



# Devolution and Public Participation In Kenya

## Civic Education Trainer's Manual Executive Programme



2016



REPUBLIC OF KENYA

# Devolution and Public Participation In Kenya

## Civic Education Trainers Manual Executive Programme

2016



Ministry of Devolution  
and Planning



**Uraia**



Council of Governors



Devolution and Public Participation in Kenya

Civic Education Training Manual

13 weeks Programme

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## National Anthem

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

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

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

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

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

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

## Foreword


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

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

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

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

This manual has been developed to enhance the capacity of trainers of civic education and enable them to effectively train the target groups on the provisions of the constitution particularly, devolution and public participation. It is hoped that the trainer will find this manual an invaluable resource.



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

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

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

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



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

## Preface

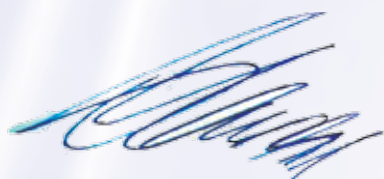
The County Governments Act, 2012 Part X, provides that there shall be established a national design and framework of civic education, including determining the content of the curriculum. The institutions that have been legally mandated to facilitate the provision of civic education include, the Ministry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

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

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

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

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



**GRACE MAINGI**

EXECUTIVE DIRECTOR , URAIA TRUST

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## Abbreviation and Acroynms

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

## Glossary of Terms

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

<b>Civil rights</b>	- the entitlement of an individual to freedom or liberty and their protection from unconstitutional interference from the state.
<b>Civil society</b>	- groups of active citizens concerned about a specific set of issues or focused on accomplishing a specific set of objectives.
<b>Community land</b>	- land held by communities identified on the basis of ethnicity, culture or similar community of interest.
<b>Constitutionalism</b>	- adherence to the principles of constitution or the rule of law.
<b>Council of County Governors</b>	- an intergovernmental coordinating and consultative body for the 47 county governments.
<b>County</b>	- a semi-autonomous unit of government devolved from the national level. There are 47 counties in Kenya.
<b>County Assembly</b>	- the legislative body of the County.
<b>County executive</b>	- the executive authority of county government. Equivalent to cabinet at national government.
<b>County Public Service Board</b>	- is a county-level institution that establishes and oversees public servants for each of the counties.
<b>Decentralization</b>	- a structural redistribution of power that takes a portion of the power vested in the national government and allocates it equitably to smaller sub-national entities.
<b>Delegation</b>	- a type of decentralization that refers to the transfer of some of the central authority's power to semi- independent sub-national and/ or non-government authorities, which have relative freedom to decide how to carry out their responsibilities, but they are ultimately accountable to the central authority.
<b>Democracy</b>	- a system of government based on people's consent, or the 'will of the people.'
<b>Democratic Leadership</b>	- a style of leadership where the person in charge acts in the interests of their people.
<b>Deputy Governor</b>	- the second highest executive authority in a county. The Deputy Governor fulfils the duties of the Governor when absent or as is required under law.
<b>Devolution</b>	- a type of decentralization that refers to the complete transfer of power from a central authority to near- autonomous sub-national authorities. Local citizens are empowered under devolution to elect their own leaders and make decisions on local matters.

**Dispute** - conflicts between the two groups such as the levels of

**Governments and political parties.**

**Elective positions** - positions that require an election through a secret ballot by registered voters, which include: the President; senators; members of the National Assembly; one woman elected to the National Assembly by voters in each county; governors; and ward representatives.

**Equalization Fund** - it is a national fund that seeks to address inequities that may exist between counties and within marginalized areas and groups by funding basic services such as water, healthcare, and roads.

**Governance** - management of public resources and the relationship between and among citizens, their elected officials and their organizations.

**Governor** - the highest executive authority of the county executive and serves as the chairperson of the County Executive Committee. S/he also serves as the county's representative in the National and County Government Coordinating Summit and the Council of County Governors.

**Income** - money earned from investments, resources, tax

**Judiciary** - the arm of the government that administers justice.

**Lobbying** - the practice of engaging with governments to advocate for change, request information, or hold officials accountable to their commitments to human rights and service delivery.

**Manifesto** - is a statement of intentions, which guides decision making and helps to keep the user focused on his/her goals.

**Memoranda/ Memorandum** - briefs written, record or communication to the government to create awareness of specific information.

**Municipality** - an urban area as defined under Urban Areas and Cities Act 2011.

**National Assembly** - a national legislative body representing the people of the constituencies and special interests through its elected and nominated members.

**National Executive** - the executive authority at the national level of government and is comprised of the President, Deputy President and the rest of the cabinet.

**Parliament** - the national legislative body established under Article 93 of Kenya's constitution. The National Assembly and the Senate comprise Parliament, whose legislative powers include representing the will of the people and exercising their sovereign power. Parliament also has



	the power to amend the Constitution as needed.
<b>Political party</b>	- an organization that is constituted for the purpose of providing an organized form of participation by people with similar views on political issues and activities.
<b>Political rights</b>	- <b>rights that enable citizens to participate in the political processes that</b> contribute to the functioning of a democracy.
<b>Private land</b>	- registered land owned or leased by any person.
<b>Promulgation</b>	- the act that brings a new constitution into effect and abolishes the old constitution.
<b>Proportional election formula</b>	- parties win seats in proportion to the number of votes they receive ( <i>in parliament or nominated seats</i> )
<b>Protests</b>	- an expression of opposition on a particular issue that is done through picketing, sit-ins, boycotts, vigil, and hunger strikes.
<b>Referendum</b>	- the process through which citizens decide, through a vote, whether or not they wish to make a significant change to the political landscape in which they operate.
<b>Relative majority</b>	- or plurality, when the outcome of an election is determined by the candidate that receives the most votes.
<b>Revenue Fund</b>	- a fund where each county deposits all money raised or received on behalf of the county government.
<b>Rule of law</b>	- the principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced.
<b>Senate</b>	- represents the counties, and serves to protect the interests of the counties and their governments.
<b>Sovereign power</b>	- the supreme power that a sovereign State uses to govern itself independently and the power from which all citizens and government institutions derive their political power.
<b>Sovereignty</b>	- collective power of the citizens exercised directly or through their democratically elected representatives at national and county levels.
<b>Speaker</b>	- the Speakers lead each of Kenya's legislative bodies at the national and county levels that is the National Assembly, Senate and county assemblies.
<b>Strategy</b>	- a roadmap on how you or your organization will go about achieving its mission.
<b>Sub-county</b>	- a semi-autonomous unit of government devolved from the county

whose purpose is to improve government administrative functions and service delivery by bringing both closer to citizens.

- Sub-national** - a semi-autonomous decentralized unit of government below the national level. Each of Kenya's 47 counties is known as sub-national units.
- Summit** - Also referred to as "National and County Government Coordinating Summit" is an intergovernmental relations body whose membership include the president, deputy president and the 47 governors.
- Super majority** - a vast majority (over 80%) consensus required to make major changes that will have a direct effect on the population of a country, such as an amendment to the Bill of Rights.
- Supreme law** - often used to refer to the Constitution as the highest law, and the based upon which all other laws are developed.
- Town** - an urban area as defined under urban areas and Cities Act 2011
- Urban sub-county** - a unit of government devolved from the county level and has urban characteristics of development, service delivery and population.
- Values** - core beliefs that are shared among the stakeholders of an organization
- Vertical Decentralization** - the process by which sovereign power is dispersed vertically between national and sub-national authorities (i.e. county) and/or semi-autonomous authorities (e.g. revenue authority).
- Ward** - a decentralized unit of county government governed by a ward administrator. Wards also serve as electoral units for electing members of the county assembly.

# Introduction

## Overview of the Training Manual

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

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

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

1. understand the constitution and its provision,
2. implement the civic education curriculum,
3. provide facilitating techniques for adult participants,
4. assess participants understanding of the constitution,
5. source for teaching and learning resources,
6. participate in the governance of their country.

The participants will in turn be able to:

1. demonstrate knowledge on the constitution,
2. appreciate the provisions of the Constitution of Kenya, 2010,
3. understand the importance of devolution,
4. participate in the governance of their country at county and national level
5. love their country.

## How to Use the Manual

The manual is intended for facilitators of Civic Education as it provides useful information on how to successfully implement the Civic Education Curriculum. The manual comprises of an introduction that gives general information on how to carry out the training and three modules where several units are discussed. In each unit and subsequent sessions, topic specific objectives, suggested learning methods, assessments and resources and key notes are provided. Also

included is a brief introduction to the unit and in some units additional information is included to equip the facilitator with the necessary information they require to know to effectively facilitate the sessions. The learning methods and assessment are suggested to give the facilitator opportunity to use their innovativeness and creativity to use any other method they see fit for their situation.

When using the manual the facilitator should note the following:

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

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

### **Module Introduction**

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

### **General objectives**

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

### **Specific objectives**

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

### **Suggested learning resources**

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

### **Suggested training method**

In order to achieve the session specific objectives the trainer has been provided with suggested training methods. The explanation on how these methods can be carried out is provided for in

this introduction. However, this list is not exhaustive and the trainer is encouraged to come up with other training methods as long as they enhance the achievement of the session specific objectives.

### **Suggested assessment methods**

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

### **Key notes**

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

### **Additional information**

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

## **The Executive Manual**

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

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

The manual has the following three modules:

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

### **Training Methods and Activities**

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

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

1. Discussions



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

## **1. Discussions**

Discussions are verbal interactions on a given topic between participants and the trainer facilitating the session. Well organized discussions enhance full participation of all participants. The participants are able to share their thoughts, ideas and experiences while at the same time listen to those of others. It also encourages spontaneous flow of thought, ideas, and information; however, the trainer should be careful to moderate the discussions to ensure they do not go out of the topic. During discussions, participants should be encouraged to ask questions and raise any related issue. Discussions also develop skills such as listening and speaking, effective communication, assertiveness and critical thinking.

When planning for discussions thought should be given to what will be asked to keep the discussion alive. The trainer should therefore prepare a list of questions before the lesson.

Discussion can be organized for the whole class or in groups.

### **a) Class Discussion**

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

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

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

### **b) Group Discussion**

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

to take.

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

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

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

After the discussions the trainer can summarize the session by:

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

## 2. Brainstorming

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

Brainstorming can be used when:

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

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

- link familiar concepts to those that are unfamiliar;

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

### 3. Buzzing

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

#### Explanation

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

#### Lecture

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

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

When planning for a lecture, the trainer should consider:

- a) length of the lecture to enable the trainer time them self;
- b) audio visuals and other materials that will be used during the lecture;
- c) the outline and sequencing of the information;
- d) the environment which the lecture will take place.

### 4. Role Play

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

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

- Use this approach to teach a concept in a topic that participants are familiar with.
- The participants taking part in the role play should be identified before the lesson

and properly guided on their roles.

- Introduce the lesson and ask the participants to role play at the appropriate time.
- Ensure that all the participants can clearly see what is being acted out.
- Inform the participants how long the role play should take to ensure adequate time for them to bring out the expected results.
- At the end of the role play the trainer should get feedback from the participants on what they have learned.
- The trainer should form the lesson summary from the feedback from the participants and include any other information that may have been left out.

## 5. Simulations

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

## 6. Case Studies

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

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

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

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

## 7. Experience Sharing

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

## 8. Display

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



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

## **Training Resources**

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

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

The Constitution of Kenya 2010 is the main reference material for this training manual. It should be used and referred to in every session. The trainer should always carry a copy of the constitution during the training. It is also important for the trainees to have their own copies.

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

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

### ***c) Acts of Parliament***

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

### ***d) Books***

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

### ***e) Social Maps***

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

### ***f) Budgets***

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

### ***g) Reports***

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



- The Hansard  
This is a Parliamentary report. Both the national and county governments have Hansards which are the official published reports of proceedings in the parliaments. Where possible, the trainee can avail a Hansard report for the participants to interact with.
- Controller of Budgets reports.
- County governments' annual reports
- Social audit reports by Civil Society Organisations (CSOs)
- Commission for the Implementation of the Constitution (CIC) reports
- Auditor General reports

#### **a) Plans**

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

#### **b) Internet sources**

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

- YouTube can be used to show the difference between riots and demonstration
- Kenya devolution and revenue sharing calculator ([www.brookings.edu/research/interactives/2013/kenya](http://www.brookings.edu/research/interactives/2013/kenya)). The trainer can use this calculator to determine how much money their counties are entitled to and how it is calculated.

### **Assessment Methods**

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

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

The assessment methods suggested in the manual include:

#### **1. Oral questions**

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

## **2. Question and answer**

The trainer prepares questions for learners to answer during the training. It is important to plan the questions well in advance in order to allow learning to be more focused especially in meeting the session objectives. The responses from the participants will enable the trainer to gauge how much they have understood the content being discussed. The trainer can use this method to carry out discussions and build on the session content.

## **3. Observation**

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

# MODULE ONE: THE CONSTITUTION



## **Introduction**

This module aims at providing participants with relevant information about the Constitution and constitutionalism. It also provides information on the rights and responsibilities as enshrined in the constitution. Further the module discusses the national values and principles of governance, facilitation and participation in the electoral processes.

### **General Objectives**

By the end of the module, the participant should be able to:

- a) understand and promote constitutionalism;
- b) understand and promote rights and responsibilities as enshrined in the constitution;
- c) appreciate and promote national values and principles of governance as enshrined in the constitution;
- d) acquire knowledge and attitudes to effectively facilitate and participate in the electoral processes.

# UNIT 1: THE CONSTITUTION OF KENYA

## Introduction

This unit aims at equipping participants with basic knowledge on the Constitution of Kenya. It further aims at enlightening the citizens on their rights, responsibilities and opportunities for participation in governance.

## SESSION 1: Overview of the key Components of the Constitution of Kenya 2010, and the Constitutional Review Process from 1964-2010

### Time: 30 minutes Session Objectives

By the end of the session, the participants should be able to:

- a) define constitution and constitutionalism;
- b) State the purpose of the constitution;
- c) describe the constitution amendments from 1964-1992;
- d) describe the events of the clamour for new constitution and the Constitution review process from 1997-2010;
- e) give an overview of the chapters and schedules of the Constitution of Kenya;
- f) Outline mechanisms and key institutions responsible for the implementation of the Constitution;

### Suggested Learning Resources

- Constitution of Kenya, 2010
- Constitution of Kenya Review Act, 1998
- Constitution of Kenya Amendment Act, 2008
- The Citizen Handbook by Uraia/IRI, 2012
- Information, Education and Communication (IEC) materials on Bill of Rights
- Understanding the Constitution by Kenya National Integrated Civic Education (K-NICE), 2012

### Suggested Training Methods

- Discussions
- Brainstorming



## Suggested Learning Activities

Guide the participants to discuss;

- i. the purpose of a constitution
- ii. the chapters and schedules of the Constitution of Kenya,
- iii. the mechanisms and key institutions responsible for the implementation of the constitution
- iv. the constitution review process from 1964-1992.
- v. Summarise the Session.

## Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

## KEY NOTES

### CONSTITUTION AND CONSTITUTIONALISM

#### Constitution

The Constitution is the supreme law of the country. It provides the limits for interaction between the state and its citizens. All policies, laws and regulations must be aligned to the constitution.

#### Constitutionalism

Constitutionalism is the limiting of power by providing for a body of rules within the Constitution by which the government and all citizens of a state must abide. It is also the process of abiding by these sets of norms.

#### Purpose of a Constitution

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

## Constitution amendments from 1964-1992

### *i. 1964*

The Constitution was amended by an Act of Parliament with the following changes:

- Kenya become a republic with executive power vested in the presidency
- the position of the Prime Minister was removed and Jomo Kenyatta became the first president of the republic
- The Senate and the regions (majimbo) were abolished.

### *ii. 1969*

A new constitution was adopted to consolidate the earlier amendments made to the independence constitution. These included;

- scrapping of the provincial assemblies;
- dissolving of the senate and its members were combined with those of the house of representatives into a unicameral assembly;
- strengthening of the presidential powers;
- altering of the process of amending the constitution by removing the requirement of two-thirds majority vote.

### *iii. 1976*

A major amendment was made to allow the president to pardon politicians who were barred from contesting elections due to electoral malpractices.

### *iv. 1982*

Kenya experienced an attempted coup d'état which led to the government amending the constitution;

- Removal of multiparty system
- Removal of security of tenure for Judges , Attorney General, Controller and Auditor General
- Establishment of one-party state structure with KANU as the only ruling party

### *v. 1988*

- Introduction of 'mlolongo' system of voting which replaced the secret ballot method of voting for nominations
- These amendments resulted in peoples' demand for a new constitutional dispensation with greater democratic space, human rights and accountability on the part of the government.

### *vi. 1991*

Section 2A of the Constitution was repealed and Kenya became a multiparty state again. The amendment also introduced a limitation on the tenure of the President to two consecutive terms.

## Events of the clamour for new constitution and constitution review process from 1997 -2010

Continued pressure to demand for review of the constitution led to a number of initiatives;

### *i. 1997*

- Inter-Party Parliamentary Group Initiative (IPPG) which consisted of members of Parliament from various political parties who were pushing for minimum reforms to ensure fair ground for political competition in the 1997 elections.

### *ii. 2000*

- Establishment of the Constitution of Kenya Review Commission (CKRC) chaired by Prof. Yash Pal Ghai.
- CKRC prepared a draft constitution which was submitted to the Bomas Constitutional Conference in 2004.
- The Bomas draft was submitted to the Attorney General's Office (Amos Wako was the then Attorney General). This Draft was reviewed in Kilifi and it later came to be known as the Kilifi or Wako Draft (Proposed New Constitution of Kenya, 2005).
- It was the Kilifi or Wako draft that was subjected to a national referendum in 2005. This draft was rejected in the referendum.
- The hotly contested 2007 general election and the subsequent post- election violence brought new developments:

The Constitution of Kenya Amendment Act was enacted in 2008 which created the National Accord and Reconciliation Act where power was shared between the President from the Party of National Unity (PNU) and the Prime Minister from Orange Democratic Movement (ODM). This was known as the Grand Coalition Government.

- The Constitution of Kenya Review Act, 2008 was to serve as the legal framework for achieving a new constitution
- The Review Act created the Committee of Experts (COE) who produced the Proposed Constitution of Kenya that was passed in a referendum and promulgated in August 2010.

## Overview of chapters and schedules to the Constitution of Kenya, 2010

The Constitution of Kenya has eighteen (18) Chapters and six schedules. Each Chapter addresses a unique facet of the relationship between the state and its citizens or between the citizens themselves.

- Chapter 1 - Sovereignty of the people and supremacy of the Constitution:** It declares that all sovereign power belongs to the people of Kenya and must be exercised in a manner that respects the supremacy of the people and all laws must be based on the Constitution.
- Chapter 2 – The Republic:** It defines the republic, national values, national languages and symbols.
- Chapter 3 – Citizenship:** This chapter defines the citizens of Kenya and the manner in which citizenship is acquired or lost.

- iv. Chapter 4 Bill of Rights:** The chapter recognizes rights of citizens and others. It provides for circumstances under which rights fundamental freedoms may be limited and provides mechanisms and procedures for the protection of rights.
- v. Chapter 5 – Land and Environment:** It provides for a framework for management of land, environment and natural resources and provides for their use and protection.
- vi. Chapter 6 Leadership and Integrity:** It sets out principles of conduct for state and public officers.
- vii. Chapter 7 – Representation of the People:** It provides for the election of leaders as the representative of the people, rules and principles of voting, framework for regulating political parties and creates the Independent Electoral and Boundaries Commission (IEBC).
- viii. Chapter 8 –The Legislature:** The chapter establishes the National Assembly and Senate (Parliament).
- ix. Chapter 9 –The Executive:** It establishes the executive arm of the National Government headed by the President and his Deputy and provides for mechanisms for the election or removal of the President. It also provides for establishment of the Office of the Attorney General (AG) and the Office of Director of Public Prosecution (ODPP).
- x. Chapter 10 –The Judiciary:** It establishes the Judiciary and the system of courts in Kenya.
- xi. Chapter 11 – The Devolved Government:** The chapter provides for the establishment of a system of devolved government. It establishes county governments and their functions.
- xii. Chapter 12 –Public Finance:** The chapter makes provisions for the raising of revenue and allocation of funds from the National Treasury and provides for principles of accountability for public resources.
- xiii. Chapter 13 – The Public Service:** The chapter establishes the public service and sets out the organisation of the public service. It provides for principles and values of good governance in service delivery.
- xiv. Chapter 14 –National Security:** The chapter sets out principles of national security and establishes institutions that provide security to the public.
- xv. Chapter 15 – Commissions and Independent Offices:** It provides for the roles, functions and independence of Constitutional Commissions and Independent Offices.
- xvi. Chapter 16- Amendment of the Constitution:** The chapter outlines how the Constitution can be amended, that is, through the popular initiative, Parliamentary initiative and referendum.
- xvii. Chapter 17- General Provisions:** The chapter provides rules for interpreting the Constitution.
- xviii. Chapter 18 – Transitional and Consequential Provisions:** The chapter deals with how the Constitution should be implemented.

## SCHEDULES

There are six Schedules as follows:

- i. First Schedule – Provides for the names of the 47 Counties
- ii. Second Schedule – Provides for the National Symbols
- iii. Third Schedule - Provides for the National Oaths and Affirmations
- iv. Fourth Schedule – Provides for the distribution of functions between National and County Governments
- v. Fifth schedule - Provides for the legislation to be enacted by Parliament
- vi. Sixth Schedule – Provides for Transitional and Consequential Provisions

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

### ***Mechanisms:***

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

### ***Key Institutions:***

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



## SESSION 2: Human Rights under the Constitution of Kenya 2010 Time Allocation:

**Time: 30 min**

### Session Objectives

By the end of the session, the participants should be able to:

- a) state some of the human rights under the Constitution of Kenya;
- b) explain the principles of human rights;
- c) describe ways of achieving rights under the Constitution of Kenya;
- d) identify the limitation of rights and fundamental freedoms under the Constitution of Kenya.

### Suggested Learning Resources

- The Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/IRI, 2012
- Information, Education and Communication (IEC) materials on Bill of Rights

### Suggested Training Methods

- Discussions
- Brainstorming

### Suggested Learning Activities

- a) Guide the participants to discuss on;
  - i. Principles of human rights
  - ii. human rights under the Constitution of Kenya 2010,
  - iii. The rights of people who require special protection,
  - iv. ways of achieving rights under the Constitution of Kenya
  - v. when Rights and fundamental Freedoms may be limited by law,
- b) Discuss and make presentations.
- c) Summarize the session.

### Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

## KEY NOTES

### Some of the Human Rights under the Constitution of Kenya

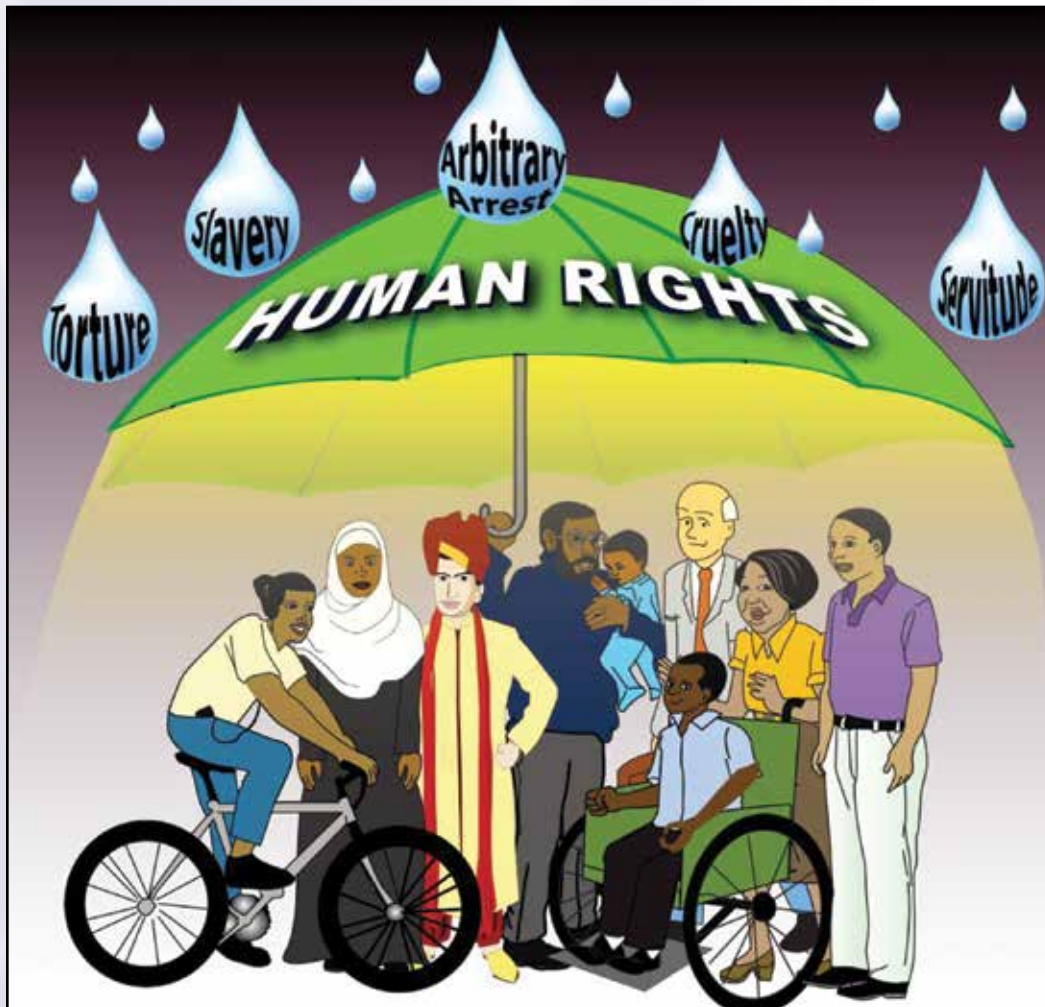


Figure 1: Human rights under the constitution

- i. The right to life (Art. 26), equality and freedom from discrimination (Art. 27), human dignity (Art. 28), freedom and security of the person (Art. 29)
- ii. The protection against slavery, servitude and forced labour (Art. 30), right to privacy (Art. 31)
- iii. Freedom of conscience, religion, belief and opinion (Art. 32), freedom of expression (Art. 33), freedom of the media (Art. 34) and access to information (Art. 35)
- iv. Freedom of association (Art. 36), assembly, demonstration, picketing and petition (Art. 37)
- v. Political rights (Art. 38), freedom of movement and residence (Art. 39)
- vi. Protection of right to property (Art. 40)
- vii. Labour relations (Art. 41)
- viii. Environmental rights (Art. 42)

- ix. Economic and social rights (Art. 43)
- x. Language and cultural rights (Art. 44)
- xi. Family rights (Art. 45)
- xii. Consumer rights (Art. 46)
- xiii. The right to fair administrative action (Art. 47)
- xiv. The right to access to justice (Art.48)
- xv. Rights of arrested persons (Art.49)
- xvi. Right to fair hearing (Art. 50)
- xvii. Rights of persons detained, held in custody or imprisoned (Art.51)

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

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

## Principles of Human Rights

### ***i. Universality and Inalienability:***

Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: *“All human beings are born free and equal in dignity and rights.”*

### ***ii. Indivisibility:***

Human rights are indivisible. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

### ***iii. Interdependence and Interrelatedness:***

Human rights are interdependent and interrelated. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfillment of one right often depends, wholly or in part, upon the fulfillment of others. For instance, fulfillment of the right to health may depend, in certain circumstances, on fulfillment of the right to development, to education or to information.

**iv. Equality and Non-discrimination:**

All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

**v. Participation and Inclusion:**

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

**vi. Accountability and Rule of Law:**

States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights- holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights.

**Ways of achieving rights under the Constitution of Kenya**

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

**Participation:**

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

**Inclusion:**

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

**Fulfilling obligation:**

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

**Limitation of rights and fundamental freedoms under the Constitution of Kenya**

The Constitution of Kenya provides for the limitation of rights and fundamental freedoms. A right or freedom may be limited by Law. A right or freedom may only be limited to the extent to which is reasonable and the institution which it is limiting it can justify it in an open and democratic manner.



However, the following rights shall not be limited:-

- Freedom from torture and cruelty, inhuman or degrading treatment or punishment
- Freedom from slavery or servitude
- The right to a fair trial; and
- The right to petition a court to order a public body to produce any person it holds in its custody.

### **SESSION 3: Land, Environment and Natural Resources use and management**

**Time: 40 min**

#### **Session Objectives**

By the end of the session, the participants should be able to:

- a) discuss the principles of land management under the Constitution of Kenya;
- b) discuss the land tenure systems in Kenya;
- c) explain the three classification of land in Kenya;
- d) state the functions of the National Land Commission , Ministry of lands and County land management boards;
- e) identify types of natural resources;
- f) discuss ways of protecting the environment and natural resources;
- g) explain the agreements relating to natural resources.

#### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- The Environmental Management and Coordination Act, 1999 (EMCA)
- The Citizen Handbook by Uraia/IRI 2012
- The National Land Commission Act, 2012
- Practice Guidelines for County Land Management Boards on Processing of Development Application, 2014
- Information, Education and Communication (IEC) materials on principles of land management under the Constitution of Kenya, tenure systems in Kenya, Classification of Land in Kenya, National Land Commission, types of natural resources

#### **Suggested Training Methods**

- Discussions
- Brainstorming



## Suggested Activities

- a) Guide the participants to discuss;
  - i. types of natural resources,
  - ii. the principles of land management under the Constitution of Kenya,
  - iii. the functions of the National Land Commission, Ministry responsible for lands, County Land management Board
  - iv. Ways of protecting the environment and natural resources.
- b) Make presentations.
- c) Summarize the session.

## Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

## KEY NOTES

### Principles of Land Management under the Constitution of Kenya, 2010 (Art.60)

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

### Land tenure systems in Kenya

- i. **Leasehold:** where a person or organisation leases or pays rent to the national or county government for a period of time.
- ii. **Freehold:** where a person or organisation holds an absolute title to land acquired through purchase or inheritance. This tenure may however be limited by law.
- iii. **Partial Interest:** where two or more people have rights over one piece of land such as a neighbour having a right of way.
- iv. **Customary:** where land is held by a group of people based on their customary beliefs or lifestyle. However, this is limited if the custom conflicts with any principles or provisions of the Constitution.

## Classification of Land in Kenya

### A. Public Land

- i. This is land which belongs to either the national or county government or any State organ and held on behalf of the people. This can also be defined as land to which no individual or community claims ownership or which is defined by an Act of Parliament as public land.
- ii. Any land in respect of which no heir can be identified by any legal process is also classified as public land.
- iii. Public land includes any land upon which natural resources are deposited including: all minerals and mineral oils, government forests, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;
- iv. Roads and public utility land, all rivers, lakes and other water bodies, the territorial sea, the exclusive economic zone and the sea bed, the continental shelf, all land between the high and low water marks;
- v. Any land not classified as private or community land under the Constitution, and any other land declared to be public land by an Act of Parliament is also public land.

### B. Private Land

This is land registered and held by any person under any freehold tenure; under a leasehold tenure; or any other land declared private land under an Act of Parliament.

### C. Community Land

Community land refers to land that is lawfully registered in the name of group representatives under the provisions of any law; or transferred to a specific community by any process of law; and any other land declared to be community land by an Act of Parliament; and land that is:

- i. Lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
- ii. Ancestral lands and lands traditionally occupied by hunter-gatherer communities;
- iii. Lawfully held as trust land by the county governments but not including any public land held in trust by the county government.

## Functions of the National Land Commission (NLC)

The functions of the National Land Commission are to:

- i. Manage public land on behalf of the national and county governments
- i. Develop a national land policy
- ii. Advise the national government on matters related to land titles and monitoring
- iii. Oversee land use throughout the country
- iv. Investigate present or historical land injustices and recommend appropriate land redress
- v. Encourage use of traditional dispute resolution mechanisms in conflicts over land.

## Functions of the Ministry responsible for lands

The functions of the ministry responsible for lands are to:

1. develop and regularly review national land policies
2. initiate legislation on land matters
3. make regulations to guide registration of land
4. execute contracts regarding sale of land on behalf of the government
5. acquire private land for public use e.g settlement
6. carry out survey and mapping of land
7. carry out land adjudication
8. carry out physical planning
9. offer land and property valuation services
10. land reclamation
11. administer public land as stipulated by the constitution

## Functions of County Land Management Boards

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

1. allocation of public land in the counties
2. renewal of land leases
3. change and extension of user
4. sub-division of public land in the county

## Types of Natural Resources

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

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

The Environmental Management and Coordination Act, 1999 (EMCA) identifies natural resources to include air, land, water, animals and plants.

The Constitution defines “land” to include:

- i. The surface of the earth and the subsurface rock
- ii. Any body of water on or under the surface
- iii. Marine waters in the territorial sea and exclusive economic zones

- iv. Natural resources completely contained on or under the surface
- v. The air space above the surface.

### **Ways of protecting the environment and natural resources**

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

- Agriculture
- Fishing, hunting and gathering
- Protection of animals and wildlife
- Water protection
- Energy

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

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

### **The agreements relating to natural resources**

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

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

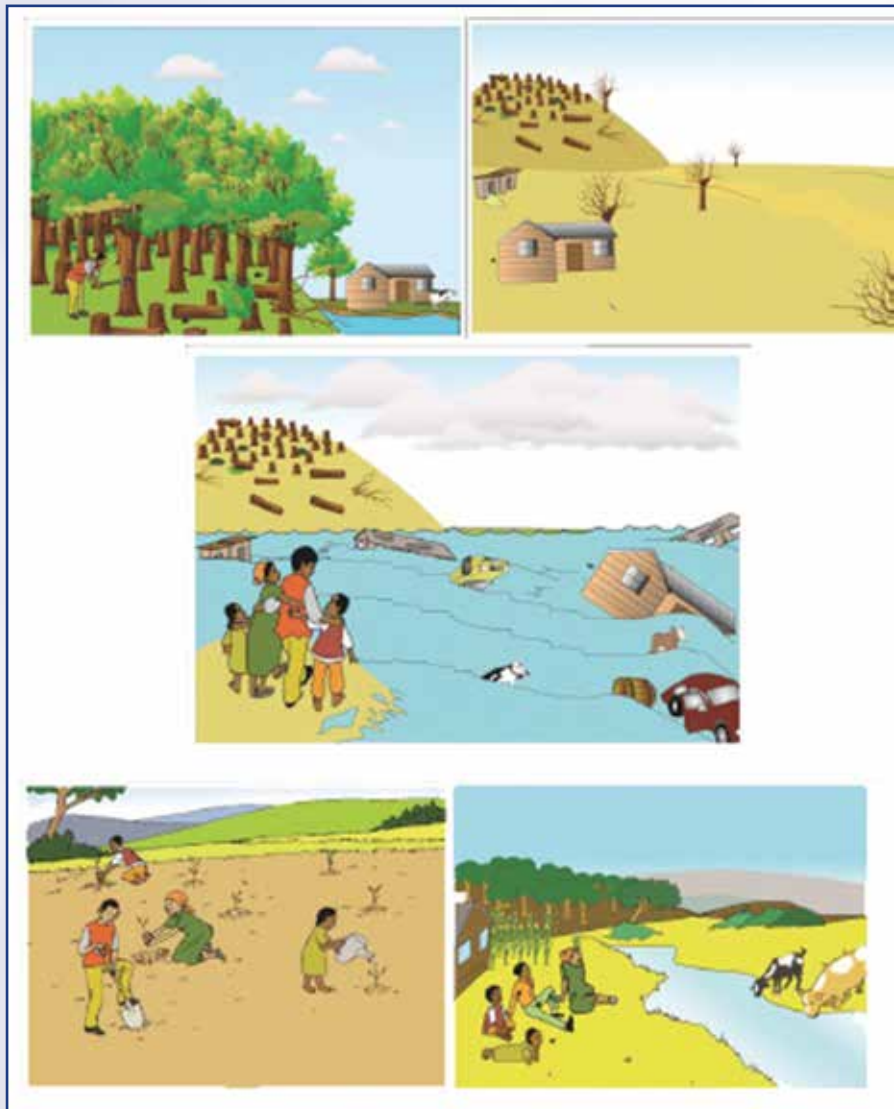


Figure 2

## SESSION 4: Leadership and Governance under the Constitution of Kenya, 2010

**Time: 20 minutes**

### Session Objectives

By the end of the session, the participant should be able to:

- a) state the national values and principles of governance
- b) discuss the principles of leadership and integrity
- c) discuss the code of conduct for state and public officers



**Suggested Learning Resources**

- Constitution of Kenya, 2010
- Commission on Administrative Justice Act, 2011
- Ethics and Anti-Corruption Act, 2011
- The Leadership and Integrity Act, 2012
- Public Officers and Ethics Act, 2003
- Understanding the Constitution, by K- NICE ,2012

**Suggested Training Methods**

- Discussions
- Brainstorming

**Suggested Learning Activities**

- a) Guide the participants to brainstorm on;
  - i. National values and principles of governance
  - ii. Guiding principles on leadership and integrity
  - iii. the code of conduct of State and public officers as stipulated in the Constitution of Kenya.
  - iv. Functions of EACC and CAJ
- b) Summarize the session.

**Suggested Assessment Methods**

- Question and answer
- Observation on active participation in discussions

**KEY NOTES****National values and principles of governance**

The national values and principles of governance include:

- i. Patriotism
  - ii. National unity
  - iii. Sharing and devolution of power
  - iv. The rule of law
  - v. Democracy and participation of the people
  - vi. Human dignity
  - vii. Equity

- viii. Social justice
- ix. Inclusiveness
- x. Equality
- xi. Human Rights
- xii. Non-discrimination
- xiii. Protection of the marginalized
- xiv. Good governance
- xv. Integrity
- xvi. Transparency and accountability.
- xvii. Sustainable development

### **Guiding principles of leadership and integrity**

The guiding principles of leadership and integrity include

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

### **Responsibilities of leadership**

Authority assigned to a State officer is a public trust to be exercised in a manner that:

- is consistent with the purposes and objects of the Constitution;
- demonstrates respect for the people;
- brings honour to the nation and dignity to the office;
- promotes public confidence in the integrity of the office;
- vests in the State officer the responsibility to serve the people, rather than the power to rule them

### **Legislation on Leadership:**

- The Leadership and Integrity Act, 2012
- Public Officers and Ethics Act, 2003
- Ethics and Anti-Corruption Act, 2011
- Commission on Administrative Justice, 2011

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



Figure 3. Traffic Police officer refusing a bribe

In relation to state and public officers the Ethics and Anti-Corruption Commission has the following functions:

- i. develop and promote standards and best practices in integrity and anti- corruption;
- ii. develop a code of ethics;
- iii. work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
- iv. receive complaints on the breach of the code of ethics by public officers;
- v. investigate and recommend to the Director of Public Prosecutions of any acts of corruption or violation of codes of ethics or other matter prescribed under the Ethics and Anti-Corruption Commission Act, 2012 or any other law enacted pursuant to Chapter Six of the Constitution
- vi. recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;
- vii. oversee the enforcement of codes of ethics prescribed for public officers;
- viii. advise, on its own initiative, any person on any matter within its functions;
- ix. raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 as to confidentiality;
- x. subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and

- xi. institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

The functions of the Commission on Administrative Justice are to:

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

### **The conduct of state officers as stipulated in the Constitution of Kenya**

In conducting their duties, state and public officers must:

- Perform their duties as provided by the law
- Treat members of the public and other public officers with courtesy and respect
- Carry out their duties in the best interest of the people of Kenya;
- Take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office
- Carry out the duties of their office efficiently, honestly, transparently, in an accountable manner
- Keep accurate records and documents relating to the functions of the office
- Report truthfully on all matters of the organization which they represent
- Carry out the duties of the office in a manner that maintains public confidence in the integrity of the office
- Maintain high standards of performance and level of professionalism within their organizations. Adhere to the ethical and professional requirements of any professional body they are members.

State and public officers must avoid—

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

## UNIT 2: REPRESENTATION OF THE PEOPLE

### Introduction

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

### SESSION 1: Electoral System in Kenya

**Time: 30 min**

#### Session Objectives

By the end of the session, the participant should be able to:

- a) discuss the importance of elections
- b) state the constitutional principles of the electoral system in Kenya;
- c) identify key provisions on elections in Kenya;
- d) describe ways of winning elections in Kenya;

#### Suggested Learning Resources

- Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/IRI, 2012
- Relevant Acts of Parliament
- Information, Education and Communication (IEC) materials on principles of electoral system in Kenya, key provisions on elections and ways of winning elections

#### Suggested Training Methods

- Brainstorming
- Group discussions
- Sharing of experiences

#### Suggested Learning Activities

- a) Guide the participants to discuss on ;
  - i. The importance of elections
  - ii. constitutional principles
  - iii. key provisions on elections iv. ways of winning an election
- b) Summarise the session.



### Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

## KEY NOTES

### Importance of Elections

- It provides an opportunity for citizens to choose their leaders.
- It allows for political participation.
- It enables people to exercise their democratic right.
- It provides for self-corrective system where political parties are kept in check or their performance is reviewed.

### Constitutional principles of the electoral system in Kenya

The electoral system is required to comply with the following principles:

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

### Key provisions on elections

1. **Code of Conduct** – The Constitution provides for a code of conduct by which political parties, their nominees, independent candidates and the general public must comply. The Code of Conduct is found in the Second Schedule of The Elections Act, 2011.
2. **Voter registration** – The Constitution provides for qualifications of registering as a voter at elections and referenda. This include:
  - i. Attainment of age of maturity (18 years)
  - ii. Possession of a National Identity Card or Kenyan Passport at the time of registration;
  - iii. Being of sound mind;
  - iv. Not having been convicted of an election offence during the previous five years.

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

**3. Independent candidate:** A person does not have to be a member of a political party in order to be a candidate for any of the six elective positions.

According to Article 85 of the Constitution, any person may contest elections as an independent candidate if he or she is not a member of a registered political party and has not been a member for at least three months immediately before the Election Day. A person must also satisfy the specific nomination requirements for independent candidates for election to the any of the elective positions.

**4. Voting, vote counting and announcement of results** –The Independent Electoral and Boundaries Commission (IEBC) is responsible for ensuring that the voting method used during every election is simple, accurate, verifiable, secure, accountable and transparent. Moreover, the Commission is responsible for implementing structures to prevent electoral malpractice and to ensure that each polling station promptly counts and tabulates votes and announces the election results.

**5. Allocation of party list seats** –The allocation of party list seats is in line with a proportional system outlined in Article 90 of the Constitution, which stipulates that the nominated seats in the National Assembly, Senate, and the 47 county assemblies are determined through nomination by party lists submitted to IEBC before a general election.

**6. Electoral disputes** – Article 87 of the Constitution requires a quick and just resolution of disputes and allows citizens to petition the Court in case of disputes of the results within 28 days of their declaration by IEBC. Presidential election disputes should be filed within seven days.

### Winning elections in Kenya

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

## **SESSION 2: Elective Positions, Functions of the Independent Electoral and Boundaries Commission (IEBC), Political Parties, Election Campaign Financing Act, and Election Offences.**

**Time: 30 Min**

### **Session Objectives**

By the end of the session, the participant should be able to:

- a) identify the elective positions;
- b) state the functions of the Independent Electoral and Boundaries Commission;
- c) discuss the features and roles of political parties as outlined in the Constitution of Kenya and Political Parties Act;
- d) discuss the key provisions of the Election Campaign Financing Act, 2013;
- e) discuss the electoral offences and punishment as outlined in the Elections Act.

### **Suggested Learning Resources**

- Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/IRI, 2012
- Independent Electoral and Boundaries Commission Act, 2011
- Elections Act, 2011
- Political Parties Act, 2011
- Voter Education Training Manual, IEBC

### **Suggested Training Methods**

- Discussions
- Brainstorming

### **Suggested Learning Activities**

- a) Guide the participants to discuss:
  - i. Election Campaign Financing
  - ii. the functions of the independent Electoral and Boundaries Commission,
  - iii. the electoral offences and punishment as outlined in the elections act,
  - iv. features and roles of political parties as outlined in the Constitution and Political Parties Act
- b) Summarise the session

**Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussions

**KEY NOTES****Elective positions at various levels National level**

- The President
- The Member of the National Assembly
- The Senator
- The Woman County Representative to the National Assembly

**County level**

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

**The functions of Independent Electoral and Boundaries Commission (IEBC)**

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

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

**Other functions of IEBC are to carry out:**

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

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

### Features of Political Parties

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

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

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

- a) apply in writing and the application signed by an authorized official of the political party;
- b) recruit as members, not fewer than one thousand registered voters from each of more than half of the counties
- c) ensure that membership reflects regional and ethnic diversity, gender balance and representation of minorities and marginalised groups
- d) have the composition of its governing body reflecting regional and ethnic diversity, gender balance and representation of minorities and marginalised groups
- e) have not more than two-thirds of the members of its governing body being of the same gender
- f) demonstrate that members of its governing body meet the requirements of Chapter Six of the Constitution and the laws relating to ethics;
- g) have submitted to the Registrar;
  - i. a list of the names, addresses and identification particulars of all its members;
  - ii. the location of its head office, which shall be a registered office within Kenya and a postal address to which notices and other communication may be sent;
  - iii. the location and addresses of the branch offices of the political party, which shall be in more than half of the counties;
- h) undertake to be bound by the Political Parties Act, 2011 and the Code of Conduct set out in the First Schedule of the act



## Roles of Political Parties

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

## Legal Limits of a Political Party

Article 91 (2) prohibits political parties from:

- being founded on religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred;
- engaging in or encouraging violence by, or intimidation of, its members, supporters and opponents;
- establishing or maintaining a paramilitary force, militia or similar organization;
- engaging in bribery or other forms of corruption;
- accepting or using public resources to promote its interests or its candidates in elections, except where allowed under the constitution or by statute

## Key provisions of the Election Campaign Financing Act 2013:

### *Sources of campaign funds*

The sources of funds for purposes of financing party nomination, election or referendum campaign are---

- a) contributions received from any person, political party or any other lawful source;
- b) contributions from a lawful source, not being directly from a foreign government;
- c) contributions from a harambee.

### *Limits to expenditure*

1. The IEBC shall, at least twelve months before an election, by notice in the Gazette, prescribe the spending limits. This may include limits on media coverage.
2. Any contribution from a person, organisation or any other lawful source contributed to a campaign financing account shall not exceed the limit of the total contribution prescribed. However, a candidate's contribution to their own campaign financing account is limitless.

3. The IEBC shall, in prescribing spending limits take into consideration
  - geographical features and urban centres;
  - the type of election;
  - the population in an electoral area;
  - the number of party members in an electoral area. This does not apply to independent candidates.
  - the communication infrastructure in an electoral area
4. Where a candidate, political party or a referendum committee exceeds the spending limits prescribed due to unforeseeable and extraneous circumstances, the candidate, political party or referendum committee shall file a report with IEBC specifying the reasons for exceeding the limit, within such time as the Commission may prescribe and the Commission shall determine if such spending was justifiable.
5. A candidate who, or a political party or referendum committee which, exceeds the prescribed spending limits and fails to report this fact to IEBC commits an offence.

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

1. **Offences relating to register of voters** for example registering using falsified documents and use of a deceased person's documents. A person who commits offences relating to register of voters is liable, on conviction, to a fine not exceeding one million shillings and to imprisonment for a term not exceeding six years or both.
2. **Offences relating to multiple registrations as a voter.** A person who commits the offence is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or both.
3. **Offences relating to voting for example double/multiple voting** and pretence on ground of disability or illiteracy so as to be assisted in voting. A person who commits the offence is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding six years or both.
4. **Offences by members and staff of the Commission** (including officers engaged for a particular election) such as bias in the dispensation of duty and falsification of election documents. A person who commits the offence is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.
5. **Offences relating to maintenance of secrecy at elections.** A person who contravenes the provisions of this section commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.
6. **Personation, treating, undue influence, bribery and use of force or violence during election period.** A person who commits any of the offences is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.
7. **Use of national security organs.** A candidate, or any other person who uses a public officer, or the national security organs to induce or compel any person to support a particular candidate or political party commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding six years or to both.

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

### **SESSION 3: Run off, Petitions, dispute resolution Mechanisms, role of observers, right of recall**

**Time Allocation: 30 minutes**

#### **Session objectives**

By the end of the session, the participant should be able to:

- a) explain the circumstances for run off and election petitions;
- b) discuss electoral dispute resolution mechanisms
- c) describe the role, rights and privileges of election observers.
- d) Explain the procedure of recalling an elected leader

#### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- The Citizen Handbook by Uraia /IRI, 2012
- Understanding the Constitution by K-NICE, 2012
- Information, Education and Communication (IEC) on elective positions, role, rights and privileges of election observers

#### **Suggested Training Methods**

- Brainstorming
- Discussion
- Sharing of experiences

#### **Suggested Learning Activities**

- a) Guide the participants to discuss:
  - i. election petitions and run off,
  - ii. Elective petitions
  - iii. Dispute resolution mechanisms
  - iv. Election Observation
  - v. Recall
  - vi. The roles, rights and privileges of election observers.
- b) Summarise the session.

## Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

## KEY NOTES

### Run Off and Election Petition

#### *Run-off election*

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

#### *Election Petition*

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

### Dispute Resolution Mechanisms

- Dispute resolution is the process of resolving disputes between a member of a party and the party.
- Common election disputes are disputes relating to or arising from nominations.
- IEBC is mandated to resolve all electoral disputes, including disputes relating to or arising from nominations but is excluded from settlement of election petitions and disputes subsequent to the declaration of election results which is a preserve of the Courts.

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

### **The role, rights and privileges of election observers**

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

An election observer is accredited by the IEBC.

The Roles of Observers are to:

- Promote free and fair elections
- Identify electoral malpractices and bring them to the attention of the electoral body
- Compile and write reports on electoral malpractices in a political electoral unit;
- Pursue corrective action to electoral malpractices
- Bolster voter confidence
- Act as a deterrent to those interested in undermining the electoral system and process
- Influence policy making by the IEBC on the unique nature of the electoral process.

### **Rights and privileges of election observers**

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

### **Recall of Elected Leaders**

- Article 104 (1) provides a voter the right to recall a Member of Parliament and County Assembly representing their constituency, county or county assembly ward before the end of their term.
- The Elections Act, 2011, provides that a Member may be recalled when he/ she is found, after due process of the law, to have
  - violated Chapter Six of the Constitution (Leadership and Integrity),
  - mismanaged public resources,
  - been convicted of an offence under The Elections Act, 2011.



- A recall can only occur 24 months after the election and no later than 12 months immediately before the next general election.
- A recall of a member of Parliament or County Assembly shall only be initiated upon a judgment or finding by the High Court confirming the grounds specified
- A recall petition shall not be filed against a Member of Parliament or County Assembly more than once during the term of that member in the respective houses.

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

- A recall shall be initiated by a petition which shall be filed with the IEBC and which shall be:
  - in writing and signed by a petitioner who:
    - is a voter in the county assembly ward, constituency or county in respect of which the recall is sought; and
    - was registered to vote in the election in respect of which the recall is sought;
  - o accompanied by an order of the High Court issued in terms of section 45(3) of the Elections Act, 2011
- The petition shall:
  - o specify the grounds for the recall
  - o contain a list of such number of names of voters in the county ward assembly, constituency or county which shall represent at least thirty percent (30%) of the registered voters
  - o be accompanied by the fee prescribed for an election petition.
- In the case of the Member of Parliament, the list of names shall contain the names, address, national identity card or passport number and signature of the voters supporting the petition and shall contain names of at least fifteen percent of the voters in more than half of the wards in the county or the constituency, as appropriate.
- The voters supporting a petition shall represent the diversity of the people in the county assembly ward, constituency or county as the case may be.
- The petitioner shall collect and submit to IEBC the list of names within a period of thirty days after filing the petition.
- The IEBC shall verify the list of names within a period of thirty days of receipt of that list.
- The Commission, if satisfied that the requirements are met, shall within fifteen days after the verification, issue a notice of the recall to the Speaker of the relevant House.
- The Commission shall conduct a recall election within the relevant jurisdiction within ninety days of the publication of the question.

# MODULE TWO: DEVOLUTION



## **Introduction**

This module aims at providing the participant with relevant information on the concept of devolution and the system of devolved government as provided for in the Constitution of Kenya 2010. This will enable the participant to become an active player in the governance processes at both National and County levels.

## **General Objectives**

By the end of this module, the participant should be able to:

- a) understand the system of devolved governance in Kenya;
- b) practice the values and principles of the public service;
- c) facilitate planning and budget making process ;
- d) facilitate open and transparent public procurement process;
- e) understand the laws relating to devolution;
- f) promote principles and the scope of affirmative action in devolved Government.

# UNIT 1: UNDERSTANDING DEVOLUTION

## Introduction

This unit focuses on the meaning of decentralization and devolution, objects and principles of devolution and overview of the legal framework on devolution. The unit also outlines the role of the Transition Authority during the transition period and discusses the objects and purpose of key legislations guiding devolution.

## SESSION 1: Understanding Devolution

**Time: 40 min**

### Session Objectives

By the end of the session, the participant should be able to:

- a) explain the meaning of the terms decentralization and devolution
- b) discuss the objects and principles of devolution
- c) Outline the role of Transition Authority during the transition period

### Suggested Learning Resources

- Constitution of Kenya, 2010
- Transition to Devolved Government Act, 2012
- County Government Act, 2012
- The Citizen Handbook by Uraia IRI, 2012
- IEC materials on Devolution
- Understanding the Transition to Devolved Government in Kenya: Answers to Frequently asked Questions by Transition Authority (2013)

### Suggested Training Methods

- Discussion
- Explanation

### Suggested Learning Activities

- a) Guide the participants to discuss
  - i. the meaning of terms decentralization and devolution, ii. objects and principles of devolution.
- b) Make presentation
- c) Role of the Transition Authority during the transition period Summarizes the session.

### Assessment Methods

- Question and answer
- Observation on active participation during discussions

### KEY NOTES

Meaning of terms decentralization and devolution

#### Decentralization

Decentralization is a process of transfer of sovereign power and resources from a central authority to different levels of government. There are various forms of decentralization which include; delegation (to parastatals), deconcentration (to districts and provinces) and devolution among others.

#### Devolution

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

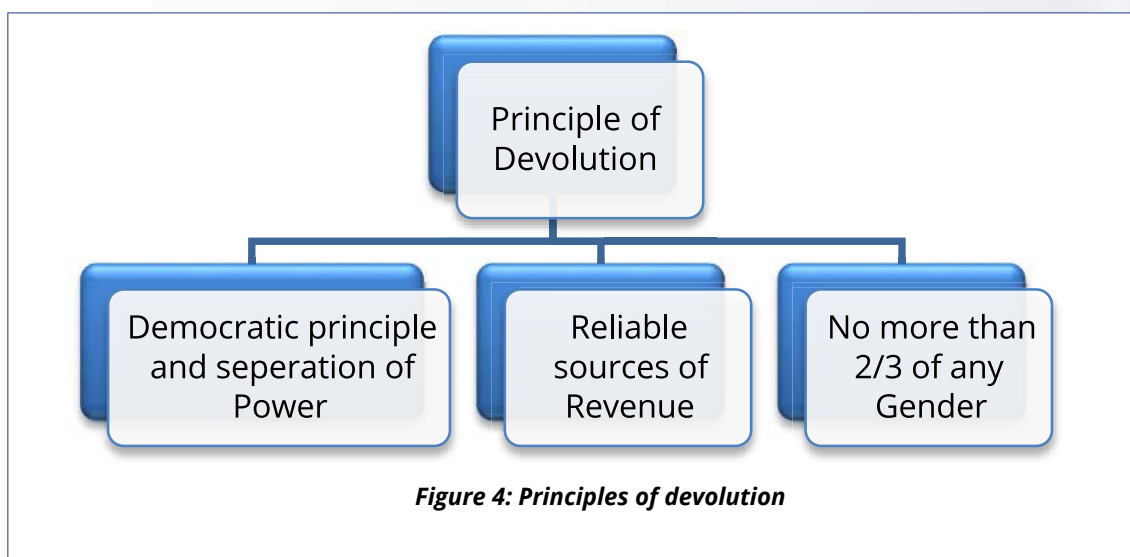
#### Objects and principles of devolution Objects of Devolution

The primary objects of devolution are to:

- i. Promote democratic and accountable exercise of power
- ii. Foster national unity by recognizing diversity
- iii. Give powers of self-governance to the people
- iv. Enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them
- v. Recognize the right of communities to manage their own affairs and to further their development
- vi. Protect and promote the interests and rights of minorities and marginalized groups who include women, youth, persons with disabilities among others
- vii. Promote social and economic development and the provision of proximate, easily accessible services throughout Kenya
- viii. Ensure equitable sharing of national and local resources throughout Kenya
- ix. Facilitate the decentralization of State organs, their functions and services x. Enhance checks and balances and the separation of powers



## Principles of Devolution



### Principles of Devolution

- i. Democratic principles
- ii. Separation of powers
- iii. Reliable sources of revenue to enable delivery of services effectively
- iv. Ensuring no more than two thirds of the members of representative bodies shall be of the same gender

### Role of the Transition Authority during the transition period

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

### Specific Functions of Transition Authority

The following are the functions of the Transition Authority pursuant to section 7(2) of the Transition to Devolved Government Act, 2012:

- a) Facilitate the analysis and the phased transfer of the functions provided under the Fourth Schedule to the Constitution to the national and county governments;
- b) Determine the resource requirements for each of the functions;
- c) Develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule to the Constitution;
- d) Co-ordinate with the relevant State organ or public entity in order to–
  - i. Facilitate the development of the budget for county governments during Phase One of the transition period ;
  - ii. Establish the status of ongoing reform processes, development programmes and projects and make recommendations on the coordinated management,

reallocation or transfer to either level of government during the transition period; and

- iii. Ensure the successful transition to the devolved system of government.
- e) Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities;
- f) Make recommendations for the effective management of assets of the national and county governments;
- g) Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period;
- h) Pursuant to Section 15 (2) (b) of the Sixth Schedule to the Constitution, develop the criteria as may be necessary to determine the transfer of functions from the national to county governments, including–
  - i. Such criteria as may be necessary to guide the phased or asymmetric transfer of functions to county governments; and
  - ii. The criteria to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities.
- i) Carry out an audit of the existing human resource of the Government and local authorities;
- j) Assess the capacity needs of national and county governments;
- k) Recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions;
- l) Co-ordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- m) Advise on the effective and efficient rationalization and deployment of the human resource to either level of government;
- n) Submit monthly reports to the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation on the progress in the implementation of the transition to the devolved system of government;
- o) Perform any other function as may be assigned by national legislation.

**Note:** At the end of the TA term, the residual functions will be performed by the intergovernmental Relations Technical Committee.

## SESSION 2: Key Legislation Guiding Devolution

Time: 20 Min

### Session Objective

By the end of the session the participant should be able to:

- a) List the key Legislations guiding devolution
- b) Discuss the objects and purpose of the key Legislations guiding devolution.

### Suggested Learning Resources

- Transition to Devolved Government Act, 2012
- County Government Act, 2012
- Public Finance Management Act, 2012
- Urban Areas and Cities Act, 2011
- Intergovernmental Relations Act, 2012

### Suggested Training Methods

- Discussion on the key Legislations
- Explanation on the Legislations

### Suggested Learning Activities

Guide the participants to discuss:  
The objects and purpose of the key Legislations guiding devolution.

### Suggested Assessment Methods

- Observation during discussion
- Question and answer

## KEY NOTES

Key Legislations Guiding Devolution

Transition to Devolved Government Act, 2012

The object and purpose of this Act is to—

- a) provide a legal and institutional framework for a coordinated transition to the devolved system of government while ensuring continued delivery of services to citizens;

- b) provide, pursuant to Section 15 of the Sixth Schedule to the Constitution, for the transfer of powers and functions to the national and county governments;
- c) provide mechanisms to ensure that the Commission for the Implementation of the Constitution performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively;
- d) provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of —
  - i. assets and liabilities;
  - ii. human resources;
  - iii. pensions and other staff benefits of employees of the government and local authorities and
  - iv. any other connected matters;
- e) provide for closure and transfer of public records and information; and
- f) provide for the mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.

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

The object and purpose of this Act is to—

- a) provide for matters necessary or convenient to give effect to Chapter Eleven of the Constitution pursuant to Article 200 of the Constitution;
- b) give effect to the objects and principles of devolution as set out in Articles 174 and 175 of the Constitution;
- c) give effect to Article 176(2) of the Constitution in respect of further decentralization;
- d) provide for the removal from office of the speaker of the county assembly in accordance with Article 178 of the Constitution;
- e) provide for the powers, privileges and immunities of county assemblies, their committees and members under Article 196 of the Constitution;
- f) provide for public participation in the conduct of the activities of the county assembly as required under Article 196 of the Constitution;
- g) seek to ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee as contemplated in Article 197 of the Constitution;
- h) prescribe mechanisms to protect minorities within counties pursuant to Article 197 of the Constitution;
- i) prescribe additional requirements in respect of the publication of county legislation as contemplated in Article 199 of the Constitution;

- j) provide, pursuant to Article 200 of the Constitution, for—
  - i. the manner of nomination or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;
  - ii. the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and
  - iii. the suspension of assemblies and executive committees;
- k) prescribe, pursuant to Article 235 of the Constitution, uniform norms and standards, for—
  - i. establishing and abolishing offices in the county public service;
  - ii. appointing persons to hold or act in those offices, and confirming appointments;
  - iii. exercising disciplinary control over and removing persons holding or acting in those offices;
- l) provide for the promotion, evaluation and reporting on the compliance by county public officers with the values and principles in Articles 10 and 232 of the Constitution.

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

The object of this Act is to ensure that—

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

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

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

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

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

The objects and purposes of this Act are to—

- a) provide a framework for consultation and co-operation between the national and county governments;
- b) provide a framework for consultation and co-operation amongst county governments;
- c) establish institutional structures and mechanisms for intergovernmental relations;



- d) provide a framework for the inclusive consideration of any matter that affects relations between the two levels of government and amongst county governments;
- e) give effect to Articles 187 and 200 of the Constitution, in respect of the transfer of functions and powers by one level of government to another, including the transfer of legislative powers from the national government to the county governments; and provide mechanisms for the resolution of intergovernmental disputes where they arise.



**Figure 4: National Government Coordination structures at County level**

## UNIT 2: DEVOLVED GOVERNMENT STRUCTURES

### Introduction

This unit covers decentralized units of County Governments functions of County Public Service Boards, County Assembly Service Boards and values and principles of the public service. The unit also discusses principles, objects, structures and functions of intergovernmental relations as well as mechanisms for intergovernmental dispute resolutions.

### SESSION 1: The structure, composition and functions of the county governments

**Time allocation: 1Hr 15 Min**

#### Session objectives

By the end of the session, the participant should be able to;

- a) describe the structure, composition and functions of the county governments in Kenya;
- b) identify the decentralized units of the county governments.

#### Suggested Learning Resources

- Constitution of Kenya, 2010
- County Government Act, 2012
- Transition to Devolved government Act, 2012
- Urban areas and cities Act, 2011
- Flow Charts on structures of county government
- The Citizen Handbook by Uraia /IRI, 2012

#### Suggested Training Methods

- Explanation
- Discussion

#### Suggested Learning Activities

- a) Guide the participants to discuss the structure, composition and functions of the county governments.
- b) Participants discuss in small groups. c) Summarise the session.

### **Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussions

### **KEY NOTES**

The county government consists of the County Executive and a County Assembly. The County Assembly consists of members elected by the registered voters in the wards (Art. 177).

#### **County Executive**

The executive authority of the county is exercised by the County Executive Committee. The executive committee consists of:

- i. County Governor
- ii. Deputy County Governor
- iii. Members appointed by the County Governor with the approval of the County Assembly. However, they are not members of the county assembly.

The number of members in the committee should not exceed one third or more than ten of the members in the County Assembly. The County Executive Committee is accountable to the county governor.

The Functions of the County Executive Committee

The Functions of the County Executive Committee are as follows:

- i. Implementing county laws
- ii. Implementing within the county the national laws
- iii. Managing and coordinating the functions of county administrations and its departments
- iv. Preparing proposed laws for consideration by the County Assembly
- v. Providing the county assembly with full regular reports on county matters.

### **THE COUNTY ASSEMBLY**

The County Assembly is the organ in which elected county leaders sit and make laws.

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

- (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.

(1) The county assembly shall —

- (a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;
- (b) perform the roles set out under Article 185 of the Constitution;
- (c) approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220 (2) of the Constitution, guided by Articles 201 and 203 of the Constitution;
- (d) approve the borrowing by the county government in accordance with Article 212 of the Constitution;
- (e) approve county development planning; and
- (f) perform any other role as may be set out under the Constitution or legislation.

### **Functions of County Governments**

The Fourth Schedule to the Constitution assigns the County Governments functions and powers as follows:

- i. Agriculture
- ii. Health services
- iii. Control of pollution
- iv. Cultural activities, entertainment and public amenities
- v. Transport
- vi. Animal control and welfare
- vii. Trade development and regulation
- viii. Planning and development
- ix. Pre-primary education, village polytechnics, home craft centres and child care facilities
- x. Natural resources and environmental conservation policies
- xi. Public works and services
- xii. Firefighting services and disaster management
- xiii. Control of drugs and pornography control
- xiv. Building capacity of communities to participate in governance at the local level.

## Powers of County Governments

As an entity exercising constitutional authority, a county government shall be a body corporate with perpetual succession and shall have all the powers necessary for the discharge of its functions.

- a) A county government may enter into partnerships with any public or private organization in accordance with the provisions of any law relating to public or private partnerships for any work, service or function for which it is responsible within its area of jurisdiction.
- b) To ensure efficiency in the delivery of service or carrying out of a function for which the county government is responsible, the county government may— (i) establish a company, firm or other body for the delivery of a particular service or carrying on of a particular function; or (ii) contract any person, company, firm or other body for the delivery of a particular service or carrying on a particular function.
- c) In exercising its powers or performing any of its functions a county government shall ensure efficiency, effectiveness, inclusivity and participation of the people.

## Decentralized Units of County Governments

The decentralized units of the County Government are as follows:

- i. Urban areas and cities
- ii. Sub- counties
- iii. Wards
- iv. Village units
- v. Other units (Counties may establish smaller units)



Figure 5: levels of decentralization



## SESSION 2: County Public Service Board, County Assembly Service Board and Values and Principles of Public Service

**Time: 35 Mins**

### Session objectives

By the end of the session, the participant should be able to:

- a) discuss the values and principles of the public service.
- b) discuss the composition and functions of the County Public service Boards and County Assembly service Boards;

### Suggested Learning Resources

- The Constitution of Kenya, 2010
- County Governments Act, 2012
- Public Service Commission Act, 2012
- The Citizen Handbook by Uraia/IRI, 2012

### Suggested Training Methods

- Brainstorming
- Discussion

### Suggested Learning Activities

- c) Guide the participants to discuss the functions of County Public service boards and County Assembly service boards, the values and principles of the public service.
- d) Summarise the session.

### Suggested Assessment Methods

- Question and answer
- Observation on active participation during the discussion

## KEY NOTES

Values and principles of public service

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) Fair competition and merit as the basis of appointments and promotions; h) Representation of Kenya's diverse communities;
- 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.

### **Composition, Functions and Powers of County Public Service Boards**

#### Composition of the County Public Service Board

The County Public Service Board shall comprise—

- a) a chairperson nominated and appointed by the county governor with the approval of the county assembly;
- b) not less than three but not more than five other members nominated and appointed by the county governor, with the approval of the county assembly; and
- c) a certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.

The functions of the County Public Service Board are to:

- a) Establish and abolish offices in the county public service;
- b) Appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
- c) Exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for in the Act;
- d) Prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
- e) Promote in the county public service, the values and principles referred to in Articles 10 and 232;
- f) Evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;
- g) Facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;

- h) Advise the county government on human resource management and development;
- i) Advise county government on implementation and monitoring of the national performance management system in counties;
- a) Make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees.

### **County Assembly Service Board**

Composition of the County Assembly Service Board

The county assembly service board shall consist of—

- a) the Speaker of the county assembly as the chairperson;
- b) the leader of the majority party or a member of the county assembly deputed by him or her, as the vice-chairperson;
- c) the leader of the minority party or a member of the county assembly deputed by him or her; and
- d) one person resident in the county, appointed by the county assembly from among persons who have knowledge and experience in public affairs, but who is not a member of the county assembly.
- e) The county assembly clerk shall be the secretary to the county assembly service board.

The county assembly service board is responsible for-

- a) providing services and facilities to ensure the efficient and effective functioning of the county assembly;
- b) constituting offices in the county assembly service, and appointing and supervising office holders;
- c) preparing annual estimates of expenditure of the county assembly service and submitting them to the county assembly for approval, and exercising budgetary control over the service;
- d) undertaking, singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; performing other functions -
  - i. necessary for the well-being of the members and staff of the county assembly; or
  - ii. prescribed by national legislation.

## SESSION 3: Intergovernmental Relations

**Time allocation: 40 mins**

### Session objectives

By the end of the session, the participant should be able to discuss:

- a) principles and objects of intergovernmental relations;
- b) describe the composition and functions of the intergovernmental relations structures;
- c) describe the mechanisms of intergovernmental dispute resolution.

### Suggested Learning Resources

- The Constitution of Kenya, 2010
- Intergovernmental Relations Act, 2012
- County Government Act, 2012
- Transition to Devolved Governments Act, 2012
- Public Finance Management Act, 2012
- Flow chart showing the relationship between National and County governments
- The Citizen Handbook by Uraia/IRI, 2012

### Suggested Training Methods

- Brainstorming
- Explanation

### Suggested Learning Activities

- a) Guide the participants to brainstorm on the principles and objects of intergovernmental relations
- b) Present their views
- c) Summarize the session using a on a flip chart.

### Suggested Assessment Methods

- Question and answer
- Observation on active participation during the brainstorming session

## KEY NOTES

### Intergovernmental Relations

The CoK 2010 provides that the governments at national and county level are distinct and interdependent and shall conduct their mutual relations on the basis

of consultation and co-operation. The intergovernmental relations Act 2012 was enacted pursuant to this provision to provide policy and operational mechanism.

### **Principles of Intergovernmental Relations**

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

### **Objects of Inter-governmental Relations**

- i. Facilitating the implementation of the devolution objects and principles outlined in the Constitution
- ii. Facilitating cooperation and consultation between national and county governments and amongst county governments
- iii. Providing a forum for coordinating government policies, legislation and functions
- iv. Providing mechanisms for the transfer of power, functions and competencies to either level of government
- v. Promoting accountability between the two levels of government or amongst county governments.



**Figure 6: Forum for Inter-governmental relations**



## **Composition and functions of the intergovernmental relations structures.**

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

### **1. The National and County Government Coordinating Summit (The Summit)**

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

#### **Functions of the Summit:**

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

### **2. Council of county governors**

The members of the council of county governors are the 47 county governors. The council elects a chairperson and Vice chairperson from amongst its membership.

#### **Functions of the Council**

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

- viii) Considering reports from other intergovernmental forums on matters of national and county interest.

### **3. Intergovernmental Relations Technical Committee Membership**

The members of the committee are:

- a) A chairperson competitively recruited and appointed by the Summit
- b) Not more than 8 members, competitively recruited and appointed by the summit.
- c) The Principal Secretary responsible for matters relating to devolution

#### **Functions of the committee**

- a) Administer the day-to-day operations of the Summit and the Council of county Governors by:
  - i. Facilitating the activities of the Summit and the Council;
  - ii. Implementing the decisions of the Summit and Council.
- b) Take over residual functions of Transition Authority when the Authority is wound up.
- c) Convene a meeting of 47 County Secretaries within thirty days preceding every Summit meeting.
- d) Perform any other functions conferred by other laws, the Summit and Council.

The committee may establish sectorial working groups to assist in carrying out its functions. It submits quarterly reports to the Summit. The Committee is served by a Secretariat. The committee is responsible for appointing a secretary with approval of the Summit to serve as the Secretariat's chief executive and accounting officer. The Secretary is also responsible for the day-to-day running of secretariat including implementation of summit and Council decisions.

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

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

- i. Deputy President (Chairperson)
- ii. Cabinet Secretary responsible for matters relating to Finance
- iii. Cabinet Secretary, responsible for Intergovernmental Relations
- iv. Representative of Parliamentary Service Commission
- v. Representative of Judicial Service Commission
- vi. Chairperson of Commission on Revenue Allocation
- vii. Chairperson, Council of County Governors
- viii. Every County Executive Committee Member for Finance

### Functions of the council

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

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

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

### 5. Joint committees

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

## 1. COUNTY INTERGOVERNMENTAL FORUM

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

The county intergovernmental forum comprises of -

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

The intergovernmental forum is responsible for-

- harmonization of services rendered in the county;
- coordination of development activities in the county;

- coordination of intergovernmental functions; and
- such other functions as may be provided for by or under any law.

### **Mechanisms for Resolving Inter-Governmental Disputes**

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

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

### **Dispute Resolution Mechanism**

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

### **Formal declaration of dispute**

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

- Before formal declaration, the parties to the dispute should make reasonable effort and steps to amicably resolve the matter through direct negotiation with each other or through an intermediary. If this fails, the matter is formally declared to the Summit, Council of County Governors or any other intergovernmental structures established under the Intergovernmental Relations Act.
- Summit or Council of County Governors or other intergovernmental structures should convene meeting between parties within 21 days of formal dispute declaration. The meeting will determine the issues in the dispute, material issues not in the dispute and identify and apply mechanisms or procedures other than judicial proceedings that can assist in settling the dispute.
- If not resolved, the parties may submit for arbitration or judicial proceedings.
- It is an offence for parties in dispute to fail to attend the meetings, refuse to produce documents, give false evidence or interrupt the meeting. This is an offence punishable by law and upon conviction, the person will pay a fine not exceeding two hundred thousand shillings or to imprisonment not exceeding six months, or both.





## UNIT 3: COUNTY PLANNING

**Time: 40 Mins**

### Introduction

This unit covers the principles and objects of planning; importance of planning; types and purposes of county plans, and the role of the public in county planning.

### SESSION 1: Objects, Principles and importance of Planning

**Time Allocation: 20 Mins**



*Figure 7: People confused because of failing to plan*

### Session Objectives

By the end of the session the participant should be able to:

- Outline the principles and objects of planning
- Explain the importance of planning

### Suggested Learning Resources

- Constitution of Kenya, 2010
- County government Act 2012
- Public Finance Management Act 2012
- Urban Areas and Cities Act, 2011
- Relevant legislation from County Assemblies
- The Citizen Handbook by Uraia/IRI, 2012

### **Suggested Training Methods**

- Question and answer
- Discussion
- sharing of experiences

### **Suggested Learning Activities**

Guide the participants to discuss:

- a) the principles and objects of planning
- b) the importance of planning
- c) Make presentation
- d) Summarize the session

### **Suggested Assessment Methods**

- a) Question and answer
- b) Observation on active participation during discussions
- c) Sharing of experiences

## **KEY NOTES**

Principles and Objects of planning

The principles of planning are to:

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

## The Objects of County Planning

The objectives of county planning shall be to—

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

## The Importance of Planning

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

- i. **Increases Efficiency:** Planning makes optimum utilization of all available resources, reduces wastage, avoids duplication, and aims to give the highest returns at the lowest possible cost thus increasing the overall efficiency.
- ii. **Facilitates Proper Coordination:** It facilitates the coordination of the different departments in an organization and the short-term, medium-term and long-term plans of an organization.
- iii. **Aids in Organizing:** Organizing means bringing together all available resources. Planning tells us how much resources are required, and when they are required.
- iv. **Gives Right Direction:** Direction means to give proper information, accurate instructions and right guidance. Planning tells what to do, how to do it and when to do it.
- v. **Keeps Good Control:** With control actual performance is compared with the plans. Planning assists in keeping good control.

- vi. Helps to Achieve Objectives: Every County Government has targets to fulfill or objectives. It keeps working hard to fulfill these objectives. Planning helps to achieve these objectives with ease and promptness. Planning therefore eliminates random activities.
- vii. Assists in Decision-Making: A county has many different plans. Planning assists in prioritizing the county needs and in making decisions.

## **SESSION 2: Types and Purposes of County Plans and the Role of the Public in County Planning**

**Time allocation: 20 Minutes**

### **Session objective**

By the end of the session, the participant should be able to:

- a) explain the different types and purposes of County plans b) discuss the role of the public in county planning

### **Suggested Learning Resources**

- Constitution of Kenya, 2010
- County government Act 2012
- Public Finance Management Act 2012
- Urban Areas and Cities Act, 2011
- The Citizen Handbook by Uraia/IRI 2012

### **Suggested Training Methods**

- Question and answer
- Discussion
- Sharing of experiences

### **Suggested Learning Activities**

- a) Guide the participants to discuss:
  - i) different types and purposes of county plans ii) role of the public in county planning
- b) Make presentations
- c) Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussions

## KEY NOTES

### Types and Purposes of County Plans

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

- (a) county integrated development plan;
- (b) county sectoral plans (for departments); (c) county spatial plan; and
- (d) cities and urban areas plans as provided for under the Urban Areas and

### Cities Act (No. 13 of 2011).

#### County Integrated Development Plan

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

- i) clear goals and objectives;
- ii) an implementation plan with clear outcomes; iii) provisions for monitoring and evaluation; and iv) clear reporting mechanisms.

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

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



### County Sectoral Plans

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

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

### County Spatial Plan

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

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

### Urban Areas and Cities plans



**Figure 12. Unplanned and planned urban areas**

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

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

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

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

## **Role of the Public in County Planning**

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

Article 184(1) (c) of the CoK 2010 provides for national legislation to provide for the governance and management of urban areas and cities and shall among others provide for participation by residents in the governance of urban areas and cities. Among others, Article 196 of CoK 2010 requires a county assembly to facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

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

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

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

### **Role of Citizens in County Planning**

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

## UNIT 4: PUBLIC FINANCE MANAGEMENT

### Introduction

This unit covers the principles of public finance management, the legal framework in budget making and execution process, role of fiscal institutions in public finance management; sources of government revenue at national and county levels, and sharing of national revenue. It also covers the budget making process at national and county level, the role of citizens in planning, budget making and execution process. In addition, the unit covers the public procurement process and disposal of public assets.

**Time: 3hrs 40 Mins**

### SESSION 1: Principles of Public Finance Management

**Time Allocation: 20mins**

#### Specific Objective

By the end of the session, the participants should be able to explain the principles of public finance management

#### Suggested Learning Resources

- Constitution of Kenya, 2010
- Public Finance Management Act 2012
- County Government Act 2012
- The Citizen Handbook by Uraia IRI, 2012

#### Suggested Training Methods

- Discussion
- Observation

#### Suggested Learning Activities

- a) Guide the participants to discuss principles of Public Finance management.
- b) Make presentations.
- c) Summarise the session.

#### Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussion

## KEY NOTES

### Principles of Public Finance Management

The principles of finance management include:

- i. openness and accountability, including public participation in financial matters;
- ii. promotion of an equitable society, and in particular:
  - the burden of taxation shall be shared fairly
  - revenue raised nationally shall be shared equitably among national and county governments
  - expenditure shall promote the equitable development of the country, including by making special provision for marginalized groups and areas
- iii. the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
- iv. public money shall be used in a prudent and responsible way;
- v. financial management shall be responsible, and fiscal reporting shall be clear.

## SESSION 2: Legal framework in budget making and execution process

**Time Allocation: 20 Mins**

### Session objective

By the end of the session, the participant should be able to discuss the legal framework in budget making and execution process.

Suggested Learning Resources

- Constitution of Kenya, 2010
- Public Finance management Act, 2012
- County Government Act, 2012
- County Allocation of Revenue Act
- County Appropriation Act
- County Finance Act
- Division of Revenue Act

### Suggested Training Methods

- Discussion
- Sharing of experiences



## Suggested Learning Activities

- a) Guide the participants to discuss the legal framework in budget making and execution process
- b) Make presentations
- c) Summarise the session

## Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussion

## KEY NOTES

### Public Finance Management Act

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

The object of this Act is to ensure that:

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

### County Revenue Allocation Bill

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

The object and purpose of this bill:

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

### County Appropriation Bill

This is a Bill for County Assembly to authorize the issue of a sum of money out of the County Revenue Fund and its application towards the service in a financial year

and to appropriate that sum and a sum voted on account by the County Assembly for certain public services and purposes.

### **County Finance Bill**

The County Finance Bill provides for the County Assembly to impose and amend certain taxes, charges, fees and licenses and for matters incidental.

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

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

### **Division of revenue Bill**

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

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

financial year.

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

## **SESSION 3: Role of fiscal institutions in management of public**

### **Finance**

**Time allocation: 20 Minutes**

### **Session objective**

By the end of the session, the participant should be able to outline the role of fiscal institutions in management of public finance

### **Suggested Learning Resources**

- Constitution of Kenya 2010
- CRA reports
- The Citizen Handbook by Uraia/IRI (2012).
- County Government Act 2012
- Public Finance Management Act 2012
- Auditor General Report
- Controller of budget report

### **Suggested Training Methods**

- Question and answer
- Discussion
- Sharing of experiences

### **Suggested Learning Activities**

- a) Guide the participants to discuss on the role of fiscal institutions in management of public finance
- b) Make presentations
- c) Summarise the session.

### **Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussion

## KEY NOTES

### Role of fiscal institutions in management of public finance

#### National Treasury

General responsibilities of the National Treasury

1. Subject to the Constitution and this PFM Act, 2012 the National Treasury shall—
  - a) formulate, implement and monitor macro-economic policies involving expenditure and revenue;
  - b) manage the level and composition of national public debt, national guarantees and other financial obligations of national government within the framework of this Act and develop a framework for sustainable debt control;
  - c) formulate, evaluate and promote economic and financial policies that facilitate social and economic development in conjunction with other national government entities;
  - d) mobilise domestic and external resources for financing national and county government budgetary requirements;
  - e) design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution: Provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government;
  - f) in consultation with the Accounting Standards Board, ensure that uniform accounting standards are applied by the national government and its entities; (g) develop policy for the establishment, management, operation and winding up of public funds;
  - g) within the framework of this Act and taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, prepare the annual Division of Revenue Bill and the County Allocation of Revenue Bill;
  - h) strengthen financial and fiscal relations between the national government and county governments and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and
  - i) assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet.

Secretary responsible for matters relating to intergovernmental relations.

2. The National Treasury shall have the following functions, in addition to those in subsection (1) -
  - i. promote transparency, effective management and accountability with regard

- to public finances in the national government;
- ii. ensure proper management and control of, and accounting for the finances of the national government and its entities in order to promote the efficient and effective use of budgetary resources at the national level;
  - iii. co-ordinate the preparation of annual appropriation accounts and other statutory financial reports by the national government and its entities;
  - iv. prepare annual estimates of revenue of the national government, and co-ordinate the preparation of the budget of the national government;
  - v. consolidate reports of annual appropriation accounts and other financial statements of the national government and county governments and their entities;
  - vi. report every four months to the National Assembly on the implementation of the annual national budget on areas not reported on by the Controller of Budget;
  - vii. be the custodian of an inventory of national government assets except as may be provided by other legislation or the constitution;
  - viii. monitor the management of the finances of public enterprises and investments by the national government and its entities;
  - ix. monitor the financial aspects of risk management strategies and governance structures for the national government and national government entities;
  - x. monitor the financial performance of state corporations; and
  - xi. issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.
3. The National Treasury shall take such other action, not inconsistent with the Constitution, as will further the implementation of the Act.

## County Treasury

### General responsibilities of a County Treasury.

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

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



- f) consolidating the annual appropriation accounts and other financial statements of the county government in a format determined by the

**Accounting Standards Board;**

- g) acting as custodian of the inventory of the county government's assets except where provided otherwise by other legislation or the Constitution;
- h) ensuring compliance with accounting standards prescribed and published by the Accounting Standards Board from time to time;
- i) ensuring proper management and control of, and accounting for the finances of the county government and its entities in order to promote efficient and effective use of the county's budgetary resources;
- j) maintaining proper accounts and other records in respect of the County Revenue Fund, the County Emergencies Fund and other public funds administered by the county government;
- k) monitoring the county government's entities to ensure compliance with this Act and effective management of their funds, efficiency and transparency and, in particular, proper accountability for the expenditure of those funds;
- l) assisting county government entities in developing their capacity for efficient, effective and transparent financial management, upon request;
- m) providing the National Treasury with information which it may require to carry out its responsibilities under the Constitution and the Act;
- n) issuing circulars with respect to financial matters relating to county government entities;
- o) advising the county government entities, the County Executive Committee and the county assembly on financial matters;
- p) strengthening financial and fiscal relations between the national government and county governments in performing their functions;
- q) reporting regularly to the county assembly on the implementation of the annual county budget; and
- r) taking any other action to further the implementation of this Act in relation to the county.

**Commission on Revenue Allocation**

**Roles of the Commission on Revenue Allocation**

The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government—

- a. between the national and county governments; and
  - b. among the county governments
1. The Commission also makes recommendations on other matters concerning the financing of, and financial management by, county governments, as required by

the Constitution and national legislation

2. In formulating recommendations, the Commission shall seek—
  - a. to promote and give effect to the criteria set out in Article 203 (1)
  - b. when appropriate, to define and enhance the revenue sources of the national and county governments; and
  - c. to encourage fiscal responsibility.

The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of Article 204 (2).

The Commission submits its recommendations to the Senate, the National Assembly, the national executive, county assemblies and county executives.

### **Controller of Budget**

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

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

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

#### **Oversight**

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

#### **Controlling role**

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

#### **Consolidated Fund**

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

### County Revenue Fund

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

### Equalization Fund

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

### Reporting role

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

Type of Reports include but not limited to:

- Quarterly Reports on Budget Implementation to the Executive and Parliament Article 228 (6)
- Annual Reports on Budget Implementation to the President and Parliament Article 254 (1)
- Special Reports to the President and Parliament Article 254 (2),
- investigation reports (Article 254 (2)) and reports on stoppage of funds for governments units as per Article 225 of the Constitution
- Arbitration/Mediation Reports to Parliament on matters relating to Budget Implementation Article 225 (7a) Article 252 (1a&1b).
- Performance reports for the activities of Office of Controller of Budget
- And any other report on Budget implementation that may be required.

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

### Advisory role

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

The Office of the Controller of Budget is expected to investigate the matter the financial performance of a State organ or entity after which prepare and present a report on the matter to Parliament which will be used to approve or renew the

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

### **Investigation role**

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

### **Arbitration/Mediation role**

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

### **Public sensitization role**

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

### **Auditor-General**

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

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

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

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

- Accounts of the national and county governments; county governments;
- Accounts of all funds and authorities of the national and county governments;
- Accounts of all courts;
- Accounts of every commission and independent office established by the Constitution;
- Accounts of the National Assembly, the Senate and the county assemblies;
- Accounts of political parties funded from public funds;

- The public debt;
- Accounts of any other entity that legislation requires the Auditor- General to audit.
- The Auditor-General may audit and report on the accounts of any entity that is funded from public funds.

### Reports

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

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

### Salaries and Remuneration Commission

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

#### The roles of the commission are as follows:

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



## Central bank of Kenya

### Functions of the Central Bank of Kenya

1. It acts as a banker's bank.
2. It serves as a lender of last resort to commercial banks and also to the government.
3. It encourages the adoption of the financial system according to the changing needs of the markets.
4. It administers external reserves; exchange controls and handles external financial relations.
5. It manages the national reputation. It takes into account accumulated borrowings undertaken by the government to finance its expenditure.
6. It has the sole responsibility of issuing currency. It regulates the issue of notes and coins.
7. The bank is a government banker. It does not maintain the accounts of businesses and individuals in the private sector. It only maintains the accounts of governmental departments. This usually starts in a bank returns as public deposit.
8. It acts as an agent to the government. This is seen when it implements the monetary policy in the pursuit of the government's national economic development.

As part of this process, the bank acts as a medium for a two-way transmission between the government and the financial markets.

Among other things, it collects extensive statistical information on all financial institutions. The information is usually about the following:

- The volume of business.
  - The sectors of the economy that may need financial assistance in form of lending.
9. The Central Bank of Kenya has a duty to supervise the banking industry in general. The bank can issue directives to commercial banks and other financial institutions indicating how much they should be lending (quantitative directives). This has been done through what is known as moral persuasion (friendly persuasion). The bank is mandated to inspect and supervise the directives given to non-bank financial institutions and commercial bank.

## Parliament

### Responsibilities of the National Assembly budget committee in public Finance matters.

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

- a) discuss and review the Budget Policy Statement and budget estimates and make recommendations to the National Assembly;
- b) provide general direction on budgetary matters;
- c) monitor all budgetary matters falling within the competence of the National Assembly under this Act and report on those matters to the National Assembly;
- d) monitor adherence by Parliament, the Judiciary and the national government and its entities to the principles of public finance and others set out in the Constitution, and to the fiscal responsibility principles of this Act;
- e) review the Division of Revenue Bill presented to Parliament and ensure that it reflects the principles under Articles 187(2)(a), 201 and 203 of the Constitution;
- f) examine financial statements and other documents submitted to the National Assembly under Part III of this Act and make recommendations to the National Assembly for improving the management of Kenya's public finances;
- g) in accordance with Articles 114, 218 and 221 of the Constitution—
  - i. make recommendations to the National Assembly on “money Bills”, after taking into account the views of the Cabinet Secretary; and
  - ii. table in the National Assembly a report containing the views of the Cabinet Secretary in subparagraph
- (i); and h) j. introduce the Appropriations Bill in the National Assembly.

#### **Responsibilities of the Senate budget committee in public finance matters.**

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

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

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

### County Assembly

- a) Reviews the **County Fiscal Strategy Paper** and makes recommendations to the County Treasury;
- b) Approves the **Budget Estimates** for County Government as well as Urban Areas or Cities within the County; and
- c) Approves **division of revenue** between the County Government and Urban Areas or Cities as well as allocation of revenue across Urban Areas or Cities.
- d) Provides overall **oversight** over public finances at the County Government level;
- e) Ensure adherence by County Executive Committee and CG to **Principles of Public Finance** and the **fiscal responsibility principles**; and
- f) Approves the establishment of **other county public funds**.

### Intergovernmental Budget and Economic Council

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

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

## **SESSION 4: Sources of Government Revenue at National and County Level**

**Time Allocation: 15 Mins**

### **Specific Objective**

By the end of the session, the participant should be able to identify sources of government revenue at National and County level

### **Suggested Learning Resources**

- Constitution of Kenya 2010
- County government Act 2012
- Public Finance Management Act 2012
- Relevant County Finance Acts
- Annual National finance Acts
- Flow Charts on sources of government revenue at national and county level
- The Citizen Handbook by Uraia/IRI 2012

### **Suggested Training Methods**

- Discussion
- Sharing of experiences

### **Suggested Learning Activities**

- a) Guide the participants to identify sources of government revenue at national and county level
- b) Make presentation
- c) Summarise the session using a flow charts on sources of government revenue at national and county level

### **Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussion

### **KEY NOTES**

- a. Sources of revenue for national government
  - Taxes
  - Income tax
  - Customs and excise duty
  - Value added tax
  - Sin tax
  - Fees and charges
  - Penalties

- Fines
- Return on investments
- Sale of public property
- Grants
- Loans
- b. Sources of revenue for the county government
  - Allocation by national government
  - Property taxes
  - Entertainment taxes
  - Local fees and fines and charges
  - Sale of public property
  - Income from investments
  - Grants
  - Loans guaranteed by national government

## **SESSION 5: How Revenue is shared between National and County Governments**

**Time Allocation: 20 Minutes**

### **Session objective**

By the end of the session, the participant should be able to explain how revenue is shared between National and County governments,

### **Suggested Learning Resources**

- Constitution of Kenya ,2010
- CRA reports
- Division of Revenue Act
- County Allocation of Revenue Act
- The Citizen Handbook by Uraia/IRI (2012).
- County Government Act 2012
- Public Finance Management Act 2012
- CRA Act 2011

### **Suggested Training Methods**

- Question and answer
- Discussion
- Sharing of experiences



## Suggested Learning Activities

- a) Guide the participants to discuss how revenue is shared between national and county government.
- b) Make presentations
- c) Summarise the session

## Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussion

## KEY NOTES

### How revenue is shared between national and County Governments

Revenue raised nationally shall be shared equitably among the national and county governments. County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.

The following criteria shall be taken into account in determining the equitable shares

- a) The national interest;
- b) Any provision that must be made in respect of the public debt and other national obligations;
- c) The needs of the national government, determined by objective criteria;
- d) The need to ensure that county governments are able to perform the functions allocated to them;
- e) The fiscal capacity and efficiency of county governments;
- f) Developmental and other needs of counties;
- g) Economic disparities within and among counties and the need to remedy them;
- h) The need for affirmative action in respect of disadvantaged areas and groups;
- i) The need for economic optimization of each county and to provide incentives for each county to optimize its capacity to raise revenue;
- j) The desirability of stable and predictable allocations of revenue;
- k) The need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.

The Commission on Revenue Allocation (CRA) is mandated to recommend the basis for equitable sharing of revenues raised nationally between the National and the County Governments; and sharing of revenue among the County Governments.

Revenue raised nationally will be shared between National and County governments and among county governments as follows;

Total revenue raised = 100%

- National Government <84.5 %

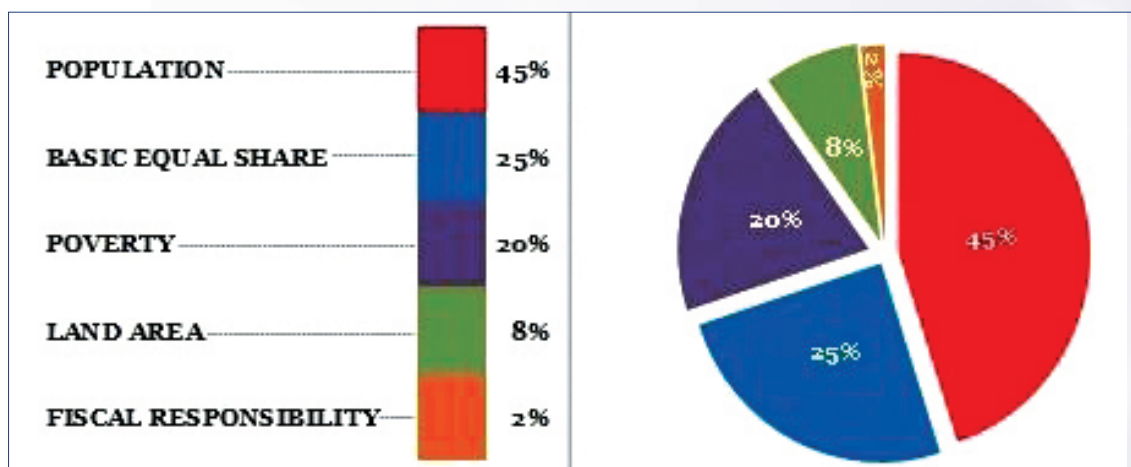


Figure 9. Formula for Sharing revenue among County Governments

- 47 County Governments >15 % - This amount shall be calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly
- Equalization fund = 0.5 %

The >15% revenue sharable among the 47 county governments will be shared using the formula approved by parliament as below:

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

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

### Administration and management of the equalization fund

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

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

The national government may use the Equalisation Fund :--

- only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by Parliament; and
- Either directly, or indirectly through conditional grants to counties in which marginalised communities exist.

The Commission on Revenue Allocation shall be consulted and its recommendations considered before Parliament passes any Bill appropriating money out of the Equalisation Fund.

- a. Any unexpended money in the Equalisation Fund at the end of a particular financial year shall remain in that Fund for use in accordance with the law during any subsequent financial year.
- b. The current period for which the equalization fund shall exist is a maximum of twenty years after the effective date.
- c. Parliament may enact legislation to alter the effect of the equalization fund for a further fixed period of years.
- d. Legislation to alter the effective period of the equalization fund shall be supported by more than half of all the members of the National Assembly, and more than half of all the county delegations in the Senate.
- e. Money shall not be withdrawn from the Equalisation Fund unless the Controller of Budget has approved the withdrawal.

## **SESSION 6: The budget making process at National and County Level**

**Time: 40 Mins**

### **Session objective**

By the end of the session, the participant should be able to explain the budget making process

### **Suggested Learning Resources**

- Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/IRI, 2012
- County government Act 2012
- Public Finance Management Act 2012

### **Suggested Training Methods**

- Question and answer
- Discussion
- Sharing of experiences

### **Suggested Learning Activities**

- a) Guide the participants to discuss the budget making process
- b) Make presentations
- c) Summarise the session.

## Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions
- Sharing of experiences

## KEY NOTES

Budget making process at national and county levels

- **August 30.** National Treasury releases a circular to all government agencies starting the process, and setting out guidelines for public participation. The County Executive member for finance must also release a circular by this date doing the same at county level.
- **September 1 to February 15th.** During this time, the National Treasury and the various ministries and agencies should undertake some type of consultation with the public and other stakeholders. This can include sector hearings as in the past, or visits by Treasury to counties to solicit views. Views from the public should feed into the formulation of the Budget Policy Statement.
- **January 1.** By January of every year, the Commission on Revenue Allocation should submit its recommendations for the division of revenue between national and county governments, and among the counties, to the rest of government.
- **February 15th.** Cabinet Secretary for Finance to submit the Budget Policy Statement to Parliament. Also the deadline for the debt management strategy paper, and the Division of Revenue and County Allocation of Revenue Bills to go to Parliament.
- **February 28th.** Deadline for Budget Policy Statement to be approved by Parliament. This is also the deadline for the County Fiscal Strategy Paper to be tabled in each County Assembly.
- **March 1.** Deadline for Budget Policy Statement to be made available to public.
- **March 16th.** This is the deadline for passing the Division of Revenue and County Allocation of Revenue Bills.
- **April 30th.** This is the deadline for the Cabinet Secretary to submit the budget proposal, or Budget Estimates to Parliament. It is also the deadline for the Judiciary and the Parliamentary Services Commission to submit their own budgets to Parliament. This is also the date for the county budget proposal to be submitted to the County Assembly.
- **May.** This is likely when the Budget Committee will begin to hold public hearings on the budget.
- **May-June.** This is when the Budget Committee will table its recommendations on the budget in Parliament.

- **May 15th.** This is the deadline for the Cabinet Secretary to give any comments on the Judiciary and Parliamentary budget requests.
- **June.** The national Finance Bill to authorize tax and revenue collection is tabled in Parliament. A County Finance Bill is to be tabled at this time in the County Assembly.
- **June 30th.** This is the end of the financial year, and the deadline for the Appropriations Bill to be passed by Parliament to authorize spending for the new budget year. This is also the deadline at county level for passing the county Appropriations Act.
- **July.** Sometime in the latter half of July, the final approved budget estimates should be available to the public.
- **November.** Government must publish the Budget Review and Outlook Paper, reviewing last year's budget performance and this budget year's initial forecasts from the Budget Policy Statement in February. There is no deadline for the County Budget Review and Outlook Paper, but it should be available around this time as well.
- **December 15.** Government must publish an implementation report on the first quarter of budget implementation from July-September no later than 45 days after the end of the quarter.



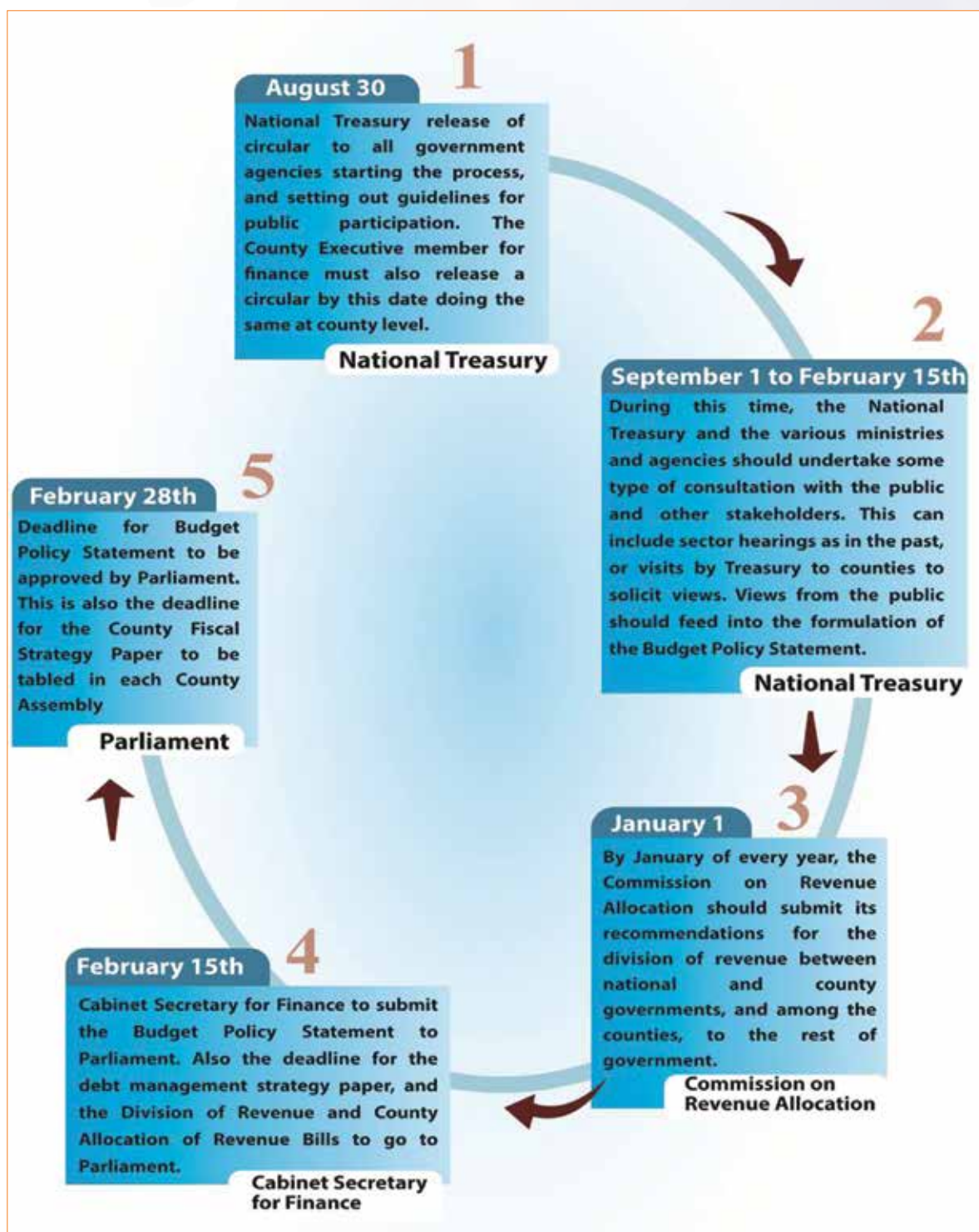


Figure 10: Budget Cycle

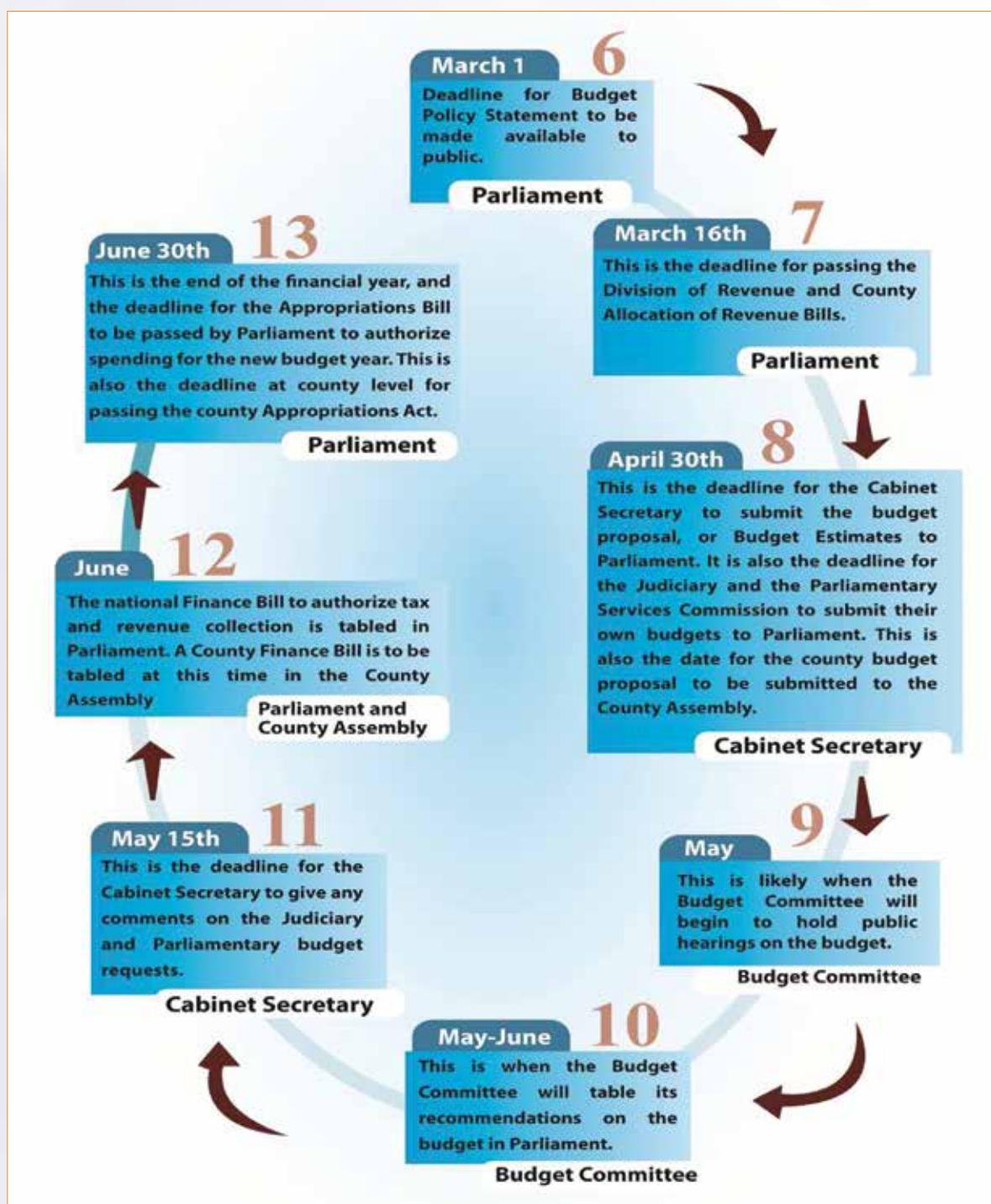


Figure 11: Budget Cycle Continued

## Budget Execution Audit and Reporting

### SESSION 7: Role of citizens in planning, budget making and execution process

**Time: 45 Min**

#### Session Objectives

By the end of the session, the participant should be able to:

- explain the role of citizens in planning and budget making process
- discuss the composition and functions of County Budget and Economic Forum
- discuss the importance of monitoring the implementation of plans and budgets

#### Suggested Learning Resources

- Constitution of Kenya 2010
- County Government Act, 2012
- Public Finance Management Act, 2012
- Urban Areas and Cities Act, 2011
- Citizen Handbook by Uraia/IRI, 2012
- Sample County Plans

#### Suggested Training Methods

- Brainstorming
- Question and answer
- Discussion
- Sharing of Experiences

#### Suggested Learning Activities

- a) Guide the participants to discuss:
  - i) the role of the citizens in planning, budget making and execution process
  - ii) the composition and functions of the County Budget and Economic Forum
  - iii) the importance of monitoring the implementation of plans and budgets.
- b) Make presentations
- c) Summarise the session.

### **Suggested Assessment Methods**

- Question and answer
- Observation on participation during discussions

### **KEY NOTES**

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

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

The budget making process generally has four steps as follows:

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

### **Opportunities for Citizen Participation at the County Level**

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

#### **1. Pre-budget reading period**

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

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

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

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

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



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

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

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

## **iii. Citizen Fora**

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

## **iv. County Planning Units**

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

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

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

## **vi. Post-budget reading period**

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

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

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

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



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

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

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

## **SESSION 8: How Goods, Works and Services Are Procured in the Public Sector**

**Time: 40 Mins**

### **Session objective**

By the end of the session, the participant should be able to:

- a. explain how goods, works and services are procured in the public sector
- b. discuss the affirmative action for women ,youth and persons with disabilities in public procurement.

### **Suggested Learning Resources**

- Constitution of Kenya ,2010
- Public Finance Management Act 2012
- Public procurement and disposal act, 2005
- Public procurement and disposal Regulations, 2006 and 2013
- The Citizen Handbook by Uraia/IRI 2012
- County government Act 2012

### **Suggested Training Methods**

- Question and answer
- Discussion
- Sharing of experiences

### **Suggested Learning Activities**

- a) Guide the participant to discuss on how public goods and services are procured
- b) Make presentations
- c) Summarise the session.

**Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussions

**KEY NOTES**

Procurement of Goods, Works and Services in the Public Sector

**Introduction**

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

**Legal Framework Governing Public Procurement**

1. The Constitution-Article 227
2. The Public Procurement and Disposal Act-PPDA, 2005
3. The Public Procurement and Disposal Regulations, 2006, 2011, 2013 and the amendments in Legal Notices 106 & 114
4. Procurement Manuals & Standard tender Documents
5. Circulars

**Bodies involved in Public Procurement**

1. Public Procurement Oversight Authority: ensure procurement procedures are complied with
2. Public Procurement Advisory Board: the Director with the approval of the Advisory Board debar contractors on grounds stated in the Act
3. Public Procurement Administrative Review Board (ARB - adjudicates on cases of persons aggrieved in a procurement e. g. the procurement of laptops.

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

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

Objectives of Good Procurement (e.g. of drugs for a Level 5 Hospital) Acquisition in the most cost effective manner means drugs procured at the

1. Right price (lowest evaluated price),
2. Right quantities
3. Right quality

4. Right source
5. Right time
6. Right place

**The benefits of good procurement include: (e.g. for drugs at a Level 5 hospital)**

- a) Security of supply, that drugs are available in the hospital for the patients.
- b) Lower total cost in the procurement of the drugs
- c) Reduced risk, by the procuring entities e.g. by the entity requesting tender security and performance bond
- d) Improved quality, through developing of proper specifications and evaluation criteria
- e) More added value
- f) Greater efficiency
- g) New innovations, by undertaking market survey to know the new products in the market and not using brand names in specifications
- h) Importance of Public Procurement
- i) Majority of Kenya Vision 2030 flagship projects to be delivered through public procurement.
- j) Need for elimination of waste through strategic leadership in public procurement & disposal.
- k) Internal organization of Procuring Entities.

A procuring Entity shall establish the following committees as required by the regulations for the purpose of making decisions on behalf of the public entity as specified in the Act and regulations

1. Procurement Unit: manages the whole procurement & disposal process including inventory management.
2. Tender Committee: adjudicates & award procurements above Kes.500,000.
3. Procurement Committee: adjudicates & awards procurements below Kes.500,000.
4. Tender Processing Committee: evaluates, negotiates & inspects and accepts goods, works and services.
5. Disposal Committee: responsible for recommending to Accounting officer the most suitable method of disposal.

**The Public Procurement Process**

**1. Identify the Need**

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



Figure 12: ethical service in procurement



Figure 13. Corrupt practise in procurement

## 2. Undertake Procurement Planning

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

## 3. Specification of Requirement

It consists of definitive descriptions on the object to be procured. Specifications must be clear, accurate and complete otherwise will result to wrong procurement of goods/services/works

Provision of information that the supplier requires in order to reliably meet the user's expectation.

Need for market survey to assist with preparation of specifications Specification to be drawn by the user of the product or service Consultants may be used in preparation of specifications and bidding document.

### Methods of Specifications

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

## 4. Preparation of Tender Documents

- Containing Specifications:
- Bills of quantities, drawings,
- Evaluation criteria,
- Price schedule, tender forms, sample contract,
- Preferences and Reservations for tenders set aside for the disadvantaged or for margin of preference application.

## 5. Choice of Procurement Method

- a. Open tendering (Open National Tender or International Open Tender)- preferred method- (Section 50 -71) fairest to the procuring entity and to tenderer.
- b. Restricted Tender – (Section 73) only if completion is limited due to complexity or specialization or time & cost to examine a large number of tenders would be disproportionate or there are only a few known suppliers
- c. Direct procurement – (Section 74-75) only if only one person can supply and no reasonable alternative or substitute or there is urgent need and that other



methods impracticable & circumstances were not foreseeable or result of procuring entity's dilatory conduct, & procuring negotiates the price.

- d. Request for proposals – (Section 76-87) for services or combination of goods and services and that service are advisory/predominately intellectual.
- e. Request for quotation – (Section 88-89) for goods readily available & with an established market.
- f. Low value procurement – (Section 90) use of cash to procure goods, works and services as per the limits set out in the classification of procuring entities
- g. Specially permitted procedures (Section 92) for design competition; for services which are creative in nature e.g. architecture, landscaping urban design.

**6. Publicizing the procurement opportunity** – Advertising in newspapers, notice boards, Procuring entity website & PPOA tenders portal

**7. Availing bidding documents to bidders** - At the prescribed fee in the legal notice

#### **8. Submission of bid Documents**

- Provision of tender box
- No late tenders

#### **9. Opening of Bids**

- Opening as per instructions to bidders
- Appointment of tender opening committee, bidders may participate, and minutes prepared

#### **10. Bid Evaluation**

This step involves:

- Preliminary evaluation- and rejection of tenders that do not satisfy the basic requirements (Reg.47)
- Technical Evaluation- comparing each tender to the technical requirements
- Financial Evaluation- Comparing tenders to determine the evaluated price of each Tender
- Post qualification- Where indicated in the tender documents a Procuring Entity may, prior to award of the tender confirm the qualifications of the lowest evaluated tender

#### **11. Award of Tender by Tender Committee**

- Tender committee Quorum to be FIVE including the Chairman
- Decision through consensus
- Minutes of Tender Committee to be prepared

#### **12. Notification of Award and Appeal Window Period**

- Notification to winner and losers simultaneously

- Bidders have a right to seek administrative review on PE's decisions
- Bidders right to seek judicial Review

### **13. Contract Management**

- Execution of contract
- Inspection and quality assurance-by Tender Processing Committee
- Handling, claims and disputes
- Overdue payments to be paid with interest (Section 48)
- Variations to Contracts allowed on price and quantity as per Regulation (31)
- Contract Termination - To be approved by the tender committee.

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

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

### **Restriction on disposal to employees set out in the Regulation 93. Preference & Reservations Legal Notice 114**

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

# MODULE THREE: PUBLIC PARTICIPATION



## **Introduction**

Public participation is a process in which the public is informed, consulted or involved to ensure their concerns are considered throughout decision making, particularly in governance processes. A variety of tools and techniques to inform the public, build consensus and reach agreement are discussed. The module therefore aims at equipping the participant with knowledge, skills, attitudes and values to enhance their participation in governance processes. It is intended to develop in the participant civic responsibility.

## **General Objectives**

By the end of the module, the participant should be able to:

- a) acquire knowledge, skills, attitudes and values to promote effective participation in governance processes;
- b) demonstrate creativity and critical thinking in facilitating public participation;
- c) appreciate the sovereign power of the citizens as provided for in the Constitution of Kenya, 2010.

# UNIT 1: SOVEREIGNTY OF THE PEOPLE

**Time: 1 hr**

## Introduction

This unit covers; the meaning of terms sovereignty, public participation, duty bearers right holders, source of sovereign power, the types of citizen power and benefits of public participation to duty bearers and right holders

## SESSION1: Meaning of terms and ways in which the Constitution provides for Sovereign Power of the People

**Time Allocation: 20 minutes**

### Session objectives

By the end of the session, the participant should be able to:

- a) explain the meaning of the selected terms;
- b) explain ways in which the Constitution provides for sovereign power of the people;

### Suggested Learning Resources

- The Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/IRI 2012
- County Government Act, 2012
- Transition to Devolved Government Act, 2012
- Urban Areas and Cities Act, 2011
- Other relevant Acts

### Suggested Training Methods

- Brainstorming
- Group discussion

### Suggested learning Activities

- a) Guide the Participants to brainstorm on the following terms:
  - i. Sovereignty,
  - ii. Public participation,
  - iii. Duty bearer,
  - iv. Right holder,
  - v. Ways in which the Constitution provides for Sovereign Power.
- b) Summarise the session.



## Suggested Assessment Methods

- a. Question and answer
- b. Direct Observations

## KEY NOTES

### Meaning of the terms

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

**Sovereignty** - This refers to collective power exercised by the citizens. The citizens may exercise the sovereign power either directly or through their democratically elected representatives

**Public participation** - This is an action or series of actions a citizen takes to engage in the affairs of government or community. This may include:

- i. Participation in voting exercises.
- ii. attending meetings, for example, the chief's Baraza.
- iii. participating in public or private political discussion or debates on issues.
- iv. signing a petition on a desired government action.
- v. volunteering in the community.
- vi. Contributing money to a political party or independent candidate vying for election.

**Duty Bearers** - These are actors who have a particular responsibility to respect, promote and realise human rights. Duty bearers are either State or Non-state actors. An example of a state actor is a leader in the either national or county government. Depending on the context, individuals, local organisations, private companies, donors and international institutions can also be considered as duty bearers.

**Right holders** - These are individuals or social groups that have particular entitlements in relation to specific duty bearers. A citizen has a right to services in the county such as health, education and security among other rights; all of which a duty bearer has an obligation to provide.

### Ways in which the Constitution provides for sovereign power

The Constitution under Article 1(1), (2), (3), (4) states that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.

It also provides that;

- i. The people may exercise their sovereign power either directly or through their democratically elected representatives;
- ii. The sovereign power of the people is exercised at both the national and county levels;

- iii. Sovereign power under the constitution is delegated to a number of different organs including the following:
  - Parliament and legislative assemblies in the county governments;
  - The National and County Governments executive structures and
  - the Judiciary and tribunals.

## **SESSION 2: Types Citizen Power, Source sovereign power, roles and benefits of public participation**

**Time allocation: 15 minutes**

### **Session objectives**

By the end of the session, the participant should be able to:

- a. discuss types of citizen power;
- b. discuss the role of the duty bearers in facilitating public participation;
- c. outline the benefits of public participation to duty bearers and right holders.

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- The Citizen Handbook by URAIA, 2012
- County Governments Act, 2012
- Other Relevant Acts

### **Suggested Training Methods**

- Brainstorming
- Group discussion

### **Suggested learning Activities**

- a) Guide the participants to discuss the following in buzz groups:
  - i. types of citizen power
  - ii. sources of sovereign power
  - iii. the role and benefits of public participation to duty bearers and right holders.
- b) Make presentations.
- c) Summarize the session.

### Suggested assessment methods

- Question and answer
- Direct Observation

## KEY NOTES

### Types of citizen power

Citizen power is exercised in different ways which includes:

**Passive citizen power** - This refers to participation that does not require direct physical actions; for instance, petition signing, voting; writing letters to complain or to demand for information or services.

#### a) Physical Citizen Power

This requires direct physical participation such as protesting, working for different authorities or boycotting. When exercising physical citizen power, it is important to do so in a responsible manner as provided under the Bill of Rights in article 37 of the Constitution of Kenya, 2010. The Article directs that every person has the Right to peaceably and unarmed to assemble, demonstrate, picket and present petitions to public authorities.



Figure 14. People voting

## b) Fiscal citizen power

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

Role of duty bearers in facilitating public participation

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

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

Role of right holders in Facilitating Public Participation

The roles of right holders are:

- i. Taking advantages of opportunities provided by duty bearers to express their concerns.
- ii. Demanding accountability from duty bearers.
- iii. Initiating programs for active citizen participation in governance.
- iv. Taking part in Civic Education.



**Figure 15. Round Table Discussion**

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

The following are the benefits of public participation:

- i. Improves service delivery by public officers
- ii. Increases credibility between public officers and the community on important issues and services
- iii. Creates a sense of belonging among citizen and trust in the government, Provides a platform for greater diversity of citizens to contribute to public debate and decision making
- iv. Provides an opportunity for focused and prioritised community concerns to be addressed by public officials
- v. Creates citizens who are more aware of their community needs and how government responds to those needs.



## UNIT 2: PUBLIC PARTICIPATION IN GOVERNANCE

### Introduction

This unit focuses on the purpose and principles of public participation; tools and platforms for public participation; the public participation spectrum, challenges facing public participation and possible solutions.

### SESSION 1: Purpose and Principles of Public Participation and Application of Tools and Platforms in Facilitating Public participation

**Time allocation: 15 Minutes**

#### Session objectives

By the end of the session, the participant should be able to:

- a) explain the purpose and principles of public participation;
- b) discuss tools and platforms used to facilitate public participation;
- c) discuss the public participation spectrum;
- d) discuss challenges facing public participation;
- e) outline solutions to challenges facing public participation.

#### Suggested Learning Resources

- The Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/ IRI, 2012
- The County Governments Act, 2012
- The Transition to Devolved Governments Act, 2012
- Public Finance Management Act, 2012
- Other relevant Acts

#### Suggested Training Methods

- a. Analyzing the case study
- b. Group discussion
- c. Experiences sharing

#### Suggested Learning Activities

- a) Guide the participants to brainstorm on;
  - i. Purpose and principles of public participation,
  - ii. Tools and platforms used in facilitating public participation, iii. Tools and platforms used in facilitating public participation.
- b) Present the findings.
- c) Summarise the session.

## **Suggested Assessment Methods**

- a. Question and answer
- b. Direct Observations

## **KEY NOTES**

### **Purpose and principles of public participation**

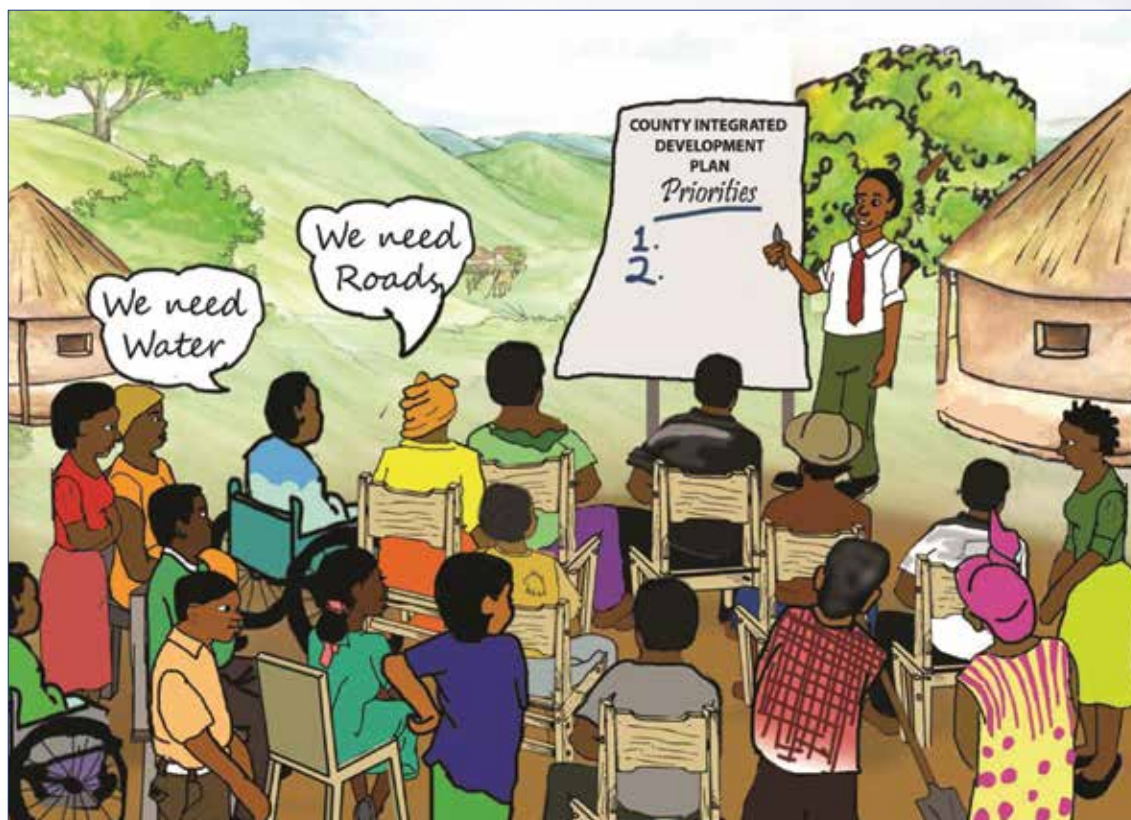
#### **Purpose of public participation**

The purposes of public participation are to:

- i. Provide objective information, to assist in understanding the problem alternatives opportunities and/or solutions.
- ii. Obtain public feedback.
- iii. To work directly with the public throughout the process to ensure that their concerns are consistently considered.
- iv. Partner with the public in each aspect of the decision making process.
- v. Place the final decision making process in the hands of the public.
- vi. To comply with the Constitutional demand as provided for in Article 174 (c).

#### **Principles of Public Participation**

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



**Figure 16. Public Baraza**

Tools and platforms that facilitate public participation Tools that facilitate public participation are:

- Advisory Committees
- Public Petitions
- Lobbying and Advocacy
- Local Referenda
- Social Media
- Memoranda
- Manifestos
- Communique

### **Public Participation Spectrum**

Public participant is in a continuum. Each level has a public participation goal and a desired outcome. The spectrum has the following five levels.

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

Source: IAP2 website: <http://www.iap2.org.au/spectrum.pdf>

## SESSION 2: Challenges facing Public participation and solutions

### Time Allocation: 15 minutes

#### Session objectives

By the end of the session, the participant should be able to:

- a. discuss challenges facing public participation;
- b. outline solutions to challenges facing public participation.

#### Suggested Learning Resources

- The Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/ IRI, 2012
- The County Governments Act, 2012
- Transition to Devolved Government Act, 2012
- Other relevant Acts

#### Suggested Training Methods

- Question and answer
- Direct observation

#### Suggested Learning Activities

- a) Guide the participants to discuss challenges facing citizens public participation and their solutions
- b) Make presentations
- c) Summarize the session.

#### Suggested Assessment Methods

- Question and answer
- Direct Observation

## KEY NOTES

### Challenges facing public participation

The following are challenges facing public participation:

- Inadequate skills for engagement by both the duty bearer and right holder
- Language barrier
- Lack of necessary resources
- Inadequate access to information



- Lack of understanding of the policy making process
- Inadequate representation of certain community groups in the decision- making process
- Negative attitudes and stereotypes
- Inaccessible leaders
- Lack of confidence in leaders, for example, when they fail to address issues raised by the people they represent.
- Public Apathy
- Lack of structured guidelines platform for public participation

### **Solutions to these Challenges**

The following are possible solutions to challenges facing public participation:

- Effective Civic education.
- Empowering people to hold their leaders accountable.
- Putting in place mechanisms for provision of information to the public.
- Enabling timely Make access to information. timely
- Developing and implementing communication strategies.
- Ensuring the constitution is implemented according to the letter and spirit.

## Appendix 1: ACTS OF PARLIAMENT

1. Public Procurement and Disposal Act, 2005
2. Political Parties Act, 2011
3. Elections Act , 2011
4. Urban Areas and Cities Act, 2011
5. County Governments Act, 2012
6. Code of Ethics for Public Officers 2012
7. Transition to Devolved Government Act, 2012
8. National Government Coordination Act , 2012
9. Inter-Governmental Relations Act 2012
10. Leadership and Integrity Act, 2012
11. Public Officer Ethics Act, 2012
12. Public Finance Management Act, 2012
13. Ethics and Anti-Corruption Act, 2012
14. The Commission on Administrative Justice Act 2012
15. Campaign Financing Act (CFA), 2013
16. The Kenya law reform Commission, 2013
17. The National .Cohesion and .Integration. Commission Act.,2008
18. Land Act, 2012
19. Land registration Act,2012
20. Environmental and coordination Act,2009



Ministry of Devolution  
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