



# Devolution and Public Participation In Kenya

## Civic Education Trainer's Manual for General Public

13 Weeks Programme



2016



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**Uraia**



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

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

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

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

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

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

## Foreword

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

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

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

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

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



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

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

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

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



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

## Preface

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

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

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

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

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



**GRACE MAINGI**  
EXECUTIVE DIRECTOR , URAIA TRUST



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## List of Abbreviations and Acronyms

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

## Glossary of Terms

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

<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.

### **Council of County**

<b>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.

### **County Public**

<b>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.'

### **Democratic**

<b>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.

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



include representing the will of the people and exercising their sovereign power. Parliament also has the power to amend the Constitution as needed.

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

### ***Proportional***

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

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

## ***Vertical***

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

## Introduction

### Overview of the Training Manual

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

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

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

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

### HOW TO USE THE MANUAL

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

When using the manual the facilitator should note the following:

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

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

## **1. Module Introduction**

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

## **2. General objectives**

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

## **3. Specific objectives**

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

## **4. Suggested learning resources**

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

## **5. Suggested training method**

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



## 6. Suggested assessment methods

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

## 7. Key notes

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

## 8. Additional information

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

### The 13 weeks 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 13 weeks civic education manual has been developed to equip the general public 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 is unfamiliar;
- motivate the participants to think;
- encourage the participants to participate in the learning process;
- show the relationship between events or ideas;
- ensure the discussion remains focused on the topic specific objectives;
- understand the interpretation capacity of the participants;
- engage the whole group or class.

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.

### **3. 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.

### **4. 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.

### **5. 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 p l a y 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.

## **6. 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.

## **7. 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.

## **8. 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.

## 9. 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

### **h) Plans**

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

### **i). 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.

## **j) 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 • 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



## **Time 10 Hours**

### **Introduction**

This module aims at equipping participants with basic knowledge on the Constitution of Kenya. It further sets out to enlighten the public on their rights, responsibilities and opportunities for participation in governance processes.

### **General Objectives**

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

- understand the historical background of the Constitution of Kenya;
- appreciate and promote constitutionalism;
- appreciate and exercise rights and responsibilities enshrined in the Constitution;
- appreciate the importance of values and principles of governance as per the Constitution;
- acquire skills, knowledge and attitudes for protecting the environment;
- understand different ways of administration of natural resources;
- acquire knowledge and attitudes for active and effective participation in governance processes.

# UNIT 1: HISTORICAL BACKGROUND OF THE CONSTITUTION IN KENYA

## Introduction

This unit discusses the historical development of the Constitution in Kenya from pre-colonial period up to the promulgation of the Constitution of Kenya, 2010. It is intended to give the historical perspective of the Constitution of Kenya.

## SESSION 1: Meaning, Purpose and Types of Constitution

**Time: 1 hour**

### Session Objectives

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

- a. state the meaning of the Constitution;
- b. state the purpose of the Constitution;
- c. identify the types of Constitutions.

### Suggested Learning Resources

- a. The Constitution of Kenya, 2010
- b. The Citizen Handbook Uraia/IRI, 2012
- c. Internet sources
- d. Understanding the Constitution, KNICE, 2011
- e. Resource person

### Suggested Training Methods

- a. Brainstorming
- b. Discussion

### Suggested Learning Activities

- i. Brainstorm on the meaning of the Constitution
- ii. Discuss the meaning, purpose and types of the Constitution
- iii. Summarize the session

### Suggested Assessment Methods

- a. Question and answer
- b. Observation on participation in brainstorming Sessions

## KEY NOTES

### Meaning of the term Constitution

The term Constitution refers to the basic principles or laws according to which a country or organization wishes to be governed.

### Purpose of the Constitution

The purpose of the Constitution is to;

1. Protect individual rights and freedom.
2. Set out and clarify the divisions of power.
3. Limit and control government's power.
4. Set out the principles, structures and processes of governance.
5. Nurture and protect 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.

### Types of Constitutions

The written Constitution refers to the basic principles and laws governing a country or organization. The laws are written down in a single comprehensive document. For example; the Constitutions of Kenya, India and the United States of America. The Unwritten constitution refers to a constitution where the provisions are not contained in a single document. Instead, the provisions are written in different documents which are considered as part of the fundamental law, for example; the basic laws of Israel and the unwritten laws of the parliament of United Kingdom.



## SESSION 2: Constitutional Amendments between 1964-2010

**Time: 1 hour**

### Session Objective

By the end of the session, the participant should be able to trace some of the major constitutional amendments in Kenya.

### Suggested Learning Resources

- a. The Kenya Constitution, 1963
- b. Citizen Handbook Uraia/IRI, 2012
- c. Resource persons
- d. Internet
- e. Relevant Acts

### Suggested Training Methods

- a. Sharing of experiences
- b. Use of Resource persons
- c. Discussion

### Suggested Learning Activities

- i. Sharing experiences regarding the Constitution during post-colonial period by a resource person
- ii. Discussing the Constitution amendments during post-colonial period
- iii. Summarize the session

**Note: The Resource persons should be a person who experienced the events or a professional who carried out studies on events during the period**

## Evolution of Kenyan constitution 1964 to 1991

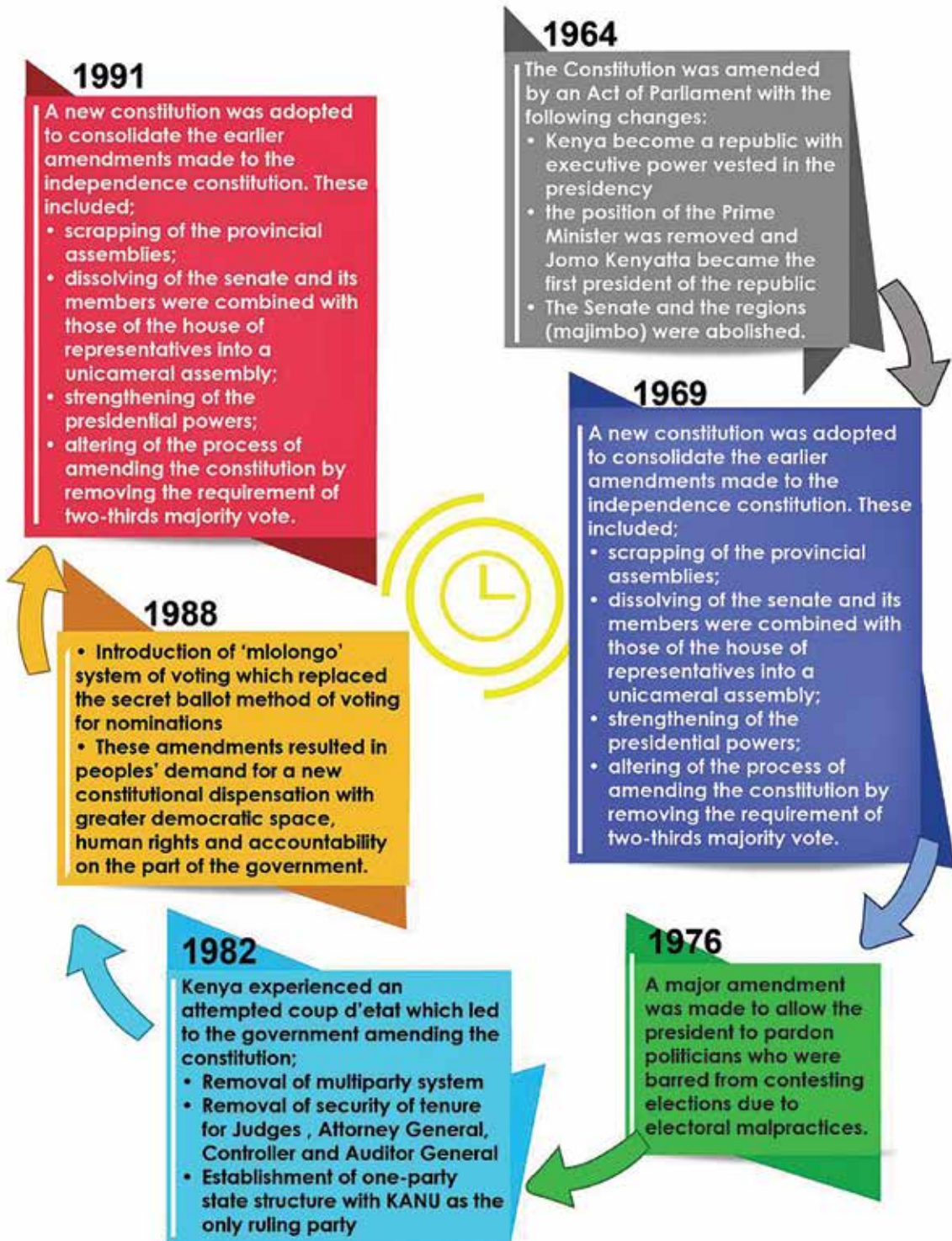


Figure 1: Evolution of Kenyan Constitution

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

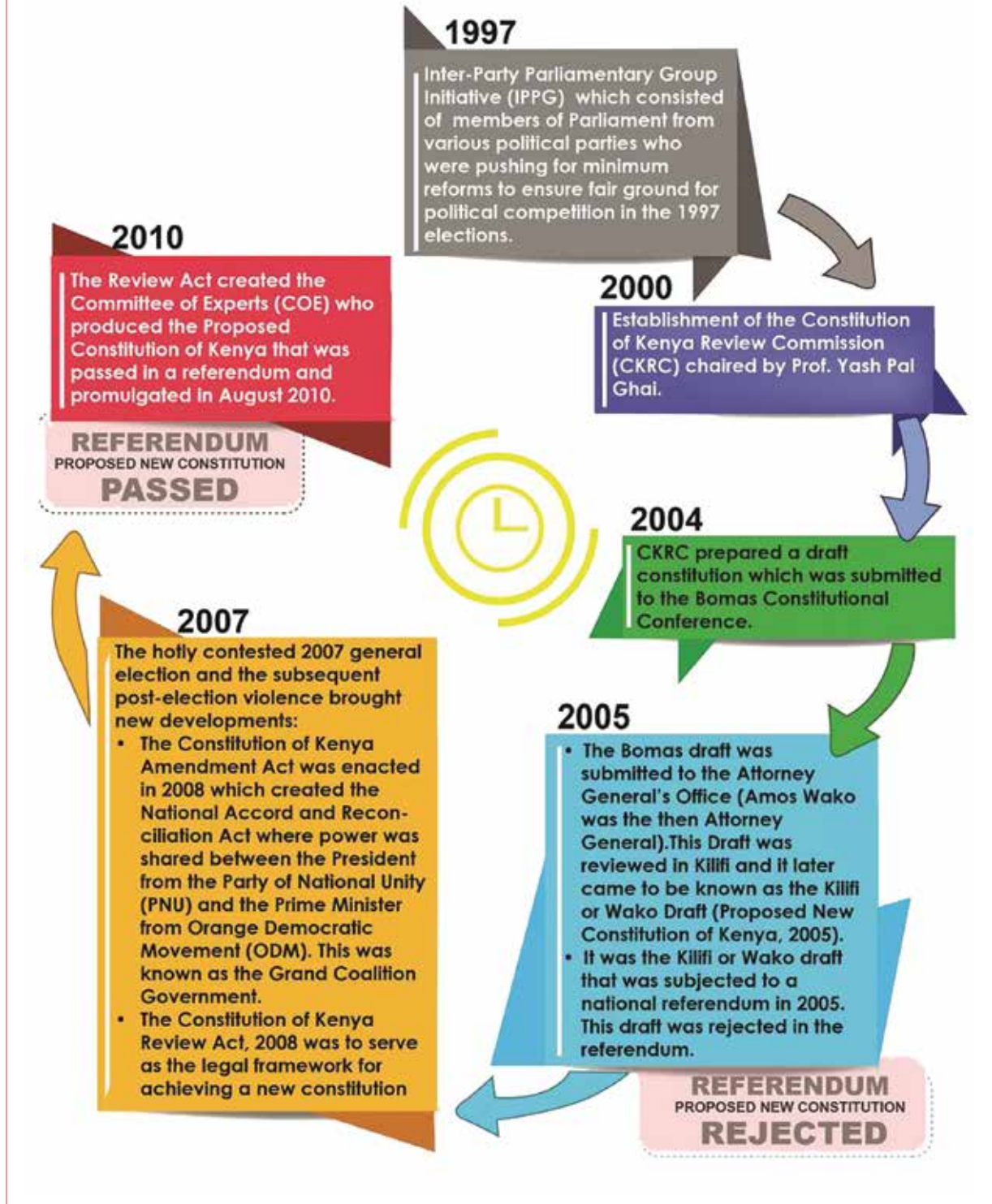


Figure 2: Events of the clamour of the new constitution

## Suggested Assessment Methods

- a. Question and answer
- b. Observation on sharing of experiences

## KEY NOTES

### a) 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 abolished and Jomo Kenyatta became the first President of the Republic
- The Senate and the regions (Majimbo) were abolished.

### b) 1969

A new Constitution was adopted to consolidate the earlier amendments made to the Independence Constitution. The changes 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.

### c) 1976

A major amendment was made to allow the president to pardon politicians barred from contesting in elections due to electoral malpractices. This amendment was resisted by a section of politicians who were imprisoned.

They included: Chelagat Mutai, George Anyona and Martin Shikuku.

### d) 1982

Kenya experienced an attempted coup d'état which led to the government amending the Constitution as follows:

- Removing of security of tenure for judges , Attorney General, Controller and Auditor General
- Removal of multi-party system and the establishment of one-party state structure with Kenya African National Union ( KANU) as the only ruling party
- Introduction of 'Mlolongo' system of voting which replaced the secret ballot method of voting

- These amendments resulted in people's demand for a new constitutional dispensation with greater democratic space, human rights and accountability on the part of the government.

### e) 1991

A KANU delegates' meeting chaired by President Moi at Kasarani Stadium led to the repeal of Section 2A of the Constitution which resulted to;

- Kenya becoming a multi-party state again
- Limitation of presidential tenure to two consecutive terms
- Reconstitution of Electoral Commission of Kenya (ECK).

### f) Continued pressure to demand for review of the Constitution led to a number of initiatives as follows;

- Establishment of the Constitution of Kenya Review Commission (CKRC) in 2000 Chaired by Professor Yash Pal Ghai
- Preparation of a Draft Constitution by CKRC, which was submitted to the Bomas Constitutional Conference in 2004
- Submission of The Bomas draft to the Attorney General's office. It was reviewed at Kilifi and was later to be known as Kilifi or Wako draft
- Subjection of the Kilifi or Wako draft to a national referendum in 2005.

The draft was rejected during the referendum.

The hotly contested 2007 general election and the subsequent post-election violence brought new developments. These include;

- The Constitution of Kenya Review Act, 2008 which created the National
- Accord in which 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 Act created the Committee of Experts who produced a draft constitution that was passed in a referendum and promulgated in August, 2010.





## UNIT 2: THE CONSTITUTION OF KENYA, 2010

**Time: 3 hours 30 minutes**

### **Introduction:**

The Constitution of Kenya 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. The Constitution of Kenya has a preamble, eighteen (18) Chapters and six Schedules. Each Chapter addresses a unique aspect of the relationship between the State and its citizens or between the citizens themselves. The purpose of this module is to give a brief overview of the Constitution and explain briefly the roles of the state vis-à-vis the rights of the citizens and their responsibilities.

### **SESSION 1: Key Provisions of the Constitution of Kenya, 2010**

**Time: 30 minutes**

#### **Session Objectives**

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

- a. describe the key provisions of the Constitution of Kenya, 2010;
- b. identify key features of the Constitution of Kenya,2010;
- c. identify the institutions responsible for the implementation of the Constitution.

#### **Suggested Learning Resources**

- a. The Constitution of Kenya, 2010
- b. Citizen Handbook Uraia/IRI,2012 IEC materials

#### **Suggested Training Methods**

- a. Brainstorming
- b. Group discussion

#### **Suggested Learning Activities**

- i. Discuss the major provisions in the Constitution of Kenya, 2010
- ii. Discuss key features of the Constitution of Kenya, 2010
- iii. Summarize the session

## Suggested Assessment Methods

- a. Question and answer
- b. Observation during participation in discussions

## KEY NOTES

### Overview of the Chapters of the Constitution of Kenya, 2010

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

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** - Defines the republic, national values, national language and symbols.

**Chapter 3: Citizenship** - Defines the citizens of Kenya and the manner in which citizenship is acquired or lost.

**Chapter 4: Bill of Rights** - Recognizes rights of citizens and others. It provides for situations when rights may be limited and provides mechanisms and procedures for the protection of rights.

**Chapter 5: Land and Environment** - Creates a framework for land, Environment and natural resources and provides for their use and protection.

**Chapter 6: Leadership and integrity** - Sets out principles of conduct for State and Public officers.

**Chapter 7: Representation of the people** - 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.

**Chapter 8: The Legislature** - Establishes the National Assembly and Senate (Parliament).

**Chapter 9: The Executive** - Establishes the Executive headed by the President and the Deputy. It provides for mechanisms for the election or removal of the President. It also provides for establishment of the office of the Attorney General.

**Chapter 10: The Judiciary** - Establishes the Judiciary and the courts system in Kenya.

**Chapter 11: The Devolved Government** - Expounds on the territory of Kenya and establishes County Governments and their functions.

**Chapter 12: Public Finance** – It makes provisions for the collection of taxes and allocation of funds from the national treasury and provides for principles of accountability for national resources.

**Chapter 13: The Public Service** - Establishes the public service and sets out the organization of the public service. It provides for principles of good governance in service delivery.

**Chapter 14: National Security** - It sets out principles of national security and establishes institutions that provide security to the public.

**Chapter 15: Commissions and Independent Offices** - provides for the roles, functions and independence of Constitutional Commissions and Independent Offices.

**Chapter 16: Amendment of the Constitution** - Outlines how the Constitution can be amended; that is, through the popular initiative, parliamentary initiative and referendum.

**Chapter 17: General Provisions provide** - provides rules for interpreting the constitution.

**Chapter 18: Transitional and Consequential Provisions** - deals with ways of implementing the constitution.

### Overview of the Schedules

There are **six** schedules as follows:

- First schedule is on Counties
- Second schedule is on National Symbols
- Third schedule is on National Oaths and Affirmations
- Fourth schedule on distribution of functions between National and County Governments
- Fifth schedule on Legislation to be enacted by Parliament
- Sixth schedule on Transitional and Consequential Provisions

### Key features of the Constitution of Kenya, 2010

- Sovereignty of the people
- Rights-based governance and public service delivery
- Accountable servant leaders working for the people of Kenya
- Citizen-centred service delivery
- Devolved governments
- New value system

## The Institutions Responsible for the Implementation of the Constitution

- Commission for the Implementation of the Constitution (CIC)
- Constitutional Implementation Oversight Committee(CIOC)
- The Parliament
- Office of the Attorney General and Department of Justice
- Kenya Law Reform Commission(KLRC)
- The Executive
- The Judiciary

## **SESSION 2: National values and principles of governance**

**Time: 30 minutes**

### **Session Objective**

By the end of the session the participant should be able to discuss the national values and principles of governance

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- KNICE Manual, 2012 (Understanding Constitution)
- Citizen Handbook, Uraia/IRI, 2012
- IEC Materials

### **Suggested Methods**

- Brainstorming
- Group discussion

### **Suggested Learning Activities**

- i. Brainstorm on National values and principles of governance
- ii. Discuss the national values and principles of governance

### **Suggested Assessment Methods**

- i. Question and Answer
- ii. Observation during participation in discussions

## KEY NOTES

### **The National Values and Principles of Governance:**

The National Values and Principles of governance in Article 10 bind all state organs, state officers, public officers and all persons. The national values and principles of governance include:

#### **a) Patriotism**

Patriotism is love, loyalty and devotion shown to one's country. Patriotism is about service to the country. It is about having an identity as a Kenyan. It is essential in helping Kenyans forge a common front in the pursuit of national development

#### **b) Sharing and Devolution of Power**

Power sharing refers to a political arrangement in which all groups in a society participate in governance. On the other hand, devolution is the transfer of power, resources and services from a central government to local units.

#### **c) National Unity**

National Unity is the deliberate decision to work in concert with others in pursuit of common goals. It is an intentional willingness to allow what binds us together to take priority over what sets us apart from one another.

#### **d) The Rule of Law**

The rule of law is about individuals, persons, and government submitting to obey, and be regulated by law, and not arbitrary action by an individual or a group of individuals. The rule of law requires that no person is above the law, and no one can be punished by the government except for a breach of the law.

#### **e) Democracy and public participation**

Democracy is a legislative system in which all citizens participate directly or indirectly in governance of their country for example through participating in budget making and choosing their leaders.

#### **f) Human dignity**

Human dignity is the idea that all humans should be treated with love and respect simply because they are humans regardless of class, race, gender, nationality, culture, sex, education, religion or any other divisions.

#### **g) Equity**

It is the quality of being impartial, reasonable and fair in all our decision and actions. In law, it is a system of jurisprudence founded on principles of natural justice and fair conduct. It supplements the common law that dejects biasness, favouritism, and unjustified preference.

## **h) Social justice**

Social justice implies fairness in the society. It is based on the idea of a society which gives individuals and groups fair treatment and a just share of the benefits of society.

## **i) Inclusiveness**

The process of inclusiveness engages each individual and makes people feel valued and essential to the success of a group or organization. Where there is inclusiveness, individuals function at full capacity, feel more valued, and equally feel included in the general mission of their country.

## **j) Equality**

Social equality includes equal rights under the law, such as security, voting rights, freedom of speech and assembly, and the extent of property rights. It also includes access to education, health care and other social securities.

## **k) Human Rights**

Human rights are entitlements inherent to all human beings, irrespective of nationality, place of residence, sex, ethnic origin, colour, religion, language, or any other status. These rights are all interrelated, interdependent and indivisible.

## **g) Non-discrimination and Protection of the Marginalized**

Non-discrimination refers to fairness in treating people without prejudice irrespective of their gender, ethnicity, class, religion and race, geographical or generational differences. On the other hand, marginalization is the social process of becoming or being relegated or confined to a lower social standing. The Constitution provides for inclusiveness; that no individual or community should be discriminated against or marginalized.

## **h) Good governance**

Good governance entails conducting of public affairs and managing public resources effectively in order to guarantee the realization of human rights and social welfare.

## **a) Integrity**

Integrity is regarded as the honesty and truthfulness of one's actions. Integrity is the strength and firmness of character, a sense of honesty and truthfulness in regard to the motivation for one's actions. It provides the will to refuse to engage in behavior that is corrupt, that evades responsibility, and that is morally questionable. Integrity calls for transparency and accountability in our conduct of affairs. Embracing integrity will allow Kenyans to base their actions on an internally-consistent framework of principles even when it is at personal cost.

## **b) Transparency and Accountability**

Transparency can be defined as openness in the management of public affairs. Public accountability means the obligations of persons or authorities entrusted

with public resources to report on the management of such resources and being answerable to the public.

### **c) Sustainable Development**

Sustainable development may be defined as a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come.

It may further be defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

## **SESSION 3: Rights and Fundamental Freedoms under the Constitution of Kenya, 2010 (Chapter4)**

**Time: 40 minutes**

### **Session Objectives**

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

- a. discuss the principles of Human Rights
- b. state the rights and fundamental freedoms under the Constitution of Kenya;
- c. identify the limitation of Rights and Fundamental Freedoms under the Constitution of Kenya, 2010.

### **Suggested Learning Resources**

- a. The Constitution of Kenya, 2010
- b. Citizen Handbook Uraia/IRI, 2012
- c. IEC materials
- d. Understanding the Constitution KNICE, 2012
- e. The Universal Declaration of Human Rights, 1948

### **Suggested Training Methods**

- a. Discussions
- b. Brainstorming
- c. Group work

### **Suggested Learning Activities**

- Discussion on principles of human rights
- Brainstorm on the rights and fundamental freedoms under the Constitution of Kenya
- Group work on rights and fundamental freedoms
- Presentation in plenary
- Summarize the session

## Suggested Assessment Methods

- a. Question and answer
- b. Observation on participation in discussions

## KEY NOTES

### 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 fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.

#### iv. Equality and Non-discrimination

All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, 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.

### **Rights under the Constitution**

Rights under the Constitution include but are not limited to:

#### **a) Civil and Political rights which include the rights to:**

- Life
- Liberty
- Security of person
- Access to justice
- Political participation.

#### **b) The Bill of Rights protects Social and Economic rights including:**

- Health care
- Housing
- Reasonable sanitation
- Freedom from hunger and to have adequate food of acceptable quality
- Clean and safe water
- Social security
- Education

#### **c) Cultural and Environmental Rights are:**

- Clean environment
- Use of one's language
- Participation in the cultural life of a person's choice

#### **d) Rights of specific groups of people**

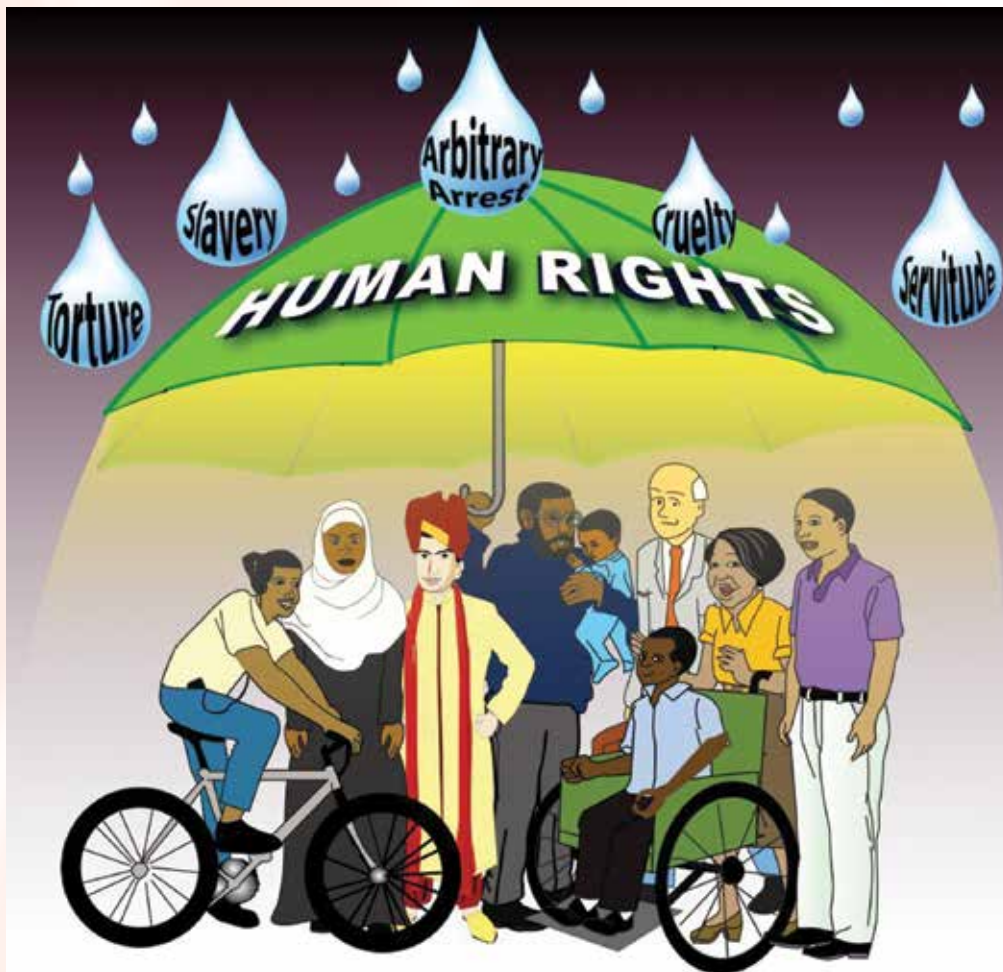
These are rights that accrue to particular groups of people who face unique challenges in the equal realization of their rights and hence need for special protection including:

- Women
- Children
- Persons with disabilities
- Youth

- Older persons
- Marginalized and minority groups
- Internally displaced persons
- Refugees.

### **Fundamental Freedoms Article (21)**

- Freedom of the media
- Freedom from discrimination
- Freedom of conscience, religion, belief and opinion
- Equality and freedom from discrimination
- Freedom and security of the person
- Freedom of expression
- Freedom of association
- Freedom of movement and residence



*Figure 3: Human rights under the constitution*



## Limitation of Rights and Fundamental Freedoms

Rights provided under the Bill of Rights are not absolute except:

- a) Freedom from torture and cruel, inhuman or degrading treatment or punishment
  - Freedom from slavery or servitude
  - The right to a fair trial
  - The right to petition a court to order a public body to produce any person it holds in its custody.
- b) A right or freedom may be limited by Law.
- c) A right or freedom may only be limited to the extent to which is reasonable and if the institution which is limiting it can justify it in an open and democratic society taking into account all relevant factors, including:
  - The nature of the right or fundamental freedom
  - The importance of the purpose of the limitation
  - The nature and extent of the limitation
  - The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others

Institutions responsible for the enforcement of Human Rights in Kenya

- The National Police Service
- The Judiciary
- The Kenya National Commission on Human Rights
- National Gender and Equality Commission
- Commission for Administrative Justice (Office of the Ombudsman)

## SESSION 4: Classification and System of Land Tenure in Kenya

**Time: 50 minutes**

### Session Objectives

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

- a) identify the classification of land in Kenya;
- b) discuss the principles of land management under the Constitution of Kenya, 2010;
- c) discuss the system of land tenure in Kenya;
- d) state the functions of the National Land Commission, the Ministry of Lands and County Land Management Board.

### Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012

- Information, Education and Communication (IEC) materials
- Relevant Acts
- Practice Guidelines for County Land Management Boards on Processing of Development Application, 2014
- National Land Policy, 2009

### **Suggested Training Methods**

- Brainstorming
- Discussion
- Cross referencing of content

### **Suggested Learning Activities**

- Brainstorm on the classifications of land in Kenya
- Explain the classification of land
- Explain the principles of land management under the Constitution
- Discuss the land tenure system in Kenya
- Brainstorm on the functions of the National Land Commission (NLC), Ministry of Lands and County Land Management Board
- Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation on participation during discussions

## **KEY NOTES**

### **Classification of Land in Kenya**

Land is classified in three categories:

#### **a) Public Land (Article 62)**

- This is land which belongs to either the National or County Governments or any State organ and held on behalf of the people. It is also land to which no individual or community claims ownership or which is defined by an

Act of Parliament as public land;

- Any land in respect of which no heir can be identified by any legal process;
- 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;
- 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.

#### **b) Community Land (Article 63)**

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. It also refers to the 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 Governments.

#### **Private Land (Article 64)**

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.

#### **Land Tenure System in Kenya**

Tenure refers to the period or term of holding something.

Land Tenure refers to the manner in which individuals or groups of people within community enjoy rights of access to land at a broader level, this would include the conditions under which such land is enjoyed.

- i. Leasehold – where a person or organization leases or pays rent to the national or County Government for a period of time not exceeding 99 years.
- ii. Freehold – where a person or organization 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 access to social amenities.
- iv. Customary interest – 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.

#### **The Principles of Land Management under the Constitution of Kenya**

All land in Kenya is held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles:

- 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 and
- vii. Encouragement of communities to settle land disputes through recognized local community initiatives.

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

The functions of the National Land Commission are to:

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

### **Functions of Ministry of Lands**

The functions of Ministry of 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 land adjudication
- 7. offer land and property valuation services
- 8. land reclamation

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

The functions of County Land Management Boards are:

- 1. To process application for;
  - a) allocation of public land in the counties
  - b) renewal of land leases
  - c) change and extension of user
  - d) sub-division of public land in the county
- 1. Carry out physical planning
- 2. Carry out survey and mapping of land

3. Receive and handle land-related disputes
4. Administer public land as stipulated by the constitution

## **SESSION 5: Environment and Natural Resources**

**Time: 30 minutes**

### **Session Objectives**

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

- a) identify types of natural resources;
- b) discuss ways of protecting the environment and natural resources.

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- IEC materials
- Environmental Management and Coordination Act, 2009

### **Suggested Training Methods**

- Brainstorming
- Discussion
- Cross referencing of content
- Sharing of experiences

### **Suggested Learning Activities**

- i. Use question and answer to solicit examples of natural resources in Kenya
- ii. Discuss the types of natural resources in Kenya
- iii. Share experiences on environmental protection
- iv. discuss environmental conservation measures
- v. Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation on participation in discussions

## **KEY NOTES**

### **Types of Natural Resources**

The Constitution (Article 260) defines natural resources as physical non- human factors and components whether renewable or non-renewable. These include:

- Sunlight
- Water on the surface of the earth and that below it
- Forests, animals and plant life (biodiversity) and genetic resources
- Rocks, minerals, fossil fuels and other sources of energy, for example; Geothermal and Hydroelectric power.

The Environmental Management and Coordination Act, 2009 identifies natural resources as air, land, water, animals and plants.

The Constitution indicates that “land” includes:

- The surface of the earth and the sub-surface rock
- Any body of water on or under the surface
- Marine waters in the territorial sea and exclusive economic zone
- Natural resources completely contained on or under the surface and
- 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:

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

The Minister in charge of the environment and /or other relevant government agencies are required to publish regulations for protection of the environment including:

- Protection of rivers, riverbanks, lake shores, wetlands and zone
- Protection of the interests of indigenous communities within or around a lakeshore, wetland, coastal zone or river bank or forest
- Protection of hill tops, hill sides, mountain areas and forests
- Re-forestation and afforestation of hill tops, hill slopes and mountainous areas.

### **Protection of forests**

The following are some ways through which forests can be protected:

- Conservation of energy and planting of trees or woodlots
- Conservation of different species of animals and plants (biological diversity)

- Conservation of naturally occurring resources situated beneath the surface of the earth (biological resources in situ)
- Conservation of naturally occurring resources situated above the surface of the earth (biological resources ex-situ)
- Protection of the coastal zone
- Protection of the ozone layer
- Ensuring access to genetic resources of Kenya by issuing guidelines and prescribing measures for their sustainable management and utilization.

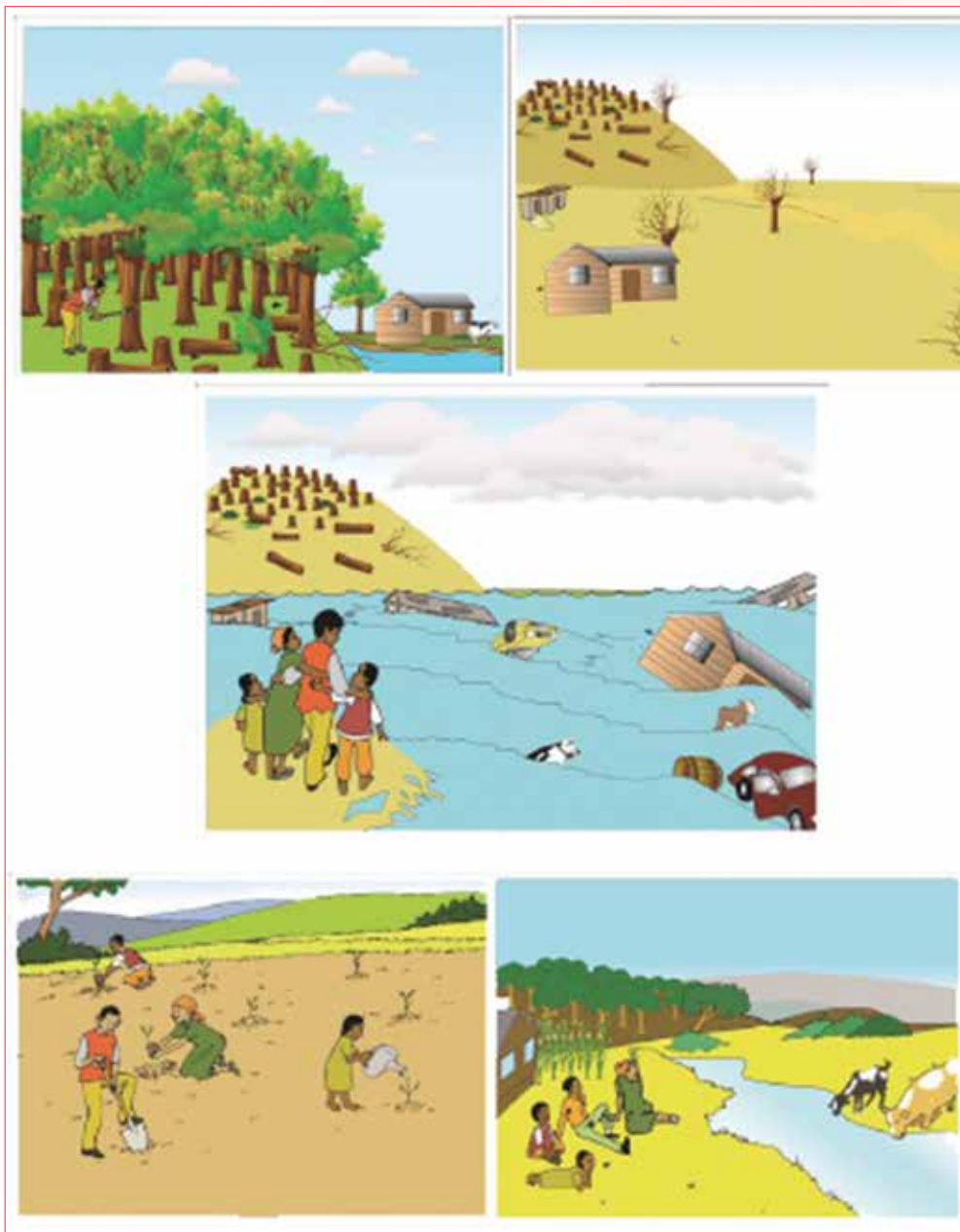


Figure 4

## Agreements Relating to Natural Resources

According to the Constitution, the government may enter into an agreement with another government, a company or any other entity for the exploitation of any natural resource 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.

## SESSION 6: Principles of Leadership and Integrity

**Time: 30 minutes**

### Session Objectives

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

- a) state the guiding principles of leadership and integrity under the Constitution;
- b) discuss the conduct of public officers as stipulated by the Constitution of Kenya, 2010.

### Suggested Learning Resources

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

### Suggested Training Methods

- Brainstorming
- Discussion
- Cross referencing of content
- Role-play

### Suggested Learning Activities

- i. Brainstorm the differences between State and Public Officers
- ii. Discuss the principles of leadership and integrity showing the linkage to Article 10 on national values and principles of governance
- iii. Role-play on principles of leadership and integrity
- iv. Summarize the session



## Suggested Assessment Methods

- Question and answer
- Observation on participation during the role play

## KEY NOTES

The Guiding Principles of Leadership and Integrity (Chapter 6)

These principles are related to the National Values and principles of governance in Article 10 of the CoK, 2010 and they include the following:

- 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;
  - honesty in the execution of public duties
  - the declaration of any personal interest that may conflict with public duties
- iv. accountability to the public for decisions and actions
- 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:

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

The conduct of State Officers as stipulated by the Constitution of Kenya (Article 75)

a) In conducting their duties, State Officers must:

- Act in accordance with the law
- Treat members of the public and other Public Officers with courtesy and respect
- Exercise their power 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 and 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 the organization
- Observe and subscribe to the ethical and professional requirements of any professional body they are members

**b) State Officers must avoid:**

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



**Figure 5: Traffic Police officer refusing a bribe**

## UNIT 3: REPRESENTATION OF THE PEOPLE (CHAPTER 7)

**Time: 4 Hours**

### 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, the Judiciary and other Independent Tribunals.

### SESSION 1: Key Provision of Elections in Kenya

**Time: 45 Minutes**

#### Session Objectives

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

- a) explain the importance of elections;
- b) state the Constitutional principles of electoral system in Kenya;
- c) identify key provisions on elections in Kenya.

#### Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- Relevant Acts of Parliament
- IEC Materials

#### Suggested Training Methods

- Brainstorming
- Group discussion
- Role-play

#### Suggested Learning Activities

- i. Brainstorm on the importance of elections
- ii. Discuss the constitutional principles of electoral system in Kenya
- iii. Discuss major provisions on elections in Kenya
- iv. Sharing experiences on the national elections
- v. Role-play issues that contradict provisions of elections

### **Suggested Assessment Methods**

- Question and answer
- Observation on participation in discussions
- Observation during Role-play

### **KEY NOTES**

#### **Importance of elections in Kenya**

- 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 review their performance

#### **Constitutional principles of the electoral system in Kenya**

- a) The electoral system is required to comply with the following principles:
- b) All Kenyan citizens must be allowed and encouraged to freely exercise their political rights under Article 38
- c) Participation of both men and women by ensuring that no more than two-thirds of the members of any elective public bodies shall be of the same gender;
- d) Fair representation of persons with disabilities
- e) Universal suffrage based on the aspiration for fair representation and equality of vote
- f) 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 with. The Code of Conduct is found in the Second Schedule of the Elections Act, 2011.

2. Voter registration – The Constitution provides for qualifications registering as a voter at elections and referenda. These include attainment of age of eighteen years of age and in possession of a national identity card or Kenyan passport at the time of registration, being of sound mind, and not being convicted of an election offence during the previous five years.
3. An eligible voter may only register at one registration centre and the registration process should not prevent eligible citizens from registering. Part 2 of The Elections Act, 2011 provides in-depth requirements regarding voter registration. It also provides for the rights of a voter.
4. Recall of a Member of Parliament– Article 104 (1) provides a voter the right to recall a Member of Parliament representing their Constituency or County 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 the law on Leadership and Integrity such as mismanaging public resources, or 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.
5. Independent candidate–A person who is not a member of any political party in order to be a candidate for one 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 Election Day. A person must also satisfy the specific nomination requirements for election to the National Assembly, Senate or to one of the 47 County Assemblies.
6. Voting, vote counting and results – IEBC is responsible for ensuring that the voting method used during every election is simple, accurate, verifiable, secure, accountable, and transparent. Moreover, the Commission is responsible for implementing structures to prevent electoral malpractices and to ensure that each polling station promptly counts and tabulates votes and announces the election results.
7. Allocation of party list seats –The allocation of party list seats uses 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.
8. Electoral disputes – Article 87 of the Constitution requires the quick and just resolution of disputes and allows citizens to petition the court in dispute of the results within 28 days of their declaration by IEBC. However, Presidential election disputes must be filed within seven days.

## **SESSION 2: Functions of Independent Electoral and Boundaries Commission (IEBC)**

**Time: 1 hour 20 minutes**

### **Session Objective**

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

- a) state the functions of Independent Electoral and Boundaries Commission;
- b) explain the roles and responsibilities of elective positions in Kenya;
- c) describe the electoral process in Kenya;
- d) describe ways of winning an election in Kenya;
- e) explain the circumstances for run-off and election petitions.

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- Handbook of Elective Positions, IEBC, 2012
- Information, Education and Communication (IEC)

### **Suggested Training Methods**

- Brainstorming
- Discussion

### **Suggested Learning Activities**

- Discuss the functions of the IEBC
- Brain storm on roles and responsibilities of elective positions in Kenya.
- Discuss the process of elections in Kenya
- Role-play on the voting process.
- Explain the ways of winning elections
- Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation on participation in discussions



**Figure 6: Voter registration process**

IEBC is established under Article 88 of the Constitution. The independence and part of the functions of IEBC are provided under Chapter 15. It is not subject to directions from any party.

**The mandate of the IEBC is to carry out:**

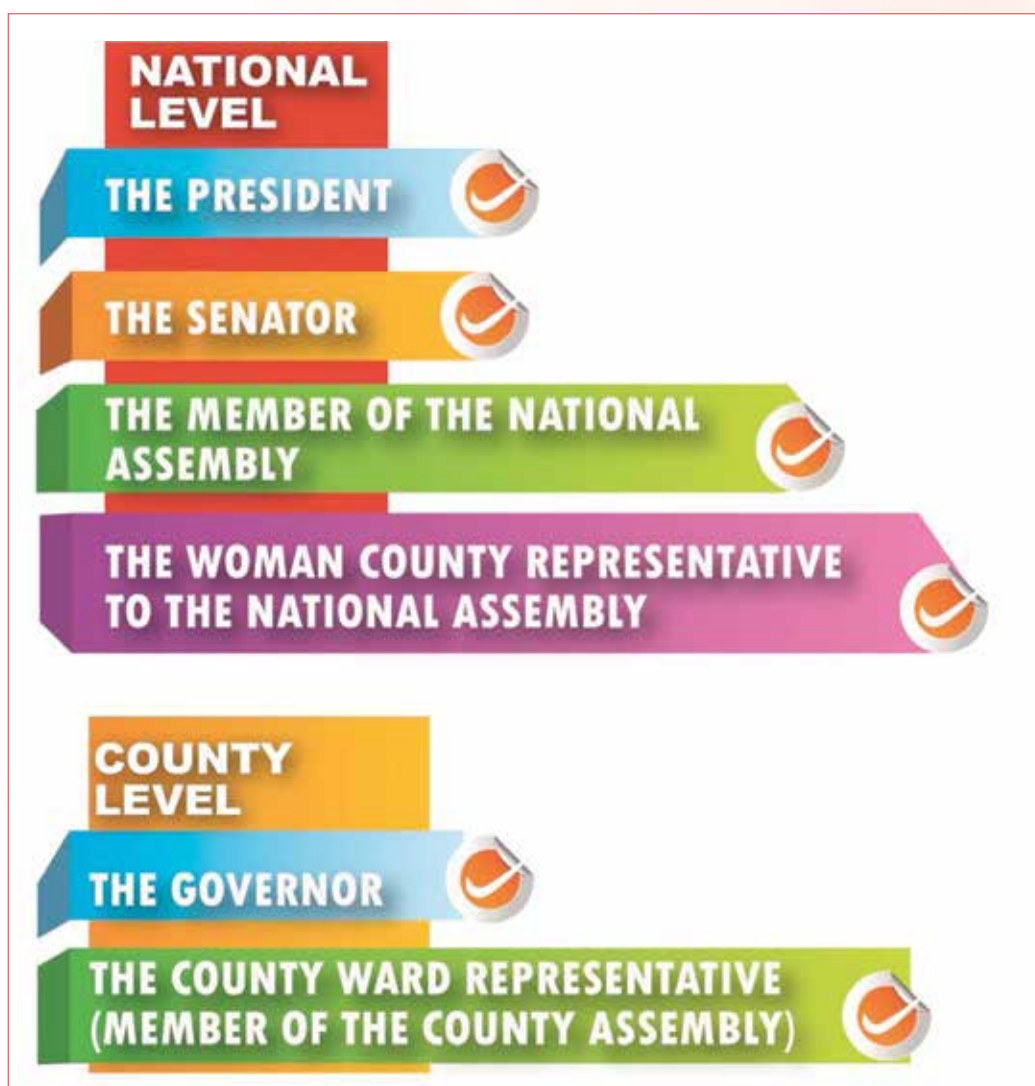
- a) Continuous voter registration;
- b) Regular revision of the voters' roll
- c) Delimitation of Constituency and Ward boundaries
- d) Overseeing the process of nomination of candidates for elections by e) Political Parties; the settlement of electoral disputes particularly
- f) disputes relating to or arising from the nominations exercise g) Registration of candidates for election
- h) Voter education
- i) Facilitation of the observation, monitoring and evaluation of elections j) Regulation of the amount of money that may be spent by or on behalf k) of a candidate or party in respect of any election
- l) Development of a code of conduct for candidates and parties m) contesting elections
- n) Monitoring of compliance with the law relating to nomination of o) candidates by political parties

**Suggested Learning Activities**

- i. Brain storm on roles and responsibilities of elective positions in Kenya.
- ii. Discuss the roles and rights of election observer
- iii. Discuss the principles of the electoral system
- iv. Role-play on the voting process.
- v. Summarize the session

**Overview of Elective positions, their roles and responsibilities**

There are six elective offices in Kenya as follows:



*Figure 7: Overview of elective positions*

### **At National level:**

The Presidency:

The President;

- Is the Head of State and Government
- Is the Commander-in-Chief of the Kenya Defense Forces
- Is the Chairperson of the National Security Council
- Is a symbol of national unity
- Safeguards the sovereignty of the Republic
- Promotes and enhances the unity of the nation
- Promotes respect for the diversity of the people and communities of Kenya

- Ensures the protection of human rights, fundamental freedoms and the rule of law
- Chairs Cabinet meetings
- Directs and coordinates the functions of ministries and government departments
- Receives foreign diplomatic and consular representatives
- Confers honours in the name of the people and the Republic
- Declares a state of emergency
- With the approval of Parliament, may declare war
- Ensures that the international obligations of the republic are fulfilled
- May exercise power of mercy based on the advice of the Advisory Committee
- Nominates and with the approval of the National Assembly appoints and may dismiss:
  - The cabinet secretaries
  - The Attorney General
  - The Secretary to the Cabinet
  - Principal secretaries
  - High commissioners, ambassadors and diplomatic consular representatives.

### **Senate**

- Represents the counties
- Protects the interests of the County governments
- Makes laws for the county government
- Decides on the allocation of national revenue among counties
- Oversees national revenue allocated to the county governments
- Participate in the oversight of State offices
- Has the final vote in the removal (impeachment) of the President or Deputy President from office

### **National Assembly (MP)**

- Represents the people of the constituencies and special interests in the National Assembly;
- Deliberate on and resolves issues of concern to the people
- Makes national laws
- Decides on the allocation of national revenue between the levels of Government and other national State organs;
- Oversee State organs, national revenue and its expenditure

- Reviews the conduct of the President, the Deputy President and other state officers and may initiate the process of removing them from office.

### **Woman Representative**

- The Woman Representative represents the interests of the special interest groups including women, youth and persons with disabilities in the county.
- Deliberate on and resolves issues of concern to the people
- Makes national laws
- Decides on the allocation of national revenue between the levels of Government and other national State organs;
- Oversee State organs, national revenue and its expenditure
- Reviews the conduct of the President, the Deputy President and other state officers and may initiate the process of removing them from office.

### **At County level: Governorship The Governor:**

- Is head of the County Executive
- Is in charge of all county services
- Appoints the county executive committees with the approval of county assembly;
- Appoints town committees and municipal boards for towns and municipalities within the county area.

County Assemblies are the legislative organ of County Governments. They are to:

- Make laws for the County governments;
- Exercise oversight over the county executive organs;
- Receive and approve plans and policies for the Counties

## **The 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 not 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;
  - By secret ballot

- Free from violence, intimidation, improper influence or corruption;
- Conducted by an independent body
- Transparent
- Administered in an impartial, neutral, efficient, accurate and accountable manner



Figure 8: Elections in progress

## The Electoral Process in Kenya

### Presidential Election

- The IEBC initiates a presidential election by publishing a notice in the Kenya Gazette as well as in the electronic and print media of national circulation
- The notice must be published at least **sixty days** before the date of a general election
- A notice for a repeat election or upon the office of the president becoming vacant must be made at least **twenty one days** before the date of the election.

### Parliamentary Election

- The IEBC initiates a parliamentary election by publishing a notice in the Kenya Gazette as well as in the print and electronic media of national circulation
- The notice must be published at least sixty days before the date of a general election

- A notice of a by-election is made upon the office of a Member of Parliament becoming vacant
- The Speaker of the respective House must notify the Commission of the vacancy.

### **County Governor Elections**

- The Commission initiates the process of County Governor elections by publishing a notice in the Kenya Gazette and in electronic and print media of national circulation.
- The notice must be published at least sixty days before the date of a general election.

### **County Assembly**

- The Commission initiates the process of elections for Members of the County Assembly/Ward Representatives by publishing a notice in the Kenya Gazette and in electronic and print media of national circulation
- The notice must be published at least sixty days before the date of a general election
- If the office of a member of the County assembly becomes vacant, the publication of the notice is done once notification of the vacancy is received from the Speaker of the respective County Assembly.

### **Format and Content of the Notice**

Each notice must be in a form prescribed by law and must specify the following things:

- The nomination date for the candidates
- The day or days on which the poll shall be taken and which must be at least twenty one days after the nomination
- Where general elections are concerned, the notice must indicate the day upon which political parties shall submit party lists for purposes of facilitating the nomination of nominated members of the two representative bodies as required under the Constitution.

### **Ways of winning elections in Kenya**

- Plurality – the method used in determining a winner of any elective position other than the office of the President whereby the candidate with the most number of votes wins.
- Absolute majority– the method used in the election of the President whereby the winning candidate must garner more than the half (50% +1) of all valid votes cast. In addition the winning candidate must also receive more than twenty five percent (25%) of all valid votes cast in more than half (24) of all the Counties.

- The proportional election formula - The proportional election formula used is in form of party list where the political parties nominate candidates to specific seats in Parliament and County Assembly. IEBC determines the special nominated seats based on the proportional number of nominated seats won by each Political party in that election

### **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 Member of National Assembly or Senator are lodged in the High Court. Petitions from Presidential elections must be lodged in the Supreme Court.
- The law requires that these petitions be lodged within the prescribed time limit. In the case of a petition arising from Presidential elections it must be lodged within seven days from the publication of the results. All other petitions must be lodged within 28 days.

## **SESSION 3: Political Parties and Election Campaign Financing**

**Time: 1 Hour**

### **Session Objectives**

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

- a) discuss the roles and features of Political Parties in Kenya;

- b) describe the process of party nomination and dispute resolution;
- c) explain the key provision of the Election Campaign Financing Act,2013.

### **Suggested Learning Resources**

- The Constitution of Kenya,2010
- Citizen Handbook Uraia/IRI,2012
- IEC materials
- Relevant Acts

### **Suggested Training Methods**

- Brainstorming
- Group Discussion

### **Suggested Activities**

- i. Discuss features and roles of political parties
- ii. Brainstorm the process of party nominations
- iii. Explain key provision of Campaign financing Act,2013
- iv. Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation during discussions

## **KEY NOTES**

### **Features of Political Parties in Kenya**

Political parties should:

- Have a national character, that is, must have a presence in all areas of the Country and its leadership must be diverse
- Have a democratically elected governing body
- Abide by the democratic principles of good governance
- Respect the right of all persons to participate in the political process, including minorities and marginalized groups
- Respect and promote human rights and fundamental freedoms, and gender equality and equity
- Subscribe to and observe the code of conduct for political parties

- Political parties in Kenya cannot be registered by the Registrar of Political Parties unless the requirements of the Political Parties Act, 2011 are satisfied.

The requirements in the Act include:

- The application must be in writing and signed by an authorized official of the political party
- It has recruited as members, not fewer than one thousand registered voters from each of more than half of the Counties
- Membership must reflect regional and ethnic diversity, gender balance and representation of minorities and marginalized groups
- The composition of its governing body reflects regional and ethnic diversity, gender balance and representation of minorities and marginalized groups;
- Not more than two-thirds of the members of its governing body are of the same gender
- It demonstrates that members of its governing body meet the requirements of the Constitution and the laws relating to ethics

## **Roles of Political Parties**

They:

- Provide an organized form of participation by people with similar views on issues and activities
- Influence government policies and legislation.

## **The Process of Party Nomination and Dispute Resolution**

- Political parties are required by the Elections Act, 2012 to nominate their candidates for an election at least forty-five days before a general election and in accordance with its constitution and nomination rules.
- A political party is not allowed to change the candidate nominated after the nomination of that person has been received by the Commission. If a candidate dies, resigns, becomes incapacitated or violates the electoral code of conduct, the nominating party can substitute that nominee by notifying the IEBC. In such a case, the party must first notify the nominee of the intention to substitute them.
- If a dispute arises during or as a result of the nomination process, the IEBC is mandated to settle it. The dispute should be determined within seven days of the lodging of the dispute with the Commission. If the dispute relates to a prospective nomination or election, the dispute must be determined before the date of the nomination or election, whichever is applicable.

## **Key provisions of the Election Campaign Financing Act (CFA) 2013**

The Act:

- Appoints the Independent Electoral and Boundaries Commission as the implementer of the Act and provides for its functions and powers. (Section 3 and 4)

- Establishes rules for election campaign financing (Section 5), establishes Expenditure Committees (Party Campaign Expenditure Committee, Party Candidate Expenditure Committee, Party Expenditure Committee and Independent Candidate Expenditure Committee) (Sections 7-9) and makes a requirement for the submission of Expenditure Reports (Section 10)
- Sets out sources of campaign finances and limits to contributions. It prohibits anonymous contributions or contributions from an illegal source. It further provides for campaign expenses (spending limits) and requirements and mechanisms for disclosure of funds by a candidate and political party. It also regulates media coverage and exposure for a candidate or political party to ensure fairness
- Prescribes offences and sets out penalties with respect to campaign financing
- Gives general provisions such as registration and dissolution of Expenditure Committees, Records, Audit of Accounts, Claims and objections, General penalty and Regulations.

## **SESSION 4: ROLES AND RIGHTS OF ELECTION OBSERVERS AND AGENTS**

**Time: 30 minutes**

### **Session Objective**

By the end of the session the participant should be able to describe the roles and rights of election observers and election agents

### **Suggested Learning Resources**

- a) The Constitution of Kenya, 2010
- b) Citizen Handbook Uraia/IRI, 2012
- c) Election Agents' Manual, NDI /IEBC, 2013
- d) IEC materials
- e) Relevant Acts

### **Suggested Training Methods**

- Brainstorming
- Group Discussion

### **Suggested Learning Activities**

- i. Brainstorm the roles and rights of election observers
- ii. Discuss the roles and rights of election agents
- iii. Summarize the session

## **Suggested Assessment Methods**

- Question and answer
- Observation during discussions

## **KEY NOTES**

### The Roles and Rights of Election Observers

#### Roles of Observers

- a) Promote free and fair elections;
- b) Identify electoral malpractices and bring them to the attention of the electoral body;
- c) Compile and write reports on electoral malpractices in a political electoral unit;
- d) Pursue corrective action to electoral malpractices;
- e) Boost voter confidence;
- f) Act as a deterrent to those interested in undermining the electoral system and process; and
- g) 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.

### **The Rights and Responsibilities of an Agent**

#### ***Rights of an Agent***

- The Election Agent has the right to:
  - Access polling stations and tallying centres, if they are accredited to the tallying centre and are wearing an accreditation badge;
  - Obtain official information about the elections from election officials, including information about voter turnout;
  - Attend observer and agents' briefs
  - Speak or communicate with anyone outside the polling station with regard to

elections

- Speak to anyone other than a voter inside the polling station
- *N.B. To speak to a voter inside the polling station, they must get approval of the Presiding or Deputy Presiding Officer*
- Attend public election related activities
- Dispute the inclusion of a ballot paper in the count that they believe should be “rejected”
- Object to the rejection of a ballot paper that they believe is “valid”
- Request the Presiding Officer to have the vote recounted/rechecked (provided that this recount does not take place more than twice).

### **The Election agent cannot**

- Interfere with the voting process or the authority of the election officials in the polling stations.
- Enter or remain in a polling station without an identification badge
- Interfere with, or attempt to influence any voter
- Disclose any knowledge concerning the vote of a person
- Wear a badge or emblem of a political party or candidate within the polling station; or
- Deliberately show or leave a “how-to-vote card, or any similar directions as to how a voter should vote, in the polling station.

### **Roles of Agents**

- The key roles of an election agent are to:
- Observe the preparation and opening of the polling station
- Confirm emptiness of ballot boxes before polling begins
- Inspect and list the serial numbers of the seals on ballot boxes
- List the serial number of the ballot papers
- Seal the ballot boxes with their own independent candidate or political party seals
- Observe whether or not the voting procedure conforms with regulations
- Observe the closing procedures of the polling stations at the end of polling
- Observe if the counting procedures are strictly adhered to
- Confirm that separate packets are made and sealed for the various categories of ballots and materials after counting votes. The agents may also put their seals on the packets and ballot boxes (These seals are provided by the IEBC)
- Sign the declaration forms at polling stations. N.B. if the election agent does not sign or is absent during the counting of votes, the Presiding Officer will record so. The Presiding Officer will also record the refusal of any agent to sign the

declaration form

- Escort, using their own transport, the sealed ballot box with separate packets to the Returning Officer at the Constituency or County Tallying Centre.
- Witness the tallying of the results
- Sign the declaration forms at the Constituency or County Tallying Centre; and
- Complete a checklist and submit it to their party or independent candidate coordinator as instructed

## **SESSION 5: ELECTION OFFENCES AND PUNISHMENT**

**Time: 15 minutes**

### **Session Objective**

By the end of the session the participant should be able to discuss election offences and punishment

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- The elections Act, 2011
- IEC materials

### **Suggested Training Methods**

- Brainstorming
- Discussion

### **Suggested Learning Activities**

- i. Discuss election offences and their punishment
- ii. Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation on participation in discussions

## KEY NOTES

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



**Figure 9: An election offence**

1. Impersonating, unduly influencing or bribing
2. Printing, publishing, distributing or posting up any advertisement, handbill, placard or poster without the names and addresses of the printer and publisher
3. Making or publishing any false statement of withdrawal of any other candidate
4. Forging, defacing or destroying any nomination paper, or delivering to a returning officer any nomination paper knowing it to be forged
5. Interfering with election material by removing, destroying, concealing or mutilating of any such material save on the authority of the commission or under the provisions of this Act
6. Printing, manufacturing or supplying of any election material without authority
7. Interfering with free political canvassing and campaigning
8. Refusing or failing to effect a direction, instruction or lawful order issued by or on behalf of the commission;
9. Refusing or failing to leave an election counting centre or any area designated by the commission for electoral purposes when so ordered;

10. Entering or remaining in an election centre or in any area designated by the commission for electoral purposes in contravention of this Act;
11. Obstructing or hindering any elections officer, candidate or agent in the execution of their lawful duties;
12. Making a false statement or furnishes false particulars in any statement which is required under this act knowing the statement or particulars to be false or without reasonable grounds for believing the same to be true; or
13. Publishing, repeating or disseminating in any manner whatsoever, information with the intention of-
  - Disrupting or preventing an election;
  - Creating hostility or fear; or
  - Otherwise unlawfully influencing the process or outcome of the election;
  - Forging, defacing or destroying any campaign or promotional material of an opposing candidate or political party.

**Some of the punishments for electoral offences are:**

- A fine not exceeding five hundred thousand shillings
- Imprisonment for a term not exceeding five years
- A fine not exceeding five hundred thousand shillings and imprisonment for a term not exceeding five years

## **SESSION 6: Process of Recall and Impeachment**

**Time: 40 minutes**

### **Session Objectives**

By the end of the Session, the participant should be able to describe the process of recall and impeachment

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- The elections Act, 2011
- IEC materials

### **Suggested Training Methods**

- Brainstorming
- Discussion



### Suggested Learning Activities

- iii. Brainstorm on the difference between recall and impeachment
- iv. Discuss the process of recall and impeachment
- v. Summarize the session

### Suggested Assessment Methods

- Question and answer
- Observation on participation in discussions

#### Member of Parliament, Woman Representative or Senator: (Elections Act ,2011)

1. The electorates in a County or constituency, except an unsuccessful candidate in a general or by election have a right to recall their Member of Parliament before the end of the term of the relevant House of Parliament. A recall motion may be initiated two years after the general elections or when the member was first elected to Parliament and not later than twelve (12) months/one year before the next general elections.
2. A member of Parliament may be recalled on any of the following grounds:
  - a) is found to have violated the provisions of Chapter Six of the Constitution
  - b) is found to have mismanaged public resources
  - c) is convicted of an offence under the Elections Act
  - d) In this case, a recall is only to be initiated upon a judgment or finding by the High Court

#### Member of County Assembly: (County Governments Act)

1. The electorates in a ward, except an unsuccessful candidate in a general or by election have a right to recall their Member of County Assembly before the end of the term of the relevant Assembly. A recall motion may be initiated two years after the general elections or when the member was first elected to the County Assembly Parliament and not later than twelve (12) months/one year before the next general elections.
2. A member of the County Assembly may be recalled on any of the following grounds:
  - a) is found to have violated the provisions of Chapter Six of the Constitution
  - b) is found to have mismanaged public resources
  - c) is convicted of an offence under the Elections Act

In this case, a recall is only to be initiated upon a judgment or finding by confirming the grounds specified above

**Petition:**

3. A recall is initiated by a petition in writing which is filed with the IEBC. A petition cannot be filed more than once against a Member of Parliament during their term. The petition must be:
  - a). Signed by a petitioner who—
    - i. is a voter in the Constituency or County in respect of which the recall is sought
    - ii. was registered to vote in the election in respect of which the recall is sought
  - b). The petition must be accompanied by an order of the High Court
  - c). The order must specify the grounds for the recall
  - d). It also contains a list of at least thirty percent of the registered voters in the Constituency or County, and at least fifteen percent of the voters in more than half of the wards in the County or the constituency, as appropriate who support the petition including their names, address, voter card number, national identity card or passport number and signatures;
4. The petitioner must collect and submit to the IEBC the list of names within a period of thirty days after filing the petition
  - a) The voters supporting the petition should represent the diversity of the people in the County or the constituency
5. The petition must be accompanied by the fee prescribed for an election petition.

3. A recall is initiated by a petition in writing which is to be filed with the IEBC and which cannot be filed more than once against a member of the County Assembly during their term. The petition must be:
  - a). Signed by a petitioner who—
    - i. is a voter in the Ward in respect of which the recall is sought; and
    - ii. was registered to vote in the election in respect of which the recall is sought;
  - b). The petition must be accompanied by an order of the High Court.
    - i. must specify the grounds for the recall;
    - ii. contain a list of at least thirty percent of the registered voters in the Ward who support the petition including their names, address, voter card number, national identity card or passport number and signatures;
4. The petitioner must collect and submit to the IEBC the list of names within a period of thirty days after filing the petition.

The voters supporting the petition should represent the diversity of the people in the County or the constituency; and
5. The petition must be accompanied by the fee prescribed for an election petition.

**Notification to Speaker**

6. The Commission must verify the list of names within a period of thirty days of receipt of that list.

**Notification to Speaker**

6. The Commission must verify the list of names within a period of thirty days of receipt of that list.
7. The Commission, if satisfied that the requirements are met, must issue a notice of the recall to the Speaker of the National Assembly or Senate within fifteen days after the verification.

**Framing of Question:**

8. The Commission must frame the question that requires the answer - yes  or the answer —no  to be determined at the recall election and assign a symbol for each answer to the recall question.

**Conduct of Recall Election:**

9. The Commission shall conduct a recall election within the relevant constituency or County within ninety days of the publication of the question.
10. The voting at the recall election shall be by secret ballot and decided by a simple majority of the voters in the recall election.
11. A recall election must be valid if the number of voters who agree in the recall election is at least fifty percent of the total number of registered voters in the affected County or constituency.

**Conduct of By-election:**

12. If a recall election results in the removal of a Member of Parliament, the Commission must conduct a by-election in the affected constituency or County and the Member of Parliament who has been recalled may run for re-election.

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**Framing of Question:**

8. The Commission must frame the question that requires the answer —yes  or the answer —no  to be determined at the recall election and assign a symbol for each answer to the recall question.

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**Conduct of By-election:**

12. If a recall election results in the removal of a Member of Parliament, the Commission shall conduct a by-election in the affected constituency or County and the Member of Parliament who has been recalled may run for re-election.

### Impeachment or Removal of the President

1. A member of the National Assembly can move a motion for the impeachment of the President. The motion must be supported by at least a third of all the members. This motion must allege any of the following offences:
  - a) Gross violation of the Constitution or any other law;
  - b) Where the President has committed a crime under national or international law; or
  - c) For gross misconduct.
2. The motion must be supported by at least two-thirds of all the members of the National Assembly by voting on the floor of Parliament.
3. If it receives the two-thirds support, the Speaker of the National Assembly shall inform the Speaker of the Senate of that resolution within two days.

However while this process is ongoing, the President continues to perform the functions of the office pending the outcome of the proceedings.

4. The Speaker of the Senate must within seven days after receiving notice of the resolution from the Speaker of the National Assembly, convene a meeting of the
5. Senate to hear charges against the President.

### Impeachment or Removal of the Governor

1. Member of the County Assembly initiates motion by notice to the Speaker. The motion must be supported by at least a third of all the members of the County Assembly. The member then moves a motion for the removal of the governor under Article 181 of the Constitution.
2. If a motion is supported by at least two-thirds of all the members of the County Assembly the Speaker of the County Assembly shall inform the Speaker of the Senate within two days; meanwhile the Governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.
3. The Speaker of the Senate must convene a meeting of the Senate to hear charges against the Governor within seven days after receiving notice of the resolution from the Speaker of the County Assembly. The Governor has the right to appear and be represented before the special committee during its investigations.
4. The Senate may appoint a special committee to investigate the matter and it must submit its report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated.

6. The Senate can appoint a special committee comprising eleven of its members to investigate the matter.
7. The special committee must investigate the matter and report to Senate within ten days on whether it finds the particulars of the allegations against the President to be true. The President has the right to appear and be represented before the special committee during its investigations.
8. If the special committee reports that the particulars of any allegation against the President are not accurate, no other action can be taken in respect of that allegation.
9. If the allegations are accurate, then Senate must vote on the impeachment charges. The president must be given opportunity to appear and be represented before Senate to defend him or herself.
10. If at least two-thirds of all the members of the Senate vote to uphold any impeachment charge, the President shall cease to hold office.

#### **Removal of the President on Grounds of Incapacity**

1. A member of the National Assembly can move a motion for the investigation of the President's physical or mental capacity to perform the functions of office. The motion must be supported by at least a quarter of all the members.
2. The motion must be supported by a majority of all the members of

5. If the report shows that the allegations against the Governor cannot be proved further proceedings cannot be undertaken in respect of that allegation. However, if they are proved then the senate votes on the impeachment charges.
6. If a majority of all the members of the Senate vote to uphold any impeachment charge, the Governor ceases to hold office.
7. If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate must notify the Speaker of the concerned County assembly accordingly. The motion by the assembly for the removal of the governor on the same charges can only be re-introduced to the Senate on the expiry of three months from the date of the Senate's vote.
8. The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor.

the National Assembly when voting on the floor of Parliament.

3. If the motion receives a majority support, the Speaker of the National Assembly must inform the Chief Justice of that resolution within two days. Meanwhile, the President continues to perform the functions of the office pending the outcome of the proceedings.
4. The Chief Justice must appoint a tribunal within seven days after receiving notice of the resolution from the Speaker. The tribunal must consist of three persons who are qualified to practice medicine; one advocate of the High Court; and one person nominated by the President.
5. The tribunal must inquire into the matter and report to the Chief Justice and to the Speaker of the National Assembly, within fourteen days.
6. The Speaker must ensure that the report of the tribunal is tabled before the National Assembly within seven days after receiving it.
7. The report of the tribunal is final and not subject to appeal.
8. If the tribunal reports that the President is capable of performing the functions of the office, the Speaker of the National Assembly inform the National Assembly.
9. If the tribunal reports that the President is incapable of performing the functions of the office, the National Assembly will vote on whether to ratify the report.
10. If a majority of all the members of the National Assembly vote in favour of ratifying the report, the President ceases to hold office.

# MODULE TWO: DEVOLUTION



## **Introduction**

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

## **General Objectives**

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

- a) understand and appreciate system of devolved governance in Kenya;
- b) appreciate the importance of values and principles of the Public Service;
- c) understand and participate effectively in Public Finance Management processes;
- d) understand the public procurement process;
- e) understand the role of citizens in devolved system of government;
- f) appreciate and promote the principles and scope of affirmative action in devolved government.



## UNIT 1: UNDERSTANDING DEVOLUTION

**Time: 3 Hours**

### Introduction

This unit discusses the meaning of the terms decentralization and devolution, the objects and principles of devolution and distinct features of Kenya's devolution. It also discusses benefits, challenges of devolution and possible solutions, and Kenya's transition mechanisms to devolved government.

### SESSION 1: Kenya's Devolution

**Time: 2 Hours**

#### Session Objectives

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

- a) distinguish between decentralization and devolution;
- b) discuss the objects and principles of devolution;
- c) describe the distinct features of Kenya's devolution.
- d) Discuss benefits, challenges of devolution and possible solutions.

#### Suggested Learning Resources

- Constitution of Kenya ,2010
- Citizen Handbook, Uraia/IRI (2012).
- Relevant Acts
- Understanding the transition to devolved government in Kenya: Answers to Frequently asked Questions, Transition Authority (2013)

#### Suggested Training Methods

- Explanation
- Discussion
- Buzzing
- Brainstorming

## Suggested Learning Activities

Guide participants to:

- i. buzz in twos and distinguish between Devolution and Decentralization
- ii. Discuss in small groups the objects and principles of devolution
- iii. Brainstorm distinct features of Kenya's devolution
- iv. Summarize the session

### 2.1.5 Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

### 2.1.6 Key Notes

#### Difference between Devolution and Decentralization

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.

Decentralization is a process of delegating sovereign power from a central authority to different levels of government.

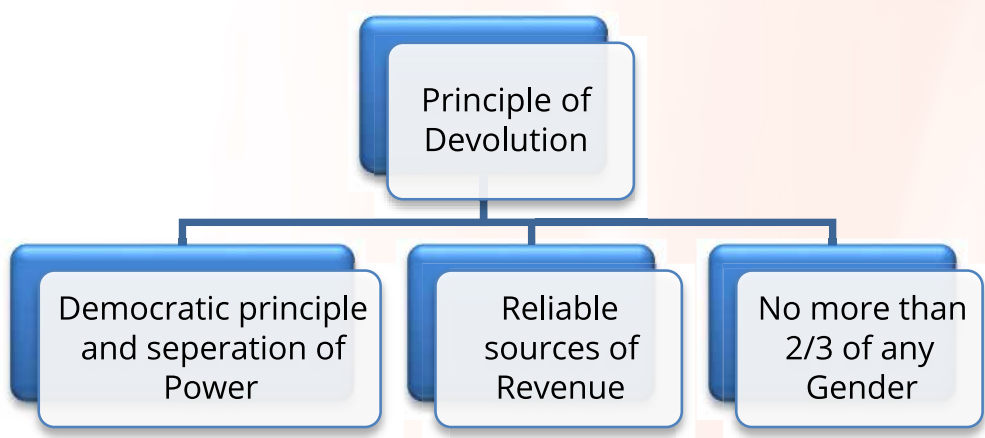
#### Objects of Devolution

The primary objectives of devolution of Government are to:

- promote democratic and accountable exercise of power
- foster national unity by recognizing diversity
- give powers of self-governance to the people
- enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them
- recognize the right of communities to manage their own affairs and to further their development
- protect and promote the interests and rights of minorities and marginalized groups who include women, youth, persons with disabilities among others
- promote social and economic development and the provision of proximate, easily accessible services throughout Kenya

- ensure equitable sharing of national and local resources throughout Kenya
- facilitate the decentralization of State organs, their functions and services, from the capital of Kenya
- enhance checks and balances and the separation of powers

### Principles of Devolution



**Figure 10: Principles of devolution**

County governments shall be based on:

- Democratic principles and separation of powers;
- Reliable sources of revenue to enable them to govern and deliver services effectively
- Ensuring that not more than two thirds of the members of representative bodies in each county government shall be of the same gender.

### Distinct features of Kenya's devolution

Kenya's devolution model has several distinct features. The most prominent are:

- **Level of Government.** The sovereign power of people is exercised at two levels that is, at the national and county levels. The two levels of government are - interdependent and shall conduct mutual relations on the basis of consultations and cooperation.
- **Revenue distribution.** For every financial year, equitable share of the revenue raised nationally that is allocated to County Governments shall be not less than 15% of all the revenue collected by the National Government. The basis shall be the most recent audited accounts of revenue received as approved by the National Assembly
- **Decision making organs.** The Constitution places national political power in the hands of the National Executive, and parliament and at the county level, the 47 county assemblies and county executive committees.

## SESSION 2:

### Kenya's Transition Mechanisms to Devolved Government

**Time: 2 Hours**

#### Session Objectives

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

- a) Identify key legislations in the transition to devolved government
- b) Discuss the role of Key institutions involved in the transition process to devolved government
- c) Discuss the benefits of devolution
- d) Outline the challenges of devolution and possible solutions.

#### Suggested Learning Resources

- Citizen Handbook, Uraia/IRI (2012).
- Constitution of Kenya 2010
- County governments Act 2012
- Transition to Devolved Government Act 2012
- Urban areas and cities Act 2011
- Understanding the transition to devolved government in Kenya: Answers to Frequently asked Questions, Transition Authority (2013)

#### Suggested Training Methods

- Group work
- Sharing experiences

#### Suggested Learning Activities

- i. Discuss key legislations in the transition to devolved government
- ii. Discuss the role of Key institutions involved in the transition process to devolve government
- iii. Discuss the benefits, challenges of devolution and possible solutions

#### Suggested Assessment Methods

- Question and answer
- Observation on active participation during group discussions

## KEY NOTES

### Key legislations in transition to devolved government

This involves passing of key legislations to ensure a smooth transition to devolved government. Some of the legislations that have been passed are as follows:

- County governments Act 2012
- Transition to Devolved Government Act 2012
- Urban Areas and Cities Act 2011
- Intergovernmental relations Act 2012
- Public finance Management Act 2012
- Transition County Allocation Revenue Act 2013
- National Government Coordination Act 2013

### Key institutions in transition to devolved government

Various institutions have been mandated to facilitate, oversee and implement the transition to devolved system of Government as follows;

- **Transition Authority (TA)** - It manages the transition to devolved system of government. It is also responsible for facilitating and coordinating the transition. TA also submits monthly reports on the progress in the implementation of the transition to CIC and CRA. Quarterly and annual reports are submitted to parliament and the president
- **Commission for Revenue Allocation (CRA)** - Proposes the equitable sharing of national revenue between the national and the county levels, and between the counties .At least 15% of the revenue collected by the national government will be allocated to county governments. Receive reports from Transition Authority on status of transition and give feedback.
- **Parliament:**  
Enacts legislations to and ensure that they are in line with the new constitution. It also allocates budget to both levels of government and oversees the executive in the implementation of programmes and budgets. As an oversight body, it receives reports from Transition Authority on quarterly basis.
- **Commission for implementation of the Constitution (CIC)** - The commissions functions are to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution .The commission also coordinates with the Attorney general and the Kenya Law reform Commission in preparation of legislation required for the implementation of the Constitution .It also reports regularly to the Constitution implementation oversight committee on its progress. The commission also works with other Constitutional commissions. It monitors devolution through reports from TA.

- **County Governments:**

County governments have a responsibility to entrench devolution. They receive functions and requisite resources (human, finance, assets and liabilities) as assigned to them by the constitution and operationalise them by planning, budgeting and executing them. They also receive reports from Transition Authority on the status of transition to devolved system of government.

- **National and County Government Coordination Summit** - This is the apex body for inter- governmental relations. It reports annually to the National Assembly, the senate and the county assembly within three months after the end of every financial year. It also discusses and dispense devolution matters.
- **Intergovernmental Relations Technical Committee** – It is responsible for the day today administration of the Summit and the Council of Governors .It facilitates the activities of the summit and of the council and also implements the decisions of the Summit and of the council. It also charged with the responsibility of taking over the residential functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity. It convenes meeting of the forty seven county secretaries within 30 days preceding every summit meeting. It may also establish sectoral working groups or committees

### **Benefits of Devolution**

The benefits of devolution are:

- Increased employment
- Improved national economic growth
- Promotion of greater service delivery
- Increased developments of marginalized / underdeveloped areas
- Promotes equitable distribution of resources
- Enhancement of peoples participation in governance

### **Challenges to Devolution**

The following are some of the challenges facing devolution

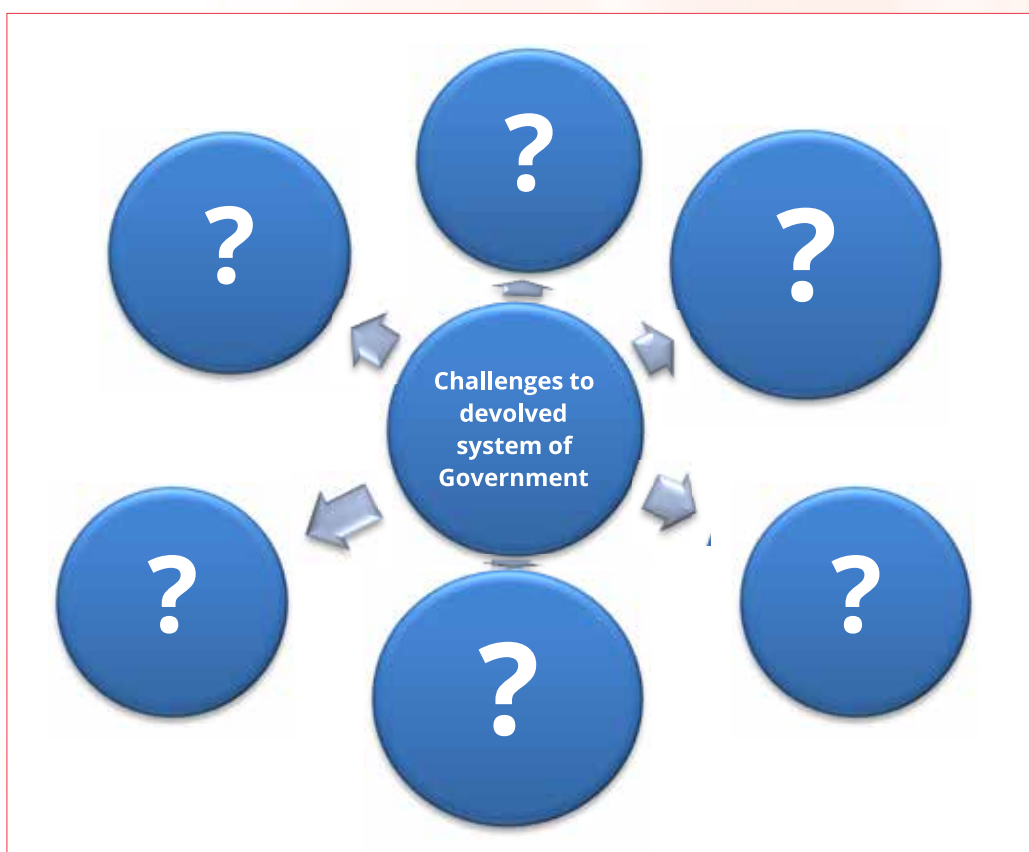
- Corruption – abuse of power, nepotism, clanism, marginalization discrimination,
- Poor management of resources
- National disunity
- Duplication of functions
- Excessive taxation
- Increased impunity
- Conflicting functions
- Misinterpretation of the Constitution



### Possible Solutions to the challenges

The possible solutions to some of the challenges include:-

- Strengthening Civic Education
- Instituting checks and balances in the devolved systems
- Meting stiff penalties be meted on corrupt individuals
- Harmonization and rationalization of functions
- Empowering people to hold leaders to account
- Equitable distribution of resources
- Broadening the tax base to ease the burden of taxation
- Creating innovative ways on revenue mobilization



**Figure 11: Challenges to devolution**

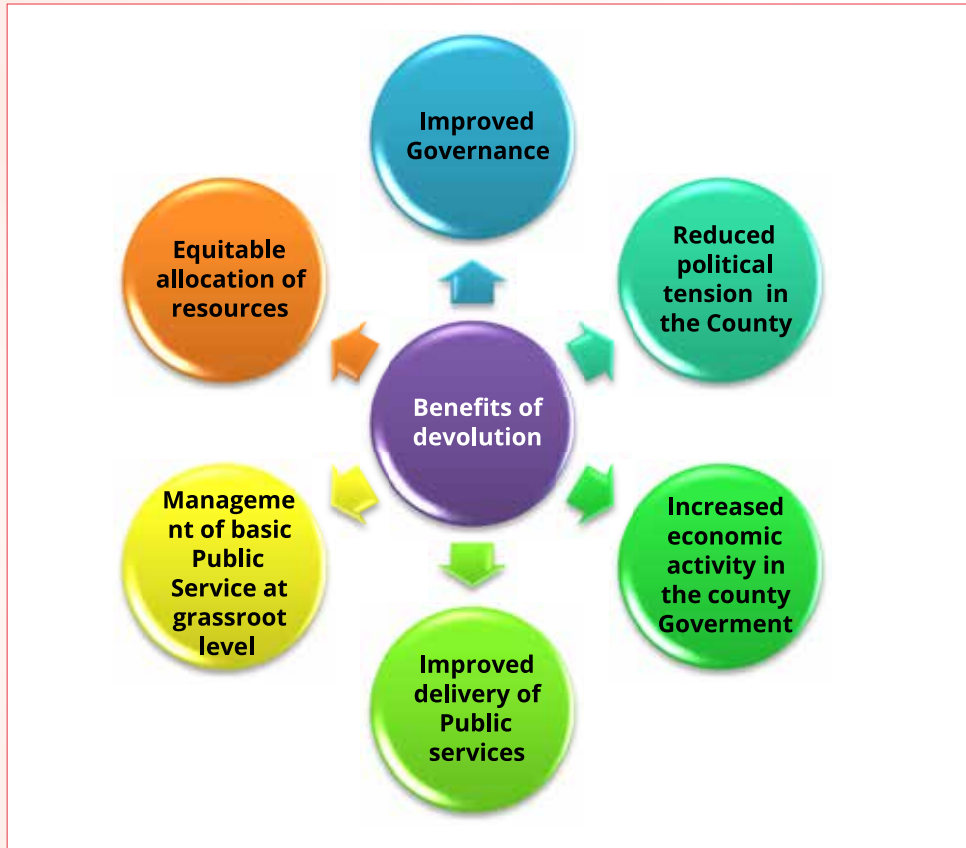


Figure 12: Benefits of devolution



## UNIT 2: DEVOLVED GOVERNMENT STRUCTURES

**Time: 3 hours**

### Introduction

This unit covers the structure, composition, functions and powers of National and County Governments, roles of National Government at the County level, decentralized units of County Governments and roles of the institutions shared between National and County Governments.

### SESSION 1: The National Government

**Time: 1 hour**

#### Session Objective

By the end of the session, the participant should be able to describe the structure, composition, powers and functions of the National government.

#### Suggested Learning Resources

- a) Constitution of Kenya, 2010
- b) Citizen Handbook Uraia/IRI, 2012
- c) Flow Charts on the structure of National government

#### Suggested Training Methods

- Brainstorming
- Discussion

#### Suggested Learning Activities

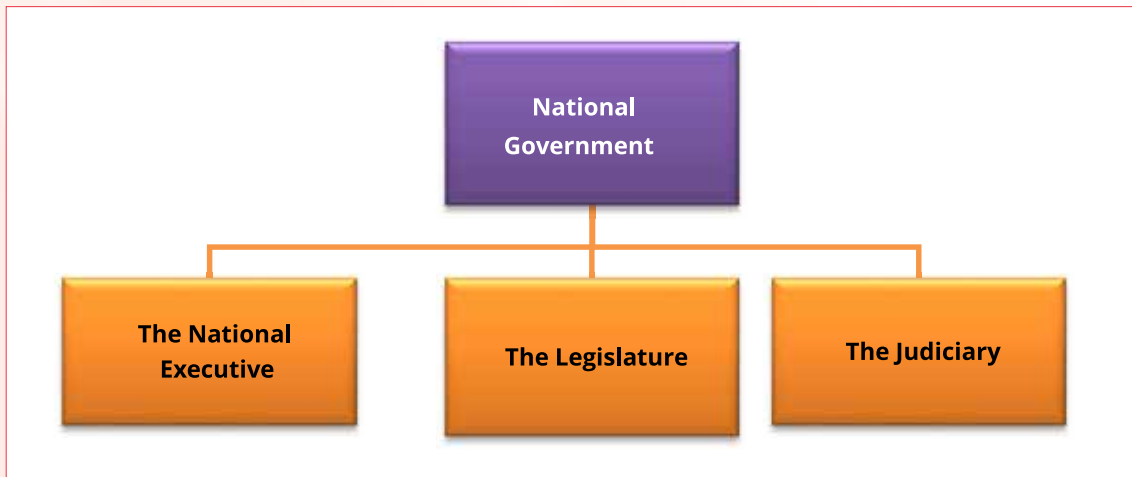
- i. Brainstorm on functions of National Government
- ii. Use a flow chart to discuss the structure, composition, functions and powers of National Government
- iii. Summarize the session

#### Suggested Assessment Methods

- Question and answer
- Observation on participation during discussions

## KEY NOTES Government Structures

The Constitution of Kenya, 2010 has created a system of devolved government with representation at National and County levels. The National Government is composed of three arms; the Executive, Legislature and Judiciary.



*Figure 13: Arms of Government*

### The National Executive

#### The Composition of the National Executive (Articles 130, 156, 157)

- The President, Deputy President, Cabinet Secretaries, the Attorney General and the Director of Public Prosecutions.
- The Constitution requires that composition of the National Executive shall reflect the regional and ethnic diversity of the people of Kenya.

#### Principles of Executive Authority (Article 129)

- Executive authority is derived from the people of Kenya and must be exercised in accordance with the Constitution
- Executive authority must be exercised in a manner compatible with the principle of service to the people of Kenya

#### Authority and Functions of the President (Articles 131,132)

- Commander in Chief of the Kenya Defense Forces
- Chairperson of the National Security Council
- Symbol of national unity
- Respect , uphold and safeguard the Constitution
- Safeguard the Sovereignty of the Republic
- Promote and safeguard the unity the Nation

- Respect the diversity of the people and communities of Kenya
- Protect the Human rights and fundamental freedoms and the rule of law
- Address each newly elected Parliament
- Address a special sitting of Parliament once every year
- Addressing the Nation once every year on all measures taken and progress achieved in the realization of national values
- Report to National the Assembly regarding progress in fulfilling

### **International obligations**

- Receive Foreign Diplomatic and Consular Representatives
- Declare a State of emergency
- Confer Honours in the name of the people and the Republic
- Declare war with the approval of Parliament
- Nominate, appoint and dismiss the approval of parliament the Cabinet Secretaries the Attorney General Secretary to the Cabinet, Principle Secretaries, High Commissioners Ambassadors Diplomatic and Consular Representatives
- Chair Cabinet meetings
- Direct and coordinate functions of Ministries and Government Departments.

### **Functions of the Deputy President**

- The Deputy President is the Principal Assistant to the President and deputizes for the President (Article 147)
- The Deputy President is not elected directly by the voters but is a running mate of the presidential candidate
- All procedures for taking of office and removal are similar to those of the President
- In case a vacancy for the post of The Deputy President occurs, the President nominates another person who has to be approved by the National Assembly.

### **The Cabinet**

- The Cabinet consists (Article 152):
- The President
- The Deputy President
- The Attorney-General and
- Not fewer than 14 and not more than 22 Cabinet Secretaries

## Legislature (Chapter 8)

### National Assembly (Article 95)

The National Assembly is composed of:

- i. 290 members, each elected by the registered voters of single member constituencies;
- ii. 47 women, each elected by the registered voters of the counties, each County constituting a single member constituency;
- iii. 12 members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and
- iv. The Speaker, who is an ex officio member.

### Role the National Assembly

The roles of the National Assembly are to:

- Allocate national revenue between the levels of Government
- Appropriation of funds for expenditure by the National Government and other National state organs
- Act as oversight over national revenue and expenditure

### Other state officers

- Initiate the process of removal of the president, the Deputy President and other state officers
- Exercise oversight of state organs
- Approve declarations of war and extensions of states of emergency

### Composition of the Senate (Article 98)

- The Senate is made up of six eight (68) members as follows Forty seven (47) members each elected by the registered voters of each County;
- Sixteen (16) women members nominated by political parties according to their proportion of seats won in Senate;
- Two (2) members, one man and one woman representing the youth;
- Two (2) members, one man and one woman representing persons with disabilities; and
- The Speaker

### Role of the Senate

The Constitution provides that the Senate (Article 96):-

- Represents and protects the interests of the Counties and their governments;

- Participates in the law-making by considering, debating and approving Bills (draft Acts of Parliament) that concerns Counties;
- Determines the allocation of national revenue among counties and exercises oversight over national revenue allocated to the County Governments; and
- Participates in the oversight of State Officers by considering and having the final vote on any resolution by the National Assembly to remove the President or the Deputy President from office.

### **The Judiciary (Article 160)**

The Judiciary is the arm of the government that administers justice. The judiciary is an independent institution that shall not be subject to the control or direction of any person in authority.

#### **The Judiciary consists of:-**

- The Chief Justice;
- The Deputy Chief Justice;
- Judges of Superior Courts (the Supreme Court, the Court of Appeal the High Court
- The Chief Registrar - who is the chief administrator and accounting officer of the Judiciary;
- Magistrates;
- Other judicial officers; and Staff

The Judicial Service commission may establish other office of registrar as may be necessary

### **Role of the Judiciary**

The functions of the judiciary include:

- interpreting the laws
- Arbitrating on disputes between differing sides.

### **Structure of the Judiciary**

The Judiciary consists of four levels of courts:

- The Supreme Court;
- The Court of Appeal;
- The High Court;
- Land and Environment Court the Industrial Court; and
- The Subordinate Courts.

### **Additional Information**

In exercising judicial authority, the Courts shall be guided by the following principles: (Article 159)

- Justice to all irrespective of their status
- Justice shall not be delayed
- Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted
- Justice shall be administered without undue regard to procedural technicalities
- The purpose and principles of the constitution shall be promoted and protected.

### **Functions of the National Government**

The Constitution of Kenya, 2010 assigns the following functions to the National Government under Part 1 of the Fourth Schedule

1. Foreign affairs, foreign policy and international trade.
2. The use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defense and the use of the national defense services.
7. Police services, including—
  - a) the setting of standards of recruitment, training of police and use of
  - b) police services;
  - c) criminal law; and
  - d) correctional centers
8. Courts
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans
15. Education policy, standards, curricula, examinations and the granting of university charters.

16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools , special education, secondary schools and special education institutions
17. Promotion of sports and sports education
18. Transport and communications, including, in particular—
  - (a) Road traffic
  - (b) The construction and operation of national trunk roads
  - (c) Standards for the construction and maintenance of other roads by counties
  - (d) Railways
  - (e) Pipelines
  - (f) Marine navigation
  - (g) Civil aviation;
  - (h) Space travel;
  - (i) Postal services
  - (j) Telecommunications; (Radio and television broadcasting).
19. National public works.
20. Housing policy
21. General principles of land planning and the co-ordination of planning by the counties
22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, In particular—
  - (a) fishing, hunting and gathering;
  - (b) protection of animals and wildlife;
  - (c) water protection, securing
23. Sufficient residual water, hydraulic engineering and the safety of dams; and energy policy
24. National referral health facilities
25. Disaster management
26. Ancient and historical monuments of national importance
27. National elections
28. Health policy
29. Agricultural policy
30. Veterinary policy
31. Energy policy including electricity and gas reticulation and energy Regulation
32. Capacity building and technical assistance to the counties

33. Public investment
34. National betting, casinos and other forms of gambling
35. Tourism policy and development.

## **SESSION 2: County Governments**

**Time: 1 Hour 45 Minutes**

### **Session Objectives**

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

- a) describe the structure, composition ,powers and functions of the County Governments;
- b) identify the decentralized units of the County Governments.

### **Suggested Learning Resources**

- Constitution of Kenya, 2010
- IEC Materials
- Citizen Handbook Uraia/IRI,2012
- Understanding the Transition to Devolved Government in Kenya: Answers to Frequently Asked Questions, by TA (2013)
- Relevant Acts

### **Suggested Training Methods**

- Question and answer
- Discussion

### **Suggested Learning Activities**

- i. Explain the structure, composition, functions and powers of County Governments
- ii. Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussions

## **KEY NOTES**

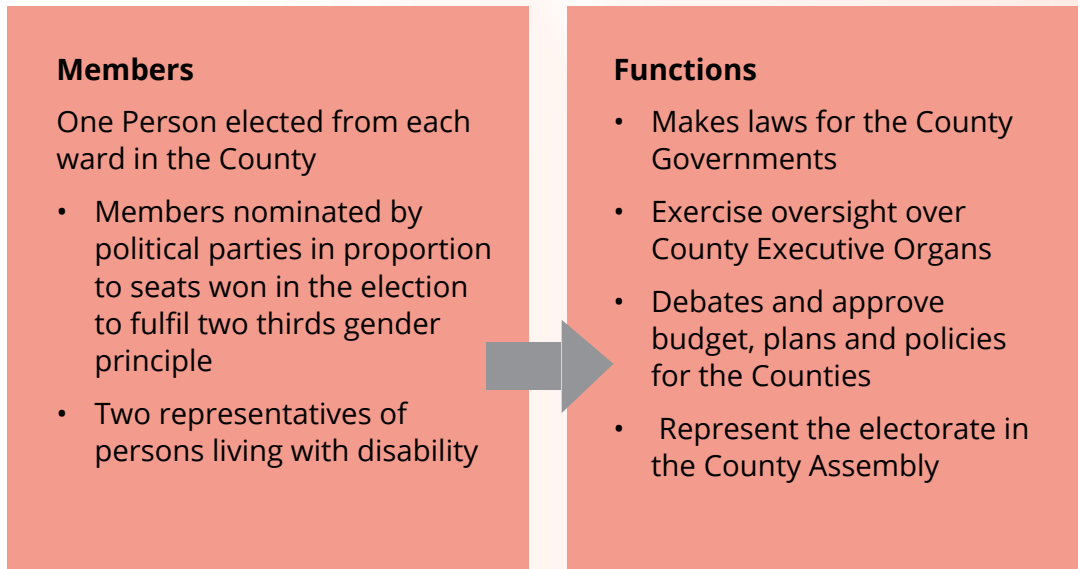
### **Structure of County Governments**

The County Governments consist of the County Assembly and a County Executive. The County Assembly consists of members elected by the registered voters in the wards (**Article 177**)



## The County Assembly

This is the organ where elected County leaders sit and make laws.



- Membership of the County Assembly should ensure that no more than two thirds are of the same gender
- Marginalized groups including people with disabilities and the youth will also be considered as prescribed by an Act of Parliament
- The speaker is an ex-officio member. The Speaker will be elected by the County Assembly from among members who are not members of the assembly. The County Assembly operates in a term of five years.

## County Executive Committee

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

- County Governor
- Deputy County Governor
- Members appointed by the County Governor with the approval of the County Assembly.

These are not among members of the County assembly.

The number of members in the committee shall 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 are as follows:

- Implementing County laws
- Implementing within the County the national laws
- Managing and coordinate the functions of County administrations and its departments
- Preparing proposed laws for consideration by the County Assembly
- Providing the County Assembly with full regular reports on County matters.

### **Decentralized units of the County Governments**

The decentralized units of County Governments are:

- Urban Areas and Cities
- Sub-County
- Ward and Village units and other units that Counties may establish

### **Administrative structure of County Governments**

Administrative structures of Urban Areas and cities as decentralized units of the County Governments

*Note: Special purpose city can be conferred on an urban area if it has significant cultural, economic or political importance.*

### **Function of County Governments**

The Constitution of Kenya, 2010 has assigned County Governments the following functions as per Part 2 of the Fourth Schedule

- Agriculture
- Health services
- Control of pollution
- Cultural activities, entertainment and public amenities



Figure 14: Administrative structure of County Governments



Figure 15: Urban Areas and cities as decentralized units of the County Governments

- Transport
- Animal control and welfare
- Trade development and regulation
- Planning and development
- Pre-primary Education, village polytechnics, home craft centres and child care facilities
- Natural resources and environmental conservation policies
- Public works and services
- Firefighting services and disaster management
- Control of drugs and pornography control
- Building capacity of communities to participate in governance at the local level.

As noted in Part 1 of the Fourth Schedule the National Government is assigned responsibility of capacity building and technical assistance to the counties and development of policies, norms and standards in respect to functions assigned to counties.

### **SESSION 3: Relationship between National and County**

#### **Ornaments**

**Time: 45 minutes**

#### **Session Objectives**

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

- a) discuss the relationship between National and County Governments;
- b) outline the roles of the shared Institutions.

#### **Suggested Learning Resources**

- Constitution of Kenya, 2010
- Flow charts on devolved government structures
- Citizen Handbook Uraia/IRI,2012
- Understanding the transition to devolved government in Kenya:
- Answers to frequently asked questions, by TA (2013)
- Relevant Acts

#### **Suggested Training Methods**

- Question and answer
- Discussion

## Suggested Learning Activities

- i. Discuss the relationship between the National and County Governments
- ii. Discuss the institutions shared between National and County Governments
- iii. Summarize the session

## Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

## KEY NOTES

### Relationship between National and County Governments

The National and the County Governments shall relate in the following ways:

- exercising their powers while respecting the functional integrity and the status of each level;
- cooperating in the performance of functions and exercise of powers;
- assisting, supporting and consulting the laws of both levels;
- liaising with each other to exchange information, coordinate policies and administration and enhance capacity. they may also set up joint committees and authorities;
- providing procedures for settling inter-governmental disputes.

### Roles of Institutions Shared Between National and County Governments

The following are institutions shared between the National and County Governments.

- Independent Electoral and Boundaries Commission (IEBC)
- Public Service Commission (PSC)
- Ethics and Anti-Corruption Commission (EACC)
- National Land Commission (NLC)
- Commission on Revenue Allocation (CRA)
- Salaries and Remuneration Commission (SRC)
- National Police Service Commission (NPSC)
- Independent Policing Oversight Authority (IPOA)
- Teachers Service Commission (TSC)
- Office of the Auditor General

- The Kenya National Commission on Human rights
- National Gender and Equality Commission
- The Commission on Administrative Justice
- Transition Authority (TA)
- Office of the Controller of Budget)
- Judicial Service Commission

Commission for Implementation of the Constitution (CIC) **Judiciary** (see Module 2 Unit 2 Session 1) **Parliament** (see Module 2 Unit 2 Sessions 1)

**The IEBC** (see Module 1 Unit 3 Session 2) Article 88

### **Public Service Commission (Article 233)**

Public service refers to the community service; a service that is performed for the benefit of the public or its institutions. It can also mean a service that is provided by the government to its citizens, either directly or indirectly through the public sector.

### **Functions and powers of the Public Service Commission**

The Constitution in **Article 234** indicates the functions of the Public Service Commission as to:

- Establish and abolish offices in the public service;
- Appoint and confirm persons to hold or act in positions in those offices;
- Exercise disciplinary control over and remove persons holding or acting in those offices;
- Promote values and principles in articles 10 and 232 throughout the public service;
- Investigate, monitor and evaluate the organization, administration and personnel practices in the public service;
- Ensure that the public service is efficient and effective;
- Develop human resources in the public service;
- Review and make recommendations to the national government in respect of conditions of service, code of conduct and qualifications of the officers in the public service;
- Evaluate and report to the office of the president and parliament on the extent to which the values referred to are complied with in the public service;
- Hear and determine appeals in respect of the county government's public service.

### **The National Land Commission (NLC) (Article 67)**

National Land Commission is established pursuant to Article 67 of the constitution.

- The functions are to:

- manage public land on behalf of the National and County Governments;
- Recommend a national land policy to the National Government;
- Advise the National Government on a comprehensive programme for the registration of title in land throughout Kenya;
- Conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- Initiate investigations on a complaint into present or historical land injustices and recommend appropriate redress;
- Encourage the application of traditional dispute resolution mechanism in land conflicts;
- Assess tax on land and premiums and immovable property in any area designated by law;
- Monitor and have oversight responsibilities over land use planning throughout the country.

The Commission on Revenue Allocation (CRA) (Article 215) Article 215, establishes the Commission on Revenue Allocation. The functions of the Commission are stated in Article 216. The main function of the CRA is to recommend how revenue raised by the National Government will be shared between the National and County Governments and among the County Governments. Other functions include:

- Making recommendations on matters concerning the financing of and the financial management by County Governments;
- Determining, publishing and regularly reviewing policy which sets criteria for identifying marginalized areas;
- Submit its recommendations to the Senate, the National Assembly, the National Executive, County Assemblies and County Executives.

### **The Salaries and Remuneration Commission (SRC) (Article 230)**

Article 230, establishes the Salaries and Remuneration Commission. The Commission has been established to set and regularly review the salaries and benefits of all state officers and advise the National and County Governments on the salary and benefits. In performing these functions, the Commission will apply the following principles:

- The need to ensure the total public wage bill is financially sustainable;
- The need to ensure that public services are able to attract and retain the skills required to carry out its functions;
- Recognition of productivity and performance;
- Transparency and fairness.

### **The National Police Service Commission(NPSC) (Article 246)**

The functions of the National Police Service Commission are as follows:

- Recruit and appoint persons to hold or act in offices in the service;
- Confirm appointments and determine promotions and transfers within the service;
- Disciplinary control within the service; remove persons holding or acting in offices within the service;

The composition of the national police service shall reflect the regional and ethnic diversity of the people.

### **Independent Policing Oversight Authority (Independent Policing Oversight Authority Act 2011)**

The functions of the Authority shall be to—

- Investigate any complaints related to disciplinary or criminal offences committed by any member of the Service, whether on its own motion or on receipt of a complaint, and make recommendations to the relevant authorities, including recommendations for prosecution, compensation, internal disciplinary action or any other appropriate relief, and shall make public the response received to these recommendations;
- Receive and investigate complaints by members of the Service;
- Monitor and investigate policing operations affecting members of the public;
- Monitor, review and audit investigations and actions taken by the Internal Affairs Unit of the Service in response to complaints against the Police and keep a record of all such complaints regardless of where they have been first reported and what action has been taken;
- Conduct inspections of Police premises, including detention facilities under the control of the Service;
- Co-operate with other institutions on issues of Police oversight, including other State organs in relation to services offered by them;
- Review the patterns of Police misconduct and the functioning of the internal disciplinary process;
- Present any information it deems appropriate to an inquest conducted by a court of law;
- Take all reasonable steps to facilitate access to the Authority's services for the public;
- Subject to the Constitution and the laws related to freedom of information, publish findings of its investigations, monitoring, reviews and audits as it sees fit, including by means of the electronic or printed media;
- Make recommendations to the Service or any State organ;

- Report on all its functions under this Act or any written law; and
- Perform such other functions as may be necessary for promoting the objectives for which the Authority is established.

### **The Teachers Service Commission (TSC)(Article 237)**

Article 237 establishes the Teachers Service Commission whose functions are to:

- register trained teachers;
- recruit and employ registered teachers;
- assign teachers employed by the commission for service in any public school or institution;
- promote and transfer teachers;
- exercise disciplinary control over teachers;
- terminate the employment of teachers;
- review the standards of education and training of persons entering the teaching service;
- review the demand for and the supply of teachers;
- advise the National Government on matters relating to the teaching profession.

### **The Ethics and Anti-corruption Commission (EACC) (Article 79)**

The key function of this Commission is to ensure that there is compliance by all state and public officers as required by Chapter Six of the Constitution.

In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—

- a) In relation to State officers
  - i. develop and promote standards and best practices in integrity and anti-corruption;
  - ii. develop a code of ethics;
- b) Work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
- c) Receive complaints on the breach of the code of ethics by public officers;
- d) Investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption or violation of codes of ethics or other matter prescribed under this Act or any other law enacted pursuant to Chapter Six of the Constitution;
- e) Recommend appropriate action to be taken against State officers or Public officers alleged to have engaged in unethical conduct;
- f) Oversee the enforcement of codes ethics prescribed for public officers;

- g) Advise, on its own initiative, any person on any matter within its functions;
- h) 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;
- i) 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
- j) 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.

### **Office of the Auditor General (Article 229)**

The Auditor General shall audit and report annually the accounts of:

- The National and County Governments;
- All funds and authorities of the National and County Governments;
- All courts;
- Every commission and independent office established by the Constitution;
- The National Assembly, the Senate and the County Assemblies'
- Political parties funded from public funds;
- The public debt;
- 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. The audit report should confirm whether or not public money has been well utilized and shall be submitted to Parliament or the relevant County assembly.

### **Office of the Controller of Budget (Article 228)**

The Controller of Budget oversees the implementation of the budgets of the National and County Governments by authorizing withdrawals from public funds. Every four months, the Controller shall submit to each House of Parliament a report on the implementation of the budgets of the National and County Governments.

### **The Commissions on Human Rights (Article 59)**

The Constitution of Kenya, 2010 recommended the establishment of a Kenya National Human Rights and Equality Commission to promote the protection and observance of Human Rights. Parliament was later empowered to enact legislation to restructure the Commission into two or more separate Commissions. The following Commissions were established by Parliament.



## **The Kenya National Commission on Human Rights**

The functions of the Commission are to:

- Promote respect for human rights and develop a culture of human rights;
- Promote the protection and observance of human rights in public and private institutions;
- Monitor, investigate and report on the observance of human rights;
- Receive and investigate complaints about alleged abuses of human rights;
- Investigate or research matter in respect of human rights, and make recommendations to improve the functioning of state organs;
- Ensure compliance with obligations under international and regional treaties and conventions relating to human rights;
- Formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the constitution;
- Work with the National Gender and Equality Commission and the Commission on Administrative Justice to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration.

## **The National Gender and Equality Commission**

The functions of the Commission include to:

- Promote gender equality and freedom from discrimination;
- Monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;
- Act as the principal organ of the state in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children;
- Co-ordinate and facilitate mainstreaming of issues of gender persons with disability and other marginalized groups in national development and to advise the government on all aspects thereof;
- Monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the constitution;
- Work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws;
- Co-ordinate and advice on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination.

## **The Commission on Administrative Justice (CAJ)**

The Commission on Administrative Justice plays these roles in the public service.

- Investigate any conduct in state affairs, or any act or omission in public administration by any state organ, state or public officer in National and County Governments that is improper;
- Investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;
- Report to the National Assembly bi-annually on the complaints investigated and the remedial action taken thereon;
- Inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence misbehavior, inefficiency or ineptitude within the public service;
- Facilitate the setting up of, and build complaint handling capacity in, the sectors of public service, public offices and state organs;
- Work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration;
- Promote public awareness of policies and administrative procedures on matters relating to administrative justice.



## UNIT 3: INTER-GOVERNMENTAL RELATIONS

**Time: 1 hour 30 minutes**

### Introduction

This unit discusses the importance, principles and objects of inter- governmental relations and structures for National and County Government's coordination. It also highlights the composition and functions of the Council of County Governors as well as mechanisms for resolving inter-governmental disputes.

### SESSION 1: Principles and Objects of Inter-Governmental Relations

**Time: 30 Minutes**

#### Session Objective

By the end of the session, the participant should be able to discuss the importance, principles and objects, of Inter-governmental Relations.

#### Suggested Learning Resources

- The Constitution of Kenya,2010
- The Citizen Handbook Uraia/IRI,2012
- Relevant Acts
- Flow chart

#### Suggested Training Methods

- Brainstorming
- Question and answer
- Discussion

#### Suggested Learning Activities

- i. Brainstorm on the importance principles and objects of inter- governmental relations
- ii. Summarize the session

#### Suggested Assessment Methods

- Question and answer
- Observing participation in brainstorming Sessions

## KEY NOTES

### Principles of Inter-governmental Relations

- Recognition of the sovereignty of the people;
- Inclusive and participatory governance;
- Respect for the functional and institutional integrity of the two levels of government;
- Promotion of national values and principles of governance;
- Respect for the constitutional status of the levels of government and the institutions of government established at either level of government;
- Promotion of equality and equity in service delivery;
- Objectivity and impartiality in decision making;
- The requirement for consultation and cooperation between the

### National and County Governments as distinct and inter-dependent

- The need to minimize inter-governmental disputes while co-operating in exercising their functions;
- Promotion of accountability to the people in decision making and actions taken; and
- Institutionalized protection of the marginalised.

### Objects of Inter-governmental Relations

- Facilitating the realization of the objects and principles of devolution;
- Facilitating co-operation and consultation between the National and the County Governments and amongst County Governments;
- Providing a forum for coordinating governments' policies, legislation and functions;
- Providing a forum for sharing and disclosing of necessary data and information;
- Providing mechanisms for the transfer of power, functions and competencies to either level of government;
- Promoting accountability between the two levels of government or amongst the County Governments.

### Importance of Inter-governmental Relations

The relations between the various levels of government are extremely important in a system of devolved government because it ensures:

- proper coordination among the various government entities in planning and service delivery
- management of conflicts among the National Government and the County Governments as well as between County Governments



## SESSION 2: Coordination of National and County

### Governments Relations

**Time: 30 Minutes**

### Session Objectives

By the end of the session, the participant should be able to discuss the structures for coordinating inter-governmental relations;

### Suggested Learning Resources

- The Constitution of Kenya, 2010
- The Citizen Handbook Uraia/IRI, 2012
- Relevant Acts

### Suggested Training Methods

- Discussion
- Question and answer

### Suggested learning Activities

- i. Discuss the structures for coordinating National and County Government's relations
- ii. Summarize the session

### Suggested Assessment Methods

- Question and answer
- Observing participation during discussion

## KEY NOTES

### National and County Governments Coordination

The Inter-governmental Relations Act, 2012 establishes several inter- governmental structures, which serve to facilitate inter-governmental consultation and cooperation under Kenya's devolved government model. The National Government and County Governments are required to use these structures to reach a consensus on crosscutting policies, legislation and other important issues that have a double impact nationally and locally. Furthermore, these structures are expected to facilitate the prevention or speedy resolution of inter-governmental disputes.

### National and County Governments Coordinating Summit

The Inter-governmental Relations Act, 2012 establishes the National County Governments Coordinating Summit (The Summit), which is the highest body of inter-governmental relations in Kenya. The Summit ensures that inter- governmental

relations between the National and County Governments are effective and consultative.

The Summit is comprised of the President of the Republic (or Deputy President in his/her absence) who serves as the Chairperson, all Governors of the 47 Counties. The Chairperson of the Council of County Governors serves as the Summit's Vice Chairperson.

### **Functions of the Summit**

The Summit, is required to convene at least twice a year and to submit an annual report to Parliament and the County Assemblies within three months after the end of every financial year. Other functions of the Summit include:

- Consultation and co-operation between the National and County Governments;
- Promotion of national cohesion, values, and principles of governance;
- Consideration and promotion of national interest matters and reports on national interest by other inter-governmental bodies and forums;
- Monitoring national and county development implementation plan;
- Considering inter-governmental issues referred to the summit by the public and making recommendations on appropriate actions;
- Evaluating national and county governments performance and making recommendations on appropriate action;
- Implementation of County and National Governments development plans;
- Facilitating and coordinating the transfer of functions, power or competencies from and to either level of government.

## **The Council of County Governors**

### **Composition of the Council of County Governors**

- The Council of County Governors serves as an Inter-governmental coordinating and consultative body for the 47 County Governments.
- The Council, which must convene at least twice a year, comprises of 47 County Governors, a Chairperson and a Vice Chairperson selected from among its membership.
- The Council has the power to establish other Inter-Governmental Forums (for example Inter-City and Municipality forums) and sector working groups or committees to assist in carrying out its functions.

### **Functions of the Council of County Governors**

The Council of County Governors is required to submit an annual report to the National and County Governments Coordinating Summit and both houses of the Parliament. The Council should also send this report to the County Assemblies within three months after the end of every financial year.

Other functions of the Council include:

- consultation amongst county governments;
- information sharing on the performance of the counties;
- considering matters of common interest to county governments;
- resolving disputes between counties;
- facilitating capacity building for governors;
- receiving reports and monitoring the implementation of inter-county agreements on inter-county projects;
- considering matters referred by a member of the public;

### **Intergovernmental Relations Technical Committee**

- The Intergovernmental Relations Technical Committee is comprised of a Chairperson and not more than eight members appointed by the Summit.
- The Committee is responsible for the Summit's day-to-day operations, including the facilitation of Summit activities and implementation of Summit decisions.
- It is also responsible for submitting quarterly reports to the Summit and may establish sectoral working groups to assist in carrying out its functions.
- The Technical Committee doubles as the National and County Governments Coordinating Summit Secretariat.
- The Technical Committee is responsible for appointing a secretary to serve as the Secretariat's Chief Executive and Financial Officer.
- The Secretary is also responsible for the day-to-day administration of affairs of the Secretariat as well as the implementation of decisions made by the Coordinating Summit and its Technical Committee.
- Considering reports from other inter-governmental forums on matters of national and county interest.

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

This is established pursuant to Section 187 of Public Finance Management 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.

### 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.

### 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.

### **SESSION 3: Mechanisms for Resolving Inter-governmental Disputes**

**Time: 30 Minutes**

#### **Session Objective**

By the end of the session, the participant should be able to explain the mechanisms for resolving inter-governmental disputes

#### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- The Citizen Handbook Uraia/IRI, 2012
- Relevant Acts
- Flow charts on inter- governmental relations

#### **Suggested Training Methods**

- Question and answer
- Discussion

#### **Suggested Learning Activities**

- i. Sharing experience on mechanisms for resolving Inter-Governmental disputes
- ii. Summarize the session

#### **Suggested Assessment Methods**

- Question and answer
- Observing participation in the discussion

### **KEY NOTES**

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

According to the Inter-governmental Relations Act, 2012, the National and County Governments should take all reasonable measures to resolve disputes amicably and utilize alternative inter-governmental dispute resolution mechanisms before resorting to judicial proceedings.

The institutions mandated by the Constitution to resolve inter-governmental disputes are:

- The Senate
- The Summit
- The Council of County Governors
- The Transition Authority (during the transition period)
- The Judiciary

The relations between the various levels of government are extremely important in a system of devolved government. While the Constitution assigns specific mandates to each level of government, it is important to have an inter- governmental coordinating mechanism to manage conflicts between the two levels of governments.

### **Dispute Resolution Framework**

Any agreement between the National Government and a County Government or amongst County Governments should include a dispute resolution mechanism. This mechanism should also provide alternative options for dispute resolution that leaves legal proceedings as the last resort.

Article 32(2) states that agreements not containing the above dispute resolution framework should utilize the framework established in the Inter- governmental Relations Act, 2012.

### **Declaration of a Dispute**

Before declaring a dispute, the concerned parties should make every effort to amicably resolve the matter through direct negotiations or through an intermediary.

In case these negotiations fail, a party may formally refer the dispute to any of the intergovernmental structures. .

### **After Declaration of a Formal Dispute**

Any inter-governmental structure (for example, the Summit or Council of County Governors) should convene a meeting between the involved parties or representatives within 21 days of the formal dispute declaration. The goal of the meeting is to identify the issues in dispute, discuss possible solutions and identify any existing dispute resolution mechanisms.

The parties should make every effort to resolve a dispute with a mechanism where one exists. When the parties exhaust all dispute resolution alternatives and there is still no resolution, a party may submit the dispute for arbitration or judicial proceedings.

## UNIT 4: PUBLIC SERVICE

**Time: 1 hour 30 minutes**

### Introduction

This unit covers categories of government officers, functions of the Public Service Commission, County Public Service boards, County Assembly Service boards, Values and principles of Public Service and the role of citizens in vetting and appointment of public officers,.

### SESSION 1: Government officers and Public Service Commission

**Time: 45 Minutes**

#### Session Objectives

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

- a) outline the categories of Public Officers;
- b) outline the functions of the Public Service Commission, County Public Service Board and County Assembly Service Board.

#### Suggested Learning Resources

- Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI,2012
- Relevant Acts
- Understanding the transition to devolved government in Kenya: Answers to frequently asked questions, TA (2013)
- IEC materials

#### Suggested Training Methods

- Question and answer
- Discussion

#### Suggested Learning Activities

- i. Distinguish between State and Public Officers.
- ii. Discuss The Public Service Commission, County Public Service Board and County Assembly Public Service Board
- iii. Summarize the session

### **Suggested Assessment Methods**

- Question and answer
- Observation of participation in the discussions

### **KEY NOTES**

Public Service refers to service that is provided by the government to its citizens, either directly or through the public sector. This term can also be explained as a service which is provided by the government to its citizens, either directly or indirectly through the public sector.

There are two categories of government officers who include: state officer and public officers. They may be defined as follows:

- A state officer is a person holding a constitutional office under oath.
- A public officer is any person working in a government office

### **Functions of the Public Service Commission (Article 233)**

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

### **Functions of the County Public Service Board (Section 59 of the County Government Acts, 2012)**

The functions of the County Public Service Board are to:

- establish and abolish offices in the county public service;

- 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;
- exercise disciplinary control over, and remove, persons holding or acting in county public service offices;
- prepare regular reports for submission to the county assembly on the execution of the functions of the board;
- promote in the county public service the national values and principles of governance and values and principles of public service;
- evaluate and report to the county assembly on the extent to which the national values and principles of governance and values and principles of public service have been complied with;
- facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in Counties;
- advise the county governments on human resource management and development;
- advise the county governments on implementation and monitoring of the national performance management system in counties;
- make recommendations to the salaries and remuneration commission, on behalf of the county governments, on the remuneration, pensions and gratuities for County public service employees.

#### **Functions of the County Assembly Service Board (Section 12 of the County Government Acts, 2012)**

- Provide services and facilities to ensure the efficient and effective functioning of the County Assembly.
- Constitute offices in the County Assembly service, and appoint and supervise office holders.
- Prepare annual estimates of expenditure of the County Assembly Service and submit them to the County Assembly for approval, and exercise budgetary control over the service.
- Undertake singly or jointly with other relevant organizations, programmes to promote the ideals of parliamentary democracy; and Clerk and staff of the County Assembly.
- Performing other functions necessary for the well-being of the members and staff of the County Assembly or prescribed by national legislation.

## SESSION 2: Values and Principles of the Public Service

**Time: 45 minutes**

### Session Objectives

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

- a) state the values and principles of the Public Service;
- b) discuss the role of citizens in vetting and appointment of Public Officers.

### Suggested Learning Resources

- Constitution of Kenya, 2010
- Code of Ethics for Public Officers, 2012
- Other relevant Acts

### Suggested Training Methods

- Question and answer
- Discussion

### Suggested Learning Activities

- i. Discuss values and principles of the Public Service
- ii. Sharing experiences on values and principles of the Public Service.
- iii. Discuss the role of citizen in vetting and appointment of Public Officers
- iv. Summarize the session

### Suggested Assessment Methods

- Question and answer
- Observation of a role play on citizen participation in vetting and appointment of public officers

## KEY NOTES

The Values and Principles of the Public Service

- High standards of professional ethics
- Efficient, effective and economic use of resources
- Responsive, prompt, effective, impartial and equitable provision of services
- Involvement of the people in the process of policy making
- Accountability for administrative acts

- Transparency and provision to the public of timely and accurate information
- Fair competition and merit as the basis of appointments and promotions
- Representation of Kenya's diverse communities.
- Affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service for; men and women, ethnic groups; persons with disabilities.

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

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

The Commission on Administrative Justice plays an important role in the public service in considering complaints or issues arising out of maladministration in the public service. Refer to functions as discussed in Unit 2, Session 3 of this module.



## UNIT 5: PUBLIC FINANCE

**Time: 4 hours**

### Introduction

This unit discusses the principles of Public Finance Management, sources and sharing of government revenue, the composition and functions of the County Budgets and Economic Forum and different types of County plans. It also covers the steps in the budget making process at the national and county levels, the role of citizens in planning and budget making process, importance of monitoring the implementation of plans and budgets, the public procurement process and the administration and management of the equalization fund.

### SESSION 1: Principles of Public Finance Management

**Time: 1 hour**

#### Session Objective

By the end of the session, the participant should be able to explain the principles of Public Finance Management

#### Suggested Learning Resources

- Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI,2012
- Fifty things every county government official needs to know about public finance by CIC and IBP
- Relevant Acts

#### Suggested Training Methods

- Question and answer
- Discussion

#### Suggested Learning Activities

- i. Question and answer on principles of Public Finance Management
- ii. Summarize the session

#### Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussion

## KEY NOTES

The Principles of Public Finance Management are as follows:

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

## SESSION 2: Sources and Sharing of Government Revenue

**Time: 1 hour**

### Session Objectives

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

- a) identify sources of government revenue at National and County levels;
- b) explain how revenue is shared between National and County Governments.

### Suggested Learning Resources

- Constitution of Kenya ,2010
- Citizen Handbook Uraia/IRI, 2012
- Sample of budgets and reports
- IEC Materials
- Relevant Acts

### Suggested Training Methods

- Brainstorming
- Discussion



## Suggested Learning Activities

- i. Brainstorm on sources of government revenue
- ii. Discuss how revenue is shared between national and County Governments
- iii. Summarize the session

## Suggested Assessment Methods

- Question and answer
- Observation on participation during discussion

Taxes	Fees and charges
Income tax Customs and exercise duty Value added tax Sin tax, such as tax levied on alcoholic drinks and beer, cigarettes	
Penalties	Fines
Return on investments	Sale of public property
Grants	Loans

## Sources of revenue for the County Governments

- Allocation by the National Government
- Property taxes
- Entertainment taxes
- Local fees and surcharges
- Sale of public property
- Income from investments
- Charges for services
- Grants
- Equalization fund
- Loans guaranteed by the National Government\

### Sharing of revenue 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:

- The national interest;
- Any provision that must be made in respect of the public debt and other national obligations;
- The needs of the national government, determined by objective criteria;
- The need to ensure that county governments are able to perform the functions allocated to them;
- The fiscal capacity and efficiency of County Governments;
- Developmental and other needs of counties;
- Economic disparities within and among counties and the need to remedy them;
- The need for affirmative action in respect of disadvantaged areas and groups;
- The need for economic optimization of each county and to provide incentives to optimize its capacity to raise revenue;
- The desirability of stable and predictable allocations of revenue;
- 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.

The breakdown on how revenue raised nationally will be shared between National and County Governments and among County Governments is as follows:

**Total revenue raised nationally is 100%**

Allocation to National Government is **84.5 %** of revenue that is raised nationally.

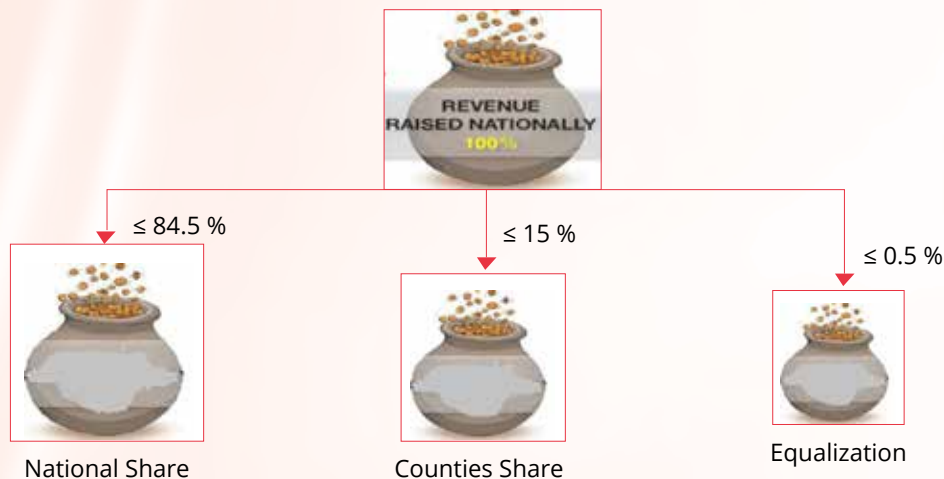


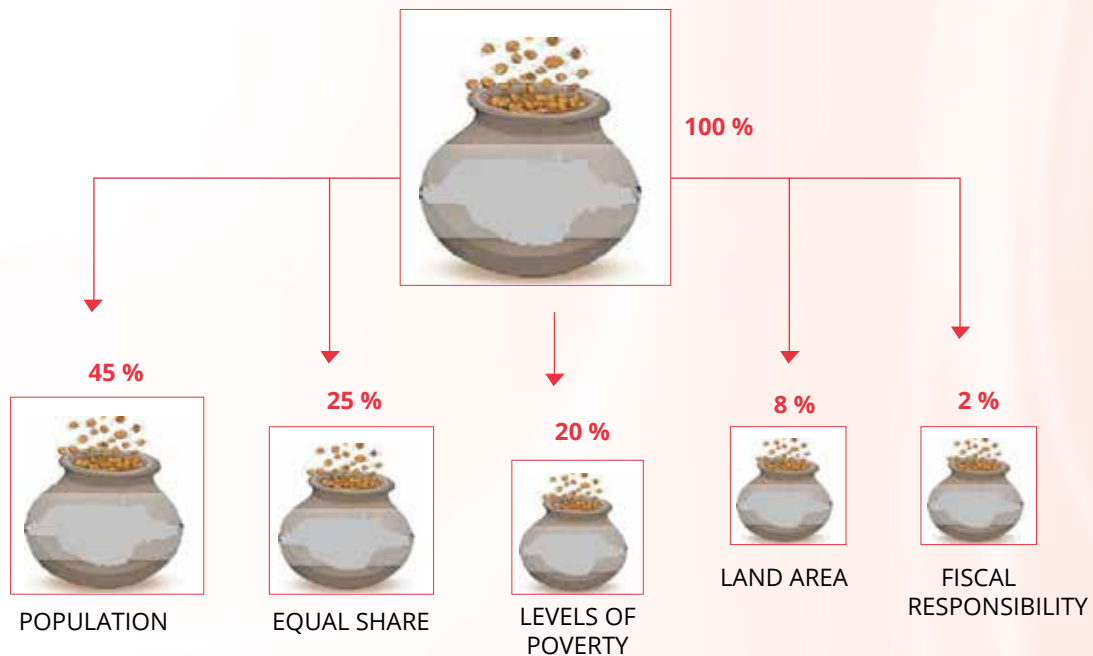
Figure 16: Revenue allocation adopted from CRA

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

- Population size
- Basic equal share
- Poverty level
- Land area in km<sup>2</sup>
- Fiscal responsibility

The percentage allocation to the counties will be calculated as illustrated.

### Basis of sharing the 15% revenue for the Counties



**Figure 17: Revenue allocation adopted from CRA**

*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)

## Equalization Fund

- a) The Constitution of Kenya, 2010 establishes an Equalization Fund which is 0.5 per cent of all the revenue collected by the National Government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.
- b) The National Government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.
  - i. The National Government may use the Equalization Fund :-
  - ii. only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by Parliament; and
- c) Either directly, or indirectly through conditional grants to Counties in which marginalized communities exist.
- d) The Commission on Revenue Allocation shall be consulted and its recommendations considered before Parliament passes any Bill appropriating money out of the Equalization Fund.
- e) Any unexpended money in the Equalization 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.
- f) The current period for which the equalization fund shall exist is a maximum of twenty years after the effective date.
- g) Parliament may enact legislation to alter the effect of the equalization fund for a further fixed period of years.
- h) 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.
- i) Money shall not be withdrawn from the Equalization Fund unless the Controller of Budget has approved the withdrawal.

## SESSION 3: Planning and Budget Making Process

**Time: 1 hour**

### Session Objectives

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

- a) discuss the composition and functions of County Budget and Economic Forum;
- b) explain the different types of county plans;
- c) describe the steps in budget making process at the national and county levels;

- d) explain the role of citizens in planning and budget making process;
- e) discuss the importance of monitoring the implementation of plans and budgets.

### **Suggested Learning Resources**

- Constitution of Kenya 2010
- Citizen Handbook by Uraia/IRI, 2012
- Relevant Acts and Reports
- CRA Guidelines on the Formation of County Budgets and Economic Forum
- Sample County Plans
- Other Relevant Acts and Reports

### **Suggested Training Methods**

- Brainstorming
- Question and answer
- Discussion
- Sharing Experiences

### **Suggested Learning Activities**

- i. Discuss composition and function of CBEFs
- ii. Explain different types of County Plans.
- iii. Discuss the role of citizens in planning and budget making process.
- iv. Explain the importance of monitoring the implementation of plans and budgets.
- v. Summarize the session.

### **Suggested Assessment Methods**

- Question and answer
- Observation on active participation during discussions

## **KEY NOTES Keynotes**

### County Budget and Economic Forum

- a) 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 sector, women, persons with disabilities, the elderly and faith based groups at the county level.

b) The Functions of the CBEF entails:

Providing a means for consultation by the county government on;

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

Every County Government shall prepare a development plan in accordance with Article 220(2) of the Constitution, that includes—

- strategic priorities for the medium term that reflect the county government's priorities and plans;
- a description of how the County Government is responding to changes in the financial and economic environment;
- programmes to be delivered with details for each programme of—
  - o the strategic priorities to which the programme will contribute;
  - o the services or goods to be provided;
  - o measurable indicators of performance where feasible; and
  - o the budget allocated to the programme
- payments to be made on behalf of the county government, including details of any grants, benefits and subsidies that are to be paid;
- a description of significant capital developments;
- a detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the county, including measurable indicators where those are feasible;
- a summary budget in the format required by regulations; and
- other matters as may be required by the Constitution or the Public Finance Management Act, 2012

### **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 18: Unplanned and planned urban areas**

**Part V of 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;
  - overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and
  - 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 citizens in planning and budget making process**

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 takes has four steps as follows:

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

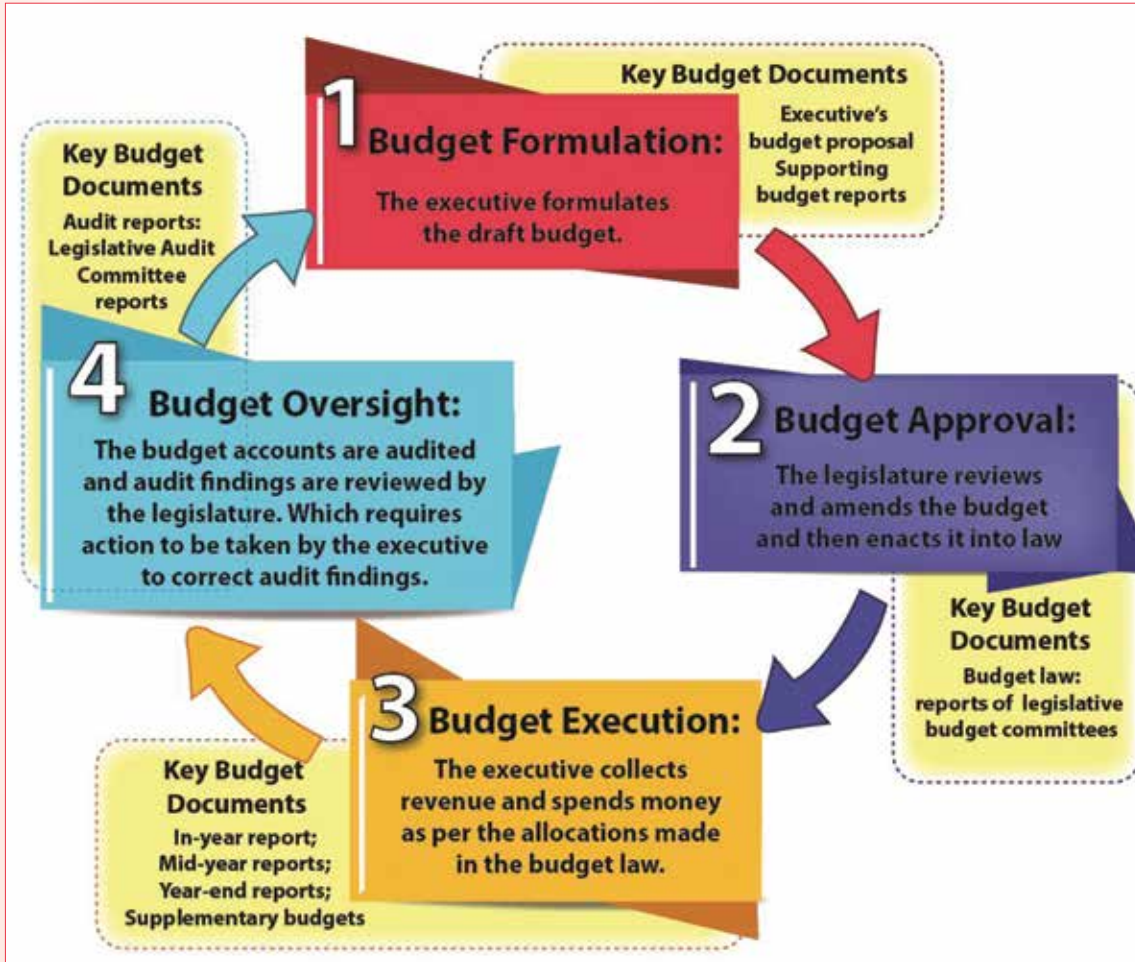


Figure 19: Budget making process

### Opportunities for Citizen Participation at the County Level

In the spirit of transparency and accountability in the budget making process, there are many opportunities for citizen participation. Citizens can exercise their right to participate in the budget-making process at the following two levels.

1. **Pre-budget reading period.** The platforms for engagement during the pre-budget reading period are:
  - a) **County Budget and Economic Forum:** The County Budget and Economic Forum allows citizens to give their views and input in planning and budgeting through their representatives. The forum includes members of the County executive, representatives from professional bodies, business, women, persons with disabilities, and faith-based groups. The citizens' views are integrated in documents such as the Annual Plan, Fiscal Strategy Paper and the Budget Review and Outlook Paper.
  - b) **County 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.

- c) **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
- d) **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.
- e) **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. Citizens are encouraged to take advantage of this provision to contribute to the budget-making process.

## 2. 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 4: Procurement of Goods, Works and Services**

**Time: 1 Hour**

### **Session Objectives**

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 , works and services are procured
- b) Make presentations
- c) Summarize 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

- To maximize economy & efficiency
- To promote competition and ensure that competitors are treated fairly
- To increase transparency and accountability in procurement procedures
- To increase public confidence in procurement procedures
- 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

- Right price (lowest evaluated price),
- Right quantities
- Right quality
- Right source

- Right time
- 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
- c) Improved quality, through developing of proper specifications and evaluation criteria
- a) More added value b) Greater efficiency
- c) New innovations, by undertaking market survey to know the new products in the market and not using brand names in specifications

### **Importance of Public Procurement**

- a) Majority of Kenya Vision 2030 flagship projects to be delivered through public procurement.
- b) Need for elimination of waste through strategic leadership in public procurement & disposal

### **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
  - a) Responsibility for identification of requirements at Departmental level
  - b) Consider type of goods, works and services; and when and where needed
2. Undertake Procurement Planning
  - a) Departments supply their procurement plans which are consolidated

b) Procurement commenced on satisfaction that sufficient funds exist

### 3. Specification of Requirement

- a) It consists of definitive descriptions on the object to be procured.
- b) must be clear, accurate and complete otherwise will result to wrong procurement of goods/services/works
- c) Provision of information that the supplier requires in order to reliably meet the user's expectation.
- d) Need for market survey to assist with preparation of specifications
- e) Specification to be drawn by the user of the product or service
- f) Consultants may be used in preparation of specifications and bidding document

### 4. 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 illustration - 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))

### 5. 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.

### 6. 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.
7. Publicizing the procurement opportunity – Advertising in newspapers, notice boards, Procuring entity website & PPOA tenders portal
  8. Availing bidding documents to bidders - At the prescribed fee in the legal notice
  9. Submission of bid Documents
    - Provision of tender box
    - No late tend



Figure 20: Ethical service in procurement



Figure 21: Corrupt practise in procurement

#### 10. Opening of Bids

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

This step involves:

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

12. 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

13. 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

14. 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.

**15. 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 the decision making process, particularly in governance processes. A variety of tools and techniques to inform the public, build consensus and reach agreement are discussed. The module 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) appreciate the sovereign power of citizens as provided for in the Constitution of Kenya, 2010;
- b) acquire knowledge, skills, attitudes and values necessary for effective participation in governance processes;
- c) demonstrate ability to utilize tools and platforms for public participation in governance processes;
- d) promote public participation in governance processes;
- e) demonstrate creativity and critical thinking in addressing challenges in public participation.

## UNIT 1: SOVEREIGNTY OF THE PEOPLE

### Time: Introduction

This session focuses on the citizen power and how to exercise it. It explains how citizens can delegate this power to different organs and when they can use the power directly. In addition, it outlines values and benefits of citizen power. Information in this session is intended to empower citizen to appreciate the power the Constitution of Kenya has bestowed on them. This power should enable them participate actively and responsibly in governance processes.

### SESSION 1: Source, Types and Value of Sovereign Power of the People

#### Time:

#### Session Objectives

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

- a) explain the meaning of terms: citizen, sovereignty, and public participation;
- b) identify the source of sovereign power of the people;
- c) identify types of citizen power;
- d) discuss the value of the sovereign power of the people.

#### Suggested Learning Resources

- Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI,2012
- Case study Extract
- IEC materials

#### Suggested Training Methods

- Case Study
- Discussion

#### Suggested Learning Activities

- i. Read and discuss the case study.
- ii. Discuss the meaning of citizen, sovereignty and public participation, duty holders and right holders.
- iii. Discuss source, types and values of citizen power.
- iv. Summarize the session.

## Suggested Assessment Methods

### Question and answer

#### Case Study: Citizen Power

Umoja community has a population of 500 people who are involved in farming, business, mining, fishing and other trades. The community members nominated 5 leaders to represent them by engaging the County government on various developmental issues such as transport, access to clean water, electricity, health facilities, and education among others. All the leaders are elderly, able bodied men and have flourishing businesses in Umoja.

Once each month, leaders provide progress reports to the community which highlights the progress made and challenges faced. The community leaders use this opportunity to share with members the emerging needs. Leadership is changed after every two years.

#### Questions

1. Who nominated the community leaders?
  2. Which leadership qualities did the community look for in the leaders?
  3. What other qualities should have been considered in nominating the leaders?
  4. Why is it necessary for a community to have leaders?
- 
- a) The discussion should focus on public participation on nomination of leaders based on national values and principles of leadership and Integrity as per the Constitution of Kenya, 2010.
  - b) Power can be taken away from the leaders by the same citizens who elected or nominated them. The discussion should also focus on inclusivity.

## KEY NOTES

### Meaning of terms related to Public Participation

#### Citizen

A citizen 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 indirectly 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 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 others 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 this Constitution.

It also provides that;

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

#### Types of Citizen Power

Citizen power is exercised in different ways which includes the following:

**a) 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.

**b) Physical citizen power**

This requires direct physical participation such as protesting, working for government or boycotting.

When exercising physical citizen power, it is important to do so in a responsible manner as provided under the Bill of Rights in Article 37 of the Constitution 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.

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

**Values of Sovereign Power**

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

## UNIT 2: STEPS TO SUCCESSFUL PUBLIC PARTICIPATION

### Time: Introduction

This unit discusses the steps to successful public participation, the process of forming a community group, the basic components for partnering and forming networks and ways of participating in governance processes. This is to enable people understand their rights and how to use them responsibly. It will also enable them to participate actively in decision making, policy formulation, and hold their leaders to account.

### SESSION 1: Legal Provisions in Public Participation

#### Time: Introduction

The Constitution of Kenya, 2010 provides the framework for public participation. It also makes public participation a central part of governance. Article 10 (2) (a) provides for participation of the people. This is one of the country's values and principles of governance.

#### Session Objective

By the end of the session, the participant should be able to explain the legal provisions that provide for public participation.

#### Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- The County Governments Act, 2012
- IEC materials

#### Suggested Training Methods

- Discussion
- Experience sharing

#### Suggested Assessment Methods

- Question and answer

#### Suggested Learning Activities

- i. Discuss legal provisions for public participation.
- ii. Discuss the case study: A Legacy of Citizen Participation in Kenya.
- iii. Summarize the session.

*Note, where time allows the participants can discuss the case study*

## KEY NOTES

### The Legal Provisions for Public Participation

The Constitution has provided for a devolved model of governance, which includes structures and mechanisms to bring services closer to the people. The Constitution provides a strong legal framework for public participation. The following are the specific Legal provisions for public participation.

#### i. Sovereign Power of Citizens

Public participation is anchored in the Constitution and is reflected in Article

1, which indicates that all sovereign power is vested in the people of Kenya. This power should be exercised at national and county levels either directly through public participation or indirectly through democratically elected representatives. Sovereign power under the Constitution of Kenya is delegated to the following State organs:

Parliament

- The Legislative Assemblies in the County Governments
- The National Executive
- The Executive structures in the County Governments
- The Judiciary
- Independent Tribunals.

#### ii. Participation in Governance processes

The Constitution of Kenya, 2010 Article 10(2) (a) indicates that public participation is one of our country's values and principles of governance. In addition, the Public Service Act contains references to public participation in Article 232(1) (d) stipulates that citizens should include in the process of policy making.

#### iii. Participation in Devolved Government

The Constitution of Kenya, 2010 Article 174 (c) specifies that the main objective of devolution is to enhance people's participation of exercising their sovereign power and in making decisions affecting them. Article 184 (1) (c) further stipulates that a national legislation is required by the Constitution to define the governance and management of urban areas and cities, which include mechanisms for participation by residents in the governance of Urban areas and Cities.

#### iv. Participation in the Legislature

Articles 118(1) (b) and 196(1) (b) directs the National and County legislatures respectively to facilitate public participation in its work. In addition, Article 119(1) specifies that people have the right to petition Parliament to consider any matter within its authority.



**Figure 22: Legislative participation**

### **Access to Information**

Article 35 of the Constitution of Kenya, provides that citizens have the right to access all information held by the State or Public Officials. Public Servants are also bound to share information with citizens. Further, Articles 118(1) (a) and 196(1) (a) of the County Governments Act directs Parliament and County Assemblies respectively, to hold public meetings and conduct their work in full view of citizens.

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

## **SESSION 2: Steps to Successful Public Participation**

### **Session Objectives**

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

- a) outline steps to successful public participation;
- b) discuss the process of forming a community group;
- c) identify the basic principles of partnering and forming networks;
- d) discuss ways of participating in governance processes;
- e) appreciate and respect the value of working with others.

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- IEC materials

### **Suggested Training Methods**

- Discussion
- Experience sharing
- Question and answer

### **Suggested Assessment Methods**

- Question and answer
- Discussion

### **Suggested Learning Activities**

- Ask and answer questions on ways of participating in governance processes.
- Explain the steps to successful public participation.
- Describe the process of forming community groups.
- Discuss the importance of forming community groups.
- Explain the principles of partnership and networks.
- Discuss the value of working with others.
- Summarize the session.

## **KEY NOTES**

### **a) Steps to successful Public participation**

- Identify community needs
- Assemble a citizen group
- Form partnerships and networks
- Utilize tools and strategies
- Keep the community informed
- Seek feedback

### **c) Process of forming a community group**

- Identify the needs of the community
- Partner with others who share the same concerns
- Decide on the activities to be undertaken
- Structure the group based on activities to be conducted in terms of leadership, decision making, resource mobilization and membership recruitment and retention

- v. Draw up a constitution to govern the group. The constitution should have the following components:
  - Name of the group
  - Aims and objectives
  - Functions of the group
  - Registration of members
  - Election and nomination of officials
  - Management of the group
- vi. Register the group with relevant government body

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

Community groups can only be sustainable by partnering and forming networks. Partnerships are formed by groups of individuals that join together aiming to accomplish a common purpose. The main focus is coexistence and collaboration in achieving the nation's strategic goal(s). Networking is exchanging information for mutual benefits such as increased information opportunities. The principles for partnering and networks are:

- i. Partnership is a social contract. This means that it is an implicit agreement among the members of a society to cooperate for social benefits.
- ii. Partnership is built on mutual trust and confidence in each other's ability.
- iii. Partnership should be based on fair exchange of value between the partners based on the agreed Memorandum of understanding.
- iv. Partnership is essentially the relationship of equals
- v. Partnership is built on commitments by both parties to a common goal and shared interest within the framework and terms of engagement. The commitment is presumed to continue indefinitely.

In forming effective partnership and networks following factors are considered:

- **Purpose for Partnering and Forming Networks**

This is the public value the community group and other partners wish to provide.

- **Goals for Partnering and Forming Networks**

These are set measurable performance goals which should be in congruence with policy and the national development agenda.

- **Objectives for Partnering and Forming Networks**

These are the intents of the community group and potential network partners which are derived from the goals.

- **Memorandum of Understanding (MoU)**

It is a written document describing the roles and a general description of the responsibilities of two (or more) parties which sets forth the basic principles and guidelines under which the parties will work together to accomplish the goals and

objectives. It outlines the duties and responsibilities of individual organizations or partners in the network. The MoU indicates the shared and significant involvement in the technical, financial, publicity and administrative areas of the partnership. All MoUs should include:

- The names of partners involved
- The period of the MoU
- The role of each party
- How the MoU can be terminated
- Contact information of signing parties

It is important to ensure a sense of mutuality, clearly define expectations, rights and responsibilities, and agree accountabilities and responsibilities.

#### **d) Value of Working with Others**

The values of working with others are that:

- i. Effectiveness of participation is enhanced.
- ii. Unity of purpose is upheld.
- iii. Inclusivity in the community is realized.
- iv. Integrity, transparency and accountability are maintained.
- v. Collective responsibility is enhanced.

## UNIT 3: PARTICIPATION IN GOVERNANCE

### Time: Introduction

Public participation is an important part of governance process as provided for in Article 10(2) of the Kenya Constitution, 2010 on national values and principles of governance. It is further re-emphasized in Part VIII the County Governments Act, 2012. The aim of this unit is to equip the participant with the knowledge, skills, attitudes and values to enhance their participation in governance processes. Under this unit, the participants will cover the following:

- a) Forms of public participation
- b) Stages of public participation
- c) Principles of public participation
- d) Public participation at national and local contexts
- e) Benefits of public participation

### SESSION1: Forms and Stages of Public Participation

#### Time:

#### Session Objective

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

- a) identify forms of public participation;
- b) describe the stages of public participation.

#### Suggested Learning Resources

- The Constitution of Kenya,2010
- Citizen Handbook Uraia/IRI,2012
- County Governments Act, 2012
- IEC Materials

#### Suggested Training Methods

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

#### Suggested Learning Activities

- i. Display and discuss the IEC materials on public participation.
- ii. Conduct group discussions on forms of public participation
- iii. Present group findings in plenary.
- iv. Describe the stages of public participation.
- v. Summarize the session.

## KEY NOTES

### Forms of Public Participation

Public participation takes various forms which are:

- i. Attending public meetings or rallies to learn discuss or support an issue of concern to the community.
- ii. Campaigning for a political candidate or issue(s) that will be voted for by the public.
- iii. Demonstrating on a position or an issue, cause or government policy through marches, boycotts, sit-ins, or other forms of peaceful protest.
- iv. Vying for an elective office.
- v. Volunteering in the community or holding state office.
- vi. Serving the country through military or other service to the country.
- vii. Participating in civic discussions such as the local baraza.
- viii. Persuading a lawmaker to vote in a certain way.
- ix. Appealing to the government by signing petitions.
- x. Communicating to elected representatives.
- xi. Serving the country through military or Public Service.
- xii. Participating in sector working and interest groups or advisory committee to influence policy and plans.

### The Stages of Public Participation

The stages of Public participation are classified into three categories;

#### Category One

This is the lowest form of participation which consists of two stages namely:

##### Stage 1 - Manipulation

##### Stage 2 - Therapy

In the manipulation stage, the public participate in what has already been planned. They do not take part in decision making. This is likely to raise concerns from the public. During the therapy stage the anxiety of the community is diffused. The primary objective of these two stages is to educate the citizens on their concerns.

#### Category two: Tokenism

Tokenism consists of three stages; Stage 3 - Informing

##### Stage 4 - Consultation

##### Stage 5 - Appeasing or pacifying the people

The primary objective of this stage is to allow citizens to hear and be heard. The stage is considered a higher level because citizens have the ability to not just hear and be heard, but also to consult with power holders. This strategy is meant to appease the



public. Nevertheless, the power holders can approve and make decisions without taking consideration of the public’s input.

**Category Three: Citizen Power**

This category consists of three stages which are discussed below;

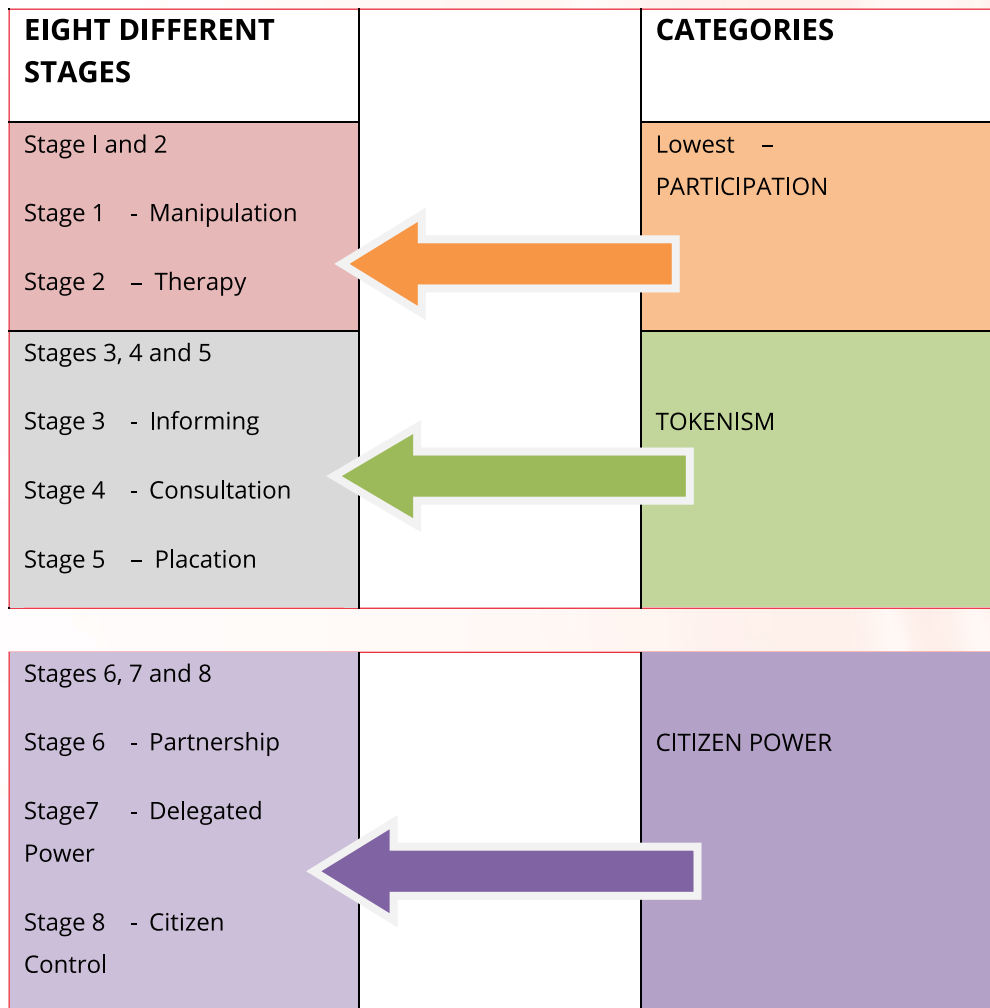
**Stage 6 – Partnership**

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

**Stage 7 - Delegated Power**

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

The upper-most stage reflects increasing degrees of “citizen power.” It relates to citizens having greater power over the decision making process through such things as more seats on a committee or even full managerial power of a project. The main objective of this stage therefore is to include citizens in the decision making process.



**Figure 23: Stages of citizen participation. Adapted from Sherry Amstein**

## **SESSION 3: Principles, Application and Benefits of Public Participation**

### **Time:**

### **Session Objectives**

- a) By the end of the session, the participant should be able to:
- b) discuss the principles of public participation;
- c) apply principles of public participation to national and county contexts.

### **Suggested Learning Resources**

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- IEC Materials
- County Governments Act, 2012

### **Suggested Training Methods**

- Discussion
- Role- play
- Question and answer

### **Suggested Learning Activities**

- i. Discuss the principles of public participation.
- ii. Roles play an aspect of public participation.
- iii. Apply principles of public participation to national and county contexts.
- iv. Discuss the benefits of public participation in governance processes.
- v. Summarize the session.

### **Suggested Assessment Methods**

- Question and answer
- Observation on participation during group discussion

## **KEY NOTES**

### **a) The Principles of Public Participation**

- i. The scope of activities in any event or project in the community should be determined.

- ii. The chain of authority should be clearly determined.
- iii. The persons responsible for the various activities should be identified in good time.
- iv. The resources to be used should be adequate.
- v. The process should be inclusive with special support given to the marginalized.
- vi. There should be transparency and accountability.
- vii. Records of the process and outcomes should be kept for reference.
- viii. Applying principles of public participation to national and county contexts

### **b) Application of Principles of Public Participation**

Public participation at the national and county governments involves:

- i. Contesting for elections
- ii. Registering to vote and voting
- iii. Becoming informed on issues and policies
- iv. Appraising candidates and Political Parties
- v. Maintaining peace during and after elections
- vi. Debating on national and county issues using relevant platforms
- vii. Attending community or civic meetings for sensitization
- viii. Participating as members of private, public and voluntary organizations
- ix. Being responsible in paying taxes
- x. Getting involved in peaceful protests
- xi. Petitioning the government on issues that affect citizens;
- xii. Recalling elected members of Parliament and County Assemblies



Figure 24: Public Participation

### Benefits of Public Participation

When done in a meaningful way, public participation will result in the following significant benefits:

- i. Increased trust between the public officials and the community.
- ii. The public have a sense of belonging and trust in their community leaders.
- iii. Decisions made are legitimate and are less subject to challenge. iv. Diverse views from a greater citizenry contributing to the public debate on issues and decision-making.
- v. Citizens are better informed on projects and government proposals. vi. Community concerns are more focused and prioritized for public officials to address.
- vii. Peoples' diverse and unique skills are revealed to government officials and the community.
- viii. The public is more aware of community concerns.
- ix. The public can effectively judge government responses to their concerns.
- x. Public officials get a better understanding of community needs and are able to respond effectively.

## UNIT 4: TOOLS FOR PUBLIC PARTICIPATION

### Time: Introduction

Tools for public participation empower citizens to be active participants in community affairs. This topic aims at developing in the participant knowledge, skills, attitudes and values to enhance active role in the community affairs. The unit focuses on:

- Tools for public participation
- Tools for social accountability
- Ways in which the Constitution of Kenya promotes public participation

### SESSION 1: Tools for Effective Public Participation

#### Time:

#### Session Objectives

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

- a) identify tools for public participation;
- b) describe tools for effective public participation;
- c) describe tools for social accountability.

#### Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- The County Governments Act, 2012
- Other relevant Acts
- IEC materials

#### Suggested Training Methods

- Question and answer
- Group discussion

#### Suggested Learning Activities

- i. Describe the tools for effective public participation.
- ii. Conduct group work on a selected tool for public participation.
- iii. Plenary presentation.
- iv. Discuss the application of tools for public participation.
- v. Summarize the session.

## Suggested Assessment Methods

- Question and answer
- Observation during presentations

## KEY NOTES

Tools for Effective Public Participation

The following are the tools for effective public participation.

### 1) Public Petitions

Public petitions are important avenues for those who wish to influence government on a preferred position. There are two types of petitions, namely, online and physical (paper) petitions. A successful petition will complement a strategy that includes direct lobbying, letter writing and media exposure. Public petitions involve:

- Writing a petition
- Lobbying
- Advocacy
- Writing a manifesto
- Communique.

#### a) Writing a Petition

The following are steps followed in writing a petition.

#### b) Identifying the Target

The first task in effective petition writing is to identify the target audience. Some of the possible targets include: National and County Governments, Parliaments, and Politicians, Political Parties, the President, Cabinet Secretaries, Governors, Senators and Ambassadors; Media organizations; neighbourhood authorities; and Business Associations.

#### c) Content of the Petition

The content of a petition begin with a request, followed by well researched reasons for making the request. Provide a description of relevant circumstances and links to documentation or facts that support the description. The description should contain information that suggests that the petition is feasible. Do not include information or requests that have no clear connection to the main message.

### 1. How to Promote a Petition

To promote a petition, send the message to friends, family, networks through the media and other forms of communication. Raise issues in fora and discussion groups and share with as many people and concerned parties as possible.

### 2. Lobbying

Lobbying is the practice of engaging the government and other stakeholders to advocate for change. It also involves requesting for information or holding officials accountable to their commitments on human rights or service delivery. In order to succeed in lobbying, it is important that the right steps are followed.

### **a) Key Principles of Lobbying**

The key principles of lobbying are:

- i. Have a specific goal and state it clearly.
- ii. Demonstrate to decision-makers how relevant the issue is to their policy formulation.
- iii. Be brief and to the point when using verbal or written communication.
- iv. Recognize opposing views and be ready with arguments for and against the position you have taken.
- v. Be precise, accurate and honest when answering questions.
- vi. Consider the target's perspective and make the position align with their values and interests.
- vii. Recognize and appreciate any effort made towards supporting the cause.
- viii. Follow up by sending a thank you note or making a phone call

### **b) Tips for Successful Lobbying**

Important meetings and negotiations need preparation. Members of the citizen action group should be helped to prepare for key meetings and to develop negotiation skills. Practical considerations such as where the meeting will be held should be given prominence. People usually feel more comfortable meeting an official in their own home territory. There is need to have a group session beforehand to prepare aims and approaches so as to build confidence and strategy.

The key questions to cover in this preparatory group session are:

- i. What is the purpose of the meeting?
- ii. Who among the group members will attend the meeting?
- iii. What kind of issues will be discussed?
- iv. What questions will be asked, and who will ask them? (Allocating critical strategic questions among attendees is an effective tactic)
- v. What possible solutions have you already identified?
- vi. When do you propose the issue to be resolved?
- vii. How do you propose the issue to will be resolved?
- viii. Who has been assigned which duty?
- ix. Who else supports the initiative?
- x. What is the way forward? These must be agreed upon with the officials before leaving the meeting.

The following are tips for successful lobbying:

- i. Identify key decision-makers who have the greatest influence on the decision-making process. It is important to locate and contact information for key stakeholders during the initial research.
  - ii. Develop a target list of names of community leaders, elected politicians, government officials, and other civil society groups.
  - iii. Stay in touch informally with these contacts to develop a relationship of trust before approaching them.
  - iv. Identify influential individuals who support or are interested in the issue under consideration. Even if the supporters do not have decision-making power directly linked to the issue of interest, they may help in exerting influence on the key decision-makers. Note that it is not the elected representatives only who hold influence. Maintain contacts and relationship with staff who work for the elected officials.
- 3) **Advocacy-** Advocacy is the process by which an individual or group aims at influencing decisions within political, economic, social systems and institutions. Advocacy can include many activities that a person or organization undertakes including media campaigns, public speaking, commissioning, publishing research and conducting exit polls or filing of an amicus brief. It can also be defined as any action that speaks in favor of, recommends, argues for a cause, supports or defends, or pleads on behalf of others.

### **Activities for Advocacy**

The following is a list of suggested advocacy activities.

#### **i. Organizing**

This is building power at the grassroots by mobilizing communities to take action on a given issue.

#### **ii. Educating decision makers**

This entails providing information on an issue to decision-makers to ensure that they are informed on a given issue facing the public.

#### **iii. Creating a Platform for meeting with Decision-Makers**

The communities have an opportunity to meet legislators and decision-makers face to face and discuss the issues that affect their lives. Not only do legislators receive the tools they need to represent their communities, but they are also equally empowered to influence the outcomes of policy debates.

#### **iv. Conducting Research**

This entails collecting facts and evidence that support the issue being advocated for in the community.

#### **v. Organizing a rally**

This involves mobilizing support from people on the cause being advocated for in the community.

#### 4) Manifestos

A manifesto is a statement of intentions, and may consist of only a few words or many pages of text. A manifesto can help to guide in making decisions and keeping the user focused on goals. For example, Political parties must have a Party Manifesto that guides the activities of the party with regard to National Development.

#### 5) Memoranda/ Memorandum

This is a brief(s) of written record(s) to the government and other stakeholders that hold power or influence, for example, the mining companies. The basic function of a Memorandum is to make the recipient aware of specific information as conclusively as possible.

A memorandum can be written to inform, to persuade, or to give specific feedback on a particular topic. A memorandum is written using a specific format which is accepted by the organization in which the memorandum is used. The following are the key elements of a memorandum:

<b>Memorandum</b>	: Subject title
<b>To</b>	: The person receiving the memorandum
<b>From</b>	: The person writing the memorandum
<b>Date</b>	: Current date
<b>Subject</b>	: A short description on the issue

**Introduction:** explains why the memorandum has been written and what issues are being raised in the memorandum.

**Body:** contains details explaining the issues being discussed in the memorandum and their implications.

**Conclusion:** Emphasizes on the call for which the action is being proposed.

**Members Present:** Include names of all members party to the memorandum

*NOTE: Proof-read the memorandum before sending it out to the intended recipient.*

#### 6) Communique

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

##### Preparing a One-Pager

This is a summary of information on an issue prepared in one page. The information contained in it should be clear and concise. The name and contact information should stand out. Stakeholders should be given an outline of the situation to be

discussed, facts and figures related to the issue and proposed solutions. There is need provide the necessary relevant reference that is; newspapers, website links and brochures for more information.

### **Letter writing and e-mail campaigns**

Letter and e-mail campaigns can be an effective means of communication. It involves writing as an individual or getting enough people to submit letters, postcards or e-mails to the target audience.

### **Phone Calls**

For effective use of phone calls:

- Always try to deliver a one-pager prior to the phone call.
- Be prompt and prepared to deliver the message in a clear, concise and compelling manner.
- End the call by asking the target audience what they intend to do about the issue.

### **Face to face meetings**

These are the most effective ways to engage officials and elected members in a dialogue.

## **7) Public Interest Litigation**

Public interest litigation is defined as the use of legal action, which seeks to advance the cause of minority or disadvantaged groups or individuals, or which raises issues of broad public concern. It is a way of using the law strategically to effect social change. Public interest litigation actions concerned with housing and land rights, police abuses, corruption, electoral malpractice and political violence among other issues.

### **TOOLS FOR PUBLIC PARTICIPATION**

Advisory committees  
Public petitions  
Lobbying

Advocacy

Manifestos

Memoranda/memorandum

## SESSION 2: Tools for Social Accountability

### Introduction

Citizens and communities have to enhance social accountability to improve governance processes, service delivery, resource allocation and use. Different methods and tools are used. Methods are the procedures used to gather and analyze data on the issues. Tools are the instruments used while undertaking these procedures. Examples of the tools are the score cards, Community Radio and Citizen Charters.

### Time:

### Session Objectives

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

- a) describe tools for social accountability;
- b) explain ways in which the Constitution of Kenya promotes public participation

### Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- The County Governments Act, 2012
- Other relevant Acts
- IEC materials

### Suggested Training Methods

- Question and answer
- Discussion

### Suggested Learning Activities

- i. Use question and answer to explain the meaning of social accountability.
- ii. Describe the tools for social accountability.
- iii. Discuss ways in which the Constitution of Kenya promotes public participation
- iv. Summarize the session.

### Suggested Assessment Methods

- Question and answer
- Observation during presentation

## KEY NOTES

### Social Accountability Tools

Social accounting is also known as social audit. It is initiated by research organizations and civil societies. The accounting involves gathering information on resources or facilities meant for social objectives. The purpose of the social accounting is to expose any mismanagement, corruption and to discourage fraud.

To carry out a social accounting;

- i. Define the objective of the audit
- ii. Identify what and who will be audited in government or service providers
- iii. Gather data from official records, case studies or participation observation
- iv. Analyze the data gathered
- v. Present the findings in a public hearing
- vi. Organize for follow-up

The tools used for social accounting include:

### Community Score Card

This is a monitoring tool used to exact social and public accountability from local providers. This is in terms of quality, efficiency and transparency in service provision.

### Community Radio

Community radio is a nonprofit making broadcast that serves geographic communities in rural and urban areas. It is communicated using local language, which means that it is accessible to people who cannot access other media. The radio broadcasts issues of local concern. The radio is often paired with other communication tools such as mobile phones for call-in shows, or face to face listening groups which enhance active public participation and uptake of the information being shared.

### Citizen Charter

This is a document that informs the citizen the services that they should get. It states the standards that are expected of the services. This protects the public from exploitation and corruption from service providers.

### Public hearing

A public hearing is a formal meeting for receiving testimony from the public at large on a local issue, or proposed government action. It gives the public an opportunity the right to be heard. Public hearings are held to open discussions on legislative sensitive or controversial matters such as land use, plans and budgets. The hearings are held to clarify community needs as their constitutional right. They are also held to gather information and find a solution to a community problem or issue. Successful public hearing is influenced by:

- i. Prior timely public notice for the meeting.
- ii. Setting ground rules to conduct the hearing.
- iii. Maintaining an impartial attitude to have fairness during the hearing
- iv. Decisions made that are consistent with legal standards.

## UNIT 5: PLATFORMS FOR PUBLIC PARTICIPATION

**Time:**

### Introduction

Public participation refers to different mechanisms provided for the community to express opinions in order to influence political, economic, management or other social decisions. Participation activities may be initiated by the government or a citizens' perspective. The Constitution requires that these activities be undertaken at the government, corporate or social level. Public participation builds support for activities, educates the public on their role in governance processes and facilitates useful information exchange regarding the local situations.

This unit covers the following;

- Platforms for public participation which include:
  - Round Table discussions
  - Community forums
  - Social Media
  - Public Consultations
  - Public Baraza
  - Public/ individual Protests (Picketing, Sit-ins, Boycotts, Vigil, Hunger strikes)
- Appropriate platforms for public participation;
- Challenges facing public participation
- Solutions to challenges facing public participation

### SESSION 1: Platforms for Public participation

**Time:**

#### Session Objectives

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

- a) describe platforms for public participation;
- b) select appropriate platform for public participation.

Suggested Learning Resources

- The Constitution of Kenya,2010
- Citizen Handbook Uraia/IRI,2012

- County Governments Act, 2012
- IEC materials

### **Suggested Training Methods**

- Brainstorming
- Group Discussion
- Experience Sharing

### **Suggested Assessment Methods**

- Question and answer
- Observation during group presentations.

### **Suggested Learning Activities**

- i. Brainstorm on platforms for public participation.
- ii. Share experiences on platforms for public participation.
- iii. Conduct group discussion on platforms for public participation.
- iv. Present and discuss the platforms for public participation in plenary.
- v. Summarize the session.

## **KEY NOTES**

### **a) Round Table Discussions**

These are discussions whereby experts or professionals holding different views on a compounding issue come together at a roundtable to have an engagement. Through dialogue they get way forward or long lasting solution to the issue at hand.

#### **i. Benefits of Round Table**

Round table discussions have the following benefits:

- Builds alliances with concerned partners and possible champions
- Enables free and effective negotiations conducted with objectivity
- Opens opportunity for self-expression
- Enhances mutual understanding among parties in the discussion
- Helps to establish the root cause of challenges.

#### **ii. Tips for Successful Roundtable Discussion**

- The venue for the discussion should be convenient for the participant
- Simple language and where possible the local language should be used.

- During the discussions, norms, values and culture of the community should be respected
- Choice of the day, week or time of the year for the discussion should be convenient for all the participants
- The language and content of the presentations must be relevant and appropriate for the audience
- Regular engagement with the community is necessary
- The relevant government offices and structures should be involved
- Divergent opinions should be embraced.

### **b) Advisory Committees**

- i. The composition of the advisory committees is driven by the purpose for which they are constituted.
- ii. Members are chosen from respective fields and/or specific areas of expertise
- iii. The composition takes cognizance of constitutional provisions such as equity, inclusiveness, equality, non-discrimination, protection of the marginalized and gender balance.
- iv. The advisory committees provide guidance and input on a wide variety such as issues of public safety, business, environment and health care among others.

It is important for the public to be familiar with the different members of the advisory committees to enhance engagement.

### **c) Community Forums**

Community forums are important in building consensus among different groups in a community. They serve as an invaluable tool for recruitment of future advocacy efforts and help in building trust among community members. An example of community fora is the concept of Citizens' Parliaments commonly known as "Bunge La Mwananchi", which is a platform for communities to discuss, share and exchange information on matters that affect them. In such fora, political speeches by elected officials should be avoided.

### **d) Social Media**

These refer to the technology and platforms that enable the creation of interactive webs. It consists of any online channel such as e-mail, twitter, U tube and face book among others. This enables content creation, collaboration and exchange by the public on issues affecting them. Social media can be used for organizing social events, communicate information develop position, distribute e-petitions where applicable, share and exchange ideas or issues in the community.

## Benefits of Social Media

The benefits of Social media are:

- People and processes are more visible
- It increases participation by wider audience, for example, young adults hence raises the level of representativeness
- Leads to a more personalized connection with the audience
  - It is cost effective
  - These avenues of communication can be used to spread messages on public participation in governance processes.

### e) Public Consultations

Public consultation is a form of public participation involving interest groups or parties in an issue affecting the community. It is a regulatory process in which the communities input on matters affecting it are sought. It involves notification of issues to be consulted on. The main focus of public consultation is to improve efficiency and transparency in community service.

### f) Public Baraza

A Baraza is a social gathering meant for raising awareness in the community, creating networks, sharing knowledge and ideas. It is also a means of bringing large and diverse groups of people together at a short notice. The common types of baraza are residents' meetings held in a given area to discuss issues that affect them such as security. Since this takes the form of a social gathering, entertainment may be arranged. Cultural and other forms of entertainment promote talent and social cohesion among communities.

### g) Protests

A protest is a collective term denoting many different forms of expression such as the following among others:

- Picketing
- Sit-ins
- Boycotts
- Vigil
- Hunger strikes.

Protests may take place either passively or actively. Passive action, or protest, entails appealing for change within a system. This implies that a message is conveyed and gains attention, without disrupting the system. The picture below shows an example of a public protest.



Figure 25: Public protest

### Selecting appropriate platforms for public participation

The principles of public participation can be applied in various contexts. This depends on the issue, need or concern raised by the public. The table below shows some examples of contexts in which the platforms could apply.

Platform	Application	Relevant context
Round table	<ul style="list-style-type: none"> <li>· Conflict resolution</li> <li>· Self-expression</li> <li>· Building consensus on an issue</li> <li>· Consultative planning</li> </ul>	<ul style="list-style-type: none"> <li>· Boundary disputes</li> <li>· Food security</li> <li>· Disease outbreak</li> <li>· Strategizing on the community progress</li> </ul>

Community fora	<ul style="list-style-type: none"> <li>· Building consensus on issues</li> <li>· Building trust among groups</li> <li>· Appreciation of divergent views</li> <li>· Exchange of information</li> </ul>	<ul style="list-style-type: none"> <li>· Acquisition of a piece of land to put up a social facility.</li> </ul>
Public consultations	<ul style="list-style-type: none"> <li>· Solicit for public views/ opinions</li> <li>· Identify community needs</li> <li>· Prioritizing community needs</li> </ul>	<ul style="list-style-type: none"> <li>· Acquisition of a piece of land to put up a social facility</li> <li>· Introducing new crops</li> <li>· Delimitation of boundaries</li> </ul>
Social Media	<ul style="list-style-type: none"> <li>· Building consensus</li> <li>· Notification on issues</li> <li>· Carrying out research</li> <li>· Influencing change</li> <li>· Awareness creation</li> </ul>	<ul style="list-style-type: none"> <li>· Campaign on substance use</li> <li>· Early warning on natural disasters</li> <li>· Paying tax</li> <li>· Controlling juvenile criminal behavior</li> </ul>
Public Baraza	<ul style="list-style-type: none"> <li>· Dissemination of information</li> <li>· Raising awareness on government/public/social issues</li> <li>· Building capacity</li> <li>· Enhancing national cohesion</li> </ul>	<ul style="list-style-type: none"> <li>· Insecurity</li> <li>· Disease breakout</li> <li>· Distribution of mosquito nets, relief food, vaccination and seeds</li> </ul>
Protests	<ul style="list-style-type: none"> <li>· Appealing for change within a system</li> <li>· Expression of public opinion against a felt injustice</li> <li>· Seeking public empathy and support</li> <li>· Gaining attention</li> </ul>	<ul style="list-style-type: none"> <li>· Land grabbing</li> <li>· Embezzlement of public funds in school</li> <li>· Poor governance</li> <li>· Corruption</li> </ul>



## **SESSION 2: Challenges and Possible Solutions for Effective Public Participation**

### **Time:**

### **Special Objectives**

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

- a) identify challenges facing public participation;
- b) discuss possible solutions to challenges facing public participation.

### **Suggested Training Methods**

- Experience share
- Question and answer
- Discussion

### **Suggested Learning Resources**

- The Constitution of Kenya,2010
- Citizen Handbook Uraia/IRI,2012
- IEC Materials

### **Suggested Learning Activities**

Share experiences on challenges facing public participation. Discuss challenges and possible solutions to public participation. Summarize the session.

### **Suggested Assessment Methods**

- Question and answer
- Observation on active participation in group discussion

## **KEY NOTES**

### a) Challenges Facing Public Participation

Challenges identified at community level include:

#### **i. Relationship between the government and community**

The relationship between the community and government is at times strained. This is because of the negative perception that the government does not understand their issues and imposes policies and programs that affect them.

## **ii. Restrictions on policy timelines**

The government may be considering a policy change over a long period of time. However, the public consultation process may be short and may not allow the community and other stake-holders time to research and prepare to effectively participate.

## **iii. Lack of access to information**

The communities lack adequate information on policy, government programs and services. Some of the information is difficult to obtain and interpret. In addition, little research has been conducted concerning the Kenyan communities and the policy-making process.

## **iv. Inadequate representation of certain community groups in the decision-making process**

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

## **v. Lack of understanding of the policy making process**

The policy-making process tends to be very complex, making it difficult for most people to understand it. It is important to note that the process can help empower individuals and communities to implement policy. It can also help reduce public apathy or a situation where the public demands payment.

## **vi. Inadequate community resources**

For communities to play an active role in the policy-making process, it is necessary for them to have access to resources. These resources include adequate funding, government training programs, leaders, and volunteers to support the causes and initiatives.

## **b) Challenges identified at the government level**

Perceived resistance of communities as partners in policy development.

- Jurisdictional issues such as unresolved boundary disputes and the of location county headquarters.
- Operational bureaucracies within government.
- Unclear accountability on use of public resources.

## **c) Solutions to challenges facing Public participation**

The following are possible suggested solutions to challenges facing public participation:

### **i. Relationship between government and communities**

The challenge can be solved by creating horizontal initiatives to provide linkages among communities, government departments and agencies. This should be done considering the needs, concerns, and resources of the specific community involved.

## ii. Time and policy timeline restrictions

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

## iii. Lack of access to information

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

## iv. Inadequate representation

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

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

Empower individuals and communities on policy-making process.

## vi. Inadequate community resources

The government should provide communities with adequate resources and training programs. This is to facilitate communities to play an active role in governance processes. Figure 9 shows a community participation in government processes



Figure 26: Public participation on governance processes

## **APPENDIX 1: ACTS OF PARLIAMENT**

- Campaign Financing Act (CFA), 2013
- Code of Ethics for Public Officers 2012
- County Governments Act, 2012
- Elections Act , 2011
- Environmental Management and Coordination Act, 2009
- Ethics and Anti- Corruption Act, 2012
- Inter-Governmental Relations Act, 2012
- Kenya Law Commission Act,2013
- Land Registration Act, 2012
- Leadership and Integrity Act, 2012
- National Cohesion and Integration Act 2008
- National Government Coordination Act , 2012
- Political Parties Act, 2011
- Public Finance Management Act, 2012
- Public Officer Ethics Act, 2012
- Public Procurement and Disposal Act, 2005
- The Commission on Administrative Justice Act, 2012
- The Land Act, 2012
- Transition to Devolved Government Act, 2012
- Urban Areas and Cities Act, 2011



Ministry of Devolution  
and Planning



**Uraia**



Council of Governors

