



Commission for the Implementation
of the Constitution

Utekelezaji wa katiba, jukumu la wote

Quarterly Report for the period

January to March 2012

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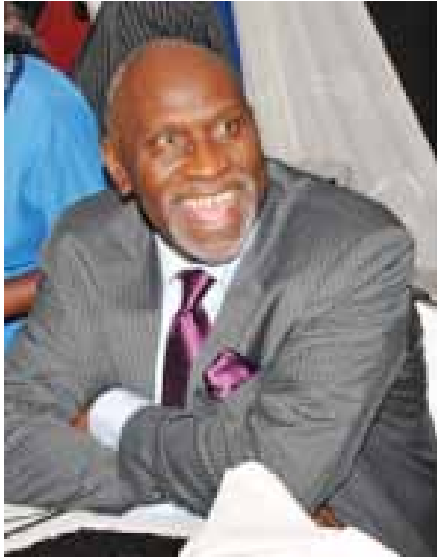
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Foreword



This quarter marks one year since the Commission for the Implementation of the Constitution commenced operations and eighteen months since the Constitution took effect. The status, challenges and potential impediments of the Constitution implementation process were well captured in the four quarterly reports for the year 2011.

The period under review started on a slow note in the legislative arena for the first time since the promulgation of the Constitution. The timeline for the enactment of legislation as stipulated in the Fifth Schedule has been missed. As at the time of going to print, the County Government Bill, 2012 had not yet been enacted. The President declined to assent to the Bill because of unconstitutional provisions introduced on the floor of the House. The Bill was sent back to the National Assembly with a memorandum proposing amendments to ensure the Bill is consistent with the Constitution.

During this quarter Parliament also invoked its Constitutional Powers under Article 261(3)b to extend the timeline for enactment of the National Land Commission Bill 2011, the Land Bill, 2012 and the Land Registration Bill, 2011 to 26th April, 2012. The Bills were due for enactment by 26th February, 2012. In the view of CIC, to the extent that such extension of time will both provide opportunity for enhanced public participation and give parliament greater opportunity to scrutinize bills, we welcome the extension. It has always been CIC's view that even as we seek to ensure compliance with the Fifth schedule timelines, this must not be at the expense of either quality of the laws or public participation in Constitution implementation.

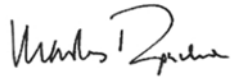
The period also saw the High Court weighing in on the outstanding matter of the Election date. The IEBC acting within its constitutional mandate and taking into account the High Court ruling declared March, 4th 2013 as the date for the next General Election, and this remains the election date unless it is changed through constitutionally acceptable means.

Of concern to CIC is the apparent slow down in the Constitution implementation process. Despite having laws in place relevant institutions such as the Office of the Inspector General, the National Police Service Commission, the Independent Police Oversight Commission and the Ethics and Anti-Corruption Commission are not yet fully operational. This apparent slow down of reforms especially in the penultimate stages is a set back in the implementation process.

Despite the challenges, thus far the implementation of the Constitution remains generally on course. We must however continue to be alive to and avoid the danger of the process being

derailed, particularly in the current political environment, by a failure to remain true to what we ourselves have undertaken, namely, to safeguard the Constitution for future generations

Sovereignty belongs to the people of Kenya and it is incumbent upon each and every one of us to play our individual and collective roles towards the full and faithful implementation of the Constitution.



Mr. Charles Nyachae
Chairperson

Executive Summary

This report is the first quarterly reports for the year 2012 by the Commission for the Implementation of the Constitution (CIC) to the Parliamentary Constitutional Implementation Oversight Committee (CIOC) and the public to inform them on the progress being made in the implementation of the Constitution of Kenya 2010.

The report focuses on the status of implementation of the Constitution with emphasis on the achievements, challenges faced and potential impediments in the implementation of the Constitution, as well as activities projected for implementation in the second quarter of 2012. Some of the challenges that were highlighted in 2011, including resistance to change by some stakeholders, lack of consensus on the content of bills and deliberate misinformation to the public by some parts of the Executive, remain.

This report also makes recommendations on how to overcome the challenges and potential impediments to ensure implementation of the Constitution is on track. By preparing and publicizing this quarterly report, the CIC aims to keep all stakeholders apprised on how the progress in implementation of the Constitution to ensure the Commission is accountable to the people of Kenya in line with the national principles and values set out in the Constitution. This first quarterly report of 2012 contains six main parts.

The first part summarizes the context of operation for the quarter and links this report to the previous reports. The second part gives an overview of Commission-wide activities and the engagements with various stakeholders and interest groups. The third part discusses the progress made under the eight thematic areas, and in particular, progress made on enactment of various laws and policies necessary for implementing the Constitution. The section also highlights the challenges faced, the recommendations for action and the activities to be carried out in the second quarter.

The fourth part leads a discussion on the present challenges and impediments CIC is facing in implementing the Constitution. The fifth part focuses on key recommendations for keeping up the momentum in implementation. Finally, the Annexes give a snapshot of the status of submission of quarterly reports by Ministries and government agencies, an update of status of Commissions that are to be set up under the Constitution, status of enactment of implementing laws and the advisory opinions CIC has rendered on the elections date question and on the boundaries report.

1 Overview of CIC Activities

This report is CIC's first scorecard for the year 2012. The report aims to inform all partners and stakeholders about the progress being made in the implementation of the Constitution of Kenya 2010.

As in past editions, this report addresses the status of implementation of the Constitution including the achievements in the implementation, challenges faced in the course of implementing the Constitution, potential impediments and recommendations on how to address these challenges, and activities projected for implementation in the second quarter of 2012. The report also gives an update of progress made by the Commission at institutional level.

1.1 Commission-wide Activities

Commission wide activities for this quarter included stakeholder engagements, public advisory opinions, study tours and institutional development activities.

1.1.1 CIC Engagements With Stakeholders

In line with its mandate CIC continues to engage with stakeholders in the Constitution implementation process. Some of the stakeholders CIC engaged with are: CIOC, the Youth, the Attorney General, Caucus for Persons with Disability, Civil Society and the Private Sector. The following is a summary of issues deliberated upon with stakeholders.

► The Young People of Kenya Forum

One of the key missions of CIC is to actively engage the different categories of the people of Kenya, based on age, gender, professions and social groups on the implementation of the Constitution. The overall goal of such engagements is for the people of Kenya to learn and understand what the electoral system, process and its outputs should ideally look like after the Constitution of Kenya is fully implemented. Specifically, the focus is to ensure that each and every Kenyan is able to visualize and understand the new dispensation in as far as the electoral system and process is concerned, understand what implementing the new electoral system and process means, know his/her rights and responsibilities in the new dispensation and is ready to play his/her part in implementing the Constitution.

In pursuance of the above objectives, CIC held a youth forum between the 3rd to the 8th of January 2012 at the KCB Leadership Centre in Karen, Nairobi, with five participants from each of the 47 counties within the age bracket of 18–35 years. The aim of the forum was for the participants to develop a long-term strategy on how CIC can actively and constructively engage the young people of Kenya across the country in order to ensure full and effective implementation of the Constitution.

The specific focus on the target age group was based on the fact that the youth (persons aged between 18-35 years) represent the largest voting bloc in the country (at 60% of the country's population as per the 2009 census). Hence, it is important that the youth understand what is expected of them in the constitution implementation process. In addition, it was deemed important to specially target that category of Kenyans as they have the energy and passion to drive the country towards a new and more inclusive dispensation. The value of inclusivity that is desired for the new Kenya was evident in the diversity of the youth who were invited to the forum. Participants reflected diversity and balance in gender, religious beliefs, socio-economic backgrounds, as well as the inclusion of persons with disabilities. A highlight of the forum was a presentation made by a group of participants with hearing impediments, who challenged their fellow participants to treat persons with disabilities with respect, and to avail equal opportunities to them. The youth from different counties, who also represented the diverse ethnicities of the country were able to interact and learn from each other.

The forum was designed in the form of a think-tank, where participants were required to critically think about their perceptions of self and their roles as social beings in a Kenya that is changing towards a new dispensation. The think-tank design consisted of: plenary presentations, plenary question and answer sessions, group work sessions and individual reflections. The plenary sessions focused on presentations on virtuous leadership, the sovereignty of the people of Kenya and presentations on the importance of the youth's engagement in the electoral process. The individual reflection session focused on the questions, "*Who am I and what is my role in the new Kenya.*"

The think-tank format of the forum was especially important in that it encouraged the participants to self-reflect on their knowledge and skills, impart vital information on their sovereignty as outlined in Article 1 of the Constitution and engage participants in collective and individual brainstorming of how to communicate to their peers and communities in understanding their rights and responsibilities under the new dispensation.

By the end of the forum the following had been achieved:

- The 230 youth, majority of whom had not previously read or known of the provisions of the Constitution, were broadly familiar with the Constitution;
- The youth understood that they are part and parcel of the Constitution implementation process and have a special role to play in it, and thus, should not leave it to the unknown 'someone else'.
- The participants understood how the Constitution, if implemented correctly, can impact the youth population, helping it create productive, satisfying lives.
- Through the different representations of the socio-cultural diversity of the participants and their consequent interaction with each other, the youth demonstrated their ability and desire to engage the different diversities of Kenya irrespective of ethnic, religious or socio-economic backgrounds.
- Through the special focus on the importance of youth involvement in the electoral process, the participants recognized that the next election is a potential tipping point event in the life of the new dispensation of Kenya, which must be carried out correctly, both by government officials and the people of Kenya as a whole.

Through the focus on the sovereign power of the people of Kenya, the youth understood that it is up to the people of Kenya to hold all implementing agencies, including the CIC, accountable to

them by the standards set out in the Constitution so as to ensure the successful implementation of the Constitution.

Going forward, CIC intends to draw from the vision and hopes of the Kenyan populace, and use insights gained during the forum to develop a long term model for engaging young people in the Constitutional and governing process



A participant making a presentation during the Young People of Kenya Forum

► Meeting with the CIOC

CIC participated in a working retreat hosted by the CIOC from 11th to 12th January 2012. The purpose of the retreat was to look at legislation and actions required of Parliament within the first eighteen months of promulgation of the Constitution. The meeting formed a technical team comprising the CIC, KLRC, Office of the Attorney General and the Parliamentary Service Commission to discuss the way forward regarding the process of development of private members' bills. The technical team agreed on the following issues:

a. Procedure to be followed in the processing of private members' bills

The National Assembly has a distinct and independent role to play in the process of implementation of the Constitution. However, CIC must also play its role to ensure the contents of every bill are in line with the letter and spirit of the Constitution before it is tabled in Parliament, and indeed at every stage of the process. Taking cognizance of the primary responsibility of members of parliament to enact legislation including private members' bills and the role of CIC to monitor,

facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution, the technical committee agreed that CIC should be allowed to check the constitutionality of every bill that impacts on implementation of the Constitution, without limiting that function to legislation required under legislation required in the Fifth Schedule to the Constitution.

b. The way forward regarding the status of enactment of legislation required to be in place within the first eighteen months of promulgation of the Constitution

The meeting adopted tentative timelines for enactment of legislation that should be in place by February 2012 and August 2012.

c. Update on operationalization of Chapter Fifteen Commissions

While noting the progress made in enactment of legislation and setting up of Chapter Fifteen Commissions, the CIC expressed concern that some legislation although being priority had not been enacted and some Chapter Fifteen Commissions had not yet been set up. (See Annex I for status of operationalization of Chapter Fifteen Commissions) CIC urged CIOC to fast track the finalisation of:

- Amendments to the Parliamentary Service Commission
- Setting up of the National Police Service Commission
- Gender and Equality Commission, subject to the determination of the Court Case.

► Meeting with the Independent Electoral and Boundaries Commission

On the 27th of February 2012, CIC held an introductory meeting with the newly appointed commissioners of the Independent Electoral and Boundaries Commission. The objective of the meeting was to discuss how best the CIC and the IEBC can work together pursuant to Section 5 (6)(d) of the Sixth Schedule to the Constitution, and particularly with regard to preparations being made for the next election. The meeting also discussed the holding of regular meetings between the two Commissions and the role of IEBC in the determination of election dates.

CIC also attended a policy dialogue meeting hosted by the IEBC to discuss ways through which non-state actors could be involved in ensuring that the next general elections are peaceful, free and fair.

► Participation of Diaspora Kenyan's in the electoral process

The Office of the Prime Minister is engaged in a process which seeks to ensure that Kenyans in the Diaspora exercise their right to vote. CIC is currently working with the team which comprises representatives from the Office of The President, office of The Prime Minister, the Ministry of Justice National Cohesion and Constitutional Affairs, Ministry of Foreign affairs, Ministry of State for Immigration and Registration of Persons, Ministry of Finance, the Independent Electoral and Boundaries Commission and the Article 59 Commissions, in the development of policies to facilitate the voter registration and eventual voting for Kenyans in the Diaspora in compliance with Article 82(1)(e) of the Constitution.

► Development and Review of Material for Civic Education

In the exercise of its monitoring and oversight mandate, CIC is also working with the Ministry of Justice, National Cohesion and Constitutional Affairs in the development of material that will be used in Civic Education including a Curriculum, Communication Guide and a simplified Constitution. These will be used for civic education scheduled to be conducted throughout the country.

► Meeting With the Disability Caucus on The Implementation of The Constitution

The Constitution provides for the protection and promotion of the rights of persons with disabilities as an affirmative action and non-discrimination measure. In this context, the CIC held a meeting with the Disability Caucus on the Implementation of the Constitution. The Caucus is a coalition of organizations of and for persons with disabilities. The primary purpose of the meeting was to explore ways through which the CIC and the Caucus can work together to ensure that the Constitution is fully and faithfully implemented and that rights and opportunities for persons with disabilities are realized and safeguarded.

The Caucus presented a written memorandum of ways in which they can engage with CIC. The meeting discussed the working modalities between the two organizations and proposals for inclusion of persons with disabilities in the political and electoral processes. The Caucus raised concerns about the implementation of Article 100 of the Constitution on legislation for the representation of marginalized groups in the electoral process.

Regarding the rights of persons with disabilities in the electoral process, the following key issues were highlighted:

- The register of voters to include persons with disabilities and indicate the type of disability for ease of assistance;
- Budgeting for reasonable accommodation;
- Special measures to be put in place for persons with mental and intellectual disability;
- Accessibility of voting materials and facilities; and
- The use of assistive and new technologies.

The meeting was very productive and CIC plans to continue having such meetings with other stakeholders and interest groups to explore to ensure that rights and benefits for all Kenyans as provided in the Constitution are safeguarded.

► Presentation to the American Chamber of Commerce Kenya

The CIC Chairperson was invited to grace the monthly luncheon of the American Chamber of Commerce and Industry in Kenya. The Chamber comprises of persons from the USA with business interests in Kenya . CIC took the opportunity to apprise the business community of the benefits to the community in the Constitution and the important role the business community has in the Constitution implementation process.

► Meeting with the Attorney General

The CIC held a meeting with the Attorney General on 7th March, 2012 regarding translation of the Swahili version of the Constitution of Kenya. The meeting was necessitated by the need



Ms Eddah Maina, Chief Executive Officer, Kenya Society for the Mentally Handicapped with Mr. Charles Nyachae, Chairperson CIC and CIC Commissioner, Mr. Philemon Mwaisaka, MBS, SS, leaving the CIC and Disability Caucus meeting

to have a common understanding of Article 7 of the Constitution in view of the fact that the Government has been sued by the Chief Whip of the National Assembly, Hon. Johnstone Muthama over the translation of the English version of the Constitution of Kenya to Kiswahili. Furthermore, a number of people have requested Swahili versions of the Constitution. Article 7(2) of the Constitution provides that the national language is both Kiswahili and English.

The meeting was called to determine whether the Kiswahili version of the Constitution has been developed. The AG proposed that the CIC should take the lead on how the Government will ensure compliance with Article 7 of the Constitution. The meeting agreed that there was need to start a mechanism of getting the Constitution translated into Kiswahili and that CIC together with its Constitution implementing partners should consider facilitating the development of legislation to implement Article 7 of the Constitution.

► Study Tour to Indonesia

A delegation from CIC led by the Vice- Chairperson Dr. Elizabeth Muli, visited the Republic of Indonesia on a study tour between 20th and 23rd March 2012. The team visited the Constitutional Court of Indonesia, the Provincial Government of Jakarta and the Secretariat of the House of Representatives. The choice of Indonesia was based on the fact that the country has made tremendous progress in reforming its systems to ensure economic benefit to its citizens.

Some of the lessons learned from the study tour are that:

- To ensure access to justice, the Constitutional Court charges no fees to lodge any petition on constitutional matters and filing of human rights petitions.
- The Indonesian judicial system is structured in a manner that ensures that the tribunals established under various laws fall within the judicial structure, allowing for a linkage

between the quasi-judicial institutions and the formal judicial system. This facilitates review and appeal of decisions of the tribunals.

- A legal framework on Alternative Dispute Resolution was established in 2003 by the Supreme Court of Indonesia. The Supreme Court issued regulations concerning mediation procedures in courts. The Regulations are based on the civil procedure law which obligates presiding judges to try and settle the disputes amicably.
- The principle of enfranchisement of all citizens, in particular migrant workers and students, has led to the introduction of a system for diaspora voting for the President in Indonesian embassies. The vote-counting system is designed to include diaspora votes such that votes cast in Malaysia and Singapore are included in one of the two electoral districts in the capital, Jakarta, and all other diaspora votes to the second Jakarta district.
- Decentralization of government, as a crosscutting issue, has multitude of stakeholders. It requires close coordination and consensus building among central government agencies, and between central and regional governments.
- Any technical assistance for decentralization policies should be flexibly designed and process oriented.
- Irrespective of the urgent need for assistance, interventions during rapid economic, political, and administrative transitions may become irrelevant and ineffective, with outputs and outcomes short lived and not sustainable.
- In times of institutional and administrative changes, the identification of the proper implementing agency is a precondition for successful implementation and should be reconfirmed before the fielding of experts or staff. If unclear mandates continue to exist, broad agreement is needed on the most appropriate implementing agency and how the various stakeholders can support implementation.
- There should be long-term approach to capacity building so as to have better chances of success in a fluid policy environment.

The visit was informative and the team picked valuable lessons on how Indonesia has undertaken governance and institutional reforms to spur economic growth and development.

1.1.2 Advisory Opinions

In keeping with its mandate to monitor the implementation of the Constitution, CIC issued two Public Advisory Opinions: one on the IEBC Delimitation of Boundaries Report and the other on the Announcement of the Election Date.

With respect to the election date pronounced by the IEBC, CIC was quite categorical that Sections 14, 16, 17, and 19 of The Elections Act empower the IEBC to publish in the Gazette and in the electronic and print media of national circulation a notice on the holding of the general elections at least sixty days before the holding of those elections. Further, the CIC asserted that IEBC's actions are buttressed by the ruling of the Constitutional Division of The High Court. In issuing the judgment, the Court affirmed that the IEBC is the body constitutionally mandated to pronounce the date of the first General Elections under the Constitution. Therefore CIC is fully persuaded that in deciding the date of the first General Elections under the new Constitution, IEBC acted entirely within the parameters of the Constitution.

In the matter of the Boundaries Report, CIC expressed concerned over the apparent interference with the Boundaries Report as it was bound to amount to interference with the independence

of IEBC, an independent constitutional commission. CIC stood firmly opposed to attempts by Parliament to impose its preferences on the IEBC as this would amount to influencing the IEBC, in violation of the letter and spirit of the Constitution. **(See the Advisory on the Electoral Boundaries Report and Advisory on Election Date in Annex II and III respectively).**

1.1.3 Public Interest Litigation

In line with its mandate, CIC monitors implementation of the Constitution and endeavours to promote and protect constitutionalism, rule of law and the sovereignty of the people by appropriate legal measures. To this end, CIC has been involved in various cases involving the implementation of the Constitution. The cases are at different stages of determination as shown below

a. Constitutional Petition No. 65 of 2011

Case for Determination of the Date for the Next General Elections

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

The petitioners moved to Court to have a number of perceived grey areas around the date for the first General Elections under the new Constitution interpreted and determined by the Court. The Court heard the matter, considered the issues in contention and held that:

- i. The High Court had jurisdiction to determine the case;
- ii. The first elections under the Constitution may be lawfully held:
 - a. In the year 2012, within sixty days from the date on which the National Coalition is dissolved by written agreement between the President and Prime Minister in accordance with section 6(b) of the National Accord and Reconciliation Act, 2008; or
 - b. Upon the expiry of the term of the 10th Parliament on the 5th Anniversary of the day it first sat which is designated by Legal Notice No. 1 of 2008 as 15th January 2008. The term therefore expires on 14th January 2013. The elections shall be held within sixty days of 15th January 2013.
- iii. The President has no power under the Constitution to dissolve Parliament.
- iv. The body mandated under the Constitution to fix the date for the election is the IEBC.
- v. An amendment to the Constitution affecting the term of the President cannot be effected into law without a referendum.
- vi. By virtue of Section 6 and 7 of the Sixth Schedule, the terms and conditions of service of Members of Parliament are saved until the end of the current term of the National Assembly or upon dissolution of the National Coalition.

A civil society organisation, the Centre for Rights, Education and Awareness for Women has appealed against the High Court decision. **(See the Press summary of the judgement on the case on the date of the general elections in Annex IV)** Pending a ruling on the matter by the Court of Appeal, the High Court decision is valid and the reference point for determination of the election date. The IEBC acting on the basis of the Court ruling set 4th March, 2013 as the date for the first general elections under the new Constitutional dispensation.

b. Constitutional Petition No. 102 of 2011

Case for the appointment of at least one third women to the Supreme Court

[In the matter of the Recommendation by the Judicial Service Commission of Persons for Appointment to the Offices of Judges of the Supreme Court under the Constitution of the Republic of Kenya (Between Federation of Women Lawyers of Kenya (FIDA-K) & others and the Attorney-General and others)].

The Federation of Women Lawyers-Kenya (FIDA) and other petitioners filed in the High Court a petition to seek the correct interpretation, full tenor, meaning and effect of Article 27 of the Constitution and the proper approach to the interpretation of the Constitution. It was contended that with two women and five men in the Supreme Court, the percentage composition of Court was 28.57% female and 71.43% male, which was in breach of Article 27, on the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender. Judgment was issued in the case upholding the JSC recommendation. FIDA-Kenya filed an appeal against the Court decision. A decision is pending.

c. Constitutional Petition No. 145 of 2011

Case to Clarify the Procedure for the Preparation of Legislation to Implement the Constitution.

[In the matter of Article 2(1), (2) and (4) of the Constitution and in the matter of Articles 22, 23, 27(1) and (2), 47(1) and 258 of the Constitution and in the matter of Article 261(4) of the Constitution and in the matter of Sections 2(3)(b), 14(1) and (2), and 15 of the Sixth Schedule to the Constitution (between the Commission for the Implementation of the Constitution and the Attorney-General and others)].

The CIC filed a Constitutional reference objecting to the Attorney-General's unconstitutional conduct in the preparation of two Bills, namely the Contingencies Fund and County Emergency Funds Bill, 2011 and the National Government Loans Guarantee Bill 2011. The Commission sought to restrain the Speaker of the National Assembly (named as the 2nd Respondent from dealing with the two Bills in any way connected with debate on and enactment of the Bills). The court issued interim orders restraining the Attorney General and others from taking further steps in connection with the enactment of the two Bills until the hearing of the application. However the Court order was ignored and the two Bills passed by Parliament and assented to.

The matter is still in Court.

d. Constitution Petition No. 137 of 2011

Case to Determine Whether MPs Should Pay Tax

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

Rev. Timothy Njoya and others sought interpretation of the following provisions of the Constitution:

- Whether under the Constitution all State Officers including Members of Parliament are under an obligation to pay tax as per Article 210 as read with 201 and 230 of the Constitution;
- Whether the Executive has the powers or authority to exempt any 'State Officer' from payment of tax;
- Whether the current Constitution or the transitional clauses saves or exempts the Members of Parliament from payment of tax;
- Whether it would be illegal and unconstitutional for the Government to settle the tax burden of Members of Parliament using public resources or tax payer's money; and,
- Whether it would be illegal and unconstitutional for Members of Parliament to derail or frustrate the debate or passage of bills for full implementation of the Constitution on account of the demand by the Kenya Revenue Authority to pay taxes.

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

1.1.4 Institutional Development Activities

One of CIC's strategic outcome, result area one is to have a strong and well functioning secretariat. CIC has been working to strengthen its Secretariat. To this end it has undertaken a number of measures to continuously strengthen the Secretariat.

A significant step for CIC in this quarter was the relocation to new offices. CIC moved to its more spacious offices at Parklands Plaza. The new physical Address for CIC is:

**Parklands Plaza,
Chiromo Lane, off Muthithi Road
Westlands, NAIROBI**

In human resource development CIC has recruited a number of senior staff. CIC has also advertised for senior management and middle level management positions. The recruitment of staff will significantly improve its technical capacity.

CIC embraces the policy of continuous professional development and took six of its Research Officers for a five days course on Legislative Drafting at the Kenya School of Law from 26th – 30th March, 2012. Plans are also underway to train all staff in procurement processes in the next quarter to ensure familiarization with the Public Procurement and Disposal laws and regulations.

On the financial front, to facilitate better operations the CIC has sought assistance from the Treasury for a budget framework that will ease CIC operations.

1.1.5 Audit of Laws, Policies, administrative procedures and progress of implementation.

The CIC recognizes the important roles that state actors and non-state actors play in accelerating implementation of the Constitution. The contribution of Government Ministries in the

implementation process, service delivery, advocacy democracy and good governance is widely acknowledged. Hence, a comprehensive, collaborative and coordinated approach is essential to an efficient and effective constitution implementation. Concerted efforts by all the implementers are required to avoid duplication and inefficiency. CIC, with support from the Office of the Head of Civil Service finalized and released the Process Circular for Ministries and State Organs to State Implementers in early 2011.

The Circular aims to provide guidance to state implementers on their role in the implementation process. Further, the Commission continues to hold interactive sessions at ministries, state corporations and constitutional commissions to set out the modalities of working together to implement the Constitution and apprise the people of Kenya through quarterly reports.

The Circular requires state organs to submit quarterly reports at least three weeks before the end of each quarter. CIC developed a reporting template to facilitate a well coordinated reporting structure. CIC sends out reminder letters to all ministries, state corporations and agencies to submit quarterly reports. The quarterly reports are analyzed comprehensively by each Thematic Area in the CIC and identified for follow up and further engagement with the relevant state organs. However, the receipt of reports by ministries has been intermittent.

CIC commends ministries and state organs that have been steadfast in their submission of reports. It is of great concern to CIC that some state organs do not submit their status reports within the prescribed time. This goes against the principles of accountability and transparency embodied in the letter and spirit of the Constitution; and national values and principles of governance as set out in Article 10 of the Constitution. Further Section 27 of the CIC Act is categorical that all state organs should cooperate with CIC in the discharge of its mandate. State organs that fail to submit their reports are in breach of this provision of the law. CIC may have to consider appropriate legal action pursuant to Section 27 of the Commission for the Implementation of the Constitution Act, Act No. 9 of 2010

State Organs that submitted the first quarterly reports on the progress on the implementation of the Constitution include:-

1. Parliamentary Service Commission;
2. Teachers Service Commission ;
3. Central Bank of Kenya;
4. Kenya Revenue Authority;
5. National Housing Corporation;
6. Ministry of Lands;
7. Office of the Vice-President;
8. Ministry of Cooperative Development and Marketing;
9. Ministry of Trade;
10. Ministry of Industrialization;
11. Ministry of Water and Irrigation;
12. Ministry of State for Public Service;
13. Ministry of Environment and Mineral Resources;
14. Ministry of State for Provincial and Internal Security(APS);
15. Ministry of Information and Communication;
16. Ministry of Medical Services;
17. Ministry of Public Health and Sanitation;

18. Ministry of Gender, Children and Social services;
19. Ministry of Housing
20. Ministry of Water and Irrigation;

In summary, the reports submitted highlight the following issues:

a. Familiarization with the Constitution

Most agencies have availed hard and soft copies of the Constitution to their staff. However, it has been reported that field officers are sometimes unable to access soft copies versions due to poor internet accessibility.

State agencies have also undertaken workshops, seminars and other interactive sessions to sensitize their staff on their role in the implementation of the Constitution. Inadequate funds are however hampering the efforts of some ministries and agencies.

b. Extent of Integration of Implementation of the Constitution in Performance Contracts

In this result area most agencies have set up internal working teams, committees and tasks forces to spearhead implementation. Reports also indicate that the agencies have incorporated Constitution implementation in Performance Contracts.

The Ministry of State for Public Service reports starting implementation and has deployed technical staff to all 47 counties in line with Chapter 11 on devolved government to assist in the supervision of projects across the country.

c. Identification and Audit of Laws, Policies and Administrative Procedures

All the Ministries set down the various laws, policies and administrative procedures that need to be audited and amended or enacted to ensure effective implementation of the Constitution. In particular the following laws were identified for enactment or revision-

- National Land Commission Bill, 2012
- Land Bill and the Land Registration Bill, 2012
- The Physical Planning Act, Cap 286
- The Survey Act, Cap 292
- The Cooperative Societies Act
- Restrictive Trade Practices Monopolies Price Control Act
- Landlord and Tenant Bill
- Exports Processing Zones Act
- Trade Descriptions Act
- Weights and Measures Act
- Trading in Prohibited Good Act
- Trademarks Act
- The Consumer Protection Bill,
- Trade Development Bill,
- The Kenya Institute of Business Training Bill,
- The Advertisements Bill,

- Micro and Small Enterprises Bill,
- The Freedom of Information Bill and the Data Protection Bill.

d. Status of Development of Change Management Strategy

While most ministries are still in the familiarization stage to fully understand their roles in the new dispensation, some agencies such as the Ministry of Cooperative Development and Marketing set up a Constitution Implementation Unit and developed a five year staffing plan as well as a detailed scan on the Ministry's capacity for implementation of the of Results Based Management (RBM).

1.2 Thematic Activities

Thematic teams of the CIC have, in the first quarter of 2012, undertaken key implementation activities towards realization of the mandate of the Commission. This section provides a summary of the thematic teams' activities during the quarter. For each thematic area the report highlights the achievements and includes updates on the status of Bills or enactment of laws, summaries of engagement with stakeholders, donor support and a synopsis of the planned activities for the second quarter of 2012. The thematic reports also highlight the challenges faced in the last quarter.

1.2.1 Activities under the Citizenship and Human Rights Thematic Area

The New Year was marked with renewed energy towards ensuring finalization of the review of the bills under the thematic area. Although CIC under this thematic area seeks to expedite the review of the bills, the primary concern however, is to ensure that the bills once enacted are not only compliant with the letter and spirit of the Constitution but are also sensitive to the needs of the beneficiaries. It is in this regard, that the CIC Human Rights Thematic Area was compelled in certain circumstances to reopen dialogue on key issues relating to certain bills.

The following bills were also processed within the quarter:

- Births and Deaths Registration Bill 2012
- Identification and Registration of Citizens Bill 2012
- Refugee Bill 2012
- Marriage Bill 2012
- Matrimonial Property Bill 2012
- Family Protection Bill 2012
- Freedom of Information Bill 2012
- Data Protection Bill 2012
- Consumer Protection Bill 2012

► Status of Development of Bills

a. Immigration Related Bills:

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

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

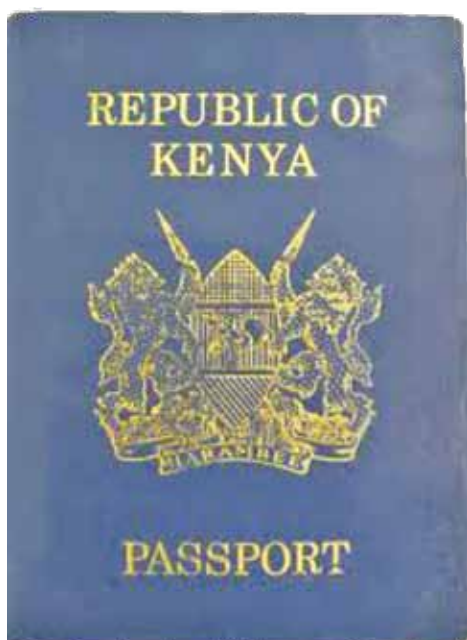
2012 and the Refugee Bill 2012 were developed and forwarded to CIC by the Ministry of State for Immigration and Registration of Persons together with the bills for the fifth schedule in July 2011. On receipt of the bills, CIC under the human rights thematic area embarked on an internal review of the bills.

In this regard, initial stakeholder consultations were organized in November 2011. The consultations, which were characterized by a stakeholder forum was also undertaken in recognition of the fact that although the Taskforce on Citizenship and Related Provisions had held stakeholder consultations in the development of the bills, the Taskforce did not hold consultations once the draft bill was prepared.

One of the key outputs of the stakeholder forum, was the formation of a technical committee comprising representatives from CIC, the Ministry of State for Immigration and Registration of Persons, the office of the Attorney General and the Kenya Law Reform Commission. The Committee was mandated to deliberate upon the provisions of each of the clauses in the three bills and build consensus, taking into account the stakeholder recommendations. The technical committee held a working retreat on 19th – 20th January 2012 and deliberated upon the provisions of the bills in accordance with its mandate. The three bills were circulated to stakeholders for their review.

During the review, the technical committee upheld the recommendation by stakeholders on the need for a comprehensive registration system. The committee consented to the formulation of a coordinated, accurate and credible system of registration for all persons. This would necessitate the cross-referencing, integration and harmonization of existent registration schemes and from a legislative aspect, amalgamation of the Identification and Registration of Persons Bill 2012; Births and Deaths Registration Bill 2012. As a way forward the committee recommended that CIC should engage with the Ministry of State for Immigration and Registration of Persons for policy direction on the same.

CIC held a meeting with the Ministry of Immigration on 21st March 2012, to deliberate on the consolidation of the two bills, which was agreed upon, and a team constituted to consolidate the two bills subject to the stakeholder consultations and the recommendations from the meeting.



The technical committee also deliberated the provision of the Refugee Bill 2012, and although the bill did not have controversial issues, CIC is keen on ensuring that the three bills are processed together. Among the key concerns raised by stakeholders on the Refugee Bill included the need for clarity on the principles of Non-refoulement of asylum seekers, refugees and their families as well as Revocation and Cancellation of refugee status. Following the initial forum, a few of the stakeholders from Non-Governmental Organizations that work with refugees have also held consultations on the bill and forwarded

comments on the Refugee Bill, which are being incorporated accordingly.

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

b. Family law bills:

1. Marriage Bill 2011;
2. Matrimonial Property Bill 2011;
3. Family Protection Bill 2011

The pressure to finalize and enact the family law bills continued to mount even as stakeholders, particularly the faith-based organizations, raised concerns over certain provisions in the bills that they considered contentious requiring further consultations. In order to address the range of concerns CIC resolved to hold additional forums in order to subject the bills to further stakeholder consultations. The CIC thematic team held a retreat for the technical committee on 5th – 6th January 2012. The technical committee which was constituted following the initial stakeholder consultations in October-November 2011 as highlighted in the last report comprised representatives from the Office of the Attorney General, Kenya Law Reform Commission, the Ministry of State for Immigration and Registration of Persons, Ministry of Gender, Children and Social Development, Hindu Council of Kenya, Supreme Council of Kenya Muslims, Catholic Secretariat, Law Society of Kenya, FIDA and CIC. The technical committee was mandated to review the bills in view of the recommendations and proposals arising from the stakeholder forum.

The revised bills were subjected to a further stakeholder review forum on 9th – 10th February 2012. The forum deliberated upon fundamental issues to which the technical committee had not reached a consensus. These included among others provisions relating to:

- **Polygamous marriages:** While the participants acknowledged the polygamous nature of some of the marriage systems, the push towards legislating for a system that will subsequently ensure implementation of monogamous marriages was evidenced by the arguments put forward including reference to the Protocol on the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol) Article 6 which provides that “monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected.”
- **Payment of Dowry:** The debate relating to payment of dowry was based on whether the law should provide for dowry payment as a compulsory measure. This was in light of the fact that article 45 of the Constitution recognizes marriages concluded under traditional system of which payment of dowry is one such recognized customary practice.
- **Presumption of Marriage:** The participants debated upon the presumption of marriage provision arguing that recognition of cohabitation as a system of marriage where two parties have cohabited for two years and acquired the reputation of being husband and wife, as being contrary to religious teachings of marriage as a sacred covenant that can only be accorded by taking the vows of marriage.
- **Divorce:** Among the key arguments put across with regards to the issue of divorce was the fact that the bill provided for a simplified court procedure for divorce and the grounds for divorce have been increased, which would encourage and increase the

number of divorce applications. Participants also acknowledged the importance of the conciliatory body in assisting to settle marital disputes. However, they debated whether the parties to the marriage should be compelled to go to such a conciliatory body, or whether the same should be optional where parties to a marriage are in disagreement.

- Protection of Family “members” against domestic violence: The participants also debated upon the scope of persons or members of the family that should be covered in the protection against domestic violence.

The family law Bills have since been revised and circulated to stakeholders to review and ensure that their concerns have been incorporated. As highlighted above, CIC has scheduled county visits to be undertaken in the next quarter prior to the finalization of review of the Bills, following which an internal plenary and roundtable will be held for final review. The county visits, will seek to address and ensure consensus on the concerns raised by the different interest groups.

c. Ratification of Treaties Bill

As enumerated in the report of the last quarter, the Ratification of Treaties Bill is currently awaiting the second reading before parliament. CIC will monitor parliamentary deliberations on the Bill once the same is tabled for Parliamentary debate.

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

CIC having received the Freedom of Information Bill and the Data Protection Bill from the Ministry of Information and Communication held an internal review of the bills before organizing technical forums for stakeholders to review the bills. The bills were subsequently revised in line with the stakeholder recommendations and a technical committee retreat was held on 5th – 6th December 2011 to incorporate all the comments. The revised bills were circulated for stakeholder review and a final stakeholder forum to deliberate on the bills held on 23rd – 24th January 2012.

The forum reviewed the Freedom of Information Bill 2012. On the Data Protection Bill 2012, stakeholders felt they required more time to fully understand the complexities relating to the Bill. In this regard it was agreed that an explanatory memo would be developed and circulated to the stakeholders, providing clarity on principles of data protection, thus assisting in their review of the Data Protection Bill 2012. The Ministry of Information and Communication developed the explanatory memo which provided the following:

- The Data Protection Bill seeks to elaborate on Article 31 of the Constitution of Kenya and especially Article 31(c) which provides that “every person has the right to privacy, which includes the right not to have (c) information relating to their family or private affairs unnecessarily required or revealed”
- The Bill relates to privacy with regards to particular aspects of personal information/ data which relates to “any information about an individual whose identity is apparent, or can reasonably be ascertained from the information.” In this regard the Bill generally focuses on principles relating to collection, including limitations of and exemptions to the collection principle. It also addresses use, disclosure, storage and security of, as well as access to such personal information.
- The Bill also provides for the implementation mechanism and the institutional

framework that will oversee the data protection principles. That is, the Freedom of Information Commission established under the Freedom of Information Act. The Bill therefore provides for the powers of the Commission in relation to Data Protection.

The explanatory memorandum was circulated to stakeholders together with the Data Protection Bill and a stakeholder forum was held on 2nd March 2012, to review the Bill. The Bill is currently being redrafted subject to the stakeholder comments and is scheduled for an internal plenary for final review after which it will be forwarded to the Attorney General for onward transmission to Cabinet.

e. Consumer Protection Bill 2011

The Consumer Protection Bill is among the requisite laws for enactment in order to ensure constitutional implementation and CIC continues to engage with Honourable Jakoyo Midiwo, who is the mover of the Bill, and other stakeholders in its review. As part of its development process, CIC held an initial stakeholder forum in December, 2011 to review the issues arising from the Bill. The stakeholders raised key concerns relating to the Bill and it was clear that the Bill needed further consultation. The Bill was revised to incorporate the views of the stakeholders and a follow up stakeholder forum was held on 26th – 27th January 2012. The two day forum was characterized by extensive contributions and it was apparent from the input that the Bill still needed more work, including the cross-referencing with other related laws such as the Sale of Goods Act, Competition Act and Standards Act, among others.

To facilitate the review, a technical team with members drawn from Parliament, the Kenya Law Reform Commission, Office of the Attorney General, Ministry of Finance, Ministry of Trade, Ministry of Industrialization, Kenya Bureau of Standards (KEBS), Consumer Information Network, Commission on Administrative Justice, Competition Authority, KEPSA, KARA, CMA and the CIC was constituted and tasked to undertake sector-specific reviews to facilitate accurate linking of the Bill to other laws. The technical team held a retreat from 21st – 23rd March, 2012 to finalise the Bill. Among the key proposals included:

- The Bill should provide for general principles which will guide the different sectors in their development of regulations to govern the respective sectors.
- CIC would liaise with Hon. Midiwo in order to ensure that the Bill is introduced as a Government Bill and not a Private Member's Bill. This is because the Consumer Protection Bill is a money bill in line with Article 114 of the Constitution of Kenya 2010.
- Permanent Secretaries within the different sectors in the government should be brought together to develop a plan of action towards implementation of Article 46 of the Constitution and the Consumer Protection Bill.

f. Development of Legislation on Public Participation

Public participation is one of the key Constitutional values and principles which CIC seeks to ensure is entrenched in law and respected by state and non-state actors. Effective participation by citizens in matters affecting them is the best and ultimate mechanism for ensuring the implementation of letter and spirit of the Kenyan constitution. As highlighted in the previous report, CIC has been working with Civil Society Organizations in the development of the policy and Bill on public participation. One of the key concerns is the need to ensure that the development process for the Bill is logical, beginning with research on the concept of public

participation, discussion of the different theories and experiences, development of a policy statement and eventually a Bill on public participation.

In order to give effect to the principle, both the CIC and the Civil Society Organization agree on the need for the Bill to be developed under the leadership and policy guidance of a Government ministry. CIC and the Civil Society Organizations are currently in consultation with the Ministry of Justice, National Cohesion and Constitutional Affairs on the same and it is in this regard that a stakeholder forum scheduled for February 2012 was rescheduled to allow for the consultations.

► Other Thematic Activities for the First Quarter of 2012

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

As highlighted in the last report, CIC held meetings with different government ministries and the Prime Minister on the establishment of a mechanism that will facilitate coordinated and joint planning of different sectors to ensure optimum and prudent use of resources for better service delivery. With a focus on ensuring progressive realization of socio-economic rights, CIC had written to the Prime Minister and to the President seeking meetings with both offices. CIC anticipates as a key output of these meetings, the establishment of an inter-ministerial team that will set the standards for effective realization of socio-economic rights.

b. Development of a Guide for the Implementation of Human Rights.

CIC under the human rights thematic area continued to work on the development of the implementer's manual to guide implementers on how to integrate human rights in laws and policies, and to apply a rights approach in administrative procedures. Among the key activities undertaken within the reporting period was the development of a plan of action towards finalization of the manual.

A sample presentation of the implementers guide detailing the right to health and the right to privacy was developed to provide a general overview of what to expect from the final output. Development of the implementers guide will be done in consultation with other players including an editorial team drawn from different sectors that will review the implementation guide during its development. The first draft of the guide is expected to be finalized by May 2012.

► Engagement with Other Bodies

Participation at the United Nations Commission on Status of Women meeting

CIC participated in the 56th Session of the Commission on the Status of Women (CSW) which took place between 27th February and 9th March 2012 at the United Nations Headquarters in New York. CSW, which is the principal global policy-making body dedicated exclusively to gender equality and advancement of women, is mandated to prepare recommendations and reports to the UN Security Council on promoting women's rights in political, economic, civil, social and educational fields. CSW also makes recommendations to the Council on urgent problems requiring immediate attention related to women's rights.

The theme for the 56th session was "the empowerment of rural women and their role in poverty

and hunger eradication, development and current challenges.” Participating in the session was key to the mandate of CIC and particularly for the human rights thematic area which is charged with ensuring effective implementation of all the rights including those of historically marginalized groups.

► Donor support/Engagement of consultants.

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

► Challenges faced by the Citizenship and Bill of Rights Thematic Area

One of the key challenges faced by the thematic team was the failure by some of the stakeholders to fully engage with the review process. As a result, some of the concerns raised by different interest groups were not reflective of ongoing broader stakeholder deliberations on the bills. This was experienced particularly in regards to the review of the Family law bills as well as the Freedom of Information Bills.

► Addressing the Challenges - Recommendations

CIC recommends that a broader cross-section of stakeholders be more engaged in the development and review process of all the bills, at both the Ministries and the CIC levels. This can be done through participation at stakeholder forums as well as accessing CIC’s interactive website to obtain the different drafts of the bills, during the various stages of review.

► Activities planned for the second quarter.

The activities planned for the second quarter of 2012 include:

- Finalize review of the Freedom of Information Bill 2008 and the Data Protection Bill 2009;
- Finalize review of the Births and Deaths Registration 2011; Identification and Registration of Persons 2011; Refugee Bill 2011;
- Finalize review of the Marriage Bill 2011; Matrimonial Property Bill 2011; Family Protection Bill 2011;
- Develop the first draft of the Guide for Implementers;
- Continue activities towards the development of standards on socio-economic rights;
- Finalize review of the Consumer Protection Bill; and
- Continue activities relating to the development of the Bill on Public Participation.

1.2.2 Activities under the Land and Environment Thematic Area

The Land and Environment thematic area mandate is derived from Chapter Five of the Constitution, which provides the framework and principles for managing Lands and Environment. The thematic area involves monitoring, facilitating, coordinating and overseeing the implementation of Chapter Five. The thematic area covers activities related to the following Government ministries: the Ministry of Lands, the Ministry of Environment and Mineral Resources, the Ministry of Forestry and Wildlife, the Ministry of Water and Irrigation, Ministry of Livestock

Development, the Ministry of Northern and Arid Lands, the Ministry of Regional Development, and the Ministry of Tourism.

► Engagements on Land Legislation

In the period under review, the land and environment thematic team embarked on various activities towards ensuring sound legislation related to land through broad public participation and stakeholder input. Some of these activities include:

a. Internal Review of the Land Bill 2012, and the Land Registration Bill 2012, and the National Land Commission Bill.

The thematic team led several activities aimed at meticulously reviewing the Land Bills to ensure compliance with the letter and spirit of the Constitution. These included consultative engagements with civil society, county representatives, and relevant state agencies involved in land matters. The consultations revealed several contentious issues that required further deliberations to ensure Article 68 and Article 67 of the Constitution are robustly implemented as envisaged in Chapter Five.

b. County Visits

CIC participated in visits to various counties to gather views on the proposed Land Bill 2012 and the Land Registration Bill 2012. This process of public engagement is in line with the national values and principles of governance set out in Article 10 of the Constitution. The first county consultative forums took place in over eight counties between 15th and 19th January 2012.

Specifically, the forums were aimed at:

- Discussing how land should be allocated to avoid irregular compulsory acquisition and subsequent allocation to third parties.
- Considering the recommended minimum and maximum acreages of land to be held by any person or groups of persons.
- Discussing whether any dealings with property rights under a lease held in trust for others should be a controlled transaction.

The views generated from participants were collated, analysed and used to enrich the Land Bill and Land Registration Bill.

► Engagement with Stakeholders

The CIC participated in a parliamentary retreat on the Land Bills in Mombasa. The aim of the retreat was to agree on a set of principles to guide the Land Bills and ensure timely implementation. CIC also held a retreat on January 25th- 28th to carefully examine the Land Bill and the Land Registration Bill and resolve any outstanding issues. Additionally, CIC participated in a technical meeting with members of the Parliamentary Committee on Land and Natural Resources and members of Civil Society on the 31st to 2nd of February, 2012 to address the contentious issues in the Bills and finalize the Bills.



The CIC Chairperson addressing participants at a stakeholder forum on Land Bills in Narok County

The Commission held a Roundtable meeting with the KLRC, the Officer of the Attorney General and Ministry of Lands on 3rd of February, 2012 to sign off on the proposed Bills before submitting them to the Attorney General for publication and transmission to Parliament. On February 24th, Parliament, cognizant of the need to thoroughly analyze the bills and have all parties heard voted to extend the February 27 deadline set in the Constitution legislation timeline by 60 days to pass the key Land Bills. Additionally, CIC has been working with Kenya Law Reform Commission and Law Society of Kenya to examine and address issues for the attention of the Parliamentary Committee on Land and Natural Resources.

► Consultants engaged to finalise Land Bills

The CIC in fulfilling its mandate engaged two consultants to undertake a critical analysis of the Land Bill, the Land Registration Bill and the National Land Commission Bill and assess the technical soundness of the Bills. The consultants examined the constitutional provisions related to land to ensure they were fully reflected in the Bills. The consultants were supported by IDLO and the WWF .

► Challenges

CIC has noted a worrying trend emerging in the Executive arm of Government that has the effect of technically defeating the deadlines set in the Constitution for enactment of laws. .

The Ministry of Lands illustrated this when they submitted the three Bills related to lands within the stipulated timeframe, but the Ministry continued working on the draft bills and continually replaced each version with a subsequent revised version to the extent that it became almost impossible to determine the version that represented the final position of the Ministry. It also became impossible to enact the land legislations within the stipulated timeframe.

Continued reviewing of content may enrich a Bill and although such improvement is welcome, once the Attorney General has forwarded the bill to the CIC, any subsequent proposed changes incorporated into the Bill should be done in collaboration with the CIC technical team. This will minimize unnecessary delays and confusions in preparation of Bills.

► Proposed activities for the second quarter

- Conduct a stakeholder's forum on the Community Land Bill to assess the extent it conforms to the letter and spirit of the constitution.
- Conduct County visits to ensure broad and robust public participation on the Community Land Bill.
- Hold consultative meetings with the Ministry of Lands on the Land Policy to ensure conformity with the Constitution.
- Harmonize the existing policies, legislations, and administrative procedures in the environment and natural resources sector.

1.2.3 Activities under the Public Service and Leadership Thematic Area

The Public Service and Leadership thematic area continues to oversee matters relating to Chapters Six and Thirteen of the Constitution of Kenya, 2010. Chapter Six of the Constitution focuses on Leadership and Integrity which is applicable to all State officers and with necessary modifications to public officers. In this Chapter, the principles of leadership and integrity are spelt out together with expectations of State Officers in the conduct of their affairs. These principles should guide conduct in electing or appointing State Officers. Chapter Thirteen provides the guiding values and principles in the Public Service. It is also in this Chapter that the Public Service Commission is established and given its powers and functions. Staffing of the county governments and protection of public officers are also spelt out in this Chapter. Both chapters ultimately detail the overall expectations of State officers who work in State offices and public officers at both county and national levels of government.

Development of Legislation/Policies/Administrative Procedures

a. Public Service Commission Bill, 2012

During this quarter, a roundtable meeting was held on 26th January 2012, between the Ministry of State for Public Service, the Public Service Commission, the Kenya Law Reform Commission, Attorney General's office and CIC to finalize the review of the Public Service Commission Bill, 2012. Following the roundtable meeting, the Bill was forwarded to the Attorney General office for final drafting and onward transmission to the Cabinet and publication.

b. Leadership and Integrity Bill, 2012

The Leadership and Integrity Bill addresses the leadership and integrity values of public service which should be enacted within two years. This Bill will hold State Officers accountable in the discharge of their duties. The Ministry of Justice, National Cohesion and Constitutional Affairs organized a two day workshop at the Kenya School of Monetary Studies on 5th and 6th February, 2012 in which CIC participated to review the Bill. The Public Service thematic area team has been reviewing the draft Bill as posted on the Ministry's website as CIC waits receipt of the final Bill from the Ministry. Once the Bill is received, the thematic team will secure dates for stakeholders' engagement and public participation to ensure that the Bill adheres to the letter and spirit of the Constitution.

c. Public Service Management Bill, 2012

The Public Service Management Bill deals with all matters relating to public officers including values and principles. This Bill was identified as a priority Bill to be enacted by August 26, 2012 because of the integral role that the Public Service plays in the formation of County governments. The line Ministry expects to develop the Public Service Management Bill within the given timeframe. CIC has been in correspondence with the Ministry of State for Public Service regarding the development of the Bill. The Ministry reports that it has formed an inter-ministerial committee comprised of members from different institutions and ministries to develop the Bill. CIC will continue to consult with the Ministry of State for Public Service and the relevant stakeholders in the development of the Public Service Management Bill.

► Donor Support/Engagement of Consultants

The thematic team is in the process of securing the services of a consultant to assist in the review of the Leadership and Integrity Bill, 2012.

► Challenges

The thematic area encountered delay in submission of Bills by Government Ministries. Although CIC and key implementing partners developed a schedule of timelines to review legislation in order to effectively engage relevant stakeholders and the public, CIC is yet to receive the draft Leadership and Integrity Bill.

► Addressing the Challenges—Recommendations

The line ministries should observe agreed timelines to ensure timely and adequate reviewing of Bills. This will avoid last minute rushes and allow exhaustive and extensive public consultation in good time.

There is need for the appointment of the chairperson and members of the Ethics and anti-Corruption Commission as a matter of extreme priority. This will then allow for consultations in the review of the Anti-Corruption and Economic crimes Act and the Leadership and Integrity Bill, 2012.

► Activities planned for the second quarter

The thematic team has planned the following activities for the second quarter of 2012:

Public Service Management Bill

Once CIC receives the draft Bill from the Ministry of State for Public Service and given that the Public Service Management Bill should be enacted within two years, the thematic team will review the Public Service Management Bill in the next quarter with stakeholder participation in the review process, to ensure it adheres to the letter and spirit of the Constitution.

Leadership and Integrity Bill

CIC is currently awaiting the official copy of the Leadership and Integrity Bill from the Attorney General's office.

The thematic team plans to undertake consultative engagements with the relevant stakeholders and the public to review the Leadership and Integrity bill.

Guidelines on recruitment of Public Officers

The thematic area will include continued engaging with the Ministry of State for Public Service with regards to vetting of public officers. CIC developed guidelines on the recruitment process for all public officers at national and county levels of government. The draft guidelines have been forwarded to the relevant Commissions and the Ministry of State for Public Service for their review and input.

Policy, Legislation and Institutional Framework for the National Value System for Kenya
The Public Service and Leadership thematic area will also entail a review the Policy, Legislation and Institutional Framework for the National Value System for Kenya. The framework was developed by the Taskforce on National Cohesion under the Ministry of Justice, National Cohesion and Constitutional Affairs.

Anti-Corruption and Economic Crimes Act

The thematic team was scheduled to review the Anti-Corruption and Economic Crimes Act this quarter, however, this exercise was postponed pending appointment of the Ethics and Anti-Corruption Commission. This will allow comprehensive consultations between CIC, the Ministry of Justice, National Cohesion and Constitutional Affairs and the Ethics and Anti-Corruption Commission amongst other stakeholders in the review process.

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

The objective of the Representation of the People and the Legislature thematic team is to ensure that the policies, laws, systems, structures and administrative procedures reviewed or developed

and applied at all levels of elections, in every political party, in parliamentary affairs, and in other departments are consistent with the letter and the spirit of the Constitution.

Ultimately, the thematic area hopes to have all the people of Kenya, including leaders, respect the rule of law, upholding national values and living by the Constitution. This will enable the people of Kenya to live in the new dispensation of a united, peaceful and prosperous Nation.

► Status of Development of Bills/Policies/Administrative Procedures

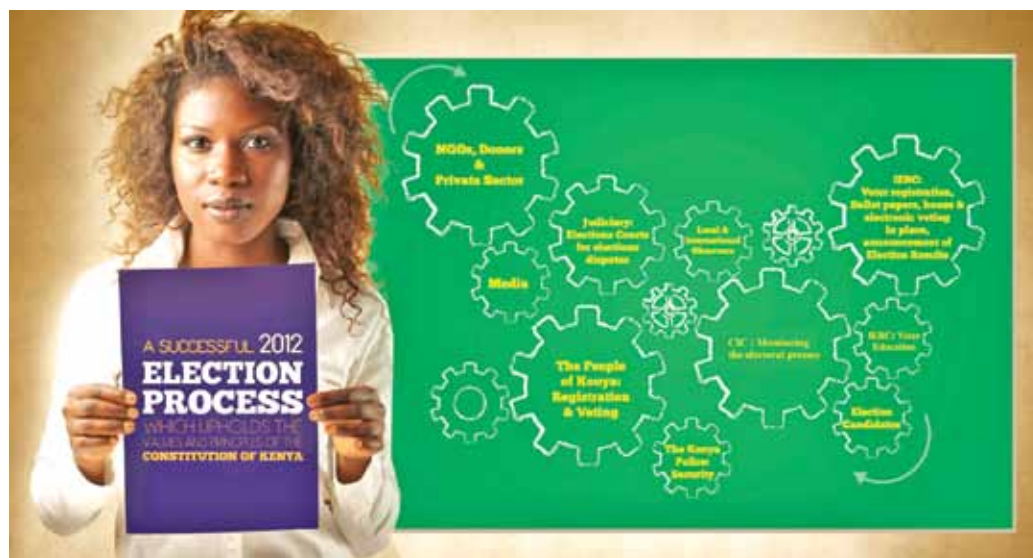
The Campaign Financing Bill, 2012

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

CIC began its internal review of the Bill with a committee meeting on the 19th of December 2011. On the 22nd of February 2012, CIC held a stakeholder forum with representatives from Political Parties. Also present at the forum was the office of the Registrar of Political Parties. The purpose of the forum was to obtain views and recommendations on the provisions of the Campaign Financing Bill, which would be considered by CIC in its further review of the Bill. The CIC Commissioners then held a plenary meeting on 1st of March 2012 to further deliberate on the provisions of the Bill. This was followed by a roundtable meeting on the 5th of March 2012 in which representatives from the Officer of the Attorney General, KLRC, the IEBC and the Office of the Registrar of Political Parties further discussed the Bill. CIC will hold a second roundtable meeting with implementing partners before formally releasing the final version of the Bill to the Attorney General for publication for subsequent introduction for debate in Parliament.

► Challenges

- Parliament's interference in the delimitation of ward boundaries, which is a power vested on the IEBC under Article 89 of the Constitution.
- Some Kenyans challenging IEBC's authority to set the first election date yet this is a power given by the ruling of the High Court.



► Activities for the second quarter

- Development of a long-term strategy for and the inception of the engagement of the Kenyan youth in the Constitution implementation process
- Education sector – the thematic team will initiate preparations for working with the Ministry of Education in order to implement the new Constitution.
- Review of bills to continue as per the schedule produced from the Naivasha meeting with CIOC in January 2012.
- The thematic team will continue to monitor, facilitate, coordinate and oversee the implementation of the electoral system and process, including the preparations for the realization of Article 105 of the Constitution.

1.2.5 Activities under the Executive and Security Thematic Area

The Executive and the National Security Organs play a critical role in the implementation of the Constitution. As state organs, they are bound by the Constitution and can only exercise their authority as prescribed in the Constitution in Article 2(1) and (2). The national values and principles of governance, such as upholding the rule of law, ensuring participation of the people, transparency and accountability, are binding on the Executive and national security organs when they apply the Constitution and make or implement public policy decisions. Before the first general elections under the new Constitution, the Executive must put in place measures to ensure it complies with Article 129(2) which requires the Executive to exercise authority in a manner that promotes service to, and the welfare and well-being of the people of Kenya.

It is an enormous task assigned to the Executive in so far as implementation of the Constitution is concerned. The generation, formulation and implementation of public policies, legislation and administrative measures required to implement the Constitution is, substantially, the responsibility of the Executive.

During the period under review, the thematic team requested the various offices under Chapter Nine and Fourteen of the Constitution to submit their implementation plans indicating the progress on implementation of the Constitution, which indicated a measure of progress in the implementation process.

► Status of Development of Bills/Policies/Administrative Procedures

Executive

a. The Office of the President

During the quarter, the thematic team made several attempts, unsuccessfully, to secure appointments with the Office of the President to discuss among other matters, the implementation of the Constitution generally and in particular, measures being put in place to align the Office of the President and the Cabinet Office to Chapter Nine of the Constitution. Further, neither the Office of the President nor the Cabinet Office submitted progress reports on the implementation of the Constitution. This raises concerns on actualization of the principles of transparency and accountability by the Office of the President and the Cabinet Office. The requirement for CIC to

make periodic progress reports to Parliament is a Constitutional requirement and the Constitution binds all state organs including the Executive in Chapter Nine.

b. Assumption of the Office of the President Bill

Pursuant to Article 141(4) of the Constitution, Parliament is obligated to enact the legislation providing for the procedure and ceremony for the swearing-in of a President after election. The Fifth Schedule to the Constitution requires that the legislation relating to the Assumption of Office of the President be formulated and enacted within two years after coming into force of the Constitution.

The thematic team received the Assumption of Office of the President Bill from the Kenya Law Reform Commission on the 23rd January, 2012. The Commission undertook review of the Bill and subsequently held a roundtable meeting on the Bill on 7th February, 2012. In attendance was the Office of the the Attorney-General, KLRC, and representatives from the Cabinet Office. The Assumption of Office of the President Bill was forwarded to the Attorney-General on 7th February, 2012 for finalization and onward transmission to the Cabinet. The Bill is yet to be published. The Bill should be prioritized and published without further delay, to allow for timely preparations and avert unnecessary confusion at the swearing in ceremony of the President after the elections.

c. The Cabinet

As with the Office of the President, several efforts to seek audience with the Cabinet Office were unsuccessful. CIC sought input from the Cabinet Office on measures put in place by the Cabinet to operationalise the values and principles of the Constitution, and transitional arrangements being put in place for purposes of devolution.

d. The Office of the Attorney General

The Office of the Attorney General is yet to submit a report to CIC indicating the progress made in the implementation of the Constitution.

e. Director of Public Prosecutions

The Office of the Director of Public Prosecutions requires major reforms to conform to the letter and spirit of the Constitution. The fact that the Constitution de-linked this important office from the Office of the Attorney-General is, in itself, a significant shift. As such, the Commission considers it critical to monitor facilitate and oversee implementation of Article 157 of the Constitution, and in particular, the functions and powers of the Director of Public Prosecutions. Importantly, the administrative measures put in place to guide the relationships with the Inspector-General of the National Police Service, the Office of the Attorney General, Parliament, the Independent Policing Oversight Authority (IPOA), Constitutional Commissions, Ethics and Anti-Corruption Commission (EACC), National Police Service Commission (NPSC), Kenya National Human Rights Commission (KNHRC), amongst others are central to the DPP's implementation process. Despite frequent efforts, CIC has not been successful in securing an appointment with the Office of the DPP nor in receiving a status report on implementation of the Constitution.

Entrenching the values and principles under the Constitution in the exercise of powers and discharge of the functions of the DPP is an integral aspect of implementation of the Constitution and need to be prioritized.

Security

The national security organs are: National Intelligence Service, Kenya Defence Forces and National Police Service. The National Security Council, though not a security organ per se, is established by Part I of Chapter Fourteen, of the Constitution, which provides for security organs. The following ministries are directly responsible for implementation of Chapter Fourteen:

- Office of the President.
- Ministry of State for Provincial Administration and Internal Security.
- Ministry of State for Defence.
- Ministry of Foreign Affairs.

a. The Kenya Defence Forces

CIC received the draft Kenya Defence Forces Bill, from KLRC. The Commission invited public views on the Bills through the Sunday Nation and Sunday Standard Newspapers, dated 11th March, 2012. CIC particularly sought views of members of the Kenya Defence Forces, including retired officers, military and human rights experts, on how best to reform the Defence Forces in line with the letter and spirit of the Constitution.

CIC has sought appointments with the Kenya Defence Forces regarding the implementation of Chapter Fourteen of the Constitution and in particular, the implementation of Articles 239(6), 240 and 241 of the Constitution. The Commission awaits a confirmation of an appointment from the Kenya Defence Forces.

The Ministry of State for Defence has neither submitted an implementation report nor has it confirmed an appointment with the CIC despite several attempts to secure one. .

b. National Intelligence Service

The Commission received National Intelligence Service Bill towards the end of the first quarter. Plans are underway to review the Bill and undertake stakeholder consultations. In the meantime, the Bill has been uploaded to the CIC website for public review and feedback. The Bill is due for enactment by August 2012.

c. National Police Service

In their reports, the Administration Police Service (APS) and Kenya Police Service(KPS) indicated that they are in the process of reviewing the existing administrative measures, including standing orders, to align them to the letter and spirit of the Constitution and the National Police Service Act, 2011. They are also in the process of operationalizing the National Police Service Act, 2011 as they await the appointment of the Inspector-General.

Both the KPS and APS identified a number of existing legislation that require to be amended to align to the letter and spirit of the Constitution and also to enable the National Police Service effectively administer and enforce the law. The Commission has since communicated the

proposed amendments to the relevant Ministries, the Attorney-General and the Director of Public Prosecution, among others for further necessary action.

The Commission also notes that most of the abuse and/or claw-back to the gains made by the Constitution are perpetrated through subsidiary legislation or administrative measures. These subsidiary laws and policies are subjected to little or no scrutiny. It is therefore important that State organs, departments and agencies identify unconstitutional provisions in existing Acts as well as subsidiary legislation, for purposes of amendment, review or reform to align them to the letter and spirit of the Constitution.

The KPS is in the process of establishing the Internal Affairs unit for purposes of accountability and in line with the National Police Service Act, 2011. According to the KPS report, a delegation comprising of both the representatives of Administration Police Service and National Police Service travelled to the United Kingdom on a benchmarking study tour to learn from the UK internal affairs model.

Upon review of the Standing Orders CIC has recommended to the National Police Service and the Ministry of Internal Security and Provincial Administration the review of standing orders and subsidiary legislation to align them to the Constitution, the National Police Service Commission Act and the National Police Service Act.

The thematic team will follow up with the Ministry and National Police Service in the second quarter of 2012 regarding the development of new administrative measures necessary to operationalise the National Police Service Act and implement the Articles of the Constitution that relate to the Service.

d. National Police Service Commission

There has been a delay in the recruitment and appointment of chairperson and members of the National Police Service Commission, which inevitably slows down the implementation of Article 246 of the Constitution. The names of nominees to the Commission are currently before Parliament for approval.

► Activities planned for the second quarter

The Executive and National Security thematic area will undertake the following activities for the second quarter:

- Audit existing administrative measures including, policies and guidelines on legality/constitutionality and identify issues for stakeholder deliberation.
- Work with the implementing partners in the formulation of the administrative measures, including regulations required under the National Police Service Act, National Police Service Commission Act, and Power of Mercy Act, amongst others.
- Conduct County visits to hold forums with county-based stakeholders on the Bills under Chapter Nine and Fourteen of the Constitution.
- Engage stakeholders in the next two quarters on the National Coroners Service Bill, Private Security Industry Regulation Bill, National Security Council Bill and National Intelligence Service Bill.
- Finalize the review of the National Security Council Bill and National Intelligence Bill

► Donor Support/Engagement with Consultants

During the first quarter, the Commission received support from IDLO in form of technical support to review the Kenya Defence Bill. The consultant undertook comparative analysis of the various existing laws on Defence Forces, related laws from other jurisdictions and international best practice. The reports shall be instrumental in the process of review of the Kenya Defence Forces Bill and related service orders and subsidiary legislation.

► Challenges and Impediments

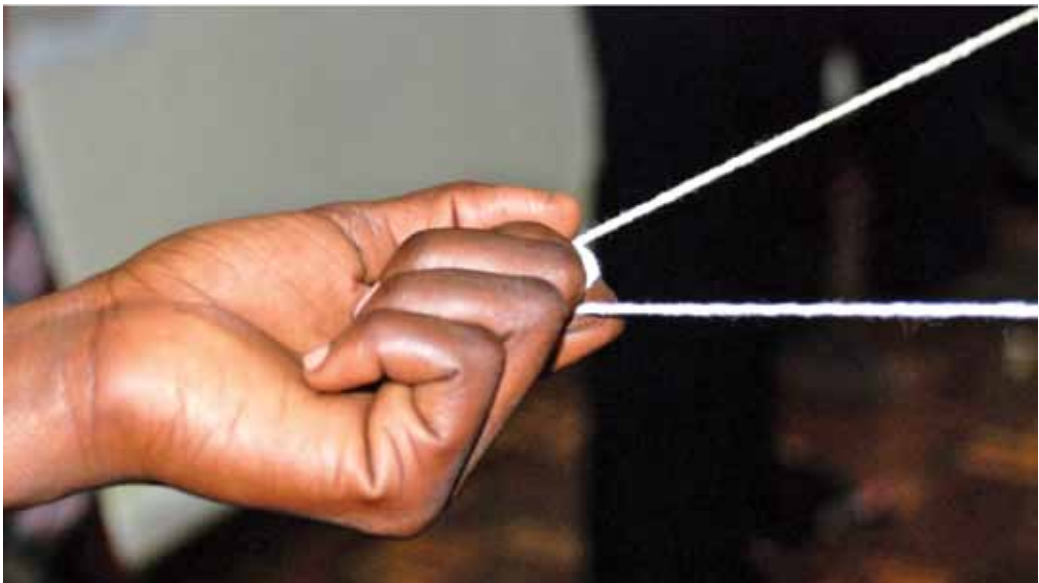
Lack of cooperation from the Office of the President and/or (Cabinet Office) is a major impediment. Implementation of Chapters Nine and Fourteen of the Constitution are considered essential ahead of the general elections. The thematic team considers these meetings very important and awaits confirmation of the appointment by the Office of the President (Cabinet Office).

The Office of the President, the Cabinet Office, the Ministry of State for Defence have not submitted their implementation plan or progress on implementation for the period under review. This hinders the performance of the Commission's functions with regard to monitoring the implementation of the Constitution on the part of the Office of the President (Cabinet Office). In the same vein, lack of cooperation by the Kenya Defence Forces impedes progress on Chapter Fourteen and the Kenya Defence Forces Bill.

Delay in the submission of some of the Bills required for implementation of Chapter Fourteen of the Constitution by the Attorney-General in consultation with the Ministry of State for Provincial Administration and Internal Security.

According to the Fifth Schedule to the Constitution, the National Security Council Bill and National Intelligence Service Bill ought to be enacted by 26 August, 2012.

1.2.6 Activities under the Judiciary and Constitutional Commissions Thematic Area



This thematic area is concerned with the constitutional establishment and/or institutional reform of the judiciary and constitutional commissions as respectively provided in Chapter Ten and Fifteen of the Constitution. Under this thematic area, CIC addresses enactment and/or amendment of legislation and policy, as well as development or review, and formulation of administrative procedures required to ensure effective and timely implementation of the Constitution. The various activities undertaken by the team during this quarter are as follows:

► **Development of legislation/policies/administrative procedures**

a. Teachers Service Commission Bill, 2012

The team reported last year that following the CIC plenary held on 23rd November 2011, the Teachers Service Commission Bill was submitted to KLRC to incorporate a number of amendments to the Bill that had been agreed upon. After the amendments, a roundtable meeting was held at CIC offices on 23rd January 2012 and thereafter, the Bill was submitted to the Office of the Attorney-General for onward processing towards enactment.

b. Kenya Law Reform Commission Bill, 2012

CIC received the draft Kenya Law Reform Commission Bill from KLRC on 26th January 2012. The Bill seeks to reconstitute the Commission as a body corporate and give KLRC independence in the carrying out of its functions. A stakeholder's consultative forum was held on 8th February 2012 to facilitate public participation in accordance with Article 10(2)(a) of the Constitution. On 8th March 2011, the Bill was brought before a consultative plenary for deliberation and was finalized on 6th March 2012 following roundtable discussions with the Office of the Attorney-General and KLRC at Jacarada Hotel, Nairobi.

► **Activities planned for second quarter**

The thematic team will work with:

- The Office of the Attorney General, KLRC and the Judiciary to review the Magistrates' Court Act, Appellate Jurisdiction Act, Criminal Procedure Act, Civil Procedure Act and Judicature Act and make recommendations for amendment and/or repeal;
- The Judiciary and/or JSC to review the Rules of the Court (the Chief Justice Rules, the Supreme Court Rules, the Court of Appeal Rules, the Industrial Court Rules, the Environment and Land Court Rules and any rules for subordinate courts); and
- Constitutional Commissions to ensure respect for the letter and spirit of the Constitution.

1.2.7 Activities under the Devolved Government Thematic Area

The Devolved Government Thematic Area has, during this quarter, entailed activities required to ensure the passage of the devolution bills which have a deadline of 18 months from promulgation of the Constitution. The thematic team finalized the review of the Bills on devolved government, namely, the County Government Bill 2012, the Transition to Devolved Government Act 2012, the Intergovernmental Relations Act 2012, and the Public Finance Management Bill 2012. In reviewing the Public Finance Management Bill 2012 the Devolution thematic team worked in collaboration with the Public Finance thematic team. This is because some aspects of the Public Finance Management Bill deal with financial management of County level governments.

► Status of development of legislation/policies/administrative procedures

Progress in the thematic area in the first quarter of 2012 was realized by the successful development and finalization of the above devolution legislations in time. There was great effort to process these Bills ahead the eighteen month deadline of 27th February 2012.



Commissioners Prof. Wanyande and Mr. Mwaisaka with public officers during a county visit in Homa Bay County

a. The County Government Bill, 2011

The County Government Bill, 2011 seeks to give effect to devolved governance provisions in the Constitution and specifically Chapter Eleven, by detailing county governments' powers, functions, and responsibilities to deliver services and for other connected purposes.

The Bill was finalized by CIC on 18th November 2011 and submitted to the Attorney General the following day, 19th November, 2011. There was a post Cabinet review of the Bill by CIC after which it was forwarded to the Attorney General's office on 13th January 2012. The Bill was tabled and passed in Parliament on 23rd February 2012 and was submitted for Presidential assent. However, the President declined to assent to the Bill because he objected to provisions in the bill relating to the handling of national security which amounted to restructuring the provincial administration system. Parliament had introduced a provision into the Bill creating a county equivalent of national security. The President in his refusal to assent to the Bill argued, in a memorandum to the Speaker of the National Assembly, that there could be no such equivalent structure at the county level since the security function was the responsibility of the national

government. The President also argued that the restructuring of the provincial administration in light of the changes made by the Constitution was the responsibility of the national government and has not yet been done. The President requested parliament to reconsider the Bill in light of his arguments on the two issues.

CIC reviewed the President's memorandum on the Bill and was in agreement with the President's decision. Furthermore, CIC still retains the responsibility to review the Bill after any amendments by parliament in response to the issues raised by the President. This will be done to ensure that the final bill is consistent with the letter and spirit of the Constitution

The Bill is still with Parliament and CIC is concerned that Parliament has taken too long to respond to the issues raised by the President. This raises anxiety over the state of devolution in the country.

b. The Transition to Devolved Government Act 2012

The Transition to Devolved Government Act 2012 sets out provisions to give effect to section 15 of the Sixth Schedule to Constitution. It provides a framework for transitional arrangements to devolved government and for connected purposes. CIC reviewed and submitted the Bill to the Attorney General on 16th January 2012. The Attorney General forwarded the Bill to the Cabinet thereafter. The post-Cabinet Bill was returned to CIC on 27th January 2012 for review. The review was carried out by CIC and thereafter an advisory opinion on the Bill was submitted to the Attorney General on 31st January 2012. The Bill was enacted into law on 27th February 2012. CIC will soon undertake a post-Parliament review of the Bill alongside other devolution laws to ensure that it does not contain inconsistencies or unconstitutional provisions.

The Transition to Devolved Government Act 2012 establishes the Transition Authority which will undertake the country's transition to devolved government as provided under section 15 of the Sixth Schedule of the Constitution. Further, as part of its functions under the Act, the Transition Authority shall carry out the phased activities specified in the Fourth Schedule of the Act.

The transition process is crucial in determining the success of the devolved government structure and CIC is monitoring the transition process closely. The Commission will remain focused and steadfast in ensuring that legislation that gives effect to devolution remains consistent with the letter and spirit of the Constitution thus establishing and guaranteeing devolution even in uncertain and tumultuous times. CIC is however concerned that the Transition Authority is yet to be established and urges that this be accorded the priority it deserves.

c. The Intergovernmental Relations Act 2012.

The Intergovernmental Relations Act 2011 establishes a framework for consultation and co-operation between National and County governments and between county governments. It establishes mechanisms for dispute resolution between and within the two levels of government.

CIC reviewed and submitted the Bill to the Attorney General on 16th January 2012. It was forward to the Cabinet and returned to the CIC on 27th January for a post- Cabinet review. The review was carried out by CIC and an advisory opinion on the Bill's conformity with the

Constitution was submitted back to the Attorney General on 31st January. CIC monitored the Bill after it was tabled before Parliament and the Commission is now awaiting to review the finalised Act for any inconsistencies or unconstitutional provisions.

d. The Public Finance Management Bill 2012.

The Public Finance Management (PFM) Bill 2012 deals with effective and prudent management of public finance at national and county government levels. The object of this Bill is to ensure that public finances are managed at both the national level and the county level in accordance with the principles set out in Chapter Twelve of the Constitution and that public officers responsible for managing those finances are accountable to the public through Parliament and County Assemblies.

The PFM Bill was reviewed and submitted to the Attorney General on 7th February 2012. It was forwarded to the Cabinet on 15th February 2012 and returned to CIC on 17th February 2012 for a post cabinet review. The review was carried out by CIC and an advisory opinion submitted to the Attorney General on the same day, that is, 17th February. The Bill was published on 23rd February for tabling in Parliament.

CIC is monitoring developments on the Bill in Parliament. The Commission is concerned that Parliament is taking too long to enact this Bill, given its importance in effecting devolution as envisaged in the Constitution. CIC urges that the Bill be enacted as soon as possible.

► Stakeholder engagements

a. Consultative meetings with government agencies

CIC attended a number of consultative meetings on devolution. On 5th March 2012, the thematic team met with the Parliamentary Committee on Local Authority at the invitation of the Committee. The Committee sought CIC's input into the report the Committee was preparing to table in parliament on the County Government Bill 2011. The report would be used to guide debate in Parliament on the amendments that the president recommended in his memorandum on the Bill.

The thematic area attended a meeting with The Institute for Social Accountability (TISA) on matters relating to the coordination of civic education on devolution. The meeting held on 12th March 2012 initiated broad stakeholder dialogues on county implementation activities.

b. Media talk shows

The thematic area teams participated in a number of live television talk shows as part of a panel to articulate issues on devolution. This activity sought to give members of the public a better understanding of the constitutional issues relating to devolved government including the challenges expected in implementation.

► Challenges in the thematic area

There is a legal gap in the devolution framework at the national level. All the bills developed so far on devolution have addressed the county level government and the relations between counties and the national level. However, no bill expressly provides for the national level government. CIC has raised this issue with the Executive and recommended the development of a national government bill to address the gap. CIC awaits a response from the Executive on this matter.

Another challenge is the misunderstanding of what devolved government involves. There is a tendency by many people and public institutions to equate devolution with county governments only. This perhaps explains why the national government bill has not been prepared as part of the devolution bills.

There is also a general misunderstanding of Chapter Eleven. In particular many institutions do not understand that the two levels of government, namely national and county governments, will only come into place after the first elections under this Constitution.

► Proposed activities for the second quarter of 2012

- Audit all legislation passed with a view to establishing any inconsistencies/contradictions in the individual Acts, with other Acts and with the letter and spirit of the Constitution, as well as any additional legislation required to effect devolution.
- Audit civic education materials developed by civic education providers Including CSOs, NGOs and the Ministry of Justice National Cohesion and Constitutional Affairs.
- Hold consultative meetings with ministries on their transition to devolved government work plans.
- Develop civic education materials on devolved government.
- Monitor transition activities.
- Work with ministries to review administrative procedure necessary for effecting devolution.
- Monitor violations of the Constitution with regard to devolution.
- Sensitize counties through workshops on matters relating to devolution.

1.2.8 Activities under the Public Finance Thematic Area

The Public Finance Thematic Area is responsible for guiding and coordinating all activities aimed at implementing Chapter Twelve of the Constitution. Since the commencement of the activities of CIC in January 2011, the Public Finance thematic team has undertaken numerous steps to facilitate, monitor and coordinate all stakeholders involved in the generation and development of a Constitution-compliant legal and institutional framework for public finance management.

The Ministry of Finance has played a leading role in the formulation of the public financial management legislation and as has previously been pointed out, the Treasury released a draft Bill in November 2011. The Bill as conceptualized sought to consolidate issues relating to public finance, county public finance and intergovernmental fiscal relations.

► Status of development of legislation/policies/administrative procedures

a. Public Finance Management Bill

In furtherance of discussions on the PFM Bill, the CIC held a retreat in January 2012 with the aim of consolidating and affirming the issues that had been proposed during an earlier retreat in Mombasa. It was also important to confirm the constitutional ramifications of the proposals made in Mombasa and ensure their compliance with both Chapters Eleven and Twelve of the Constitution.

The numerous discussions and stakeholder consultations set the stage for the conduct of the roundtable meeting on this bill. The roundtable was conducted on the 31st January 2012 and brought together officers from the Ministry of Local Government, Ministry of Finance, KLRC, Parliamentary Budget Office, Office of the Prime Minister and the Office of the Auditor General.

During the meeting, the Treasury and the Ministry of Local Government presented common positions agreed upon between them which streamlined the discussions and avoided stalemates. From the outset, the core concern that informed the deliberations at the roundtable was the need to create an effective public finance architecture which recognizes devolution as a fundamental part of public finance management.

Based on the need to sign off the views that were raised during the deliberations at the roundtable, it was deemed useful to have a technical committee review the issues and factor them into the Bill. In attendance were select number of officials from the Treasury, Ministry of Local Government, the Officer of the Attorney General, Parliamentary Budget Office and the KLRC. Significantly, the technical committee went through the entire Bill and strove to ensure that the views expressed and factored into the Bill appreciated the spirit of devolution and the revamped system of public finance as enunciated under Chapter Twelve.

Following the stakeholder engagements and the roundtable technical meeting, the PFM Bill was submitted to the Office of the Attorney General on 7th February 2012 for editing.

The Cabinet met and discussed the Bill on the 17th February, 2012 and sent it back to CIC to confirm the Cabinet's recommendations. Upon CIC's approval of the contents of the Bill, the same was sent to the AG for publication in the Kenya Gazette and onward transmission to Parliament for debate.

It is noteworthy that in terms of priority and the need to provide for an all inclusive infrastructure for managing public finance at national and county levels, the Bill ought to have been passed by the 26th of February 2012. Unfortunately, the Bill has not been enacted before the deadline and a formal extension of time was not sought before the expiry of the deadline. This may bring the legality of the law enacted outside the timeline into question.

The PFM law has a two year timeline, albeit with county government financial management provisions have an 18-month timeline. As such, it was agreed that the Bill be fast tracked for possible enactment by the 27th February, 2012 deadline. The Bill is still under discussion in Parliament.

► Activities planned for the second quarter

During the first quarter, a lot of the thematic areas efforts went into ensuring that the PFM bill was finalized. The nature of views, discordance in the views of the Executive, the interests of Kenyans, and the need to appreciate both Chapter Eleven and Twelve of the Constitution called for the dedication of the thematic area in ensuring that need expedience does not overshadow Constitutional soundness.

As such, other activities that had been slotted for the first quarter will be moved move to the next quarter. They include:

- Review of the Controller of Budget Bill – the Controller of Budget submitted their final views on the Bill in the first quarter thus paving the way for the conduct of the requisite roundtable meeting on the Bill.
- Review of the Public Audit Bill –the Auditor General and the Treasury are in the process of reviewing the Public Audit Act and CIC will be involved in the second quarter once a draft Bill is ready for deliberations.
- Review of the Public Procurement and Disposal Act – the Public Procurement and Oversight Authority is consolidating views to ensure conformity with Constitutional provisions on public procurement. CIC is engaged in review of the draft Bill which will be concluded in the next quarter.
- Review of the Central Bank Act and the Kenya Revenue Authority Act – both institutions are reviewing the existing Acts and will share with the CIC their consolidated views to enable review of the laws.

2 Challenges, Impediments in The Implementation of the Constitution

A range of challenges continue to affect the implementation process. Some of the key challenges faced by the commission in the first quarter of 2012 are summarised in this section.

2.1 Irregular amendment of Bills by the Executive and Legislature

Some Bills which had been approved by the CIC and the implementing partners (the office of the Attorney General, the KLRC and the line Ministry) at final roundtable meeting and forwarded for publication, were amended without reference to CIC. CIC has resorted to issuing Advisories to the Office of the Attorney General and National Assembly, in a bid to rectify the anomalies created by the amendments. Despite CIC's relentless efforts, some unconstitutional provisions found their way in the Bills and some provisions required by the Constitution were omitted from the Bills. This trend is disconcerting and CIC calls upon implementing partners, at all levels, to respect and uphold the letter and spirit of the Constitution, including the process of formulation of Bills in line with Article 249(1) and (4), Article 261(4) and section 5 of the Sixth Schedule to the Constitution. The Land Bills have been notorious in this respect.

2.2 Deliberate attempts to mislead the public on key constitutional issues

The tendency by some politicians to mislead the public on some aspects of implementation is a challenge. The most recent example is the debate on the election date. The announcement of 4th March 2013 as the election date was followed by a debate in which some politicians accused the IEBC of overstepping its mandate. The accusations and attacks on the IEBC has the potential of undermining the authority of not just IEBC but also other independent constitutional offices.

2.3 Delay in operationalizing key constitutional offices

Failure to appoint members to key institutions and Commissions and delay in the appointment of the Registrar of Political Parties as per the Political Parties Act, 2011 remains a key concern.

2.4 Disregard for CIC's mandate and public participation

The publication of important Bills affecting the Nation without fulfilling the Constitution's requirements of public participation and review by the Commission presents a challenge. For example, the Cabinet approved of the Companies and Insolvency Bills and they subsequently were published without subjecting the Bills to the Commission's review and other relevant stakeholders input.

The Commission considers the aforementioned proposed laws essential in safeguarding and guaranteeing the implementation of the rights enshrined in Chapter Four of the Constitution, such as, Article 40 among other relevant principles and values of the Constitution. The Commission is of the view that all Bills under formulation, whether referred to under the Fifth Schedule to the Constitution or derived from other Articles of the Constitution, should be submitted to the Commission for review to verify their conformity to the letter and spirit of the Constitution prior to publication.

2.5 Deliberate attempts to disregard the Constitution implementation process and mandate of the CIC

The tendency by some partners in the process of preparing bills to overlook some aspects of the process undermines the implementation efforts. CIC has observed that some bills are presented to Parliament without the involvement of CIC and in some cases without even the knowledge of CIC. This happens when those generating the bills and sometimes even the Office of the Attorney General fail to inform CIC about the status or even existence of such Bills.

There are also cases in which bills are submitted to Parliament after Cabinet review before they are vetted by CIC as required by the process that was agreed on by all the stakeholders involved in processing Bills before tabling in parliament

2.6 Late submission of Bills

Despite raising this challenge in previous CIC reports, some implementing partners persist in not meeting deadlines agreed for processing of bills.



3 Addressing the Challenges and Impediments to Constitutional Implementation

The challenges highlighted in page 44 above could be addressed through a number of steps. In this regard, CIC makes the following recommendations.

► Adherence to the agreed timelines and processes of enactment of laws

CIC recommends that every implementing partner respects the process of developing bills as agreed upon, including respecting deadlines. This will ensure that the minimum required levels of stakeholder engagements are undertaken and all legislation enacted comply with the letter and spirit of the Constitution.

► Increased coordination in the Executive

There is need for increased coordination especially within and from the Executive to ensure that relevant processes in the preparation of bills are undertaken timely.

► Political leadership

Political leaders should exercise leadership at all time to ensure that the implementation process is on track. Any disagreements with decisions taken by constitutionally mandate bodies should be referred to the appropriate judicial authorities for determination to ensure constitutionality is upheld.

► Operationalisation of key constitutional offices

Appointment of the chairperson and members of the Ethics and Anti-Corruption Commission and other key constitutional offices and Commissions should be finalised as a matter of extreme priority.

Annexes

Annex I

Update on Chapter 15 Commissions

	Name of the Commission	Status of Enactment and Formation	Way Forward
A	Kenya National Human Rights Commission	Law enacted and the existing Commission is the successor of the previous KNHRC	Legislation has been enacted and new Commissioners to be appointed on expiry of the terms of the current Commissioner's terms
B	National Land Commission	Legislation has not been enacted	<ol style="list-style-type: none"> a. Bill passed first reading in Parliament and was referred to Departmental Committee on Land for scrutiny and public participation b. Bill is scheduled to be enacted by 26th April 2012.
C	Independent Electoral and Boundaries Commission	Legislation has been enacted and Commissioners have been appointed	
D	Parliamentary Service Commission	Existing Act has not been amended	<ol style="list-style-type: none"> i) Amendments should be enacted by 26th August 2012 ii) CIOC to help facilitate the fast tracking of the amendments
E	Judicial Service Commission	Legislation has been enacted and Commissioners have been appointed	
F	Commission for Revenue Allocation	Legislation has been enacted and Commissioners have been appointed	
G	Public Service Commission	Legislation has not been enacted	<ol style="list-style-type: none"> 1. Enact legislation by 26th February 2012. 2. New Commissioners to be appointed on expiry of the terms of the current Commissioner's terms
H	Salaries and Remuneration Commission	Legislation has been enacted Commissioners have been appointed	
I	Teachers Service Commission	Legislation has not been enacted	<ul style="list-style-type: none"> • Bill has been finalized by AG and is awaiting approval by Cabinet before publication and tabling in Parliament • New Commissioners to be appointed on expiry of the terms of the current Commissioner's
J	National Police Service Commission	Legislation has been enacted, appointment of Commissioners on-going	<p>Parliament approved the nomination of Ms. Amina R Masoud as the Chair of the NPSC and Esther Chui-Colombini, Ronald Musengi, James Atema, Mary Auma Owuor and Muiu Shadrack Mutia as members of the Commission.</p> <p>CIOC to follow up on the cause of delay in the selection process</p>

K	Commission on Administrative Justice	Legislation has been enacted and Commissioners have been appointed	
L	National Gender and Equality Commission	Legislation has been enacted Appointment of Commissioners had been halted by the Courts	Appointment of Commissioners was put on hold on 15th November 2011 pending the hearing and determination of HCCC Petition No. 243 of 2011- Community Advocacy and Awareness Trust & 8 others v National Gender and Equality Commission & 5 others filed on 14th November 2011 which sought to challenge the appointment of Ms. Winfred Osimbo Lichuma as chairperson of the National Gender and Equality Commission. The High Court dismissed the petition on 14th March 2012.
M	Ethics and Anti-Corruption Commission	Legislation has been enacted	Parliament approved the nomination of Mr. Mumo Matemu as the EACC Chairperson, and Prof. Jane Onsongo and Irene Keino as members of the Commission on 10th December 2011 CIOC to follow up on the cause of delay

Annex II

CIC's Advisory to the Public on the IEBC Delimitation of Boundaries Report

The mandate of the Commission for the Implementation of the Constitution (CIC) is, among others, to monitor, facilitate, coordinate and oversee the implementation of the Constitution of Kenya (CoK) 2010. In addition, CIC, along with other constitutional commissions, has as its objects:

1. Protecting the sovereignty of the people;
2. Securing the observance by all State organs of democratic values and principles; and
3. Promoting constitutionalism (Article 249 (1)).

It is in this context that CIC is concerned by what appears to be an attempt by Parliament to direct the Independent Electoral and Boundaries Commission (IEBC) with regards to the Boundaries Report.

The Role of IEBC

Article 88 of the CoK 2010 establishes IEBC as an independent commission and provides, inter alia, that in the exercise of its functions, it is not subject to the direction or control of any person or authority and is only subject to the Constitution and the law.

The constitution gives the IEBC various functions and powers including the delimitation of constituency and ward boundaries as well as the determination of the names and boundaries of constituencies and wards, and in the case of wards, their number [Article 89 (8)]. The process by which this function and power is exercised is generally set out in Article 89 of the constitution and in the IEBC Act **NOTING HOWEVER THAT** any of the provisions of the Act that contradict the constitution are void to the extent of that contradiction. One of the key responsibilities of the IEBC in the process of determining the boundaries is to consult interested parties [Article 89 (7) (a)]. Other than the public, one of the key interested parties in this process is of course Parliament. Ultimately however, the constitutional responsibility of determining the boundaries and gazetting the same is granted to the IEBC.

IEBC must however ensure that its final report complies fully with the provisions of the constitution so that it is not open to challenge on the basis of unconstitutionality. CIC, in exercise of its mandate under Section 5(6) of the 6th Schedule and its general function of oversight over the implementation of the constitution is reviewing the IEBC report and continues to engage with IEBC in this regard to ensure that the letter and spirit of the constitution are respected. Ultimately however, CIC cannot direct the IEBC on the final content of the report. That responsibility lies with the IEBC.

In the event however that IEBC were to gazette boundaries that conflict with the provisions of the constitution, Article 89 (10) of the Constitution provides that *a person may apply to the High Court for review of a decision of the Commission*. This is a right available to the people of Kenya, including members of Parliament.

The Role of Parliament

Article 2 of the CoK 2010 provides that

1. The Constitution is the Supreme law of the Republic and binds all persons and all State organs at both levels of government and
2. No person may claim or exercise State authority except as authorized under this Constitution

Article 94 of the Constitution states that the role and power of Parliament is, among others, to make laws and to alter county boundaries and that this authority is derived from the people. The alteration of Boundaries is to be carried out according to Article 188 which states:

(1) The boundaries of a county may be altered only by a resolution:-

- recommended by an independent commission set up for that purpose by Parliament; and
- passed by-
 1. the National Assembly, with the support of at least two-thirds of all of the members of the Assembly; and
 2. the Senate, with the support of at least two-thirds of all of the county delegations.

The Constitution also grants Parliament an oversight role over State organs. However, this oversight power, particularly over independent Commissions is limited by the constitution and cannot be exercised to defeat their constitutionally guaranteed independence. Parliament, in the exercise of its oversight role cannot take over the functions of any constitutional organ, particularly an independent Commission. To this extent, with respect to the Boundaries report, Parliament cannot take over the functions of IEBC, of determining the boundaries and number of constituencies and wards. What Parliament can do in this regard, is to make recommendations to IEBC. IEBC is the final authority on the extent, if any, to which it will adopt the recommendations of Parliament.

Any attempt by Parliament to impose its preferences on the IEBC would amount to directing IEBC and would therefore be a violation of the letter and spirit of the Constitution. It would purport to legitimize interference by Parliament with the constitutional independence of other State organs.

Once again CIC reiterates its commitment to discharge its mandate fully and faithfully and to ensure that the Constitution is implemented in letter and spirit. CIC would like to appeal to the owners of the Constitution, the people of Kenya, to remain vigilant and be committed to the implementation of the Constitution. It is the responsibility of the people of Kenya to hold accountable all persons and State organs, including CIC, to their responsibilities with regard to the implementation of the Constitution.

Charles A. Nyachae
Chairperson

Annex III

CIC Advisory to the Public on the Setting of the Election Date by the Independent Electoral and Boundaries Commission (IEBC)

In the discharge of its mandate to oversee the process of implementation of the Constitution of Kenya, 2010, The Commission for the Implementation of the Constitution (CIC) finds it appropriate to issue this advisory to the people of Kenya as regards the setting by The Independent Electoral And Boundaries Commission (IEBC) of the date for the first elections under the Constitution of Kenya, 2010.

In giving this advisory, CIC is concerned, not with the political interests and preferences surrounding the election date debate, but with the constitutional and legal issues that underlie the setting of that date. IEBC is established under Article 88 of The Constitution of Kenya, 2010, and is an independent Constitutional Commission within the meaning of Chapter 15 of the Constitution. In terms both of Article 88(4) of The Constitution and Section 4 of The Independent Electoral and Boundaries Commission Act, 2011, IEBC is inter alia “responsible for conducting or supervising referenda and elections to any elective body or office established by the Constitution”.

In terms of Sections 14, 16, 17, and 19 of The Elections Act, IEBC shall publish a notice of the holding of the election, in the Gazette and in the electronic and print media of national circulation, in the case of a General Election, at least sixty days before the holding of the elections.

As regards the first General Election under the Constitution of Kenya, 2010, IEBC on Saturday 17th March 2012, made public its decision to hold the said Election on 4th March 2013. In the considered view of CIC, and in the context of the public debate generated by IEBC’s announcement, two questions fail to be determined:-

- Is IEBC the constitutional organ mandated to set the date of the General Election; and
- If so, has IEBC set the date within the parameters of the Constitution and the Law.

Both these questions were canvassed and interrogated comprehensively in the judgment handed down by the Constitutional Division of The High Court (Lenaola, Ngugi and Majanja JJ) **in Constitutional petition no.65 of 2011 consolidated with petitions nos. 123 of 2011 and 1855 of 2011.**

In its judgment on the question, “when shall the first General Elections be lawfully held?”, the constitutional Court ruled:

“the first General Elections under the Constitution can only be lawfully held as follows:-

- ✓ In the year 2012, within sixty days from the date on which the National Coalition is dissolved by written agreement between the President and the Prime Minister in accordance with Section 6(b) of The National Accord and Reconciliation Act, 2008
- ✓ Within sixty days from the expiry of the terms of the National Assembly, on 15th January, 2013”

On the question, “which body under the Constitution is entitled to fix the election date, the Court concluded:

“(i) In light of the authority and powers conferred by Article 88 to the IEBC to conduct and supervise elections, it is the IEBC that will fix the election date for the first elections under the Constitution.

THE IEBC IS an independent body and in line with its mandate, it shall fix a date once it is satisfied the conditions and arrangements that ensure a free and fair election have been met but within sixty days of either of the two events referred to.

(ii) Having found that the first elections under the Constitution shall be held within sixty days from the end of the expiry of the National Assembly as provided or upon dissolution of the National Coalition, we hold that it is the responsibility of IEBC, to fix any date within the sixty days thereafter.”

The Constitution of Kenya, and specifically Article 165, gives the High Court jurisdiction to hear and determine any questions with respect to the interpretation of the Constitution, unless therefore, a decision of The High Court is reversed or varied either by the Court of Appeal or the Supreme Court, such decisions remain the authoritative and binding constitutional and legal position.

In the instant case, it is the unequivocal view of CIC that IEBC, in Terms of the judgment of the Constitutional Court, is the organ constitutionally mandated to set the election date. CIC is fully persuaded that, in the discharge of the mandate, IEBC acted entirely within the parameters of the Constitution, as stated by the Constitutional Court.

The date set by IEBC is therefore the constitutionally valid date for the first General Elections under the Constitution. It is to be recognized that this date may change if:-

- ✓ The Court of Appeal or The Supreme Court reverses or varies the judgment of The High Court; or
- ✓ In accordance with the Court’s ruling, the President and the Prime Minister, by a written agreement, dissolve the Grand National Coalition; or
- ✓ The Constitution is amended to expressly set a different election date.

In the absence of any of the above events taking place, it behoves all Kenyans, including all other constitutional organs and offices, to respect IEBC and its mandate.

Article 2 of The Constitution of Kenya, 2010, states that, “This Constitution is the supreme law of the Republic and binds all persons and all state organs at both levels of Government”. Further, by virtue of Article 3 of The Constitution, “Every person has an obligation to respect, uphold and defend the Constitution”.

CIC therefore calls upon all Kenyans to uphold the Constitution of Kenya, 2010, in particular by according respect to both the Judiciary in its constitutional role of interpreting the Constitution, and to IEBC, in the discharge of its mandate, as the Election Management Body, including, the mandate to set the date for the first General Election under the Constitution of Kenya, 2010.

CIC takes this opportunity to reaffirm its commitment in ensuring that the Constitution of Kenya, 2010 is implemented fully and faithfully, in letter and spirit.

Charles Ayako Nyachae
Chairperson

Commission for the implementation of the constitution

Annex IV

Judgement on the Date of the General Elections

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI MILIMANI LAW COURTS
CONSTITUTIONAL PETITION NO. 65 OF 2011 CONSOLIDATED WITH PETITIONS
NOS 123 OF 2011 AND 185 OF 2011

Between

John Harun Mwau **1st Petitioner**
Milton Mugambi Imanyara **2nd Petitioner**
Professor Lawrence Gumbe **3rd Petitioner**
Martin Muthomi Gitonga **4th Petitioner**

and

The Honourable Attorney General **1st Respondent**
Commission for the Implementation
of The Constitution **2nd Respondent**
Independent Electoral and
Boundaries Commission **3rd Respondent**

PRESS AND PUBLIC SUMMARY

ON THE DATE OF THE FIRST ELECTIONS UNDER THE CONSTITUTION

This is not a copy of the certified judgment. The following explanatory note is provided to assist the public and the media in reporting this case and is not binding on the High Court or any other Court.

After hearing the petitioners in the three consolidated petitions on 15th and 16th December 2011 the High Court (Hon. Justices Isaac Lenaola, Mumbi Ngugi and David Majanja) delivered its judgment on 13th January 2012. The Court dealt with seven issues that were framed for determination. The following is a summary of the findings on each issue by the Court.

Whether this court had jurisdiction to determine the matter.

The jurisdiction to determine this matter is founded on two grounds. First, failure to hold the first elections on a date fixed in accordance with the provisions Constitution would be a threat to the Constitution and therefore any party is entitled to move the court under Article 258(1) for appropriate relief. Secondly, the Supreme Court in Constitutional Application No. 2 of 2011

directed the court to determine the petitions before it having been satisfied that the High Court has jurisdiction.

When shall the first elections under the Constitution be lawfully held.

The date of the first elections under the Constitution is determined by reference to section 9 and 10 of the Sixth Schedule as follows;

- (a) In the year 2012, within sixty days from the date on which the National Coalition is dissolved by written agreement between the President and Prime Minister in accordance with section 6(b) of the National Accord and Reconciliation Act, 2008; or
- (b) Upon the expiry of the term of the 10th Parliament on the 5th Anniversary of the day it first sat which is designated by Legal Notice No. 1 of 2008 as 15th January 2008. The term therefore expires on 14th January 2013. The elections shall be held within sixty days of 15th January 2013.

Does the President have power or authority to dissolve Parliament under the Constitution?

Following the repeal of the former Constitution and together with it section 59 thereof and in the absence of a specific provision entitling the President to dissolve Parliament, the President has no power under the Constitution to dissolve Parliament.

Which body under the Constitution has the Constitutional responsibility to fix the date for the first elections.

The body entitled under the Constitution to fix the date of the first elections within sixty days of the expiry of the term of the National Assembly or upon dissolution of the National Coalition by written agreement between the President and the Prime Minister in accordance with section 6(b) of the National Accord and Reconciliation Act, 2008 is the Independent Electoral and Boundaries Commission.

Can an amendment to the Constitution affecting the term of the President be proposed, enacted or effected into law without a referendum being held under the Constitution.

In accordance with Article 255 of the Constitution, an amendment to the Constitution affecting the term of the President cannot be effected into law without a referendum.

Does the unexpired term of the existing members of Parliament include terms and conditions of service.

The terms and conditions of service of Members of Parliament are governed by the National Assembly Remuneration Act (Chapter 5 of the Laws of Kenya) and Parliamentary Pensions Act (Chapter 196 of the Laws of Kenya) which are saved by virtue of section 6 and 7 of the Sixth Schedule upto the end of the term of the National Assembly or upon dissolution of the National Coalition.

Who should bear the costs of the petitions as consolidated?

The award of costs in matters concerning enforcement of fundamental rights and freedoms protected by the Bill of Rights under Article 22 and 23 and enforcement of the Constitution under Article 258 is in the court's discretion and in this particular case the court orders each party to bear its own costs.

Dated at Nairobi this 13th Day of January 2012

ANNEX V

Summary of Submission of Quarterly Reports by Implementing Agencies

List of Ministries	1 st Quarter
Office of the President	
Cabinet Office	✓
Ministry of State for Defence	✓
Ministry of Provincial and Internal Security	
State House	✓
Office of the Prime Minister	✓
Ministry of Planning, National Development and Vision 2030	✓
Ministry of State for Public Service	✓
Office of the Vice President & Ministry of State for National Heritage & Culture	✓
Ministry of Home Affairs	✓
Ministry of Immigration and Registration of Persons	✓
Ministry of National Heritage and Culture	✓
Ministry of Agriculture	✓
Ministry of Cooperative Development and Marketing	
Ministry of Development of Northern Kenya and other Arid Lands	✓
Ministry of East African Community	✓
Ministry of Education	✓
Ministry of Energy	✓
Ministry of Environment and Mineral Resources	✓
Ministry of Fisheries Development	✓
Ministry of Foreign Affairs	✓
Ministry of Forestry and Wildlife	
Ministry of Higher Education, Science and Technology	✓
Ministry of Housing	✓
Ministry of Industrialization	✓
Ministry of Information and Communications	
Ministry of Justice, National Cohesion and Constitutional Affairs	✓
Ministry of Labour	✓
Ministry of Lands	
Ministry of Livestock Development	
Ministry of Medical Services & Ministry of Public Health & Sanitation	✓
Ministry of Gender, Children and Social Development	✓
Ministry of Nairobi Metropolitan Development	✓

Office of Deputy Prime Minister and Ministry of Finance	✓
Office of Deputy Prime Minister and Ministry of Local Government	✓
Ministry of Public Health and Sanitation	✓
Ministry of Public Works	
Ministry of Regional Development Authorities	✓
Ministry of Roads	✓
Ministry of State for Special Programmes	✓
Ministry of Tourism	✓
Ministry of Transport	✓
Ministry of Trade	
Ministry of Water and Irrigation	
Ministry of Youth and Sports	✓
The National Assembly	

State Parastatals

List of Parastatals	1 st Quarter
Kenya Post Office Savings Bank	✓
Tana and Athi Rivers Development Authority	✓
Kenya Investment Authority	✓
Kenya Revenue Authority	✓
Export Promotion Council	✓
Export Processing Zone	✓
Kenya Industrial Property Institute	✓
Kenya Electricity Transmission Company Limited	
Teachers Service Commission	
Central Bank of Kenya	✓
Kenya School of Law	✓
National Housing Corporation	✓
National Environment Management Authority	✓
Kenya National Examination Council	✓
Kenya National Highways Authority	✓
National Aids Control Council	✓

Commissions

List of Commissions	1 st Quarter
Commission on Revenue Allocation	✓
Teachers Service Commission	✓
Ethics and Anti-Corruption Commission	✓

KEY

✓	Submitted
✘	Not Submitted

ANNEX VI

Schedule of Enactment of Legislation for Implementation of the Constitution of Kenya, 2010

Legislation/Bill	Status of Enactment	Remarks
Status of Enactment of Legislation under the Fifth Schedule to the Constitution and the Agreed Schedule of Bills to be Enacted by 26th August, 2011		
The Industrial Court Act, 2011	Enacted in August 2011	
The National Police Service Act	Enacted in August 2011	
The Urban Areas and Cities Act	Enacted in August 2011	
The Environment and Land Court Act, 2011	Enacted in August 2011	
The National Gender and Equality Commission Act, 2011	Enacted in August 2011	
The Ethics and Anti-Corruption Commission Act, 2011	Enacted in August 2011	
The Elections Act, 2011	Enacted in August 2011	
The Kenya Citizenship and Immigrations Act, 2011	Enacted in August 2011	
The Commission on Revenue Allocation Act, 2011	Enacted in August 2011	
The Power of Mercy Act, 2011	Enacted in August 2011	
The Vetting of Judges and Magistrate Act, 2011	Enacted in August 2011	
The Judicial Service Act, 2011	Enacted in August 2011	
The Independent Electoral and Boundaries Commission Act, 2011	Enacted in August 2011	
The Supreme Court Act, 2011	Enacted in June 2011	
The Independent Offices (Appointment) Act, 2011	Enacted in August 2011	
The Kenya National Human Rights Commission Act, 2011	Enacted in August 2011	
The Commission on Administrative Justice Act, 2011	Enacted in August 2011	
The Political Parties Act, 2011	Enacted in August 2011	
The Salaries and Remuneration Commission Act, 2011	Enacted in August 2011	
The Independent Policing Oversight Authority Act, 2011	Enacted	
The National Police Service Commission Act, 2011	Enacted	
Laws Enacted Unconstitutionally		
The Contingencies Fund and County Emergency Funds Act, 2011	Enacted unconstitutionally	
The National Government Loans Guarantee Act, 2011	Enacted unconstitutionally	
Status of Enactment of Legislation under the Fifth Schedule to the Constitution and the Agreed Schedule of Bills to be Enacted by 26th February, 2012		
The Transition to Devolved Government Act, 2012	Enacted in February 2012	

The Intergovernmental Relations Act, 2012	Enacted in February 2012	
The County Government Bill	Enacted in February 2012	Referred back to Parliament by the President for amendment to comply with the Constitution
The Land Registration Bill	Before Parliamentary Committee on Land and Natural Resources	On 24 th February, Parliament voted to extend the timeline to pass the Bill by 60 days to allow more time for stakeholders to scrutinize the Bill
The Land Bill	Before Parliamentary Committee on Land and Natural Resources	On 24 th February, Parliament voted to extend the timeline to pass the Bill by 60 days to allow more time for stakeholders to scrutinize the Bill
The National Land Commission Bill 2011	Before Parliamentary Committee on Land and Natural Resources	On 24 th February, Parliament voted to extend the timeline to pass the Bill by 60 days to allow more time for stakeholders to scrutinize the Bill
The Public Financial Management Bill	Before Parliament for debate	
The Intergovernmental Fiscal Relations Bill	Merged with PFM Bill Awaiting Parliamentary Debate	
The County Government Finance Management Bill	Merged with PFM Bill Awaiting Parliamentary Debate	
The Public Service Commission Bill, 2011	Forwarded to the Attorney General for publication	
The Teachers Service Commission Bill, 2011	Forwarded to the Attorney General for publication	
The Campaign Financing Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
Status of Enactment of Legislation under the Fifth Schedule to the Constitution and the agreed Schedule of Bills to be Enacted By 26Th August, 2012		
The Assumption of Office of President, 2012	Forwarded to the Attorney General for publication	
The National Intelligence Service Bill, 2011	Undergoing CIC Internal Review And Stakeholder Consultations	
The National Security Council Bill, 2011	Undergoing CIC Internal Review And Stakeholder Consultations	
The National Coroners Service Bill, 2010 & 2011	Undergoing CIC Internal Review And Stakeholder Consultations	

The Kenya Defence Forces Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Private Security Industry Regulation Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Leadership and Integrity Bill, 2012		
Public Service Management Bill, Article 235	-	
Public Officers Vetting Bill	-	
The National Government Bill (Proposed)	-	
The Miscellaneous Acts (Amendment) Bill	-	
Public Officers Vetting Bill	-	
Affirmative Measures Bill	-	
Other Bills For Implementation of the Constitution		
The Kenya Law Reform Commission Bill, 2012	Forwarded to the Attorney General for publication	
The Ratification of Treaties Bill, 2011	Awaiting Parliamentary Debate	
The Independent Communications Commission Of Kenya Bill, 2010	Undergoing CIC Internal Review And Stakeholder Consultations	
The Constitution Of Kenya (Amendment) Bill, 2011	Undergoing CIC Internal Review And Stakeholder Consultations	
The Freedom Of Information Bill, 2008	Undergoing CIC Internal Review And Stakeholder Consultations	
The Data Protection Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Matrimonial Property Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Family Protection Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Controller Of Budget Bill, 2011	Undergoing CIC Internal Review And Stakeholder Consultations	
The Identification And Registration of Kenya Citizens Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Births And Deaths Registration Bill, 2011	Undergoing CIC Internal Review And Stakeholder Consultations	
The Refugee Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Marriage Bill, 2012	Undergoing CIC Internal Review And Stakeholder Consultations	
The Consumer Protection Bill, 2011	Undergoing CIC Internal Review And Stakeholder Consultations	

ANNEX VII

About the Commission and the Commissioners

A. The Mandate of CIC

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

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

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

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

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

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

B. Vision, Mission and Strategic Outcome Results

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

Vision:

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

Mission:

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

Strategic outcomes:

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

C. Commissioners



Mr. Charles Nyachae
Chairperson



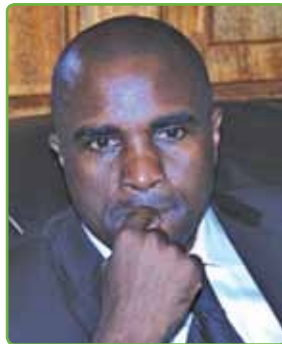
Dr. Elizabeth Muli
Vice-Chairperson
Convener of the Executive and
Security Thematic Team



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



Prof. Peter Wanyande
Convener of the Devolved
Government Thematic Team



Mr. Kamotho Waigannjo
Convener of the Public
Finance Thematic Team



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



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



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



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

Map Showing Counties

