



# Devolution and Public Participation In Kenya

## Civic Education Handouts for Participants



2016



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Ministry of Devolution  
and Planning



**Uraia**



Council of Governors



Devolution And Public Participation In Kenya Civic Education Handouts For Participants  
Executive Programme

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The Civic Education Training Manual is designed to enable facilitators train the officers in the public and private sectors on the Constitution of Kenya, 2010. This publication should not be used as a substitute for officially published copies of the constitution, laws or other official government documents related to the topics discussed herein. The views expressed herein are those of the author(s) and do not necessarily reflect the views of URAIA Trust, Transition Authority or Kenya Institute of Curriculum Development. Every effort has been made to ensure the accuracy of the information given. Any information in this manual deemed inaccurate or incomplete is not intentional and the author(s) should be notified immediately for correction and/or amendment.

Ee Mungu nguvu yetu  
Ilete baraka kwetu  
Haki iwe ngao na mlinzi Natukae  
na undugu Amani na uhuru  
Raha tupate na ustawi.

Amkeni ndugu zetu  
Tufanye sote bidii  
Nasi tujitoe kwa nguvu Nchi yetu  
ya Kenya Tunayoipenda  
Tuwe tayari kuilinda

Natujenge taifa letu Ee, ndio  
wajibu wetu Kenya istahili  
heshima Tuungane mikono  
Pamoja kazini  
Kila siku tuwe na shukrani

O God of all creation  
Bless this our land and nation  
Justice be our shield and  
defender May we dwell in unity  
Peace and liberty  
Plenty be found within our  
borders.

Let one and all arise  
With hearts both strong and  
true Service be our earnest  
endeavour And our homeland  
of Kenya Heritage of splendour  
Firm may we stand to defend.

Let all with one accord  
In common bond united  
Build this our nation together  
And the glory of Kenya  
The fruit of our labour  
Fill every heart with thanksgiving

## Foreword

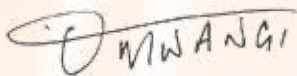
The Constitution of Kenya was promulgated on 27th August, 2010, following a long process of development. It expresses the general will of the nation, its history aspirations and vision. It is therefore, important that every Kenyan understands the provisions of the Constitution as it concerns their individual welfare, that of fellow citizens and the State.

Article 1 of the Constitution provides that all Sovereign power belongs to the people of Kenya which is exercised directly or indirectly through democratically elected representatives. In line with these provisions, it is imperative that citizens are placed at the centre of governance and public service.

One of the landmark provisions of the Constitution is the devolved system of governance which has created two levels of governments:- National and County Governments. The two levels of government have been assigned clear mandates as detailed in the Fourth Schedule of the Constitution. This being a new system, there is need for the Citizens to understand how it works and their role in its implementation.

One way of enhancing the capacity of the public to effectively participate in governance, is through civic education. Citizens need to be provided with the right information that will enable them to effectively participate in public affairs and national development. Article 33(1) a of the Constitution states that every person has the right to freedom of expression which includes freedom to seek, receive or impart information or ideas. Civic education will ensure that Citizens have enhanced knowledge, understanding and ownership of the constitution.

This curriculum has been developed to guide trainers of civic education and enable them to effectively train the target groups on the provisions of the Constitution particularly, devolution and public participation.



**HON. MWANGI KIUNJURI, MGH**  
CABINET SECRETARY  
MINISTRY OF DEVOLUTION AND PLANNING

## Acknowledgement

The development of this Civic Education curriculum has been made possible through a consultative process involving key stakeholders including the Ministry of Devolution and Planning (MoDP), Transition Authority (TA), Uraia Trust, Council of Governors (CoG), County Governments, Kenya Institute of Curriculum Development (KICD), Office of the Attorney General and Department of Justice and Non-State Actors. I wish to thank USAID - AHADI for the printing of this curriculum.

I wish to acknowledge the leadership and facilitation offered by the inter-agency civic education team, in the development of this curriculum. In particular, I wish to commend members of the team who included Safia Abdi, Gitonga Mbaka, George Kimani, Michael Mwangi and Margaret Chebii of TA, Nancy Wamwea, Abubakar Said and Caroline Nyamu of Uraia Trust, Cynthia Gichuki of the Office of the Attorney and Department of Justice, Amb. P.R.Owade, Martin Anyango, Nelson Rob, Fredrick Kanini, Amos Omari of MoDP, and Meboh Abuor and Rosemary Njaramba of CoG. I also thank all staff of State Department of Devolution, Members of TA who include Angeline Hongo, Simon Pkiyach, Dr. Dabar Abdi Maalim, Erastus Rweria and Bakari Omara, and the Staff of TA who include Mary Ndeto, Dr. Dabar Abdi Maalim, Makori Kerosi Duncan Ndegwa, Margaret Kiema, Mulei Muia, and Polycarp Oduol for their support and contribution.

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I recognize the contribution of Commission on Revenue Allocation, Commission for the Implementation of the Constitution, Kenya National Human Rights Commission, Public Procurement and Oversight Authority, National Land Commission and Independent Electoral and Boundaries Commission for partnering with us in the process of developing and piloting of the curriculum and training manuals.

I am sincerely grateful to the United Nations Development Programme, Uraia Trust and Transition Authority for their financial assistance towards this process.

For all those individuals and organizations that in diverse ways made development of this curriculum a success but I could not mention by name, I say, thank you.



**MWANAMAKA MABRUKI, CBS**  
PRINCIPAL SECRETARY, MODP

## **Preface**

The County Governments Act, 2012 Part X, provides that there shall be established a national design and framework of civic education, including determining the content of the curriculum. The institutions that have been legally mandated to facilitate the provision of civic education include, the Ministry of Devolution and Planning, Office of the Attorney General and Department of Justice, County Governments and Transition Authority. On the other hand, historically, Non State Actors have always played a reciprocal role in spearheading provision of civic education in the country.

After promulgation of the Constitution, the Kenya National Integrated Civic Education (KNICE) Programme (under the then Ministry of Justice, National Cohesion and Constitutional Affairs) was initiated to provide civic education on the Constitution. With the coming in of the County Governments, it is important to have a more focused curriculum for civic education on devolution and public participation to ensure that the citizens and public officers effectively participate and facilitate the entrenchment of the new governance structure.

It is against this background that the Ministry of Devolution and Planning, Transition Authority and Uraia Trust partnered to develop the curriculum and training manual with the technical assistance of the Kenya Institute of Curriculum Development. The curriculum and training manuals are expected to standardise the content and methodology of delivery of civic education by various providers. It will also contribute towards enabling both duty bearers and right holders to better understand their rights, responsibilities and practice constitutionalism.

The process of developing this curriculum started in February 2014. It involved extensive stakeholder engagement and participation. The process entailed retreats to develop initial drafts, stakeholder reviews, piloting and incorporation of the necessary feedback for finalization. The piloting of the curriculum and training manual was carried out by Uraia Trust in 25 Counties.

The curriculum covers three modules: the Constitution, Devolution and Public Participation. It targets youth in public and private sectors. We trust that it shall aid the provision of quality civic education and contribute to the enhancement of youth understanding of the provisions of the Constitution, devolution, and the principles and platforms of public participation.



**GRACE MAINGI**  
EXECUTIVE DIRECTOR , URAIA TRUST





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## List of Abbreviations and Acronyms

CAJ	Commission on Administrative Justice
CBEF	County Budget and Economic Forum
CFA	Election Campaign Financing Act, 2013
CIC	Commission for the Implementation of the Constitution
COB	Controller of Budget
CoK 2010	Constitution of Kenya, 2010
CRA	Commission on Revenue Allocation
CSOs	Civil Society Organisations
EACC	Ethics and Anti-Corruption Commission
IEBC	Independent Electoral and Boundaries Commission
IEC	Information, Education and Communication
IRI	The International Republican Institute
JSC	Judicial Service Commission
KLRC	Kenya Law Reform Commission
KNCHR	Kenya National Commission on Human Rights
NEMA	National Environmental Management Authority
NLC	National Land Commission
NPC	National Police Commission
PSC	Public Service Commission
SRC	Salaries and Remuneration Commission
TA	Transition Authority
TSC	Teachers' Service Commission

## Glossary of Terms

<b>Accountability</b>	ability to be open and responsible to somebody or for something and answerable for actions taken.
<b>Affirmative action</b>	policies put in place by the State to correct past discriminatory practices.
<b>Amendments</b>	to make changes to documents in order to improve or correct it
<b>Attitudes</b>	personal opinions, beliefs or feelings toward specific matter
<b>Baraza</b>	a community gathering to raise awareness, to share knowledge and ideas or to network
<b>Bill of Rights</b>	a list of the most important rights of the citizens of a country which defines the rights and freedoms of citizens and protects them from infringement.
<b>Budget</b>	a plan for allocating resources it specifies how resources will be spent during a particular period.
<b>Charges</b>	money asked for goods or services
<b>Citizen</b>	a person who legally belongs to a country and has the rights and protection of that country
<b>Citizen participation</b>	an action or series of actions a citizen takes to participate in the affairs of his or her own government and/or community.
<b>Citizenship</b>	the duties, obligations and responsibilities that come with being a citizen of a country.
<b>City</b>	is an urban area as defined under The Urban Areas and Cities Act (No. 13 of 2011).
<b>City Board</b>	the governing body of a city.
<b>City Manager</b>	She/he is the chief administrator of a city who is responsible for implementing the policies and decisions of the board and is also accountable to them.
<b>Civic Education</b>	means of educating citizens on socio economic and political issues impacting the lives of citizens. The process also informs citizens of their specific societal roles.
<b>Civil rights</b>	the entitlement of an individual to freedom or liberty and their protection from unconstitutional interference from the state.
<b>Civil society</b>	groups of active citizens concerned about a specific set of issues or focused on accomplishing a specific set of objectives.

**Community land** land held by communities identified on the basis of ethnicity, culture or similar community of interest.

**Constitutionalism** adherence to the principles of constitution or the rule of law.

### **Council of County**

**Governors** an intergovernmental coordinating and consultative body for the 47 county governments.

**County** a semi-autonomous unit of government devolved from the national level. There are 47 counties in Kenya.

**County Assembly** the legislative body of the County.

**County executive** the executive authority of county government. Equivalent to cabinet at national government.

### **County Public**

**Service Board** is a county-level institution that establishes and oversees public servants for each of the counties.

**Decentralization** a structural redistribution of power that takes a portion of the power vested in the national government and allocates it equitably to smaller sub-national entities.

**Delegation** a type of decentralization that refers to the transfer of some of the central authority's power to semi-independent sub-national and/or non-government authorities, which have relative freedom to decide how to carry out their responsibilities, but they are ultimately accountable to the central authority.

**Democracy** a system of government based on people's consent, or the 'will of the people.'

### **Democratic**

**Leadership** a style of leadership where the person in charge acts in the interests of their people.

**Deputy Governor** the second highest executive authority in a county. The Deputy Governor fulfils the duties of the Governor when absent or as is required under law.

**Devolution** a type of decentralization that refers to the complete transfer of power from a central authority to near-autonomous sub-national authorities. Local citizens are empowered under devolution to elect their own leaders and make decisions on local matters.

<b>Dispute</b>	conflicts between the two groups such as the levels of governments and political parties.
<b>Elective positions</b>	positions that require an election through a secret ballot by registered voters, which include:the President; senators; members of the National Assembly; one woman elected to the National Assembly by voters in each county; governors; and ward representatives.
<b>Equalization Fund</b>	it is a national fund that seeks to address inequities that may exist between counties and within marginalized areas and groups by funding basic services such as water, healthcare, and roads.
<b>Governance</b>	management of public resources and the relationship between and among citizens, their elected officials and their organizations.
<b>Governor</b>	the highest executive authority of the county executive and serves as the chairperson of the County Executive Committee. S/he also serves as the county's representative in the National and County Government Coordinating Summit and the Council of County Governors.
<b>Income</b>	money earned from investments, resources, tax
<b>Judiciary</b>	the arm of the government that administers justice.
<b>Lobbying</b>	the practice of engaging with governments to advocate for change, request information, or hold officials accountable to their commitments to human rights and service delivery.
<b>Manifesto</b>	is a statement of intentions, which guides decision making and helps to keep the user focused on his/her goals.
<b>Memoranda/ Memorandum</b>	briefs written, record or communication to the government to create awareness of specific information.
<b>Municipality</b>	an urban area as defined under Urban Areas and Cities Act 2011.
<b>National Assembly</b>	a national legislative body representing the people of the constituencies and special interests through its elected and nominated members.
<b>National Executive</b>	the executive authority at the national level of government and is comprised of the President, Deputy President and the rest of the cabinet.
<b>Parliament</b>	the national legislative body established under Article 93 of Kenya's constitution. The National Assembly and the Senate comprise Parliament, whose legislative powers include representing the will of the people and exercising





their sovereign power. Parliament also has the power to amend the Constitution as needed.

<b>Political party</b>	an organization that is constituted for the purpose of providing an organized form of participation by people with similar views on political issues and activities.
<b>Political rights</b>	rights that enable citizens to participate in the political processes that contribute to the functioning of a democracy.
<b>Private land</b>	registered land owned or leased by any person.
<b>Promulgation</b>	the act that brings a new constitution into effect and abolishes the old constitution.

### **Proportional**

<b>election formula</b>	parties win seats in proportion to the number of votes they receive (in parliament or nominated seats)
<b>Protests</b>	an expression of opposition on a particular issue that is done through picketing, sit-ins, boycotts, vigil, and hunger strikes.
<b>Referendum</b>	the process through which citizens decide, through a vote, whether or not they wish to make a significant change to the political landscape in which they operate.
<b>Relative majority</b>	or plurality, when the outcome of an election is determined by the candidate that receives the most votes.
<b>Revenue Fund</b>	a fund where each county deposits all money raised or received on behalf of the county government.
<b>Rule of law</b>	the principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced.
<b>Senate</b>	represents the counties, and serves to protect the interests of the counties and their governments.
<b>Sovereign power</b>	the supreme power that a sovereign State uses to govern itself independently and the power from which all citizens and government institutions derive their political power.
<b>Sovereignty</b>	collective power of the citizens exercised directly or through their democratically elected representatives at national and county levels.
<b>Speaker</b>	the Speakers lead each of Kenya's legislative bodies at the national and county levels that is the National Assembly, Senate and county assemblies.
<b>Strategy</b>	a roadmap on how you or your organization will go about achieving its mission.

<b>Sub-county</b>	a semi-autonomous unit of government devolved from the county whose purpose is to improve government administrative functions and service delivery by bringing both closer to citizens.
<b>Sub-national</b>	a semi-autonomous decentralized unit of government below the national level. Each of Kenya's 47 counties is known as sub-national units.
<b>Summit</b>	Also referred to as "National and County Government Coordinating Summit" is an intergovernmental relations body whose membership include the president, deputy president and the 47 governors.
<b>Super majority</b>	a vast majority (over 80%) consensus required to make major changes that will have a direct effect on the population of a country, such as an amendment to the Bill of Rights.
<b>Supreme law</b>	often used to refer to the Constitution as the highest law, and the based upon which all other laws are developed.
<b>Town</b>	an urban area as defined under urban areas and Cities Act 2011.
<b>Urban sub-county</b>	a unit of government devolved from the county level and has urban characteristics of development, service delivery and population.
<b>Values</b>	core beliefs that are shared among the stakeholders of an organization.

## **Vertical**

<b>Decentralization</b>	the process by which sovereign power is dispersed vertically between national and sub-national authorities (i.e. county) and/or semi-autonomous authorities (e.g. revenue authority).
<b>Ward</b>	a decentralized unit of county government governed by a ward administrator. Wards also serve as electoral units for electing members of the county assembly.

## Introduction

### Overview of the Training Manual

The Constitution of Kenya, 2010 upholds public participation at all levels of governance. Such participation is only possible when the public is educated on governance issues. The Civic Education Training Manual has been developed to train Kenyan citizens on the provision of the constitution in the endeavour to equip them with desirable knowledge, skills, attitudes, values and competencies for effective participation in governance processes both at national and county levels.

The trainer is encouraged to use this manual during the training programmes. The manual also provides a variety of teaching and learning methods, activities, resources and assessments that the trainer can use to ensure effectiveness of the training sessions. However, the trainer is encouraged to be innovative to generate other activities that are relevant to their situation as long as they enable achievement of the specific objectives outlined in the manual and the curriculum.

The aim of the manual is to provide information in order to empower the trainer to:

1. understand the constitution and its provision,
2. implement the civic education curriculum,
3. provide facilitating techniques for adult participants,
4. assess participants understanding of the constitution,
5. source for teaching and learning resources,
6. participate in the governance of their country. The participants will in turn be able to:
  1. demonstrate knowledge on the constitution,
  2. appreciate the provisions of the Constitution of Kenya, 2010,
  3. understand the importance of devolution,
  4. participate in the governance of their country at county and national level
  5. love their country.

### HOW TO USE THE MANUAL

The manual is intended for facilitators of Civic Education as it provides useful information on how to successfully implement the Civic Education Curriculum. The manual comprises of an introduction that gives general information on how to carry out the training and three modules where several units are discussed. In each unit and subsequent sessions, topic specific objectives, suggested learning methods, assessments and resources and key notes are provided. Also included is a brief introduction to the unit and in some units additional information is included to equip the facilitator with the necessary information they require to know to effectively facilitate the sessions. The learning methods and assessment are suggested to give the facilitator opportunity to use their innovativeness and creativity to use any other method they see fit for their situation.

When using the manual the facilitator should note the following:

1. The Constitution of Kenya, 2010 and relevant laws are the key resources for the curriculum and must be referred to in every session.
2. The Constitution of Kenya, 2010 is referred to as the constitution severally in the text
3. The introduction gives useful information that the facilitator requires and therefore must read it before facilitating a session. The facilitator is also encouraged to interact and familiarize themselves with the whole document.
4. The organizers of the training should try to fit in their programme the session provided and the time suggested in the modules, units and sessions.
5. The learning resources provided are suggested, however, the trainer should try to familiarize themselves with them and also read widely in the area.

Each module in the training manual contains an introduction, general objectives, unit introduction, specific objectives, time, suggested training methods, suggested learning activities, suggested teaching resources, suggested assessment methods, key notes and additional information. This makes the training manual user friendly for the civic educators and trainers.

## **1. Module Introduction**

At the beginning of each module an introduction has been provided. The introduction gives a brief overview of what is contained in the module.

## **2. General objectives**

These are broad objectives that show what one expects to achieve at the end of module.

## **3. Specific objectives**

Every unit and session in the training manual has specific objectives which are geared towards achieving the general objectives. The specific objectives indicate the expected observable behavioural changes in the participant after covering the unit or session. These objectives are normally stated in measurable terms, are specific and are achievable within the training session.

## **4. Suggested learning resources**

In every session, a list of relevant training resources has been provided for the trainer. The trainer is expected to source for these resources and use them when planning for the training. This list is not exhaustive and the trainer is encouraged to read widely.

## **5. Suggested training method**

In order to achieve the session specific objectives the trainer has been provided with suggested training methods. The explanation on how these methods can be carried out is provided for in this introduction. However, this list is not exhaustive and the trainer is encouraged to come up with other training methods as long as they enhance the achievement of the session specific objectives.



## 6. Suggested assessment methods

Since the intent of training is to achieve the specific objectives of the session, there is need for the trainer to assess the extent to which these objectives have been achieved. In every session, the trainer has been provided with suggested assessment methods which can be incorporated in the training.

## 7. Key notes

In every session, the trainer has been provided with key notes. This is the information that the trainer is expected to convey to the participants. The trainer is encouraged to read and internalize these key notes before delivering the session.

## 8. Additional information

In some of the units additional information is provided. This information is for the trainer and not what is expected to be delivered during the training. This additional information is provided to equip the trainer with information they may need to clarify issues that may arise during the training.

## The Executive Manual

The training manual has been developed using the Civic Education Curriculum developed by Ministry of Devolution and Planning, Uraia Trust and Transition Authority. It has been designed to make it user friendly for civic educators and trainers.

This three day civic education manual has been developed to equip the professionals with desirable knowledge, skills, attitudes, values and competencies for effective participation in governance processes both at national and county levels.

The manual has the following three modules:

- Module 1: The Constitution
- Module 2: Devolution
- Module 3: Public participation

## Training Methods and Activities

The manual has provided a variety of training methods and activities. These are provided in every topic with a brief explanation on how it can be used during the training sessions. The training methods and activities are suggested. The facilitator can use any other approach they find fit for their situation as long as the topic specific objectives are achieved.

The following is an overview of the training methods used in the manual.

1. Discussions
2. Brainstorming
3. Explanation
4. Lecture
5. Role play
6. Simulations
7. Field trip
8. Buzzing
9. Case studies
10. Experience Sharing

## **1. Discussions**

Discussions are verbal interactions on a given topic between participants and the trainer facilitating the session. Well organized discussions enhance full participation of all participants. The participants are able to share their thoughts, ideas and experiences while at the same time listen to those of others. It also encourages spontaneous flow of thought, ideas, and information; however, the trainer should be careful to moderate the discussions to ensure they do not go out of the topic.

During discussions, participants should be encouraged to ask questions and raise any related issue. Discussions also develop skills such as listening and speaking, effective communication, assertiveness and critical thinking.

When planning for discussions thought should be given to what will be asked to keep the discussion alive. The trainer should therefore prepare a list of questions before the lesson. Discussion can be organized for the whole class or in groups.

### **a) Class Discussion**

Class discussion can be used to introduce a new topic or concept, to explain difficult terms, to get the participants experiences and to conclude a lesson.

A class discussion should be carefully planned to ensure the discussion is focused on the lesson objective(s). For a class discussion to work effectively, it is important for the trainer to elicit the participation of all the participants. This can be done by asking questions to which answers are sought and then discussed. The trainer should allow flow of ideas from the participants. After the participants give their feedback, the trainers can clarify, explain and/or add to the information given.

The summary of feedback from the participants and what the trainer adds can be used to summarize the session.



## **b) Group Discussion**

Group discussion is a method where the trainer divides the class into small manageable groups and assigns each group a topic to discuss. When choosing a topic for a group discussion, it is important to take into consideration the participant's knowledge on the same. A topic that the participants are familiar with is easy to discuss. The facilitator should give clear instructions to the groups including how long the discussions ought to take.

In the formation of the groups, mix participants of different ability to ensure that all the participants are catered for. Remember, large groups tend to be difficult to control and some participants do not participate fully. Groups work better when there is a group leader to moderate the discussion. It is also important to have a secretary in the group to record the ideas agreed upon by the members. The training room should be arranged in such a way that groups do not interfere with each other.

The trainer should prepare adequately to ensure ample time is provided for the group discussion during the lesson. A hurried group discussion demotivates the participants when they are not able to exhaust all their ideas. However, there should be control so that the trainer gets adequate time to summarize the lesson.

After the group discussion, each group should appoint one member to present what they have discussed to the whole class. During the presentation, other participants can give more ideas and ask questions. The trainer should correct any wrong information or misconceptions and add any extra information that may have been missed by the participants. It is important for the group's contributions to be appreciated to motivate the members. The trainer should use the information from the groups as part of the summary of the session.

After the discussions the trainer can summarize the session by:

1. clarifying concepts or misconceptions, ideas and issues that may have arisen from the discussion and/or presentation;
2. bringing out the main points of discussions;
3. emphasizing on information they are expected to have gained based on the specific objectives of the lesson;
4. building consensus where the group did not agree on a given matter.

## **2. Brainstorming**

Brainstorming is a discussion where the participants think quickly and creatively about an idea or issue with a view of trying to understand it better. It does not allow time for reflection thus enables the trainer to understand what the participants think about a given phenomenon. The discussions are spontaneous and every member of the class or group is encouraged to express their ideas freely and as they share their views and opinions. It gives each participant a clearer understanding of the issue or phenomena.

Brainstorming can be used when:

- introducing new ideas or concepts to the class;
- trying to understand an idea;
- seeking different views of the participants on certain situations;
- building consensus among the class.

When preparing for a brainstorming session the trainer should have a list of questions that can help lead the brainstorming. The questions will enable the trainer to:

- link familiar concepts to those that is unfamiliar;
- motivate the participants to think;
- encourage the participants to participate in the learning process;
- show the relationship between events or ideas;
- ensure the discussion remains focused on the topic specific objectives;
- understand the interpretation capacity of the participants;
- engage the whole group or class.

### **3. Buzzing**

Buzzing is a training method where 2-3 participants are asked to consult with one another on an issue raised by the trainer. The issue is normally raised to the whole class and the participants are then asked to converse in low murmurs (buzz) amongst themselves. They record their views and thereafter share with the whole class.

#### **Explanation**

Explanation is a training method where the trainer expounds on an idea by giving reasons, clarifications, justifications and/or any other details that will enable the participants to understand. Explanations can be used together with other training methods. The trainer will explain, giving the facts needed to understand whatever is being discussed.

#### **Lecture**

A lecture is an instructional or educational speech or talk on a topic. This method can be used in the training sessions but with caution as adult participants do not enjoy it. The trainers can, however, use short forms of a lecture to highlight key points of the lesson, to introduce a topic or in a situation where the trainer may need to provide detailed and specific information in a short time.

The trainer can interrupt the lecture by introducing class discussions, brainstorming sessions and/or question answer sessions.

When planning for a lecture, the trainer should consider:

- a) length of the lecture to enable the trainer time them self;
- b) audio visuals and other materials that will be used during the lecture;



- c) the outline and sequencing of the information;
- d) the environment which the lecture will take place.

#### **4. Role Play**

Role play is acting out a part especially that of somebody with a particular role in society in order to interrogate their role and to understand it better. The play is carried out by the participants under the instructions of the trainer. Role play reinforces learning as participants will internalize the roles as they act them out or observe the others acting. Desirable attitudes can also be easily imparted using role play.

When planning for a role-play, the trainer should consider the following:

- Use this approach to teach a concept in a topic that participants are familiar with.
- The participants taking part in the role play should be identified before the lesson and properly guided on their roles.
- Introduce the lesson and ask the participants to role play at the appropriate time.
- Ensure that all the participants can clearly see what is being acted out.
- Inform the participants how long the role play should take to ensure adequate time for them to bring out the expected results.
- At the end of the role play the trainer should get feedback from the participants on what they have learned.
- The trainer should form the lesson summary from the feedback from the participants and include any other information that may have been left out.

#### **5. Simulations**

Simulation is the actual reproduction of an activity with the essential features. The trainer can use simulation when they want to duplicate an event as it happened or how it is supposed to happen, for example the voting process. It is similar to role play and can be planned as such. However, in simulations it is a replica of the event

#### **6. Case Studies**

A case study is a study of a situation, person or condition in order to draw conclusions. The situation may be actual or imaginary. When used in a training situation it stimulates thinking, considerations and assessment. The case study is presented to the participants and then they are given time to discuss it. The discussion may be led by the trainer using prepared questions or they may arise from the discussions on the case study. During the discussions the following may arise:

- resolutions;
- empathy or other emotions;
- decision making;
- provoked to apply what is discussed in their day to day living.

The trainer should present case studies that are interesting and engaging to the participants yet addressing the topic specific objectives. It should also be written in a language that is applicable to the participants and also the use of vocabulary should be considered. The scenes presented in the case study should be something the participant can relate to.

A case study can be developed by the teacher or selected directly from newspapers, books or magazines. Case studies can be discussed in groups or the whole class.

### **7. Experience Sharing**

In this method, the participants are given opportunities to tell the encounters in specific areas as indicated in the manual. Such experiences bring to life what is discussed in the constitution. The manual has suggested this method in various sessions of the training.

### **8. Display**

This is a method where a trainer uses a collection of learning materials for the learner to see, feel and manipulate in order to enhance learning. The trainer can display charts, Acts of Parliaments, election materials and other resources for the participants to see and interact with.

Displays should be mounted before the session and should be placed where all participants can see. The trainer should provide time for the participants to ask questions and seek clarifications.

### **Training Resources**

Resources are used to enhance learning as participants tend to retain more of what they see and feel than what they hear. Resources also increase participants' attention span and opens room for discovery and exploration. Resources are therefore very important in training. The manual has therefore provided a list of resources for use during the training. These include:

#### **a) The Constitution of Kenya, 2010**

The Constitution of Kenya 2010 is the main reference material for this training manual.

It should be used and referred to in every session. The trainer should always carry a copy of the constitution during the training. It is also important for the trainees to have their own copies.

## **b) Information, Education and Communication (IEC) materials**

These include posters, pictures, charts, pamphlets and other materials that are used to inform participants during the training sessions. The use of a variety of IEC materials ensures that all participants are catered for in ensuring the aims of the training are achieved.

## **c) Acts of Parliament**

Acts of Parliaments are very important in facilitating the implementation of the constitution. The training manual has made reference to most of the current Acts. The trainer should make reference to the same and provide them to the trainees so that they can interact with them. As new Acts are enacted the trainer should include them during the training in the relevant areas. A list of Acts is provided in **appendix 1**:

## **d) Books**

A number of books have been suggested as reference materials in this manual. The trainer is encouraged to source for them as they are widely available.

## **e) Social Maps**

Social maps show social economic resources status and distribution of a nation. Such maps can be generated by the participants or the trainer.

## **f) Budgets**

Where possible, the trainer can source for county and/or national budgets for the participant to interact with. This enables the participants to see how they look like and how they are developed.

## **g) Reports**

Where relevant reports are available the trainer should provide a copy for the participants to interact with and see the information they provide and their importance. The reports referred to in the manual include:

- The Hansard

This is a Parliamentary report. Both the national and county governments have Hansards which are the official published reports of proceedings in the parliaments. Where possible, the trainee can avail a Hansard report for the participants to interact with.

- Controller of Budgets reports.
- County governments' annual reports
- Social audit reports by Civil Society Organisations (CSOs)
- Commission for the Implementation of the Constitution (CIC) reports
- Auditor General reports

### **a) Plans**

National and county plans have been referred to in the manual. The trainer should try to access these plans when training.

### **b) Internet sources**

Where ICT infrastructure is available it should be used as they bring to life what is being discussed. They have therefore been suggested in relevant areas in the manual. A good example is:

- YouTube can be used to show the difference between riots and demonstration
- Kenya devolution and revenue sharing calculator

([www.brookings.edu/research/interactives/2013/kenya](http://www.brookings.edu/research/interactives/2013/kenya)). The trainer can use this calculator to determine how much money their counties are entitled to and how it is calculated.

## **Assessment Methods**

Assessment means to make judgement on person(s) or situation(s) based on available information. It is an essential part of training. Assessment during the training sessions is based on the achievement of specific objectives and should be included in the planning of the session. The manual has provided suggestions on how each session can be assessed. The trainer can also use any other assessment method they may see fit to assess the achievement of the specific objectives. An assessment is important for the trainer as it:

- determines the extent of the achievement of the set objectives;
- enables identification of participants' strengths, weaknesses, attitudes, abilities and knowledge;
- assessment of their training methods;

The assessment methods suggested in the manual include:

### **1. Oral questions**

Oral questions are used during the training regardless of the training method used. The

questions are asked spontaneously or can be planned and asked during the training. This type of assessment gives immediate feedback on the learner's knowledge and attitudes. The trainer should use oral questions continuously during the training and also encourage the participants to ask questions. Such questions enable the trainer to assess the participants' level of understanding of the subject matter.

### **2. Question and answer**

The trainer prepares questions for learners to answer during the training. It is important to plan the questions well in advance in order to allow learning to be more focused especially in meeting the session objectives. The responses from the participants will enable the trainer to gauge how much they have understood the

content being discussed. The trainer can use this method to carry out discussions and build on the session content.

### **3. Observation**

The trainer is expected to be vigilant and observe what is happening during the training. The trainer observes the participants' contribution during brainstorming, discussion, experience sharing, role play, discussion, group activities and presentations. Participants who do not contribute may be due to lack of understanding of what is being trained or they are not seeing the relevance of the information being provided. The trainer should ask such participants' questions based on the subject matter to gauge their understanding.



# MODULE ONE: THE CONSTITUTION



# CONSTITUTION

The Constitution is a supreme law that governs a Country and every Citizen has an obligation to abide by it.

The purpose of a Constitution

- a. Protect individual rights and freedom
- b. Set out and clarify the divisions of power
- c. Limit and control Government's power
- d. Set out the principles, structures and processes of governance
- e. Nurture and protect the well-being of the individual, family, community and the nation
- f. Create a society that is responsible, respect human dignity and that is patriotic united and democratic
- g. Establish a system of governance that is fair, accountable and participatory under public officers that are selfless, honest, competent and competitively selected.

## TYPES OF CONSTITUTIONS

There are generally two types of constitution; written and unwritten.

Written (Coded)	Unwritten (Uncoded)
<ul style="list-style-type: none"> <li>• Laws are written down in a single comprehensive document</li> </ul> <p>Examples: Kenya and India</p>	<ul style="list-style-type: none"> <li>• Laws are written in different documents which are considered as part of the fundamental laws</li> </ul> <p>Examples: Israel and United Kingdom</p>

*Figure 1. Types of Constitution*

### Evolution of the Constitution during the pre-colonial and colonial periods:

#### a. Customary Constitution

The following are some of the features of the customary Constitutions:

- i. The laws were largely unwritten
- ii. They mainly governed the economic, social, cultural and political issues such as marriage, birth, death, inheritance, cattle raiding, initiation, movement from childhood to adulthood, war and leadership among others



- iii. Justice was administered mainly by clan elders. However, during the colonial period laws were administered by the native courts
- iv. Laws were community based and therefore not uniform, although with few similarities. The variations were caused by differences in economic, political developments, differences in social and kinship systems, religious beliefs and cultural practices
- v. During the colonial period, English law was superior while African customary law was subordinate
- vi. Where African customary law was deemed to contradict English law, the English law prevailed.

#### **b. Lyttelton Constitution (1954)**

This was the first multi-racial Constitution. It was a product of an understanding between the Secretary of State, Oliver Lyttelton and Governor Evelyn Baring in 1954. It was named after the then Colonial Secretary, Sir Lyttelton. The Constitution established a Council of 12 Ministers as follows:

- 6 Ministers appointed by the Governor
- 6 were Elected Ministers: 3 Europeans, 2 Asians and 1 African. The African representatives rejected these arrangements as a result of inadequate representation of Africans.

#### **c. Lennox-Boyd Constitution (1958)**

This Constitution was adopted in 1958. It abolished the Executive Council and replaced it with a Council of Ministers. It increased the Council of Ministers to 16, that is, half elected and half appointed by the Governor.

However, the Europeans were still the majority and as a result key issues such as the redistribution of land, release of political prisoners and repeal of repressive laws were not addressed. Demand for full independence was in the air. The Africans demanded for a constitutional conference to negotiate for independence. It led to the colonial office acceptance of the need to hold a constitutional conference which was the first Lancaster House Conference of 1960 by the colonial office in which Kenyan political leaders met to address the colony's constitutional future.

#### **d. Macleod Constitution (1960)**

This Constitution resulted due to the failure of the first Lancaster House to provide an acceptable solution of representation in governance. It provided for a majority of Africans in the Legislative Council (LEGCO) of 65 Members and Council of Ministers. The Europeans refused to accept the Constitution. This led the second Lancaster House Conference of 1962 which made for provision for independence and alluded to internal self-governance.

### **e. Lancaster House or Independence Constitution**

The Lancaster House or the Independence Constitution reflected the compromises made at the three constitutional conferences held at Lancaster House.

### **f. Independence Constitution (Westminster Model)**

The Independence Constitution adopted this model in which government centralizes power at the National level through the Head of State and Parliament.

#### **Constitutional Amendments were as follows:**

- 1964 - Kenya became a republic
- 1969 - Made to consolidate the earlier amendments (1964 - 1969) altering of the process of amending the Constitution by removing the requirement of two thirds majority vote.
- 1976 - Amendments made to allow the president to pardon politicians barred from contesting in elections due to electoral malpractices
- 1982 - Removal of multi-party system and the establishment of one-party state structure with Kenya African National Union (KANU) as the only ruling party  
  
Introduction of 'Mlolongo' system of voting which replaced the secret ballot method of voting during primaries/nominations
- 1991- Kenya became a Multiparty State again.
- 1997- Establishment of inter-party Parliamentary Group (IPPG) to agree on minimum reforms on the Constitution

#### **Other Processes Leading to the CoK 2010**

- Establishment of the Constitution of Kenya Review Commission
- Preparation of the draft Constitution
- 2005 - National Referendum on the Kilifi Draft. Kenyans voted against this Draft
- 2008 - Constitution of Kenya Review Act to serve as the legal framework for achieving a new constitution. The Act created the Committee of Experts
  - Referendum and Promulgation of the CoK 2010

### **The Constitution of Kenya, 2010**

#### **Provisions of the Constitution of Kenya, 2010**

The constitution of Kenya has a preamble, 18 chapters and 6 Schedules

**The Preamble:** The eight principles of the Preamble of the Constitution of Kenya form the basis of its chapters. They include:

**Acknowledging:** the supremacy of the Almighty God of all creation. This is to admit the existence of God.

**Honouring:** those who heroically struggled to bring freedom and justice to our land. We need to give fame and glory to those people who fought for the freedom of Kenya. For example Mau Mau Freedom Fighters, Mekatilili wa Menza.

**Proud:** of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation. We should feel pleasure and highly honoured of our ethnic cultures, faith and creed.

**Respectful:** of the environment, which is our heritage and determined to sustain it for the benefit of future generations.

**Committed:** to nurturing and protecting the well-being of the individual, the family, communities and the nation.

**Recognising:** the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. We should have a strong desire and ambition to achieve positive values.

**Exercising** our sovereign and inalienable right to determine the form of governance of our country and having participated fully in the making of this Constitution. Citizens should endeavor to understand the Constitution and its provisions to ensure duty bearers carry out their responsibilities while they participate in their own governance.

**Adopt, Enact:** and give this Constitution to ourselves and to our future generations

### **Overview of Chapters of the CoK 2010**

Chapter 1: Sovereignty of the People and Supremacy of the Constitution

Chapter 2: The Republic Chapter 3: Citizenship Chapter 4: Bill of Rights

Chapter 5: Land and Environment Chapter 6: Leadership and integrity Chapter 7: Representation of the people Chapter 8: The Legislature Chapter 9: The Executive Chapter 10: The Judiciary

Chapter 11: The Devolved Government Chapter 12: Public Finance Chapter 13: The Public Service Chapter 14: National Security Chapter 15: Commissions and Independent Offices

Chapter 16: Amendment of the Constitution

Chapter 17: General Provisions

Chapter 18: Transitional and Consequential Provisions

### **Schedules of the Constitution**

- a) There are six schedules as follows:
- b) First schedule is on Counties
- c) Second schedule is on National Symbols
- d) Third schedule is on National Oaths and Affirmations
- e) Fourth schedule on distribution of functions between National and County Governments
- f) Fifth schedule on Legislation to be enacted by Parliament to implement the Constitution
- g) Sixth schedule on Transitional and Consequential Provisions

### **Institutions Responsible for the Implementation of the Constitution**

- a) Constitution Implementation Commission (CIC)
- b) Constitutional Implementation Oversight Committee(CIOC)
- c) The Parliament (National Assembly and Senate)
- d) Office of the Attorney General and Department of Justice e) Kenya Law Reform Commission(KLRC)
- f) The Executive g) The Judiciary
- h) Transition Authority
- i) Constitutional Commissions and Independent Offices

### **Mechanisms and key institutions responsible for the implementation of the Constitution**

Mechanisms for implementing the Constitution:

- i. Laws
- ii. Policies
- iii. Regulations and Guidelines

Key Institutions for implementing the constitution:

- i. Commission for the Implementation of the Constitution (CIC)
- ii. Constitutional Implementation Oversight Committee
- iii. Parliament and County Assemblies
- iv. Office of the Attorney General and Department of Justice
- v. Kenya Law Reform Commission (KLRC)
- vi. The Executive at the National and County Levels
- vii. The Judiciary
- viii. Constitutional Commissions
- ix. Independent Offices

## Rights and Fundamental Freedoms under Constitution of Kenya, 2010 (Chapter 4)

### Types of Rights

The types of Rights under the Constitution of Kenya 2010 are:

- i. Civil and Political rights which include the right to life, liberty, security of person, access to justice and political participation
- ii. Access to Social and Economic rights which include health care, housing, reasonable sanitation, freedom from hunger and to have adequate food, clean and safe water, social security and education
- iii. Cultural and Environmental Rights are: clean environment, use of one's language including sign language and other modes of communication.
- iv. Rights of specific groups of persons: women, children, persons with disabilities, youth, older person, marginalized and minority groups

### Fundamental Freedoms

- i. Some of the Human Rights under the Constitution of Kenya
- ii. The right to life (Art. 26), equality and freedom from discrimination (Art. 27), human dignity (Art. 28), freedom and security of the person (Art. 29)
- iii. The protection against slavery, servitude and forced labour (Art. 30), right to privacy (Art. 31)
- iv. Freedom of conscience, religion, belief and opinion (Art. 32), freedom of expression (Art. 33), freedom of the media (Art. 34) and access to information (Art. 35)
- v. Freedom of association (Art. 36), assembly, demonstration, picketing and petition (Art. 37)
- vi. Political rights (Art. 38), freedom of movement and residence (Art. 39)
- vii. Protection of right to property (Art. 40)
- viii. Labour relations (Art. 41)
- ix. Environmental rights (Art. 42)
- x. Economic and social rights (Art. 43)
- xi. Language and cultural rights (Art. 44)
- xii. Family rights (Art. 45)
- xiii. Consumer rights (Art. 46)
- xiv. The right to fair administrative action (Art. 47)

- xv. The right to access to justice (Art.48)
- xvi. Rights of arrested persons (Art.49)
- xvii. Right to fair hearing (Art. 50)
- xviii. Rights of persons detained, held in custody or imprisoned (Art.51)

Groups of people whose rights require special attention: These are rights that accrue to particular groups of people who face unique challenges in the equal realization of their rights and hence need special protection:

- i. Rights for children (Art. 53)
- ii. Persons with disabilities (Art. 54)
- iii. Youth (Art. 55)
- iv. Minorities and marginalized groups (Art.56)
- v. The older members of society (Art.57).

### Principles of Human Rights

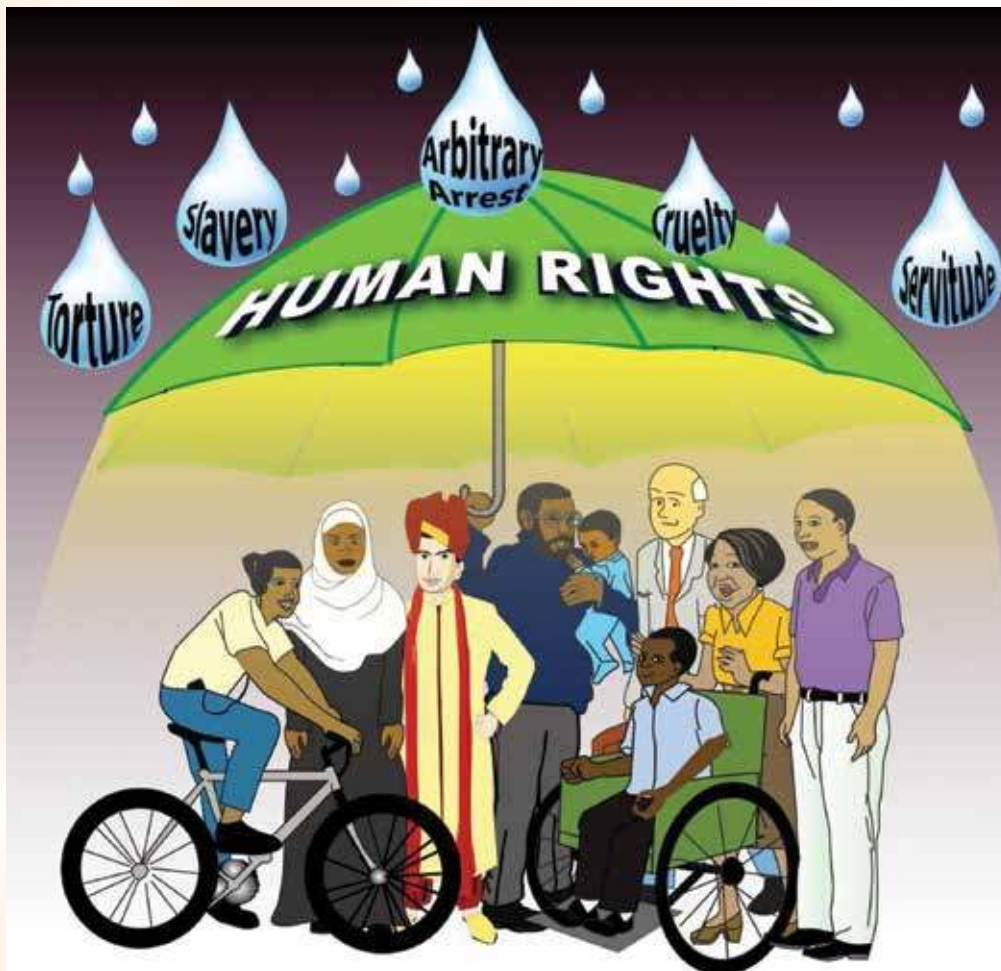


Figure 2: Human Rights under the Constitution

- i. **Universality and Inalienability:** Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."
- ii. **Indivisibility:** Human rights are indivisible. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.
- iii. **Interdependence and Interrelatedness:** Human rights are interdependent and interrelated. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.
- iv. **Equality and Non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.
- v. **Participation and Inclusion:** All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.
- vi. **Accountability and Rule of Law:** States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights.

### **Ways of Achieving Rights under the Constitution of Kenya**

There are three ways of achieving rights through the human rights based approach:

**Participation:**

Enabling people to realise their rights to participate in, and access information relating to, the decision-making processes which affect their lives.

**Inclusion:**

Building socially inclusive societies based on the values of equality and non-discrimination, through development which promotes all human rights for all people.

**Fulfilling obligation:**

Strengthening institutions and policies which ensure that obligations to protect and promote the realisation of all human rights are fulfilled by states and other duty bearers.

- a. Limitation of rights and fundamental freedoms under the Constitution of Kenya
- b. The Constitution of Kenya provides for the limitation of rights and fundamental freedoms.
- c. A right or freedom may be limited by Law
- d. A right or freedom may only be limited to the extent to which is reasonable and the institution which is limiting it can justify it in an open and democratic manner.
- e. However, the following rights shall not be limited:-
  - i. Freedom from torture and cruelty, inhuman or degrading treatment or punishment
  - ii. Freedom from slavery or servitude
  - iii. The right to a fair trial; and
  - iv. The right to petition a court to order a public body to produce any person it holds in its custody.

**Land, Environment and Natural Resources, use and Management (Chapter 5)**

**Classification and System of Land Tenure in Kenya**

- i. There are three classifications of land in Kenya namely:
- ii. Public Land - is land that belongs to either national or county government or any state organ and held on behalf of the public e.g. lands of public schools, national parks etc
- iii. Private Land -is land registered and held by any person under any tenure
- iv. Community Land - is land that is lawfully registered in the name of group representatives under the provision of any law



## Land Tenure System in Kenya

- i. The constitution provides for:
- ii. Leasehold-is where person or organization leases or pays rent to the national or county government for a period of time.
- iii. Freehold-is where a person or an organization holds an absolute title to land acquired through purchase or inheritance.
- iv. Partial Interest-where two or more people have rights over one piece of land, for instance a neighbor having access to social amenities
- v. Customary interest-where land is held by a group of people based on their customary belief or lifestyle

## Principles of Land Management under the Constitution of Kenya (Art. 60)

- v. Equitable access to land
- vi. Security of land rights
- vii. Sustainable and productive management of land resources
- viii. Transparent and cost effective administration of land
- ix. Sound conservation and protection of ecologically sensitive areas
- x. Elimination of gender discrimination in law, customs and practices related to land and property in land and Encouragement of communities to settle land disputes through recognized local community initiatives.

## Functions of the National Land Commission (Article 67):

The functions of the commission are to;

- xi. Manage public land on behalf of the National and County Governments
- xii. Develop a national land policy
- xiii. Advise the national government on matters related to land titles and monitoring
- xiv. Oversee land use throughout the country
- xv. Investigate present or historical land injustices and recommend appropriate land redresses
- xvi. Encourage use of traditional dispute resolution mechanisms in conflicts over

## Functions of the Ministry Responsible for lands

The functions of the ministry responsible for lands are to:

1. develop and regularly review national land policies
2. initiate legislation on land matters
3. make regulations to guide registration of land
4. execute contracts regarding sale of land on behalf of the government

5. acquire private land for public use such as settlement
6. carry out survey and mapping of land
7. carry out land adjudication
8. carry out physical planning
9. offer land and property valuation services
10. land reclamation
11. administer public land as stipulated by the constitution

### **Functions of County Land Management Boards**

The functions of County Land Management Boards are to process application for:

- i. allocation of public land in the counties
- ii. renewal of land leases
- iii. change and extension of user
- iv. sub-division of public land in the county

### **Environment and Natural Resources**

The Constitution (Article 260) defines natural resources as physical non-human factors and components whether renewable or non-renewable. The Environmental Management and Coordination Act, 2009 identifies natural resources as air, land, water, animals and plants.

### **Types of Natural Resources**

The Constitution defines natural resources to mean physical things occurring in nature other than those created by human beings. These include those things that can be used only once or reused severally including:

- i. Sunlight
- ii. Water on the surface of the earth and that below it
- iii. Forests, animals and plant life (biodiversity) and genetic resources
- iv. Rocks, minerals, fossil fuels and other sources of energy for example geothermal and hydroelectric power.

The Environmental Management and Coordination Act (EMCA) 2009 identify natural resources to include air, land, water, animals and plants.

- i. The Constitution defines "land" to include:
  - ii. The surface of the earth and the subsurface rock
  - iii. Any body of water on or under the surface
  - iv. Marine waters in the territorial sea and exclusive economic zones
  - v. Natural resources completely contained on or under the surface
  - vi. The air space above the surface.



## Ways of Protecting the Environment and Natural Resources

Land in Kenya is required to be held, used and managed in a manner that is equitable, efficient, productive and sustainable for current and future generations and in particular in the areas of:

- a. Agriculture
- b. Fishing, hunting and gathering
- c. Protection of animals and wildlife
- d. Water
- e. Energy

The Cabinet Secretary in charge of the environment or the National Environmental Management Authority (NEMA) is required to publish regulations for the protection of the environment including:

- i. Protection of rivers, riverbanks, lake shores, wetland zones among others
- ii. Protection of the interest of indigenous communities within or around a lake shore, wetland, coastal zone or river bank or forest
- iii. Protection of hill tops, hill sides, mountain areas and forests
- iv. Re-forestation and afforestation of hill tops, hill slopes and mountainous areas
- v. Conservation of energy and planting of trees or woodlots
- vi. Conservation of different species of animals and plants (biological diversity)
- vii. Conservation of naturally occurring resources situated beneath the surface of the earth
- viii. Protection of the ozone layer
- ix. Ensure access to genetic resources of Kenya by issuing guidelines and prescribing measures for their sustainable management and utilization.

## The Agreements Relating to Natural Resources

A government may enter into an agreement with another government, a company or any other entity for the exploitation of any natural resources in Kenya. Where the agreement involves the granting of a right or concession by or on behalf of any person, the government is required to consult the National Environmental Management Authority (NEMA) and that agreement must receive the approval of Parliament.

NEMA is required to keep a register of all international treaties, agreements or conventions in the field of the environment to which Kenya is a party.

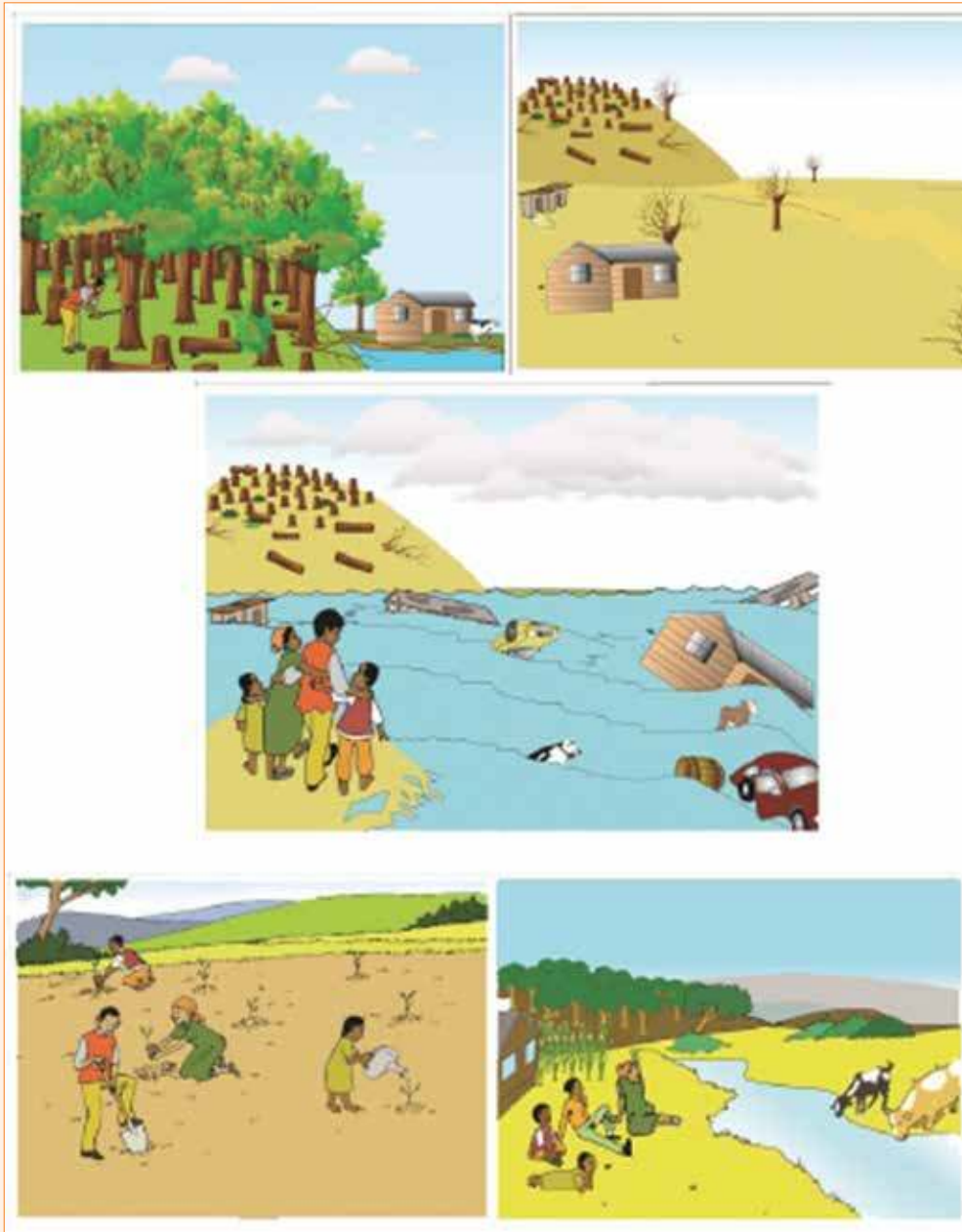


Figure 3

## Protecting the Environment and Natural Resources

- i. Protection of river banks, lake shores and wetlands
- ii. Protection of the interest of indigenous communities within or around above areas(a)
- iii. Protection of hill sides, mountain areas and forests
- iv. Re-afforestation and afforestation of above areas(c)
- v. Protection of the forests by:
  - Conservation of energy and planting of trees
  - Conservation of different species of animals and plants
  - Conservation of naturally occurring resources situated beneath the surface of the earth
  - Conservation of naturally occurring resources situated above the surface of the earth
  - Protection of the coastal zone
  - Protection of the ozone layer
  - Ensuring access to genetic resources of Kenya by issuing guidelines and prescribing measures for sustainable management and utilization.

## Leadership and Governance under the Constitution of Kenya, 2010

### National Values and Principles of Governance (Chapter 2 Art. 10)

- i. **Patriotism** - commitment of a person to love, loyalty and devotion to one's country
- ii. **Sharing and Devolution of Power** - political arrangement in which all groups in a society participate in governance while devolution is the transfer of power resources and services from a central government to a local unit
- iii. **National Unity** - working with others in pursuit of common goals
- iv. **The Rule of Law** is about individuals, persons and government submitting to obey the law.
- v. **Democracy and public participation** is a legislative system in which all citizens participate directly or indirectly in governance of their country.
- vi. **Human dignity** is that idea that all humans should be treated with love and respect regardless of class, race, gender, nationality, culture, sex, education, religion or any other division
- vii. Equity is the quality of being impartial, reasonable and fair in all our decision and actions.
- viii. Social justice is justice in terms of the distribution of wealth, opportunities, and privileges within a society
- ix. Inclusiveness engages each individual and makes people feel valued and

essential to the success of a group or organization.

- x. Equality includes equal rights under the law, such as security, voting rights, freedom of speech and assembly, and the extent of property rights. It also includes access to education, health care and other social securities.
- xi. Human Rights are entitlements inherent to all human beings, irrespective of nationality, place of residence, sex, or ethnic origin, colour, religion, language, or any other status.
- xii. Non-discrimination and Protection of the Marginalized refers to fairness in treating people without prejudice irrespective of their gender, ethnicity, class, religion and race, geographical or generational differences. On the other hand, marginalization is the social process of becoming or being relegated or confined to a lower social standing. The Constitution provides for inclusiveness; that no individual or community should be discriminated against or marginalized.
- xiii. Good governance entails conducting of public affairs and managing public resources effectively in order to guarantee the realization of human rights and social welfare.
- xiv. Integrity is regarded as the honesty and truthfulness of one's actions.
- xv. Transparency and Accountability is the openness in the management of public affairs while public accountability is the obligations of persons or authorities entrusted with public resources to report on the management of such resources and being answerable to the public.
- xvi. Sustainable development is a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come.

### **Guiding Principles of Leadership and Integrity (Art. 73)**

- 1. Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- 2. Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
- 3. Selfless service based solely on the public interest, demonstrated by
  - i. Honesty in the execution of public duties; and
  - ii. The declaration of any personal interest that may conflict with public duties;
- 4. Accountability to the public for decisions and actions; and
- 5. Discipline and commitment in service to the people

### **Responsibilities of Leadership**

- i. Authority assigned to a State officer is a public trust to be exercised in a manner that:
  - ii. is consistent with the purposes and objects of the Constitution;

- iii. demonstrates respect for the people;
- iv. brings honour to the nation and dignity to the office;
- v. promotes public confidence in the integrity of the office;
- vi. vests in the State officer the responsibility to serve the people, rather than the power to rule them

**The role of Ethics and Anti- Corruption Commission and Commission on Administrative Justice in implementing Chapter Six of the Constitution:**



**Figure 4. Traffic Police officer refusing a bribe**

In relation to State and Public officers the Ethics and Anti-Corruption Commission has the following functions;

- i. develop and promote standards and best practices in integrity and anti-corruption;
- ii. develop a code of ethics;
- iii. work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
- iv. receive complaints on the breach of the code of ethics by public officers;
- v. investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption or violation of codes of ethics or other matter prescribed under the Ethics and Anti-Corruption

Commission Act, 2012 or any other law enacted pursuant to Chapter Six of the Constitution

- vi. recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;
- vii. oversee the enforcement of codes of ethics prescribed for public officers;
- viii. advise, on its own initiative, any person on any matter within its functions;
- ix. raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 as to confidentiality;
- x. subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

The functions of the Commission on Administrative Justice are to:

- i. Investigate any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice;
- ii. Investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct;
- iii. Report on complaints investigated and take remedial action

The conduct of state officers as stipulated in the Constitution of Kenya In conducting their duties, state and public officers must:

- i. Perform their duties as provided by the law
- ii. Treat members of the public and other public officers with courtesy and respect
- iii. Carry out their duties in the best interest of the people of Kenya;
- iv. Take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office
- v. Carry out the duties of their office efficiently, honestly, transparently, in an accountable manner
- vi. Keep accurate records and documents relating to the functions of the office
- vii. Report truthfully on all matters of the organization which they represent
- viii. Carry out the duties of the office in a manner that maintains public confidence in the integrity of the office



- ix. Maintain high standards of performance and level of professionalism within their organizations

Adhere to the ethical and professional requirements of any professional body they are members.

- i. State and public officers must avoid-
- ii. Having any conflict between personal interests and public or official duties
- iii. Demeaning the office that the officer holds
- iv. Engaging in activities that amount to abuse of office
- v. using their office to unlawfully or wrongfully enrich themselves or any other person
- vi. Discriminating against any person
- vii. Misusing public resources
- viii. Falsifying any records
- ix. Engaging in wrongful conduct in furtherance of personal benefit
- x. Committing criminal offences
- xi. Engaging in actions which would lead to their removal from the membership of a professional body
- xii. Violating the rights and fundamental freedoms of any person.

## REPRESENTATION OF THE PEOPLE

Representation refers to both the process of electing leaders by the citizens and the system of leadership. Sovereign power is delegated to Parliament and Legislative Assemblies in County Governments; National Executive and executive structures in the County Governments, the Judiciary and other Independent Tribunals.

### Importance of Elections

- It provides an opportunity for citizens to choose their leaders.
- It allows for political participation.
- It enables people to exercise their democratic right.

It provides for self-corrective system where political parties are kept in check or their performance is reviewed.

### Constitutional principles of the electoral system in Kenya

- a. The electoral system is required to comply with the following principles:
- b. All Kenyan citizens must be allowed and encouraged to freely exercise their political rights under Article 38
- c. Participation of both men and women by ensuring that no more than two-thirds of the members of any elective public bodies shall be of the same gender;
- d. Fair representation of persons with disabilities
- e. Universal suffrage based on the aspiration for fair representation and equality of vote
  - i. Free and fair elections, which are:
  - ii. by secret ballot
  - iii. free from violence, intimidation, improper influence or corruption
  - iv. conducted by an independent body
  - v. transparent
  - vi. administered in an impartial, neutral, efficient, accurate and accountable manner.

### Key Provisions that Guide Elections in Kenya

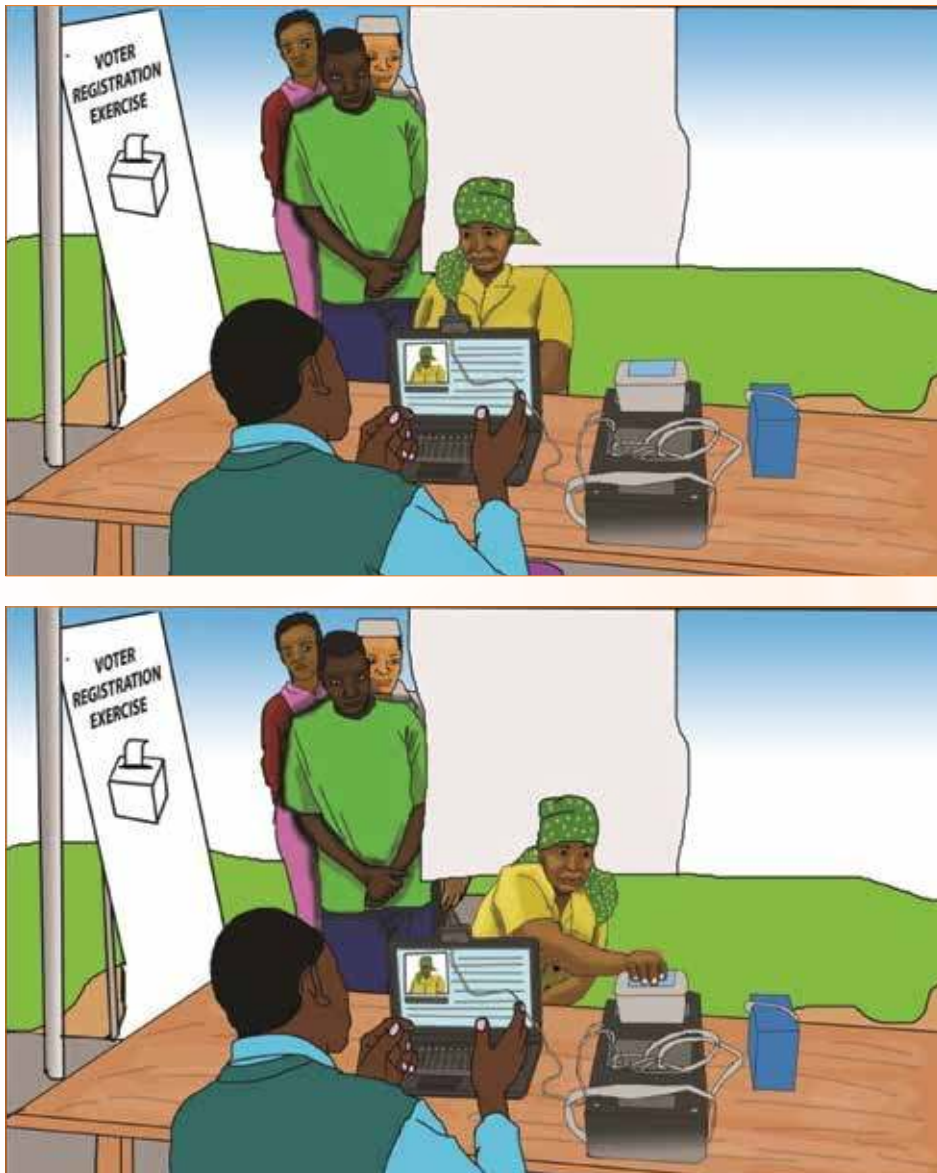
Key provisions on elections are:

1. **Code of Conduct** -The Constitution provides for a code of conduct by which political parties, their nominees, independent candidates and the general public must comply. The Code of Conduct is found in the Second Schedule of The Elections Act, 2011.
2. **Voter registration** - The Constitution provides for qualifications of registering as a voter at elections and referenda. This include:



- i. Attainment of age of maturity (18 years)
- ii. Possession of a National Identity Card or Kenyan Passport at the time of registration;
- iii. Being of sound mind;
- iv. Not having been convicted of an election offence during the previous five years.

The law provides for continuous voter registration. An eligible voter may only register at one registration centre and the registration process should be simple and accessible to allow any eligible citizen to register. Part 2 of The Elections Act, 2011 provides in-depth requirements regarding voter registration. It also provides for the rights of a voter.



**Figure 5. A woman registering for a voters card**

3. **Independent candidate:** A person does not have to be a member of a political party in order to be a candidate for any of the six elective positions. According to Article 85 of the Constitution, any person may contest elections as an independent candidate if he or she is not a member of a registered political party and has not been a member for at least three months immediately before the Election Day. A person must also satisfy the specific nomination requirements for independent candidates for election to the any of the elective positions.
4. Voting, vote counting and announcement of results -The Independent Electoral and Boundaries Commission (IEBC) is responsible for ensuring that the voting method used during every election is simple, accurate, verifiable, secure, accountable and transparent. Moreover, the Commission is responsible for implementing structures to prevent electoral malpractice and to ensure that each polling station promptly counts and tabulates votes and announces the election results.
5. Allocation of party list seats -The allocation of party list seats is in line with a proportional system outlined in Article 90 of the Constitution, which stipulates that the nominated seats in the National Assembly, Senate, and the 47 county assemblies are determined through nomination by party lists submitted to IEBC before a general election.
6. Electoral disputes - Article 87 of the Constitution requires a quick and just resolution of disputes and allows citizens to petition the Court in case of disputes of the results within 28 days of their declaration by IEBC. Presidential election disputes should be filed within seven days.

### Winning elections in Kenya

- **Plurality:** This is the method used in determining a winner whereby the candidate with the most number of votes wins. This applies to all elective positions, except for the position of president.
- **Absolute majority:** This is the method whereby the winning candidate must garner at least more than the half (50% +1) of all valid votes cast. In addition, the winning candidate must also receive at least twenty five percent (25%) of all valid votes cast in more than half of all the Counties. In Kenya used in the election of the President
- i. **Proportional formula:** This is done by use of party lists. The Independent Electoral and Boundaries Commission is responsible for the conduct and supervision of elections for these seats. Each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the Nomination seats in National Assembly, Senate and the County Assemblies. Each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and except in the case of County Assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya. The seats mentioned are allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

- ii. **Voting, vote counting and results** - IEBC is responsible for ensuring that the voting method used during every election is simple, accurate, verifiable, secure, accountable, and transparent. Moreover, the Commission is responsible for implementing structures to prevent electoral malpractices and to ensure that each polling station promptly counts and tabulates votes and announces the election results (Article 86 of Cok 2010)

Electoral disputes - Article 87 of the Constitution requires the quick and just resolution of disputes and allows citizens to petition the court in dispute of the results within 28 days of their declaration by IEBC. However, Presidential election disputes must be filed within seven days.

### **Constitutional principles of the electoral system (Art. 81)**

- i. All Kenyans Citizens must be allowed and encouraged to freely exercise their political rights (Article 38)
- ii. Observation of the 2/3 gender rule
- iii. Fair representation of persons with disabilities

Universal suffrage based on the aspirations for fair representation and equality of vote Free and fair elections

### **Elective positions at various levels**

#### **National level**

- i. The President
- ii. The Member of the National Assembly
- iii. The Senator
- iv. The Woman County Representative to the National Assembly

#### **County level**

- i. The Governor
- ii. The County Ward Representative (Member of the County Assembly)

### **Functions of Independent Electoral and Boundaries Commission (IEBC)**

The Independent Electoral and Boundaries Commission (IEBC) is established under Article 88 of the Constitution as an independent body, not subject to directions from any party

The mandate of the IEBC is to conduct and supervise all referenda and elections to any elective body or office established by the Constitution or any other elections prescribed by an Act of Parliament.



**Figure 6. Elective positions**

Other functions of IEBC are to carry out are:

- i. Continuous voter registration
- ii. Regular revision of the voters' roll
- iii. Delimitation of constituency and ward boundaries
- iv. Overseeing the process of nomination of candidates for election by political parties
- v. Settlement of electoral disputes particularly disputes relating to or arising from the nominations exercise
- vi. Registration of candidates for election
- vii. Voter education
- viii. Facilitation of the observation, monitoring and evaluation of elections
- ix. Regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election
- x. Development of a code of conduct for candidates and parties contesting elections

- xi. Monitoring of compliance with the law relating to nomination of candidates by political parties.

### **Features and roles of political parties as outlined in the Constitution of Kenya and Political Parties Act, 2011**

#### **Features of Political Parties**

Political Parties in Kenya are registered by the Registrar of Political Parties. For a political party to be registered it has to satisfy the requirements stipulated by the Constitution and the Political Parties Act, 2011. The Constitution states that every political party shall:

- a) have a national character as prescribed by an Act of Parliament;
- b) have a democratically elected governing body;
- c) promote and uphold national unity;
- d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;
- e) respect the right of all persons to participate in the political process, including minorities and marginalised groups;
- f) respect and promote human rights and fundamental freedoms, and Gender equality and equity;
- g) promote the objects and principles of the Constitution and the rule of law; and subscribe to and observe the code of conduct for political parties.

The Political Parties Act requires that for any political party to be fully registered, the party shall;

- a) apply in writing and the application signed by an authorized official of the political party;
- b) recruit as members, not fewer than one thousand registered voters from each of more than half of the counties
- c) ensure that membership reflects regional and ethnic diversity, gender balance and representation of minorities and marginalised groups
- d) have the composition of its governing body reflecting regional and ethnic diversity, gender balance and representation of minorities and marginalised groups
- e) have not more than two-thirds of the members of its governing body being of the same gender
- f) demonstrate that members of its governing body meet the requirements of

#### **Chapter Six of the Constitution and the laws relating to ethics;**

- i. have submitted to the Registrar;
- ii. a list of the names, addresses and identification particulars of all its members;
- iii. the location of its head office, which shall be a registered office within Kenya

- and a postal address to which notices and other communication may be sent;
- iv. the location and addresses of the branch offices of the political party, which shall be in more than half of the counties;
- g) undertaken to be bound by the Political Parties Act, 2011 and the Code of Conduct set out in the First Schedule of the Act

### **Roles of Political Parties**

- i. Promote freedom of association that allows people to belong to a political party of their choice
- ii. Provide an alternative government in situations where the ruling party fails to meet the needs of the people
- iii. Educate 'Wananchi' on national issues and the problems facing the country and the solutions to the problems
- iv. Encourage the respect of Human Rights and opposition parties as they act as people's representatives
- v. Make change of government orderly and lawful.
- vi. Promote democracy in governance

### **Legal Limits of a Political Party**

- Article 91 (2) prohibits political parties from:
  - being founded on religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred;
  - engaging in or encourage violence by, or intimidation of, its members, supporters and opponents;
  - establishing or maintain a paramilitary force, militia or similar organization;
  - engaging in bribery or other forms of corruption;
  - accepting or use public resources to promote its interests or its candidates in elections, except where allowed under the constitution or by statute

### **Key provisions of the Election Campaign Financing Act 2013: Sources of campaign funds**

- a) The sources of funds for purposes of financing party nomination, election or referendum campaign are:
- b) contributions received from any person, political party or any other lawful source;
- c) contributions from a lawful source, not being directly from a foreign government;
- d) Contributions from a Harambee.



1. Limits to expenditure
2. The IEBC shall, at least twelve months before an election, by notice in the Gazette, prescribe the spending limits. This may include limits on media coverage.
3. Any contribution from a person, organisations or any other lawful source contributed to a campaign financing account shall not exceed the limit of the total contribution prescribed. However, a candidate's contribution to their own campaign financing account is limitless.
  - The IEBC shall, in prescribing spending limits take into consideration
  - geographical features and urban centres;
  - the type of election;
  - the population in an electoral area;
  - the number of party members in an electoral area. This does not apply to independent candidates.
4. the communication infrastructure in an electoral area
5. Where a candidate, political party or a referendum committee exceeds the spending limits prescribed due to unforeseeable and extraneous circumstances, the candidate, political party or referendum committee shall file a report with IEBC specifying the reasons for exceeding the limit, within such time as the Commission may prescribe and the Commission shall determine if such spending was justifiable.

A candidate who, or a political party or referendum committee which, exceeds the prescribed spending limits and fails to report this fact to IEBC commits an offence.

### **Electoral offences and punishment as outlined in the Elections Act, 2011**

#### **1. Offences relating to register of voters for example registering using falsified documents and use of a deceased person's documents.**

A person who commits offences relating to register of voters is liable, on conviction, to a fine not exceeding one million shillings and to imprisonment for a term not exceeding six years or both.

#### **2. Offences relating to multiple registrations as a voter**

A person who commits the offence is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both.

#### **3. Offences relating to voting for example; double/multiple voting and pretence on ground of disability or illiteracy so as to be assisted in voting.**

A person who commits the offence is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six years or both Offences by members and staff of the Commission (including officers

engaged for a particular election) such as bias in the dispensation of duty and falsification of election documents.

A person who commits the offence is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

**4. Offences relating to maintenance of secrecy at elections.**

A person who contravenes the provisions of this section commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both

**5. Personation, treating, undue influence, bribery and use of force or violence during election period.**

A person who commits any of the offences is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.

**6. Use of National Security Organs**

A candidate, or any other person who uses a public officer, or the national security organs to induce or compel any person to support a particular candidate or political party commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding six years or to both.



**Figure 7. Bribery of voters is an electoral Offenses**

## 7. Use of Public Resources

A person who uses public resources during a campaign is liable, on conviction, to a fine not exceeding two million shillings or imprisonment for a term not exceeding six years or to both. A candidate, who after conviction for this offence repeats the offence, shall be disqualified by the Commission and shall not be eligible to participate in the ongoing election and the next election; and be disqualified from holding any public office

## Run Off and Election

### Petition Run-off election

- A run-off election is provided for only in a Presidential election contest. If no candidate gets the required number of votes (that is 50%+1) and at least 25% in at least half of the counties, then the top two candidates with the most votes compete in a second election, known as run-off.
- The run-off election for the President must be held within thirty days after the general election.
- The presidential candidate with most valid votes in the run-off elections becomes the winner.

### Election Petition

- This refers to a legal complaint raised by either a loser or a voter in an election against the winner seeking to overturn the outcome of that election based on allegations of any of the electoral offences committed by the winner or announcement of erroneous results.
- The petition is lodged with the proper authority. Where the complaint arises from the process of nomination or campaigning, the petition should be lodged with IEBC. In case where the complaint arises from the outcome of the election, the complaint should be lodged in the Courts. Specifically an election petition from the election of a County Assembly Ward Representative is lodged in the Magistrate's Court. Petitions from the election of the Governor, the Member of National Assembly (MNA), County Woman Member of National Assembly or Senator are lodged in the High Court. Petitions from Presidential elections must be lodged in the Supreme Court.
- The law requires that these petitions be lodged within the prescribed time limit. In the case of a petition arising from Presidential elections it must be lodged within seven days from the publication of the results. All other petitions must be lodged within 28 days.

### Dispute Resolution Mechanisms

- Dispute resolution is the process of resolving disputes between a member of a party and the party.
- Common election disputes are disputes relating to or arising from nominations.
- IEBC is mandated to resolve all electoral disputes, including disputes relating

to or arising from nominations but is excluded from settlement of election petitions and disputes subsequent to the declaration of election results which is a preserve of the Courts.

- An electoral dispute shall be determined within seven (7) days of the lodging of the dispute with IEBC.

### **The Role, Rights and Privileges of Election Observers**

Election observation is the process of gathering information related to the electoral process in a systematic way and the issuing of reports and evaluations on the conduct of electoral processes based on information gathered by the accredited observers without interference in the process itself. An election observer is accredited by the IEBC.

- i. The Roles of Observers are to:
- ii. Promote free and fair elections
- iii. Identify electoral malpractices and bring them to the attention of the electoral body
- iv. Compile and write reports on electoral malpractices in a political electoral unit;
- v. Pursue corrective action to electoral malpractices
- vi. Boost voter confidence
- vii. Act as a deterrent to those interested in undermining the electoral system and process
- viii. Influence policy making by the IEBC on the unique nature of the electoral process.

### **Rights and Privileges of Election Observers**

- Access To Polling Stations, Counting Venues and the IEBC national and local offices;
- Obtain official information about the country and the election from all election officials as long as the information is factual, public and within the official's knowledge;
- Attend meetings convened for the briefing of election observers or for any other purpose;
- Receive co-operation from all election officials within the law;
- Communicate with any person inside the polling station (other than a voter) in a manner that does not interfere with the flow of the polling and only with the permission of the Presiding Officer.
- Speak or communicate with any person at any place outside the polling station;

## Recall of Elected Leaders

- Article 104(1) provides a voter the right to recall a Member of Parliament and County Assembly representing their constituency, county or county assembly ward before the end of their term.

The Elections Act, 2011, provides that a Member may be recalled when he/she is found, after due process of the law, to have violated Chapter Six of the Constitution (Leadership and Integrity), to have mismanaged public resources,

- been convicted of an offence under The Elections Act, 2011.
- A recall can only occur 24 months after the election and no later than 12 months immediately before the next general election.
- A recall of a member of Parliament or County Assembly shall only be initiated upon a judgement or finding by the High Court confirming the grounds specified
- A recall petition shall not be filed against a member of Parliament or County Assembly more than once during the term of that member in Parliament.

### **Procedure of Recall of Member of Parliament (Senator, Member of National Assembly) and Member of County Assembly**

- A recall shall be initiated by a petition which shall be filed with the IEBC and which shall be-
  - o in writing and signed by a petitioner who
  - o is a voter in the county assembly ward, constituency or county in respect of which the recall is sought; and
- was registered to vote in the election in respect of which the recall is sought;
- Accompanied by an order of the High Court issued in terms of section 45(3).

#### ***The petition shall:***

- specify the grounds for the recall
- contain a list of such number of names of voters in the county ward assembly, constituency or county which shall represent at least thirty percent (30%) of the registered voters
- Be accompanied by the fee prescribed for an election petition.
- In the case of the Member of Parliament, the list of names shall contain the names, address, national identity card or passport number and signature of the voters supporting the petition and shall contain names of at least fifteen percent of the voters in more than half of the wards in the county or the constituency, as appropriate.
- The voters supporting a petition shall represent the diversity of the people in the county assembly ward, constituency or county as the case may be.
- The petitioner shall collect and submit to IEBC the list of names within a period of thirty days after filing the petition.

- IEBC shall verify the list of names within a period of thirty days of receipt of that list.
- The Commission, if satisfied that the requirements are met, shall within fifteen days after the verification, issue a notice of the recall to the Speaker of the relevant House.

# MODULE TWO: DEVOLUTION



## Decentralization

Decentralization is a process of transfer of sovereign power and resources from a central authority to different levels of government. There are various forms of decentralization which include; delegation (for instance to parastatals), de-concentration (from central ministry to departments at districts and lower levels) and devolution among others.

## DEVOLUTION

Devolution is the process that involves the transfer of functions, resources, power and responsibilities from the central government to county governments or other decentralized organs in order to promote participatory democracy and sustainable development for the benefit of all citizens. In Kenya, devolution is granted by the Constitution.

### Objects of Devolution (Article 174)

The objects of devolution are as follows:

- i. To promote democratic and accountable exercise of power;
- ii. To foster national unity by recognizing diversity;
- iii. To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- iv. To recognize the right of communities to manage their own affairs and to further their development;
- v. To protect and promote the interests and rights of minorities and marginalized communities;
  - i. To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
  - ii. To ensure equitable sharing of national and local resources throughout Kenya;
  - iii. To facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and
  - iv. To enhance checks and balances and the separation of powers.

### Principles of Devolution (Article 175)

- i. County governments shall be based on democratic principles and the separation of powers;
- ii. County governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and
- iii. Not more than two-thirds of the members of representative bodies in each county government shall be of the same gender.



## Kenya's Transition Mechanisms to Devolved Government

The Transition Authority is the key institution responsible for facilitating and coordinating transition to devolved government. TA is established pursuant to Section 15 of the Sixth Schedule to the Constitution under Section 4 of the Transition to Devolved Government Act 2012, (TOGA).

The Authority reports on the progress of transition to devolved government to Commission for the Implementation of the Constitution and Commission on Revenue Allocation on monthly basis. It also reports to Parliament and President on quarterly, semiannually and annual basis.

### Specific Functions of Transition Authority

- a) The following are the functions of the Transition Authority pursuant to section 7(2) of the Transition to Devolved Government Act, 2012:
  - b) Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule to the Constitution to the national and county governments;
  - c) Determine the resource requirements for each of the functions;
  - d) Develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule to the Constitution;
  - e) Co-ordinate with the relevant State organ or public entity in order to-
    - i. Facilitate the development of the budget for county governments during Phase One of the transition period;
    - ii. Establish the status of ongoing reform processes, development programmes and projects and make recommendations on the coordinated management, reallocation or transfer to either level of government during the transition period; and
    - iii. Ensure the successful transition to the devolved system of government.
  - f) Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
  - g) Make recommendations for the effective management of assets of the national and county governments;
  - h) Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period;

Pursuant to section 15 (2) (b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments, including-

- i. Such criteria as may be necessary to guide the phased or asymmetric transfer of functions to county governments; and
- ii. The criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities.

- i) Carry out an audit of the existing human resource of the Government and local authorities;
- j) Assess the capacity needs of national and county governments;
- k) Recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions;
- l) Co-ordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- m) Advise on the effective and efficient rationalization and deployment of the human resource to either level of government;
- n) Submit monthly reports to the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation on the progress in the implementation of the transition to the devolved system of government;
- o) Perform any other function as may be assigned by national legislation.
- p) County Government Act Section 138 (3) provides that the body responsible for the transition to county government shall in consultation with public service commission and relevant ministries facilitate the redeployment, transfer and secondment of staff to the national and county governments.
- q) Urban areas and cities Act 2011, section 54 (1) provides that during the transition period, assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under the Act; and shall be classified accordingly.

## **Overview of the legal framework on devolution**

The following are the objects and purposes of key legislations that operationalize devolution.

### **Transition to Devolved Government Act, 2012**

The object and purpose of this Act is to-

- a) provide a legal and institutional framework for a coordinated transition to the devolved system of government while ensuring continued delivery of services to citizens;
- b) provide, pursuant to Section 15 of the Sixth Schedule to the Constitution, for the transfer of powers and functions to the national and county governments;
- c) provide mechanisms to ensure that the Commission for the Implementation of the Constitution performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively;
- d) provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of iii. assets and liabilities;

- iv. human resources;
- v. pensions and other staff benefits of employees of the government and local authorities and
- vi. any other connected matters;
- e) provide for closure and transfer of public records and information; and
- f) provide for the mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.

### **County Government Act, 2012**

The object and purpose of this Act is to-

- a) provide for matters necessary or convenient to give effect to Chapter Eleven of the Constitution pursuant to Article 200 of the Constitution;
- b) give effect to the objects and principles of devolution as set out in Articles 174 and 175 of the Constitution;
- c) give effect to Article 176(2) of the Constitution in respect of further decentralization; (d) provide for the removal from office of the speaker of the county assembly in accordance with Article 178 of the Constitution;
- d) provide for the powers, privileges and immunities of county assemblies, their committees and members under Article 196 of the Constitution;
- e) provide for public participation in the conduct of the activities of the county assembly as required under Article 196 of the Constitution;
- f) seek to ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee as contemplated in Article 197 of the Constitution;
- g) prescribe mechanisms to protect minorities within counties pursuant to Article 197 of the Constitution;
- h) prescribe additional requirements in respect of the publication of county legislation as contemplated in Article 199 of the Constitution;
- i) provide, pursuant to Article 200 of the Constitution, for-
  - j) the manner of nomination or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;
  - i. the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and
  - ii. the suspension of assemblies and executive committees;
  - iii. prescribe, pursuant to Article 235 of the Constitution, uniform norms and standards, for-
- iv. establishing and abolishing offices in the county public service;

- v. appointing persons to hold or act in those offices, and confirming appointments; and
- vi. exercising disciplinary control over and removing persons holding or acting in those offices; and
- vii. provide for the promotion, evaluation and reporting on the compliance by county public officers with the values and principles in Articles 10 and 232 of the Constitution.

### **Public Finance Management Act, 2012**

The object of this Act is to ensure that-

- a. public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution; and
- b. public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

### **Urban Areas and Cities Act, 2011**

The objects and purposes of this Act are to establish a legislative framework for-

- a. classification of areas as urban areas or cities;
- b. governance and management of urban areas and cities;
- c. participation by the residents in the governance of urban areas and cities; and
- d. other matters for the attainment of the objects provided for in paragraphs (a) to (c)

### **Intergovernmental Relations Act, 2012**

The objects and purposes of this Act are to-

- a. provide a framework for consultation and co-operation between the national and county governments;
- b. provide a framework for consultation and co-operation amongst county governments;
- c. establish institutional structures and mechanisms for intergovernmental relations;
- d. provide a framework for the inclusive consideration of any matter that affects relations between the two levels of government and amongst county governments;
- e. (e) give effect to Articles 187 and 200 of the Constitution, in respect of the transfer of functions and powers by one level of government to another, including the transfer of legislative powers from the national government to the county governments; and

- f. provide mechanisms for the resolution of intergovernmental disputes where they arise.

## Government Structures

The sovereign power of the people is exercised at national and county level. The governments at two levels are distinct and interdependent and conduct their mutual relations on the basis of consultation and cooperation. The following are the structures and functions of the national and county governments respectively:

### National Government

The National Government consists of the Legislature; the Executive and the Judiciary. The Executive arm consists of the President; Deputy President and Cabinet Secretaries while Legislature is composed of the National Assembly and the Senate.

The Authority and Functions of the President

- i. The Commander in Chief of the Defense forces of the Republic of Kenya
- ii. Chairperson of National Security Council
- iii. Appoints and chairs Cabinet meetings
- iv. Reports to Parliament on International obligations
- v. Declares state of emergency I war with approval of Parliament
- vi. State of the address
- vii. Nominate, with approval of National Assembly, appoint and dismiss Attorney General, Cabinet Secretaries and Principal Secretaries in accordance with the Constitution.

*Note: The Deputy President shall be the principal assistant to the President and perform any other duty assigned by the President.*

### The Legislature

The legislature consists of the National Assembly and the Senate. The National Assembly consists of 290 members elected by registered voters of constituencies; 47 women elected by registered voters of counties; 12 members nominated by Parliamentary Political Parties according to their proportion of members of the National Assembly; The Speaker who is an ex-officio.

The roles of the National Assembly include;

- i. Representation of the people of constituencies and special interests groups;
- ii. law making;
- iii. determines the allocation of national revenue between the levels of government;

- iv. appropriate funds for expenditure by the national government and other national state organs;
- v. exercise oversight over national revenue expenditure;
- vi. reviews the conduct of the executive arm of government and initiates process of their removal from office and
- vii. Vet recruitment of State officers
- viii. approves declaration of war and extensions of states of emergency

The Senate comprises of 68 members: 47 elected one from each county; 16 women nominated; 2 members one man and one woman representing youth; 2 members one man and one woman representing persons with disabilities and the speaker. The senate represents the counties and serves to protect the interests of the counties and county governments.

The roles of the Senate includes: representation of the interests of counties; oversight of state officers and allocation of revenue between the two levels of Government.

## Judiciary

The Judiciary consists of:

- i. Chief justice;
- ii. Deputy Chief Justice;
- iii. Judges of the Superior (Supreme Court, Court of Appeal and High Court) ;
- iv. Chief Registrar of the Court;
- v. Magistrates;
- vi. Other judicial officers and staff

The roles of the Judiciary are to: Interpret Laws; Arbitrate on disputes between differing sides; and administer justice.

Levels of Courts

- i. Supreme Court
- ii. Court of Appeal
- iii. High Court and Sub-ordinate Courts

## Functions of the National Government

The State organ shall ensure reasonable access to its services in all parts of the republic so far as it is appropriate depending on the nature of the service. The functions of the national government are outlined in part 1 of the Fourth Schedule to the Constitution of Kenya 2010. They include:

1. Foreign affairs, foreign policy and international trade
2. The use of international waters and water resources
3. Immigration and citizenship
4. The relationship between religion and state
5. Language policy and the promotion of official and local languages
6. National defense and the use of the national defense services
7. Police services, including-
  - (a) The setting of standards of recruitment, training of police and use of police services;
  - (b) Criminal law; and
  - (c) Correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular
19. National public works.
20. Housing policy.
21. General principles of land planning and the co-ordination of planning by the counties.
22. Protection of the environment and natural resources
23. National referral health facilities.
24. Disaster management.
25. Ancient and historical monuments of national importance.
26. National elections.

27. Health policy.
28. Agricultural policy.
29. Veterinary policy.
30. Energy policy including electricity and gas reticulation and energy regulation.
31. Capacity building and technical assistance to the counties.
32. Public investment.
33. National betting, casinos and other forms of gambling.
34. Tourism policy and development.

### The national Government Coordination structures at county level



*Figure 8. National Government Coordination structures at County level*

The following are the national government coordination structures at County level.

- i. County commissioner in respect of every county
- ii. Deputy-county commissioner in respect of every sub-county
- iii. Assistant -county commissioner in respect of every ward
- iv. Chief in respect of every l o c a t i o n
- v. Assistant chief in charge of every sub-location
- vi. Any other National Government service delivery coordination unit

### County Governments

The County Government consists of the County Assembly and the County Executive. The county executive has decentralized units. The functions of the different structures of the County Government are outlined as follows:



## County Assembly

### The County Assembly consists of:

- i. Members elected by registered voters from every ward in the county; members nominated by political parties according to their strength;
- ii. two representatives of the youth;
- iii. Two representatives (one male and one female) of persons with disabilities and
- iv. The Speaker who is ex-official

Functions and powers of the County Assembly include:

- i. representation,
- ii. law making and
- iii. provide oversight over all the County organs.
  - a) Vet and approve nominees for appointment to county public offices
  - b) Approve the budget and expenditure of the county government
  - c) Approve the borrowing by the county Government
  - d) Approve county development planning
- iv. Initiate the impeachment of the governor and the deputy governor.
- v. Impeach the speaker of the county assembly

## County Executive

The County Executive consists of:

- i. the County Governor;
- ii. the Deputy County Governor; and
- iii. County Executive Committee Members

**Note:** *The number of members appointed to the county executive committee shall not exceed one-third of the number of members of the county assembly, if the assembly has less than thirty members or ten, if the assembly has thirty or more members.*

### Functions of the County Executive include:

- i. To implement county legislation;
- ii. Manage and coordinate the functions of the county administration and its departments;
- iii. Supervise the administration and delivery of services in the county and all decentralized units and agencies in the county;
- iv. Implement, within the county, national legislation to the extent that the legislation so requires.

### Further Decentralized Units of County Governments

The further decentralized units of a county government include:

- i. Urban areas and cities: as determined by the Urban Areas and Cities Act, 2011
- ii. Sub-county: as determined by IEBC periodic reviews
- iii. Ward: as determined by IEBC
- iv. Village units
- v. The management and the administrators of the decentralized unit are:

### County Government levels of Responsibility



*Figure 9. Figure of County Government Levels of Responsibility*

### Assessment and Classification of Urban Areas and Cities

Pursuant to Urban Areas and Cities Act (UACA), 2011 urban areas will be assessed and be classified into cities, municipalities and towns in accordance with the criteria contained in Sections 5, 9 and 10 of the Act for city, municipality, and town respectively.

The criteria includes amongst others:

- vi. The number of resident population,
  - vii. Existence of urban integrated development plan, and
  - viii. The capacity to effectively and efficiently deliver essential services to its residents.
- Cities will be managed by city boards, with a city manager; municipality by municipal

board with municipal manager while a town will be managed by town committees with a town administrator.

#### Functions of County Governments

The functions of the county government are provided in the Part 2 of the Fourth Schedule to the Constitution.

1. Agriculture, including
2. County health services
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities
5. County transport
6. Animal control and welfare,
7. Trade development and regulation
8. County planning and development
9. Pre-primary education, village polytechnics, home craft centres and childcare facilities.
10. Natural resources and environmental conservation policies
11. Public works and services
12. Firefighting services and disaster management.
13. Control of drugs and pornography.
14. Ensuring, coordinating and Building capacity of communities to participate in governance at the local level

*Note: These functions are transferred to the County Governments by Transition Authority in a phased and asymmetrical manner within three years after the first election under the new constitution.*

### **Intergovernmental Relations**

The CoK, 2010 provides that the governments at national and county level are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and co-operation. One level of the government may

transfer its functions to government at the other level by agreement. The intergovernmental relations Act 2012 was enacted pursuant to this provision to provide policy and operational mechanism.

### Principles and Objects of Intergovernmental Relations

- i. Recognizing the sovereignty of the Kenyan people.
- ii. Inclusive and participatory governance.
- iii. Promotion of national values, constitutional governance principles, and service delivery equality.
- iv. Respecting the constitutional status of the government levels and institutions.
- v. Objective and impartial decision-making.
- vi. Minimizing intergovernmental disputes.
- vii. Promoting accountability to the people
- viii. Institutionalizing the protection of marginalized groups.

### **Objects of Intergovernmental Relations**

- i. Facilitate the realisation of the devolution objects and principles as outlined in the Constitution;
- ii. Facilitate cooperation and consultation between national and county governments and amongst county governments;
- iii. Provide a forum for coordinating government policies, legislation and functions;
- iv. Provide forum for sharing and disclosing necessary and information between two levels and amongst counties
- v. Provide mechanisms for the transfer of power, functions and competencies to either level of government; and
- vi. Promote accountability between the two levels of government or amongst county governments.

### **Composition and Functions of the Intergovernmental Relations Structures**

The intergovernmental relations Act 2012 made provisions for a number of institutions to be established to facilitate relations between national and county government and between county governments. The following are the institutions and their functions.

## National and County Government Coordination Summit (The Summit)



*Figure 10. Photo of Summit in Progress*

The Members of the Summit are the President of the republic (or deputy president in his absence) who is the chair, and all the Governors of the 47 county governments. The chairperson of Council of governors is the vice chairperson

### The Summit

#### Functions of the Summit:

- i. Consultation and co-operation between the National and County governments;
- ii. Promotion of national cohesion, values, and principles of governance;
- iii. Consideration and promotion of national interest matters and reports on national interest by other intergovernmental bodies and forums;
- iv. Monitoring national and county development plan implementation;
- v. Considering intergovernmental issues referred to the summit by the public and recommending action;
- vi. Evaluating national or county government performance and recommending appropriate action;
- vii. County and national governments development plan implementation; and
- viii. Facilitating and coordinating the transfer of functions, power or competencies from and to either level of government.

### **Council of County Governors (the Council) Membership**

The members of council of county governors are:

- i. 47 county governors.
- ii. The council elects chairperson and Vice chairperson from amongst its membership

### **Functions of the Council**

- i. Consultation amongst county governments;
- ii. Information sharing on the performance of the counties;
- iii. Considering matters of common interest to county governments;
- iv. Resolving disputes between counties;
- v. Facilitating capacity building for governors;
  - i. Receiving reports and monitoring the implementation of inter-county agreements on inter-county projects;
  - ii. Considering matters referred by a member of the public; and
  - iii. Considering reports from other intergovernmental forums on matters of national and county interest

### **Intergovernmental Relations Technical Committee Membership**

The members of the committee are:

- i. A Chairperson competitively recruited and appointed by the Summit
- ii. Not more than 8 members, competitively recruited and appointed by the summit.
- iii. The Principal Secretary responsible for matters relating to devolution

### **Functions of the Committee**

- i. Administer Summit and Council day-to-day operations:
  - a. facilitator of Summit and Council activities
  - b. implementer of Summit and Council decisions
- ii. Take over residual functions of Transition Authority
- iii. Convene a meeting of 47 County Secretary within thirty days preceding every Summit meeting
- iv. Perform any other functions conferred by other laws, the Summit and Council.

The committee may establish sectorial working groups to assist in carrying out its functions. It submits quarterly reports to the Summit. The Committee is served by a Secretariat. The committee is responsible for appointing a secretary with approval of the Summit to serve as the Secretariat's chief executive and accounting officer.

The Secretary is also responsible for the day-to-day running of secretariat including implementation of summit and Council decisions.

### **Intergovernmental Budget and Economic Council (IBEC)**

This is established pursuant to Section 187 of Public Finance Management Act 2012. The membership includes:

- i. Deputy President (Chair)
- ii. Cabinet Secretary, Finance
- iii. Cabinet Secretary, Intergovernmental Relations
- iv. Representative of Parliamentary Service Commission
- v. Representative of Judiciary Service Commission
- vi. Chairperson of Commission on Revenue Allocation
- vii. Chairperson, Council of County Governors
- viii. All County Executive Committee member for Finance

#### Functions of the Council

It provides a forum for consultations and cooperation between the national government and county governments on:

- i. The content of budget policy statements, the budget review and outlook paper and the medium term debt management strategy.
- ii. Budgets, economic and financial management and development planning at both levels of government;
- iii. Grants and borrowing by both levels of government;
- iv. Proposed national legislation or policy with implications on county finances;
- v. Disbursement of funds to the counties
- vi. CRA recommendations on equitable distribution of revenue between national and county government and amongst county governments;
- vii. Proposed regulations to the PFM Act 2012.
- viii. Any other matter which deputy president in consultation with council members may decide

The Council Meets at least twice a year. The National Treasury provides secretariat services and assigns officers as may be necessary.

### **Joint committees**

The national or county government may establish a joint committee to a specific mandate where necessary for the achievement of objects and principles of devolution and objects of Intergovernmental Relations Act 2012.

## County Intergovernmental Forum

Section 54 of the County Governments Act, 2012 establishes the county intergovernmental forum for every county. This forum is chaired by the governor or in his absence, the deputy governor, or in the absence of both, a member of the county executive committee designated by the governor.

The county intergovernmental forum comprises of –

- a. the heads of all departments of the national government rendering services in the county; and
- b. the county executive committee members or their nominees appointed by them in writing.

The intergovernmental forum is responsible for-

- a. harmonization of services rendered in the county;
- b. coordination of development activities in the county;
- c. coordination of intergovernmental functions; and
- d. such other functions as may be provided for by or under any law.

### Mechanisms for Resolving Inter-Governmental Disputes

Dispute between the two levels of government and amongst county governments should be resolved amicably. They should apply and exhaust all mechanisms for alternative dispute resolution provided by the Intergovernmental Relations Act and other national laws before resorting to judicial proceeding.

The intergovernmental relation Act provides the framework for dispute resolution. There are several institutions that are mandated to facilitate conflict resolution. These are; the Senate, the National and County Government Coordination summit, the Council of County Governors, the Transition Authority during the transition period and the Judiciary.

### Dispute Resolution Mechanism

- i) All agreements reached by either level of government and between County Governments should have a dispute resolution mechanism that is appropriate to the nature of the agreement.
- ii) It should also provide for an alternative dispute resolution mechanism with the judicial proceedings as last resort.

### Formal declaration of dispute

Where an agreement does not provide dispute resolution mechanism, it can be resolved within the following framework:

- i. Before formal declaration, the parties to the dispute should make reasonable effort and steps to amicably resolve the matter through direct negotiation with



each other or through an intermediary. If this fails, the matter is formerly declared to the Summit, Council of County Governors or any other intergovernmental structures established under the Intergovernmental Relations Act.

- ii. Summit or Council of County Governors or other intergovernmental structures should convene meeting between parties within 21 days of formal dispute declaration. The meeting will determine the issues in the dispute, material issues not in the dispute, identify and apply mechanisms or procedures other than judicial proceedings that can assist in settling the dispute.
- iii. If not resolved, the parties may submit for arbitration or judicial proceedings.
- iv. It is an offence for parties in dispute to fail to attend the meetings, refuses to produce documents, gives false evidence or interrupts the meeting. This is an offence punishable by law.

## The Public Service In Kenya

The public service refers to service that is provided by the government to its citizens, either directly or through the public sector.

Categories of Government Officers:

- i. State Officer: Is a person holding a constitutional office under oath, for example: the President, Deputy President, Governors, Attorney General, Member of Parliament, and Member of County Assembly among others.
- ii. Public Officer: Is any person working in a government office e.g. Accountant, state counsel, teachers, doctors, planners, surveyors, administrators.

**Note:** A state officer is a public officer, but a public officer is not a state officer.

## Values and Principles of the Public Service

The public officers are required to uphold the national values and principles while delivering services to the public. These national values and principles include:

- i. High standards of professional ethics
- ii. Efficient, effective and economic use of resources
- iii. Responsive, prompt, effective, impartial and equitable provision of services
- iv. Involvement of the people in the process of policy making
- v. Accountability for administrative acts
- vi. Transparency and provision to the public of timely and accurate information
- vii. Fair competition and merit as the basis of appointments and promotions
- viii. Representation of Kenya's diverse communities

- ix. Affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service for; men and women, ethnic groups,

### **Institutions that provide Public Service in Kenya:**

- iii. The Public Service Commission (PSC)
- iv. The County Public Service Board (CPSB)
- v. The County Assembly Service Board (CASB)

### **Public Service Commission**

Article 233 of the Constitution outlines the functions of the Public Service Commission as follows

- i. Establish and abolish offices in the Public Service
- ii. Appoint persons to hold or act in public offices
- iii. Confirm appointments in public offices
- iv. Exercise disciplinary control over and remove persons holding or acting in public offices
- v. Promote the national values, principles of governance, values and principles of public service
- vi. Promote the national values, principles of governance, values and principles of public service
- vii. Investigate, monitor and evaluate the organization, administration and personnel practices of the public service.
- viii. Ensure that the public service is efficient and effective
- ix. Review and make recommendations to the National Government in respect of conditions of service, code of conduct and qualifications of officers in the Public Service;
- x. Evaluate and report to the President and Parliament on the extent to which the national values and principles of governance and values and principles of Public Service have been complied with
- xi. Hear and determine appeals in respect of County Governments Public Service

### **County Public Service Board**

Functions of the County Public Service Board as provided by county government Acts, 2012:

- i. Establish and abolish offices in the County Public Service
- ii. Appoint persons to hold or act in offices of the County Public Service including in the Boards of cities and urban areas within the County and to confirm appointments

- iii. Exercise disciplinary control over, and remove, persons holding or acting in County public service offices
- iv. Prepare regular reports for submission to the County Assembly on the execution of the functions of the Board
- v. Evaluate and report to the County Assembly on the extent to which the national values and principles of governance and values and principles of Public Service have been complied with.
- vi. Facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in Counties
- vii. Advise the County Governments on human resource management and development
- viii. Promote in the County Public Service the national values and principles of governance and values and principles of Public Service
- ix. Advise the County Governments on implementation and monitoring of the national performance management system in counties
- x. Make recommendations to the Salaries and Remuneration Commission, on behalf of the County Governments, on the remuneration, pensions and gratuities for County public service employees
- xi. Provide services and facilities to ensure the efficient and effective functioning of the County Assembly
- xii. Constitute offices in the County Assembly service, and appoint and supervise office holders
- xiii. Prepare annual estimates of expenditure of the County Assembly Service and submit them to the County Assembly for approval, and exercise budgetary control over the service
- xiv. Undertake singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and Clerk and staff of the County Assembly
- xv. Performing other functions necessary for the well-being of the members and staff of the County Assembly or prescribed by national legislation.

### **County Assembly Service Board**

Functions of the County Assembly Service Board (County Government Acts, 2012)

- i. Provide services and facilities to ensure the efficient and effective functioning of the County Assembly
- ii. Constitute offices in the County Assembly service, and appoint and supervise office holders
- iii. Prepare annual estimates of expenditure of the County Assembly Service and submit them to the County Assembly for approval, and exercise budgetary control over the service

- iv. Undertake singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and Clerk and staff of the County Assembly
- v. Performing other functions necessary for the well-being of the members and staff of the County Assembly or prescribed by national legislation.

### **Performance Management Plan**

The county performance management system is guided by the national performance management framework. The county executive committee shall design a performance management plan to evaluate the performance of the county public service and the implementation of county policies. The plan shall provide for among other;

- i. Objective, measureable and time bound performance indicators;
- ii. Linkage to mandates
- iii. Annual performance reports.
- iv. Citizen participation in the evaluation of the performance of county governments and public sharing of performance progress reports

### **Commission on Administrative Justice**

Commission on Administrative Justice (CAJ) also known as the Office of the **Ombudsman** is an independent commission. It is established by the Commission on Administrative Justice Act, 2011 pursuant to Article 59 (4) of the Constitution of Kenya.

### **The role of the Commission on Administrative Justice**

- vi. Investigate any conduct in state affairs or any act or omission in public administration by any state organ, state or public officer.
- vii. Investigate complaints within the Public Sector.
- viii. Report to the National Assembly bi-annually on the complaints investigated
- ix. Inquire into allegations of: maladministration, delay in administrative justice, misbehavior, discourtesy, incompetence, inefficiency or ineptitude within the Public Service.
- x. Facilitate the setting up of and build complaint handling capacity in public service, public office and state organs.
- xi. Work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration.
- xii. Publish periodic reports on the status of administrative justice in Kenya.
- xiii. Promote public awareness of policies and administrative procedures on matters relating to administrative justice.
- xiv. take appropriate steps in conjunction with other State organs and Commissions

responsible for the protection and promotion of human rights to facilitate promotion and protection of the fundamental rights and freedoms of the individual in public administration;

- xv. work with the Kenya National Commission on Human Rights to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration;
- xvi. Recommend compensation or other appropriate remedies against affected persons or bodies.
- xvii. perform such other functions assigned by constitution and other laws

**The role of citizens in vetting and appointment of public officers are:**

- i. Petitioning the appointment of any State or Public Officer in writing to the appointing authority
- ii. Taking legal action
- iii. Presenting themselves before the vetting committee to provide information in support of or against the person in question.

## COUNTY PLANNING



*Figure 11: People confused because of failing to plan*

### **Principles and Objectives of planning**

The principles of planning are to:

- a. integrate national values in all processes and concepts;
- b. protect the right to self-fulfillment within the county communities and with responsibility to future generations;
- c. protect and integrate rights and interest of minorities and marginalized groups and communities
- d. protect and develop natural resources in a manner that aligns national and county governments policies;
- e. align county financial and institutional resources to agreed policy objectives and programmes;
- f. engender effective resource mobilization for sustainable development;
- g. promote the pursuit of equity in resource allocation within the county;
- h. provide a platform for unifying planning, budgeting, financing, programme implementation and performance review; and

- i. serve as a basis for engagement between county government and the citizenry, other stakeholders and interest groups.

### The Objectives of County Planning

The objectives of county planning shall be to-

- a. ensure harmony between national, county and sub-county spatial planning requirements;
- b. facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county;
- c. maintain a viable system of green and open spaces for a functioning ecosystem;
- d. harmonize the development of county communication system, infrastructure and related services;
- e. develop urban and rural areas as integrated areas of economic and social activity;
- f. provide the preconditions for integrating under-developed and marginalized areas to bring them to the level generally enjoyed by the rest of the county;
- g. protect the historical and cultural heritage, artefacts and sites within the county; and
- h. make reservations for public security and other critical national infrastructure and other utilities and services;
- i. work towards the achievement and maintenance of a tree cover of at least ten per cent of the land area of Kenya as provided for in Article 69 of the Constitution; and
- J. Develop the human resource capacity of the county.

### The Importance of Planning



Figure 12. Unplanned and planned urban areas

Section 107(2) of the County Government Act, 2012 requires that; county plans shall be the basis for all budgeting and spending in a county. Planning is important for the following reasons:

- a. **Increases Efficiency:** Planning makes optimum utilization of all available resources, reduces wastage, avoids duplication, and aims to give the highest returns at the lowest possible cost thus increasing the overall efficiency.
- b. **Facilitates Proper Coordination:** It facilitates the coordination of the different departments in an organization and the short-term , medium-term and long-term plans of an organization.
- c. **Aids in Organizing:** Organizing means bringing together all available resources. Planning tells us how much resources are required, and when they are required.
- d. **Gives Right Direction:** Direction means to give proper information, accurate instructions and right guidance. Planning tells what to do, how to do it and when to do it.
- e. **Keeps Good Control:** Through control, actual performance is compared with the plans to allow for variance analysis.
- f. **Helps to Achieve Objectives:** Every County Government has targets or objectives to be fulfilled. Planning helps to achieve these objectives with ease and promptness.
- g. **Assists in Decision-Making:** Planning assists in prioritization of county needs.

## **Types and Purposes of County Plans and the Role of the Public in County Planning**

### **Types and Purposes of County Plans**

Every county government shall prepare a development plan in accordance with Article 220(2) of the Constitution. It should be noted that in both the national and county governments, the budget process starts with integrated development planning process which shall include both long term and medium term planning (PFMA, Sections 35 and 125 respectfully). Section 107(1) of CGA provides that, to guide, harmonize and facilitate development within each county there shall be the following plans:

- j. County integrated development plan;
  - k. County sectoral plans (for departments);
  - l. County spatial plan; and
  - m. Cities and urban areas plans as provided for under the Urban Areas and Cities Act (No. 13 of 2011).
- (a) County Integrated Development Plan

There shall be a five year county integrated development plan for each county which shall have:



- i. Clear goals and objectives;
- ii. An implementation plan with clear outcomes;
- iii. Provisions for monitoring and evaluation;
- iv. Clear reporting mechanisms.

Among others, the law requires that there shall be a resource mobilization and management framework which shall be reflected in a county's integrated development plan and shall at least:

- a. include the budget projection required under the law governing county government financial management;
- b. indicate the financial resources that are available for capital project developments and operational expenditure; and
- c. include a financial strategy that defines sound financial management and expenditure control, as well as ways and means of increasing revenues and external funding for the county and its development priorities and objectives, which strategy may address the following:
  - i. revenue raising strategies;
  - ii. asset management strategies;
  - iii. financial management strategies;
  - iv. capital financing strategies;
  - v. operational financing strategies; and
  - vi. strategies that would enhance cost-effectiveness.

### **(b) County Sectoral Plans**

A County department shall develop a ten year county sectoral plan as component parts of the county integrated development plan. The County sectoral plans shall be:

- i. programme based;
- ii. the basis for budgeting and performance management; and
- iii. reviewed every five years by the county executive and approved by the county assembly, but updated annually.

### **(c) County Spatial Plan**

There shall be a ten year county GIS based database system spatial plan for each county, which shall be a component part of the county integrated development plan providing-

- i. a spatial depiction of the social and economic development programme of the

- county as articulated in the integrated county development plan;
- ii. clear statements of how the spatial plan is linked to the regional, national and other county plans; and
- iii. clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

#### **(d) Urban Areas and Cities plans**

**Part V of UACA, 2011** deals with Urban Areas and Cities Integrated Development Planning. Sub-section 36(1) provides that every city and municipality established under that Act shall operate within the framework of integrated development planning which shall:

- a. give effect to the development of urban areas and cities as required by the Act and any other written law;
- b. strive to achieve the objects of devolved government as set out in Article 174 of the Constitution;
- c. contribute to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of the Constitution and the progressive realization of the socio-economic rights;
- d. be the basis for:
  - i. the preparation of environmental management plans;
  - ii. the preparation of valuation rolls for property taxation;
  - iii. provision of physical and social infrastructure and transportation;
  - iv. preparation of annual strategic plans for a city or municipality;
  - v. disaster preparedness and response;
  - vi. overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and
  - vii. the preparation of a geographic information system (GIS) for a city or municipality;

*NOTE: Sub-section 36(1) refers to city and municipality but in sub-section 10(2) (c) The existence of an integrated development plan in accordance with the Act is one of the criteria for classification of a town.*

Sub-section 36(3) of UACA provides that, a county government shall initiate an urban planning process for every settlement with a population of at least 2,000 residents. Sub-section 37(1) of UACA provides that a city or urban area integrated development plan shall be aligned to the development plans and strategies of the county governments.

## PUBLIC FINANCE MANAGEMENT

### Meaning of Terms Related to Public Finance

**Budget Calendar:** A sequence of important dates and deadlines of the budget cycle showing the events and activities that must take place during the budget preparation period to deliver the government's budget. Under the Programme Based Budgeting, it covers the planning stage to the final approval of the government's budget by the County Assembly and its publication.

**Budget Review and Outlook Paper (BROP):** A forward and backward looking document that contains preliminary reviews of past performance and assessment of prevailing economic conditions and those anticipated in the immediate future before the budget process is finalized later in the year. It provides grounds for sound budget planning for the county, is mandatory and a key document in linking policy, planning and budgeting for the County Government.

**Budget:** A statement of the government's estimate of what it will cost to provide goods and services to the citizenry in the following year. It is made up of expenditures, revenues, borrowings and other financial transactions and spans a period of three years inclusive of the budget year. The budget is submitted to the County Assembly, which authorises expenditure by approving an appropriation Act.

**County Budget Estimates:** Cost approximations of recurrent and development expenditure needed to provide government goods and services to county residents for the following year and two forward years thereafter. It is guided by the objectives of the County Integrated Development Plan (CIDP) and prioritized by the County Fiscal Strategy Paper (CFSP).

**County Chief Officers:** These are the chief operating officers of county departments charged with the responsibility of overall administration of the department. They are also the Accounting Officers of County Departments.

**County Fiscal Strategy Paper:** A final statement of the agreed steps and priorities of the County Government for the next budget year and two forward years hence.

It spells out how the County Government plans to raise and spend money on its service delivery priorities and development agenda.

**County Integrated Development Plan (CIDP):** The County Government's five year master plan for the county's economic, social, environmental, legal and spatial development to meet the service and infrastructural needs and its own targets for the benefit of all local communities. **County Treasury Annual Budget Circular:** Set of budget-related instructions issued by the County Treasury that trigger the formal start of the county budget cycle and process. It contains budget guidelines, the budget calendar of mandatory dates and deadlines of required activities, required formats and templates for reporting or submitting the required information. It carries the weight of law and compliance is mandatory.

**County Debt Management Strategy:** Financial Management: The management and control of public expenditure; financial accounting and reporting; cash management; and in some cases, asset management. It also includes the estimation and raising of revenue to fund the expenditure.

**Fiscal Framework:** The financial context within which the government plans to spend funds on providing goods and services to citizens through a structured budget process after determining the resource envelope it has to work with. It takes into account past budget and economic performance, the impact of prevailing and anticipated economic fundamentals to arrive at a reasoned basis for planning the future.

**Gender Responsive Budgeting:** The application of gender mainstreaming in the budgetary process by incorporating gender equity and perspectives at all levels and stages of the budgetary process including resource allocation decisions

**Medium Term Expenditure Framework:** A transparent planning and budget formulation process meant to improve budget decision making by linking Government policies, priorities and requirements with and within its limited resources and over a rolling timeframe of up to three years.

**Monitoring, Evaluation and Reporting Framework:** The policy and operational context and process of ensuring policy priorities and intentions are delivered and/or are being delivered as intended, as measured against clearly defined performance indicators.

**Programme-Based Budgeting:** A form of budgeting that links the government budget and its use of resources directly to defined public policy objectives through a structured template of programmes, sub-programmes and projects. This is conducted within a rolling timeframe of three years under the medium term expenditure framework (MTEF) and is performance based so that spending is assessed against defined performance indicators to ensure its effectiveness, efficiency and value-for-money.

**Sector Ceilings:** Mandatory limits imposed by the County Treasury to ensure the County Government, its departments and agencies live within their means - the county's resource envelope. Give an example...

**Public Participation/Consultation:** is a democratic process of engaging people in thinking, deciding, planning, and playing an active part in the development and operation of services that affect their lives.

**Public:** are the people of the nation, state, county, district or municipality, which the government serves.

**Budget Process Overview:** This provides a broad picture of the budget process and its various components, players, concepts and processes. It gives detailed treatment of aspects of the budget process that do not fit naturally into other sections of the manual such as various budget players and the budget calendar.

## **The County budget process according to the Constitution of Kenya and the Public Finance Management Act 2012**

The county budget process is the process by which County Governments compile and submit for approval by the County Assembly, expenditure estimates of their assessment of the total cost of delivering government goods and services to county citizens.

In any one year, budgeting consists of the three simultaneous activities of review, implementation and planning. Thus as planning for the next budget year is underway, the previous year's budget is being implemented while a continuous review of budget performance to date educates current budget preparation to establish next year's aggregates.

Division of Revenue: The County Budget Process also operates within the larger constitutional context of the equitable distribution of national revenues between the two levels of government that is the National and County Governments.

### **Public Finance Management Legal Framework**

- a. Constitution of Kenya, 2010
- b. Public Finance management Act, 2012;
- c. Public Finance management Act, Regulations, 2015; The Commission on Revenue Allocation Act, 2011; The Independent Offices (Appointment) Act, 2011;
- d. The Salaries and Remuneration Commission Act, 2011.
- e. The Contingencies Fund and County Emergency Fund Act, 2011; and The National Government Loans Guarantee Act, 2011. f. Division of Revenue Act
- g. County Allocation of Revenue Act County Government Act, 2012

### **Pending important PFM legal Instruments**

- The Controller of Budget law;
- The Public Audit Law; and
- The Public Procurement and Disposal of Assets law.

### **Principles of Public Finance Management**

The principles of finance management include:

- i. openness and accountability, including public participation in financial matters;
- ii. promotion of an equitable society, and in particular:
  - the burden of taxation shall be shared fairly revenue raised nationally shall be shared equitably among national and county governments
  - expenditure shall promote the equitable development of the country, including by making special provision for marginalized groups and areas

- iii. the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- iv. public money shall be used in a prudent and responsible way;
- v. financial management shall be responsible, and fiscal reporting shall be clear.

### **Legal framework in budget making and execution process Public Finance Management Act**

An Act of Parliament that provides for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; the different responsibilities of government entities and other bodies, and for connected purposes.

#### **The object of this Act is to ensure that:**

- i. Public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution.
- ii. Public officers who are given responsibility of managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

#### **(a) County Revenue Allocation Act**

A Bill for an Act of Parliament to provide for the equitable allocation of revenue raised by the national government among the county governments in a financial year and the responsibilities of national and county governments pursuant to such allocation and for connected purposes.

The object and purpose of this Acts:

- i. to provide for the allocation of equitable share of revenue raised by the national government among the county governments in accordance with the resolution approved by Parliament in a financial year ;
- vi. to provide, for conditional additional allocations in a financial year ;
- vii. to facilitate the transfer of allocations made to the county governments from the Consolidated Fund to the respective County Revenue Funds.

#### **(b) County Appropriation Act**

A Bill for an Act of County Assembly to authorize the issue of a sum of money out of the County Revenue Fund and its application towards the service in a financial year and to appropriate that sum and a sum voted on account by the County Assembly for certain public services and purposes.

#### **(c) County Finance Act**

A Bill for an Act of county assembly to impose and amend certain taxes, charges, fees and licenses and for matters incidental.

The Act may contain sources of revenue to be collected by the county government as follows:

- Rates of Property - Tax
- House Rent
- Single Business Permit
- Stock auction and slaughter fees
- Agricultural produce Cess
- Building plan approval
- Royalties
- Outdoor advertising
- Market fees
- County Parks fees
- Health charges and fees
- Parking fee
- Education, social facilities and other related charges
- Sale of documents
- Fisheries licenses, cess and related charges
- Forest produce cess
- Liquor Licensing
- Conveyance charges
- Firefighting and disaster management.
- Hire of vehicles and plants
- Weights and Measures

#### **d) Division of revenue Act**

A Bill for an Act of Parliament to provide for the equitable division of revenue raised nationally between the national and county governments and for connected purposes.

The object and purpose of this Bill is to provide for the equitable division of revenue raised nationally between the national and county levels of government for a financial year.

The Act also provides for the apportioning of shortfalls and excesses in terms of revenue collection between the national and county governments.

## ROLE OF FISCAL INSTITUTIONS IN MANAGEMENT OF PUBLIC FINANCE

### National Treasury

General responsibilities of the National Treasury

Subject to the Constitution and this PFM Act, 2012 the National Treasury shall-

- a. formulate, implement and monitor macro-economic policies involving expenditure and revenue;
- b. manage the level and composition of national public debt, national guarantees and other financial obligations of national government within the framework of this Act and develop a framework for sustainable debt control;
- c. formulate, evaluate and promote economic and financial policies that facilitate social and economic development in conjunction with other national government entities;
- d. mobilise domestic and external resources for financing national and county government budgetary requirements;
- e. design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution:

Provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government;

- a. in consultation with the Accounting Standards Board, ensure that uniform accounting standards are applied by the national government and its entities;
- b. develop policy for the establishment, management, operation and winding up of public funds;
- c. within the framework of this Act and taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, prepare the annual Division of Revenue Bill and the County Allocation of Revenue Bill;
- d. strengthen financial and fiscal relations between the national government and county governments and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and
- e. assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet Secretary responsible for matters relating to intergovernmental relations.

(2) The National Treasury shall have the following functions, in addition to those in subsection (1)-

- a. promote transparency, effective management and accountability with regard to public finances in the national government;



- b. ensure proper management and control of, and accounting for the finances of the national government and its entities in order to promote the efficient and effective use of budgetary resources at the national level;
- c. co-ordinate the preparation of annual appropriation accounts and other statutory financial reports by the national government and its entities;
- d. prepare annual estimates of revenue of the national government, and co-ordinate the preparation of the budget of the national government;
- e. consolidate reports of annual appropriation accounts and other financial statements of the national government and county governments and their entities;
- f. report every four months to the National Assembly on the implementation of the annual national budget on areas not reported on by the Controller of Budget;
- g. be the custodian of an inventory of national government assets except as may be provided by other legislation or the Constitution;
- h. monitor the management of the finances of public enterprises and investments by the national government and its entities;
- i. monitor the financial aspects of risk management strategies and governance structures for the national government and national government entities;
- j. monitor the financial performance of state corporations; and
- k. issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.

(3) The National Treasury shall take such other action, not inconsistent with the Constitution, as will further the implementation of this Act.

## **County Treasury**

### **General responsibilities of a County Treasury**

Subject to the Constitution, a County Treasury shall monitor, evaluate and oversee the management of public finances and economic affairs of the county government including-

- a. developing and implementing financial and economic policies in the county;
- b. preparing the annual budget for the county and coordinating the preparation of estimates of revenue and expenditure of the county government;
- c. coordinating the implementation of the budget of the county government;
- d. mobilising resources for funding the budgetary requirements of the county government and putting in place mechanisms to raise revenue and resources;
- e. managing the county government's public debt and other obligations and developing a framework of debt control for the county;

- f. consolidating the annual appropriation accounts and other financial statements of the county government in a format determined by the Accounting Standards Board;
- g. acting as custodian of the inventory of the county government's assets except where provided otherwise by other legislation or the Constitution;
- h. ensuring compliance with accounting standards prescribed and
- i. published by the Accounting Standards Board from time to time;
- j. ensuring proper management and control of, and accounting for the finances of the county government and its entities in order to promote efficient and effective use of the county's budgetary resources;
- k. maintaining proper accounts and other records in respect of the County Revenue Fund, the County Emergencies Fund and other public funds administered by the county government;
- l. monitoring the county government's entities to ensure compliance with this Act and effective management of their funds, efficiency and transparency and, in particular, proper accountability for the expenditure of those funds;
- l. assisting county government entities in developing their capacity for efficient, effective and transparent financial management, upon request;
- m. providing the National Treasury with information which it may require to carry out its responsibilities under the Constitution and this Act;
- n. issuing circulars with respect to financial matters relating to county government entities;
- o. advising the county government entities, the County Executive

Committee and the county assembly on financial matters;

- p. (q) strengthening financial and fiscal relations between the national government and county governments in performing their functions;
- q. reporting regularly to the county assembly on the implementation of the annual county budget; and
- r. taking any other action to further the implementation of this Act in relation to the county.

### **Commission on Revenue Allocation**

Roles of the Commission on Revenue Allocation

- (1) The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government--
  - a. between the national and county governments; and
  - b. among the county governments.

- (2) The Commission also makes recommendations on other matters concerning the financing of, and financial management by, county governments, as required by the Constitution and national legislation.
- (3) In formulating recommendations, the Commission shall seek--
  - a. to promote and give effect to the criteria set out in Article 203 (1);
  - b. when appropriate, to define and enhance the revenue sources of the national and county governments; and
  - c. to encourage fiscal responsibility.
- (4) The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204 (2).
- (5) The Commission submits its recommendations to the Senate, the National Assembly, the national executive, county assemblies and county executives.

### **Controller of Budget**

The Office of Controller of Budget is an Independent Office established under Article 228 of the Constitution of Kenya with the core mandate being to oversee implementation of the budgets of the National and County Governments by authorizing withdrawal from public funds.

### **Roles of Controller of Budget**

The roles and functions of the office of the Controller of Budget as stipulated in the Constitution are as follows:-

#### **Oversight**

This role involves overseeing the implementation of the budgets of both national and county governments. The Controller of Budget in this role therefore monitors the use of public funds in-year and reports to Parliament on how the funds have been utilized.

#### **Controlling role**

The controlling function involves authorizing withdrawals from public funds. Before authorizing any withdrawal from Public funds, the Controller of Budget must first be satisfied that the said withdrawal is authorized by law, as per Article 228 (5) of the Constitution. Public funds include: -

#### **Consolidated Fund**

It is into the consolidated fund that all money raised or received by or on behalf of the national government is paid. This is the fund that keeps the national government and the county government running. The Controller of Budget is mandated under Article 206 (4) of the Constitution of Kenya to ensure that the fund is utilized in accordance with the law.

### **County Revenue Fund**

This is the fund into which all money raised or received by or on behalf of the county government including money raised from property rates, entertainment taxes, levies, fees, charges, among others is paid ( Article 207 (1). Article 207 (3) of the Constitution of Kenya states that the Controller of Budget has the sole mandate and/or power to approve any withdrawal from a Revenue Fund.

### **Equalization Fund**

The fund will be used by the national government to provide basic services including water, roads, health facilities and electricity to the marginalized areas so as to bring the quality of services in those areas to the same level as generally enjoyed by the rest of the nation. This fund was created by Article 204 (1) of the Constitution of Kenya.

### **Reporting role**

This role entails the preparation of quarterly, annual and special reports to the legislature and executive on budget implementation matters of the national and county governments as provided by law according to (Article 228 (6))

Type of Reports include but not limited to:

- i. Quarterly Reports on Budget Implementation to the Executive and Parliament Article 228 (6)
- ii. Annual Reports on Budget Implementation to the President and Parliament Article 254 (1)
- iii. Special Reports to the President and Parliament Article 254 (2), investigation reports (Article 254 (2)) and reports on stoppage of funds for governments units as per Article 225 of the Constitution
- iv. Arbitration/Mediation Reports to Parliament on matters relating to Budget Implementation Article 225 (a) Article 252 (1a and 1b).
- v. Performance reports for the activities of Office of Controller of Budget  
And any other report on Budget implementation that may be required.

To ensure transparency all the reports must be published and publicized as per Article 254 (3) which states that "Every report required from a commission or holder of an independent office under this Article shall be published and publicized".

### **Advisory role**

This function involves giving advice to Parliament on financial matters where a Cabinet Secretary has stopped transfer of funds to a State organ or public entity. The suspension of funds cannot be lifted or sustained before the Controller of Budget gives a report to Parliament.

The Office of the Controller of Budget is expected to investigate the matter the financial performance of a State organ or entity after which prepare and present

a report on the matter to Parliament which will be used to approve or renew the decision to stop transfer of funds to a State organ or public entity as provided for under Article 225 (7) of the Constitution. The Controller of Budget also gives advice to government entities on improving budget implementation e.g. low absorption of funds by Ministries, Departments and Agencies and County entity. This therefore promotes accountability in the use of public financial resources.

### **Investigation Role**

Under Article 252 (1) (a) of the Constitution, the Controller of Budget (independent office) has power to conduct investigations on its own initiative or following a complaint made by a member of the public on budget implementation matters.

### **Arbitration/Mediation Role**

The Controller of Budget under Article 252 (1) (b) of the Constitution has powers for conciliation, mediation and negotiation. The Mediation role may involve resolution of conflicts between the national government and the county government, or between county governments with respect to budget implementation. This role involves conducting alternative dispute resolution mechanisms to resolve disputes relating to budget implementation.

### **Public sensitization role**

This role involves the dissemination of information to the public on budget implementation at both national and county levels as stipulated under Section 39(8) of the Public Finance Management Act, 2012. This role is buttressed by article 35 of the Constitution which provides that the public has the right to access any information held by the State. Further the Constitution sets out public participation as one of the principles guiding public financial management (Article 201(a))

### **Auditor-General**

The Office of the Auditor-General is an Independent Office established under the Constitution of Kenya to audit Government Bodies and report on their management of allocated funds.

### **Roles of the Auditor-General**

The Auditor-General's roles under the constitution are:

Audit and report within six months after the end of each financial year on:

- Accounts of the national and county governments;
- Accounts of all funds and authorities of the national and county governments;
- Accounts of all courts;
- Accounts of every commission and independent office established by the Constitution;

- Accounts of the National Assembly, the Senate and the county assemblies;
- Accounts of political parties funded from public funds;
- The public debt;
- Accounts of any other entity that legislation requires the Auditor- General to audit.
- The Auditor-General may audit and report on the accounts of any entity that is funded from public funds.

### **Reports**

The Auditor-General is mandated to do the following through the audit reports:

- An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.
- Audit reports shall be submitted to Parliament or the relevant county assembly
- Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.

### **Salaries and Remuneration Commission**

The Salaries and Remuneration Commission is a Kenya government Commission established under the Salaries and Remuneration Commission Act, 2011. Its independence is guaranteed in the Constitution of Kenya.

The roles of the commission are as follows:

- Inquire into and determine the salaries and remuneration to be paid out of public funds to State officers and other public officers;
- Keep under review all matters relating to the salaries and remuneration of public officers;
- Advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector;
- Conduct comparative surveys on the labour markets and trends in remuneration to determine the monetary worth of the jobs of public offices;
- Determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation;
- Make recommendations on matters relating to the salary and remuneration of a particular State or public officer;
- Make recommendations on the review of pensions payable to holders of public offices.

## Central Bank of Kenya

### Functions of the Central Bank of Kenya

- a) It serves as a lender of last resort to commercial banks and also to the government.
- b) It encourages the adoption of the financial system according to the changing needs of the markets.
- c) It administers external reserves; exchange controls and handles external financial relations.
- d) It manages the national reputation. It takes into account accumulated borrowings undertaken by the government to finance its expenditure.
- e) It has the sole responsibility of issuing currency. It regulates the issue of notes and coins.
- f) The bank is a government banker. It does not maintain the accounts of businesses and individuals in the private sector. It only maintains the accounts of governmental departments. This usually starts in a bank returns as public deposit.
- g) It acts as an agent to the government. This is seen when it implements the monetary policy in the pursuit of the government's national economic development.
- h) The Central Bank of Kenya has a duty to supervise the banking industry in general. The bank can issue directives to commercial banks and other financial institutions indicating how much they should be lending (quantitative directives). This has been done through what is known as moral persuasion (friendly persuasion). The bank is mandated to inspect and supervise the directives given to non-bank financial institutions and commercial bank.

As part of this process, the bank acts as a medium for a two-way transmission between the government and the financial markets. Among other things, it collects extensive statistical information on all financial institutions.

## Parliament

### Responsibilities of the National Assembly Budget Committee in Public Finance Matters

The committee of the National Assembly established to deal with budgetary matters has responsibility for the following matters, in addition to the functions set out in the Standing Orders-

- a. discuss and review the Budget Policy Statement and budget estimates and make recommendations to the National Assembly;
- b. provide general direction on budgetary matters;
- c. monitor all budgetary matters falling within the competence of the National Assembly under this Act and report on those matters to the National Assembly;

- d. monitor adherence by Parliament, the Judiciary and the national government and its entities to the principles of public finance and others set out in the Constitution, and to the fiscal responsibility principles of this Act;
- e. review the Division of Revenue Bill presented to Parliament and ensure that it reflects the principles under Articles 187(2)(a), 201 and 203 of the Constitution;
- f. examine financial statements and other documents submitted to the National Assembly under Part III of this Act and make recommendations to the National Assembly for improving the management of Kenya's public finances;
- g. in accordance with Articles 114, 218 and 221 of the Constitution-
  - (i) make recommendations to the National Assembly on "money Bills", after taking into account the views of the Cabinet Secretary; and
  - (ii) table in the National Assembly a report containing the views of the Cabinet Secretary insubparagraph (i);and
- h. Introduce the Appropriations Bill in the National Assembly.

### **Responsibilities of the Senate Budget Committee in Public Finance Matters**

The Committee of the Senate established to deal with budgetary and financial matter's has responsibilities for the following matters, in addition to the functions set out in the Standing Orders-

- a. present to the Senate, subject to the exceptions in the Constitution, the proposal for the basis of allocating revenue among the Counties and consider any bill dealing with county financial matters;
- b. review the County Allocation of Revenue Bill and the Division of Revenue Bill in accordance with Article 218(1)(b) of the Constitution at least two months before the end of the financial year;
- c. examine financial statements and other documents submitted to the Senate under Part IV of this Act, and make recommendations to the Senate for improving the management of government's public finances; and
- d. monitor adherence by the Senate to the principles of public finance set out in the Constitution, and to the fiscal responsibility principles of this Act.

In carrying out its functions under subsection (1) (a) and (b), the Committee shall consider recommendations from the Commission on Revenue Allocation, County Executive Committee members responsible for finance, the Intergovernmental Budget and Economic Council, the public and any other interested persons or groups.

### **County Assembly**

- a. Reviews the County Fiscal Strategy Paper and makes recommendations to the County Treasury;
- b. Approves the Budget Estimates for County Government as well asUrban
- c. Areas or Cities within the County; and



- d. Approves division of revenue between the County Government and Urban Areas or Cities as well as allocation of revenue across Urban Areas or Cities.
- e. Provides overall oversight over public finances at the County Government level;
- f. Ensure adherence by County Executive Committee and CG to Principles of Public Finance and the fiscal responsibility principles; and
- g. Approves the establishment of other county public funds.

### **Intergovernmental Budget and Economic Council**

The purpose of the Council is to provide a forum for consultation and cooperation between the national government and county governments on-

- a. the contents of the Budget Policy Statement, the Budget Review and Outlook Paper and the Medium-Term Debt Management Strategy;
- b. matters relating to budgeting, the economy and financial management and integrated development at the national and county level;
- c. matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees;
- d. agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections;
- e. any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;
- f. any proposed regulations to the Public Finance Management Act; 2012 and
- g. recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190 of the PFM Act; and
- h. any other matter which the Deputy President in consultation with other Council members may decide

## **Sources of National and County Government Revenue**

### **National Government Level**

The Sources of revenues for the National Government include:

- i. Taxes
  - a. Income tax
  - b. Customs and excise duty
  - c. Value added tax
  - d. Sin tax such as tax levied on alcoholic drinks and beer, cigarette
  - e. Fees and charges
- ii. Penalties and Fines

- iii. Returns on public investments
- iv. Sale of public property
- v. Grants/Donations
- vi. Public borrowing (Loans)

### **County government level**

Sources of revenue for the County Government include:

- i. Equitable share from the nationally raised revenue
- ii. Property rates
- iii. Entertainment taxes
- iv. Fees, fines and charges
- v. Sale of public property
- vi. Income from investments
- vii. Grants/donations(conditional/unconditional)
- viii. Equalization fund
- ix. Public borrowing/Loans guaranteed by the National Government

### **Sharing of Nationally Raised Revenue**

Revenue raised nationally is shared equitably between national and county governments and amongst the county governments (Article 203, CoK, 2010).

County governments may be given additional allocations conditionally or unconditionally by the national government.

The county governments are entitled to not less than 15% of the most recent audited accounts nationally raised revenue as approved by the National Assembly.

Total revenue raised nationally is a 100%

- i. Allocation to National Government is < 84.5 %
- ii. 47 county governments  $\geq 15\%$  (shall be calculated on the basis of the most recent audited accounts of revenue received as approved by the National Assembly)
- iii. Equalization fund = 0.5 %

Allocation to the 47 County Governments is a minimum of 15 % of the total amount of revenue raised nationally. The allocation for each county will be calculated according to the following parameters.

- a. Population size
- b. Basic equal share
- c. Poverty level

- d. Land area in square Kilometers
- e. Fiscal responsibility

**NOTE:** Article 217(1): *Once every Five years, the Senate shall, by resolution, determine the basis for allocate counties the share of national revenue that is annually allocated to the county level of government.*

Despite Article 217 (1), the first and second determination of the basis of division of revenue among the counties shall be made at the three year intervals, rather than every five years as provided in that article (Section 16 of Sixth

Schedule to the CoK, 2010).

### **Administration and Equalization Fund**

The Constitution of Kenya, 2010 establishes an Equalization Fund which is 0.5 per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

The national government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

The current period for which the equalization fund shall exist is a maximum of twenty years after the effective date. Parliament may enact a legislation for the extension of this date.

National Government	County Government
<ul style="list-style-type: none"> <li>• Budget circular issued by National Treasury by 30th August</li> <li>• Budget Review and Outlook Paper (BROP) is prepared and approved by Cabinet by 30th September.</li> <li>• Submit BROP to Parliament 7 days upon approval by Cabinet.</li> <li>• 6 months before the commencement of the financial year or at a later date agreed between CRA and Cabinet Secretary (finance), CRA shall submit recommendations on vertical and horizontal division of revenue.</li> <li>• National Treasury prepares and submits the BPS to Parliament by 15th February.</li> <li>• Division of Revenue Bill (DoRB) and County Allocation of Revenue Bill (CARB) are submitted together with the BPS.</li> <li>• Parliament to approve the annual DoRB and CARB not later than 30 days after they are submitted (Art 218).</li> <li>• Budget Estimates and other Bills (except Finance Bill) submitted to National Assembly by 30th April.</li> <li>• Cabinet Secretary (finance) to submit to NA comments on budget estimates of Parliament and Judiciary by 15th May.</li> <li>• The National Assembly approves the budget estimates and passes an Appropriation Bill and the President assents to the Bill by 30th June.</li> <li>• National Assembly to approve Finance Bill not later than 90 days after the passing of the Appropriation Bill.</li> <li>• Submit Debt Management Strategy to Parliament by 15th February.</li> </ul>	<ul style="list-style-type: none"> <li>• Budget Circular issued by County Treasuries by 30th August.</li> <li>• Budget Review and Outlook Paper (BROP) is prepared and approved by County Executive Committee (CEC) by 30th September</li> <li>• Submit BROP to county assembly 7 days upon approval by CEC.</li> <li>• County Executive Committee member (planning) to submit a development plan to the county assembly for approval by 1 st September.</li> <li>• Urban areas and cities shall prepare a strategic plan consistent with the County Fiscal Strategy Paper.</li> <li>• County Treasury prepares and submit the County Fiscal Strategy Paper to county assembly by 15th February.</li> <li>• Budget Estimates and other Bills (except Finance Bill) submitted to County Assembly by 30th April County assembly approves the budget estimates and passes a county Appropriation Bill by 30th June. County Executive Committee member (finance) to make a public pronouncement of revenue raising measures on the date the County Finance Bill is submitted to Parliament.</li> <li>• County Assembly to approve Finance Bill not later than 90 days after the passing of the Appropriation Bill. Submit Debt Management Strategy to county assembly by 28th February.</li> </ul>

**Figure 13. The budget making process at National and County Level**

Allocation to the 47 County Governments is a minimum of 15 % of the total amount of revenue raised nationally. The allocation for each county will be calculated according to the following parameters.

- a. Population size
- b. Basic equal share
- c. Poverty level
- d. Land area in square Kilometers
- e. Fiscal responsibility

**NOTE:** Article 217(1): *Once every Five years, the Senate shall, by resolution, determine the basis for allocate counties the share of national revenue that is annually allocated to the county level of government.*

Despite Article 217 (1), the first and second determination of the basis of division of revenue among the counties shall be made at the three year intervals, rather than every five years as provided in that article (Section 16 of Sixth Schedule to the CoK, 2010).

### **Administration and Equalization Fund**

The Constitution of Kenya, 2010 establishes an Equalization Fund which is 0.5 per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

The national government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

The current period for which the equalization fund shall exist is a maximum of twenty years after the effective date. Parliament may enact a legislation for the extension of this date.

## Budget Process Cycle

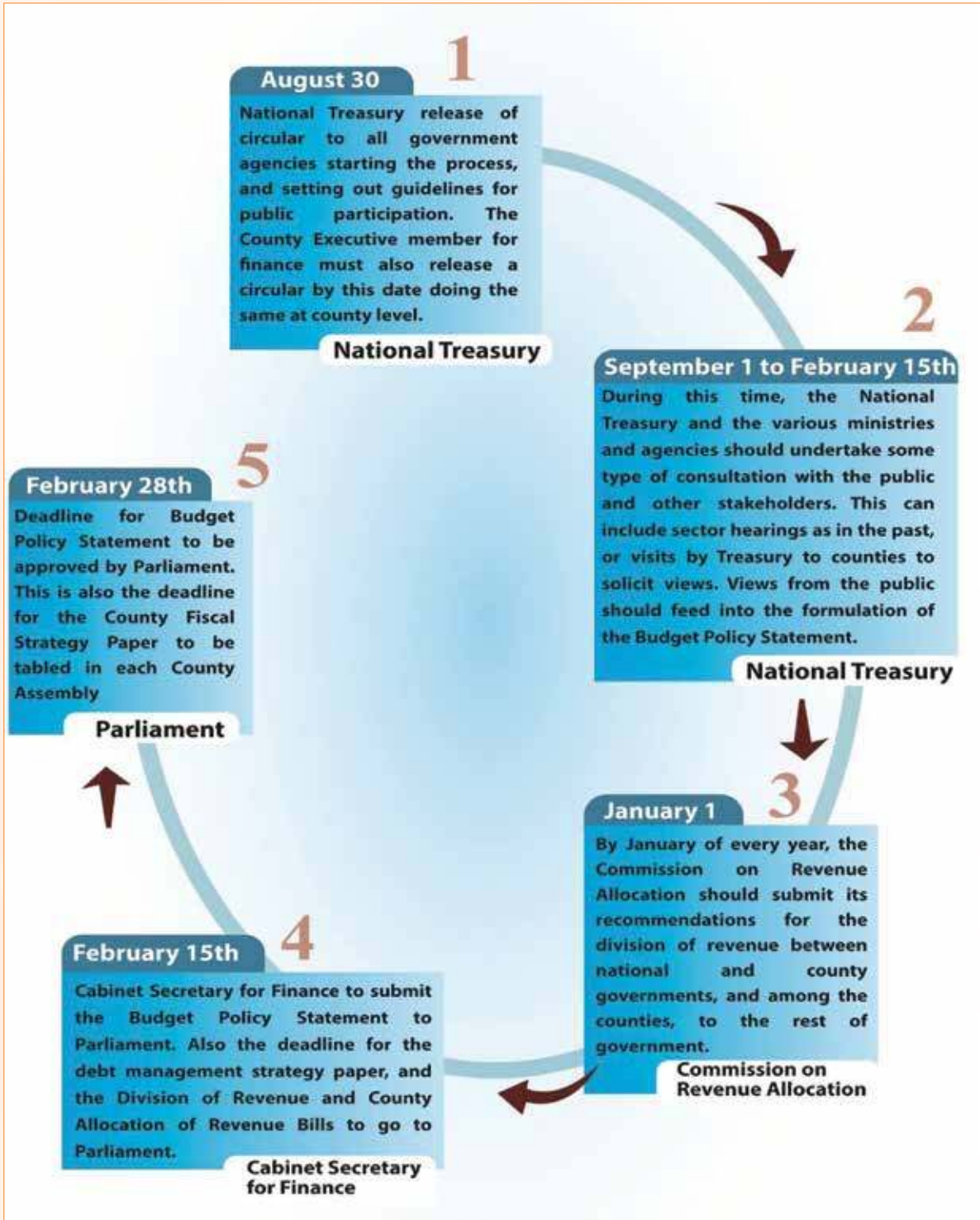


Figure 14. Budget Process Cycle

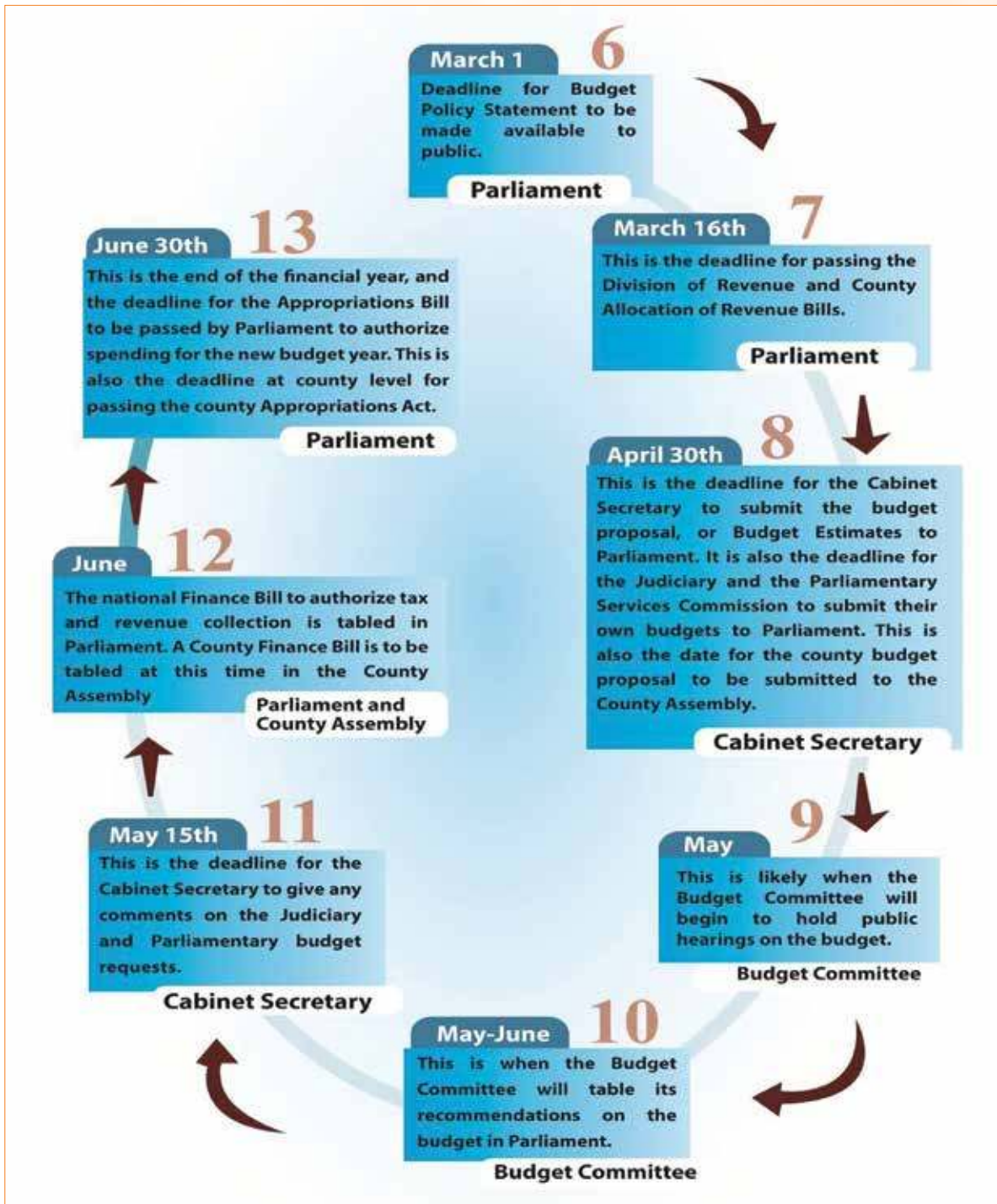


Figure 15. Budget Process Cycle Continued

## Budget Execution

A budget is a statement of projected income and expenditure. In most cases the projected income and expenditure vary from the actual in both private and public sectors. Hence the need to monitor the actual income and expenditure in order to adjust the budget.

Budget execution is the process of implementing the planned projects and programmes (operationalizing the budget), monitoring, adjusting and reporting on the current financial year's budget. Efficient and effective budget execution enables governments to utilize resources to achieve economic growth and development target for the benefit of the population.

National Government County Governments	County Governments
<ul style="list-style-type: none"> <li>• Accounting officers authorised to <b>reallocate</b> funds but:                             <ul style="list-style-type: none"> <li>o Not more than 10% of total approved expenditure;</li> <li>o Not to another NG entity or person</li> <li>o Not from capital to recurrent expenditure</li> <li>o Not if reallocation will result in the contravention of the fiscal responsibility principles.</li> </ul> </li> <li>• <b>Supplementary budget</b> only for money spent in accordance with Article 223 of the Constitution and to be approved by Parliament within 2 months of incurring the expenditure.</li> <li>• Accounting officers authorised to <b>write off any loss of a NG entity</b> as per the thresholds approved in accordance with section 69 of the PFM Act, 2012.</li> <li>• Accounting officer authorised to <b>manage assets and liabilities of NG</b> entities (sec. 72 of PFM Act, 2012).</li> <li>• Accounting officer has powers to <b>authorise payment of cash</b> advances (sec. 71 of PFM Act, 2012).</li> </ul>	<ul style="list-style-type: none"> <li>• Accounting officers authorised to reallocate funds but:                             <ul style="list-style-type: none"> <li>o Not more than 10% of total approved expenditure;</li> <li>o Not to another CG entity</li> <li>o Not from capital to recurrent expenditure</li> <li>o Not from wages to non- wage expenditure</li> <li>o Not if reallocation will result in the contravention of the fiscal responsibility principles.</li> </ul> </li> <li>• Supplementary <b>Budget</b> only if amount appropriated is insufficient or a need has arisen and no amount has been appropriated and only for amounts less than 10% of approved budget or other amounts approved by the county assembly in exceptional circumstances.</li> <li>• Accounting officers authorised to <b>write off any loss of a CG entity</b> as per the thresholds approved in accordance with section 150 of the PFM Act, 2012.</li> <li>• Accounting officer authorised to <b>manage assets and liabilities</b></li> </ul>



<ul style="list-style-type: none"> <li>• <b>Overall national government borrowing</b> is subject to a debt limit set by Parliament in accordance with section 50(2) of the PFM Act, 2012.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>of CG</b> entities (sec. 153 of PFM Act, 2012).</li> <li>• Accounting officer has powers to <b>authorise payment of cash</b> advances (sec. 152 of PFM Act 2012).</li> <li>• <b>County government borrowing</b> subject to limit set by County Assembly in accordance with section 141 (2) of the PFM Act, 2012.</li> <li>• County borrowing to be guaranteed by NG and approved by the County Assembly.</li> </ul>
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**Figure 16. Budget Execution**

### Internal Controls

The PFM Act 2012 requires the national and county governments to establish institutional arrangements to perform the internal audit function. With respect to County Governments, the arrangements for the conduct of internal auditing for a county government entity include-

- reviewing the governance mechanisms of the entity and mechanisms for transparency and accountability with regard to the finances and assets of the entity;
- conducting risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity;
- verifying the existence of assets administered by the entity and ensuring that there are proper safeguards for their protection;
- providing assurance that appropriate institutional policies and procedures and good business practices are followed by the entity; and
- evaluating the adequacy and reliability of information available to management for making decisions with regard to the entity and its operations.

A county government entity shall establish an internal auditing committee whose composition and functions are to be prescribed by the regulations to the PFM Act, 2012.

- With regard to the management of revenues, the Public Finance Management Act, 2012 provides for the designation of receivers of revenue as well as the appointment of the collectors of revenue at both the national and county government level.
- With regard to enforcement, the Act also provides for sanctions for persons who contravene the Public Finance Management Act, 2012 both at the national and county government levels.

#### National Government

- National Treasury shall prepare a **consolidated annual financial statement** of NG and submit to the Auditor-General with copies to the CoB and CRA not later than 4 months after end of financial year.
- Accounting officer to prepare an **annual financial statement** of NG entity and submit to the Auditor
- General with copies to CoB, CRA and NT not later than 3 months after the end of the financial year.
- Not later than 15 days after the end of each quarter, accounting officer for a NG entity will prepare a **quarterly report** and submit to the Cabinet Secretary for that entity with copies to CS (finance) and CoB.
- Not later than 3 months after the end of a financial year, an administrator of a national public fund shall prepare an **annual financial statement of the public fund** and submit it to the Auditor-General with a copy to the Cabinet Secretary responsible for the fund.
- Administrator of a public fund to prepare a quarterly report of a national public fund in a form prescribed by the Public Sector Accounting Standards Board.
- Separate reporting by **State Corporations** (sections 88 and 89)
- **Pre-election report** not earlier than 4 months before polling day.
- **Post-election report** - not later than 4 months after the polling day.

#### County Government

- County Treasury shall prepare a **consolidated annual financial statement** of CG and submit to the Auditor-General with copies to the CoB, CRA and NT not later than 4 months after end of financial year.
- Accounting officer to prepare an **annual financial statement** of CG entity and submit to the Auditor
- General with copies to CoB, CRA and CT not later than 3 months after the end of the financial year.
- Not later than 15 days after the end of each quarter, accounting officer for a CG entity will prepare a quarterly report and submit to the County Treasury.
- County Treasury will **consolidate the quarterly reports** of CG entities and submit the consolidated report to the county assembly, with copies to the CoB, CRA and NT not later than 1 month after that end of each quarter.
- Not later than 3 months after the end of the financial year, a receiver of revenue shall submit a **annual report of revenue received and collected** in that financial year and submit to the Auditor-General with copies to NT, CT, CoB and CRA.
- Not later than 2 months after the end of each financial year, Receiver of Revenue shall submit to the county assembly a **report of waivers and variations in taxes, fees and charges**.
- Not later than 3 months after the end of a financial year, an administrator of a county public fund shall prepare an **annual financial statement of the public fund** and submit it to the Auditor-General with a copy to the County Executive Committee member responsible for the fund.
- Administrator of a public fund to prepare a **quarterly report of the county public fund** not later than 15 days after the end of the each quarter and submit the report to the CT with a copy to the CoB.
- Separate reporting by **County Corporations** (sections 184 and 185)

Figure 17. Accounting and Reporting



## **Role of Citizen Participation in the Planning, Budget Making and**

### **Execution Process**

#### **Legal provisions for Citizen Participation in planning**

Article 184(1) (c) of the CoK 2010 provides for national legislation to provide for the governance and management of urban areas and cities and shall among others provide for participation by residents in the governance of urban areas and cities.

Among others, Article 196 of CoK 2010 requires a county assembly to facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

Among others the obligation to plan by a county, section 104(1)(4) of CGA requires the county to promote public participation and non-state actors shall be incorporated in the planning processes by all authorities.

Section 115 of CGA deals with public participation in county planning which shall be mandatory and befacilitated through:

- a. mechanisms provided for in Part VI11 of the Act; and
- b. provision to the public of clear and unambiguous information on any matter under consideration in the planning process.

Role of Citizens in County Planning Participate in forums for planning Identify priority project and programmes to be included in county plans, Facilitate provision of resources including land for County Government projects and Monitoring,reviewing and evaluation of the implementation of the county plans.

Citizens should play an oversight role in the devolved units to safeguard their resources. The Constitution of Kenya, 2010, provides for budget making at two levels namely, the National and the County levels.

#### **Steps in the Budget Making Process**

The budget making process generally has four steps as follows:

- Proposal of a spending plan and the budget by the Executive
- Debate and approval of the spendingplan and the budget by the Legislature  
Implementation of approved plan and budget
- Monitoring and implementation of the plan and the budget.



Figure 18: Budget making process

## Opportunities for Citizen Participation at the County Level

In the spirit of transparency and accountability in the planning and budget making process, there are many opportunities for citizen participation. Citizens can exercise their right to participate in the budget-making process at several stages and in various ways as follows:

### 1. Pre-budget reading period

#### i. County Budget and Economic Forum (CBEF)

The composition of the County Budget and Economic Forum (CBEF) is as follows:

- The Governor of the County Chairperson;
- Other members of the County Executive Committee;
- A number of representatives, who are not County public officers, equal to the number of executive committee members appointed by the Governor from persons nominated by organizations representing professionals, the business community, labour issues, women, persons with disabilities, the elderly and faith based groups at the County level.

The functions of the CBEF entails providing a means for consultation by the County Governments on:

- Development of County Plans,
- Development of County Fiscal Strategy Paper and the Budget Review Outlook • Matters relating to budgeting, the economy and financial management at the County level.

The County budget and economic forum allows citizens to give their views and input in the planning and budgeting process through their representatives in the forum.

### **i. County Assembly Budget Committee Hearings**

The Budget Committee of the County Assembly is obligated to organize hearings where citizens discuss their priorities. Here, the citizens have the opportunity to influence the final budget before it is approved.

### **ii. Citizen Fora**

These should be organized by the County Governments at all administrative levels of the County, namely: the sub-County, ward and village level. This is to ensure that all citizens have equal opportunities to participate. Citizens therefore have an obligation to demand for and attend these meetings and give their contribution.

### **iii. County Planning Units**

These units are also supposed to be set up at all the administrative levels. These planning units are meant to ensure citizens participate meaningfully in the planning and budget making process during sector working groups.

### **iv. County communication platform and strategy**

The Constitution of Kenya, 2010 under Article 35 places an obligation on the County Governments to actively publish and publicize information affecting the citizens including all information relating to the budget process.

### **Post-budget reading period**

The County Executive Committee member in charge of the County Treasury has a constitutional duty to publish an implementation report every quarter in the financial year. Therefore, every three months, this report is prepared and sent to the County Assembly for oversight. The implementation report outlines how the County has been implementing the budget in that period, and helps identify problems so that they can be corrected within the financial year.

These reports ought to be made public, so as to provide citizens with the opportunity to participate and raise questions about the implementation of items indicated in the budget.

In the post-budget period, citizens can participate by:

- Requesting for copies of the reports from the Finance Secretary;
- Reading the reports and discussing them with other citizens, and also with County assembly members;
- Providing comments and feedback on the reports.

### **Monitoring Implementation of Plans and Budgets**

Monitoring implementation of plans and budgets is important for the following reasons:

- a. Increases accountability among duty bearers; Reduces corruption;
- b. Ensures participation of citizens in all the processes at all levels;
- c. Ensures constant communication between duty bearers and the general public
- d. Ensures higher rates of completion of the identified projects Ensures higher rates of budget absorption
- e. Creates cohesion among the duty bearers and the citizen they serve



## HOW GOODS, WORKS & SERVICES ARE PROCURED IN THE PUBLIC SECTOR

### Introduction

Procurement means: acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other means of any type of works, assets, services or goods including livestock or any combination.



Figure 19: Ethical service in procurement



Figure 20. Corrupt practise in procurement

## **Legal Framework Governing Public Procurement**

- The Constitution-Article 227
- The Public Procurement and Disposal Act, 2005
- The Public Procurement and Disposal Regulations, 2006, 2011, 2013 and the amendments in Legal Notices 106 & 114
- Public Procurement Manuals and Standard tender Documents
- Relevant Circulars

## **Bodies involved in Public Procurement**

1. Public Procurement Oversight Authority (PPOA): ensures procurement procedures are complied with;
2. Public Procurement Advisory Board: the Director of PPOA with the approval of the Advisory Board debars contractors on grounds stated in the Act,
3. Public Procurement Administrative Review Board (PPARB - adjudicates on cases of persons aggrieved in a procurement

## **Objectives of the Public Procurement and Disposal Act, 2005**

1. To maximize economy & efficiency
2. To promote competition and ensure that competitors are treated fairly
3. To increase transparency and accountability in procurement procedures
4. To increase public confidence in procurement procedures
5. To facilitate the promotion of local industry and economic development.

## **Objectives of Good Procurement Acquisition in the most cost effective manner means drugs procured at the**

Benefits of procurement of goods include:

1. Majority of Kenya Vision 2030 flagship projects to be delivered through public procurement.
2. Need for elimination of waste through strategic leadership in public procurement & disposal specified in the Act and regulations
3. Procurement Unit: manages the whole procurement & disposal process including inventory management
4. Tender Committee: adjudicates & award procurements above Kes.500,000
5. Procurement Committee: adjudicates & awards procurements below Kes.500,000
6. Tender Processing Committee: evaluates, negotiates & inspects and accepts goods, works and services
7. Disposal Committee: responsible for recommending to Accounting officer the most suitable method of disposal.





## The Public Procurement Process

### 1. Identify the Need

- Responsibility for identification of requirements at Departmental level
- Consider type of goods, works and services; and when and where needed

### 2. Undertake Procurement Planning

- Departments supply their procurement plans which are consolidated
- Procurement commenced on satisfaction that sufficient funds exist

### 3. Specification of Requirement

It consists of definitive descriptions on the object to be procured.

- Specifications must be clear, accurate and complete otherwise will result to wrong procurement of goods/services/works
- Provision of information that the supplier requires in order to reliably meet the user's expectation.
- Need for market survey to assist with preparation of specifications
- Specification to be drawn by the user of the product or service
- Consultants may be used in preparation of specifications and bidding document

#### Methods of Specifications

- a. Sample - part of the item to be procured is submitted to the buyer to be used to compare the delivered amount against it to confirm quality adherence and conformance. It is used in textile industry and so on
- b. Grading - this method is commonly used in cereals and cash crops to indicate the various quality levels e.g. grade I, II among others
- c. Technical figure - this method is used to describe: quality of technical and complex artistic goods such as construction and building works which should be accompanied by technical drawings to confirm quality requirement.
- d. Brand name - this is used to describe quality of goods that are difficult to specify by other means. However, the words; "or equivalent" should be added when specifying using brand names (Section 34(4))

### 4. Preparation of Tender Documents

- Containing Specifications:
  - o Bills of quantities, drawings,
  - o Evaluation criteria,
  - o Price schedule, tender forms, sample contract,

- o Preferences and Reservations for tenders set aside for the disadvantaged or for margin of preference application.

## 5. Choice of Procurement Method

- a. Open tendering (Open National Tender or International Open Tender)• preferred method- (Section 50 -71) fairest to the procuring entity and to tenderer.
- b. Restricted Tender - (Section 73) only if completion is limited due to complexity or specialization or time & cost to examine a large number of tenders would be disproportionate or there are only a few known suppliers
- c. Direct procurement - (Section 74-75) only if only one person can supply and no reasonable alternative or substitute or there is urgent need and that other methods impracticable & circumstances were not foreseeable or result of procuring entity's dilatory conduct, & procuring negotiates the price.
- d. Request for proposals -(Section 76-87) for services or combination of goods and services and that service are advisory/predominately intellectual.
- e. Request for quotation - (Section 88-89) for goods readily available & with an established market.
- f. Low value procurement -(Section 90) use of cash to procure goods, works and services as per the limits set out in the classification of procuring entities
- g. Specially permitted procedures (Section 92) for design competition; for services which are creative innature e.g. architecture, landscaping urban design.
6. Publicizing the procurement opportunity - Advertising in newspapers, notice boards, Procuring entity website & PPOA tenders portal
7. Availing bidding documents to bidders - At the prescribed fee in the legal notice
8. Submission of bid Documents
  - Provision of tender box
  - No late tenders
9. Opening of Bids
  - Opening as per instructions to bidders.
  - Appointment of tender opening committee, bidders may participate, and minutes prepared.
10. Bid Evaluation

This step involves:

- a. Preliminary evaluation- and rejection of tenders that do not satisfy the basic requirements (Reg.47)
- b. Technical Evaluation- comparing each tender to the technical requirements
- c. Financial Evaluation-
- d. Comparing tenders to determine the evaluated price of each Tender

**Post qualification-**

Where indicated in the tender documents a Procuring Entity may, prior to award of the tender confirm the qualifications of the lowest evaluated tender

## 1. Award of Tender by Tender Committee

Tender committee Quorum to be FIVE including the Chairman

- Decision through consensus
  - Minutes of Tender Committee to be prepared
2. Notification of Award and Appeal Window Period
- Notification to winner and losers simultaneously
  - Bidders have a right to seek administrative review on PE's decisions
  - Bidders right to seek judicial Review
3. Contract Management
- Execution of contract
  - Inspection and quality assurance-by Tender Processing Committee
  - Handling, claims and disputes
  - Overdue payments to be paid with interest (Section 48)
  - Variations to Contracts allowed on price and quantity as per Regulation (31)
  - Contract Termination - To be approved by the tender committee.

**Methods of Disposal of surplus, obsolete or/and unserviceable stores**

- a. Transfer to another entity with or without financial adjustment
- b. Sale by public tender: used mainly for disposal of high value items
- c. Sale by public auction- common means of disposing of large numbers of relatively low-value items through the engagement of a registered auctioneer
- d. Destruction, dumping or burying: need to get a certificate from NEMA
- e. Trade-in: contract for the purchase of the equipment may include provision for the trade-in of the existing equipment that it will replace or sell-back at a specified percentage of the original purchase price after a specified number of years

*Restriction on disposal to employees set out in the Regulation 93.*

**Preference & Reservations Legal Notice 114**

- Procuring entity to allocate 30% of its procurement spend to small enterprises owned by the disadvantaged (Youth, Women & PWDs - registered by the National & County Treasuries under AGPO)
- Implementation by the procuring entity is through its budgets, procurement plans, tender notices, contract awards
- Procuring entities to submitting quarterly reports to the PPOA
- PPOA to monitor the schemes and report to the National Treasury



# MODULE THREE: PUBLIC PARTICIPATION



## Introduction

The Constitution upholds the peoples' power and how to exercise it. The "people" is any person or group of people living in Kenya and enjoying the services and rights. The Constitution also outlines the values of public power. The sovereignty of the people is articulated in Article 1 of the Constitution.

## Meaning of common terms

**Sovereignty** - refers to the power of the people. All sovereign power belongs to the people of Kenya. It is the collective power of the citizens exercised at National and County levels.

**Citizen** - is a person who legally belongs to a country and has the rights and protection of that country.

**Public participation** - is an action or a series of actions a person takes to participate in the affairs of the government or community such as voting, attending meetings, participating in public or private political discussion or debate on issues, signing a petition on a desired government action or policy, volunteering in community activities and contributing money to a political party or candidate you would like elected into government.

**Duty Bearers:** - These are actors who have a particular obligation or responsibility to respect, promote and realize human rights and to abstain from human rights violation. The term is commonly used to refer to state actors, but non- state actors can also be considered duty bearers. An example of a state actor is a leader in a county government. Depending on the context, individuals (for example parents), local organisations, private companies, donors and international institutions can also be duty bearers.

**Right holders:** - These are individuals or social groups that have particular entitlements in relation to specific duty bearers. A citizen, for example, is entitled to services in a county such as health, education and security .

Ways which the Constitution provides for sovereign power

- i. The Constitution under Article 1 (1-4) states that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.
- ii. It also states that;
- iii. The people may exercise their sovereign power either directly or through their democratically elected representatives

- iv. Sovereign power under the Constitution is delegated to a number of different organs including the Parliament and legislative assemblies in the county governments; the national executive and the executive structures in the county governments and the Judiciary and tribunals.

The sovereign power of the people is exercised at both the national and county levels.

### **Citizen Power, Source of sovereign power, roles and benefits of public participation**

The sovereign power of citizens is derived from the Constitution and the people of Kenya. The sovereign power is delegated to the following state organs:

- Parliament and Legislative assembly in the County Assembly
- The National Executive and executive structures in county governments
- Judiciary and independent tribunals.

The sovereign power of the people is exercised both at national and county level.

#### Role of duty bearers in facilitating public participation

The following are the roles of duty bearers in facilitating public participation:

- i. Ensuring they are accessible to the citizens
- ii. Ensuring existence of forums and opportunities for citizens to participate in
- iii. Providing civic education
- iv. Developing effective communication channels with citizens
- v. Providing timely information to citizens on critical and emerging issues
- vi. Providing resources to facilitate public participation.

### **Benefits of public participation to duty bearers and right holders**

The following are the benefits of public participation:

- i. Improved service delivery by public officers
- ii. Increased credibility between public officers and the community on important issues and services
- iii. Creates citizens who feel they belong and have trust in their community and local government
- iv. Provides a platform for greater diversity of citizens to contribute to public debate and decision making
- v. Provides an opportunity for focused and prioritised community concerns to be addressed by public officials
- vi. Creates citizens who are more aware of their community needs and how government responds to those needs.

## Types of Citizen Power

### Indirect Power

This refers to participation that does not require direct physical actions such as petition signing, voting and writing letters to complain or to demand for information or services.

### Physical Citizen Power

This requires direct physical participation such as protesting, working for government or boycotting. When exercising physical citizen power, it is important to do so in a responsible manner as provided under the Bill of Rights in Article 37 of the Constitution. This Article directs that every person has the right to peaceably and unarmed to assemble, demonstrate, picket and present petitions to public authorities.



Figure 21: Elections in progress

### Fiscal citizen power

This refers to financial action such as paying taxes, giving donations and approving spending of money.

### Values of Sovereign Power

The value of sovereign power allows the citizens to abide by the principles of unity, peace, liberty, equality, equity, and popular decision making. This promotes democratic governance and upholding the rule of law.



## Purpose and principles of public participation

The purpose of public participation:

- i. promote democratic and accountable exercise of power;
- ii. foster national unity by recognizing diversity;
- iii. give powers of self-governance to the people and enhance the participation of people in the exercise of the powers of the state and making decisions affecting them;
- iv. recognize the rights of communities to manage their own affairs and for further development.

## Principles of Public Participation

- i. Timely access to information on data, documents and other information relevant or related to policy formulation and implementation;
- ii. Reasonable access to the process of formulating and implementing policies, laws and regulations, including the approval of development proposals, projects, budgets, and the granting of permits and establishments of specific performance standards;
- iii. Protection and promotion of the interests and rights of minorities, marginalized groups and communities and their access to relevant information;
- iv. Legal standing to interested or affected persons, organizations, and where pertinent, communities to appeal from or review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities including women, youth and disadvantaged communities;
- v. Reasonable balance in the roles and obligations of the county government and non-state actors in decision making processes to promote shared responsibility and partnership and to provide complementary authority and oversight;
- vi. Promotion of public - private partnership such as joint committees, technical teams and citizen commissions so as to encourage direct dialogue and concerted action on sustainable development;

Recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight

## Successful Public Participation

### Public participation

This is an action or a series of actions a person takes to participate in the affairs of the government or community e.g. voting, attending meetings, Participating in public or private political discussion or debate on issues, Volunteering in the community among others.

## **The Public Participation Process**

Outline for any public participation process includes:

- i. Identifying what policy, legislation or development plan is up for discussion.  
Identifying specific problems
- ii. Formulating proposals
  - a) Legitimising decision making process;
  - b) Identify who needs to be involved in public consultation.
  - c) Deciding the level of public participation should take place. d) Identifying decision makers
  - e) Identifying opinion shapers
  - f) Identifying capacity to undertake public participation g) Clarifying the kind of decision to be made.
- iii. Specific decision making process and schedule events.
- iv. Implementing the policy, legislation or development plan

## **Monitoring and evaluation**

Outline the oversight, monitoring and evaluation framework for policy, legislation and development plans implementation.

## **Steps to successful Public Participation**

1. Identify community needs;
2. Assemble a citizen group;
3. Form partnerships and networks with local organizations and county government;
4. Keep the community informed
5. Seek feedback.

## **Process of forming a Community Group**

1. Identification of the needs of citizens in a community
2. Partnering with others who share the same concerns
3. Deciding on the activities to be undertaken by the community group.
4. Structuring the group based on activities to be conducted in terms of leadership, decision making, resource mobilization and membership, recruitment and retention.
5. Drawing up a constitution to govern the group. The constitution should have the following components:
  - a) Name of the group
  - b) Aims and objectives
  - c) Functions of the group

- d) Registration of members
- e) Election and nomination of officials
- f) Management of the group
- 6. Register the group with relevant government body

### **Basic Principles for Partnering and Forming Networks**

- 1. Purpose
- 2. Goals
- 3. Objectives
- 4. Memorandum of Understanding (MoU)

### **Value of Working Together**

- 1. Effectiveness of participation is improved.
- 2. Unity of purpose is promoted
- 3. Enable people to understand their rights and how to use them effectively
- 4. Enables people to participate effectively in decision making and policy formulation
- 5. Enables people to hold their leaders to account.
- 6. Inclusivity is improved.
- 7. Integrity, transparency and accountability are promoted.
- 8. Collective responsibility is enhanced

### **Participation in governance**

Governance refers to all processes of governing, whether undertaken by a government, market or network, whether over a family, tribe, formal or informal organization or territory and whether through laws, norms, power or language.

### **Forms of Public participation**

The various forms of public participation are:

- 1. Attending public meetings /rallies to learn, discuss or support an issue of concern to the community
- 2. Campaigning for a political candidate or issue(s) that will be voted for by the public
- 3. Demonstrating on a position or an issue, cause or government policy through marches, boycotts, sit-ins, or other forms of peaceful protest
- 4. Vying as a candidate for an elective office
- 5. Volunteering in the community or holding state office.
- 6. Participating in civic discussions such as the locals Baraza, community forums

7. Persuading a lawmaker to vote in a certain way
8. Petitioning government and signing petitions.
9. Communicating to elected representatives
10. Participating in sector working and interest groups, or advisory committee to influence policy and plans
11. Attending and participating in planning and budgeting forums

### **The Stages of Public Participation**

The 8 stages of Public participation are classified into three categories;

- 1) Category 1-Lowest form of participation
- 2) Category 2- Tokenism
- 3) Category 3- Citizen Power

#### **Category 1 -Lowest form of participation**

This category consists of two stages;

Stage 1 - Manipulation

Stage 2-Therapy

Stage 1 and 2 are called lowest form of participation. These are the lowest stages in the public participation ladder. In the manipulation stage, the citizens participate in what has been planned. They do not take part in decision making. During the therapy stage the anxiety of the community members is diffused. The primary objective of these two stages is to educate the citizens on their concerns.

#### **Category 2 - Tokenism**

Tokenism consists of three stages; Stage 3 - Informing

Stage 4 - Consultation

Stage 5 - Placation/appeasing or pacifying the people

The primary objective of tokenism is to allow the citizens to hear and be heard. The tokenism stage is considered a higher level stage because citizens have the ability to not just hear and be heard, but also to advise power holders.

#### **Category 3 - Citizen Power**

The citizen power category consists of three stages: Stage 6 - Partnership;

Citizens can engage in negotiations with power holders or get involved in decision making responsibilities.

Stage 7 - Delegated Power;

The power holders transfer part of their authority to individuals or community groups

## Stage 8 - Citizen Control

The upper-most stage reflects increasing degrees of “citizen power.” It relates to citizens having greater power over the decision making process such as; having more seats in a committee. The main objective of this stage is to involve citizens in the decision making process.

### **Benefits of Public participation**

- i. Increased trust between the public officials and the community
- ii. Citizens have a sense of belonging and trust in their community leaders
- iii. Diverse views from a greater citizenry contributing to the public debate on issues and decision-making
- iv. Citizens are better informed on projects and government proposals
- v. Community concerns are more focused and prioritized for public officials to address them.
- vi. Citizens’ diverse and unique skills are revealed to government officials and the community.
- vii. Public Participation helps in setting priorities
- viii. Public participation leads to better decisions
- ix. The public is more aware of community concerns
- x. The public can effectively judge government responses
- xi. Public officials get a better understanding of community needs and are able to respond effectively.

### **Core values of Public Participation**

- xii. Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
- xiii. Public participation includes the promise that the public’s contribution will influence the decision.
- xiv. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decisionmakers.
- xv. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- xvi. Public participation seeks input from participants in designing how they participate.
- xvii. Public participation provides participants with the information they need to participate in a meaningful way.
- xviii. Public participation communicates to participants how their input affected the decision.

## Tools for Public Participation

### Introduction

- a) Tools for public participation empower citizens to be active participants in community affairs. Tools for effective public participation are: Advisory committees
- b) The composition of the advisory committees is driven by the purpose for which they are constituted. The composition should take cognizance of constitutional provisions such as equity, inclusiveness, equality, non-discrimination and protection of the marginalized and gender balance.

### Public petitions

- A successful petition will complement a strategy that includes direct lobbying, letter writing and media exposure. Public petitions involve:
- Writing a petition
- Lobbying
- Advocacy Communique
- Oral and written submissions
- Memoranda/memorandum

### Writing a Petition

Writing a petition involves:

- identifying the target,
- carrying out research on the issue of concern,
- clear communication
- identify Ways of promoting the petition e.g. sending messages to friends, networks and media forums

### Identifying the Target Audience

Some of the possible targets include: national and County Governments, parliaments, and politicians; political parties, the President, Cabinet Secretaries, Governors, Senators and Ambassadors; Media organizations; neighborhood authorities; business associations.

### Content of the Petition

- Begin with a request, followed by well researched reasons for making the request.
- Provide a description of relevant circumstances and links to documentation or facts that support the description.
- The description should contain information that suggests that the petition is feasible.

- Do not clutter the petition with information or requests that have no clear connection to the main message

### **How to Promote a Petition**

- To promote a petition, send the message to friends, family, networks and the media (Social media; electronic and print media).
- Raise issues in forums and discussion groups and share with as many relevant people as possible

### **Lobbying**

- Lobbying is the practice of engaging with government and other stakeholders in position of power to advocate for change, request information or to hold accountable to their commitments on human rights or service delivery.

### **Tips for Successful Lobbying**

- a. Identify and engage key stakeholders
- b. Identify key decision-makers who have the greatest influence on the decision-making process. It is important to locate contact information for key stakeholders during the initial research
- c. Develop a target list of names of community leaders, elected politicians, government officials, and other civil society groups
- d. Stay in touch informally with these contacts to develop a relationship trust before approaching them. Identify influential individuals who support or are interested in the issue under consideration. Even if the supporters do not have decision-making power directly linked to the issue of interest, they may help in exerting influence on the key decision-makers.

*Note: that it is not the elected representatives only who hold influence. Maintain good contacts and relationship with staff who work for the elected officials.*

### **Key Principles of Lobbying**

- a. Be precise, accurate and honest when answering questions.
- b. Be brief and to the point when using verbal or written communication. c. Have a specific goal and state it clearly.
- d. Recognize opposing views and be ready with arguments for and against the position you have taken.
- e. Demonstrate to decision-makers how relevant the issue is to their policy formulation.
- f. Consider the target's perspective and make the position align with their values and interests.

- g. Recognize and appreciate any effort made towards supporting the cause.
- h. Follow up by sending a thank you note or making a phone call

### **Advocacy**

- Advocacy is the process by an individual or group which aims to influence decisions within political, economic, and social systems and institutions.
- It includes many activities such as media campaigns, public speaking, commissioning and publishing and research conducting exit polls or filing of an amicus brief (friend of the court).
- It can also be defined as any action that speaks in favor of, recommends, argues for a cause, supports or defends, or pleads on behalf of others.

### **Activities for Advocacy**

These include:

- Organizing communities.
- Educating decision makers.
- Creating a Platform for meeting with Decision-Makers
- Conducting Research
- Organizing a rally aimed at mobilizing support from people

### **Memoranda/Memorandum**

- This is a brief or briefs on written records to the government and other stakeholders that hold power or influence, for example, the mining companies.
- The basic function of a Memorandum is to make the recipient aware of specific information as conclusively as possible.
- A memorandum can be written to inform, to persuade, or to give specific feedback on a particular topic.

### **Communique**

This is the process of conveying information through the exchange of ideas, feelings, intentions, attitudes and expectations. It can take different forms as follows:

- a. Preparing a One-Pager
- b. Letter writing and email campaigns phone Calls
- c. Face to face meetings

### **Constitutional Provisions for Public Participation**

Public participation refers to different mechanisms in which the communities express opinions in order to influence political, economic, management or other social decisions.



Participation activities may be initiated from a government or a citizens' perspective. The Constitution requires that these activities be undertaken at the government, corporate or social level. The following are specific constitutional references to public participation:

- **Sovereign Power of Citizens**

Public participation is anchored on the core of the Constitution and is reflected in Article 1, which indicates that all sovereign power is vested in the people of Kenya. This power can be exercised at the national and county levels either directly through Public participation or indirectly through democratically elected representatives.

- Participation in Kenya's Governance

The Constitution of Kenya, 2010 Article 10(2) (a) indicates that participation of the people is one of our country's values and principles of governance. While, the values and principles of public service contain a reference to Public participation in Article 232 (1) (d) stipulates that public servants should include citizens in the process of policy making.

- **Participation in Devolved Government**

Article 174(c) in The Constitution of Kenya, 2010 stipulates that an objective of devolution is to enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them. Article 184(1) (c) Further stipulates that a national legislation is required by the Constitution to define the governance and management of urban areas and cities, which include mechanisms "for participation by residents in the governance of Urban areas and Cities".

- **Participation in the Legislature**

Articles 118(1) (b) and 196(1) (b) directs the National and County legislatures respectively to facilitate public participation in its work. In addition, Article 119(1) specifies that people have the right to petition Parliament to consider any matter within its authority. This means that every person can request Parliament and county assembly to take up issue important to them.

- **Citizens' Access to Information**

Article 35 stipulates that citizens have the right to access all information held by the State or Public Officials. Public Servants are bound to share information with citizens.

Articles 118(1) (a) and 196(1) (a) directs Parliament and County Assemblies respectively to hold public meetings and conduct their work in full view of citizens.

Article 201(1) (a), indicates that there be openness, accountability and public participation in public financial matters. Article 232 (1) (f) shows that the values and principles of Public Service include transparency and provision to the public of timely and accurate information.

## Platforms for Public Participation

Public participation refers to different mechanisms which are provided for the community; to express opinions in order to influence political, economic, management or other social decisions. Participation activities may be initiated from a government or a citizens' perspective.

The Constitution requires that these activities be undertaken at the government, corporate or social level. Public participation builds support for activities, educates the public on their role in governance processes and facilitates useful information exchange regarding the local situation.

From the public viewpoint, participation enables individuals and groups to influence governance decisions in a representational manner.

- i. Examples of platforms available for public participation are:
- ii. Round table discussions
- iii. Community forums
- iv. ICT platform/Social media
- v. Media forums
- vi. Public Baraza
- vii. Public/ individual Protests (Picketing, Sit-ins, Boycotts, Vigil, Hunger strikes)
- viii. Community projects
- ix. Traditional Media

## What is a Round Table discussion?

Different stakeholders are brought together to discuss and deliberate on issues of common interest or concern. This may involve a selected group of people. These discussions encourage citizen engagement through cooperative roundtable dialogue.

## What are the Benefits of Round Table?

- Builds alliances with sympathetic partners and possible champions; these may include Area Residents associations; lawyers; paralegals; Religious leaders; activists; elected leaders; All of whom can be invited to champion a particular cause.
- Negotiations are conducted freely and effectively with a well-prepared position. Opens opportunity for self-expression. This is because in

Enhances mutual understanding among parties. People understand the reason why issues are conducted in a certain manner/how projects are prioritized/ information sharing/ minimizes misunderstanding.)

- It helps to diagnose the root causes of problems and challenges.



### What are some of the Tips for Successful Roundtable Discussion?

For a successful round table discussion the following tips should be put into consideration by the organizers

- The activities should be held in places which are convenient for the participants.
- During the discussions simple language should be used and where possible the local language should also be used.
- When facilitating the discussions, the norms, values and culture of the community should be respected.
- The scheduling of the discussion should take into consideration the choice of time, the day, the week or time of the year to ensure that they are in harmony with the community's calendar of activities and that are held when it is appropriate for participants.
- Scheduling of activities should take into consideration peoples' work and different group specific needs such as harvesting and time for devotion in case of a religious group



Figure 22: Public Participation

- That different level of languages may be used to cater for the different categories people in order to ensure that the message achieves its goal. For instance the language used during a discussion with youths may vary from the language used for a discussion with elders or professionals.
- It is important to maintain regular contact, involvement and engagement with the community so as to ensure that the community is in touch with what is happening and what is expected from them as citizens.
- The relevant government offices, structures and officials should be involved as much as possible for support and legitimacy.
- During discussions it is important to embrace and respect different opinions and ideas.

### **What is a Community Forum?**

This is a gathering whereby different members of the public are brought together for the purposes of information sharing on certain issues concerning the community. Community forums are usually open to all members of the public who are concerned with that particular issue.

### **What is the Importance of Community Forums?**

They assist in reaching a consensus among different groups of the community on an issue affecting them

- They serve as a valuable tool for future advocacy efforts. Once people become sensitized they become informed and pass on the acquired knowledge to other members of the community
- They help build trust among community members. This is because information about issues affecting the community are put open in the public domain and every community member is aware of the issue

An example of citizen forum is the concept of citizens' parliaments commonly known as "Bunge La Mwananchi", a platform for communities to discuss, share and exchange information on matters that affect them.

It is usually advisable to ensure that political speeches by elected officials are not included in such for as they may tend to skew an issue to a certain direction and might be unfair to a certain sector of the community.

### **What are Media Forums?**

A media forum is a platform for exchange and sharing of ideas and information through the media which can be in the form of newspapers, FM Radio, community radios websites, internet, social media sites (such as Facebook and Twitter)

The media forum is also used to spread messages on Public participation in governance issues affecting the community.

### What is a Public Baraza?

- A public Baraza is a social gathering mean for raising awareness of the community, sharing knowledge and ideas and network (forming relationships). Barazas are ways of bringing large and diverse groups of people together at a short notice.

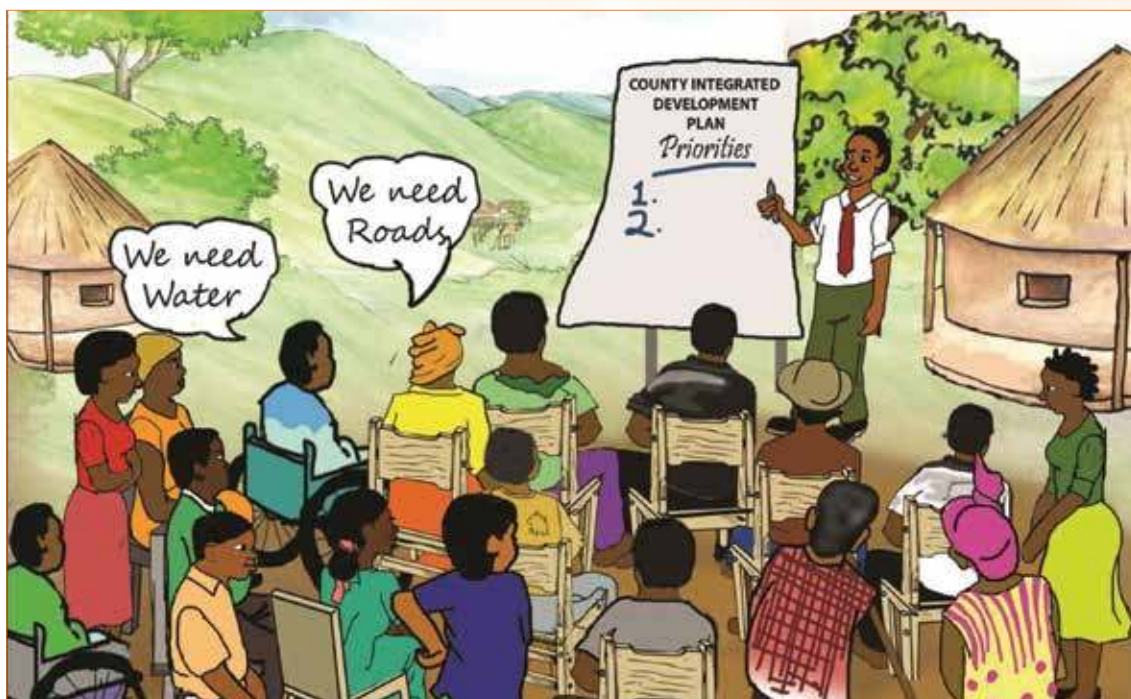


Figure 23 . Public Baraza

The Common types of Barazas are residents' meetings in a given area to discuss issues that affect them such as security.

- Local administrative leaders also use Barazas as a way of informing the community on different issues affecting the community from health security farming among others.
- Since this takes the form of a social gathering, entertainment may be arranged. This may involve cultural and traditional forms of entertainment which are used to promote social cohesion among communities.

### What is Traditional media

- A traditional media include traditional songs, traditional drama, oral narratives and other cultural activity used to pass messages and engage with the community.
- What is an ICT Platform /Social Media Information Communication and Technology platforms include the use of web based digital technology including the internet, twitter, Facebook as well as communication technology such as Whatsapp, Viber, SMS to share and engage on various issues.

## Protests

A protest is a collective term denoting many different forms of expression such as; pickveting, sit-ins, boycotts, vigil, and hunger strikes. This may take place either passively or actively.

### Active Protest

- Picketing : expression of dissatisfaction by holding and displaying posters and banners
- Boycott: where workers refuse to report to work or the public refuses to utilize certain services or certain products. All these take place actively

### Passive Protest

Passive action, or protest, entails appealing for change within a system. This implies that a message conveyed and gains attention, without disrupting a system.

- Sit-ins: when workers refuse to work but remain at the workstation.
- Vigil: to keep watch and ensure something happen or does not happen
- Hunger strikes: people refuse to eat or drink as a protest against an injustice.



Figure 24: Public protest



## Public Participation Spectrum

	<b>Inform</b>	<b>Consult</b>	<b>Involve</b>	<b>Collaborate</b>	<b>Empower</b>
Public Participation goal	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives opportunities and/or solutions	To obtain public feedback on analysis, alternatives and/or decisions	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public
Promise to the public	We will keep you informed	We will keep you informed, listen to you and acknowledge concerns and aspirations	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced decision	We will look to you for advice and innovation in formulating solution and incorporate your advice and recommendations into the decisions to the maximum extent possible	We will implement what you decide
Example Tools	Fact Sheets Websites Open House Communique	Public Comment FGDs Surveys Public meetings Oral Submissions	Workshops Deliberative forums Advisory committees Task force	Advisory committees Consensus building Participatory decision making	Delegated decision

**Figure 25: Public Participation Spectrum**

## Challenges to Public Participation

Challenges to public participation emanate from both the public and the government. Challenges citizens face in public participation;

### 1. Relationship between the government and communities

The relationship between communities and the government is strained by the community's perception that the government does not understand their issues and imposes policies and programs that negatively affect them.

### 2. Restrictions on policy timelines

The government may be considering a policy change for a long period of time, but the public consultation process may be short and may not allow the community and community-based organizations the time to research and prepare to effectively participate.

### 3. Lack of access to information

The communities lack adequate information on policy, government programs and services. Some of the information is difficult to obtain and interpret.

### 4. Inadequate representation of certain community groups in the decision making process

There are some groups who tend not to be well represented in the policy fora.

### 5. Lack of understanding of the policy making process

The policy-making process tends to be very complex making it difficult for most people to understand it. It is important to note that, if the process was made simpler, it would empower individuals and communities to understand and implement policy.

It can also help reduce public apathy or a situation where the public demands payment.

### 6. Inadequate community resources

For communities to play an active role in the policy-making process, it is necessary for them to have access to resources.

These resources include adequate funding, government training programs, education, leaders, and volunteers to support the causes and initiatives.

### 7. Apathy

This is a situation whereby citizens are indifferent, lack of concern, or get disinterested on issues affecting them and therefore withdraw from engaging with the authorities. This impedes participation in public affairs.



Challenges the duty bearers in facilitating public participation from the government level, include;

**1. Perceived resistance of communities as partners in policy development.**

This is where those in authorities tend to imagine that there would be resistance to implementation of a certain policy with the community even before trial.

**2. Jurisdictional issues**

This may include unresolved boundary issues, and County Headquarters

**3. Structural barriers within government**

This is the bureaucratic procedures and processes (many stages) involved while approaching issues in government. This tends to not only slow down the pace for public in pursuing certain issues but also discourage them to the point of giving up.

**Possible solutions to challenges facing Public participation**

These may include the following:

**1. Enhancing relationship between government and communities**

Creation of horizontal initiatives to provide linkages among communities so as to establish partnerships, with government department's organizations and agencies. This should be done considering the needs, concerns, and resources of the specific communities involved.

**2. Time and policy timeline restrictions**

Community and community-based organizations should be accorded enough time for research on policy in order to effectively participate in the policy process.

**3. Lack of access to information**

Communities should have access to information on the government policy, programs and services. The information should be simplified for easier understanding and interpretation in various multimedia formats. The information should be readily available to the community.

**4. Inadequate representation**

Affirmative action and deliberate efforts should be made to enforce the law on inclusivity.

**5. Lack of understanding of the policy making process**

Empower individuals and communities on policy-making process

## **6. Inadequate community resources**

The government to provide communities with resources such as adequate funding, training programs so that the communities can play an active role in governance processes.

### **Solutions to these Challenges**

- i. The following are possible solutions to challenges facing public participation
- ii. Civic education
- iii. Empowering people to hold their leaders accountable
- iv. Putting in place mechanisms for provision of information to the public
- v. Make access to information timely
- vi. Developing and implementing communication strategies
- vii. Ensuring the constitution is implemented according to the letter and spirit.



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