenges. The Conference also stressed the need to create the role of a regulator of wildlife and forests. Presently, the Kenya Forest Services and Kenya Wildlife Society play the multiple roles of regulator and enforcer.

The Commission emphasized the importance of public participation in the development of legislations and laws. Civil Society actors were encouraged to continue their effort to work towards ensuring a proper legal framework for public participation is realized.

► Minerals and Mining Bill

CIC has received a draft copy of the Mining and Minerals Bill. The Bill seeks to establish how to govern minerals exploration, prospecting, mining and dealings in Kenya. CIC awaits the official copy of the Bill from the Attorney General before it formally begins to review the Bill for consistency with the Constitution.

Additionally, IDLO is providing support to CIC on a consultancy on the Mining and Minerals Bill to ensure it addresses the key problems related to mining and minerals and that it is consistent with the letter and spirit of the Constitution.

► Proposed Activities for the Next Quarter

1. Conduct a stakeholder's forum on the Community Land Bill, the Mining and Minerals Bill, the Wildlife Bill and the Irrigation Bill to assess the extent to which they conform to the letter and spirit of the Constitution.
2. Conduct County visits to ensure broad and robust public participation on the Community Land Bill.
3. Engage citizens in mining areas to understand matters pertaining to environmental safety, equity in resource/revenue sharing, sustainability of resource exploitation and other related issues
4. Harmonize the existing policies, legislations, and administrative procedures in the environment and natural resources sector.

3.3 Activities under Public Service and Leadership Thematic Area

Public Service and Leadership thematic area is concerned with matters relating to Chapter Six and Chapter Thirteen of the Constitution. Chapter Six is on Leadership and Integrity whereas Chapter Thirteen is on Public Service. Public officers include State officers who make up the public service and are the key implementers of the Constitution. Public officers are expected to uphold the national values and principles set out in Constitution and develop strategies to ensure realisation of these principles. These include reviewing organizational processes, structures, policies and legal frameworks to identify areas that require amendment so that they conform to

the Constitution. The values enshrined in the national values and principles of governance in Article 10, the values and principles of public service in Article 232 and the guiding principles of leadership and integrity in Article 73 of the Constitution are expected to underpin the work and ethics of all public officers

During the second quarter, the thematic area continued to engage with an array of stakeholders in the development and review of key legislation under the Public Service and Leadership thematic area.

► **Development of Legislation, Policies and Procedures**

a. Public Service Commission Act, 2012

The Public Service Commission Bill, 2012 was reviewed and finalized during the first quarter of 2012. It was then forwarded to the office of the Attorney General, presented and debated in Parliament and enacted on 18th May 2012. The Act brings into operation the Public Service Commission as contemplated in Article 233 of the Constitution.

b. Leadership and Integrity Bill, 2012

The Commission for the Implementation of the Constitution received the Leadership and Integrity Bill, 2012 on 19th June 2012. The Leadership and Integrity Bill is intended to give effect to Chapter Six and establishes mechanisms for the effective administration of Chapter Six principles. The Bill further seeks to promote ethics, integrity and servant leadership among State Officers.

The Bill is under review by the Commission and the Public Service and Leadership thematic area has planned a stakeholders' forum to review the Bill. Following the stakeholder's forum, there will be a plenary session and a round table meeting to finalize the review of the Bill before it is forwarded to the office of the Attorney-General for onward transmission to Cabinet and Parliament.

c. State Officers Vetting Bill, 2012

The Association of Professional Societies in East Africa (APSEA) embarked on the development of a State Officers Vetting Bill last year. The Bill has undergone various review process and on 3rd July 2012 APSEA hosted a breakfast meeting to review the Draft State Officer Vetting Guidelines Bill, 2011. CIC is waiting for the Bill to be forwarded for further review and input.

► **Other Thematic Activities under the Public Service and Leadership Thematic Area**

During this quarter, the Public Service and Leadership thematic area began auditing of appointments of members of various institutions. This exercise will highlight the gaps and challenges that exist in appointments, particularly those without clear criteria and guidelines. The Constitution in Article 232(1)(h) requires adequate and equal opportunities for appointment, training and advancement at all levels of the public service, for:

- a. Men and women;
- b. The members of all ethnic groups; and
- c. Persons with disabilities.

d. Public Service Regulations 2012

The Public Service Commission has developed regulations for Public Officers, which were forwarded to CIC on 28th June 2012 for review against the standards of the Constitution. The

thematic area is currently reviewing the regulations and will consult with the Public Service Commission in the finalization of these regulations.

► Donor Support/Engagement of Consultants

The thematic area has engaged the services of a consultant in the review of the Leadership and Integrity Bill.

► Challenges Faced by the Public Service and Leadership Thematic Area

Some of the challenges faced by the thematic area are:

- i. Delay in the enactment of the Public Service Commission Bill. Although CIC completed the review of the Public Service Commission Bill on 26th January 2012, the Bill was not enacted until 18th May 2012. There was no reason given for the delay in the enactment of the Bill.
- ii. Delay in the appointment of members of the Ethics and Anti-Corruption Commission. The Ethics and Anti-Corruption Commission was established under the Ethics and Anti-Corruption Commission Act, which was enacted in August 2011. However, to date, no commissioners have been successfully appointed. There have been challenges in the appointment process ranging from gender balance and lack of consultation, to challenging the appointment of some candidates in court. Though the Ethics and Anti-Corruption Commission has continued to function, it is imperative the Commissioners are appointed as soon as possible to bring the Commission into full operation.

► Recommendations – addressing the challenges

There is need to urgently address the delay in appointment of commissioners for the Ethics and Anti-Corruption Commission.

► Activities planned for the next quarter

The thematic area has planned the following activities for the next quarter:

1. **Finalizing and forwarding the Leadership and Integrity Bill, 2012 for enactment.** The thematic area will finalize the review of the Leadership and Integrity Bill, 2012 and forward it to the relevant institution for its enacted before 27th August 2012.
2. **Engaging with the State Corporations.** The thematic area has scheduled a forum in the next quarter to engage with the State corporations. The purpose of such a forum is to sensitize the State corporations on what is expected of them in the constitution implementation process. CIC will also use this forum to review the mode of engagement between CIC and State corporations.
3. **Finalize the review of the Public Service Commission Regulations.** The Public Service and Leadership thematic area will finalize the review of the Public Service Commission regulations, which were forwarded to CIC.
4. **Legislation on Values and Principles in the Public Service (Article 232).** The thematic area plans to continue engaging with the Public Service Commission in overseeing the legislation of values and principles as contemplated in Article 232.
5. **Public Service Management Bill.** The thematic area has been anticipating the Public Service Management Bill and we hope that in the next quarter, the Bill will be forwarded to CIC for review.
6. **State Officers Vetting Bill.** CIC will engage with the relevant institutions in the review of the State Officers Vetting Bill after the Bill is forwarded to CIC.

3.4 Activities under the Representation of the People and the Legislature Thematic Area

The objective of the Representation and the Legislature thematic area is to ensure that the policies, laws, systems, structures and administrative procedures developed or reviewed and applied at all levels of elections, in every political party, in parliamentary affairs, and in other departments, are consistent with the letter and the spirit of the Constitution.

Ultimately, the thematic area seeks to have all the people of Kenya, including leaders, respect the rule of law, uphold national values and live by the Constitution in a united, peaceful and prosperous nation.

► Status of Development of Bills/Policies/Administrative Procedures

a. The Election Campaign Financing Bill, 2012

The Election Campaign Financing Bill, 2012 seeks to provide limits to funding of elections and referenda. It does this by providing for the management, spending, regulation and transparent accountability of funds during the nomination process, election campaigns, elections and referenda.

CIC began its internal review of the Bill with a committee meeting on December 2011, followed by a stakeholder meeting in February 2012 and a plenary meeting in March 2012. On the 5th of March 2012, CIC, together with representatives from the Attorney General's office, KLRC, IEBC and the office of the Registrar of Political Parties held a roundtable on the Bill. It was agreed that the IEBC and KLRC needed to review and redraft the Bill, after which a second roundtable meeting would be held.

As of end of June 2012, the Commission is still not in receipt of the Bill, which should be enacted by August 2012. Having officially written to the office of the Attorney General to forward the Bill to the Commission, CIC continues to wait for the Bill in order to review it before another roundtable is held and it is published.

b. Article 119: The Right to Petition Parliament

CIC has been expecting to receive this bill from the office of the Attorney General given that its timelines as per the schedule agreed on between CIC, The AG, CIOC and KLRC in Naivasha in January 2012 have passed. CIC has, more than once, written to the AG requesting the Bill and looks forward to receiving it.

c. The Election Regulations, 2012

CIC awaits the regulations in relation to the Elections Act 2011 and the Political Parties Act, 2011. The Commission will need to check the constitutionality of the regulations ahead of the next general elections.

d. Other Regulations

CIC looks forward to receiving regulations and administrative procedures, including Standing Orders from Parliament (for national and county assemblies) and the Registrar of Political Parties. These are urgent given that the elections are scheduled for March 2012.

► Working with stakeholders and the people of Kenya

Preparations are underway for workshops with representatives of the young people of Kenya in each of the 47 counties to discuss how they can be involved in the implementation of the Constitution of Kenya 2010 and particularly in the next elections. The preparations include developing a framework on how CIC will work with the Ministry of Education and Ministry of public works in the new dispensation.

► Challenges

- i. A number of the provisions in the Elections Act 2011 and the Political Parties Act 2011 are unconstitutional. Since last year, CIC has alerted the office of the Attorney General to the same but the issues have not been addressed, nor were they included in the Statute Law (Miscellaneous Amendments) Bill.
- ii. In addition, during the parliamentary discussions of the Miscellaneous Bill, substantive changes to the Acts were introduced without prior consultations with the people of Kenya. This is a disturbing trend of making major amendments to law without public involvement.
- iii. Continued delay in forwarding the Article 119 (Right to Petition Parliament) Bill and the Campaign Financing Bill to CIC. Within the context of the next general elections, the Bill should be enacted by August 2012 so as to meet the timelines set in the Constitution and the Elections Act, 2011.
- iv. Non-responsiveness by some implementers especially on aspects relating to elections and preparations for the new dispensation.
- v. Lack of guidelines on the shape of and hence the framework which will guide the national government in its activities in a devolved system. This is important in guiding the ministries to develop systems that will operate after the next general elections

► Activities for the Next Quarter

1. Review of the Campaign Financing Bill;
2. Review of the legislation on the right to petition Parliament required to implement Article 119 of the Constitution;
3. Review of the Public Service Management Bill, which affects the staff to be employed in the Parliamentary Service Commission;
4. Review of policy papers and Bills from the Education Sector;
5. Development of a CIC framework on how to work with ministries to aid the Commission in monitoring and facilitating their implementation of the Constitution;
6. Development of a CIC framework on how to work with the Registrar of Political Parties;
7. Engagement of the Kenyan youth in the forty-seven counties in the constitution implementation process;
8. Working with the Judiciary to put in place a system to bring about the realisation of Article 105 of the Constitution (concluding election petitions within 6 months);
9. Continuing to monitor, facilitate, and oversee the implementation of the electoral system and process, including the preparations for events before and after the next general elections.

3.5 Activities under Executive and Security Thematic Area

During the second quarter of the year, the Executive and Security thematic area held consultative meetings with the Executive and National Security Organs to discuss implementation of the Constitution generally and legislation required by the Constitution to implement Chapter Nine and Fourteen of the Constitution specifically. The Following meetings and events took place:

► The Executive

a. Office of the President

The Commission has not received any progress reports on implementation of the Constitution from the Office of the President and Cabinet Office. This lack of information raises concerns as the Office of the President and the Cabinet Office should play the leading role in ensuring full implementation of the Constitution and realization of an effective executive administration that exercises authority in compliance with the Constitution. A failure of the Executive to report on its progress frustrates the Commission's mandate to oversee, facilitate and monitor the implementation process.

There has also been an inordinate delay in the publication and tabling of the Assumption of Office of the President Bill, 2012 which was forwarded to the Attorney General on 7th February 2012. This Bill must be enacted in advance of the forthcoming general elections.

The thematic area is also awaiting progress reports from the Office of the President and the Power of Mercy Committee on the implementation of Article 133 on the Power of Mercy and the formulation of the regulations required to operationalise the Power of Mercy Act, 2011.

b. The Attorney-General

The Office of the Attorney General has not submitted any report on implementation of the Constitution to the Commission. Implementation of the Constitution is a collective initiative and all State organs are obligated to do so.

c. Director of Public Prosecutions

The Office of the Director of Public Prosecution held meetings to discuss its strategic plan and the proposed the Office of the Director of Public Prosecutions Bill to give effect to Article 157 of the Constitution.

The Commission was invited to attend the meetings. Some of the issues discussed were the necessity of prioritizing the full implementation of Article 157 and other values and principles of the Constitution.

Article 157 of the Constitution guarantees the independence of the Office of the Director of Public Prosecutions and emphasizes the importance of public interest and participation, the interests of the administration of justice and the prevention of abuse of the legal process in the discharge of prosecutorial powers. The Commission shall review the proposed Bill once submitted to ensure that the Bill adequately addresses the constitutional requirements.

► Security

Chapter Fourteen of the Constitution provides for national security organs namely; the Kenya Defence Forces, National Intelligence Service and National Police Service.

d. The Kenya Defence Forces

During the second quarter, the Commission met the Kenya Defence Forces regarding the implementation of Chapter Fourteen of the Constitution, and in particular, the implementation of Articles 239(6), 240 and 241 of the Constitution.

Pursuant to Article 239(6), the Kenya Defence Forces developed the Kenya Defence Forces Bill, which provides for the functions, organisation and administration of the Kenya Defence Forces. The Bill was submitted to the Commission for review. The Bill is now awaiting Cabinet approval to allow for publication and tabling of the Bill before the National Assembly for debate. The Commission commends the cooperation afforded by the Ministry of State for Defence and the Kenya Defence Forces in the review and finalization of the Kenya Defence Forces Bill.

The Commission shall in the next quarter review administrative measures and subsidiary legislation that operationalise the Kenya Defence Forces Bill, once it is enacted, to ensure that the administrative measures conform to the letter and spirit of the Constitution and the Kenya Defence Forces Act, 2012.

The Commission notes with gratitude the role played by serving and retired members of the Kenya Defence Forces in enriching the Bill. The public, civil society actors amongst others contributed to the Bill online and in various forums held by the Commission to discuss the Bill.

e. National Intelligence Service

The Commission is in the process of reviewing the National Intelligence Service Bill, which gives effect to Articles 239(6) and 242 of the Constitution. The Commission appreciates the cooperation afforded by the National Security Intelligence Service in the review of both the National Intelligence Service and National Security Council Bills. The two Bills are now awaiting finalization by the Commission at a roundtable meeting involving the National Intelligence Service, Ministry of State for Provincial Administration and Internal Security, the Attorney General and KLRC.

f. National Police Service

The Ministry of State for Provincial Administration and Internal security, the Administration Police Service and the Kenya Police Service have not submitted reports to the Commission on activities undertaken by the respective organs to implement the Constitution in the second quarter of the year.

The Commission has contacted the Ministry and other relevant organs on the position of implementation of the Constitution ahead of the forthcoming election. The Commission notes that despite the enactment of the National Police Service and National Police Service Commission Act, the two Acts are yet to be operationalised.

The delay in the appointment of the Inspector General of Police and establishment of the National Police Service Commission is a significant setback in the realization of requisite reforms in the police sector as envisioned in the Constitution and the two Acts. The Commission has sought the intervention of the Executive and National Assembly to unlock the stalemate.

► Donor support

The thematic area received support from IDLO.

► **Planned activities for the next quarter**

1. The Thematic Area shall review administrative measures required to implement the Constitution and operationalise the following legislations—
 - a. National Police Service Act, 2011
 - b. National Police Service Commission Act, 2011
 - c. Kenya Defence Forces Act (upon enactment)
 - d. National Intelligence Service Act (upon enactment)
 - e. Independent Policing Oversight Authority Act, 2011
 - f. Power of Mercy Act, 2011
 - g. Assumption of Office of the President Act, (upon enactment)
 - h. National Security Council Act (upon enactment)
2. Review of the National Security Policy formulated by the National Security Council
3. Review of the military and defence policies formulated by the Ministry of State for Defence and the Kenya Defence Forces.
4. Review of the National Intelligence policy formulated by the National Intelligence Service.
5. Review of the National Youth Service Act to align it with the Constitution.
6. Review of the national policing policy developed by the Ministry of State for Provincial Administration and Internal Security and the Inspector-General of the National Police Service.
7. Review of other policies as shall be submitted to the Commission in relation to the implementation of Chapters Nine and Fourteen of the Constitution.
8. Review of the national prosecutions policy formulated by the Office of the Director of Public Prosecutions.
9. Work with Chapters Nine and Fourteen implementing agencies to develop implementation work plans.
10. Participate in the implementation activities for purposes of monitoring and evaluating implementation of the Constitution by the relevant Chapters Nine and Fourteen State organs.

3.6 Activities under the Judiciary and Constitutional Commissions Thematic Area

The Judiciary and Constitutional Commissions thematic area is concerned with the constitutional establishment and institutional reform of the judiciary and constitutional commissions as provided in Chapters Ten and Fifteen of the Constitution of Kenya 2010. It addresses such matters as the development, review, enactment and amendment of legislation, policies and administrative procedures required to ensure effective and timely implementation of the Constitution. The various activities undertaken by the team during this quarter are as follows:

► **Stakeholder engagements**

a. Open Session of the Judges and Magistrates Vetting Board

On 25th April 2012, the Judges and Magistrates Vetting Board held an open session at Kenyatta International Conference Centre (KICC) to release a report of its findings on suitability of nine Court of Appeal judges to continue serving in the judiciary. Members of the public and the press were invited to hear the Board's findings. CIC attended the session. The Vetting Board found four of the judges unfit to hold their offices while the other five were cleared to continue in judicial service. It found that the four judges lacked independence, showed bias towards the high and mighty in society, favoured impunity and limited democratic expression.

It is our view that the decision of the Board will help restore public confidence in the Judiciary as well as support the values of accountability and integrity in the Judiciary as required under Articles 10(2)(c), 73(1)(a)(iv), 73(2) and 166(2)(c) of the Constitution of Kenya 2012.

b. Workshop for the Revision of the Supreme Court Rules

The Supreme Court held a three-day workshop to review the Supreme Court Rules at Mombasa Serena Beach Hotel from 14th to 16th May 2012. CIC was invited and attended the meeting. The workshop brought together all key stakeholders in the justice administration and provided them with an opportunity to review the Rules. The Supreme Court will take the feedback from the public as well as the discussions during the workshop into consideration as it works to finalize the Rules.

c. Stakeholders' Consultative Workshop on the Development of a Framework for Inclusion of National Cohesion and Integration Principles into Laws and Policies

The National Cohesion and Integration Commission (NCIC) held a workshop on 29th May 2012 to seek input to develop a framework for incorporating the national cohesion and integration principles into laws and policies of Kenya. The framework aims to provide a tool for inclusion of principles of national cohesion and integration into laws and policies of Kenya, particularly those principles that give effect to non-discrimination and equality requirements of the Constitution and National Cohesion and Integration Act, 2008. It will also help build capacity of NCIC personnel to monitor the development of laws and policies to ensure compliance with national cohesion and integration principles. CIC participated in the workshop.

d. Retreat of Constitutional Commissions and Independent Offices

CIC is committed to working with all constitutional commissions to ensure the letter and spirit of the Constitution is respected. In furtherance of its mandate under section 5(6)(b) of the Sixth Schedule of the Constitution, CIC attended a retreat of Chapter 15 Commissions and Independent Offices in Mombasa from 29th to 30th May 2012. The Retreat was organized by the Commission on Administrative Justice also known as the Office of the Ombudsman in collaboration with UN Human Rights Office in Nairobi under the theme "Towards protecting the rights and sovereignty of the people". The main objective of the retreat was to map out overlaps in the functions of the commissions and identify how best to address them for the benefit of citizens and to optimize the realization of human rights as enshrined in the Constitution.

e. Launch of the Judiciary Transformation Framework

On 31st May 2012, CIC attended the launch of the Judiciary Transformation Framework, 2012-2016 at Kenyatta International Conference Centre (KICC). The Judiciary Transformation Framework is the product of a highly consultative process involving all the constituent sections of the Judiciary – judges, magistrates, judicial staff and others affiliated to the justice sector. The Framework aims to provide general principles and goals to be pursued and methods of undertaking the transformation of the Judiciary. The Framework is anchored on four key pillars, which are: (a) People focused delivery of service; (b) Transformative leadership, organization culture and a professional, motivated staff; (c) Adequate financial resources and physical infrastructure; and (d) Harnessing technology as an enabler for justice. These four pillars are intended to be driven and implemented towards the realization of a further ten key result areas.

f. Fourth Meeting of the National Council on the Administration of Justice

The 4th meeting of the National Council on the Administration of Justice (NCAJ) was held at Nairobi Serena Hotel on 25th June 2012. During its third meeting, NCAJ resolved that nine additional members including CIC would be co-opted into the Council given the relevance of their individual visions, missions and objectives to those of the Council. The main objectives of the meeting were to receive progress reports from the NCAJ technical committee, to discuss NCAJ agencies' issues and to agree on how to complement each other's respective mandates in a well-coordinated and harmonized approach.

► Challenges

- There is a level of misunderstanding of respective mandates of constitutional commissions, which tends to inhibit collaboration in the implementation of the Constitution.
- Persistent disregard on the part of the Attorney General's Office of the previously agreed process of legislation and preparation of Bill for tabling before Parliament;
- Continued late submission by the Executive of Bills for preparation before tabling within the prescribed timelines; and
- Continued preparation of Bills in the absence of national policies.

► Activities planned for next quarter

The Judiciary and Constitutional Commissions thematic area has planned the following activities for the next quarter:

1. Review of the Magistrates' Court (Amendment) Bill and the Contempt of Court Bill;
2. Organize a workshop to review the progress in implementing the constitutional right of access to justice in Kenya; and
3. Work with the Judiciary and the JSC to review the rules of the court (the Chief Justice rules, the Court of Appeal rules, the Industrial Court rules, the Environment and Land Court rules and any rules for the subordinate court).

The Executive should make effort to prepare and adopt policies to guide legislation required to implement the Constitution

3.7 Activities under Devolved Government Thematic Area

The Constitution has fundamentally altered the previous governance framework of the country through far reaching reforms. The most critical of these reforms is the devolution of power through the creation of two levels of government: a national government and county governments made up of 47 counties. A number of enabling laws have been enacted for the effective implementation of devolution structures consistent with the provisions of the Constitution. The devolution Acts passed thus far, include:

1. County Government Act, 2012
2. Transition to Devolved Government Act, 2012
3. Intergovernmental Relations Act, 2012
4. Public Finance Management Act, 2012
5. Urban Areas and Cities Act, 2012

In keeping with Constitution requirements, public consultation were carried out to develop consensus on the structures and institutions of devolved government in the Acts. Article 119

confers every citizen with the right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing legislation.

Devolved Government thematic area monitors the effective implementation of the system of devolved government. In the next quarters of the year, CIC will embark on monitoring the execution of the Transition to Devolved Government Act, 2012.

The envisaged Transitional Authority is established by the Transition to Devolved Government Act, 2012 to operationalise transition to devolved government activities. The time pressure is high given the elections scheduled in less than a year from creation of the Transition Authority. The effective delivery on the transition activities will help prepare the country for the governance reforms provided for in the Constitution and ensure the effective and successful implementation of the devolved government. The CIC is keen to work closely with the authority to ensure successful and effective implementation of devolution.

► **Status of Development of Bill, Policies and Administrative Procedures**

The County Government Act and the Public Finance Management Act (PFM Act) 2012 have since been enacted into law. The County Government Bill, 2012 was finalized at CIC and sent to the Attorney General on 18th November 2011. A reviewed County Government Bill, 2012, was forwarded to the AG's office on 19th November 2011 after amending some provisions that had been flagged out. There was a post Cabinet review of the County Government Bill 2012, which was done at CIC, and the Bill forwarded to the AG's office on 13th January 2012. The bill was tabled in Parliament and subsequently passed by the National Assembly on 23rd of February 2012. The President declined to assent to the bill citing some provisions that were said to be unconstitutional and sending it back to Parliament for review. This resulted in a delay in the enactment of the County Government Bill, 2012. The PFM Bill was released from CIC on February 2012. The Bill was also delayed due to unresolved issues concerning public finance management at the two levels of government. Both laws were finally scheduled to be enacted in July 2012.

The five devolution laws were developed and reviewed separately and therefore quite possible carry some inconsistencies and contradictions in their relationship to the letter and spirit of the Constitution, and in the relationship among the five laws. As such, the thematic area has embarked auditing all the Acts on devolution for consistency with the Constitution and with one another. Subsequently, an advisory opinion will be given to Parliament.

► **Stakeholder engagements**

a. Meeting with the Association of Local Government Authorities of Kenya (ALGAK)

ALGAK requested a meeting to discuss contentious issues on the Urban Areas and Cities Act, 2012. In their opinion, the provisions on the population threshold and the management of the urban areas and cities were inadequate. They sought to ensure that the Urban Areas and Cities Act, 2012 adequately provides for the decentralized local government system. CIC welcomed ALGAK's request for a meeting to discuss the Urban Areas and Cities Act, 2012 on 21st June 2012.

b. Talks on the Constitution

The Devolved Government Thematic Area delivered talks to different institutions to sensitize citizens on the Constitution. The talks have been delivered at:-

National Museums of Kenya

A workshop was organized by the National Museums of Kenya to address issues under the Fourth Schedule of the Constitution on distribution of functions and responsibilities between the national and county governments, which directly affected the National Museums as a government agency. The senior programme officer under the thematic area presented a paper on distribution of function between national and county govern

Franciscan Sisters of St. Joseph

CIC facilitated a workshop for the congregation of Franciscan Sisters of St. Joseph (on the Constitution with reference to devolution of power. CIC identifies the religious community as key a stakeholder in the implementation and success of the Constitution. The workshop targeted different groups of the sisters and hence there were three different groups divided on the basis of age.



The Institute for Social Accountability (TISA)

TISA organized a meeting as a follow up to the forum held in 2011 to deliberate on non-state actors and CIC engagement on county reforms. The meeting under the theme, “Deciding on an effective county transition monitoring strategy,” brought stakeholders together, to develop a county transition monitoring strategy. CIC was invited to give a presentation and Commissioner Wanyande presented a paper on the status of devolution legislations and its implementation.

Kenya National Assembly

The Kenya National Assembly organized a two-day workshop focusing on county assemblies. The workshop brought together a carefully selected group of key actors, researchers and development partners to consider the implementation of devolved government, with very specific focus on county assemblies. The Devolved Government thematic area participated on behalf of CIC with Commissioner Wanyande presenting a paper titled “Kenya’s Experience with Decentralisation Before 2010”.

Recommendations

- CIC is still pursuing preparation of additional bills to provide for issues relating to national government and transition activities
- Bills passed by Parliament should be reviewed by CIC before forwarded for presidential assent.

► Proposed activities for the next quarter of 2012

1. Audit all legislation passed so far with a view to establishing:-
 - a. Any inconsistencies/contradictions within individual bills; across different legislations;
 - b. Any additional legislation required to effect devolution; and
 - c. Any legislation that is inconsistent with the letter and spirit of the constitution
2. Audit Civic Education Materials developed by civic education providers including CSOs, NGOs etc
3. Hold consultative meetings with ministries on their transition plans.
4. Monitor transition activities; work with Transition Authority to review administrative procedure necessary for effecting transition
5. Monitor violations in implementation of devolution
6. County visits to sensitize the public, ministries, state agencies, parastatals and local authorities on matters relating to transition activities and generally devolution.

3.8 Activities under Public Finance Thematic Area

The Public Finance thematic area is responsible for guiding and coordinating all activities aimed at implementing Chapter 12 of the Constitution. Since the commencement of the activities of CIC in January 2011, the Public Finance thematic area has undertaken numerous steps to facilitate, monitor and coordinate all stakeholders involved in the generation and development of a constitutionally compliant public finance management legal and institutional framework. The thematic area oversaw and facilitated the process leading to the passage of the Public Financial Management Act on the 27th July 2012. The Act is currently awaiting presidential assent. The passed law creates a consolidated framework for governing public finance, county public finance and intergovernmental fiscal relations in the context of Chapters Eleven and Twelve of the Constitution.

In the second quarter, the Public Finance thematic area undertook the following activities:

a. The passage of the Public Financial Management Bill:

Under Schedule 4 of the Constitution, the PFM Bill was required to be passed by the 26th of February 2012 since it contained provisions relating to the County Revenue Fund (Article 207) and financial control.

Due to oversight on the part of the legislature, the legislation was not passed on time and under intense pressure, Parliament extended the date for its enactment as authorised by Article 264 of the Constitution. The Bill was to be passed in July 2012.

b. The Budget process 2012

The thematic area reviewed the critical budget documents including the Budget Policy Statement and communicated its concerns both to the Treasury and to Parliament on the content of the Budget Policy Statement.

c. CBK Management and Staff Sensitization:

The Central Bank of Kenya (CBK) sought CIC's assistance in a bank-wide sensitization program on the Constitution for its 1,380-plus staff members, in line with the review of the CBK Act as required under Article 231 of the Constitution. The process lasted 4 weeks beginning 29th May 2012, and took the form of civic education on the Constitution and its impact on the CBK processes.

d. Constitution Implementation amongst Ministries and State Agencies:

The thematic area initiated discussions with ministries and state agencies clustered under the thematic area for purposes of monitoring the implementation of the Constitution. There have been positive responses so far, and many of these institutions have already put into motion the process of aligning their operations with the new Constitution.

The schedule below summarises the relationships and oversight of the relevant institutions:

► Activities Planned for the 2nd Quarter of 2012:

Due to the late enactment of the PFM Act, many of the activities planned by the thematic area especially on sensitization of Kenyans on the content of the law and its implications, had to be postponed. Furthermore, the planned review of the Kenya Revenue Authority Act and the Public

Audit Act has taken longer than anticipated. These will be pursued in the next quarter. This notwithstanding; the following activities have been planned for the third quarter;

1. Development of training and related materials for PFM implementers at Central government and counties level
2. Passage of Controller of Budget Bill – The draft Bill is awaiting an agreement on an appropriate date for the final roundtable after which the Bill will be presented to the Attorney General for publishing
3. Review of the Public Procurement and Disposal Act – The review of this critical legislation is ongoing under the leadership of the Procurement Authority. It is hoped that a draft Bill will be ready for discussion with stakeholders within the next quarter.
4. As documented here above the thematic area shall continue working with the listed ministries and state agencies so as to ably monitor the progress of implementation and compliance with the dictates of the Constitution of Kenya 2010.

4 Challenges and Impediments in the Implementation of the Constitution



The implementation process continues to be hampered by some challenges arising, including:

1. Delay in operationalising Chapter Fifteen Constitutional Commissions:

Delay in operationalising constitutional commissions established under Chapter Fifteen has affected implementation of the Constitution. For example, the delay in appointment of members of the Independent Policing Oversight Authority has affected progress in police reforms. The delay in appointment of members of the Ethics and Anti-Corruption Commission has been affected the Ethics Commission's operations. The challenges in the appointments range from failure to attain the constitutional requirement of gender balance, to lack of consultation between the appointing authorities and stakeholders, to challenging the appointment of some candidates in court.

2. Continued delay in forwarding Bills:

There is a critical delay in forwarding key Bills that are due for enactment by 26th August. Some of the Bills are crucial for the next general elections, as they will directly impact on processes leading to the elections. These include the Article 119 (Right to Petition Parliament) Bill, the Campaign Financing Bill, Leadership and Integrity Bill, National Government Bill, Parliamentary Service Commission Bill and Public Officers Vetting Bill.

3. Non-responsiveness:

Failure by some key government offices responsible for implementation to address issues related to the implementation process is a major challenge. There have been repeated attempts to seek reports and status updates on the specific implementation roles that these offices carry, but to no avail. This is particularly problematic when considering particular functions that relate to the next general elections and the resulting devolved government structures.

4. Lack of National Government framework:

There is an absence of guidelines on the shape and hence the framework of the national government operations in the devolved system. These guidelines are important in guiding the ministries to develop systems for use after the next general elections.

5. Statute Law (Miscellaneous) Amendment Bill, 2012:

The use of the Statute Law (Miscellaneous) Amendment Bills by office of the Attorney General and Parliament to introduce sweeping amendments to laws enacted for the implementation of the Constitution without reference to CIC or public participation is a challenge and a breach of the constitutionally sanctioned process for legislation required to implement the Constitution. See Annex IV for CIC's detailed position on this issue.

6. Bills forwarded to CIOC too late

Bills are forwarded to the CIOC too late hence the CIC cannot work on them effectively. Shortening of the maturity period deprives stakeholders of opportunity to input into the Bills. A good example is the Right to petition Parliament Act, 2011 and the Leadership an integrity Act, 2012.

7. Bills are not founded on policies

Where there are no policy frameworks to guide development of Bills, it leads to the laws being amended soon after they are enacted, as they may not be sufficiently comprehensive to cover the issues they deal with. For example the Elections Act, 2011 which had to be amended to allow the Speaker of the National Assembly to declare Kajiado North and Kangema Parliamentary seats vacant to clear the way for by-elections.

8. Bills being recalled or held back

Bills from originating Ministries being recalled or held back from publication after being agreed upon at roundtable meetings with CIC and other stakeholders.

9. Cabinet amendments clashing with the Constitution

Some provisions that Cabinet is introducing are proposing substantive changes to the Constitution. For example, the lengthy Miscellaneous Amendment Bill had some proposed amendments to the Constitution even though the Constitution is specific on how key amendments are to be done.

10. Executive activities on transition to devolved government

Preparatory activities relating to transition to county governments are not clear nor brought to light to ensure all stakeholders in the implementation process are onboard. Executive should work alongside with other implementers.

5 Recommendations to Address the Challenges in the Implementation of the Constitution

As has been the practice in preceding reports, and with a view to ensure implementation remains on track, the CIC recommends the following measures to address the challenges and impediments facing the implementation process.

1. **Fast tracking operationalisation of Chapter Fifteen (15) Commissions:**

The Executive should prioritise operationalization of constitutional commission to ensure key reforms are on track. Although the Ethics and Anti-Corruption Commission has continued to function, it is imperative that commissioners are successfully appointed and take up offices as soon as possible. The Police Service Commission is a fundamental organ and for the police reforms to be on track there is need to urgently address the issues hampering appointment of the members.

2. **Prioritisation of legislation with Constitutional timelines and those agreed to be enacted by the second year of promulgation of the Constitution (26th August 2012):**

There is need to ensure the Bills required for enactment within two years of promulgation of the Constitution and those agreed to be enacted within the same timelines are finalized in good time to avoid violating the timelines and to ensure process of development of Bills is on track.

3. **Need for a national government framework:**

CIC recommends development of a Bill to specifically provide for issues relating to operations of national government and transition activities from the existing structure to the two-tier system of government.

4. **Legislative Process:**

All bills, policies and administrative procedures should be reviewed by CIC to ensure technical soundness and consistency with the Constitution before they are enacted into law.

Annexes

Annex I

Political “Party-Hopping” By Sitting Members of Parliament

The Issue

In preparation for the forthcoming General Elections, Members of Parliament (MPs) have been realigning their political allegiances. This paper presents an analysis on whether a serving member of Parliament breaches the Constitution of Kenya 2010 when she/he moves to a party other than the one under which she/he was elected to Parliament. In considering this issue, the following questions are pertinent:

1. Does the Constitution allow for ‘party-hopping?’
2. If it does not, are the current MPs exempted from the application of such provisions in the Constitution until after the next general elections (see Section 10 of the Sixth Schedule to the Constitution and transition clauses)?
3. If the Constitution exempts MPs due to the suspension of Chapter 7, what are provisions of the previous Constitution, if any, are applicable on party hopping and are they still in force?
4. Does the Political Parties Act 2011, prohibit party hopping? If so, does it apply to serving MPs? If yes, what are the sanctions for party hopping?
5. Does the Political Parties Act 2011 apply retrospectively (under the previous Constitutional order)?
6. In light of the responses to these questions, what is the legality and constitutionality of party hopping by current MPs ahead of the 2013 general elections?

The Constitution and Political Party Membership

The Constitution prohibits the changing of party membership in the course of the term of an MP. Article 103 requires an MP who leaves the party under which she/he was elected to vacate their elected seat.

The relevant parts of the Article read:

Article 103 (1), The Office of a member of Parliament becomes vacant ... if, having been elected to Parliament as a member of a political party, the member of Parliament resigns from that party or is deemed to have resigned from that party ... (2) or as an independent candidate joins a political party;

The Article is clear on the fact that an MP in a political party vacates her/his seat when she/he resigns from that party.

However, the Sixth Schedule, Paragraph 2 suspends the operation of Chapter 8 including Article 103 until the next general elections. In light of this, Paragraph 3(2) of the Schedule of the 2010 Constitution saves the relevant provisions of the previous Constitution until the next general elections, which includes operations of Parliament. Specifically, these are sections 30-40, 43-46 and 48 to 58 of the previous Constitution.

The following is an excerpt of the table of contents of the former Constitution for an overview of the saved provisions-

Chapter III – Parliament

Part 1 – Composition of Parliament

- 30 – Legislative power.
- 31 – Composition of National Assembly.
- 32 – Election of elected members.
- 33 – Nominated members.
- 34 – Qualifications for election.
- 35 – Disqualifications for election.
- 36 – Attorney General to be member of National Assembly.
- 37 – Speaker of National Assembly.
- 38 – Deputy Speaker of National Assembly
- 39 – Vacation of seat in National Assembly.
- 40 – Vacation of seat in National Assembly upon resignation from party.
- 41 – Electoral Commission.
- 42 – Constituencies.
- 42A – Conduct of elections.
- 43 – Qualifications and disqualifications for registration as a voter.
- 44 – Determination of questions as to membership of National Assembly.
- 45 – (Repealed.)

Part 1A The Parliamentary Service and the Parliamentary Service Commission.

- 45A – Parliamentary Service
- 45B – Parliamentary Service Commission

Part 2 – Legislation and Procedure in the National Assembly

- 46 – Exercise of legislative power of Parliament.
- 47 – Alteration of Constitution.
- 48 – Restrictions with regard to certain financial measures.
- 49 – Oaths to be taken by members of National Assembly.
- 50 – Presiding in National Assembly.
- 51 – Quorum in National Assembly.
- 52 – Powers of President in Parliament.
- 53 – Official languages.
- 54 – Voting in National Assembly.
- 55 – Unqualified persons sitting or voting.
- 56 – Regulation of procedure in National Assembly.

Part 3 – Summoning, Prorogation and Dissolution of Parliament

- 57 – Powers, privileges and immunities of National Assembly
- 58 – Summoning of Parliament.

Section 40 of the former Constitution provides that where a member of the National Assembly who, having been elected with the support of or as a supporter of a political party, or having accepted appointment as a nominated member, resigns from that party at a time when that party is a parliamentary party; or after the dissolution of that party, been a member of another parliamentary party resigns from that other party at a time when that other party is a parliamentary party, shall vacate his or her seat forthwith unless in the meantime that party of which he was

last a member has ceased to exist as a parliamentary party or he has resigned his seat. However, this section does not apply to the Speaker of Parliament.

As stated above Section 40 of the former Constitution applies with regard to serving members of Parliament and a reading of the provision is clear that an MP vacates office upon resignation from the party, which supported that member to Parliament or nominated that member to Parliament. Section 14(4) of the Constitution of Kenya 2010 also prohibits multiple party memberships.

Political Parties Act

The Constitutional provision highlighted above is buttressed by Section 14(5) of the Political Parties Act 2011 which provides that a person who, while being a member of a political party: forms another political party; joins in the formation of another political party; joins another political party; in any way or manner, publicly advocates for the formation of another political party; or promotes the ideology, interests or policies of another political party; or campaigns for another political party, or a candidate of another political party commits an offence.

The Political Parties Act 2011 repealed the Political Parties Act No. 10 of 2007. However, the transitional provision [Section 47(1)] obliges political parties existing immediately before the commencement of the 2011 Act to comply with the provisions of the 2011 Act, within one hundred and eighty days from the commencement date. The express provision for parties to transit and the laws of interpretation clearly indicate that the 2007 Act is not in force and cannot therefore be the basis of determining the eligibility of members of parliament to belong to political parties.

In any event to pre-empt any assertion that the 2007 Act permits party defections, Section 17 of the repealed Political Parties Act clearly prohibits express and constructive party abandonment.

Legal Analysis

In light of the foregoing it is quite clear that the Constitution of Kenya 2010 as read together with the former Constitution and the Political Parties Act 2011 prohibits express and constructive political party resignation by Members of Parliament.

Where a Member of Parliament has given a resignation in writing, that member should vacate office on the day the resignation takes effect. The Speaker of the National Assembly should then move to declare the seat vacant. In the case of constructive resignation then each case will have to be examined in its own merits to determine whether the person can be deemed to have resigned.

On constructive determination, in *Republic V. Speaker of the National Assembly & Another ex parte Aboubakar*,¹ the High Court at Mombasa considered an application seeking an Order of Mandamus against the Speaker of the National Assembly to compel him to declare the Likoni parliamentary seat vacant. In addition, orders were sought prohibiting the then Member of Parliament from continuing to occupy the Likoni parliamentary seat, and prohibiting him from presenting himself as a Member of Parliament under Shirikisho Party. The basis of the argument, which preceded enactment of the anti defection clauses, was that the MP had issued a statement

1 *Civil Misc. App. No. 184. of 2002.* (2008, KLR (Election Petitions at pp, 420)

at a public function stating that he had defected from Shirikisho Party which had sponsored him to Parliament. In determining whether the member had defected from Shirikisho party the court noted that in the absence of a written resignation:

“...one cannot ignore certain conducts that, in general, would be viewed as acts that even though a Member of Parliament was elected with support of a party, he has ceased for all practical purposes to be a member of that party. For example, if after his election to parliament with the support of that party he registers himself as a member of another party, and/ or accepts political posts in that other party. ...However, such conduct that would be treated as amounting to resignation must, in our mind, be such that any reasonable person will see it as a conduct that leaves none with any other conclusion but that the member is for all intents and purposes no longer a member of the party that sponsored him.”

Although it has been argued that Paragraph 10 of the Sixth Schedule to the Constitution protects a current MP and allows her/him to continue as the National Assembly for its unexpired term, this provision does not negate the spirit of the Constitution. In the circumstance it will be a legal absurdity to argue that the applicable provisions for removal of an MP from holding office do not apply.

Annex II

Appointment of the County Commissioners by His Excellency the President

The current provincial administration lacks legal backing. Although to some extent provided for under the repealed Special Districts (Administration) Act, Cap. 105 and Chiefs Authority Act, Cap. 128. The provincial administration is anchored on presidential decrees authorised under the former Constitution.

Under section 24 of the former Constitution the President has powers to constitute and abolish offices for the Republic of Kenya, make appointments to any such office and terminate any such appointment. Further, section 18 of the former Constitution provides that the responsibility for any of the business of the government of Kenya, including the administration of any of the departments of Government, may be assigned to the Vice-President and the several Ministers as the President may, by directions in writing, determine.

It is on the basis of presidential decrees that the provincial administration has existed. Until the Constitution of Kenya 2010 was promulgated, the President has directly appointed the Provincial Commissioners and Deputy Provincial Commissioners.²

This notwithstanding, the restructuring of the provincial administration, recognized under section 17 of the Sixth Schedule to the Constitution must be realized through a clear legal framework, backed by a comprehensive policy to ensure that the restructured provincial administration accords with and respect the devolved government structure established under the Constitution and sets forth the functions and mandate the provincial administration vis-à-vis the dictates of the Fourth Schedule to the Constitution.

As is the case for all policies and legal framework affecting the public, transparency and adequate public participation must be sought. The proposed policies and legislation must be constitutionally sound, coherently fit into the devolved structure, and comply with enacted relevant Acts as well as Bills currently pending scrutiny and debate in Parliament.

Currently neither devolved structures of the national government and the county governments exist. While it is not unconstitutional for the central government to deploy officers, by whatever title, to discharge central government function in the counties pending the establishment of national and county governments, it is unconstitutional to give effect to section 17 of the Sixth Schedule to the Constitution by merely appointing county commissioners with disregard for constitutional dictates.

The Constitution recognizes the need to restructure the existing provincial administration and provides for a timeline (five years) within which the proposed restructuring must be realized. In

² <http://www.statehousekenya.go.ke/news/july09/2009160701.htm>.

that case, there is ample time for the national government to evaluate the provincial administration and generate an ideal structure that respects and accords with the devolved structure amongst other Constitution dictates.

Appointment of members of the restructured provincial administration

Provincial administration forms part of the public service, hence bound by the provisions of Chapter Thirteen and other relevant provisions of the Constitution. The proposed county commissioners are public officers within the meaning of Article 260 of the Constitution.

Article 260 defines a “public officer” as — (a) any State officer; or (b) any person, other than a State Officer, who holds a public office. A “public office” is defined as an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.

According to Article 234 (2) of the Constitution, the Public Service Commission is constitutionally mandated to, subject to the Constitution and legislation, establish and abolish offices in the public service; and appoint persons to hold or act in those offices, and to confirm appointments. Article 132(4) (a) of the Constitution, although suspended, recognizes the necessity for the President to comply with the recommendations made by the Public Service Commission in the establishment and abolition of public offices.

Article 132(4) (a) states as follows:

“The President may— perform any other executive function provided for in the Constitution or in national legislation and, except as otherwise provided for in the Constitution, may establish an office in the public service in accordance with the recommendation of the Public Service Commission.”

Having said the above, the Public Service Commission has the constitutional mandate to appoint the county commissioners, unless it delegates in writing to any one or more of the Public Service Commission members, or to any officer, body or authority in the public service, as stipulated under Article 234 (5) of the Constitution. In the absence of a delegation, the President acted in violation of the Constitution.

Section 24 of the former Constitution that gives the President powers to appoint persons to hold public offices, are amongst other provisions on the executive that are saved by section 3(2) of the Sixth Schedule to the Constitution. Nonetheless, section 7 of the Sixth Schedule requires that all law in force immediately before the effective date should be construed with the alterations, adaptations, qualifications and exceptions necessary to bring **into conformity with the Constitution**.

Further, section 7(2) of the Sixth Schedule states:

- (2) If, with respect to any particular matter—
 - (a) A law that was in effect immediately before the effective date assigns responsibility for that matter to a particular State organ or public officer; and
 - (b) A provision of the Constitution that is in effect assigns responsibility for that matter to a different State organ or public officer; the provisions of the Constitution prevail to the extent of the conflict.

In light of the above, the Constitution, both in letter and spirit, requires that the appointment into any public office shall be by the Public Service Commission, unless delegated in writing. In addition, Chapter Thirteen of the Constitution is not suspended; as such the appointment and recruitment procedure must adhere to Articles 10 and 232 amongst other relevant provisions of the Constitution.

Particularly, Article 232(1)(f)-(i) which states as follows:

232 (1) The values and principles of public service include—

- (f) Transparency and provision to the public of timely, accurate information;
- (g) Subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- (h) Representation of Kenya’s diverse communities; and
- (i) Affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—
 - (i) men and women;
 - (ii) The members of all ethnic groups; and
 - (iii) Persons with disabilities.

Additionally the values and principles under the Constitution bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.

Annex I

Judgment on the Appointment of County Commissioners

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
PETITION NUMBER 208 OF 2012**

Centre for Rights Education & Awareness (CREW).....1St Petitioner
Caucus for Women’s Leadership (Caucus)2Nd Petitioner
Women in Law and Development in Africa (K).....3Rd Petitioner
Development through Media (DTM)4Th Petitioner
Coalition of Violence agaisnt Women (COVAW).....5Th Petitioner
Young Women Leadership Institute (YWLI).....6Th Petitioner
International Centre for Policy & Conflict.....7Th Petitioner

VERSUS

The Attorney General.....Respondent

Consolidated With

Misc. Appl. Judicial Review No 207 Of 2012

Patrick Njuguna.....1St Petitioner
Charles Omanga2Nd Petitioner

VERSUS

Attorney General1St Respondent Minister
for Internal Security
And Provincial Administration2Nd Respondent

Summary of the Judgement

1. The Petition and Judicial Review Application question the constitutionality of the appointment or deployment by the President of 47 County Commissioners by way of Gazette Notices issued on the 11th and the 23rd of May 2012.
2. The petitioners seek a declaration that the act of the President in making the appointments is unconstitutional, null and void. The Judicial Review Misc. Application seeks orders of certiorari, mandamus and prohibition in respect of the appointments.

Facts of the Case

3. By Gazette Notice No. 6604 dated 11th May 2012, the President appointed 47 persons to be County Commissioners. On the 17th of May 2012, the Petitioners filed their petition and application challenging the appointments. On the 23rd of May 2012, by Gazette Notice No 6937 of 23rd May 2012 titled 'Deployment of County Commissioners', the President revoked Gazette Notice No. 6604. Gazette Notice No. 6937 changed the words used in Gazette Notice No. 6604 from 'Appointment' to 'Deployment' and 'appoint' to 'assign.' It also changed the provisions of the Constitution and the law relied on, and the functions that those 'deployed' would perform. However, the names of those appointed and the counties they were to serve remained the same. Of the 47 persons 'appointed' or 'assigned' as County Commissioners in the two Gazette Notices, 37 were of the male gender while 10 were of the female gender.
4. The petitioners challenge the acts of the President in making the 'appointment' or 'deployment' as being unconstitutional and in violation of Articles 10, 27, and 132 of the Constitution. On their part, the respondents defend the acts of the President and deny any violation of the provisions of the Constitution as alleged by the petitioners.

Advocates' Submissions

5. The submission by the petitioners was that the appointment of the County Commissioners by the President did not meet five essential principles of the Constitution as follows:
 - i) The national values and principles set out in Article 10 of the Constitution, in particular the principles of non-discrimination and protection of the marginalized, democracy and participation of the people had been violated in the non-competitive nature of the appointments. The principle of transparency and accountability had also been violated, as well as the principles of good governance and integrity, which required that those appointed should be appointed in a transparent manner so that their integrity can be put under scrutiny;
 - ii) The principles of gender equality set out in Article 27. In Article 27(6) and (7), the Constitution made a promise to the different genders in Kenya. Article 27(8) requires that the state takes legislative and other measures to ensure that it follows the principle that no more than two thirds of any elective and appointive positions are of the same gender. "Other measures" can only mean measures outside legislation such as the current appointments;
 - ii) The principle of consultation deriving from the National Accord and Reconciliation Act as enshrined in Section 3(2) of the Sixth Schedule to the Constitution. There was no consultation with the Prime Minister as required under the National Accord and Reconciliation Act;
 - iv) Article 132 on the exercise of Presidential Powers. There were no powers vested in the

President to make such appointments. If the President had power, such powers would be found under Article 132 which sets out Presidential Powers and makes the exercise of such powers subject to approval by Parliament; the restructuring of the Provincial Administration contemplated under Section 17 of the Sixth Schedule did not give power to the President to appoint County Commissioners; Such restructuring could only take place so as to accord with the devolved government structure and within an established legal framework. Since the necessary legislation was not in place, the positions that the President had purported to fill through deployment do not exist, hence the exercise of such powers by the President was in a vacuum and therefore a nullity as being in excess or want of such presidential powers.

6. On the other hand the respondents submitted that they had adhered to the principles in Articles 10, 27 and 132 in making the appointments. They contended that although Gazette Notice No 6604 of 11th May 2012 talks of 'appointment of County Commissioners,' the position was clarified as 'Deployment of County Commissioners' and the Gazette Notice of 11th May 2012 revoked on 23rd May 2012; that the matters before the court have been overtaken by events. A position the court did not agree with.
7. The respondents also argued that the appointments were made 'in the spirit of progressive realization' of the principle contained in Article 27(8). The petitioners referred to the provisions of Article 21 and 54 arguing that had the intention been to subject the principle in Article 27(8) to the progressive realization argument, the Constitution could have provided so expressly.
8. The respondents contend that the deployment was of senior officers within the Provincial Administration in line with the requirements of the Constitution and national values and principles under Article 10; that a criteria was used to identify suitable officers for deployment which included performance, seniority, regional balance and gender; that the officers serving in the administration must undergo training as paramilitary officers and take leadership courses unique to their career, and that in view of this requirement, officers not serving in the scheme of service for administrators are not qualified for appointment as County Commissioners. The state has only 26 women out of 286 District Commissioners, and based on the selection criteria the respondents did not have sufficient numbers of the female gender to meet the constitutional requirement under Article 27(8) because only 10 women were qualified. Therefore there was no violation of the provisions of Article 27(8).
9. On the petitioners' contention that the appointment was subject to Parliamentary approval, the respondents submitted that such approval was not necessary as the County Commissioners are not included in Article 132(f). The act of the 2nd respondent was a deployment or assignment of duties, not employment.
10. With regard to Section 17 of the Sixth Schedule, the respondents conceded that the restructuring of Provincial administration is to be done within 5 years and the process was on-going and a draft National Administration Bill was in the process of enactment and would be addressed in a consultative and inclusive exercise; that the deployed officers would operate within the existing legal framework and structure of the Provincial Administration and once a new structure is in place, then new appointments can take place.

Findings Of the Court

11. The court in its determination considers the following issues:
 - i. Fidelity to national values and principles. Gender equity as provided in Article 10(b) and 27(8). The appointments resulted in 21.3% of the appointees being female and

78.7% of the appointees being male. The appointments do not meet the constitutional requirements at Article 27(8) and on the face of it, violate the non-discrimination provisions of Article 27.

- ii. Public participation and consultation. With regard to public appointments, it is critical that an opportunity is given to all who may be interested in the position to apply, and for anyone who may have a view on the suitability of a proposed appointee, particularly with regard to integrity and competence, to be heard should they wish to be heard;
- iii. Whether the appointment were rightly done under Section 23 and 24 of the old Constitution. These provisions of the former Constitution were not saved by the Transitional Provisions contained in Schedule 6 of the Constitution. Consequently, the President could not make any appointments under the former constitution. The offices and positions did not also exist hence it was not possible to deploy officers without creating the offices and positions first.
- iv. Section 17 of the 6th Schedule makes provision for the re-structuring of the Provincial Administration. While it does not spell out exactly how this is to be done, logic dictates that there must be some form of legislative and institutional framework to in consultation with county governments provide for and guide the restructuring process. There is clearly a failure by the Executive and the Legislature in not moving with speed to enact the legislation necessary to begin the process of restructuring the Provincial Administration.
- v. The President did not have power to appoint or deploy persons as County Commissioners. Even if he had had such powers under the Constitution, then he would have been required by the provisions of Section 29(2) set out above to consult the Prime Minister and to seek the approval of the National Assembly for the appointments.

12. In conclusion the court stated, although, the actions of the respondents were motivated by a desire to start the process of coordinating national government functions at the county level prior to the coming of the county governments following the forthcoming elections, anything that is done in order to implement the new Constitution must faithfully accord with the provisions of the Constitution.

13. In light of the above matters, the court founs as follows:

- i. The President had no power to appoint or deploy County Commissioners as he purported to do under Gazette Notice No. 6604 of 11th May 2012 and Gazette Notice No. 6937 of 23rd May 2012.
- ii. Even if the President had had power to make such appointments or deployments, the appointments or deployments violated Article 10 and 27 of the Constitution.
- iii. The purported deployment of County Commissioners by Gazette Notice No. 6937 of 23rd May 2012 was therefore unconstitutional, null and void.

Annex IV

CIC's Position on Matters Relating to the Current Statute Law (Miscellaneous Amendments) Bill on the Floor of the House (Parliament) to Amend:

(a) The Elections Act, 2011; and (b) the Political Parties Act, 2011.

1. Mandate of the Commission (CIC):

CIC makes this statement in line with its constitutional mandate as defined in section 5(6) of the sixth schedule to the Constitution of Kenya, 2010. Under this section, CIC's mandate is to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution of Kenya, 2010. The ultimate goal is to protect the sovereignty of the people, secure the observance by all state organs of democratic values and principles; and to promote constitutionalism.

2. The Process of Implementation:

In carrying out its mandate CIC seeks to ensure that State Agencies and indeed the people of Kenya adhere to the requirements of the Constitution of Kenya 2010. It is in this context that CIC seeks to address matters relating to the current attempt by Parliament to introduce far-reaching amendments to the Elections Act 2011 and the Political Parties Act 2011, which go to the root of the Constitution and violate various provisions and spirit of the 2010 Constitution.

Of particular concern to CIC is the proposed amendment by Parliament of the two statutes mentioned above in contravention of the established process for the preparation of any legislation intended to implement the Constitution. Article 261(4) requires all legislation intended to implement the Constitution to be prepared by the Attorney General in consultation with CIC before presentation to Parliament for Enactment. Article 10(2) prescribes the national values and principles of democracy and public participation in such a process.

3. The Statute Law (Miscellaneous Amendments) Bill 2012:

Statute Law (Miscellaneous Amendments) Bills are essentially intended to consolidate various minor amendments from different Statutes. These relate to the elimination of anomalies, repeal of any obsolete and unnecessary enactments and for general simplification. It is NOT the primary means by which substantive amendments to the law should be effected, particularly amendments that go to the root of the Constitution or otherwise impact on the process of implementation.

The Commission's considered view with regard to substantive amendments to existing statute laws is that proposals for such amendment and resultant amendment Bills should ordinarily result from proposals made by the Executive after following due process as set out in the Constitution.

It is light of this view that CIC expresses concern regarding the legislative process presently applied by the National Assembly to amend various Acts of Parliament that have been enacted since the promulgation of the Constitution of Kenya, 2010 through the Statute Law (Miscellaneous amendments) Bill 2012. The Commission (CIC) has reviewed the Bill and the proposed amendments thereto that have been proposed by Members of Parliament and finds this trend deeply disturbing.

4. Substantive Amendments that Impact on the Constitutional Order:

In the case of proposed substantive amendments that impact on the implementation of the Constitution and significantly alter the provisions of any existing Act, such proposals to amend should follow the full mandatory legislative process as outlined in Article 261 of the Constitution. This Article requires the Attorney General to consult with CIC in the preparation of any Bill intended for implementation of the Constitution before its tabling in Parliament. The purpose of CIC's involvement in the preparation of any such Bill is to ensure that its content is in line with the letter and spirit of the Constitution. In addition, the Constitution requires thorough and meaningful consultative process that satisfies the imperatives of public participation required by Article 10 in relation to all legislation and subsequent amendments that impact on the implementation of the Constitution.

The Commission is greatly alarmed by the numerous proposals by the National Assembly to use the Statute Law (Miscellaneous Amendments) Bill to amend crucial provisions of the Elections and Political Parties Acts. Worryingly some of the proposed amendments are clearly not intended for the purpose of reforming the law. Evidently, they are designed to secure the personal interest of currently serving Members of Parliament. This is in direct contravention of Article 116 of the Constitution as a few of the following examples demonstrate.

CIC is particularly concerned by the proposal:

- (a) to introduce additional remuneration to Members of Parliament and other Parliamentary officials through the Bill in violation of Article 116(3) (which prohibits legislation designed to confer benefits to sitting members of Parliament) which is an affront to the role of the now operational Salaries and Remuneration Commission and conflicts with Articles 73 and 75 (prohibition of State Officers acting with conflict of interest);
- (b) to waive the educational requirements for serving and previous elected officials in contravention of Articles 27 (on non-discrimination), 116(3) and 10 (which prescribes democratic ideals violated in this process);
- (c) to allow candidates seeking elective office to stand for one or more elective offices, which conflicts with Article 201 (prudent use of public funds, which multiple candidatures would misuse through consequent wasteful by-elections).
- (d) to allow presidential candidates and their running mates to be included in party lists which are intended to give opportunity to apply the principle of affirmative action contemplated by Article 90 of the Constitution in relation to representation of women, the youth, persons with disabilities and marginalized groups and communities. Such an amendment would defeat the intent of Article 90 if such candidates are allowed to take positions reserved for disadvantaged groups and;
- (e) other proposed amendments seek to legalize party hopping by current members of Parliament despite clear prohibitions on the same by Article 103 and Section 40 of the previous Constitution under which the MPs were elected.

5. The Need for Urgent Intervention:

The process being applied by Parliament to make these substantive amendments violates the constitutional process and the letter and spirit of the Constitution. Accordingly, if Parliament proceeds to pass the amendments as proposed, CIC will be duty bound to seek court intervention on grounds of unconstitutionality, unless His Excellency the President intervenes by declining to assent to such Bills.

In the meantime, CIC has requested the Speaker of the National Assembly to reject any attempt by members to use the Statute Law (Miscellaneous Amendment) Bills to amend the law through an unconstitutional process or to allow the passage of unconstitutional amendments.

We also call on all parliamentarians of good will to exercise their constitutional mandate in such a way as to unreservedly support the established constitutional process and guard against any attempt to water down legislation required to implement the Constitution. More than ever before, we must all remain vigilant and guard against any attempt to subvert the due process and the Constitution.

Charles Nyachae
CHAIRPERSON

Report of the Commitments at the Prime Ministers Roundtable



GOVERNMENT OF KENYA
OFFICE OF THE PRIME MINISTER

MATRIX OF COMMITMENTS THE SPECIAL PRIME MINISTER'S ROUND TABLE: THE STATUS OF IMPLEMENTATION OF THE CONSTITUTION

1. Background

The Office of the Prime Minister is charged with the mandate of supervising and coordinating Government. In order to fulfil this mandate and in line with the aspiration of a goal oriented and responsive government trusted by its citizens, the Office has instituted various initiatives to bring the citizen to the heart of policy making and implementation. A key initiative in this regard is the Prime Minister's Round Table meetings initiative, which was launched on the 5th of August 2008.

These round table meetings were envisioned to be an engagement platform with non-state actors on high level policy reform and implementation issues. The meetings are, therefore, designed to present an opportunity for government to dialogue effectively with representatives of key socio-economic sectors and agree on strategies to facilitate the country's development as well as review government progress on the implementation of key reforms.

Since the initiative was launched, there have been eight round table meetings with the private sector steered by the Rt. Hon. Prime Minister on various thematic areas.

2. The Roundtable Meeting

A special roundtable was organised on the status of the implementation of the Constitution by the Office of the Prime Minister with key stakeholders to discuss the status of implementation of the Constitution under the main theme of "Beyond Promulgation – the Road to Full Implementation".

2.1 The Objective

The objective of the roundtable meeting was to review the progress made in the Constitution implementation process, lessons learned and to discuss important areas for focus moving forward. The meeting was held on Wednesday, 27th June 2012.

2.2 Thematic Areas

The following thematic areas were identified for deliberation during the roundtable meeting:

1. Entrenching Constitutionalism;
2. Elections;
3. Realisation of Socio-Economic Rights;
4. Devolution (Transition from Central Government to National Government); and
5. Devolution (Transition to County Governments).

During the roundtable meeting in-depth discussions were held on each of the above themes. The discussions under each theme sought to address the **Achievements** made by the key stakeholders since the promulgation of the Constitution; level of **Preparedness; Challenges** faced in the quest to entrench constitutionalism and the Coordination mechanisms between constitutional implementing partners.

2.3 Participants

The roundtable meeting involved a sample of key stakeholders in the implementation of the Constitution i.e. representatives from the following:

1. All Ministries
2. All Independent commissions and constitutional offices
3. Private sector umbrella bodies (including academia and media)
4. The development partner community
5. Civil society organisations

There were more than 40 Public Service institutions and 38 non-state institutions that attended the roundtable meeting.

3 Commitments

The key commitments made on the basis of the roundtable discussions are provided in the matrix below. It was agreed that these commitments would be reported on a quarterly basis and the reports should include initiatives put in place to ensure sustainability of results achieved:

DISCUSSION TABLE	ISSUE	COMMITMENT	ACTOR	TIMELINE
1) Devolution 1: Transition to County Government	i. Funding of County Governments	o Review CDF Act - to ensure resources go to counties and not to be managed by MPs	Ministry of Planning	December 2012
		o Undertake poverty survey and use findings to inform planning and policy making	Ministry of Planning	July – December 2012
		o Fast track audit of assets and liabilities at the devolved levels	Ministry of Local Government and the Transition Authority	By March 2013
		o Fast track extension of application of IFMIS to the devolved levels	Ministry of Finance	September 2012
	ii. Human resource at the county level	o Develop and begin implementing a comprehensive capacity building programme at the county level	Ministry of State for Public Service; Transition Authority; Kenya School of Government/KIA; and other relevant line ministries	By September 2012
		Staffing	MoSPS	On-going
		o Secondment of staff to the county level o Fast track job evaluation for county positions	Salaries and Remuneration Commission	
	o Develop and begin implementing a comprehensive programme for mainstreaming national and Public Service values at the devolved levels	Ministry of Local Government Public Service Commission Ministry of Justice, National Cohesion and Constitutional affairs	March 2013	
2) Devolution 2: From Central to National Government	i. Funding Transition Process	o Allocate funds to the transition process on a reasonable, timely and continuous basis	Ministry of Finance	Continuous
	ii. Model Legislation	o To develop ten (10) model laws, covering the functions and competencies assigned to county governments, to act as a framework for consideration by County Assemblies when they come into force. o To develop a framework law on Citizen Participation	Kenya Law Reform Commission Ministry of Local Government Ministry of Justice, National Cohesion and Constitutional affairs	End of March 2013

DISCUSSION TABLE	ISSUE	COMMITMENT	ACTOR	TIMELINE
	iii. Operationalisation of the Transition Authority	o Swearing in of the Transition Authority	Cabinet Office	4 th July 2012 at 9 am
		o The Transition Authority team to meet the Committee of Permanent Secretaries	Cabinet Office	By Second Week of July 2012
3) Entrenching Constitutionalism	i. Promoting a Constitutional culture	<ul style="list-style-type: none"> • Hold county and national forums on peaceful election by July and August, 2012 • Facilitation of civic education throughout the country • Facilitated the enactment of leadership bill • Hold National conference on implementation of constitution in September in liaison with CIC • Put in place measures for realizing Policy on National values and principles of governance 	CIC Ministry of Justice, National Cohesion and Constitutional affairs	July 2012 – March 2013
	ii. Anti-corruption and Ethics	<p>Operationalisation of the Anti-corruption & Ethics Commission</p> <ul style="list-style-type: none"> • Reconstitution of the commission • Vetting protocol within the next 3 months for the Commission • Enhance partnership and collaboration with other stakeholders • Enhance public education on the role of Ombudsman • Establish offices for the commission accessible to the public within and beyond Nairobi in six months • Enhance collaboration through annual forums 	Anti-corruption & Ethics Commission Anti-corruption & Ethics Commission & CoAJ	July 2012 – March 2013
	iii. Participation of non-state actors	<ul style="list-style-type: none"> • Input into the vetting tools • Promotion of public participation through advocacy • Research on devolution • Develop public participation policy in liaison with CIC 	The Institute for Social Accountability (TISA)	December 2012

DISCUSSION TABLE	ISSUE	COMMITMENT	ACTOR	TIMELINE
4) Progressive realization of Socio-economic rights	i. Human Rights Based Approaches	<ul style="list-style-type: none"> To expand human right based approaches 	Commission of Human Rights	On-going
	ii. Adopting rights based approach to planning and policy	<ul style="list-style-type: none"> To incorporate Human Resource indicators in the statistical abstract and the Economic Survey To embed HBR into 2nd MTP of the Vision 2030 and cascade the same through County plans. 	Ministry Planning Vision Delivery Secretariat Ministry of Justice, National Cohesion and Constitutional affairs	June 2013
	iii. Package of Health Services and Reproductive Health Care rights	<ul style="list-style-type: none"> To determine the core content of the right to the highest attainable standard of health Define package of Primary Health Care services 	Ministry of Health	Ongoing
	iv. Housing - Pending Bills, Policies and Regulations	<ul style="list-style-type: none"> To finalize and implement the Housing Policy 2004 and the National Building Maintenance Policy Enacting the Built Environment Bill, Housing Bill and Building Surveyors Bill 	Ministry of Housing, Ministry of Planning, Ministry of Finance	Ongoing
	v. Improved Service Delivery	<ul style="list-style-type: none"> Creation of a One Stop Shop for Housing Services Creation of more housing incentives to attract investment in housing 	Ministry of Housing, Ministry of Planning, Ministry of Finance	?
	vi. Health and sanitation impediments for school girls	<ul style="list-style-type: none"> Commitment to ensuring health issues for girls are addressed e.g. adequate sanitary towels to be provided regularly to girls 	Ministry of Education, Commission on Human Rights Ministry of Health	ongoing

DISCUSSION TABLE	ISSUE	COMMITMENT	ACTOR	TIMELINE
5) Elections	i. Preparedness for Elections	<ul style="list-style-type: none"> Enhance police capacity 	Kenya Police	February 2013 & ongoing
		<ul style="list-style-type: none"> Put in place biometric registration of voters, which will eliminate multiple voting Put in place electronic transmission and flow of information from the voting centres to the national level Finalize recruitment and capacity building of investigators Fast track voter education and continue 3 months after the elections 	IEBC	February 2013
			IEBC	
			IEBC	
		IEBC & Ministry of Justice, National Cohesion and Constitutional affairs		
Progress on-going work on:	Registrar of Political Parties	July 2012		
<ul style="list-style-type: none"> Software on party membership in place to detect multiple registration; Regulations on coalitions and mergers; 		August 2012		
Progress on-going work on:	Judiciary & IEBC	On-going		
<ul style="list-style-type: none"> Partnering with Judiciary Training Institute to train staff specifically on election; 				

Annex VI

Status of Enactment of Legislation Due for Enactment by August 2012

Legislation to be Enacted by August 2012 - as Per the Fifth Schedule of the Constitution

No.	BILL	STATUS	X Not Enacted ✓ Enacted
1	Legislation on Leadership (Article 80)	Undergoing internal review and Stakeholder consultation	X
2	Right of Recall (Article 104)	Provided for in the Elections Act, 2012	
3	Determination of Questions of membership of Parliament (Article 105)	Provided for in the Elections Act, 2012	
4	Right to Petition Parliament (Article 119) (Proposal for inclusion in the Public Participation Bill)	Bill not yet received at CIC	X
5	Assumption of Office of the President (Article 141)	Bill submitted to the Attorney General in February but not yet published	X
6	Judiciary Fund (Article 173)	Provided for in the Judicial Service Act, 2011	
7	Financial Control (Article 225)	Legislation included in Public Finance Management Bill, 2012. Awaiting parliamentary debate and approval	X
8	National Security Organs (Article 239): National Intelligence Service Bill, 2012	Undergoing Internal Review and Stakeholder Consultations	X
9	National Security Organs (Article 239): National Security Council Bill, 2012	Undergoing Internal Review and Stakeholder Consultations	X
10	National Security Organs (Article 239): Kenya Defence Forces Bill, 2012	Forwarded to Attorney General for Publication	X
11	Command of the Police Service (Article 245): National Police Service Act, 2011	Enacted	
12	Command of the Police Service (Article 245): Independent Police Oversight Authority Act, 2011	Enacted	
13	Command of the Police Service (Article 245): The National Police Service Commission Act, 2011	Enacted	

Total Number of Bills due by 26th August, 2012 Thirteen (13)

Enacted: Six (6)

Pending: Seven (7)

Other Bills Not in the Fifth Schedule But Identified for Enactment by 26th August, 2012

No.	BILL	STATUS	X Not Enacted ✓ Enacted
	Parliamentary Service Commission	Not yet Received at CIC	X
	Public Service Management Bill	Not yet Received at CIC	X
	Public Officers Vetting Bill	Not yet Received at CIC	X
	The National Government Bill	Not yet Received at CIC	X

Other Pending Bills

No.	BILL	STATUS	X Not Enacted ✓ Enacted
	Public Service Commission Bill, 2012	Published. In Parliament	X
	Teachers Service Commission Bill, 2012	Published. In Parliament	X
	Ratification of Treaties Bill, 2011	Published. In Parliament	X
	The County Government Bill	In Parliament	X
	The Independent Communications Commission of Kenya Bill	Undergoing Internal Review and Stakeholder Consultations	X
	National Coroners Bill	Undergoing Internal Review and Stakeholder Consultations	X
	Kenya Law Reform Commission Bill, 2012	Forwarded to Attorney General on 26 th March, 2012	X
	Controller of Budget Bill, 2012	Undergoing Internal Review and Stakeholder Consultations	X
	Public Service Management Bill	Not yet Received at CIC	X
	Public Officers Vetting Bill	Not yet Received at CIC	X
	The National Government Bill	Not yet Received at CIC	X
	Freedom of Information Bill	Undergoing Internal Review and Stakeholder Consultations	X
	Data Protection Bill	Undergoing Internal Review and Stakeholder Consultations	X
	The Refugee Bill	Undergoing Internal Review and Stakeholder Consultations	X
	The Matrimonial Property Bill	Undergoing Internal Review and Stakeholder Consultations	X
	Protection Against Domestic Violence Bill	Undergoing Internal Review and Stakeholder Consultations	X
	Identification and Registration of Kenya Citizens Bill	Undergoing Internal Review and Stakeholder Consultations	X
	The Births and Registration Bill	Undergoing Internal Review and Stakeholder Consultations	X
	The Marriage Bill	Undergoing Internal Review and Stakeholder Consultations	X
	Health Law	Undergoing Internal Review and Stakeholder Consultations	X
	Campaign Financing Bill	Awaiting Bill from the Attorney General	X
	Consumer Protection Bill	Undergoing Internal Review and Stakeholder Consultations	X

Annex VII

List of all Legislation Enacted after the Promulgation of the Constitution

SCHEDULE OF ALL LEGISLATION ENACTED BY PARLAMENT POST-PROMULGATION OF THE CONSTITUTION OF KENYA 2010 AS AT JUNE 30 2012

Legislation enacted in 2012	REVIEWED BY THE COMMISSION
Transition to Devolved Government Act, (No 1 of 2012)	YES
Intergovernmental Relations Act, (No 2 of 2012)	YES
Land Registration Act, (No 3 of 2012)	YES
Finance Act, (No 4 of 2012)	NO
National Land Commission Act (No 5 of 2012)	YES
Land Act (No 6 of 2012)	YES
Supplementary Appropriation Act (No 7 of 2012)	NO
Public Service Superannuation Scheme Act (No 8 of 2012)	NO
Kenya School of Government Act (No 9 of 2012)	NO
Kenya Deposit Insurance Act (No 10 of 2012)	NO

Legislation enacted in 2012	REVIEWED BY THE COMMISSION
Commission on Administrative Justice Act (No 23 of 2011)	YES
Commission on Revenue Allocation Act (No 16 of 2011)	YES
Contingencies Fund and County Emergency Funds Act (No 17 of 2011)	NO
Elections Act (No 24 of 2011)	YES
Engineers Act (No 43 of 2011)	YES
Environment and Land Court Act (No 19 of 2011)	YES
Ethics and Anti-Corruption Commission Act (No 22 of 2011)	YES
Independent Offices Appointment Act (No 8 of 2011)	YES
Independent Electoral and Boundaries Commission Act (No 9 of 2011)	YES
Independent Policing Oversight Authority Act (No 35 of 2011)	YES
Industrial Court Act (No 20 of 2011)	YES
Industrial Training (Amendment) Act, (No 34 of 2011)	NO
Judicial Service Act (No 1 of 2011)	YES
Kenya Citizenship and Immigration Act (No 12 of 2011)	YES
Kenya Citizens and Foreign Nationals Management Service Act (No 31 of 2011)	YES
Kenya National Commission on Human Rights Act (No 14 of 2011)	YES
Limited Liability Partnership Act (No 42 of 2011)	NO
Mutual Legal Assistance Act (No 36 of 2011)	NO
National Construction Authority Act (No 41 of 2011)	NO
National Gender and Equality Commission Act (No 15 of 2011)	YES
National Government Loans Guarantee Act (No 18 of 2011)	NO
National Payment System Act (No 39 of 2011)	NO
National Police Service Commission Act (No 30 of 2011)	YES
Political Parties Act (No 11 of 2011)	YES
Power of Mercy Act (No 21 of 2011)	YES

	Price Control (Essential Goods) Act (No 26 of 2011)	NO
	Prohibition of Female Genital Mutilation Act, 2011 (No 32 of 2011)	NO
	Public Appointments (Parliamentary Approval) Act, 2011 (No 33 of 2011)	NO
	Salaries and Remuneration Commission Act (No 10 of 2011)	YES
	Supreme Court Act (No 7 of 2011)	YES
	Tourism Act (No 28 of 2011)	NO
	Unclaimed Financial Assets Act (No 40 of 2011)	YES
	Urban Areas and Cities Act (No 13 of 2011)	NO
	Vetting of Judges and Magistrates Act (No 2 of 2011)	YES
	Veterinary Surgeons and Veterinary Para-Professionals Act (No 29 of 2011)	NO

	Legislation enacted in 2012	REVIEWED BY THE COMMISSION
	Competition Act (No. 12 of 2010)	NO
	Alcoholic Drinks Control Act (No. 4 of 2010)	NO
	Animal Technician Act (No. 11 of 2010)	NO
	Commission for the Implementation of the Constitution Act (No. 9 of 2010)	NO

Annex VIII

About the Commission and The Commissioners

a. The Mandate of CIC

The CIC is the focal institution charged with facilitating, monitoring and overseeing the implementation of the new Constitution. Its mandate is to:

- (a) Monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution;
- (b) Coordinate with the Attorney-General (AG) and the Kenya Law Reform Commission (KLRC); in preparing for tabling in Parliament, the legislation required to implement the Constitution;
- (c) Report regularly to the Constitutional Implementation Oversight Committee (CIOOC) on: (i) The progress in the implementation of the Constitution; and (ii) Any impediments to the implementation process.
- (d) Work with each constitutional commission to ensure that the letter and spirit of the Constitution is respected.
- (e) Monitor the implementation of the system of devolved government effectively.

The CIC is further required to meet the objectives of Article 249 of the Constitution of the Kenya 2010. The objects are to:

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

In performing its functions, CIC is bound by national values and principles of governance laid out in Article 10(2) of the Constitution. The national values and principles of governance bind all state organs, state officers, public officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law or makes or implements public policy decisions.

CIC operations are accordingly guided by the National Values and Principles of Governance as stipulated in Article 10 of the Constitution. These are: patriotism, national unity, sharing and devolution of power, the rule of law, democracy, and participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of the marginalized, good governance, integrity, transparency, and accountability and Sustainable development.

B. Vision, Mission and Strategic Outcome Results

In order to fulfil its mandate the CIC has developed a clear vision and mission to guide its work. Based on this vision and mission the Commission undertakes its work within an outcomes framework under which it has defined key result areas. These outcome results assist in guiding the Commission's work and providing the basis for accountability to other institutions and the public at large. The vision, mission and the outcome results are as follows:

Vision:

A united, peaceful and prosperous Kenya in which all citizens including leaders respect the rule of law, uphold national values and live by the Constitution.

Mission:

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

Strategic outcomes:

To achieve the Vision and Mission, CIC has identified four strategic outcomes, that is; a respected, well-functioning and independent Commission effectively delivering on its mandate, policies which are compliant with the letter and the spirit of the Constitution, laws which are compliant with the letter and the spirit of the Constitution and effective institutional frameworks and administrative procedures for the implementation of the Constitution.

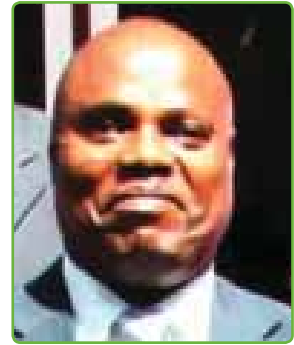
C. Commissioners



Mr. Charles Nyachae
Chairperson



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



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



Prof. Peter Wanyande
Convener of the Devolved
Government Thematic Team



Mr. Kamotho Waigannjo
Convener of the Public
Finance Thematic Team



Ms. Catherine M. Mumma
Convener of the Bill of Rights
and Citizenship Thematic
Team



Dr. Ibrahim M. Ali
Convener of the Land and
Environment Thematic Team



Mr. Philemon Mwaisaka, EBS, SS
Convener of the Public Service
and Leadership Thematic Team



Dr. Florence Omosa
Convener of the
Representation of the People
& the Legislature Team

Map Showing Counties

