



A Residents Guide to Urban Areas and Cities in Kenya

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February 2012



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How to Use this Booklet

This publication takes a simple question and answer approach and is ideal for group discussions. It is to be accompanied by the Constitution of Kenya, 2010, Urban Areas & Cities Act, 2011. A resource version is available on **www.tisa.or.ke**.



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1.0 ~ The Foundations of the New Republic

The Constitution is the supreme law of the land and defines the government and governance of a country. Kenya's Constitution was promulgated on 27th August 2010. **Chapter One of the Constitution of Kenya** defines the foundations of the country and emphasizes that sovereign power belongs to the people.

Government refers to the law makers, administrators, and judicial officers who control the state at a given time, and to the systems through which they are organised. Government is the means by which state policy is developed and enforced.

The list below gives a list of some of the functions of government. *Can you suggest any additional functions?*

- » Maintain law and order.
- » Enact policies and legislation to facilitate administration.
- » Enforce policies and legislation.
- » Protect the rights of citizens.
- » Champion the wishes, values and aspirations of citizens.
- » Promote individual and private enterprise.
- » Aggregate and redistribute resources for the benefit and welfare of all.

Governance is what a government does¹. It is the act of governing. Governance is the actual management of power and policy. The diagram² below demonstrates the qualities of good governance.



¹ <http://en.wikipedia.org/wiki/Governance>

² <http://www.iep.utm.edu/soc-cont/>

The table below illustrates some of the stages of Kenya’s governance, and demonstrates that as a country Kenya has experienced extreme and rapid changes in a very short time. *What has been the impact of these changes on the nationhood and development of Kenya?*

STAGES OF KENYA'S GOVERNANCE AND CHARACTERISTICS OF EACH	
COLONIAL ERA: 1885 - 1962	Berlin conference of 1885 leads to Colonial occupation of Kenya; Africans prohibited from direct political participation until 1944, when they were granted limited role. Colonial laws designed to appropriate land and labour for Colonial government.
KENYATTA ERA: 1963-1978	Kenya attained independence; many challenges faced the country including inadequate manpower, ethnic political competition; Kenyatta government consolidates political power into the control of tribal elite which usurps colonial lands and privileges: Defacto one party. National priorities identified as fighting disease, ignorance & poverty. Emerging inequalities.
MOI ERA: 1978-2002:	Moi creates de jure one party state. Nyayo philosophy: peace, love and unity not realised as intense ethnic politics fuels corruption and government inefficiency. Repressive government control crushes voices of dissent. 1982: Attempted coup. Moi responds by oppressive reign, detention without trial amongst other forms of oppression. Extreme inequalities, unemployment and economic recession. 1992 Multi-Party democracy reinstated due to widespread civil agitation.
KIBAKI ERA: 2002-2009 (OLD CONSTITUTION)	President Kibaki was brought to power by the overwhelming victory of the National Rainbow Coalition (NARC) came into power by popular vote. Election pledges for new constitution ignored. Free Primary Education pledge fulfilled. Coalition government divided by extreme ethnic and political tension. Investigation into Goldenberg scandal falters. Anglo leasing scandal is exposed. CDF and other funds are established. Period of high economic growth but persistent inequality and food insecurity.
DECEMBER 27th 2007	General elections malpractices lead to post election violence (PEV). Absence of clear winner forces to coalition government. National Reconciliation Accord signed by the two principals and 4 agenda items identified in Feb 2008.
AUGUST 27th 2010:	Promulgation of new constitution providing a strong legal foundation for the enhancement of participatory governance through devolved structures at county level.

Table 1: Stages in Kenya’s Governance

The Constitution of Kenya offers Kenya a new governance era based on a foundation of values. A few examples are given below. *In your view to whom do these values apply most and why? (Government, citizens, NGO’s, religious, media, donors, business institutions, other.)*

Values foundation	Reference in Constitution
National values and principles	Article 10
Socio economic rights	Article 43
Principles of land	Article 60
Principles and values of devolution	Articles 174 and 175.
Citizen participation	Article 1 (4), Article 6 (2), Article 174 (c and d), Article 184 (1), Article 196 (1), Article 232 (1) d, e, f, Fourth Schedule Part 2 (14), etc
Leadership and integrity	Chapter 6
Devolution	Chapter 11
Values of public service	Article 232
Principles of public finance	Article 201

Table 2: Values foundations in the Constitution of Kenya 2010



2.0 ~ Understanding County Governments

A Government carries out its responsibilities through three main powers and responsibilities:

- » **ADMINISTRATIVE:** This includes registration of births and deaths, issuing identification cards, licenses, planning;
- » **FINANCIAL:** Government has power to collect revenue and to spend revenue on behalf of its citizens;
- » **POLITICAL POWER:** This is the power to make laws. This is exercised through elected representatives and appointed public officials.

Decentralisation describes the process through which the central government transfers its powers, functions, responsibilities and finances away from central government to sub-national units or local governments. The table below explains different types of decentralisation; *Can you name some decentralisation schemes in Kenya? What are the benefits of decentralised development?*

Types of Decentralisation	Features
Administrative De-concentration	Deconcentration is the weakest form of decentralisation and merely shifts some administrative responsibilities from central government officials to government officials working in regions, provinces or districts. It transfers very little decision making power.
Administrative Delegation	Delegation transfers specified decision making power responsibilities as well as administrative responsibilities to organisations that are not completely controlled by the central government but ultimately accountable to it.
Fiscal	Fiscal decentralisation is the transfer of financial responsibilities such as authority to raise revenue, manage and spend the revenue and resources generated locally or granted from central government to the local governments or units.
Political	Political decentralisation referred to as Devolution involves the transfer of authority for political decision-making, finance and management to units of local government allowing them to make raise their own revenues and have independent authority to make investment decisions.
Economic/Market	Privatisation Government may opt to decentralise some service delivery aspects to private corporations through service agreements which in turn undertake public service delivery

Table 3: Types of Decentralisation

What is Devolution?

A devolved system of government assigns sovereignty to national and sub-national governments by distributing power and resources between the levels of government. The Constitution of Kenya establishes a devolved governance system in accordance with the **Principles and Values of Devolution in Articles 174 and 175**.

Article 1(4) Constitution establishes government at two levels: National and County. **Article 6(1)** divides the territory of Kenya into 47 counties which are specified in the **First Schedule**. **Article 6(2)** states that governments at both levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.

Distinct: This means that national and county governments are equal to each other, neither is subordinate to the other. They are both created by the constitution, and so neither level of government can abolish the other level of government. This is in contrast to the previous situation where local government have existed at the pleasure of national government.

Interdependent: The two levels are also interdependent so that the actions by one county government will affect the entire county governments and the national government, and the actions of national government will affect all the county governments. They therefore have to make decisions in consideration of each other.

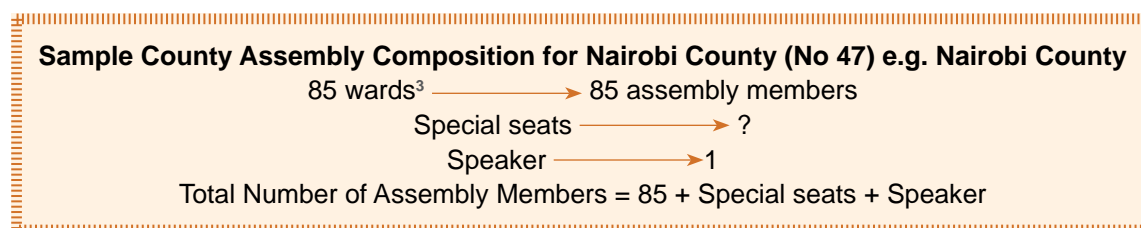
Cooperation and Consultation: The levels of government are expected to cooperate and consult in respective undertakings. This is in contrast to the present style of politics which is adversarial. This implies that intergovernmental mechanisms should provide for ongoing dialogue and continual consultation between the two levels of governmental.

Institutions of County Government in Kenya

The County governments have an executive or administrative arm of government and a legislative arm. The executive arm of County governments is the Governor and the County Executive Committee which will be responsible for the running and management of Counties. They will develop and implement County policy through further institutions created under the County government.

Each County government will also have a County Assembly consisting of Assembly Members elected from the wards. The County Assemblies will develop County legislation; undertake oversight and approval of plans for development and resource management in the County.

The County Assembly shall conduct its business in an open manner, and hold its sittings and those of its committees, in public; and facilitate public participation and involvement in its legislative and other business, including its committees. It may not exclude the public, or any media, from any sitting unless in exceptional circumstances.



An important feature of devolved government is the bicameral parliament. The National Parliament will comprise the National Assembly and the Senate. Each County will elect one Senator. The purpose of the Senate is to ensure that national legislation and policy does not harm the interests of the Counties. The Senator is therefore the defender of the County.

³ Based on proposed wards of the Preliminary Report on Delimitation of Boundaries, IEBC 9th January 2012

Senate Composition		
47 Counties	→	47
16 women reps	→	16
2 Youth reps	→	2
2 PWD	→	2
Speaker	→	1
Total Senate Size = 67 + Speaker		

The Constitution provides special County Assembly and Senate seats to represent the marginalised including women, youth and persons with disabilities (PWD) representatives.

The Constitution also creates shared institutions to serve both levels of government. Chapter 15 recognises ten permanent, independent commissions, the Auditor General and the Controller of Budget offices. The Commission for the Implementation of the Constitution (CIC) is a five year Commission created for the purpose of overseeing and coordinating the implementation process of the Constitution.

INSTITUTION / COMPOSITION	FUNCTION
<p>County Assembly</p> <p>Composed of Members elected by the registered voters of the wards, each ward constituting a single member constituency. (Governor, Deputy Governor).</p> <p>Number Special seat members necessary to ensure gender, marginalised and disabilities groups' representation.</p> <p>The speaker (ex officio)</p>	<p>Holds and exercises the legislative authority of County Government</p> <p>Make laws necessary for effective performance of the functions and exercise of the powers of the County Government.</p> <p>Exercise oversight over the county executive committee and other organs.</p> <p>Receive and approve plans and policies for the management and exploitation of county's resources, development and management of infrastructure and institutions.</p> <p>Receive the audit report and take appropriate action (Article 229(8))</p>
<p>County Executive Committee</p> <p>Composed of the county governor, deputy governor and members appointed by county governor, with the approval of the county assembly from amongst people who are not members of the assembly.</p>	<p>Holds and exercises the executive authority of the county.</p> <p>Implement county legislation</p> <p>Implement within the county, national legislation to the extent that the legislation so requires</p> <p>Manage and coordinate the functions of the county administration and its departments</p> <p>Perform any other functions conferred on it by the Constitution or National legislation.</p> <p>Provide the County assembly with full and regular reports on matters relating to the county.</p>
<p>Senate</p> <p>47 members each elected by registered voters of the counties</p> <p>16 women members nominated by political parties proportionately</p> <p>2 members (one man, one woman) representing the youth</p> <p>2 members(one man, one woman) representing persons with disabilities</p> <p>The speaker(ex officio member)</p>	<p>Represents the counties, and serves to protect the interests of the counties and their governments</p> <p>Participates in the law making function of parliament by considering, debating and approving Bills concerning counties.</p> <p>Determines the allocation of national revenue among counties and exercise oversight over national revenue allocated to the county governments.</p> <p>Participates in the oversight of state officers by considering and determining any resolutions to remove the president or deputy president from office.</p>

Table 4: Institutions of County Government

Functions of County Governments

The Fourth Schedule of the Constitution sets out the functions and powers of the National and County governments. The National government is assigned broadly; Foreign affairs, defence, macro-economic policy, and policy formulation and standards. County governments are assigned service delivery functions and so will be the main avenue for the realisation of socio-economic rights addressed in **Article 43**.

Article 186 of the constitution classifies functions as: exclusive, concurrent and residual; Exclusive functions are assigned to one level of government, to the exclusion of the other level of government; concurrent functions are conferred on more than one level of government. A power not assigned by the constitution or national legislation is a residual function and is assigned by the national government.

Article 189(1) further states that government at either level shall perform its functions and exercise its powers in a manner that respects the functional and institutional integrity of government at the other level. There will therefore be created institutions for intergovernmental relations to manage the relationship between National and County governments.

Article 187 goes further to allow for the transfer of functions and powers from one level of government to another. It also requires that the receiving level of government is adequately, financially supported. Responsibility for a transferred function remains with the level of government initially responsible for performance of the function under the Constitution.

The constitution provides for further decentralisation below the county level.

Optional group work exercise:

Using the Fourth Schedule identify services of interest to you and discuss which level government is responsible for delivery of the service.

3.0 ~ The Structure and Responsibilities of Urban Areas and Cities (U&AC)

Article 184 of the constitution provides that urban areas and cities shall be governed separately. This is to allow improved management, growth and employment creation in these areas. The Urban Areas and Cities Act 2011, deals with the establishment and governance of urban areas. Section 11 of the Act provides principles for the governance of urban areas. These include:

- » Recognition and respect for Constitutional status of County Governments;
- » Recognition of the principal and agency relationship between Counties and UA&C
- » Boards carry out functions on behalf of Counties;
- » Accountability to County and residents;
- » Institutionalised active participation of residents in management of UA&C
- » Efficient and effective delivery of services;
- » Clear assignment of functions

Part II of the Act provides that urban areas shall be classified into Cities, Municipalities or Towns based on several criteria. It provides a formal way in which urban areas can apply for and be conferred an improved status. The advantage of an improved status is that the urban area is granted increased say in the management of its resources and services. The criteria for classification include:

- » Population
- » Existence of urban area or city development plan
- » Capacity to generate income for sustainability
- » Prudent management
- » Effectiveness and efficiency in delivery of services
- » Availability of infrastructural facilities such as roads
- » Capacity for effective waste disposal

CLASSIFICATION OF URBAN AREAS AND CITIES BY POPULATION

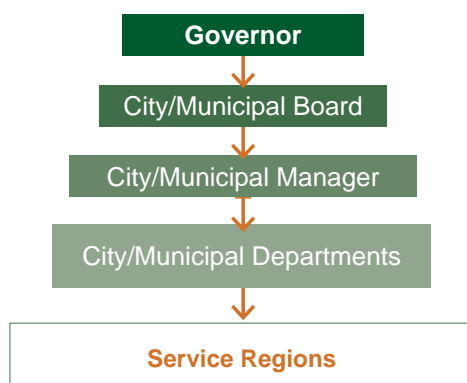


City and Municipality Boards

Urban areas that qualify as Cities and Municipalities will be managed under a City or Municipal corporate Board. The Board will function as an agency of the County government and will be accountable to the governor and the county residents. The Board will have powers to raise revenue and make financial spending decisions. Urban Boards will be responsible for service delivery under the urban area. They will have the executive authority at the City or Municipal level and will manage and implement City or Municipal plans. They will direct the City or Municipal Manager.

The day to day administration of the Cities and Municipalities will be the responsibility of a competitively recruited City or Municipal manager who will be answerable to the Board. The day to day administration of towns will be through a competitively recruited Town manager answerable to the County Executive Committee.

Management Structure of Urban Areas



The Boards will deliver services directly through urban departments or through service agreements with private service delivery companies. All service agreements must be approved by the County Assembly. All spending must be informed by sound planning also provided in Part 5 of the Act. Staff of the Cities or Municipalities will be recruited through the County Public Service. Each County will have a County public service to undertake its recruitment.

Composition of Urban Boards

The Urban Areas and Cities Act (Section 13, 14 and 20) provides for the establishment and composition of urban Boards.

Board composition in Cities: Not more than 11 members; 6 appointed through a competitive process by the County public service, 5 nominated by eligible groups.

Board composition in Municipalities: Not more than 9 members to manage Municipalities; 4 appointed through a competitive process by the County public service and 5 nominated by eligible groups.

The groups eligible to nominate members to the board include:

- A. An umbrella body representing professional associations in the area;
- B. An association representing the private sector in the area;
- C. A cluster representing registered associations of the informal sector in the area;
- D. A cluster representing registered neighbourhood associations in the area; and
- E. An association of urban areas and cities.

Functions of Urban and City Areas⁴

City—(Population at least 500,000)		
Planning and Development Control	Regional Radio Station	Financial Hub
Traffic Control and Parking	Community Radio	Museum
Water and Sanitation	Casinos	Historical Monument
Street Lighting	Funeral Parlour	Fire Station
Outdoor Advertising	Cemetery	Emergency Preparedness
Cemeteries and Crematoria	Recreational Parks	Postal services
Public Transport	Management of Markets	National TV station
Libraries	Marine Water front	National Radio Station
Storm Drainage	Animal control and welfare	Regional Radio Station
Ambulance Services	Religious Institution	Community Radio
Heath Facilities		Casinos
Fire Fighting and Disaster Management	Municipality— (Population at least 250,000)	Funeral Parlour
Control of Drugs		Cemetery
Sports and Cultural Activities	Planning and Development Control	Recreational Parks
Electricity and Gas Reticulation	Traffic Control and Parking	Management of Markets
Abattoirs	Water and Sanitation	Marine Water front
Refuse Collection	Street Lighting	Animal control and welfare
Solid waste management	Outdoor Advertising	Religious Institution
Air pollution	Cemeteries and Crematoria	Organised Public Transport
Child Care Facilities	Public Transport	
Pre-Primary Education	Libraries	Town—(Population at least 10,000)
Local Distributor Roads	Storm Drainage	
Conference Facilities	Ambulance Services	Street Lighting
Community Centres	Heath Facilities	Cemeteries and Crematoria
Five Star Hotel	Fire Fighting and Disaster Management	Libraries
Guest Houses	Control of Drugs	Heath Facilities
National Hospital	Sports and Cultural Activities	Sports and Cultural Activities
Referral hospital	Electricity and Gas Reticulation	Abattoirs
County Hospital	Abattoirs	Refuse Collection
University	Refuse Collection	Solid waste management
Constituent University Campuses	Solid waste management	Air noise
Polytechnic	Air noise	Child Care Facilities
Training Institution	Child Care Facilities	Pre-Primary Education
National School	Pre-Primary Education	Community Centres
County School	Local Distributor Roads	Guest Houses
Stadium	Conference Facilities	Homestays
National Stadium	Community Centres	Polytechnic
International Airport	Hotel Homestays	Training Institution

⁴ Classification of Cities and Towns by services UACA2011, First Schedule, RoK

Airport	Guest Houses	County School
Airstrip	County Hospital	Airstrip
National Theatre	Constituent University Campuses	Unclassified roads
Theatre	Polytechnic	Museum
Library Service	Training Institution	Historical Monument
Administrative Seat	National School	Postal services
Financial Hub	County School	Regional Radio Station
Diplomatic Hub	Municipal Stadium	Community Radio
Consulate	Stadium	Funeral Parlour
Museum	Airport	Cemetery
Historical Monument	Airstrip	Recreational Parks
Fire Station	National Theatre	Management of Markets
Emergency Postal services	Theatre	Marine Water front
National TV station	Library Service	Animal control and welfare
National Radio Station	Administrative Seat	Religious Institution

Table 5: Functions of Urban and City Areas

Questions for Group Deliberation

01. Based on the criteria of the Act does your urban area qualify as a city, municipality or town?
02. What are the strengths of the urban areas governance structures?
03. What are some of the likely challenges of governance of urban areas and how can these be addressed?
04. How can residents ensure that Board representatives represent the genuine interests of local communities?



4.0 ~ Participation by Residents in Urban Areas

Public participation is a fundamental pillar of the new dispensation of governance in Kenya. Article 1 (4), Article 6 (2), Article 174 (c and d), Article 184 (1), Article 196 (1), Article 232 (1) d, e, f, Fourth Schedule Part 2 (14), gives citizens the right to manage their own affairs and further their development and the right of participation in the exercise of powers of the state and in making decisions that affect them.

The Act provides for the transfer of Local Authorities into the County Governments. It provides for the transfer of:

Rights of Residents

The Section 22 and the second schedule of the Urban Areas Act, 2011 give residents the right to:

1. contribute to the decision-making processes of the city or urban area by written or oral submissions to the city or municipal manager or town administrator; and to receive prompt responses to their written or oral communications;
2. be informed of decisions of a board, affecting residents' rights and property, etc.
3. regular disclosure of the state of affairs of the city or urban area, including its finances;
4. the use and enjoyment of public facilities; and
5. have access to services which the city or municipality provides.

Resident Engagement in Affairs of the Urban Area

The Act places a responsibility on the Board to establish means by which residents can participate in the Board's affairs in:

1. the preparation, implementation and review of the integrated development plan, its performance management system and monitoring system;
2. the preparation of its budget; and
3. making of strategic decisions relating to delivery of service;
4. contribute to building the capacity of residents and officials of the urban area and provide funds for the promotion of community participation;

Methods of Resident Engagement

The Board is required to establish means for

1. receiving, processing and responding to petitions from residents
2. notifying residents of important events
3. consultative sessions with local groups
4. reporting to residents and

5. make provision for people who cannot read or write; people with disabilities; youth; gender equity; and minority and marginalised groups.

Access to Information

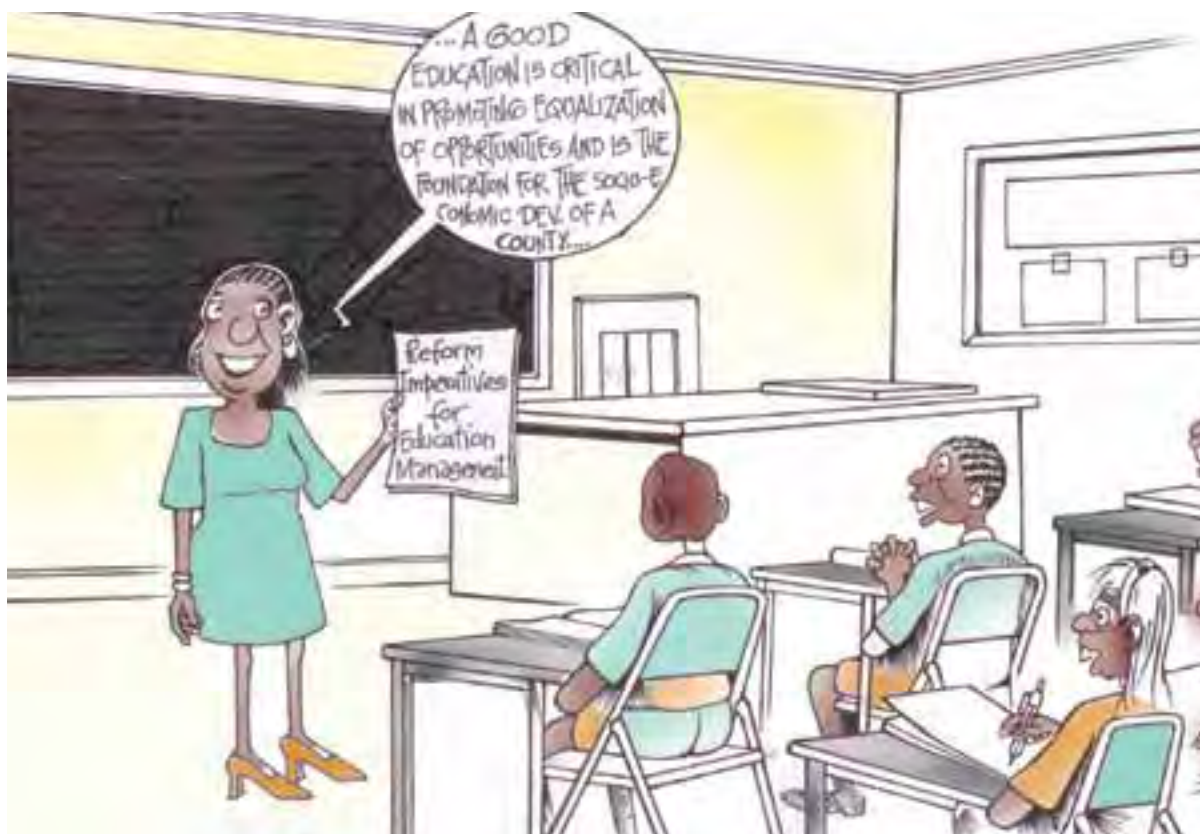
Section 24 of the Act requires the Board to publish and publicize important information affecting the City or Urban area, and to establish a system for the receipt and processing of requests for information.

Issues for Group Deliberation

Residents Associations

Residents' associations⁵ are organisations formed by groups of people from a specific geographic community who come together to address issues within their local area and act as a voice for their local community. The majority of associations are structured to include a chair, vice-chair, secretary, treasurer and committee members. They are usually formally registered. These positions are decided by way of nominations. Some associations meet to address one specific issue while others hope to address a wider spectrum of matters. Membership of a residents' association is normally open to all local people residing in a defined area. They represent the interests particularly of those who are socially excluded because of ill health, low income, language and cultural differences, or age.

01. How would you like your area prepared to in the opporutnites of the urban areas act?
02. Is there a neighborhood or residents association in your area? How effective is it? How can it be made more effective?
03. If not, how can you contribute towards the establishment of a neighborhood or residents associations in your ward?
04. What are the principles and values of effective residents/neighborhood associations?
05. How does/can your residents association support its activities?



⁵ http://en.wikipedia.org/wiki/Residents'_association

5.0 ~ Transitional provisions

Schedule 6 Part 4 of the Constitution provides for the phased transfer of functions to County Governments over a period of not more than three years from date of election of County Assemblies, from National to County government.

The Transition to Devolved Government Bill 2012 once passed will establish a Transition Authority to coordinate the transition to the devolved system of government as provided in the Constitution. The Authority shall address issues such as the costing of Counties and transfer of functions to ensure there is no disruption to services.

The Urban Areas and Cities Act provides for the transfer of Local Authorities into the County Governments. It provides for the transfer of:

- » Rights, assets and liabilities
- » Repeal of the Local Government Act (Cap. 265)
- » All by-laws, directions, resolutions, orders and authorizations given by by-laws, licenses or permits issued by the local authorities established, under the Local Government Act
- » Staff, officers, etc.
- » Existing contracts, etc.
- » Pending actions and proceedings.
- » Capacity building of official institutions and civic education to build citizen capacity to engage;
- » It confers city status on Mombasa and Kisumu

Question for Group Deliberation

01. How can areas residents engage in the transition process?



6.0 ~ Opportunities for Public Engagement in the Education Sector⁶

Article 43 (f) of the Constitution of Kenya Education places the burden of the provision of education on the government. The fourth schedule assigns the National government functions of policy, standards, examinations, granting of university charters, primary, secondary, tertiary and special education. County governments will be responsible for pre-primary and vocational institutions.

Governance of the Education Sector:

The governance structure of the education sector at present is as follows. The Minister is the overall policymaking organ with functions of coordination and promotion. The District Education Board (DEB): Implements education policy at district and made up of appointees of the Minister. Local Authorities (LAs) have been entrusted by Minister to run schools within their jurisdictions.

Board of Governors (BOG) and School Management Committees (SMCs) are the main institutions of governance in public schools- members of BOG are appointed by The Minister. SMCs are appointed by Local Authorities and District Education Boards (DEBs). The Teachers Service Commission (TSC) acts as regulator and employer of teachers. Under the Constitution the TSC is now a constitutional independent commission, Art 248 (2).

In February of 2011, The Minister for Education (MoE) established a Task Force on the re-alignment of the education sector to the New Constitution and Vision 2030. On Feb 2012, the Taskforce submitted its report to the Minister of Education. The Ministry of Higher Education Science and Technology established a taskforce in September of 2011 to realign university education, technical industrial, vocational and entrepreneurship training and science, technology and innovation sectors with the constitution. It is not clear if the Ministry will present a report other than the one released in February 2012.

Key recommendations of the report include⁷:

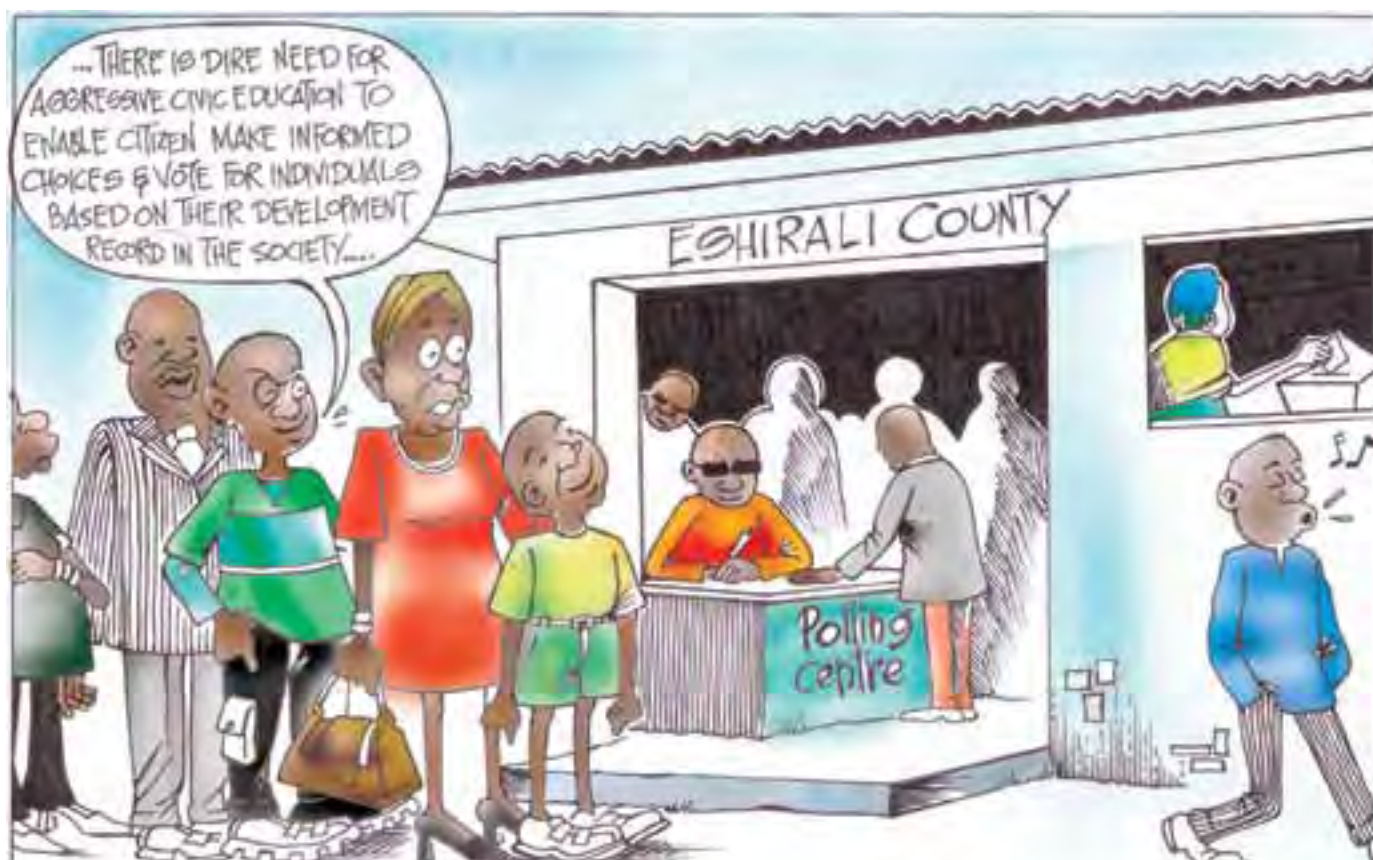
1. There should be functional review of the MoE in order to rationalise the number of directorates and staff in view of the devolution of responsibilities to Counties. Broad functions of the Ministry will include regulation, coordination, policy, planning, partnerships and curriculum oversight.
2. There will be a National Education Board (NEB) whose role will be to advise the Cabinet Secretary on all matters concerning education in the Country. The membership of NEB will comprise of not more than 13 members drawn from: Renowned Educationist Teachers Union representatives (2); TSC (1); Religious Organizations (3); Kenya Private Sector Alliance Representatives (1); Representative of Parents Association (1); Kenya Private Schools Association Representative (1); Head Teachers Associations (2); Representative of PWDs (1). NEB will have ex-officio members as follows; PS MoE ; PSs other relevant ministries; State Legal Office. The NEB may co-opt other members to address specific interests of society which include but not limited to: Student Councils; Marginalized groups.
3. It is recommended that there should be a County Education Board (CEB) with a clear mandate to provide policy and governance oversight on education matters at the county.

⁶ Section drawn from presentation by Wambua Kituku entitled *Reform Imperatives on Education Management in Nairobi County* prepared for The Institute for Social Accountability, October 2011

⁷ Interim Report on Task Force on the re-alignment of the education sector to the New Constitution (November 2011 draft)

CEB will have a maximum of 15 members. The membership of the board should include the following: Re-known Educationist from the county (1); Teachers Service Commission (1); Teachers Unions Representatives (2); Religious Organizations/Sponsors (3); Kenya Private Schools Association (1); Kenya Private Sector Alliance Representative (2); Head Teachers Associations (2); A representative of Parents Association (2); Representative of PWDs (1); The CEB may co-opt other members to address specific interests of society which include but not limited to: Student Councils; Marginalized groups.

4. Education at the County level will be headed by a County Director of Education (CDE), to be recruited by PSC through a competitive recruitment process with appropriate staff to oversee/carry out education activities as per the needs of the county. The CDE is the Professional head of educational services at the county level. Each county will have a county Director and appropriate staff as per the needs of the county covering the following critical areas; The CDE will work closely with other relevant county officers for the promotion of education at the county level. The chairman of the CEB will be appointed by the Governor from persons who are residents in the county but conversant with matters of education.
5. There will a Sub County Education Committee (SCEC), whose secretary will be the Sub County Education Officer. The membership of the SCEC, will be as follows; Educationist from the constituency(1); Head Teachers Association representatives(2); Teachers Service Commission representative(1); Religious Organizations representatives (3);Kenya Private Schools Association (1); Professionals from the constituency (1); Teachers Unions (2); All the above members should be graduates.



6. At the institutional level, there should be one management organ in charge of day to day management or running of the institution of the institution known as Board of Management (BoM). The BoM for Primary School will be composed of not more than nine members drawn from the following; ECD – Parent (1); Lower Primary Parent – (1); Upper primary parents (1); Sponsors (3); Teachers representative (1); Professionals (community) (2); Ex-officios will be; School manager as Secretary; Sub-County Education Officer; Ward representative. The BOM for primary may co-opt other members to address specific interests of society. The BoM for Secondary Schools will be composed of not more than nine members drawn from the following; Parents (3); Professionals (3); Sponsor (3); Ex-officio will be; School manager; Ward representative; CDE or representative (1); The BOM for secondary may co-opt other members to address specific interests of society.
7. Each institution will have a Parent Teachers Association whose membership will be as follows;

Primary School- The 3 parents in the BOM One (1) representative per class i.e. for Pre-primary; Six (6) for Primary and; Three (3) teachers i.e. for Pre-primary; Two (2) for Primary.

Secondary School: Junior secondary: The 3 parents in the BOM; Three (3) parents –each representing a class; Three (3) teachers; One (1) student council representative

Senior Secondary: The 3 parents in the BOM; Three (3) parents per specialization stream; One (1) Teachers per specialization stream; One (1) student council representative; chairman for the PTA in both primary and Secondary Schools will be elected by the members during their inaugural meeting
8. Students' Councils can raise issues of concern with the BOM through the PTA.

Role of Faith Based Sponsors in Education and Training

1. A sponsor refers to any religious organization which contributed land where a school or education institution sits and has continued to provide spiritual guidance.
2. Roles of Sponsors should include; Be consulted in appointment of institutional managers; nominate faith based persons to manage the spiritual aspects of a school; Participate in Board of Management as full members; Provide spiritual leadership and guidance to the institution; Provide ethos of institution; Participate in resource mobilization.
3. In addition to parental participation, institutions should device ways and means of engaging members of the local community in governance of the institutions. This will strengthen community support and ownership and promote accountability and transparency.
4. Repeal of the Education Act Cap. 211 (1968) to mainstream ECDE (4-5 years) into Basic Education and link the institutions with primary education level of Basic Education to meet the constitutional requirements.(4-18 yrs)
5. With such a high number of Non Formal Education (NFE) schools, there is a strong justification for more public investment in slums and informal settlements with a view to either formalising these schools or providing adequately for children studying in them. The legal definition and status of NFEs should be established and a plan to bring NFEs into the formal system made as a means of ensuring children in informal settlements get quality education.
6. More resources should be allocated to village polytechnics to equip youth with the skills they need for employment.

Table on Education Delivery in Nairobi County

	PRE-PRIMARY	PRIMARY EDUCATION	SECONDARY EDUCATION:	VOCATIONAL CENTERS
Number of Schools:	Public: 579 Private: 2,328 NFE: 614	Public: 191 Private: 1044 NFE: 640	Public: 55 Private: 283	8 village polytechnics
Enrolment:	Public: 70,890 Private: 221,236 NFE: 50,604	Public: 201,000 Private: 118,000 NFE: 90,997	26,755 boys 22,973 girls Total 49,728	
Teacher/Pupil ratio:	Trained: 14,837 Untrained: 6,840 Pupil: Teacher ratio 13.5:1	Public: 3,807 Pupil: Teacher ratio 46.7:1 Shortfall teachers 1,219 Shortfall of Classrooms 620	Teachers: 1003 with a ratio of 1:49 Shortfall of 240 teachers	
NCC	Nairobi City Council manages 21 ECDCs	City Council runs 184 schools (96% of public schools in the city)		

⁸NFE ⁹ECDCs

Table 6: Education Delivery in Nairobi County

Discussion Points:

- » How can your local community engage in education reforms to ensure the area interests are addressed?
- » How can the new institutions of governance be made more accountable to parents and public stakeholders?

⁸ NFE: Non formal education institutions

⁹ ECDC- Early Childhood Development Centre

7.0 ~ Opportunities for Public Engagement in the Water Sector¹⁰

The Bill of Rights of the Constitution of Kenya, Article 43(1d) states that; every person has the right to clean and safe water in adequate quantities. Every water resource shall be held by the National government in trust for the people of Kenya. The management of water resources shall be undertaken by or under the authority of the National Land Commission and by the County governments. The Commission shall, as an agent of the National government, regulate the management and use of water resources.

The management of water is complex and challenging. Under the Water Act 2002, The Ministry of Water and Irrigation is responsible for the development of legislation, policy and strategy formulation, sectors co-ordination, guidance, monitoring and evaluation and resource mobilisation for the sector.

Water provision and resource management are undertaken under separate frameworks. On the water supply side, regulation is undertaken by Water Service Regulation Board (WASREB) which issues licences to the water service boards, sets and monitors standards for water delivery and develops guidelines for water provisions on issues such as tariffs.

Water service Boards such as Athi Water Service Board are responsible for contracting water service providers through service agreements, development of water and sewer facilities, procurement and lease of water and sewer facilities.

Water Service Providers such as the Nairobi Water Company operate under a service agreement and are responsible for direct provision of water to consumers and maintenance of good customer relations, as well as maintenance of assets.

Challenges Facing the County Governments in Water Service Delivery

Kenya is classified among the most water scarce countries in the world. For instance, Nairobi City faces a rapidly increasing city population against a backdrop of dwindling water sources. The Athi Water Services Board (AWSB), puts daily demand for water by Nairobi consumers at 750,000 cubic meters a day against the current supply capacity of 530,000 cubic meters; that leaves a daily deficit of up to 220,000 cubic meters. This means that it is not possible to supply all residents' sufficient water for their daily needs forcing rationing.

Water scarcity affects informal settlements and high density areas more adversely as they are most affected by water shortages. County governments will have to establish ways to build up water resources in Nairobi and to ensure equal access to all residents irrespective of economic status and residence.

Also contributing to the water shortages are non-revenue water (NRW) due to illegal connections, frequent bursts and leakages. Illegal connections are especially acute due to illegal water cartels which prevent service providers from entering into informal settlements, causing residents of informal settlements to pay more for water. County governments will have to determine how to get into informal settlements to secure water provision for the poor amidst resistance from illegal cartels which profit unduly from the ignorance of residence.

¹⁰ From presentation by Rose Lukalo-Owino and notes by Boniface Muthee of Kangemi Water Action Group

Most residents are also not aware of their rights under the service agreements of their water service provider and so are not able to quickly report and demand action in the case of bursts and leakages.

Bribery and corruption have been identified as one of the biggest headaches facing the sector and denies water services to citizens and consumers.

Opportunities for Engagement:

1. **Water Action Group (WAGs):** Consumer protection is one key mandate of the water service regulator (WASREB) which has to ensure that there is effective consumer participation in the water regulatory process. Consumer participation is essential to hold the service providers accountable for water service delivery and provide the checks and balances required to ensure that the regulator also fulfils its mandate.

WAGs have been operational in parts of the Nairobi, Mombasa and Kisumu and their objectives are: To sensitise residents on their responsibilities and rights in the water sector; to facilitate provider-citizen engagement; monitor and follow up on resolution of complaints; promote resident participation in sector plans and investments; engage in meetings between the Boards and regulator (WASREB).

WAGs in Nairobi have been successful in the promotion of referencing-Water companies embraced the idea of issuing a reference number to help WAG members or consumers to follow up on their complaints. WAGs were able to facilitate for community engagement to improve services of water in Kayole Soweto and Ndumbu-ini in Uthiru. WAGs were also successful in areas of sewerage improvement in Kangemi and Tassia estate.

The Kisumu Residents Water Association (KISREWA) is an umbrella organization of 53 estates that deals with matters affecting residents. They also hold Complaints Discussion Forums when complaints have been registered with service providers and there has been no action taken. The Water Service Providers are called upon to give an account for the delays. Complaints Discussion Forums are held once a week. They also hold stakeholders forums after every three months and address weightier issues. They have been successful in creating awareness, resolution of citizen complaints, and in increased accountability by water officials. Their main challenge is how to finance their operations.

2. **A new Water Bill is in development:** There is need for public contribution into the process to ensure public interests especially the right to water for all is addressed.
3. **Water Service in Informal Settlements:** Informal settlements largely receive water from water vendors who are not licensed by the water service providers. As such this water is more expensive and may be unhygienic. There is need for affected settlements to reach out to the water service providers and establish a means in which water supply to their area can be achieved.
4. **Water Conservation:** Due to dwindling water resources there is need for all stakeholders to develop ways to conserve water through day to day practices and investments such as water harvesting and responsible water use. A water campaign between the water service providers and regulators and the public can be used towards this goal.
5. **Public Sensitisation:** All water service companies also operate under service charters. By understanding these charters residents can demand their water rights more effectively from the water company in their service area.
6. **Memoranda:** Resident groups can develop memoranda to go to the relevant institution with their demands. Once the Counties are in place these memoranda should be shared with the Board to ensure it prioritises these issues.

Discussion points

01. Does your area receive water? Are you satisfied with the service in your area?
02. How can residents in your area engage more effectively with the water service company?
03. Does your area have an active WAG and how can it be effective in pushing for improved water delivery?



8.0 ~ Opportunities for Public Engagement in the Land Sector¹¹

Kenya's land problems are rooted in its colonial history and magnified by the refusal of successive governments to deal comprehensively with land reforms. Pressing problems in urban areas include: high cases of grabbed public land, high numbers living in informal settlements, flouting of bylaws in land use, corruption and mismanagement at lands registry, ineffective district land boards, and poor regulatory framework.

Land and Environment are provided for in the new Constitution enacted on 27th August, 2010. **Chapter Five** of the Constitution spells out the principles of land policy and management. Article 61 of the constitution states that “...**All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals.**” The new constitution in a great way has reinforced the **National Land Policy No: 3 of 2009**.

Objectives of the National Land Policy (2009) are:

- » All citizens, particularly the poor, with the opportunity to access and beneficially occupy and use land;
- » Economically viable, socially equitable and environmentally sustainable allocation and use of land; and
- » Efficient, effective and economical operation of the land market;
- » Efficient and effective utilization of land and land based resources;
- » Efficient and transparent land dispute mechanisms.

The Constitution of Kenya demarcates the functions of National and County governments. It provides for legislation to establish a National Land Commission which will among other things administer and manage all public land for both national and county governments.

Land Reform Imperatives

1. The completion of the Land Bill, Land Commission Bill and Land Registration bill are delayed due to weak provision in the draft bills which non state actors have criticized and rejected. These bills once enacted will pave the way for the critical Land Commission and land reforms which will allow citizens to obtain solutions on land matters. However there appears to be great resistance from government to open up land as envisioned in the Constitution of Kenya.
2. Each County needs to make an inventory of all public utility land, their purpose, manner of acquisition and current status before the County Government takes over the assets and liability of local authorities and Nairobi County in particular. Every Local Authority should compile data on assets and public utility areas such as playgrounds, stadiums, water reservoir grounds; treatment plants, public social halls; public cemeteries and such other areas surrendered to the Local Authority for public use.
3. The Ministry of Lands should provide and inventory of the lapsed leases and how it shall treat the subject of renewal of leases. Publicise the number of foreign owned land, their status, if freehold or leasehold and when such leases are due for expiry.

¹¹ from a paper by John Burugu and presentation made by Collins Kowuor

4. Ministry of Local Government to undertake sensitization on the Land and Environment Act, 2011 which has been enacted and is now operational and has opportunities for citizen engagement.

Discussion points:

01. How can resident groups influence the land reforms in the country?
02. How can resident groups engage effectively with their Local Authority during the transition stage?



References

1. Constitution of Kenya, Government Printer, 2010
2. Urban Areas and Cities Act 2011
3. TISA devolution workshop: Nairobi County Reform Imperatives for Education, Land, and Water Sectors, Thursday 6th October - Friday 7th October, 2011, Kolping Centre, Magadi Road; Thursday 9th February-10th February 2012 presentations and papers
 - » Prof.Winnie V. Mitullah (**Urban Areas and Cities Act No.13 of 2011 and Transition Imperatives**),
 - » Dr.Julius .M. Malombe(**Kenya's Devolved Government: Paradigm shift and Implications for National and County Governments Public Financial Management**),
 - » Wanjiru Gikonyo(**Devolution under CK2010:Status of Implementation**),
 - » Kinuthia Wamwangi(**Citizen Participation under County Governments**),
 - » Wambua Kituku(**Reform Imperatives on Education Management in Nairobi County**),
 - » Rose Lukalo-Owino(**Reform Imperatives on Water Management in Nairobi County**),
 - » J.N Burugu (**Imperatives of Land Reforms in Nairobi County**)
 - » Collins Kowuor (**Service Delivery Imperative-Land Sector**)
 - » Collins Kowuor **Citizen Engagement within the land sector: in the context of Urban Areas and Cities Act, 2011**
 - » Sareen Malik (**Civic engagement in the water sector**)tools, methods, approaches.
 - » Muthoni-Ouko(**Education reforms &citizen engagement opportunities**)
 - » Pascaline Mulwa (**Understanding Government**)

Annexe

CHAPTER ONE—SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF THIS CONSTITUTION

- (4) The sovereign power of the people is exercised at—
- (a) the national level; and
 - (b) the county level.

CHAPTER TWO—THE REPUBLIC

6. (2) The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

10. (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

- (a) applies or interprets this Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

(2) The national values and principles of governance include—

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- (c) good governance, integrity, transparency and accountability; and
- (d) sustainable development.

CHAPTER FOUR—THE BILL OF RIGHTS

43. (1) Every person has the right—

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (b) to accessible and adequate housing, and to reasonable standards of sanitation;
- (c) to be free from hunger, and to have adequate food of acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) to social security; and
- (f) to education.

(2) A person shall not be denied emergency medical treatment.

(3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

CHAPTER FIVE—LAND AND ENVIRONMENT PART 1—LAND

60. (1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;

- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognised local community initiatives consistent with this Constitution.

(2) These principles shall be implemented through a national land policy developed and reviewed regularly by the national government and through legislation.

CHAPTER SIX—LEADERSHIP AND INTEGRITY

73. (1) Authority assigned to a State officer—

- (a) is a public trust to be exercised in a manner that—
 - (i) is consistent with the purposes and objects of this Constitution;
 - (ii) demonstrates respect for the people;
 - (iii) brings honour to the nation and dignity to the office;
 and
 - (iv) promotes public confidence in the integrity of the office; and
- b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
- (c) selfless service based solely on the public interest, demonstrated by—
 - (i) honesty in the execution of public duties; and
 - (ii) the declaration of any personal interest that may conflict with public duties;
- (d) accountability to the public for decisions and actions; and
- (e) discipline and commitment in service to the people.

CHAPTER TWELVE—PUBLIC FINANCE

PART I—PRINCIPLES AND FRAMEWORK OF PUBLIC FINANCE

201. The following principles shall guide all aspects of public finance in the Republic—

- (a) there shall be openness and accountability, including public participation in financial matters;
- (b) the public finance system shall promote an equitable society, and in particular—
 - (i) the burden of taxation shall be shared fairly;
 - (ii) revenue raised nationally shall be shared equitably among national and county governments; and
 - (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
- (c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- (d) public money shall be used in a prudent and responsible way; and
- (e) Financial management shall be responsible, and fiscal reporting shall be clear.

CHAPTER THIRTEEN—THE PUBLIC SERVICE

PART 1—VALUES AND PRINCIPLES OF PUBLIC SERVICE

232. (1) The values and principles of public service include—
- (a) High standards of professional ethics;
 - (b) Efficient, effective and economic use of resources;
 - (c) Responsive, prompt, effective, impartial and equitable provision of services
 - (d) involvement of the people in the process of policy making;
 - (e) accountability for administrative acts;
 - (f) transparency and provision to the public of timely, accurate information;
 - (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
 - (h) representation of Kenya's diverse communities; and
 - (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—
 - (i) men and women;
 - (ii) the members of all ethnic groups; and
 - (iii) persons with disabilities.
- (2) The values and principles of public service apply to public service in—
- (a) all State organs in both levels of government; and
 - (b) all State corporations.
- (3) Parliament shall enact legislation to give full effect to this Article.

FOURTH SCHEDULE

Part 2 (14.) Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

CHAPTER ELEVEN—DEVOLVED GOVERNMENT

PART 1—OBJECTS AND PRINCIPLES OF DEVOLVED GOVERNMENT

174. The objects of the devolution of government are—
- (a) to promote democratic and accountable exercise of power;
 - (b) to foster national unity by recognising diversity;
 - (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
 - (d) to recognise the right of communities to manage their own affairs and to further their development
 - (e) to protect and promote the interests and rights of minorities and marginalised communities;
 - (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
 - (g) to ensure equitable sharing of national and local resources throughout Kenya;
 - (h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and
 - (i) to enhance checks and balances and the separation of powers.

.....

175. County governments established under this Constitution shall reflect the following principles—

- (a) county governments shall be based on democratic principles and the separation of powers;
- (b) county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and
- (c) no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

PART 2—COUNTY GOVERNMENTS

176. (1) There shall be a county government for each county, consisting of a county assembly and a county executive.

(2) Every county government shall decentralise its functions and the provision of its services to the extent that it is efficient and practicable to do so.

177. (1) A county assembly consists of—

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
- (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;
- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
- (d) the Speaker, who is an ex officio member.

(2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90.

(3) The filling of special seats under clause (1) (b) shall be determined after declaration of elected members from each ward.

(4) A county assembly is elected for a term of five years.

178. (1) Each county assembly shall have a speaker elected by the county assembly from among persons who are not members of the assembly.

(2) A sitting of the county assembly shall be presided over by—

- (a) the speaker of the assembly; or
- (b) in the absence of the speaker, another member of the assembly elected by the assembly.

(3) Parliament shall enact legislation providing for the election and removal from office of speakers of the county assemblies.

179. (1) The executive authority of the county is vested in, and exercised by, a county executive committee.

(2) The county executive committee consists of—

- (a) the county governor and the deputy county governor; and
- (b) members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly.

(3) The number of members appointed under clause (2) (b) shall not exceed—(4) The county governor and the deputy county governor are the chief executive and deputy chief executive of the county, respectively.

(5) When the county governor is absent, the deputy county governor shall act as the county governor.

(6) Members of a county executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.

(7) If a vacancy arises in the office of the county governor, the members of the county executive committee appointed under clause

(2) (b) cease to hold office.

180. (1) The county governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year.

(2) To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.

(3) If only one candidate for county governor is nominated, that candidate shall be declared elected.

(4) If two or more candidates are nominated, an election shall be held in the county and the candidate who receives the greatest number of votes shall be declared elected.

(5) Each candidate for election as county governor shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.

(6) The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.

(7) A person shall not hold office—

(a) As a county governor for more than two terms;

(b) As a deputy county governor for more than two terms.

(8) For the purposes of clause (7), a person who has assumed the office of county governor shall be deemed to have served a full term, subject only to Article 182 (3) (b).

181. (1) A county governor may be removed from office on any of the following grounds—

(a) gross violation of this Constitution or any other law;

(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;

(c) abuse of office or gross misconduct; or

(d) physical or mental incapacity to perform the functions of office of county governor.

(2) Parliament shall enact legislation providing for the procedure of removal of a county governor on any of the grounds mentioned in clause (1).

182. (1) The office of the county governor shall become vacant if the holder of the office—

(a) dies;

(b) resigns, in writing, addressed to the speaker of the county assembly;

(c) ceases to be eligible to be elected county governor under Article 180 (2);

(d) is convicted of an offence punishable by imprisonment for at least twelve months; or

(e) is removed from office under this Constitution.

(2) If a vacancy occurs in the office of county governor, the deputy county governor shall assume office as county governor for the remainder of the term of the county governor.

(3) If a person assumes office as county governor under clause (2) the person shall be deemed for the purposes of Article 180 (7)—

(a) to have served a full term as county governor if, at the date on which the person assumed office, more than two and a half years remain before the date of the next regularly scheduled election under Article 180 (1); or

(b) not to have served a term of office as county governor, in any other case.

(4) If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.

(5) If a vacancy occurs in the circumstances contemplated by clause (4), an election to the office of county governor shall be held within sixty days after the speaker assumes the office of county governor.

(6) A person who assumes the office of county governor under this Article shall, unless otherwise removed from office under this Constitution, hold office until the newly elected county governor assumes office following the next election held under Article 180 (1).

183. (1) A county executive committee shall—

- (a) implement county legislation;
- (b) implement, within the county, national legislation to the extent that the legislation so requires;
- (c) manage and coordinate the functions of the county administration and its departments; and
- (d) perform any other functions conferred on it by this Constitution or national legislation.

(2) A county executive committee may prepare proposed legislation for consideration by the county assembly.

(3) The county executive committee shall provide the county assembly with full and regular reports on matters relating to the county.

184. (1) National legislation shall provide for the governance and management of urban areas and cities and shall, in particular—

- (a) establish criteria for classifying areas as urban areas and cities,
- (b) establish the principles of governance and management of urban areas and cities; and
- (c) provide for participation by residents in the governance of urban areas and cities.

(2) National legislation contemplated in clause (1) may include mechanisms for identifying different categories of urban areas and cities, and for their governance.

185. (1) The legislative authority of a county is vested in, and exercised by, its county assembly.

(2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.

(3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.

(4) A county assembly may receive and approve plans and policies for-

- (a) the management and exploitation of the county's resources; and
- (b) the development and management of its infrastructure and institutions.

PART 3—FUNCTIONS AND POWERS OF COUNTY GOVERNMENTS

186.(1) Except as otherwise provided by this Constitution, the functions and powers of the national government and the county governments, respectively, are as set out in the Fourth Schedule.

(2) A function or power that is conferred on more than one level of government is a function or power within the concurrent jurisdiction of each of those levels of government.

(3) A function or power not assigned by this Constitution or national legislation to a county is a function or power of the national government.

(4) For greater certainty, Parliament may legislate for the Republic on any matter.

187. (1) A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if—

- (a) the function or power would be more effectively performed or exercised by the receiving government; and
- (b) the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised.

(2) If a function or power is transferred from a government at one level to a government at the other level—

- (a) Arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and
- (b) Constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.

PART 4—THE BOUNDARIES OF COUNTIES

188. (1) The boundaries of a county may be altered only by a resolution—

- (a) recommended by an independent commission set up for that purpose by Parliament; and
- (b) passed by—
 - (i) the National Assembly, with the support of at least two-thirds of all of the members of the Assembly; and
 - (ii) the Senate, with the support of at least two-thirds of all of the county delegations.

(2) The boundaries of a county may be altered to take into account—

- (a) population density and demographic trends;
- (b) physical and human infrastructure;
- (c) historical and cultural ties;
- (d) the cost of administration;
- (e) the views of the communities affected;
- (f) the objects of devolution of government; and
- (g) geographical features.

189. (1) Government at either level shall—

- (a) perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;
 - (b) assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
 - (c) liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.
- (2) Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.
- (3) In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation.
- (4) National legislation shall provide procedures for settling inter-governmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration.

190. (1) Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions.

(2) County governments shall operate financial management systems that comply with any requirements prescribed by national legislation.

(3) Parliament shall, by legislation, provide for intervention by the national government if a county government—

- (a) is unable to perform its functions; or
- (b) does not operate a financial management system that complies with the requirements prescribed by national legislation.

4) Legislation under clause (3) may, in particular, authorise the national government—

- (a) to take appropriate steps to ensure that the county government's functions are performed and that it operates a financial management system that complies with the prescribed requirements; and
- (b) if necessary, to assume responsibility for the relevant functions.

(5) The legislation under clause (3) shall—

- (a) require notice to be given to a county government of any measures that the national government intends to take;
- (b) permit the national government to take only measures that are necessary;
- (c) require the national government, when it intervenes, to take measures that will assist the county government to resume full responsibility for its functions; and
- (d) provide for a process by which the Senate may bring the intervention by the national government to an end.

191. (1) This Article applies to conflicts between national and county legislation in respect of matters falling within the concurrent jurisdiction of both levels of government.

(2) National legislation prevails over county legislation if—

- (a) the national legislation applies uniformly throughout Kenya and any of the conditions specified in clause (3) is satisfied; or
- (b) the national legislation is aimed at preventing unreasonable action by a county that—
 - (i) is prejudicial to the economic, health or security interests of Kenya or another county; or
 - (ii) impedes the implementation of national economic policy.

3) The following are the conditions referred to in clause (2) (a) (a) the national legislation provides for a matter that cannot be regulated effectively by legislation enacted by the individual counties;

(b) the national legislation provides for a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing—

- (i) norms and standards; or
- (ii) national policies; or
- (c) the national legislation is necessary for—
 - (i) the maintenance of national security;
 - (ii) the maintenance of economic unity;
 - (iii) the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - (iv) the promotion of economic activities across county boundaries;
 - (v) the promotion of equal opportunity or equal access to government services; or
 - (vi) the protection of the environment.

- (4) County legislation prevails over national legislation if neither of the circumstances contemplated in clause (2) apply.
- (5) In considering an apparent conflict between legislation of different levels of government, a court shall prefer a reasonable interpretation of the legislation that avoids a conflict to an alternative interpretation that results in conflict.
- (6) A decision by a court that a provision of legislation of one level of government prevails over a provision of legislation of another level of government does not invalidate the other provision, but the other provision is inoperative to the extent of the inconsistency.

192. (1) The President may suspend a county government—

- (a) in an emergency arising out of internal conflict or war; or
- (b) in any other exceptional circumstances.

(2) A county government shall not be suspended under clause

- (1) (b) unless an independent commission of inquiry has investigated allegations against the county government, the President is satisfied that the allegations are justified and the Senate has authorised the suspension.
- (3) During a suspension under this Article, arrangements shall be made for the performance of the functions of a county government in accordance with an Act of Parliament.
- (4) The Senate may at any time terminate the suspension.
- (5) A suspension under this Article shall not extend beyond a period of ninety days.
- (6) On the expiry of the period provided for under clause (5), elections for the relevant county government shall be held.

PART 7—GENERAL

193. (1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly if the person—

- (a) is registered as a voter;
- (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and
- (c) is either—
 - (i) nominated by a political party; or
 - (ii) an independent candidate supported by at least five hundred registered voters in the ward concerned.

(2) A person is disqualified from being elected a member of a county assembly if the person—

- (a) is a State officer or other public officer, other than a member of the county assembly;
- (b) has, at any time within the five years immediately before the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- (c) has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- (d) is of unsound mind;
- (e) is an undischarged bankrupt;
- (f) is serving a sentence of imprisonment of at least six months; or
- (g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six.

(3) A person is not disqualified under clause (2) unless all possibility of appeal or review of the relevant sentence or decision has been exhausted.

194. (1) The office of a member of a county assembly becomes vacant—

- (a) if the member dies;



- (b) if the member is absent from eight sittings of the assembly without permission, in writing, of the speaker of the assembly, and is unable to offer satisfactory explanation for the absence;
- (c) if the member is removed from office under this Constitution or legislation enacted under Article 80;
- (d) if the member resigns in writing addressed to the speaker of the assembly;
- e) if, having been elected to the assembly—
 - (i) as a member of a political party, the member resigns from the party, or is deemed to have resigned from the party as determined in accordance with the legislation contemplated in clause (2); or
 - (ii) as an independent candidate, the member joins a political party;
- (f) at the end of the term of the assembly; or
- (g) if the member becomes disqualified for election on grounds specified in Article 193 (2).

(2) Parliament shall enact legislation providing for the circumstances under which a member of a political party shall be deemed, for the purposes of clause (1) (e), to have resigned from the party.

195. (1) A county assembly or any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information.

- (2) For the purposes of clause (1), an assembly has the same powers as the High Court to—
- (a) enforce the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (b) compel the production of documents; and
 - (c) issue a commission or request to examine witnesses abroad.

196. (1) A county assembly shall—

- (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and
- (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

(2) A county assembly may not exclude the public, or any media, from any sitting unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so.

(3) Parliament shall enact legislation providing for the powers, privileges and immunities of county assemblies, their committees and members.

197. (1) Not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender.

(2) Parliament shall enact legislation to—

- (a) ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee; and
- (b) prescribe mechanisms to protect minorities within counties.

198. While an election is being held to constitute a county assembly under this Chapter, the executive committee of the county, as last constituted remains competent to perform administrative functions until a new executive committee is constituted after the election.

199. (1) County legislation does not take effect unless published in the Gazette.

(2) National and county legislation may prescribe additional requirements in respect of the publication of county legislation.

200. (1) Parliament shall enact legislation providing for all matters necessary or convenient to give effect to this Chapter.

(2) In particular, provision may be made with respect to—

- (a) The governance of the capital city, other cities and urban areas;

- (b) The transfer of functions and powers by one level of government to another, including the transfer of legislative powers from the national government to county governments;
- (c) The manner of election or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;
- (d) The procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and
- (e) The suspension of assemblies and executive committees.



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