

A map of Nigeria is shown, divided into its various states and the Federal Capital Territory. The map is rendered in a light, semi-transparent style, allowing the text to be clearly visible. The text is centered over the northern part of the map.

**COMMISSION  
FOR THE IMPLEMENTATION OF  
THE CONSTITUTION**

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**2<sup>nd</sup> Quarterly Report**

**April - June 2011**

**THE COMMISSION FOR THE IMPLEMENTATION OF THE  
CONSTITUTION**

**SECOND QUARTERLY REPORT ON THE IMPLEMENTATION  
OF THE CONSTITUTION**

**June 2011**

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## FOREWORD

Since its establishment on 4<sup>th</sup> January 2011, the Commission for the Implementation of the Constitution (CIC) has successfully undertaken activities geared towards the realization of its mandate. In its first quarterly report January-March 2011, CIC focused predominantly on providing an understanding of its mandate and highlighting the start-up activities which are common to any new organization. In the first quarter there were a number of milestones achieved which included the enactment of the Judicial Services Act, the Vetting of Judges and Magistrates Act and the establishment of working modalities with key implementers, stakeholders and development partners. CIC put in place its Secretariat to support its functions.

As part of its mandate, CIC is required to prepare and submit quarterly reports to the Constitution Implementation Oversight Committee of Parliament the Public, the President and the Prime Minister. In this quarter, CIC activities focus on the activities it has undertaken under the eight thematic areas, that is, *Public Service and Leadership; Judiciary and Constitutional Commissions; Devolution; Public Finance; Bill of Rights and Citizenship; Land and Environment; Executive and Security; Representation of the People & the Legislature*. In addition, this report includes submissions from and an analysis of reports by implementing agencies and ministries. A list of ministries, which have not submitted their quarterly report, is included.

In exercising its mandate CIC enhanced effective stakeholder participation in the implementation process, and, in this regard, CIC ensured that each of the bills under consideration was subjected to a review by stakeholders from Nairobi and counties across the country. Public participation was enhanced by the successful launch of a vibrant and interactive website. Kenyans from within and without the country can now access bills and updated information on the implementation of the Constitution.

CIC also finalized and disseminated, under the auspices of the Office of the Head of the Civil Service, the Process Circular for Implementing Agencies. The circular not only serves as a basis of engagement between CIC and the ministries in the constitutional implementation but also enhances CIC's monitoring role based on reports received from ministries on their implementation status particularly with regards to the review of laws, policies and administrative procedures. These reports are an important monitoring and evaluation tool.

One of the hallmark events of this quarter was the successful hosting of the 1<sup>st</sup> Annual National Constitution Implementation Conference, in conjunction with the Ministry of Justice, National Cohesion and Constitutional Affairs. The high-level conference brought together policy leaders from the government and the non-state sector to galvanize the nation to focus on timely and full implementation of the Constitution. The conference was also attended by representatives from counties. There are plans to also have similar conferences in counties to ensure that a greater percentage of people of Kenya are reached.

Further to the discharge of the CIC mandate of monitoring Constitutional implementation in line with Article 249 requirements of rule of law and constitutionalism, CIC was vigilant on actions and omissions by implementers. Violations of the Constitution were flagged out to the concerned parties directly and, in cases of public interest, to the public through publication of the legal advisories in the print media and issuance of press statements. Most notable of the violations is the delayed release of budget estimates and the continued holding of office in political parties by appointed state officers, in violation of Article 210 and 77(2) of the Constitution, respectively. Additionally, where CIC felt the need for judicial intervention to clear questions of the interpretation of the Constitution, it did not hesitate to move to court in search of the jurisprudence of such provisions and their interpretation. For instance, CIC filed a request for an Advisory Opinion seeking the Supreme Court's opinion on several questions relating to appointments to Constitutional offices and commissions and the relationship between the Sixth Schedule of the Constitution and appointments to Constitutional offices. CIC also enjoined the case requesting for the construction, interpretation and determination of the actual date of the next general elections.

CIC encountered a number of challenges in the first quarter as it set out to discharge its mandate; some of the challenges have been progressively addressed, but some of them remain and, like the sword of Damocles, threaten to derail the implementation process. The continuous wrangles resulting in the disbandment of the Justice and Legal Affairs Committee delayed the enactment of bills as well as the engagement of Supreme Court Judges. Action by the Speaker to confer the duties of the disbanded committee on the Constitution Implementation Oversight Committee was timely.

Constitutional building as well as constitutionalism requires positive reaction and response from every citizen. The absence of good values from the citizenry and government officials is a significant challenge to the implementation process.

CIC acknowledges the efforts made by the executive, the judiciary and the legislature to keep the implementation process on course. CIC also wishes to thank development partners for financial and technical support, which has seen CIC achieve the milestones reported herein. Non-state actors, other implementation partners, stakeholders and members of the public were instrumental and supportive for the implementation process. The commissioners and staff of CIC are the backbone of the work of the CIC and without whose commitment and hard efforts the implementation process would not be where it is today. The next quarter will see more results as other requisite legislation is enacted and CIC strengthens its Secretariat to enhance efficiency.

Once again I wish to state that CIC is accessible to the people of Kenya and undertakes to remain open to public scrutiny. CIC calls upon Kenyans to appreciate their role in constitutional implementation and thus continues to encourage Kenyans to read and internalize the Constitution and remain vigilant by using the Constitution as the basis to

monitor the implementation process to ensure that the letter and spirit of the Constitution is upheld, protected and defended at all levels and at all times.

Charles Nyachae  
Chairperson

## **EXECUTIVE SUMMARY**

Ten months following the promulgation of the Constitution, the Commission for the Implementation of the Constitution (CIC) has successfully undertaken numerous activities towards constitutional implementation. In exercising its mandate, CIC underscores the emphasis that the Constitution of Kenya 2010 places on the national values and principles of governance set out in Article 10 of the Constitution, including transparency, accountability and inclusiveness of the people, in the exercise of the powers of the state and in decision-making on issues affecting the people.

In the spirit of constitutionalism and in accordance with the statutory requirement to report regularly to Parliament, and by extension to the public, as provided for in Section 6(c) of the Sixth Schedule to the Constitution and Section 4 (d) of the Commission for the Implementation of the Constitution Act, CIC has prepared its second quarterly report for the period between April and June 2011. The report gives an account of the experiences of CIC in the realization of its facilitative, monitoring and constitution-implementation oversight role. Through this report, CIC seeks to create an avenue for engagement and consultation, with the public and all stakeholders, on the progress of, impediments to and achievements in the implementation of Constitution. The second quarterly report also serves as a scorecard for the public to determine how effective CIC has been in executing its mandate and functions during the period between April and June 2011.

During this second quarter, CIC interpreted its mandate and determined its operational vision, mission, and strategic outcome results that should determine delivery of its mandate. Although it is yet to undertake full strategic planning, CIC is resolute to work towards effective realization of its mandate, through feeding into four key outcome results:

- ◆ A respected, well-functioning and independent commission effectively delivering on its mandate.
- ◆ A policy framework that is compliant with the letter and spirit of the Constitution.
- ◆ A legal framework that is compliant with the letter and spirit of the Constitution.
- ◆ Effective institutional frameworks and administrative procedures for the implementation of the Constitution.

CIC made significant progress in strengthening its working relations with partner institutions for effective constitutional implementation. In this regard, through the Office of the Head of Civil Service, CIC finalized and disseminated the Process Circular for Implementers, and, with its partners, developed timelines for implementing key legislation by 30<sup>th</sup> August 2011. CIC also advised on the review of recruitment policies and procedures for the National Police Service. Policy provisions, which were flagged out for correction before the recruitment exercise, include issues which would have amounted to violations of the principle of equality and non-discrimination contrary to Article 27 of the Constitution. Further, CIC held stakeholders' consultations with key implementing partners including state actors, civil society organizations, international development partners and members of the public on their role as implementers.

At the same time, CIC had several achievements including the review of laws among other issues. CIC facilitated the enactment of the Supreme Court Act 2011 into law during the second quarter. Bills passed by Parliament and currently awaiting presidential

assent include the Independent Electoral and Boundaries Commission Bill, the Salaries and Remuneration Commission Bill, and the Independent Office Bill. In addition the bills forwarded by CIC and waiting for approval by the Cabinet include the Kenya Human Rights Commission Bill, the National Gender and Equality Commission Bill, the Commission on Administrative Justice Bill, and the Political Parties Bill. CIC has finalized and forwarded bills to the Attorney-General for publication; these include the National Police Service Commission Bill, the National Police Service Bill, and the Independent Policing Oversight Authority Bill.. As part of its mandate, to work with constitutional commissions to ensure that the letter and spirit of the constitution is respected, CIC held meetings with the Commission on Revenue Allocation on the areas of engagement such as the Public Finance Management Bill, which is essential to the success of the workings of the Commission on Revenue Allocation.

With a backlog of laws to be enacted, CIC has continued to pay particular attention to ensuring that the bills set out in the Fifth Schedule to the Constitution are finalized and enacted within the set timeframe. What is more, during the next quarter, CIC is scheduled to hold county visits, and take part in capacity building and civic education forums on thematic issues, such as public participation, human rights, devolution and public finance, for CIC commissioners and staff as well as implementers of the Constitution.

CIC's process of executing its mandate has not been without challenges, which impacted on its effectiveness. These include resistance to change and an inclination to operate with a business-as-usual attitude, impunity by some government ministries, a lack of consensus by stakeholders on the content of bills forwarded to CIC, a lack of understanding of the constitution-implementation process at all the levels of government ministries, an apparent reluctance by technocrats to implement the Constitution in their particular sectors, a lack of awareness of the Constitution-implementation process, belated submission of bills to CIC, and poor drafting of bills. In addition, CIC's administrative operations have been hampered the following challenges: Weak liaison processes with the Ministry of Justice, National Cohesion and Constitutional Affairs, lack of a status update on CIC's expenditure and low staffing levels.

CIC also encountered impediments, which are likely to continue to affect its work into the next quarter. These include: selective reading and misinterpretation of provisions of the Constitution by implementing agencies, deliberate misinformation to members of the public by some members of both the Executive and the Legislature, a lack of guidance from the Office of the Attorney-General in the process of implementation of the Constitution, political risk, and the increasing trend by the Executive and some members of the Legislature to create grey areas regarding the interpretation of the Constitution. All these have the unfortunate propensity to create confusion and to delay the implementation of provisions of the Constitution.

Despite all these challenges and impediments, CIC is pleased with its achievements during the quarter. As a result of these challenges and impediments, however, CIC makes a number of legal, administrative, policy, and financial recommendations in the last chapter of this report, which CIC hopes the government and other stakeholders will take on board in support of the implementation of the Constitution. The recommendations include the following: Political leaders and the Executive should demonstrate stewardship to facilitate the smooth implementation of the Constitution, constitutional references relating to the implementation of the Constitution should be



fast-tracked to avoid abuse resulting in impeding the implementation of the Constitution, targeted civic education should be rolled out by implementing agencies, existing legislation and administrative procedures should be revised by ministries to align them with the Constitution, implementing agencies need to adopt a systematic and integrated approach in their agencies to involve all their staff and to prioritise the implementation of the Constitution in their work, and implementing agencies should ensure involvement of CIC at the earliest opportunity in the review of their policies and administrative procedures to ensure that the focus remains on the bills and the national interest.

## 1. INTRODUCTION

Six months since the Commission for the Implementation of the Constitution (CIC) was established and its commissioners sworn in, the process of implementing the Constitution of Kenya 2010 is well under way and about to reach the critical milestone of the first year of its implementation. As required by the CIC Act, CIC takes this opportunity to make its second quarterly report to the people of Kenya. The report takes off from where the first quarterly report left off on 30<sup>th</sup> March 2011 and charts the next three month journey of the implementation of the Constitution up to 30<sup>th</sup> June 2011 from the perspective of the CIC in the exercise of its mandate.

CIC's mandate of monitoring, facilitating, coordinating and overseeing the development of legislation and administrative procedures in the implementation process aims to ensure that genuine participation by the people of Kenya takes place at every stage of the implementation process; policies, sessional papers, laws and administrative procedures amended or developed are technically sound and are in line with the letter and spirit of the Constitution; service delivery and application of the policies, laws and administrative procedures are in line with the national values and principles as set out in Article 10 of the Constitution.

The report is divided into five main parts.

- ◆ The first part discusses the CIC mandate in relation to the process of the implementation of the Constitution.
- ◆ The second part expounds on the exercise of the CIC mandate with regard to the development of legislation and administrative procedures in each of the eight thematic areas that CIC has established.
- ◆ The third part is divided into two sections. The first section sets out the activities at a thematic level that CIC undertook between April and June 2011, while the second section shows the progress of various government ministries and agencies in implementing the Constitution.
- ◆ The fourth part sets out the challenges in and impediments to the implementation of the Constitution. CIC expects these shall be addressed to ensure that the implementation of the Constitution is not thrown off track and delayed. This part also sets out the key recommendations that should inform future interventions to safeguard the implementation process; the recommendations arise from the work of CIC during the second quarter.

## **2. THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION**

### **2.1 The Mandate and Role of CIC**

The mandate of CIC is to:

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

As a constitutional commission, the CIC mandate is amplified in Article 249 of the Constitution along these lines:

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

Delivering on its mandate, CIC is subject only to the Constitution and the law. On this basis, CIC performs its functions by ensuring that it is accountable to the Kenyan people, upholding the principle of public participation and securing the observance of all state organs of the values and principles without fear or favour. CIC guards its independence zealously and is not subject to direction or control by any person or authority. This independence is particularly important because it empowers CIC to constantly monitor any violation of the Constitution and administrative procedures by all actors including the Judiciary, Parliament, and the Executive. Overall, the fulfilment of the CIC's mandate is guided by the national values and principles as stipulated in Article 10 and other articles of the Constitution.

With regard specifically to the implementation of devolved government, the Constitution says in Section 15 (2) (d) of the Fifth schedule, that Parliament shall by legislation provide mechanisms that ensure that the Commission for the Implementation of the Constitution can perform its role in monitoring the implementation of the system of devolved government effectively. This provision emphasises the centrality of devolution to the successful implementation of the Constitution. The country has through the Constitution of Kenya 2010 adopted a devolved system of government. One of CIC's functions therefore is to see to it that devolution is successfully implemented. All

functions, whether allocated to the national government or the county government, will take place or be performed at the county level. In discussing any legislation for example CIC considers it absolutely necessary to establish how the legislation will effect and be affected by the functions at the county level. Similarly, when discussing functions CIC always emphasises the impact of such functions at the county level.

CIC is yet to undertake full strategic planning, but it has interpreted its mandate and determined an operational vision and mission and strategic outcome results that should determine delivery on its mandate. The outcome result areas are geared towards laying down relevant policy and legal and administrative systems to ensure the required firm foundation for the full implementation of the Constitution. It takes into account that CIC is not a long-term institution and should at the end of its term have worked with all key implementers in establishing this foundation.

### **Vision and Mission**

The *vision* of CIC is:

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

Its *mission* is:

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

## **2.2. Strategic Outcome Results**

CIC has organized its administrative and programmatic operations to feed into four key results areas at the outcome level:

### ***Outcome Result 1***

A respected, well-functioning and independent Commission effectively delivering on its mandate

### ***Outcome Result 2***

Policies which are compliant with the letter and the spirit of the Constitution

### ***Outcome Result 3***

Laws which are compliant with the letter and the spirit of the Constitution

### ***Outcome Result 4***

Effective institutional frameworks and administrative procedures for the implementation of the Constitution

CIC is and will continue undertaking various activities to deliver numerous outputs that will collectively contribute to the achievement of the four outcome results. To this end,

the results are to be attained through a design of its activities into eight thematic areas that are drawn from the subject matter in the different chapters of the Constitution but that inter-relate and sometimes cross-cut:

1. Bill of Rights and Citizenship.
2. Public Service and Leadership.
3. Judiciary and Constitutional Commissions.
4. Devolved Government.
5. Public Finance.
6. Land and Environment.
7. Executive and Security.
8. Representation of the People and the Legislature.

### **2.3. Role of Implementers**

CIC notes that the Constitution will only be fully implemented if constitutional implementers in the various arms of the government set the systems right in their sectors and prepare their personnel to adapt to a culture of constitutionalism. It is in this regard that the CIC, working in consultation with implementers and stakeholders in different sectors is developing modalities of work for effective implementation and facilitating key activities to be undertaken at different levels by individuals and institutions.

Working in consultation with the executive as the primary implementing arm of the government, CIC has released a circular that gives a clear roadmap to implementers to guide them on what needs to be done to ensure that the implementation of the Constitution is effected. The circular has been issued to all ministries and public institutions. In summary the circular requires:

- (a) The need to internalise the provisions of the Constitution in general and, in particular, with respect to the provisions relevant to the sector or institution in question.
- (b) The need to review or audit existing sessional papers, policies, laws, and administrative procedures against the Constitution to identify any gaps or review needs or both.
- (c) The need to develop any new laws, new policies and administrative procedures required to implement the Constitution.
- (d) The need to put in place structures necessary to effect the Constitution especially the devolved government.

These requirements will also apply to the implementation of the Constitution, one, at the devolved governance levels, two, at the parliamentary level to take into account the new structure of two houses, and, three, with the Judiciary and even with the independent constitutional commissions.

### **2.4. Implementation in the Context of the Mandate of CIC**

The implementation of the Constitution with regard to the mandate of the CIC involves:

- (a) Developing new laws, new policies and administrative procedures required to implement the Constitution.

<p><b>Box 1</b></p> <p><b>Constitutional Values and Principles</b></p> <ol style="list-style-type: none"><li>1. Patriotism, national unity, sharing and devolution of power, the rule of law, democracy, and participation of the people</li><li>2. Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, and protection of the marginalised</li><li>3. Good governance, integrity, transparency, and accountability</li><li>4. Sustainable development</li></ol>
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- (b) Reviewing existing laws, policies, administrative procedures and legislation required to implement the Constitution.
- (c) Putting in place structures necessary to effect the Constitution especially in relation to the devolved government.
- (d) Ensuring the participation by the people of Kenya in the review process; the Constitution provides that all power belongs to the people of the Republic of Kenya, and the people shall determine how they wish to be governed at the national level and at the county level (Articles 1, 10, 118, 232 of the Constitution).
- (e) Ensuring that where new laws are developed or existing ones are amended, or both are done, the new laws and the policies which informed their development should be forwarded to the Attorney-General/the Kenya Law Reform Commission and CIC.
- (f) Ensuring that the legislative process adheres to the provisions of Article 261 of the Constitution on consequential provisions.
- (g) Coordinating with the Attorney-General/the Kenya Law Reform Commission in drafting bills in coordination with originating institutions.
- (h) Coordinating with the Attorney-General/the Kenya Law Reform Commission, the Constitution Implementation Oversight Committee and parliamentary committees to ensure timely passage of bills in Parliament.
- (i) Coordinating development of change-management strategies.
- (j) Monitoring effective implementation of the Constitution in devolved units of governance.
- (k) The implementation of the devolved government would require:
- i) The development of standing orders to guide debate in the county assembly and senate. The standing orders must be consistent with the Constitution and legislation on the devolved government. While CIC will not develop the standing orders, it will review the standing orders that will have been developed
  - ii) A review of existing parliamentary standing orders to bring them in line with the new Constitution.
  - iii) The bills to have been passed by Parliament and assented to by the President.

Performing its functions, CIC is bound by national values and principles of governance laid out in Article 10(2) of the Constitution. The national values and principles of

governance bind all state organs, state officers, public officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law or makes or implements public policy decisions.

### **3. ACTIVITIES IMPLEMENTED DURING THE SECOND QUARTER**

#### **3.1 Commission for the Implementation of the Constitution: Activities by each Thematic Area**

##### **3.1.1 Public Service and Leadership Thematic Area**

###### **➤ Introductory Remarks**

Under Chapter Six and Chapter Thirteen, the Constitution ably provides for matters of public service and leadership. Under Article 232, the Constitution elaborately emphasizes on principles and values of public service that must be adhered to by state organs in the two tiers of government, State corporations and agencies, and all commissions established under the Constitution. It is apparent that successful governance must have at its core a set of principles and values that are enduring and relevant to the people. Strategies and tactics may change, but principles and values are anchors that give the government a firm footing even in uncertain or turbulent times. To that end, CIC recognizes the importance of principles and values enshrined in the Constitution in its quest to entrench constitutionalism in the people of Kenya and state organs. During the period under review, CIC undertook a number of activities under the rubric “Public Service and Leadership” thematic area that are summarised under three headings: achievements, challenges, and planned activities for the next quarter.

###### **➤ Achievements**

###### **i) Internal Review of the Ethics and Anti-Corruption Bill**

CIC undertook internal review of the Ethics and Anti-Corruption Bill, 2011, and held various consultative fora with the civil society, county representatives and state agencies among other relevant stakeholders that are involved in enforcing laws relating to corruption. The consultations identified several contentious issues that require further consultation and redress before the finalization of the bill.

CIC convened a technical meeting with the Ministry of Justice, National Cohesion and Constitutional Affairs and the Kenya Law Reform Commission on 15<sup>th</sup> June 2011. The objective of the meeting was to discuss how best the Ethics and Anti-corruption Bill would address contentious issues. The thematic team subsequently held a retreat on 23<sup>rd</sup>-24<sup>th</sup> June 2011 to finalize the draft EAC Bill and roundtable with the Kenya Law Reform Commission and the Attorney-General to sign off the bill and submit it to the Attorney-General for publication and transmission to Parliament.

###### **ii) Consultant Engaged to Review the Ethics and Anti-Corruption Bill**

Enforcement of Chapter Six is critical to the Constitution as it forms the basis on which the principles and values enshrined in the Constitution shall be enforced and guaranteed. The commission envisaged under Article 79 and Article 80 of the Constitution is very



significant in enforcing the principles of leadership and integrity and the values provided for in the Constitution.

To ensure the development of effective legislation CIC engaged an international consultant to undertake a critical analysis of constitutional provisions for principles and values, including ethics, leadership, and integrity, and tasked to analyze the applicability of the bill and its effectiveness. The reports generated by the consultant and stakeholders have since been incorporated into the bill.

**iii) Consultants Engaged for Review of the Draft Public Service Bill**

CIC engaged a consultant to review the Public Service Bill, 2011 to check its conformity with Chapter Thirteen of the Constitution. The Public Service Commission bill is still a working document and CIC is working with the Ministry of State for Public Service and the Public Service Commission to develop the bill.

**iv) Consultation with the Kenya Institute of Administration**

CIC held a meeting with the Kenya Institute of Administration to discuss how its policies and procedures can be streamlined to ensure compliance with the Constitution.

**v) Consultation with the Office of the Prime Minister**

The Office of the Prime Minister is responsible for the coordination and supervision of the execution of the functions and affairs of the government. Among other duties, the Prime Minister is specifically in charge of public service reforms, performance contracting, the Efficiency Monitoring Unit, and the Inspectorate of State Corporations. Guidance and drive from the Office of the Prime Minister is therefore crucial on public service reforms, especially on the compliance with the Constitution. Bearing this in mind, CIC held a meeting with the Office of the Prime Minister with a view to understand the efforts the office has made to ensure that existing and anticipated public service laws, procedures and policies comply with the letter and spirit of the Constitution.

**vi) Police recruitment**

The success of the recently held police recruitment is also a major achievement for CIC. The scheduled recruitment process was postponed in order to allow for a review of the police recruitment policy a process which was undertaken by the CIC to ensure compliance with the letter and spirit of the Constitution. This resulted in the implementation of administrative procedures which were compliant with the provisions of the Constitution. CIC with the support of Usalama Forum and UNIFEM, as observers, attended the recruitment exercise in all the 47 counties. The purpose of this was to ensure that recruits realized their constitutional rights.

➤ **Challenges**

Among the challenges encountered are that discussions of the Ethics and Anti-Corruption Bill raised various contentious issues that need to be resolved before the bill is finalized. The issues include whether the Ethics and Anti-Corruption Bill should have prosecutorial powers, whether the envisaged commissions' mandate should be extended to the private sector, whether the transition provisions comply with the requirements of a Chapter 15 on commissions and whether there is need to develop legislation on leadership.

➤ **Planned Activities for the Next Quarter**

The thematic area has plans to undertake these activities during the next quarter:

- i) Commence working on a CIC tool for results-based management to ensure all the implementing agencies implement the Constitution within agreed timelines.
- ii) Review the agreed draft Public Service Commission Bill.

**3.1.2 Bill of Rights and Citizenship Thematic Area**

Box 2

“The bill of rights is an integral part of Kenya’s democratic state and is the framework for social, economic and cultural policies.” Article 19(1) of the Constitution”

➤ **Introductory Remarks**

As indicated in the report of the first quarter, the Constitution is anchored on human rights principles, which are reinforced in nearly all the chapters. Chapter Three on Citizenship and Chapter Four on the Bill of Rights specifically emphasize the different rights while Article 2 has brought 15 human rights treaties into operation as part of the laws of Kenya.

During the period under review, the thematic area on Citizenship and Human Rights was, involved in a number of activities on monitoring the effective implementation of the Bill of Rights. The following are highlights of the activities undertaken in the thematic area during the period under review.

➤ **Development of Bills**

**i) Kenya National Human Rights and Equality Commission KNHREC (Article 59)**

The Constitution provides for the enactment of the Kenya National Human Rights and Equality Commission legislation as one of the priority laws, within the first years. Article 59 (4) provides for the enactment of legislation to give effect to the Kenya National Human Rights and Equality Commission, which law “may restructure the Commission into two or more separate commissions” and assign functions to each of the successor commissions. CIC received from the Ministry of Justice National Cohesion and Constitutional Affairs, three bills establishing, respectively, the Kenya National Human Rights Commission, the National Gender and Equality Commission, and the Commission on Administrative Justice as the successor commissions of the Kenya National Human Rights and Equality Commission. Given the divergent views on whether there should be one or more commissions, CIC organized stakeholder discussions on 6<sup>th</sup> and an expert consultation on 12<sup>th</sup> May 2011.

The forums, which had representatives from government ministries and human rights organizations, aimed at obtaining views from the stakeholders on their interpretation of Article 59 as well as analyzing the scenarios regarding establishing one or more commissions. A consultant was engaged to facilitate discussions and obtain a consensus; no consensus however was reached on an ideal number of commissions to be established

pursuant to Article 59 of the Constitution. CIC developed and presented an advisory brief to the Ministry of Justice, National Cohesion and Constitution Affairs, giving guidance on the key considerations in the development of the legislation to give effect to the Kenya National Human Rights and Equality Commission. CIC advised on the establishment of two commissions—a *National Commission on Human Rights* with general national human rights institutions functions including monitoring the implementation and investigation of violations of human rights together with the functions relating to the administration of justice and a *Gender and Equality Commission* to address matters relating to the principle of equality and freedom from discrimination as provided for in Article 27 of the Constitution with a mandate that focused on working with implementers to effectively integrate or mainstream this principle and work with various minority, vulnerable, marginalized and special interest groups to empower them to understand and demand the implementation of their rights. The CIC also proposed a single legislation to give effect to the two commissions.

In response to the Advisory the Ministry of Justice, National Cohesion and Constitution Affairs reiterated its proposal of the enactment of three pieces of legislation to provide for human rights, gender equity, and administrative justice, respectively. Given that the enactment of three Bills was not in any way a violation of the Constitution, CIC proceeded to audit the three bills and to hold the necessary consultations with the Attorney General, the Kenya Law Reform Commission, and the ministry. To avoid confusion, and conflict of functions, CIC also advised on the provision of clauses to facilitate collaboration and joint operation where necessary to ensure that all the commissions work for the benefit of the people of Kenya as envisaged in the Constitution.

Because of the necessary extensive consultations on these bills, it was inevitable that the Agreed Scheduled of Timelines for submission of bills was overshot. Having audited the bills, they were finalized within the quarter and submitted to the Attorney General for finalization and onward passage to Parliament. The CIC also forwarded its opinion on the subject to the Parliament for consideration as the bills are debated.

#### **ii) Public Dialogue on Utilization by Women of Opportunities Created by the Constitution**

The Constitution was a triumph for women as it created opportunities to finally ensure that women take their rightful place on the national podium. Some of the opportunities are in the public sector. Following the low level of response by women to the call for applications to the positions of members of the board for the vetting judges and magistrates, CIC organized a public dialogue forum on the gains for women in the Constitution and a discussion of strategies to enable women to fully utilize the spaces created by the Constitution. The one-day forum held on 4<sup>th</sup> May 2011, brought together women from different counties; in total there were over 80 participants. Participants included members of the legislature, executive, business community and professionals from the private sector; non-state actors and community-based organizations attended.

The forum identified and deliberated on key opportunities for women as provided for by the Constitution and resolved that:

1. Kenyan citizens will work tirelessly towards the implementation of the Constitution so that all women can rise up to the identified challenges and take advantage of all positions, whether elective or appointive offices, under the Constitution.
2. Women should realize that they have opportunities and will proceed to take advantage of these opportunities, defining the merit of these positions while embracing diversity and equity.
3. Women will guard against traditional tokenism by fighting for their full involvement at all levels of governance within the country.
4. Women will encourage each other, through deliberate initiatives, to come forth and utilize the spaces created in the Constitution.
5. Women will participate in the process of the enactment of key implementation legislation with a view to ensuring the integration of human rights and the principle of equality and non-discrimination in all the laws.
6. Women will monitor public and private sector policies, laws and administrative procedures to ensure integration of gender equality and access to equal opportunities and freedom from discrimination as stipulated in Article 27 of the Constitution. They will enhance women's participation in the political sphere and ensure that political parties come up with systems and policies that equally include men and women in their affairs.
7. Women's organizations will take steps to ensure awareness creation among fellow women, particularly at the grassroots level, of opportunities in private and public sectors. To this end, the organizations will ensure that past injustices in the public and private sectors that have contributed towards women not applying for top positions are addressed.
8. Women will more often review and audit the implementation of the constitutional provisions, especially as they relate to gender.

As a follow-up to the Forum on Opportunities for women in the Constitution, other consultations were organized by different stakeholders to continue discussions on the need for increased uptake of available opportunities by women.

### **iii) Ratification of Treaties Bill**

The Constitution vests the legislative authority in Parliament while at the same time providing that ratified international treaties and conventions become part of Kenyan law upon ratification. To give effect to Article 2(5) of the Constitution as read together with Article 94(5) of the Constitution it was deemed prudent to enact legislation to provide for a ratification process that involves parliamentary approval for the ratification of treaties—hence the need for a Ratification of Treaties Bill.

CIC received a draft bill from the Kenya Law Reform Commission and reviewed it in plenary and further subjected it to review by a stakeholders' forum. The Stakeholders' forum also discussed the advanced draft private members' bill by Hon. Millie Odhiambo on the same subject. The consultative meeting agreed to merge the two bills into a single

ratification of treaties bill. CIC has scheduled a follow-up stakeholder consultation. CIC facilitated two more technical committee discussions in the quarter and has planned another stakeholders' validation forum when the bill shall be finalized and forwarded to the AG for finalization. International law professors from law schools, the Ministry of Foreign Affairs, the Ministry of East African Community, the School of Defence, the School of Diplomacy and other stakeholders were the key reviewers of the amalgamated bill. It is expected that the bill will be cleared and forwarded to the Attorney-General by the end of July 2011.

#### **iv) Citizenship Bill**

Legislation on citizenship is one of the priority bills scheduled for enactment in the Fifth Schedule before August 2011. The legislation is aimed at giving effect to chapter 3 of the Constitution. With support from UNDP, the human rights thematic area will be engaging the services of a consultant to embark on an audit of the policies, laws and administrative procedures that are currently operational with respect to citizenship. The ministry responsible for matters of citizenship established an inter-ministerial task force on devolution to prepare a citizenship bill. CIC has met with members of the task force to get preliminary views of the progress pending receipt of the report and draft bill on citizenship from the task force.

The draft bill on citizenship is scheduled to be processed in July 2011 and enacted by the 26<sup>th</sup> August 2011. The CIC received a draft bill, and is currently reviewing it. This bill will be processed within the month of July 2011. In line with its procedures, CIC will review the bill and subject it to stakeholder forums to obtain and input views from stakeholders. CIC will also hold meetings with the Attorney-General and the Kenya Law Reform Commission on the proposed amendments to the bill before the bill is forwarded to Parliament for deliberation.

#### **v) Participation at Stakeholder Forums**

CIC participated at the Prime Minister roundtable on Gender Affairs held on 24<sup>th</sup> May 2011. The roundtable provided an opportunity for stakeholders to initiate discussions relating to the principles of equity and equality within the Constitution on gender responsive reforms and the content of the Family Protection Bill, the Marriage Bill, and the Matrimonial Property Bill. The roundtable which was chaired by the Prime Minister was attended by participants from the counties, civil society organizations, government representatives as well as members of Parliament.

The forum noted the need to ensure that the three laws establishing the Article 59 of the Constitution commissions, as referred to in the preceding paragraphs, are enacted without delay, and participants noted the need for women to take up leadership roles particularly at the political level. The forum also noted the need to have annual meetings to be facilitated by the ministry responsible for gender and a forum for stakeholders to assess and evaluate the progress of the implementation of proposed recommendations.

#### **vi) Consultation with Implementing Agencies**

CIC held a meeting with the Ministry of Justice, National Cohesion and Constitutional Affairs on 15<sup>th</sup> June 2011 to discuss the roadmap for the implementation of human rights as provided in the Constitution. The meeting agreed that the National Policy and Action Plan on Human Rights will be the guiding tool for implementers and in the final stages need to take note that human rights are cross-cutting and therefore applicable to all implementers. In this regard, the National Policy and Action Plan on Human Rights needs to be designed to ensure consistency with the Constitution and involve all implementers and be the reference tool on human rights in all sectors. It was also agreed that there is a need to establish a technical structure to develop standards for the implementation of socio-economic rights in line with Article 21 of the Constitution. In this regard, follow-up forums will be held with the Kenya National Human Rights and Equality Commissions.

#### **➤ Challenges**

The thematic area was faced by some challenges, which include:

- i) A lack of consensus on whether to form one or more commissions in line with Article 59 of the Constitution: The discussions on the merits of each option were clearly driven by self-interest and lobbying, making the process of the consideration of the bills take too long and resulting in CIC overshooting on the scheduled timeframe within which to submit the bills for Cabinet deliberation.
- ii) The implementation of socio-economic rights face a potential challenge if the key government development planning and supervisory offices and ministries fail to internalize their constitutional responsibility to deliver on these rights and on the principle of equality and equity in the sharing of national services, resources and opportunities. The CIC believes that all coordinating ministries and public departments including the ministries of Planning, Treasury and Public Service as well as the Vision 2030 and the Central Bureau of Statistics, working with the Kenya National Human Rights and Equality Commission and the CIC must relook at the national development policies and the available data and review it to enable the equitable sharing of resources and objective monitoring on compliance on the delivery on the socioeconomic rights. The CIC hopes to get a consensus on an agreeable way forward among the key stakeholder in the next quarter.

#### **➤ Planned Activities for the Next Quarter**

The thematic area plans to undertake the following activities during the next quarter:

- i) Facilitating the preparation of a guide on the implementation of human rights in consultation with the Kenya National Human Rights and Equality Commission institutions and other stakeholders.
- ii) Reviewing the national policies on the National Policy and Action Plan on Human Rights and the Kenya Vision 2030 to ensure the integration of the values and principles of the Constitution.
- iii) Identifying other priority bills relating to human rights and undertake internal review and stakeholder analysis.

- iv) Reviewing sectoral policies in two sectors to ensure the initiation of relevant steps for the full integration of human rights.
- v) Undertaking a training-needs assessment for key implementers on human rights and the rights approach to service delivery.
- vi) Facilitating the development of the national implementation monitoring and reporting tool on human rights
- vii) Finalise the review of the bills on Citizenship, Marriage, Freedom of Information, and Public Participation.

### **3.1.3 Representation of the People and the Legislature Thematic Area**

#### **➤ Introductory Remarks**

The objective of the theme is to ensure that the policies, laws, systems, structures and administrative procedures developed/reviewed and applied at all levels of elections, in every political party, and in parliamentary and assembly affairs, are consistent with and according to the letter and spirit of the Constitution. The ultimate aim is to have all the people of Kenya, including leaders, respect the rule of law, uphold national values and live by the Constitution; with the eventual aim of all Kenyans living under the new dispensation in a united, peaceful and prosperous nation.

For this theme to contribute to CIC's role of monitoring, facilitating and oversight, along with working with constitutional commissions, the Representation and Legislature Thematic Team will ensure that the electoral system and process and the Independent Electoral and Boundaries Commission are put in place and applied. It will also ensure that guidelines for political parties, Parliament and county assemblies are developed and applied according to the letter and spirit of the Constitution.

#### **➤ Achievements**

##### **i) Independent Elections and Boundaries Commission, Political Parties and Elections Bills**

All the bills (Independent Elections and Boundaries, Political Parties and Elections Bills) under this theme had not gone through the process of obtaining input from the 47 counties much as the Constitution requires the people of Kenya to participate in their development. As a result, CIC had to have the people of Kenya (through representatives from the 47 counties) input their views before CIC finalized with the monitoring, facilitating and overseeing the implementation of the Constitution. The participation of the people of Kenya in the development of the bills was through three separate consultative forums, one for each bill. Additionally, eleven counties were visited by CIC and during the visits, views on how the electoral system and process may be improved were obtained from county residents. The Independent Elections and Boundaries Commission and Political Parties bills were then signed off by the Attorney-General/the Kenya Law Reform Commission/the Interim Independence Electoral Commission/CIC. The Independent Elections and Boundaries Commission Bill was passed by Parliament in May 2011 and it is currently awaiting presidential assent. The Elections Bill is delayed because it is awaiting input from the Devolved Government Task Force.

It may be interesting to note that the Independent Elections and Boundaries Commission is yet to be forwarded to the President for assent. CIC has been trying to understand why the delay yet this is one of the crucial bills for matters to do with elections.

#### **ii) Monitoring the application of policies, laws and administrative procedures**

The theme was also involved in monitoring the application of the policies, laws and administrative procedures. In pursuance of this, CIC wrote to the Registrar of Political parties in relation to political parties' compliance with the Constitution. CIC also monitored and oversaw the legislative process to ensure that each arm plays its role in a timely manner, as agreed and tabulated, plus, as per the Constitution. In this endeavour, CIC wrote two advisories to Parliament concerning changes in the Independent Elections and Boundaries Bill. CIC now awaits the Independent Elections and Boundaries Act to check its constitutionality. The theme is currently developing a framework for monitoring, facilitating and overseeing the electoral process and system, Parliament and County Assemblies.

#### **➤ Challenges**

The challenges faced by the thematic team include the following:

- i) Changes happening after CIC has checked the constitutionality of the content of draft bills. To address this challenge, CIC had to write two advisories to the office of the Prime Minister, the Cabinet, the Ministry of Justice, National Cohesion and Constitutional Affairs, Parliament, the Attorney-General and the Kenya Law Reform Commission.
- ii) Official versions of bills keep on changing once CIC has started work on the bills.
- iii) The agreed changes at sign-off meetings were not fully incorporated thereby compelling CIC to do repeat jobs.
- iv) Staff who were sent to roundtable meetings by partners and implementing agencies were not able to make all final decisions during the sign off meetings.
- v) Delays in processing the Independent Elections and Boundaries Commission bill and this has had negative effects on moving the process forward
- vi) Parliament (Clerk to the National Assembly) has been slow in responding to CIC's request for an initial meeting to discuss how Parliament and CIC will work together in implementing the Constitution. CIC has twice written to Parliament requesting for appointments.

#### **➤ Lessons Learnt**

The thematic team drew some lessons from the challenges identified above. These may be summarised as follows:

- a) It would be better if bills have input from all key stakeholders and the people of Kenya before they are sent to CIC for review.



- b) The people of Kenya need to be continuously vigilant regarding the implementation process.
- c) All the arms of government need to develop policies/sessional papers before developing relevant legislation.

➤ **Planned activities for July-September 2011 Quarter**

The thematic area is programmed to undertake various activities in the next quarter. These include:

- i) Bills: the thematic team expects to develop new bills including the vetting bills and bills relating to the legislature both at the national assembly and county assemblies.
- ii) The thematic team anticipates to complete or ensure the following legislation is completed:
  - a) Elections Bill.
  - b) Political Parties Bill.
  - c) Bills relating to the legislature at national and county levels.
- iii) The thematic team anticipates completing the development of a framework for monitoring, facilitating and overseeing development of legislation, administrative procedures, and policies.
- iv) The thematic team anticipates to start applying the developed framework at both design and development of policies/sessional papers, legislation, and administrative procedures.
- v) The thematic team is anticipating the implementation of the Independent Elections and Boundaries Commission law once it is enacted. Towards this end the thematic team will enhance action to facilitate finalization of the delimitation of electoral boundaries.
- vi) The thematic team plans to start reviewing administrative procedures relating to the electoral system and process. The thematic team will facilitate vetting with the aim of ensuring that they are in line with the policies, laws and the letter and spirit of the Constitution.

➤ **Financial Support by Development Partners/Donors**

The UNDP facilitated the provision of two consultants to provide specialized expertise to review the Elections Bill.

**3.1.4 Public Finance Thematic Area**

➤ **Introductory Remarks**

The thematic area is tasked with the responsibility of guiding and coordinating the constitutional implementation activities relating to matters of public finance. This includes overseeing the development of legislation and administrative procedures that are reflective of the letter and spirit of the Constitution while ensuring that the process is both open and participatory. CIC's principal partner in this context is the Ministry of Finance, which is the key driver in public finance management reforms. In view of the implications of public finance management on devolved governments, CIC also partners

with the Ministry of Local Government through the Taskforce on Devolved Government.

➤ **Achievements**

In light of the foregoing, the thematic area on public finance has undertaken various activities and discussions aimed at giving effect to Chapter 12 of the Constitution.

**i) Public Finance Management and Fiscal Decentralization Principles Workshop**

CIC, jointly with the Treasury held a consultative forum on public finance management and fiscal decentralization with the aim of discussing the principles of the public finance management framework as spelt out in the Constitution whilst also highlighting the Public Finance Management law as conceptualized. The meeting involved all government agencies dealing with public finance and fiscal decentralization including the Task Force on Devolved Government. The consultation with the Task Force on Devolved Government was intended to achieve a common understanding on the critical issues required in the anticipated legislation. The meeting provided an avenue for devising ways and strategies aimed at overseeing the transition to fiscal decentralization and the roles of the various institutions therein. The meeting availed an opportunity to sensitize key players on their roles regarding facilitating the rollover to the new fiscal decentralization/devolution framework.

The Ministry of Finance released a lay Draft of the Public Finance Management Bill and was soliciting views from the public regarding the contents of the Public Finance Management Bill. The importance of the bill cannot be gainsaid especially because Kenya has adopted the devolved system of government. CIC has been in constant consultation with the Ministry to ensure public participation in the preparation of the bill before its presentation to CIC for review.

**ii) CSO Consultative Forum on the Public Finance Management Bill**

On 17<sup>th</sup> June 2011, CIC held a technical workshop on key issues arising from the draft the Public Finance Management Bill, including issues of intergovernmental fiscal relations, roles of institutions and transparency and accountability mechanisms within the draft. The resolutions of that meeting fed into the stakeholder forum held on the 27<sup>th</sup> June 2011. The consultation is expected to involve a wider cross-section of stakeholders, including representatives from the counties.

**iii) Discussion Forums with Experts on Public Finance Management**

CIC held two working forums with international experts and practitioners in the public finance area including Professor Paul Smoke, Dr. Junaid Ahmad and the former Chief Executive Officer of the Johannesburg Municipal Council. The basis of the meetings was to sensitize CIC commissioners regarding the public finance processes by learning from comparative experiences on fiscal decentralization. The lessons learnt will enrich the implementation process in Kenya in light of Chapter Eleven of the Constitution while ensuring that the interests of the public are adequately catered for. In this regard, it was

important to get the views of people who have had experience in successful systems. Kenya can learn from these experiences to implement a devolved system of government while avoiding challenges related to its implementation.

#### **iv) Commission on Revenue Allocation Bill**

CIC facilitated various discussions on the Commission on Revenue Allocation Bill with different stakeholders and was able to reach consensus on contentious issues regarding the bill.

The Commission on Revenue Allocation is an independent commission set up under Article 215 of the Constitution of Kenya. Its core mandate is to recommend the basis for equitable sharing of revenues raised nationally between the national and the county governments and the sharing of revenue among the county governments. The Commission on Revenue Allocation Bill to expound on the role and functions of the Commission on Revenue is due for publication.

#### **v) Salaries and Remuneration Commission Bill, 2011**

CIC organized stakeholder consultative meetings to facilitate the deliberation of the contents of the Salaries and Remuneration Bill. The bill sets out the operations and structure of the Salaries and Remuneration Commission established by Article 230 of the Constitution. The mandate of the Salaries and Remuneration Commission is to set and regularly review the remuneration and benefits of all State officers. The Bill was passed by Parliament and is awaiting presidential assent.

#### **vi) Consultative forum for Non-State Actors**

CIC organised a consultative forum for Non-State Actors on 7<sup>th</sup> June 2011. The overall objective of the stakeholder participation was to: share CIC's mandate and strategy and discuss how best to work with NSAs to achieve this mandate, discuss current implementation strategies among NSAs, discuss ways of enhancing stakeholder and public involvement in the implementation process. Some of the key outcomes of the meeting include, development of a mapping of non-state actors involvement in constitutional implementation at national and county level and a draft strategy for CIC's engagement with Non-State Actors.

#### **➤ Challenges**

The thematic area encountered some challenges in the course of assisting with the generation of bills. These include:

- i) A divergence of views regarding the interpretation and application of the provisions of Chapter Twelve of the Constitution on public finance, especially on the budgetary process.
- ii) A lack of coordination in the generation of bills in this area due to its cross-cutting nature. CIC has advised the parties involved in this process that such efforts would be best complemented if they were well coordinated and centrally worked on, thus avoiding a duplication of effort and resources.

#### **➤ Proposed activities in the Next Quarter**

During the next quarter, the thematic area on public finance has scheduled various activities such as:

- i) Stakeholder consultations on the final version of the Public Finance Management Bill.
- ii) Technical consultations regarding the revision of the Public Audit Act.
- iii) Oversight over the review of the Public Procurement law and the Central Bank law.
- iv) Oversight over preparation of regulations under the Public Finance Management law.
- v) Consultations with institutions dealing with Public finance.

➤ **Financial Support by Development Partners/Donors**

The GIZ facilitated the provision of a consultant to provide specialized expertise to review the Public Finance Management Bill and the Controller of Budget Bill.

### **3.1.5 Judiciary and Constitutional Commissions Thematic Area**

➤ **Introductory remarks**

This thematic area is concerned with the constitutional establishment and/or institutional reform of the judiciary and constitutional commissions as respectively provided for in Chapter Ten and Fifteen of the Constitution of Kenya 2010. It addresses such matters as the enactment and/or amendment, of legislation, policy, development or review, and formulation of administrative procedures required to ensure effective and timely implementation of the Constitution in that regard.

➤ **Achievements**

**i) Implementation of Chapters Ten and Fifteen**

Since the last quarter, the Thematic Team on Judiciary and Constitutional Commissions completed a review of three bills that have been enacted into law, namely: the Judicial Service Act, 2011, the Vetting of Judges and Magistrates Act, 2011, and the Supreme Court Act, 2011.

**ii) Public Participation in development of Bills**

The internal review of the aforesaid laws involved numerous consultative workshops to ensure sufficient public participation in accordance with the requirements of Article 10 of the Constitution. On 30<sup>th</sup> March 2011, the Thematic Team successfully organized a multi-stakeholders' forum to discuss the Supreme Court Bill at Sankara Hotel, Nairobi as a follow-up to a similar meeting held on 18<sup>th</sup> March 2011. The object of the Bill is to make further provision for the operations of the Supreme Court pursuant to Article 163(9) of the Constitution. The forum was attended by stakeholders drawn from various Civil Society Organizations, namely, ICJ-Kenya, FIDA-Kenya and TI- Kenya. It was also attended by the Chairman of the Kenya Law Reform Commission. Participants at the stakeholders' forum exhaustively discussed the Supreme Court Bill, exchanged views and made suggestions for the improvement of some of its provisions. On 21<sup>st</sup> April 2011, CIC finalized review of the Supreme Court Bill and submitted the Bill with amendments to the Attorney-General's Office for consideration. The bill was passed by

Parliament on 16<sup>th</sup> June 2011 and subsequently assented to by the President on 23<sup>rd</sup> June 2011.

The Thematic Team on Judiciary and Constitutional Commissions also worked on the Salaries and Remuneration Commission Bill, 2011, and collaborated with the Public Finance Thematic Team on the Independent Officers (Appointment) Bill, 2011, both of which are awaiting presidential assent. Notably, the Salaries and Remuneration Commission Bill has recently been referred to Parliament by the President for minor amendments before assent.

Due to the significant amount of work undertaken by the Commission, CIC has been keen in determining priorities to be given to draft bills once it receives them. On 18<sup>th</sup> April 2011, CIC agreed on timelines for the development of priority bills for the period ending 30<sup>th</sup> August 2011. The Thematic Team worked in collaboration with the Bill of Rights Thematic Team on the following bills in harmony with the scheduled timelines:

- (a) Kenya National Human Rights Commission Bill, 2011,
- (b) National Gender and Equality Commission Bill, 2011, and
- (c) Commission on Administrative Justice Bill, 2011.

CIC has convened several workshops to gather views and comments from various stakeholders for purposes of enriching the abovementioned bills. Internal review of the bills is still ongoing and will be finalized by the end of the month.

### **iii) The Vetting of Judges and Magistrates Act**

Following the enactment of the Vetting of Judges and Magistrates Act, 2011, the President, in consultation with the Prime Minister, declared vacancies in the offices of the members of the Judges and Magistrates Vetting Board. Applications were expected to have been submitted on or before 21<sup>st</sup> April 2011. However, only four people however applied for the position of chairperson and five for members of the Vetting Board by the closing date on 21<sup>st</sup> April 2011. Further, the number of applicants to the Vetting Board did not meet the constitutional requirement for gender equity, with only one female applicant.

Due to the low level of interest shown by women in applying for positions to the Vetting Board, the Thematic Team on Bill of Rights and Citizenship organized a consultative forum on 4<sup>th</sup> May 2011 to discuss ways in which women can meaningfully utilize opportunities created for them by the Constitution of Kenya, 2010. The workshop was well attended by women leaders, political leaders, lawyers and members of the general body of civil society.

To attract more applications for the vacancies, the Minister for Justice, National Cohesion and Constitutional Affairs, Hon. Mutula Kilonzo, tabled before Parliament the Judges and Magistrates (Amendment) Bill, 2011, on 4<sup>th</sup> May 2011. The Bill proposed to amend section 9(2) of the Vetting of Judges and Magistrates Act, 2011, which would extend the time for constitution of the Vetting Board. The Bill was passed by Parliament

and subsequently assented to by the President on 21<sup>st</sup> March 2011. On 19<sup>th</sup> May 2011, the President, in consultation with the Prime Minister, via Gazette Notice No. 5366 of the same date, declared vacancies in the offices of members of the Judges and Magistrates Vetting Board and invited fresh applications from qualified persons for nomination for appointment to the offices. The closing date for submission of applications was set for 2<sup>nd</sup> June 2011.

#### **iv) Appointment of Supreme Court Judges and the Director of Public Prosecution**

The Judicial Service Commission conducted interviews from 3<sup>rd</sup> to 12<sup>th</sup> May 2011 to nominate persons for the positions of the Chief Justice, the Deputy Chief Justice and the Director of Public Prosecution, while interviews for the five other judges of the Supreme Court were conducted between 6<sup>th</sup> and 14<sup>th</sup> June 2011. The Judicial Service Commission nominated for approval by the Parliament Dr. Willy Mutunga, Ms. Nancy Baraza and Mr. Keriako Tobiko as the Chief Justice, the Deputy Chief Justice and the Director of Public Prosecution respectively. Five other judges were also nominated for approval by Parliament. They are Justice Philip Tunoi, Justice (Professor) Jacktone Ojwang, Justice Mohammed Ibrahim, Dr. Smokin Wanjala and Ms. Njoki Ndungu. The nominees were approved by Parliament and subsequently appointed by the President on 16<sup>th</sup> June 2011.

On 20<sup>th</sup> June 2011, Dr. Willy Mutunga, Ms. Nancy Baraza and Mr. Keriako Tobiko were sworn in to office as the Chief Justice, the Deputy Chief Justice and the Director of Public Prosecution respectively. The swearing in of the five other Supreme Court judges was restrained by an Order of the Court pending determination of a petition lodged by Federation of Women Lawyers (FIDA-Kenya) and five other NGOs seeking to nullify their appointment on the grounds of failure to comply with the constitutional values and principle of gender equity and equality as prescribed in Article 10 of the Constitution. The petition is scheduled for hearing on the 27<sup>th</sup> June 2011.

#### **v) Public interest litigation**

On 23<sup>rd</sup> March 2011, CIC requested the Court Appeal sitting as the Supreme Court to give an advisory opinion on various questions concerning the nomination and appointment of constitutional and public officers and the effect of the provisions of the Sixth Schedule (Transitional and Consequential Provisions) to the Constitution on these appointments. The matter was heard before Justices Tunoi, Bosire, O'Kubasu, Githinji and Waki on the 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> April 2011. The matter will be coming up for ruling on 8<sup>th</sup> July 2011 at 9.00 a.m.

#### **➤ Activities for the Next Quarter**

- i) Conduct stakeholder consultations/workshops to discuss:
  - (a) the system of courts;
  - (b) amendments to the Magistrates' Courts Act, Judicature Act, Kadhis' Court Act, Appellate Jurisdiction Act and Judicature Act to ensure consistency with the Constitution;

- (c) court rules and administrative procedures (Chief Justice rules, Supreme Court rules, appellate and subordinate court rules etc.); and
- (d) Teachers Service Commission Bill.
- ii) Hold public consultations on the administration of justice in Kenya (20 County Visits).
- iii) Study tour to Malaysia on court systems, ADR mechanisms and civic education- dissemination of information and materials to promote public awareness of the new laws and reformed judicial institutions.

### **3.1.6 Land and Environment Thematic Area**

#### **➤ Introductory Remarks**

This thematic area on land and environment covers activities in the mandate of the following ministries: the Ministry of Land, the Ministry of Environment and Mineral Resources, the Ministry of Forestry and Wildlife, the Ministry of Water and Irrigation, Ministry of Tourism, the Ministry of Northern and Arid Lands, the Ministry of Regional Development, and the Ministry of Livestock Development. The latter ministries are by and large focused on the rangelands of Kenya and therefore have great impact on the range ecology of the area. Chapter Five of the Constitution provides the framework for this sector and in particular the principles that apply to land and the obligations of the state with respect to the environment.

#### **➤ Achievements**

In the period under review the thematic area had various achievements that include:

##### **i) Consolidation of Bills, Policies, and Administrative Procedures**

CIC has surveyed some of the existing policies and legislation pertaining to the sector with special reference to the above Ministries and the relevant State corporations. Due to the possible risk of duplication of reform initiatives or conflicts, or both, the CIC is in the course of procuring a consultant to consolidate and ensure the integration of the various bills, policies and administrative procedures from the various ministries, departments and state corporations in the environment and natural resources sector. This will entail liaising with the sector actors to effectively map out their planned initiatives and focus these to bringing about conformity and coherence in their policies and legislation.

##### **ii) Participation in Consultative Fora**

###### **a) *National Land Commission Bill***

CIC participated in a consultative forum on the National Land Commission bill organised by the Land Sector Non-State Actors under the auspices of the Institutions of Surveyors of Kenya.

###### **b) *Consultation with Implementing Agencies***

CIC has had consultative meetings with the task forces/committees on constitutional reforms from the Ministry of Water and Irrigation, the Ministry of Forestry and Wildlife, and the Ministry of Northern Kenya and Arid Lands. The meetings were useful in forging a common approach to the process of developing the respective bills and policies.

### ***c) Consultation with Civil Society Organizations***

The thematic area received technical and financial support from the World Wide Fund to hold a workshop with the National Environment Civil Society Alliances of Kenya. The objective of the workshop was to establish a strategic alliance and commence dialogue with the civil society on pressing issues afflicting land and environment and the importance of ensuring robust public participation. CIC elaborated that the main motivations for an engagement with civil society organizations in the implementation of the Constitution are:

1. Management of natural resources as a constitutional requirement by providing opportunities for civil society organizations to participate in the review of the different policies and legislations at national and country levels
2. Ensuring that important issues that may be missed out are captured in the relevant land and environmental policies and legislation
3. Awareness support in the counties and nationally regarding the Constitution

### **iii) National Land Commission Bill**

Most of the bills in the land and environment sector identified in the Fifth Schedule to the Constitution are required to be implemented within a timeframe of four or five years. Due to the central role of land in environment and natural resources management, However, CIC decided to fast-track the National Land Commission Bill to spearhead other bills in the sector. The bill is now under review and should be presented to Parliament for debate. It is projected that the bill will be passed by August 2011.

## **3.1.7 Executive and Security Thematic Area**

### **➤ Introductory Remarks**

Chapter Nine of the Constitution on the Executive provides for the functions and powers of the offices of the President, the Deputy President, the Cabinet and other offices such as the Attorney-General, the Director of public prosecutions and their removal. The Executive formulates government policies and priorities. It is also responsible for the execution and administration of government policies.

### **➤ Achievements**

The thematic team had attained the following achievements during the period under review:

#### **i) Consultative forum with Permanent secretaries**

CIC engaged with the head of public service and permanent secretaries as chief executing officers to share with them the role they are expected to play with regard to the implementation of the Constitution. This was done through a workshop held on 4<sup>th</sup> April 2011.

#### **ii) Progress by Implementing Agencies**

In exercise of its mandate, CIC required all ministries as part of the executive to submit a progress report on the status of implementation and their proposed work plans for implementation of the Constitution in their specific sectors. A summary of the reports is set out in section 3.2 of this report.



### **iii) Consultation with the Office of the Prime Minister**

The CIC held consultations with Office of the Prime Minister on May 17, 2011 to deliberate on the role of the executive in ensuring timely implementation of the Constitution and the application of the Rapid Results Initiative.

### **iv) Police Recruitment guidelines made compliant with the Constitution**

CIC is responsible for monitoring the administrative procedures and practices to ensure they are in compliance with the Constitution. In this regard, CIC advised on the review of the national police recruitment guidelines, which were amended to bring them into conformity with the Constitution. CIC in collaboration with Usalama Forum and UNIFEM monitored the police recruitment exercise conducted on 29<sup>th</sup> April 2011 to evaluate the extent to which the guidelines were followed. This was, among other issues, done to ensure compliance with the principle of equality and non-discrimination subject to Article 27 of the Constitution. The active monitoring role played by the CIC led to the realization that there is need for members of the Police Service to be trained on human rights at all levels if the culture of respect for the constitutional principles, particularly with regards to the bill of rights is to be instituted in their work. On the whole, the recruitment exercise was successful with regard to compliance on issues of transparency and public participation. There however were reported cases of non-compliance with the Constitution, including candidates being discriminated against on the basis of age, ethnic diversity or gender.

### **v) Vetting of Police**

CIC has requested the Public Service Commission and the National Police Service to submit to it the criteria and standards being applied to undertake the ongoing police vetting exercise. This is aimed at ensuring that the process is conducted in accordance with the Constitution.

### **vi) Bills**

CIC successfully completed the review of the following three police bills;

- a) National Police Service Bill.
- b) National Police Service Commission Bill.
- c) Independent Police Oversight Authority Bill.

### **The process of reviewing bills**

The process of reviewing bills involved the following activities:

- i) Internal review of the bills by an international human rights and security expert from UNODC and DFID.
- ii) Stakeholders' forum held with the civil society to review the National Police Service Bill, the Independent Policing Oversight Authority Bill and the National Police Service Commission Bill.
- iii) County visits undertaken between April 10<sup>th</sup> and 18 April 2011 to get views of the public on issues relating to: the appointment and qualifications of the Inspector General of the National Police Service, public participation on

community policing at the county level, county police authorities, the welfare of the police, and powers of the National Police Service Commission and the Independent Policing Oversight Authority.

- iv) Consultative meeting held with the Ministry of Provincial Administration and Internal Security and Police Reforms Implementation Committee to updated them on the progress made on the Police bills and receive their input on the bills.
- v) Roundtable held with Kenya Law Reform Commission, Attorney-General, Police Reforms Implementation Committee and the Ministry of Internal Security on the National Police Service Bill, the National Police Service Commission Bill and the Independent Policing Oversight Authority bill. These bills have been finalized and submitted to the Attorney-General and the line ministry for submission to the Cabinet.
- vi) Consultative meeting with the Director General of the National Intelligence Service to discuss the proposed draft bills on the National Security Council and the National Intelligence Service and the directorate's implementation plan on administrative procedures.

➤ **Planned activities for the Next Quarter**

**i) National Security bills**

Under chapter fourteen of the Constitution, provision is made for the development of legislation, and administrative procedures and the establishment of institutions in the security sector. The institutions include national security organs; the Kenya Defence Forces, the National Intelligence Service and the National Police Service. In this last quarter, CIC has achieved the following in this thematic area;

**ii) Review of the Bills**

CIC is scheduled to review the following bills and administrative procedures:

- a) The Power of Mercy Bill (Article 133 of the Constitution). Towards achieving this thematic team shall hold a stakeholders forum in July, 2011.
- b) The National Security Council and National Intelligence Service bills to ensure compliance with the Constitution: towards attaining this, the thematic team shall hold a stakeholders' forum on the bills. The thematic team shall also hold a consultative meeting with the Kenya Defence Forces on the proposed military bill.
- c) The Police Reforms Implementation Committee programme document on reforms in the police service to assess its compliance with the letter and spirit of the Constitution.

**3.1.8 Devolved Government Thematic Area**

➤ **Introductory Remarks**

As reported in the first quarter, this thematic area deals with all matters relating to the operationalization of the constitutional provisions on devolved government as provided for in Chapter Eleven of the Constitution.

It is important to reiterate that since Kenya adopted a devolved system of government, all functions including the national level functions will affect and be affected by the devolved nature of the system. This reality must be emphasized to all those charged with the responsibility of implementing the Constitution. This also means that any bills being developed must take into account the requirements of devolution. In this regard the thematic area works with relevant ministries especially the Ministry of Local Government that is charged with the generation of policies, legislation and administrative procedures relating to devolution. As required by the Constitution, the devolution thematic team also works closely with non-state actors including civil society organizations, to facilitate the realization of devolution. In this regard, all implementing agencies are advised to ensure that any bill they generate takes into account that the bill may have relevance to devolution.

➤ **Achievements**

To date, the Ministry of Local Government has not submitted a single bill to CIC. CIC however is in touch with the ministry and the Taskforce on Devolved Government on the status of the implementation of the relevant bills required to implement devolution, and in one engagement with the Task Force on Devolved Government the following bills were identified as requiring priority attention:

- i) The elections bills which should be submitted to CIC by 30th June 2011.
- ii) The public finance bills that have implications on devolution; these should be submitted to CIC by 15<sup>th</sup> June 2011.
- iii) The transition bills should be submitted to CIC by 29<sup>th</sup> July 2011.
- iv) The principles guiding the establishment and governance of Urban Areas and cities should be developed by 30<sup>th</sup> June 2011.

CIC also is reviewing or has finalized some bills that also have implications on the devolved system of governance.

➤ **Participation in Stakeholders' Fora**

In addition to developing bills, the thematic area on devolution has participated in a number of consultative fora with key stakeholders. Below is a summary of the activities relating to these fora:

1. A consultative meeting held on 2<sup>nd</sup> June 2011 between CIC and the Taskforce on Devolved Government discussed the status of priority bills and set timelines for their finalisation. The meeting also discussed the relationship between legislation in national and county public services and the need to consider merging some bills that will apply at county and national government levels.
2. A meeting convened by the Institute for Social Accountability and CIC on 25<sup>th</sup> May 2011 brought together non-state actors. The meeting determined the need for increased collaboration between CIC and civil societies. Further, it was agreed that CIC needs to have thematic study sessions with civil society organizations on a regular basis and that CIC's role of monitoring the legislative

process would be enhanced through regular consultations with civil society organizations.

3. Consultation with the World Bank and international experts was held on 6<sup>th</sup> May 2011. The meeting was held to deliberate issues relating to devolved governance with a view to understanding the transitional process and establishing a system that is effective and efficient as the implementation process enters the operationalization of the devolution and fiscal decentralisation phase.
4. A meeting between CIC, the Task Force on Devolved Government, the Steering Committee on Devolved Government and the World Bank on 4<sup>th</sup> and 5<sup>th</sup> May 2011 was held to discuss issues concerning the structure, service delivery and finance in a devolved government. The issues revolved around the task force's interim report on devolved government. World Bank experts gave their opinion on best practices and lessons learnt from South Africa and La Paz Bolivia. The experts included Mr. Kesto Gordhan, the former City Manager of Johannesburg South Africa and Ronald Maclean, a former mayor of La Paz, Bolivia.
5. CIC held a one-day colloquium for all CIC commissioners on 29<sup>th</sup> April 2011 in Nairobi. The objectives of the colloquium were to:
  - a) Develop a shared understanding of the concept of devolution,
  - b) Identify potential challenges and risks attendant to implementing devolution,
  - c) Prepare and empower commissioners to critically examine draft devolution bills, policies and administrative procedures required to implement the Constitution of Kenya,
  - d) Sensitize commissioners on how to monitor the implementation of devolved governance, and
  - e) Provide key programmatic action plans in the various CIC thematic areas.
6. CIC held two meetings with the Ministry of Public Works. The meetings discussed the ministry's plan to develop county infrastructure including the construction of county headquarters, houses for county governors and offices for county assemblies. The meetings agreed that the planned activities were the exclusive mandate of county governments and therefore the ministry could not proceed with its plans in this regard. Official communication was given to them in this regard.

### ➤ Challenges

During the period in review, the thematic area encountered challenges that include:

- i) Poor coordination by the ministries of Finance and Local Government in the development of bills that have financial implications;
- ii) Failure by implementing agencies and especially those that generate bills to appreciate that devolution cuts across all ministries;
- iii) Some ministries such as Public Works and the Office of the Deputy Prime Minister and Ministry of Local Government are usurping the functions assigned to the counties especially during the transitional period;
- iv) Lack of a mechanism/institutional framework to guide transition from the current system to a devolved system; and

- v) Lack of coordination within civil society organizations working on devolution and uncoordinated initiatives relating to devolution on devolution by different civil society organizations.

➤ **Planned Activities for the Next Quarter**

For the next quarter, the thematic area has scheduled activities, which may be summarised as:

- i) Conducting benchmarking visit/study tours to countries operating a devolved system of government;
- ii) Auditing civic education materials on devolution;
- iii) Undertaking capacity-building programmes for CIC commissioners and staff on various aspects of devolution;
- iv) Conducting stakeholder consultations on bills relating to devolution submitted to CIC for review;
- v) Finalizing all bills relating to devolution submitted to CIC by the Kenya Law Reform Commission and transmitting them to the Attorney-General for publication;
- vi) Participating in regular meetings with civil society organizations working on issues relating to devolution; and
- vii) Undertake consultations with existing local authorities on issues relating to the implementation of devolution.

*(See Table 2: Summary of progress in the development of legislation Annex V and Table 3: Summary of engagements with stakeholders per thematic area Annex VI)*

### **3.1.9 Institutional Development**

➤ **Introductory Remarks**

In addition to progress in the implementation of activities as reported in the respective thematic area and in the analysis of reports from the key implementing agencies and state organs, CIC undertook a number of activities to build the capacity of CIC as an institution for efficient and effective discharge of its mandate. In this sector, the activities undertaken range from institutional development to engagements with the private sector, the civil society, development partners and key implementing agencies.

These developments and engagements were important in giving visibility to CIC, establishing dialogue with the implementers of the Constitution, clarifying the mandate functions of CIC, working out modalities for implementing the Constitution, establish dialogue with development partners and promoting public participation in CIC activities and in the Constitution implementation process. The following are some activities undertaken under this area in the last quarter.

➤ **Achievements**

**i) Public participation at county level**

CIC held county visits to over 11 counties all over the Country on 10<sup>th</sup> – 18<sup>th</sup> April. The overall objective of the visits was for CIC to share its mandate and discuss how to achieve this mandate, to discuss with the people of Kenya ways in which the public can participate in the process of implementing the Constitution, and to observe, assess and discuss the status of the implementation of the Constitution at the county level. One of the key issues discussed during the visits was how to improve the electoral system and process. The public gave its views relating to ways through which the electoral system and process elections may be improved. The feedback from county visits was informative and provided input in the review of the Elections Bill and the various Police Service bills.

County visits will be a continuous exercise and CIC will undertake visits to the remaining counties within the next two quarters to complete the inaugural round of visits. The work and mandate of CIC will also involve more visits to counties as we monitor and ensure that the Constitution is fully implemented in all corners of the Republic of Kenya.

**ii) Development of the agreed schedule of timelines for priority bills**

Chapter Five of the Constitution sets out consequential legislation to the passing of the Constitution, which must be enacted within the next five years. The forthcoming General Elections call for the establishment of sound legal, institutional and administrative structures. With this in mind, CIC jointly with the Attorney-General, the Kenya Law Reform Commission, the Cabinet Office and Parliament put in place a process and an agreed schedule of priorities and deadlines to ensure the timely preparation and enactment of the legislation listed in the Fifth Schedule of the Constitution. The process agreed upon requires that once line ministries generate bills, they are forwarded to the Office of the Attorney-General, for submission to the CIC for review. Once CIC has reviewed the bills in accordance with its internal procedures, the Commission convenes a roundtable meeting with Kenya Law Reform Commission, the Attorney-General and the line ministry to sign off on the final version of the Bill. The Attorney-General formally submits the bill to the Cabinet for approval before it is published and tabled in Parliament. Thereafter, the bill is considered by the relevant parliamentary committee before it is debated in Parliament and passed. The Constitution Implementation Oversight Committee, which together with CIC, plays an oversight role on the implementation process and ensures that the bill is tabled and debated in Parliament in a timely manner. These identified priority legislation includes the election laws, devolution laws and police reform laws. *(See Table 1: Agreed schedule of timelines for preparation of priority bills in Annex IV).*

Some bills are running behind schedule due to outstanding policy issues and a lack of consensus between and among different stakeholders. CIC has put in place mechanisms to urgently address the differences with having the timeline all the bills on the schedule passed by the Constitution and agreed deadline.

**iii) National Constitutional Conference**

The National Constitutional Conference was jointly organized by CIC and the Ministry of Justice, National Cohesion and Constitutional Affairs and was held in Nairobi between 20<sup>th</sup> and 22<sup>nd</sup> June 2011. The purpose of the conference was to undertake a focused account of the implementation process and yield a concrete agenda for outstanding priorities. The objectives of the conference were to refocus the country on the constitutional implementation process, take stock of the progress of the implementation process and outline the implementation agenda regarding outstanding priorities. The participants included His Excellency the President, the Right Honourable Prime Minister, the Honourable Vice-President and members of the public drawn from the public sector, the civil society, professional organizations and counties. The participants deliberated on the status of the implementation of the Constitution, and challenges of and opportunities in the Constitution.

The deliberations at the conference were important as the achievements were celebrated, challenges were flagged and proposals made on how to overcome the challenges and a closer working relationship between and among the implementing partners and stakeholders was forged with a view to ensuring that the Constitution would be implemented for the benefit of the people of Kenya.

#### **iv) Monitoring Police recruitment**

The Constitution obliges the state and every state organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights which includes the right to fair labour practices as provided in Article 41 of the Constitution. As part of monitoring the administrative practices to ensure that these provisions are applied in all government policies, CIC reviewed and advised on policies and procedures for recruitment into the National Police Service. Policy provisions, which were flagged out for correction before the recruitment exercise, include issues which would have amounted to violations of the principle of equality and non-discrimination contrary to Article 27 of the Constitution. These include:

- a) Prescription of minimum height,
- b) Gender-based discrimination, and
- c) Exclusion of persons with certain physical features such as being flat footed, being knock kneed, and being scarred.

In terms of human rights, CIC noted that, following its timely intervention most recruitment centres adhered to the constitutionally required 30% threshold of women recruits. The police recruitment exercise was one of the many monitoring activities that CIC will undertake to ensure that the administrative procedures are in line with the constitutional provisions. The active monitoring role played by CIC led to the realization that there is need for members of the Police Service to be trained on human rights at all the levels if the culture of respect for the constitutional principles is to be achieved in their work.

#### **v) Capacity Building**

CIC noted the need to learn from other jurisdictions that undertook a comprehensive revision of their national constitutions and implemented the changeover successfully. CIC undertook its first benchmarking visit to India from 14<sup>th</sup> to 18<sup>th</sup> June and held consultations with national institutions of the Government of India in areas of devolution, representation and legislature. The CIC delegation consisting of commissioners and senior members of staff held consultations with the following offices.

***(a) Study tour to India***

CIC undertook a benchmarking study tour of India. The purpose of the tour was to interrogate the process of legislation, devolved administrative procedures and service delivery to the people at lower level of government in India.

The visit was coordinated by the Kenyan High Commission India. The CIC delegation visited the following offices:

1. The Attorney-General of the Republic of India
2. The Ministry of Law and Justice
3. The Ministry of Finance
4. The Parliament of India (both the Lok Sabha and the Rajya Sabha)
5. The State of Haryana, which is one of the most stable states of India
6. The Haryana Legislative Assembly, situated at the Vidhan Bhawan building, a common building shared by both the Haryana and the Punjab State Legislative Assemblies
7. The Panchkula District (the district level the delegation visited)
8. The Panja Village where CIC delegation met the village leaders

The visits were very instrumental in the conceptualization of devolution generally, the interrelation between the national and other tiers of government, security matters, public service, among other important constitutional issues.

***Lessons Learnt***

1. Adherence to the principle of constitutionalism: Where people inculcate the values and principles of the constitution, social cohesion is enhanced. The Constitution of India puts emphasis on social solidarity including; unity, group consciousness, and social cohesion. It was reported that the respect for the constitution has resulted to observance of the rule of law and the common good for all.
2. Establishing strong institutions: The Constitution of India forms part of a structured and well-established system. India has institutionalized its laws and established strong institutions to manage the people's welfare hence people have trust in state institutions.
3. Governance: The governance systems in India seem to be predictable. This is premised on the perception of supremacy of the constitution. It was reported that the rule of law is observed at all the levels of the society.
4. Checks and balances: It is imperative to establish checks and balances in governance institutions.



5. Public participation: Public participation is paramount in constitutional implementation. Where, at all the levels of the government, there is inclusion in governance system, the governance system gets the required legitimacy.
6. Deliberate efforts towards the preservation of national history and cultural heritage.

***(b) Change Management***

Some members of CIC attended a change-management course to understand the needs for change managements. This is important as it informed the review of change management strategies developed by all implementing agencies to implement and accommodate the changes that will be occasioned by the full implementation of the Constitution.

**vii) Public interest litigation**

***a) Constitutional Petition No. 65 of 2011***

In exercise of its mandate, CIC has on a number of issues relating to interpretation sought the court's guidance. CIC with the support of GIZ instituted court proceedings in two occasions. The cases in which CIC is currently an interested party are as follows:

**In the Matter of the Construction, Interpretation and Determination of the Actual Date of the Next General Elections (Between Milton Mugambi Imanyara & others and the Attorney-General and others).**

The Interim Independent Electoral Commission, being the 3<sup>rd</sup> Respondents, filed a Preliminary Objection contesting the jurisdiction of the High Court on the matter. The basis of the Preliminary Objection is the argument that the petitioners can only obtain an advisory opinion from the Supreme Court and in its absence, the Court of Appeal. The parties have made submissions on their respective viewpoints and the court is set to rule on the question of jurisdiction on 23<sup>rd</sup> June 2011.

**In the Court of Appeal sitting as the Supreme Court at Nairobi (Constitutional Application No. 1 of 2011) in the matter of Advisory Opinions of the Court under article 163 (6) of the Constitution and in the Matter of Section 21 (2) of the sixth schedule of the Constitution and in the matter of the Commission for the Implementation of the Constitution as the applicant.**

CIC filed a Request for an Advisory Opinion seeking the Court's opinion on several questions relating to appointments to state offices and commissions and the relationship between the Sixth Schedule of the Constitution and these appointments. CIC is using Article 163(6) to obtain the advisory opinion on the meaning of nine articles and two sections of the transitional clauses and it is the commission's expectation that the court shall address the matter with finality while setting the record straight for future appointments made pursuant to the Constitution.

An objection as to jurisdiction was raised when the matter first came up for hearing and the matter is set to be ruled upon by the Court of Appeal sitting as the Supreme Court on the 8<sup>th</sup> July 2011.

**vii) Institutional support**

As reported in the first quarter, CIC has continued to develop its staff structure and has put in place a secretariat to support its functions. During this quarter CIC contracted Researchers, a Legal Officer and staff in the support departments including Administration; Finance; Procurement; Human Resource Management; Accounts; Media and Communication; ICT; Internal Audit; Hansard; Records Management and Security personnel, who are the backbone of the success of CIC. The secretariat is currently headed by an Acting Chief Executive Officer who is responsible to CIC for ensuring the implementation of policies, strategies and decisions of the commission; facilitating the functions of the thematic groups, supporting drafting of legal opinions and other relevant documents; appraising progress on the various programmes; and ensuring prudent management of resources and assets. CIC also launched its vibrant and interactive website which continues to play a key role in providing information to the public on bills and other activities related to constitutional implementation. The website also enhances public participation in line with the spirit and letter of the Constitution.

**viii) Financial Independence**

With regard to finances, CIC was allocated Kshs 262 million by Parliament for implementing various programmes/activities by Parliament for the six months between January and June 2011. The funds were included in the Ministry of Justice, National Cohesion and Constitutional Affairs 2010/11 financial year revised budget and the Ministry has continued to administer the funds. In fulfilment of the provisions of the Constitution of Kenya 2010, the Treasury has allocated CIC its own Vote and Budget with effect from July 2011. CIC is in the process of setting up the necessary structures in readiness for operations under the new status. During the 2011/12 financial year, CIC will require Kshs 1,147,536,545 for implementing various programmes/activities. Parliament has allocated Kshs 524 million to it for the same period, resulting in a Kshs 623,536,545 financing (resource) gap.

**3.2.0 Strategic Partnerships**

➤ **Achievements**

**i) Establishment of liaisons with implementers**

CIC held a one-day consultative forum with permanent secretaries to sensitize them on the role of CIC and their role as key implementing agencies in the Constitution implementation process. CIC also held a one-day constitutional implementation workshop with representative from civil society organizations. The workshop was instrumental in establishing linkages with the civil society in view on the need for civic education, hence the need for the civil society to play its traditional role of effectively educating the public on the Constitution and the rights of the public but in a coordinated manner and in conformity to the constitutional provisions of adhering to national values and promoting accountability and transparency when interpreting and applying the Constitution.

## **ii) Engagement with Development Partners**

In the first quarter CIC received tremendous support from the donor community through technical and financial assistance. CIC has continued to engage with donors and, to this end, has held meetings with UNDP, GIZ, Friedrich Ebert Stiftung, and DFID. CIC also made a presentation to a roundtable meeting organized by the Frient, a working group composed of members from the civil society and non-state actors from Germany. The roundtable meeting reviewed the status of the implementation of the Constitution and explored possibilities on the way forward in view of apparent delays in the implementation process, especially identifying the role of the civil society and development partners in the reform process.

CIC has prepared a comprehensive work plan for the next financial year and is in the process of mobilizing resources to meet the activities in the work plan. A meeting with a group of development partners keen on supporting the constitutional implementation process was scheduled for 29<sup>th</sup> June 2011 to identify projects for technical assistance in line with the work plan.

### **➤ Activities Planned for the Next Quarter**

CIC plans to implement various activities in the next quarter. Some of these activities are listed below:

- i) It is imperative to note that CIC's work goes beyond legislation; it includes monitoring any implementation of the Constitution to ensure constitutionalism. It is for this reason that CIC will seek to establish a unit to monitor any constitutional violations by the three arms of the government.
- ii) There is need to set a minimum standard for the development of legislation. In this regard every ministry is required to generate a policy before developing legislation.
- iii) CIC also intends to commence working on a tool for results-based management to ensure all the implementing agencies implement the Constitution within agreed timelines.

***(See Table 4: schedule of engagements with partners and stakeholders in Annex VII)***

## **3.2 Progress by Implementing Agencies**

Constitution implementation involves actors from the State, which is the key implementer, as well as Non-State Actors and the Public. Effective and efficient constitutional implementation can only be achieved through a coordinated approach. This requires an orderly synchronization of the efforts of all implementers in order to avoid duplication of efforts. In this regard, CIC, under the auspices of the Office of the Head of Civil Service finalized and disseminated the process circular for implementing agencies to state implementers ***(See Circular in Annex I)***. The Circular is aimed at providing guidance to state implementers on their role in the implementation process. CIC further held forums with both state and non-state actors, prepared and disseminated

to each of the implementing ministries, an implementation status reporting matrix. This was done in fulfilment of the mandate of the CIC.

CIC sent out over 43 matrixes to the Ministries out of which only 16 responses were received. **(See Table 5: Matrix of Ministerial reports in annex VIII).** It is a matter of concern to the CIC that some implementing agencies were yet to submit their status reports at the time of publication of this report. This failure contravenes the principles of accountability and transparency in line with the spirit of the Constitution and the national values and principles of governance as set out in Article 10 of the Constitution.

The reports provided as follows:

**a) Familiarization with the Constitution**

Of the reports received only eight of the Ministries and one Commission reported having uploaded the Constitution on their websites and sensitized staff on the provisions of the Constitution. Among these, only the Ministry of State for Public Service reported that it has sensitized staff in all the counties and developed a sensitization curriculum on the implications of the Constitution on service delivery. Most of the ministries however had only successfully sensitized the senior staff and have scheduled to cascade the sensitization program down to the staff in the lower cadres within the next financial year. The eight ministries and the Commission include *the Ministry of State for Public Service; the Ministry of Fisheries Department; the Ministry of State for Immigration and Registration of Persons; the Ministry of Information and Communication; the Ministry of Forestry and Wildlife; the Ministry of Justice, National Cohesion and Constitutional Affairs; the Ministry of Water and Irrigation; the Ministry of Northern Kenya and other Arid Lands; and the Commission for revenue Allocation.*

**b) Identification and Audit of Laws, Policies and Administrative Procedures**

Some of the ministries outlined various laws, policies and administrative procedures that should either be enacted or audited to ensure effective implementation of the Constitution. These included:

**i) Laws:** *The Urban Areas & Cities Bills; the County Public Service Bill; the Devolution Bill; the County Government Finance Management Bill; the Intergovernmental Fiscal Relations Bill, and Transition Bill* within the Office of the Deputy Prime Minister and Ministry of Local Government; *the Energy Bill* within the Ministry of Energy; *the Media Bill; and the Independent Communications Commission Bill* within the Ministry of Information and Communication *and the Commission for Revenue Allocation Bill* by the Commission for Revenue Allocation.

**ii) Policies:** *The Citizenship & Immigration Policy; the Registration of Persons Policy; the Refugee Affairs Policy and the Civil Registration Policy* within the Ministry of State for Immigration and Registration of Persons; *the National Human Rights Policy and the National Anti-Corruption Policy* within the Ministry of Justice, National Cohesion and Constitutional Affairs; *the National Forest Policy; National Wildlife Policy* within the Ministry of Forestry and Wildlife and *the Internally Displaced Persons Draft Policy; the Disaster Management Draft Policy; and the Fire Draft Policy* in the Ministry of

Special Programmes and *National Irrigation Policy* within the Ministry of Water and Irrigation.

CIC noted with concern that some ministries have narrowed their focus, on their role in the enactment of constitution enabling legislation predominantly around the consequential legislation in the Fifth Schedule of the Constitution. This is illustrated in the text box below, obtained from a constitution implementation status report of one of the Ministries:

**Box 3**  
**Case Study on Ministerial Constitution Implementation Status Reporting**  
“The Ministry does not have a lead role in preparation of priority bills for implementation of the Constitution pursuant to the provision of Article 261(1) of the Constitution and agreed timelines for development of priority bills issued by the Commission.”

***c) Establishment of Constitution Implementation Units***

The Ministry of Energy; the Ministry of State for Immigration and Registration of Persons; the Ministry of Northern Kenya and Parliament reported that they have set up Constitutional Implementation Units or taskforces to facilitate and expedite constitutional implementation including enactment of legislation to operationalize the Constitution. The Commission for Revenue Allocation has also prioritised implementation of the Constitution.

While CIC acknowledges receipt of the reports from the Ministries that reported, CIC wishes to highlight that where Ministries fail to submit their implementation status progress reports, this frustrates the efforts of CIC to effectively realize its monitoring, facilitation, coordination and oversight mandate. The reports serve as a basis for engagement between CIC and other implementers and as monitoring tools. CIC therefore calls upon Ministries to ensure commitment to the constitutional implementation process, part of which involves reporting on the measures undertaken by the Ministries towards constitutional implementation.

#### **4. KEY ACHIEVEMENTS OF, CHALLENGES OF, AND POTENTIAL IMPEDIMENTS TO THE IMPLEMENTATION OF THE CONSTITUTION**

Within the quarter under review, CIC realized various achievements, in addition to the achievements reported in the thematic areas and in other preceding chapters. There have been other significant achievements in the Constitution implementation process both at the CIC level and with other implementers. The implementation process was not without challenges and this section highlights challenges which need to be addressed. CIC also identifies a number of impediments, which may hinder the implementation process if they are not addressed timely.

##### **➤ Achievements**

The achievements in this quarter include:

- i) CIC enhanced effective stakeholder participation in the constitution-implementation process by subjecting each of the bills under review to stakeholder participation. Representatives from Nairobi and the counties played a key role in reviewing and providing input into the bills. Stakeholder participation was further enhanced by putting in place an interactive website from which the stakeholders could easily access bills and other related information. Notably a substantial number of bills reviewed by CIC, all of which were subjected to stakeholder participation were reviewed and forwarded to the Attorney-General for publication and onward transmission to Parliament.
- ii) In collaboration with the Ministry of Justice, National Cohesion and Constitutional Affairs, CIC held a successful three-day high level 1<sup>st</sup> Annual National Constitutional Implementation Conference that brought together local and international policy leaders from the government and the non-state sector to galvanize the nation to focus on timely and full implementation of the Constitution. The conference which comprised representation from all the counties provided an environment where stakeholders deliberated on thematic issues revolving around the CIC's thematic areas of work.
- iii) The finalization and dissemination of the Process Circular for Implementing Agencies with the support of the Office of the Head of Civil Service was another major achievement of CIC. The circular enhances engagement between the CIC and implementers and forms a basis for monitoring stakeholder implementation of the Constitution through receipt of ministerial implementation status reports. The CIC also held two forums with permanent secretaries and non-state actors where clear proposals on the mode of engagement and the role of the stakeholders in the constitutional implementation were agreed. The effect of this will be a structured manner of constitutional implementation.
- iv) The success of the police recruitments is a major achievement for the CIC. The scheduled recruitment process was postponed to allow for a review of police recruitment policy, a process which was undertaken by CIC to ensure compliance with the letter and spirit of the Constitution. This resulted in the implementation

of administrative procedures which were compliant with the provisions of the Constitution ensuring that the recruits realized their constitutional rights.

### ➤ Challenges

The specific challenges facing institutional development are:

1. **Resistance to change and the inclination to operate with a business-as-usual attitude:** Resistance to change and the inability to contemplate a life different from one's prevailing life experiences has led to entities establishing deliberate schemes to undermine and delay the constitution-implementation process.
2. **Impunity by some government ministries:** Impunity is the driving force behind the failure of implementing agencies to appreciate that the Constitution was promulgated in August 2010 and thus requires that each of the implementing agencies should ensure that the laws, policies and administrative procedures are aligned to the constitutional provisions. This further impediment has resulted result in delays in the constitution-implementation process.
3. **Lack of consensus by stakeholders on the content of bills forwarded to CIC:** This has led to the development of different versions of bills regarding the same subject in some cases thereby occasioning delay in the process of development of bills.
4. **Lack of understanding of the constitutional-implementation process at all the levels of government ministries:** To many, constitution-implementation is principally about changes of leadership and the electoral process. The lack of awareness leads to a laissez-faire attitude and business-as-usual mentality. A culture of ignorance is nurtured and allows the development of pseudo-knowledge of an alternative "effective date" of the Constitution centred around 2012.
5. **Apparent reluctance by technocrats to implement the constitution within their particular sectors:**

#### Box 4

##### Case Study on Ministerial Constitution Implementation Status Reporting

Reluctance by technocrats to embrace the Constitution implementation process. Some of the constitutional implementation status reports received from Ministries reported the following: "The Ministry does not have a lead role in preparation of priority bills for implementation of the Constitution pursuant to the provision of Article 261(1) of the Constitution and agreed timelines for development of priority bills issued by the Commission"

6. **Lack of awareness of the Constitution implementation process:** Lack of awareness is also manifested in the myopic understanding and interpretation of the 5<sup>th</sup> Schedule of the Constitution. Certain ministries glance through the Schedule and conclude that their ministries are not cited and can therefore forward any legislation to Parliament without auditing such with CIC. Twice CIC has advised the Ministry of Environment and Mineral Resources and has yet to get response from the ministry.
7. **Delays in the preparation of bills:** Belated submission of bills to CIC and/or responses resulting in the erosion of effectiveness of the implementation process.

8. **Poor drafting of bills:** Poorly drafted bills in terms of content and conservative drafting. This results in time-consuming editing. Further, most bills are not founded on any existing polities, which impairs the effectiveness of the implementation of the Constitution.

In addition, CIC's administrative operations have been hampered by the following challenges:

1. **Weak liaison processes:** The funds allocated to the CIC for the financial year 2010/2011, totalling K.shs. 262 million were included in the Ministry of Justice, National Cohesion and Constitutional Affairs 2010/11 financial year revised budget. Therefore the Ministry has continued to administer the funds on behalf of CIC. Although the CIC has largely been able to undertake its activities the bureaucratic processes involved in appropriating funds and procuring work equipment through the Ministry have significantly inconvenienced and delayed the Commission's day to day operations.
2. **Lack of status update on CIC's expenditure:** The Ministry of Justice National Cohesion and Constitutional Affairs has not been forthcoming with CIC's expenditure returns from the time the Commission was set up. This is despite several requests. As a result CIC does not have accurate records detailing its expenditure from the time the Commission was established upto the close of the financial 2010/2011. This has compelled the CIC to petition the Auditor General to address this issue with urgency.
3. **Staffing levels:** CIC has in the last two quarters faced various challenges including low staffing levels, inadequate and inaccessibility of its space, and challenges related to financial independence all of which are common to an institution in its formative stage. The CIC is temporarily housed under an ad hoc arrangement with the Ministry of Justice, National Cohesion and Constitutional Affairs, which is also the Ministry through which the CIC has been carrying out its procurement activities. In the new financial year, however, CIC will be financially independent and will thus be in a position to recruit more staff, and undertake its activities with financial independence all of which is key in fast-tracking constitutional-implementation.

### ➤ Impediments

The realization of the mandate of the CIC was not without its impediments which impacted on the CIC's effectiveness. These may be summarised into the following:

1. **Misinterpretation:** Selective reading and misinterpretation of provisions of the Constitution by implementing agencies. (*See Advisory opinion regarding Article 77(2) of the Constitution in Annex III*).
2. **Deliberate misinformation:** Deliberate misinformation to members of the public by some members of the Executive and the Legislature
3. **Lack of guidance from the Office of the Attorney general:** The Office of the Attorney-General has given little guidance in the process of implementation of the Constitution. The Office of the Attorney-General has fallen short of its mandate to give legal opinion in terms of faithful implementation of the Constitution and this has led to a lack of clarity in the implementation process.

#### Box 5

##### Case Study on the Budget process

In the period leading to the presentation of the budget as required under the Constitution the Minister for Finance failed to submit to the National Assembly estimates of revenue and expenditure for tabling in the National Assembly two months before the end of the financial year 2010/2010.

As a result, CIC brought this to the attention of the Prime Minister and the Office of the Prime Minister and as a result the Minister for Finance did not read the budget statement but instead read a ministerial statement. (*See Advisory opinion in Annex II*)



4. **Political Risk:** As mentioned in the first report, the wrangles in the Judicial and Legal Affairs Committee led to a delay in finalization of bills and the implementation process, thereby forcing the Speaker to constitute the Constitution Implementation Oversight Committee as an ad hoc committee to facilitate the constitutional-implementation agenda. This impediment persists from the first quarter and is likely to continue to affect the implementation process.
5. **Grey areas:** CIC has noted with concern that there is an increasing trend by the Executive and some members of the legislature to create grey areas regarding interpretation of the Constitution, even in the face of clear Constitutional provisions, this has the unfortunate propensity to create confusion and to delay implementation of provisions of the Constitution.

### ➤ **Recommendations**

To ensure the effective implementation of the Constitution, the CIC makes the following recommendations aimed at providing a remedy for the challenges and impediments outlined above:

1. **Systematic and integrated approach:** Implementing agencies need to adopt a systematic and integrated approach within their agencies. They should involve all their staff and prioritize the implementation of the Constitution in their work. They should adopt sectorial approach towards the implementation in view of the fact that the Constitution provides for a maximum of 22 ministries.
2. **Civic education:** Civic education should be rolled out by implementing agencies however, there is need to ensure that the content complies with the letter and spirit of the Constitution.
3. **Targeted sensitisation:** Existing legislation and administrative procedures should be revised by ministries to align them with the Constitution. There is need for targeted civic education to ensure an understanding of the implementation process.
4. **Public participation:** Implementing agencies must uphold the principle of public participation in developing legislation and administrative procedures.
5. **CIC participation in development of legislation and administrative procedures:** Implementing agencies should ensure involvement of CIC at the earliest opportunity in the review of their policies and administrative procedures as well as at an early stage during the development of the bills as this will ensure that the focus remains on the bill and the content therein and the national interest of the people of Kenya. Public participation should also be part and parcel of the legislative review and development process.

6. **Role of the political leadership:** Political leaders and the Executive should demonstrate stewardship to facilitate the smooth implementation of the Constitution. Constitutional references relating to implementation of the Constitution should be fasttracked to avoid abuse so as to impede the implementation of the Constitution, but should facilitate the meeting of timelines. In addition, statements of commitment by leaders should be demonstrated in action.

## 5. ANNEXURES

### Annex I

#### **THE ROLE OF GOVERNMENT INSTITUTIONS AND COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION (CIC) IN THE PROCESS OF IMPLEMENTING THE CONSTITUTION OF KENYA**

The objective of this communication is to advise all Government Ministries, Parastatals, Regulatory Boards and all Constitutional Commissions and other institutions that have the primary responsibility for generating policies, proposed legislation and administrative procedures required for the implementation of the Constitution of Kenya 2010, on the process to be followed in undertaking the exercise.

The procedures outlined in this communication take cognizance of the values enshrined in Article 10 of the Constitution and which are deemed necessary for the furtherance of the mandate of the Commission for the Implementation of the Constitution (CIC) as spelt out below.

The Commission for the Implementation of the Constitution (CIC) is established under Section **5(1)** of the Sixth schedule to the Constitution. The mandate of CIC is stipulated in Section **5(6)** of the same schedule and **Section 4** of the Commission for the Implementation of the Constitution Act 2010.

The functions of CIC are to:-

- (a) monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution;
- (b) co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement this Constitution;
- (c) report every three (3) months to the Constitutional Implementation Oversight Committee on:-
  - (i) progress in the implementation of this Constitution; and
  - (ii) any impediments to its implementation; and
- (d) work with each Constitutional Commission to ensure that the letter and spirit of this Constitution is respected; and
- (e) exercise such other functions as are provided for by the Constitution or any other written law.

The mandate of CIC is further amplified by **Article 249 (1)** which sets out the objects of the Constitutional Commissions and the independent offices to include:-

- a) protecting the sovereignty of the people;
- b) securing the observance by all State organs of democratic values and principles;  
and
- c) promoting constitutionalism.

Further Article 261 extends the mandate of the CIC as follows:

**Article 261 (1)** Parliament shall enact any legislation required by this Constitution to be enacted to govern a particular matter within the period specified in the Fifth Schedule, commencing on the effective date.

**Article 261 (4)** For the purposes of Clause (1), the Attorney-General, in consultation with the Commission for the Implementation of the Constitution, shall prepare the relevant Bills for tabling before Parliament, as soon as reasonably practicable, to enable Parliament to enact the legislation within the period specified.

**Section 15 (d)** of the Sixth schedule requires CIC to ensure that the system of devolved government is implemented effectively.

## **PROCESS**

To enable it carry out its constitutional mandate effectively, CIC advises that the following procedure be followed by the Public Service:-

- 1) Each of the Institutions listed above should familiarize itself with the entire Constitution and its implications and ensure that:-
  - a) In the course of performing its duties the constitution is not violated;
  - b) In performing its duties all new and existing policies, laws and administrative procedures that are being applied are consistent with the letter and spirit of the constitution; and
  - c) Implementation of the Constitution is integrated in performance contracts. In this regard, implementing institutions should provide for implementation in its goals, set targets for measuring performance and provide incentives for achieving these targets. The performance contract should incorporate an evaluation model that shall provide feedback on performance and best practice in the implementation process.
- 2) The aforementioned familiarization with the Constitution will enable the institutions to undertake a comprehensive audit of all existing Sessional papers; laws, by-laws and regulations; policies; administrative procedures; government guidelines and circulars relating to its functions and to the sector in which the Institution operates.

- 3) The intention of the audit is to determine the compliance of such sessional papers; laws, by-laws and regulations; policies; government guidelines; circulars and administrative procedures with the letter and spirit of the Constitution.
- 4) Upon audit of all such existing sessional papers; laws, by- laws and regulations; policies; government guidelines; circulars and administrative procedures, any language that is inconsistent with the Constitution be identified and a plan for its review developed and the necessary review subsequently undertaken.
- 5) Each Institution, in consultation with the Attorney General (AG) should also identify any new laws that are required for the implementation of the Constitution. The legislation in question will include but not be limited to those listed in the Fifth Schedule of the constitution. In undertaking this activity the Institutions are also free to consult CIC.
- 6) Each Institution should identify any new administrative procedures that may be required to implement the constitution.
- 7) Each Ministry should, within the shortest time possible after issuance of this circular, submit its comprehensive plan for the development and review of Sessional papers; laws, by-laws and regulations; policies and administrative procedures required to implement the constitution to the following:
  - a) The Commission for the Implementation of the Constitution;
  - b) The Ministry of Justice, Constitutional Affairs and National Cohesion being the Ministry coordinating the implementation of the constitution within Government;
  - c) The Attorney General, and
  - d) The Kenya Law Reform Commission,
    - i) The plans submitted by Ministries should indicate:
      - The sessional papers; laws, by-laws and regulations to be reviewed;
      - The policies and administrative procedures to be developed or reviewed; and
      - Nature of the reviews to be undertaken.
    - ii. The steps in reviewing the by-laws, laws, sessional papers, policies and administrative procedures already taken and the expected timeframes for outstanding activities,
- 8) In reviewing existing policies, administrative procedures and legislation, and determining the necessity of new laws, institutional policies, administrative procedures and legislation, each Ministry or other institutions participating in such processes should in particular take into account the following:-

- a) The existence of any international treaty ratified by Kenya relating to any matter concerning the sector and which has not been domesticated
  - b) The provisions relating to the Bill of Rights in the Constitution and in particular the need to incorporate the requirement for progressive implementation of the socio-economic rights under Article 43 of the Constitution in appropriate legislation
  - c) The values and principles articulated in Article 10, Chapter 6 (Leadership and integrity) and Chapter 13 Part I (values and principles of public service) of the Constitution including:-
    - i. Participation of the people;
    - ii. Equity, inclusiveness, human rights, social justice, equality, non-discrimination and protection of the marginalized;
    - iii. The principle of gender equity and regional balance in the consideration of opportunities;
    - iv. Sharing and devolution of power;
    - v. Good governance, integrity, transparency and accountability
    - vi. Sustainable development;
    - vii. The principles on leadership and integrity in Chapter 6 of the Constitution;
    - viii. The principles of fairness, prudence, clarity and the need for fiscal responsibility in the management of public resources in Chapter 12 of the constitution; and
    - ix. Any other principle within the Constitution.
- 9) In determining new policy and administrative procedures, and generating new legislation, every Ministry and every Institution involved in implementing the Constitution should ensure that the process leading to the determination of policy and generation of legislation and administrative procedures is undertaken in a participatory and transparent manner. In this respect, the public and in particular sectoral stakeholders including members of Civil Society Organisations and Community Based Organisations should be given reasonable opportunity to **effectively** participate in the process taking into account all relevant factors, including the nature of the policy, administrative procedures and legislation, its implications and the applicable time constraints.

Public participation includes any or all of the following:-

- i. Structured process of gathering views of the public during policy formulation or Bill preparation;
- ii. Stakeholder input via workshops, seminars or other fora;
- iii. Dissemination of draft Bill to the public for discussion through various media outlets;
- iv. Focused media debate on policy or draft Bill;
- v. Credible process of considering public views; and
- vi. Validation workshops.

10) In determining whether any draft legislation forwarded to CIC for review is consistent with the letter and spirit of the constitution, CIC will take the following criteria into account:-

- a) The extent to which the public participated effectively in generating the policy or legislation;
- b) The consistency of any sessional papers; laws, by-laws and regulations; policies and administrative procedures within the letter and spirit of the constitution;
- c) The adequacy and sufficiency of the sessional papers; laws, by-laws and regulations; policies and administrative procedures in enabling implementation of the constitution; and
- d) The impact of the sessional papers; laws, by-laws and regulations; policies and administrative procedures on other laws, institutions and the two levels of government i.e. national and county governments.

### **Change Management**

CIC recommends:-

- 11) That each Institution in consultation with the Government Department coordinating the implementation of the Constitution within government and CIC develops a change management strategy and applies it in all the activities of the Institution.
- 12) The change management strategy should outline how each Institution plans to effect the change necessary for the realisation of the requirements of the Constitution.
- 13) That within the next three (3) months each Institution submits to CIC and to the Government Department coordinating the activities relating to the implementation of the Constitution its change management strategy to enable efficient monitoring of the process of the implementation of the Constitution.
- 14) For the purposes of this Circular change management is a structured and systematic approach to transforming individuals, groups of people or institutions usually after a situational analysis. In the Kenyan case the change anticipated was triggered by the promulgation and coming into effect of a new constitution, **The Constitution of Kenya, 2010**. The goal of change management shall be to entrench the culture of constitutionalism within the institution and in service delivery.

### **MODE OF COLLABORATION AND WORKING WITH THE CIC**

- 15) Each implementing institution should establish an implementation unit that shall oversee the implementation of the work plan and report on the progress and

impediments to implementation of the Constitution. The implementation unit shall work with CIC in ensuring that progress is on track.

- 16) The implementation institution shall ensure that it trains its staff to internalize the objectives of implementation of the Constitution. This will ensure that all actors share the same vision and avoid the risk of discordant or conflicting implementation initiatives. Upon request, CIC shall provide advice on the training guidelines to ensure that it reflects the letter and spirit of the Constitution.
- 17) To enable CIC report on the progress of implementation as required by the Constitution, each ministry should submit its implementation report to CIC three weeks before the end of each quarter. For the purposes of this circular, the **first quarter ends on the 30<sup>th</sup> of June 2011**. The report should be provided in a format to be provided by CIC after consultation with the ministries.
- 18) CIC, in pursuance of its mandate to monitor the implementation of the Constitution, will from time to time undertake an audit of the different sectoral policies, laws, and administrative processes and structures to determine compliance with the letter and spirit of the Constitution.

**FRANCIS K. MUTHAURA, EGH**  
**PERMANENT SECRETARY, SECRETARY TO**  
**THE CABINET AND HEAD OF THE PUBLIC SERVICE**

Copy to:-

The Rt. Hon. Prime Minister  
H.E. the Vice-President and Minister for Home Affairs  
The Hon. Deputy Prime Minister and Minister for Finance  
The Hon. Deputy Prime Minister and Minister for Local Government  
All Hon. Ministers  
All Hon. Assistant Ministers



## **Annex II**

### **ADVISORY OPINION: IN THE MATTER OF THE BUDGET PROCESS UNDER ARTICLE 221 OF THE CONSTITUTION**

#### **Introduction:**

The budget is a vital instrument that is ordinarily used by governments to enumerate its national policy whilst also highlighting on the cost implications of its programmes and the possible sources of revenues in a given fiscal year. Further, it is acknowledged that a good budget system is founded on several objectives including; maintenance of stable macro-economic environment, enhancing fiscal discipline, attainment of allocative efficiency and operational/technical efficiency. In the circumstances of Kenya, the quest for budget reforms has inter alia been premised on the need to attain and maintain fiscal discipline, ensure equity whilst imbuing transparency and public participation in the Budget process.

Prior to the passage of the new constitution, various statutes together with the repealed Constitution under Sections 48, 99 to 105 lay a framework for the conduct of public finances related activities in the country.

#### **Statement of the Problem:**

Treasury and the National Assembly are locked in a dispute as to how the next budget ought to be presented. On its part, treasury prefers to proceed the old way where the finance minister prepares both the budget estimates and the Finance Bill then proceeds to the floor of the house to defend the budget proposals.

On the other hand, the National Assembly through the Parliamentary Budget Committee contends that treasury sticks to the provisions of the New Constitution and in that regard, the budget ought to be submitted as per the constitution especially as is provided for under Article 221. In their view, treasury ought to have submitted the revenue estimates and proposals for government expenditure two months (end of April, 2011) before the expiry of the current financial year in June, 2011. Curiously, the budget Committee at the request of the Treasury, “granted” an extension of the period for submission of the estimates to the end of May 2011. The committee also raises issue with the notice by the Minister of Finance of his intention to read the budget statement on the 8th of June 2011.

#### **The Constitution of Kenya – 2010**

On 27th August 2010, Kenya adopted a new constitution which has an entire chapter (12) dedicated to Public Finance. This chapter on Public Finance has revolutionized Public Financial Management and is a radical departure from the status that existed as was provided for by the former constitution.

One of its core principles of Public Finance is outlined in Article 201 (a) of the Constitution and it demands for openness and accountability, including public participation in financial matters.

As to the budgetary process, Article 221 is quite instructive;

*221. (1) At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly.*

*(2) The estimates mentioned in clause (1) shall—*

*(a) include estimates for expenditure from the Equalisation Fund; and*

*(b) be in the form, and according to the procedure, prescribed by an Act of Parliament.*

*(3) The National Assembly shall consider the estimates submitted under clause (1) together with the estimates submitted by the Parliamentary Service Commission and the Chief Registrar of the Judiciary under Articles 127 and 173 respectively.*

*(4) Before the National Assembly considers the estimates of revenue and expenditure, a committee of the Assembly shall discuss and review the estimates and make recommendations to the Assembly.*

*(5) In discussing and reviewing the estimates, the committee shall seek representations from the public and the recommendations shall be taken into account when the committee makes its recommendations to the National Assembly.*

At the outset it is important to emphasize that the Chapter on Public Finance is operational and took effect immediately the new constitution was promulgated. Specifically Article 221 is operational to its fullest extent and places clear obligations on various institutions.

Article 221 bestows the Cabinet Secretary for Finance (and in light of the transitional provisions in the constitution, the current Minister for Finance) with a constitutional obligation to provide the National Assembly with the estimates of the revenue and expenditure of the national government for the next financial year at least two months before the expiry of each financial year.

In an apparent recognition of this obligation, the Permanent Secretary to the Treasury issued the **Treasury Budget Circular No. 2/2011** dated 17th March 2011, to all Accounting Officers. The contents of this Circular are categorical and in accordance with the Constitution and read, in part, that it is,

**“ intended to guide ..Ministries, Departments and other government agencies (MDAs)... on planning for FY2011/12 Budget which will be presented to Parliament in accordance with Article 221 of the new constitution.”**

It is also instructive that towards the end of the constitutional deadline in April, Treasury sought Parliament’s leave to extend the period for presenting the estimates by one month on the basis that the estimates could not be prepared within the constitutional timelines. It is clear from these acts that compliance with Article 221 was never in doubt.

The intent of Article 221 is to enable the National Assembly participate effectively in the budget process. It is on this basis that the constitution requires that before the budget estimates presented by the Minister are considered by the National Assembly, the latter is expected to constitute a committee with the task of discussing and reviewing the estimates and as a result, making recommendations to the Assembly. The committee is also mandated to seek representations from the public and take the same into account when making its recommendations to the National Assembly. This requirement resonates with the provisions of Article 201 (a) of the Constitution which in principle calls for openness, accountability and public participation in such financial matters.

It thus means that the provision of these revenue estimates and expenditures reports in advance, serve to give transparency to the process whilst also opening the said reports to public scrutiny as is demanded by the constitution. This is provided for as a right on the part of the public in terms of their participation.

Issues have been raised on the implications of the absence of the laws contemplated by Article 221(2)(b) which stipulates that the estimates under Article 221 (1) shall be in the form and procedure provided for by an Act of parliament. Tied to this is the provision of Article 225 (1) which calls for an Act of Parliament to provide for the establishment, functions and responsibilities of the national treasury.

It must be noted that Article 221(1) is a constitutional provision which takes precedence over legislation. In the context of the Constitution and the requirement for the passage of enabling legislation, the main purpose of such legislation is to supplement or in the best manner possible, give effect to the provisions of the constitution. It cannot contradict or take away that which the constitution has mandated. Thus the current absence of the Acts contemplated under Articles 225(1) and 221(2)(b) does not negate the essence of the constitution as already provided for in Articles 221(1)(3)(4)(5) of the constitution. In any event existing statutes including the Government Financial Management Act 2004, the Financial Management Act 2009 and existing Government Financial Regulations can provide guidance on the form and procedure of presentation of the estimates, provided that those statutes comply with Section 7 of the 6th schedule which provides that all existing law, whilst applicable, must be

*“construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution”*

From the foregoing it is clear that Treasury, in failing to present the estimates to the National Assembly within the constitutional timelines violated the provisions of Article 221 of the constitution. This violation ought to be redressed as urgently as possible so as not to impede the constitutional implementation process, particularly the need for public participation in the budget formulation process.

Finally the Commission did seek clarification from the Treasury on this failure to comply with the constitution. The treasury has informed the Commission that they intend to present the estimates by the 30th of May 2011 which was the date that was “extended” by the Parliamentary Committee. The view of the Commission is that no organ has the power to extend constitutional timelines. That notwithstanding, it is important that all parties involved in this matter, including Parliament, make all efforts to ensure that this matter is concluded within the shortest time possible so that the spirit of the constitution is respected and complied with.

## Annex III

### **ADVISORY OPINION: INTERPRETATION OF ARTICLE 77(2) OF THE CONSTITUTION OF KENYA 2010**

#### **1. Background**

The Registrar of Political Parties by a letter dated 3 May informed the Commission for Implementation of the Constitution (CIC) that the Political Party ODM have informed her office that they would like to hold national elections for the party to comply with the provisions of the Political Parties Act and the Constitution of Kenya. The registrar attached the letter from ODM party in her correspondence to us. Pursuant thereto the Registrar of Political Parties has requested CIC to construe the purport of Article 77(2) of the Constitution of Kenya, 2010 *vis-a-vis* the structure of political parties registered in Kenya. Below is an advisory opinion regarding interpretation of Article 77(2) of the Constitution.

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

The mandate of the Commission for the Implementation of the Constitution is to ensure that the letter and spirit of the Constitution is respected. The Commission notes that the Constitution contains provisions specific to the conduct of affairs of political parties and members of Parliament.

Article 77(2) of the Constitution expressly states that any appointed State officer shall not hold office in a political party. Within the same context Article 260 of the Constitution provides that a “State officer” means a person holding State Office. The same Article defines “State office” to mean any of the following offices:

“State office” means any of the following offices:

- (a) President;
- (b) Deputy President;
- (c) Cabinet Secretary;
- (d) Member of Parliament;
- (e) Judges and Magistrates;
- (f) Member of a commission to which Chapter Fifteen applies;
- (g) Holder of an independent office to which Chapter Fifteen applies;
- (h) Member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;
- (i) Attorney-General;
- (j) Director of Public Prosecutions;
- (k) Secretary to the Cabinet;
- (l) Principal Secretary;

- (m) Chief of the Kenya Defence Forces;
- (n) Commander of a service of the Kenya Defence Forces;
- (o) Director-General of the National Intelligence Service;
- (p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or
- (q) An office established and designated as a State office by national legislation;

The significance of the Article 77(2) and Article 260 provisions is that persons appointed to hold the state offices outlined above are prohibited from holding official positions in political parties. The interpretation of the effect of Article 77(2) hinges on the meaning of the word “appointed” although the Constitution is silent on the interpretation of the word “appointed”.

It is imperative to note that State officers come into office through different procedures and terms of service prescribed by the Constitution or by legislation including nomination, election, appointment to service or office on a permanent or temporary, or paid or unpaid terms among others. Therefore where a state officer comes into office exclusively by way of elections as prescribed in the Constitution the prohibition in Article 77(2) shall not apply to them. However where a state officer is appointed e.g. as provided in Article 152(2) of the Constitution the prohibition to hold office in a political party applies to them.

On the contrary Article 260 of the Constitution defines “public officer” to mean any State officer; or any person, other than a State Officer, who holds a public office. Further a “public office” means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament. In effect a public officer includes a state officer.

Further, it is worth noting that Section 75 of the Constitution prescribes the conduct of State officers. It states that a State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids:

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest;
- or
- (c) demeaning the office the officer holds.

A person who contravenes these provisions or Article 76, 77 or 78(2) of the Constitution: shall be subject to the applicable disciplinary procedure for the relevant office; and may, be dismissed or otherwise removed from office. Further, a person who has been so dismissed or otherwise removed from office under these provisions is disqualified from holding any other State office.

### **3. Conclusion**

Consequently, any person appointed to hold a State office is prohibited from holding office in a political party. However, elected state officers may hold office in political parties. In the current scenario after the promulgation of the Constitution in accordance with Article 263 of the Constitution Parliament is mandated to enact legislation required to give full effect to the Constitution. Article 152 of the Constitution provides that Cabinet consists of the President, Deputy President, the Attorney General and Cabinet Secretaries. The President shall nominate, and with the approval of the National Assembly appoint Cabinet Secretaries who shall not be members of Parliament. However, because this is a transitional period Section 2(1)(c) of the Sixth Schedule of the Constitution applies; the provisions in Article 129 to 155 of Chapter Nine of the Constitution are suspended until after the final announcement of all the results of the first elections for Parliament under the Constitution (in 2012). Therefore Cabinet Ministers are also Members of Parliament in accordance with the provisions of the former Constitution. It follows that the restriction in Article 77(2) applies to Cabinet Ministers to the extent that they are appointed state officers. It is worth noting that Article 91 of the Constitution provides for basic requirements for political parties. Article 91(g) mandates political parties to promote the objects and principles of the Constitution of Kenya and the rule of law. Further Article 92 mandates Parliament to enact legislation to provide for among other things: regulation of political parties, roles and functions of political parties, the establishment and management of political parties and any other matters necessary for the management of political parties.

Annex IV

**TABLE 1: AGREED SCHEDULE OF PRIORITY BILLS**

Agreed timelines for the development of priority bills for the period ending 30 <sup>th</sup> August 2011. To guide relevant institutions including Line AG, KLRC , CIC and Parliament.									
	Bill	Raw draft and policy docs from line Ministry/institution released to KLRC/AG by	Draft Bill by KLRC/AG released to CIC by	Round table AG/KLRC/CIC/line Ministry/institution finalized by	Final draft bill released by AG to Cabinet by	Post Cabinet consultations where substantive changes are made finalized by	Publication by	Constitution - (Schedule 5) Deadline	Proposed date enacted
	<b>Representation &amp; Legislature:</b>								
1	Vetting of public appointments by Parliament	30/5/2011	15/6/2011	27/6/2011	26/6/2011	7/7/2011	10/7/2011	One Year (26/8/2011)	15.8.2
2	Bills relating to legislative structures	15/6/2011	10/7/2011	22/7/2011	25/7/2011	8/8/2011	10/8/2011	2 years (26.8.2012)	25/8/2012
3	IEBC						Published	One Year (26/8/2011)	15.5.2
4	Political parties		15/5/2011	23/5/2011	25/5/2011	7/6/2011	9/6/2011	One Year (26/8/2011)	23/6/2011
5	Elections (National & County)		15/5/2011	8/6/2011	12/6/2011	21/6/2011	24/6/2011	One Year (26/8/2011)	8/7/2011
	<b>Judiciary &amp; Constitutional Commissions</b>								
6	System of Courts	30/5/2011	15/6/2011	27/6/2011	26/6/2011	7/7/2011	10/7/2011	One Year (26/8/2011)	25/8/2011
7	Salaries & Remuneration Commission							Published	15.5.2
8	Article 59		15/5/2011	30/5/2011	3/6/2011	16/6/2011	18/6/2011	One Year	3/7/2011



	Commissions (3 Bills)							(26/8/2011)	
9	Supreme Court				Done (Bill in Cabinet)	15/5/2011	20/5/2011	One Year (26/8/2011)	30/5/
10	Public Service Commission	30/5/2011	15/6/2011	28/6/2011	30/6/2011	14/7/2011	16/7/2011		30/7/
	<b>Public Finance:</b>								
11	Commission for Revenue Allocation	20/4/2011	4/5/2011	18/5/2011	21/5/2011	6/6/2011	8/6/2011	3 months (26/11/2010)	22/6/
12	Independent Offices (Appointment)				Done (Bill in Cabinet)	15.5.2011			30.5.2
13	Auditor General & Controller of Budget	30/5/2011	15/6/2011	30/6/2011	4/7/2011	18/7/2011	20/7/2011		3/8/2
14	Public Finance Management	30/5/2011	15/6/2011	30/6/2011	4/7/2011	18/7/2011	20/7/2011	2 Years (26/8/2012)	3//8/
	<b>Public Service &amp; Leadership:</b>								
15	Ethics and Anti-corruption Commission	15/5/2011	30/5/2011	14/6/2011	17/6/2011	1/7/2011	2/7/2011	One Year (26/8/2011)	16/7/
16	Ethics and Leadership	15/5/2011	30/5/2011	14/6/2011	16/6/2011	30/7/2011	2/8/2011	2 Years (26/8/2012)	16/8/
	<b>Bill of Rights &amp; Citizenship:</b>								
17	Citizenship		16/7/2011	28/7/2011	31/7/2011	9/8/2011	11/8/2011	One Year (26/8/2011)	25/8/
18	Ratification of International Treaties	10/6/2011	10/7/2011	24/7/2011	27/7/2011		7/8/2011		21/8/
	<b>Executive and Security Sector:</b>								
19	Power of Mercy	30/6/2011						One Year (26/8/2011)	

20	Independent Police Oversight Authority		30/6/2011	13/7/2011	16/7/2011	30/7/2011	2/8/2011		16/8/
21	National Police Service		15/6/2011	30/6/2011	14/7/2011	28/7/2011	30/7/2011	2 years (26/8/2012)	14/9/
22	NSIS		31/7/2011	14/8/2011	16/8/2011	30/8/2011	2/9/2011	2 Years (26/8/2012)	16/9/
23	National Police Service Commission		22/5/2011	6/6/2011	8/6/2011	21/6/2011	23/6/2011	2 years (26/8/2012)	7/7/2
	<b>Devolved Government</b>								
24	Bills relating to devolved government							Between one and two years	
25	Urban Areas and Cities	15/6/2011	30/6/2011	14/7/2011	16/7/2011	28/7/2011	30/7/2011	One Year (26/8/2011)	14/8/
	<b>Land and Environment</b>								
26	National Land Commission	30/5/2011	15/6/2011	30/6/2011	4/7/2011	18/7/2011	20/7/2011	18 months (26.3.2012)	3/8/2

## Annex V

**TABLE 2: SUMMARY OF PROGRESS IN THE DEVELOPMENT OF LEGISLATION**

Bill	Draft Bill by KLRC/AG released to CIC	Stakeholder Forums	Round table AG/KLRC/CIC/line Ministry/institution finalized	Final draft bill released by CIC to AG	Date/Status of Enactment
<b>Public Service and Leadership:</b>					
Ethics and Anti-Corruption Bill	25 <sup>th</sup> May 2011	CIC held a technical meeting with Ministry of Justice national Cohesion and Constitutional Affairs on 15 <sup>th</sup> June 2011, carried out a stakeholders meeting on 2 <sup>nd</sup> and 8 <sup>th</sup> of June, 2011 and on 23 <sup>rd</sup> and 24 <sup>th</sup> June 2011	30 <sup>th</sup> June, 2011	-	Review of the Bill by CIC is ongoing
<b>Citizenship and Human Rights:</b>					
Kenya National Human Rights Commission Bill	8 <sup>th</sup> April 2011	6 <sup>th</sup> and 13 <sup>th</sup> May 2011	9 <sup>th</sup> June 2011	28 <sup>th</sup> June 2011	Awaiting cabinet approval as at 29 <sup>th</sup> June 2011
Commission on Administration of Justice Bill	8 <sup>th</sup> April 2011	6 <sup>th</sup> and 13 <sup>th</sup> May 2011	9 <sup>th</sup> June 2011	28 <sup>th</sup> June 2011	Awaiting cabinet approval as at 29 <sup>th</sup> June 2011
National Gender Commission and Equality Bill	8 <sup>th</sup> April 2011	6 <sup>th</sup> and 13 <sup>th</sup> May 2011	9 <sup>th</sup> June 2011	28 <sup>th</sup> June 2011	Awaiting cabinet approval as at 29 <sup>th</sup> June 2011
Ratification of Treaties Bill	11 <sup>th</sup> May 2011	17 <sup>th</sup> June 2011	-	-	Review of the Bill by CIC is ongoing
<b>Representation of the People &amp; Legislature:</b>					
Independent Electoral and Boundaries Commission Bill	Qtr 1	<i>County Visits</i> 10 <sup>th</sup> – 18 <sup>th</sup> April 2011 <i>Workshops</i> 16 <sup>th</sup> -17 <sup>th</sup> May 2011	Qtr 1	Qtr 1	Published and awaiting presidential assent
Political Parties	15 <sup>th</sup> May	<i>Workshops</i>	20 <sup>th</sup> and	25 <sup>th</sup> May 2011	As of 20/6/2011, the

	2011	26 <sup>th</sup> -27 <sup>th</sup> May 2011	23 <sup>rd</sup> May 2011		AG had released the Bill to the Cabinet
Elections (National & County) Bill	21 <sup>st</sup> May 2011	<i>County Visits</i> 10 <sup>th</sup> – 18 <sup>th</sup> April 2011	-	-	CIC has been awaiting input from the Task Force for Devolved Government
<b>Public Finance:</b>					
Public Finance Management Bill, 2011	16 <sup>th</sup> May 2011	17 <sup>th</sup> June, 2011 – CIC meeting with Non State Actors  27 <sup>th</sup> June 2011– CIC meeting with Government Agencies and Non State Actors	Tentative Date – 17 <sup>th</sup> July 2011	-	Review of the Bill by CIC is ongoing
Controller of Budget Bill (from Treasury)	16 <sup>th</sup> June 2011	27 <sup>th</sup> June 2011	Tentative Date - 15 <sup>th</sup> July 2011	Not Yet	Review of the Bill by CIC is ongoing
Commission on Revenue Allocation Bill	09 <sup>th</sup> May 2011	-	18 <sup>th</sup> May 2011	The Bill is pending finalization by Cabinet	-
<b>Judiciary and Constitutional Commissions:</b>					
Supreme Court Bill	14 <sup>th</sup> May 2011	18 <sup>th</sup> and 30 <sup>th</sup> May 2011	21 <sup>st</sup> April 2011	23 <sup>rd</sup> June 2011	Enacted into law on 27 <sup>th</sup> June 2011
Independent Offices Bill	-	-	-	The Bill is before Parliament for debate	-
<b>Land and Environment:</b>					
National Land Commission	20 <sup>th</sup> June 2011	-	-	-	Review of the Bill by CIC is ongoing
<b>Executive and Security:</b>					
National Police Service Bill	9 <sup>th</sup> February 2011	Consultation with National Police 8 <sup>th</sup> April 2011, Consultation with Civil Society Organisations on 24 <sup>th</sup> May 2011	29 <sup>th</sup> June 2011	29 <sup>th</sup> June 2011-	Finalised and forwarded to the Attorney General for Publication
National Police Service Commission Bill	9 <sup>th</sup> February 2011	Consultation with National Police 8 <sup>th</sup> April 2011, Consultations with Civil Society Organisations	18 <sup>th</sup> June 2011	27 <sup>th</sup> June 2011-	Finalised and forwarded to the Attorney General for Publication

		on 24 <sup>th</sup> may 2011			
Independent Policing Oversight Authority	9 <sup>th</sup> February 2011	Consultation with National Police 8 <sup>th</sup> April 2011, Consultations with Civil Society Organisations on 24 <sup>th</sup> May 2011	29 <sup>th</sup> June 2011	29 <sup>th</sup> June 2011-	Finalised and forwarded to the Attorney General for Publication

**Annex VI**

**TABLE 3: SUMMARY OF ENGAGEMENTS WITH STAKEHOLDERS PER THEMATIC AREA**

<b>ORGANISATION</b>	<b>EVENT</b>	<b>DATE OF MEETING</b>
<b>Public Service and Leadership Thematic Area</b>		
Kenya Institute of Administration	Consultation to discuss how the policies and procedures of the Kenya Institute of Administration can be streamlined to ensure compliance with the Constitution	18 <sup>th</sup> May 2011
The Office of the Prime Minister	Consultation to understand the steps taken to ensure that existing and anticipated public service laws, procedures and policies comply with the Constitution.	17 <sup>th</sup> May 2011
<b>Bill of Rights and Citizenship Thematic Area</b>		
Women members of the legislature, executive, business community and professionals from the private sector; non-state actors and community-based organizations	Public dialogue forum on the gains for women in the Constitution and a discussion of strategies to enable women to fully utilize the spaces created by the Constitution.	4 <sup>th</sup> May 2011
The Office of the Prime Minister	Consultation with Prime Minister roundtable on Gender Affairs	24 <sup>th</sup> May 2011
Ministry of Justice, National Cohesion and Constitutional Affairs	Consultations on how to ensure the National Policy and Action Plan on Human Rights is in compliance with the Constitution.	15 <sup>th</sup> June 2011
<b>Public Finance Thematic Area</b>		
CIC and Treasury	Consultative forum on Public Finance Management and Fiscal Decentralization Principles	June 2011
Civil Society Organisations	Technical workshop on the Public Finance Management Bill with Civil Society Organisations	17 <sup>th</sup> June 2011
Stakeholders	Consultative Forum on the Public Finance Management Bill	27 <sup>th</sup> June 2011
Prof Paul Smoke, Dr. Junaid Ahmed and Mr. Gordhan the former Chief executive Officer of the Johannesburg Municipal Council	Discussion with experts on the Public Finance Management Bill to Sensitize CIC commissioners regarding the public finance processes and comparative experiences on fiscal decentralization	4 <sup>th</sup> and 5 <sup>th</sup> May 2011
<b>Land and Environment Thematic Area</b>		
National Environment Civil Society Alliances of Kenya	Workshop develop a strategic alliance and commence dialogue with the civil society on pressing issues afflicting land and environment and ensuring robust public participation	10 <sup>th</sup> May 2011
Land Sector Non-State Actors under the auspices of the Institutions of Surveyors of Kenya.	Consultative forum on the National Land Commission Bill	27 <sup>th</sup> May 2011
Ministry of Water and Irrigation, the Ministry of Forestry and Wildlife, and the Ministry of	Consultative meetings with the task forces/committees on constitutional reforms relevant to the ministries	10 <sup>th</sup> May 2011

Northern Kenya and Arid Lands.		
<b>Executive and Security Thematic Area</b>		
Permanent Secretaries	Workshop with the head of public service and permanent secretaries (Chief executing officers) to share with them their role with regard to the implementation of the Constitution.	4 <sup>th</sup> April 2011
The Office of the Prime Minister	Consultation with the Office of the Prime Minister to deliberate on the role of the executive in ensuring timely implementation of the Constitution and the application of the Rapid Results Initiative.	17 <sup>th</sup> May 2011
The National Police Service	Review of the national police recruitment guidelines and supervision of police recruitment nationwide to ensure compliance with the provisions of the Constitution	29 <sup>th</sup> April 2011
<b>Devolved Government Thematic Area</b>		
Taskforce on Devolved Government	Consultative meeting to discuss the status of priority bills and set timelines for their finalisation	2 <sup>nd</sup> June 2011
Institute for Social Accountability	Meeting with Non-State Actors to discuss ways of increasing collaboration between CIC and with civil society	25 <sup>th</sup> May 2011
World Bank and international experts	Consultation to deliberate issues relating to devolved governance with a view to understanding the transitional process and establishing effective devolved systems	6 <sup>th</sup> May 2011
Task Force on Devolved Government, the Steering Committee on Devolved Government and the World Bank	Meeting to discuss issues concerning the structure, service delivery and finance in a devolved government.	4 <sup>th</sup> and 5 <sup>th</sup> May 2011
CIC Commissioners	Colloquium to develop a shared understanding on devolution, risks and how best to implement it across all thematic areas	29 <sup>th</sup> April 2011
Ministry of Public Works	Meeting to discuss the ministry's plan to develop county infrastructure	4 <sup>th</sup> May 2011



Annex VII

**TABLE 4: CONSULTATIONS WITH STAKEHOLDERS AT INSTITUTIONAL LEVEL**

<b>ORGANISATION</b>	<b>EVENT</b>	<b>DATE OF MEETING</b>
Institute of Certified Public Secretaries of Kenya	Dinner	1 <sup>st</sup> April 2011
Executive	Permanent Secretaries' Forum	2 <sup>nd</sup> April 2011
Kenya Anti-Corruption Commission	Breakfast Meeting	5 <sup>th</sup> April 2011
Freidrich Ebert	Security Sector Reforms	6 <sup>th</sup> April 2011
International Commission of Jurists-Kenya	Launch of Media Handbook	7 <sup>th</sup> April 2011
Constituency Development Fund	Launch of Strategic Plan	20 <sup>th</sup> April 2011
Task Force on Devolution	Presentation of the Report	20 <sup>th</sup> April 2011
Media Owners' Association	Media Owners' Association Breakfast	21 <sup>st</sup> April 2011
The Constitution Implementation Oversight Committee	Meeting on Working Modalities	21 <sup>st</sup> April 2011
Freidrich Ebert Stiftunt	Constitutional Conference Meeting	21 <sup>st</sup> April 2011
World Wide Fund	Stakeholders Consultative and Wildlife Matters	10 <sup>th</sup> May 2011
German Non-State Actors	Friend Roundtable on Status of Implementation	11 <sup>th</sup> – 13 <sup>th</sup> May 2011
Media Council of Kenya	Training of Senior Editors	16 <sup>th</sup> May 2011
Office of the Prime Minister	Roundtable on Gender	24 <sup>th</sup> May 2011
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)	Judicial Reform and Rule of Law Forum	25 <sup>th</sup> May 2011
Parliament	Prayer Breakfast	26 <sup>th</sup> May 2011

## Annex VIII

**TABLE 5: MINISTERIAL REPORTING MATRIX**

Ministries/State Corporations	Ministry submission of Status report to CIC	Analysis of the Status of Constitutional Implementation
Ministry of Agriculture	Not Submitted	
Ministry of Co-operatives Development	Not Submitted	
Ministry of East African Community	Submitted	The ministry has undertaken a Rapid Result Initiative program that has resulted in: <ul style="list-style-type: none"> <li>i) draft Miscellaneous Amendment Bill</li> <li>ii) audit report on the compliance of the East African Community laws with the Constitution and thus their suitability for domestication</li> </ul>
Ministry of Education	Not Submitted	However, the Teachers Service Commission has since prepared and submitted to the CIC the Teachers Service Commission Bill.
Ministry of Public Works	Not Submitted	
Ministry of Energy <ul style="list-style-type: none"> <li>- Kenya Electricity Transmission Co. Ltd</li> </ul>	Submitted	Ministerial taskforce set up to fast-track implementation of the Constitution. A technical committee of the taskforce tasked to review existing sector laws, bylaws and regulations to determine compliance with the Constitution and come up with a new Energy Bill. The taskforce has developed a harmonized sector position paper to guide review.
Ministry of Environment and Mineral Resources	Not Submitted	
Ministry of Gender, Children and Social Development	Not Submitted	
Ministry of Fisheries Development	Submitted	The ministry has undertaken the following: <ul style="list-style-type: none"> <li>i) uploaded and availed copies of the Constitution to heads of departments and their deputies and held sensitization workshops for their heads of departments. This is being cascaded to lower levels</li> <li>ii) working to set up and staff county offices through amalgamation of existing district-based offices into one county office</li> <li>iii) review of the Fisheries Management and Development Bill</li> </ul>
Ministry of State for Planning, National Development and Vision 2030	Not Submitted	
Ministry of Higher Education, Science & Technology	Not Submitted	
Ministry of State for Immigration and Registration of Persons	Submitted	The ministry has undertaken the following: <ul style="list-style-type: none"> <li>i) uploaded Constitution and undertaken two sensitization workshops for all heads of</li> </ul>

		<p>departments and section heads and selected technical officers</p> <p>ii) established Ministerial Constitutional Implementation Committee</p> <p>iii) constituted taskforce on citizenship to draft the citizenship and immigration law</p>
Ministry of Housing	<b>Not Submitted</b>	
Ministry of Industrialization Anti-Counterfeit Agency	<b>Not Submitted</b>	The Agency has put in place an implementation unit to oversee the development of its workplan and to report on the implementation progress.
Ministry of Information and Communication	<b>Submitted</b>	<p>The ministry has undertaken the following:</p> <p>i) familiarization of the senior offices and its state corporations of the Constitution and its implications. Activity being cascaded to other staff</p> <p>ii) generated two draft bills: Media Bill, 2010, and Independent Communications Commission Bill, 2010</p> <p>iii) comprehensive audit of all existing laws, regulations, policies, administrative procedures, circulars and government guidelines relating to the functions of the ministry</p>
Ministry of Public Health and Sanitation	<b>Not Submitted</b>	
Ministry of Regional Development Authorities	<b>Not Submitted</b>	
Ministry of Forestry and Wildlife	<b>Submitted</b>	<p>The ministry has undertaken the following:</p> <p>i) uploaded and availed copies of the Constitution to staff and sensitized fora with staff and stakeholders</p> <p>ii) reviewed and provided comments on the National Land Commission Bill</p>
Ministry for Local Government	<b>Submitted</b>	<p>The ministry's taskforce on devolved government is in the process of preparing the following legislation:</p> <p>i) Urban Areas &amp; Cities Bills</p> <p>ii) County Public Service Bills</p> <p>iii) Devolution Bill</p> <p>iv) County Government Finance Management Bill</p> <p>v) Intergovernmental Fiscal Relations Bill</p> <p>vi) Transition Bill</p>
Ministry of State for National Heritage and Culture	<b>Not Submitted</b>	
Ministry of Justice, National Cohesion and Constitutional Affairs	<b>Submitted</b>	<p>The ministry has undertaken the following:</p> <p>i) uploaded and availed copies of the Constitution to staff and stakeholders and held departmental</p>

		<ul style="list-style-type: none"> <li>sensitization workshops</li> <li>ii) validated the National Human Rights Policy and prepared a cabinet memo revising concept note on the development of the National Anti-Corruption Policy</li> <li>iii) review and development of legislation</li> </ul>
Ministry of Labour	<b>Not Submitted</b>	
Ministry for Home Affairs	<b>Not Submitted</b>	
Ministry of Lands	<b>Submitted</b>	The ministry has prepared the Land Commission Bill, awaiting submission to the Kenya Law Reform Commission
Ministry of State for Provincial Administration and Internal Security	<b>Not Submitted</b>	
Ministry of State for Defence	<b>Not Submitted</b>	
Ministry of Livestock Development	<b>Submitted</b>	Review of various policy statements, legislations governing the livestock sector and administrative procedures are underway to ensure conformity with the Constitution
Ministry of Medical Services	<b>Not Submitted</b>	
Ministry of Roads	<b>Not Submitted</b>	
Ministry of Special Programmes	<b>Submitted</b>	Ministerial Constitution Implementation Unit appointed to spearhead implementation of the Constitution in the ministry. Ministerial Constitution Implementation Unit working on a plan for development review of: <ul style="list-style-type: none"> <li>i) Ministry Strategic Plan</li> <li>ii) Internally Displaced Persons Draft Policy</li> <li>iii) Disaster Management Draft Policy</li> <li>iv) Fire Draft Policy</li> <li>v) Disaster Risk Reduction Strategy</li> </ul>
Ministry of Nairobi Metropolitan Development	<b>Not Submitted</b>	
Ministry of Transport	<b>Not Submitted</b>	
Minister for Finance	<b>Not submitted</b>	
Ministry of Tourism	<b>Submitted</b>	Tourism Bill No. 19 of 2010 passed by Parliament on Thursday 21 <sup>st</sup> April 2011 and is awaiting Presidential assent
Ministry of Trade	<b>Not Submitted</b>	
Ministry of Water and Irrigation	<b>Submitted</b>	The ministry has undertaken the following: <ul style="list-style-type: none"> <li>i) availed copies of the Constitution to staff and sensitized senior staff</li> <li>ii) validated the reviewed of National Irrigation Policy 2011</li> <li>iii) Prepared an updated National Land Reclamation policy</li> <li>iv) engaged consultant to review the Irrigation Bill 2011</li> </ul>
Ministry of State for Public Service	<b>Submitted</b>	The ministry has undertaken the following: <ul style="list-style-type: none"> <li>i) developed sensitization curriculum on implication of Constitution on service delivery and sensitized public servants in all the counties</li> <li>ii) identified suitable skills for re-deployment to counties and assisted</li> </ul>

		counties in staffing their establishments
Ministry of Youth and Sports	<b>Not Submitted</b>	
Attorney-General	<b>Not Submitted</b>	
Registrar-Judiciary	<b>Not Submitted</b>	
Ministry of Northern Kenya and other Arid Lands	<b>Submitted</b>	The ministry has undertaken the following: <ul style="list-style-type: none"> <li>i) availed copies of the Constitution to all staff</li> <li>ii) uploaded soft copy of the Constitution on their website and undertaken a sensitization workshop for al staff</li> <li>iii) held stakeholder consultations on the draft national ASAL policy</li> <li>iv) established a Committee to oversee implementation of the Constitution</li> </ul>
Clerk-National Assembly	<b>Submitted</b>	Taskforce on the Implementation of the Constitution established to among other tasks facilitate the enactment of laws required to operationalize the Constitution

## **Annex IX**

### **COMMISSIONERS OF THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION**

**CHAIRPERSON: MR. CHARLES NYACHAE**

**VICE-CHAIRPERSON: DR. ELIZABETH MULI**

Dr. Elizabeth Muli is the Convener of the Public Service and Leadership Thematic Team at the CIC.

**IMAANA KIBAAYA LAIBUTA**

Mr. Kibaya Laibuta is the Convener of the Judiciary and Constitutional Commissions Thematic Team in CIC

**PROF. PETER WANYANDE**

Professor Peter Wanyande is the Convener of the Devolution Thematic Team at CIC.

**KAMOTHO WAIGANJO**

Mr. Kamotho Waiganjo is the Convener of the Public Finance Thematic Team.

**Ms.CATHERINE MUYEKA MUMMA**

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

**DR. IBRAHIM M. ALI**

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

**Mr. PHILEMON MWAISAKA, EBS, SS**

Mr. Philemon Mwaisaka is the Convener of the Executive and Security Thematic Team.

**DR. FLORENCE OMOSA**

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