

COMMISSION
FOR THE IMPLEMENTATION
OF THE CONSTITUTION

QUARTERLY REPORT

January - March 2011

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FOREWORD

The Commission for the Implementation of the Constitution (CIC) is established by the Constitution of Kenya 2010, to monitor, facilitate, coordinate and oversee the implementation of the Constitution. Its primary mandate is set out in Section 5 of the Fifth Schedule to the Constitution. This mandate requires CIC to report regularly to the Constitution Implementation Oversight Committee of the National Assembly on progress in the implementation of the Constitution and any impediments to the implementation. Further, the Commission for the Implementation of the Constitution Act 2010 requires the CIC to submit a report to the Oversight Committee and to the President and the Prime Minister quarterly. The reporting mechanism is the means by which the Commission accounts to the people of Kenya on the manner in which it discharges its constitutional mandate.

The Commission came into office on 4th January 2011. This, therefore, is its first quarterly report. Being the first report, the Commission has tried to use the report to provide the greatest possible understanding of its mandate and to explain the efforts that it has made since appointment towards the discharge of that mandate. In the nature of a start-up organization, a large amount of its time and energy has in this first quarter been spent in preparatory arrangements to facilitate the efficient discharge of the CIC mandate. This fact is reflected in the amount of space that the report devotes to this aspect of its work.

There has also been much work done towards discharging the technical mandate of the Commission. The report seeks to reflect this as fully as possible. There is, however, not enough space to record everything, and this report cannot therefore be seen as conclusive of all that the Commission has done during this brief period.

The members of the Commission are Charles A. Nyachae, Elizabeth Muli, Catherine Mumma, Florence Omosa, Kamotho Waiganjo, Kibaya Imaana Laibuta, Ibrahim Ali, Philemon Mwaisaka and Peter Wanyande. Their biodata is provided at the back of this report for public information.

The Commission recognizes that it is called upon to discharge a historic task in the process of giving Kenya a rebirth, as promised by the new Constitution. Members of the Commission feel privileged to have been given this important responsibility to serve the people of Kenya in this capacity. The Commission would like to use this first report to restate to the people of Kenya our recognition of the sacred trust placed upon our collective shoulders and our commitment to discharge the responsibility faithfully, without fear or favour, and in the best interest of the people of Kenya.

In this first quarter the Commission has hit the ground running. The task has been huge. We can report however, that we have made steady progress in setting the pace for implementation of the Constitution faithfully and within the timelines set in the Constitution. What is contained in this report should enable the people of Kenya to

remain focused on the implementation process, and equip them better to monitor that process. In the report CIC, sets out how the Commission has interpreted its mandate, how it has set about discharging it, its achievements for this quarter, the challenges it has experienced and how it intends to move the implementation process forward.

The Commission will remain accessible to the people of Kenya and will open all its processes to public scrutiny. CIC encourages Kenyans to read and internalize the Constitution, and to remain vigilant in ensuring that it is upheld, protected and defended, at all levels and at all times.



Charles Nyachae
Chairperson

EXECUTIVE SUMMARY

The Commission for the Implementation of the Constitution (CIC) is established under section 5 of the Sixth Schedule to the Constitution and the Commission for the Implementation of the Commission Act, 2010 which was legislated by the National Assembly in 2010.

The mandate of CIC is provided for in section 5 (6) and 15 (2) (d) of the Sixth Schedule to, and in Article 249 (1) of the Constitution. The functions of CIC are monitoring, facilitating, coordinating and overseeing the implementation of the Constitution, reporting quarterly to the President, Prime Minister, the Parliamentary Select Committee for the Implementation of the Constitution and to the People of Kenya. In addition, CIC is required to work with all constitutional commissions. All these functions are geared towards the protection of the sovereignty of the people, securing the observance by all State organs of the democratic values and principles set out in the Constitution; and promoting constitutionalism.

CIC is the focal institution charged with facilitating, monitoring and overseeing the implementation of the Constitution. This quarterly report concerns itself with the mandate and functions, performance and activities of CIC in the implementation process, including challenges experienced during the period between January to March 2011.

In the first three months of its work, CIC has made significant progress in setting up strategies, mechanisms and partnerships necessary to discharge its mandate. To begin with, the Commissioners have elaborated a common understanding and view of their mandate which has helped CIC to start its work without any major delay. CIC has also developed a number of strategies to fulfil its mandate. As part of the strategy, CIC has, in consultation with experts and stakeholders developed a framework to enable it to effectively deliver as expected.

CIC has elected to adopt results based planning and has defined key result areas at the outcome level. These result areas will assist in guiding the Commission's work and provide the basis for accountability to other institutions and the public at large. The result areas include:

- Laws that are compliant with the letter and the spirit of the Constitution;
- Policies that are compliant with the letter and spirit of the Constitution;
- Institutional frameworks and administrative procedures that are operating in accordance with the values and principles of the Constitution

CIC has also developed a sectoral strategy for various key constitutional issues including devolution, representation and legislation, executive and the security sector, the Bill of Rights, public finance, public service and leadership, land and environment and the judiciary and constitutional commissions.

At the implementation level, significant progress was recorded in the January – March 2011 quarter. A number of legislations, including the Vetting of Judges and Magistrates Act, were put in place. Work also began on the review of administrative procedures such as the Police Recruitment Guidelines. CIC also spent time on key Constitutional interpretation issues, including with respect to the controversy regarding the nominations of the Chief Justice (CJ), Director of Public Prosecution (DPP), Controller of Budget and the Attorney General. A range of public and stakeholder consultations were also undertaken during the period under review ensuring that the principle of public participation is observed in the Constitution implementation process.

Important administrative and programmatic matters were also addressed by CIC during its first three months of work. Setting up CIC began immediately the Commissioners were sworn in on 4th January 2011. With nothing in place other than an office, the Commissioners spent time discussing where and how to begin. The internal consultations were of two kinds. The first addressed administrative issues, especially those relating to the establishment of the CIC secretariat. Included in these consultations were issues to do with staffing, finance, procurement, information technology and outreach activities, among others. The second category of the initial internal discussions related to technical and programmatic issues. The discussions here focussed on the mandate of CIC and related matters.

CIC did not anticipate significant impediments to its work when it took office. It nevertheless recognized that like in any other life endeavour, challenges would inevitable arise in the course of its work. These challenges were initially not specific and only began to crystallize as the work unfolded and progressed. These challenges, which are not necessarily impediments, can broadly be classified as administrative and organizational, political, and core business challenges.

A number of steps and actions can be taken to reduce the risks posed by these emerging challenges. Consequently, the report discusses each group of challenges and makes a number of legal, administrative, policy and financial recommendations which CIC hopes the government and other stakeholders will take on board in support of the implementation of the Constitution.

1. BACKGROUND

The promulgation of the Constitution of Kenya, 2010 on 27th August 2011, marked an auspicious and historic moment for Kenya. It marked the end of a long journey for the country in search of a constitutional dispensation which truly reflected the will and the aspirations of the people of Kenya. To fully understand the role and progress that has been made in implementing the new Constitution, it is important to appreciate the historical background and political context in which the implementation is taking place.

1.1 The History of Constitution-Making in Kenya

The 1963 Constitution which came into force at independence on 12 December 1963 guided Kenya's political and socio-economic development for 47 years. During this period it was subjected to 38 amendments. One of the most significant constitutional amendments took place in 1982 when section 2A was inserted into the Constitution of Kenya consequent upon which Kenya became a de jure one-party state. This state of affairs subsisted for a period of seven years. In 1991, following sustained political pressure to return the country to a multi-party state, section 2A was repealed.

The Constitutional re-establishment of a multi-party system of government in 1991 marked the beginning of heightened pressure for constitutional reforms, characterised by intense advocacy and political activities for a period of another seven years. These demands for change culminated in the enactment of the Constitution of Kenya Review Act of 1998. The 1998 Act provided the legal framework for a participatory constitution-making process which resulted in the 2005 Draft Constitution that was rejected at a popular referendum held in November of the same year. However, the outcome of the 2005 referendum was by no means the end of the collective desire and demand for comprehensive constitutional reforms.

Following the disputed Presidential Election of December 2007 and the ensuing post-election violence, two pieces of legislation were enacted to lead Kenyans to a new Constitution. The first was the Constitution of Kenya (Amendment) Act 2008. It was enacted on 22 December 2008 and provided a new roadmap for constitutional reforms and established the organs and mechanisms for constitutional review. The second was the Constitution of Kenya Review Act 2008, which was enacted on 29 December 2008. This Act sought to facilitate the completion of the review process. It therefore provided a legal framework for the review mechanisms and established organs charged with the responsibility of facilitating the review process.

The 2008 Review Act established a Committee of Experts (CoE) which was mandated to finalize its work on a new (Harmonised) Draft Constitution within twelve months from the date of appointment. On 17 November 2009, the CoE published a Harmonised Draft Constitution. The Draft Constitution was approved by the National Assembly and subjected to a referendum on the 4th of August 2010, conducted by the Interim Independent Electoral Commission (IIEC).

The results of the referendum were that the Draft Constitution received 67% support of the electorate and, in accordance with the enabling law, came into force on 27th August 2010, the date on which it was promulgated by the President.

1.2 The Political Context

The promulgation of the Constitution of Kenya 2010 is regarded as the most significant achievement in governance in Kenya since independence in 1963. The difficulties experienced in previous attempts to pass a new Constitution serve to reinforce this view. The promulgation of the Constitution on 27th August 2010 therefore marked the beginning of an era of good governance and political administration. It rekindled the hope for a new social order and economic prosperity guided by national values and principles of governance set out in Article 10 of the Constitution.

The promulgation ceremony provided the occasion for the President and the Prime Minister to reiterate the promises made during the referendum campaigns to the effect that the Constitution of Kenya, 2010 would stimulate major improvements in the daily lives of ordinary Kenyans. The people of Kenya await the full implementation of the Constitution they overwhelmingly voted for. Accordingly, the effective and timely implementation of the new Constitution may be viewed as a vindication of the people's support of the enactment of the new Constitution.

The implementation of the Constitution is also key to ensuring political stability in the country. The Constitution, it is hoped, marks the end of an era in which the country experienced large-scale election-related violence including the violence of 2007 triggered off by poorly-managed Presidential Elections. It should be remembered, however, that the 2007 violence was a climax of many underlying political currents which were enhanced by the divisive referendum campaigns of 2005.

2. THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

CIC was established by Section 5 of the Sixth Schedule to the Constitution and enacted by the Commission for the Implementation of the Constitution Act, 2010. The Act confers CIC with legal status, including the right to sue and to be sued. It also provides for the functions, powers, qualifications of, and appointment procedure for the Chairperson and members of CIC. CIC, which is made up of a Chairperson and eight members, supported by a secretariat, formally came into being on 4th January 2011 when the Chairperson and the Commissioners were sworn in by the Chief Justice.

2.1 The Mandate, Functions and Role of CIC

The mandate of CIC is provided for in section 5 (6) and 15 (2) (d) of the Sixth Schedule and in Article 249 (1) of the Constitution. Section 5 (6) provides for the functions of CIC which are to:

1. Monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the constitution;
2. Coordinate with the Attorney General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement the Constitution;
3. Report regularly to the Constitutional Implementation Oversight Committee on
 - o progress in the implementation of the Constitution, and
 - o any impediments to its implementation; and
4. Work with each constitutional commission to ensure that the letter and spirit of the Constitution is respected

Section 15 (2) (d) enhances the functions of CIC by empowering Parliament, by legislation, to provide mechanisms that ensure that CIC can perform its role in monitoring the implementation of the system of devolved government effectively.

CIC is obliged to carry out the above functions with the ultimate aim of achieving the objects of the constitutional commissions and the independent offices stated in Article 249 (1) namely to:-

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

Article 249 also provides that CIC is to be subject only to the Constitution and the law and is independent and not subject to direction or control by any person or authority.

The functions and objects of CIC are made specific by the CIC Act 2010. The Act provides greater specificity to the constitutional requirement of regular reporting, requiring that CIC shall report at least once every three months to the Parliamentary Select Committee for the Implementation of the Constitution (CIOC) on the progress in and any impediments to the implementation of the Constitution. Further, the Act confers on CIC, as a general matter, the power to exercise such other functions as are provided for by the Constitution or any other written law.

In this context, CIC understands its role as that of supervising, on behalf of the people of Kenya, all the implementing arms of government (Executive, Parliament, and the Judiciary), other government institutions and any other entities tasked with the responsibility of ensuring the Constitution is implemented at both the national and county levels. As a result, CIC envisages its role as that of ensuring that policies, laws, structures, systems and administrative procedures are developed and applied at all levels of government. These should be consistent with and according to the letter and spirit of the Constitution of Kenya, 2010. The aim is to work towards achieving a united, peaceful and prosperous Kenya in which all citizens, including leaders, respect the rule of law, uphold national values and live by the Constitution.

Key to CIC ensuring that the Constitution is implemented effectively is the active participation of the people of Kenya, in a meaningful way, in the processes that will lead to full implementation of the Constitution. In this regard, CIC will strive to be the guarantor to the general public that the public's right to actively participate will be upheld by the concerned implementing arms of government, other government institutions and other entities. To fruitfully achieve this, CIC considers effective civic education a necessity. CIC will therefore facilitate and monitor civic education carried out by various actors. This may call for CIC assessing the content and provision of civic education provided for by the various civic education providers countrywide.

Additionally, to effectively protect the sovereignty of the people, the public would be required to be aware of their rights and responsibilities under the Constitution. Therefore, at the very least, CIC plans to facilitate and/or conduct public awareness or civic education on the role of CIC and the process of implementation, along with the duties and responsibilities of the people of Kenya. Public awareness is necessary for people to ensure State organs and, implementing arms of government and institutions observe democratic values and principles and to promote constitutionalism.

To achieve the above, CIC plans and is already overseeing, facilitating and monitoring both the review, design, development and application of policies, laws and administrative procedures by different arms of government and institutions, at both the county and national levels.

The attitudes and behaviours of employees of various arms of government and institutions as they deliver services to the people on a daily basis and the people of Kenya as they receive the services, will be influenced by the new/revised policies, laws and administrative

procedures. It is therefore during the phase of application that the observance and realisation of the new dispensation will be tested practically. CIC will oversee this phase of implementation as well.

For example, CIC, the implementing government ministries and institutions, Parliament, the Judiciary and the people should be vigilant as policies, laws and administrative procedures are applied on a daily basis so as to ensure they are not violated. For instance, citizens need to be observant and inform CIC if any appointing authority fails to follow the procedures laid down in the Constitution and any law for the appointment of public officers, promotion or election of office holders. Additionally, citizens need to inform CIC if and when the national government usurps the roles and responsibilities of county governments.

In this regard it is necessary to point out that the violations may also involve failure to take into account national values and principles of the Constitution as well as provisions of Chapter Six of the Constitution on leadership and integrity. Violations can also occur when, in carrying out their responsibilities, those delivering services act in contravention of the provisions of the Constitution. This can occur for example when a public officer takes action that is not in line with the new/reviewed laws, policies and/or administrative procedures or that contradict a provision in the Constitution, including the democratic values and principles. Consequently, CIC must ensure that any State organ or persons employed to serve the people do not undermine the rights and privileges of the people enshrined in the Constitution. When this happens CIC has a duty to intervene by, for example, pointing out any violations of people's rights and where necessary, instituting legal proceedings against those that violate the rights.

Overall, the fulfilment of CIC's mandate will be guided by the national values and principles of Article 10 and the values in Box 1 below.

Box 1
Principles and Values

1. The people of Kenya first
2. Servant, humble, selfless and reliable leadership
3. High integrity and consistency in conduct
4. Respect of people's rights and freedoms and facilitative of their fulfilment
5. Inclusivity and participation of the people
6. Objectivity and impartiality in decision making
7. Equity, fairness and justice
8. Upholding human dignity
9. Transparency and accountability, discipline, creativity and excellence
10. Being a living example of the new constitutional dispensation

Since CIC is mandated to oversee the implementation of the Constitution, it is imperative that it plays a coordinating role and has access to information on all initiatives, activities and actors involved in the implementation of the Constitution. This is the information CIC will use to monitor the activities and initiatives related to implementation with a view to ensuring that they contribute to the effective implementation of the Constitution, including the requirement that these activities and initiatives are consistent with the letter and spirit of the Constitution. CIC appeals to all persons and groups involved in any activities relating to the implementation of the Constitution to cooperate in this regard.

In sum, CIC views its mandate as facilitating, overseeing, monitoring and coordinating actions and processes required to translate the provisions of the Constitution of Kenya, 2010 into reality.

2.2 Process for Achieving the Mandate of CIC

To enable CIC to facilitate, monitor, coordinate and oversee the design, development and application of policies, laws and administrative procedures for the implementation of the Constitution. CIC has proposed a process to apply to all arms of government (Executive, Judiciary and Parliament).

In this regard, CIC requires each arm of government and government institutions to:

- (a) Understand the Constitution, what implementing the constitution demands of the arm of government and institution, and the minimum standards/benchmarks developed to guide the process of implementing the Constitution consistently and in a coordinated manner;
- (b) Establish the status of, and then review existing and/or develop, where necessary, policies, sessional papers, laws and administrative procedures relating to the ministry or institution's functions and to the sector in which they operate. The aim is to ensure that they are in line with the letter and spirit of the Constitution. In the course of this, every implementing arm of government and institution should ensure the active participation of the people of Kenya, transparency of the exercise and the application of the national values and principles in the Constitution. In the case of policies and administrative procedures, each institution attends to them as per their needs while forwarding the common issues to the relevant arms of government or institutions for attention. With respect to laws that need amendment or development, including those listed in the Fifth Schedule of the Constitution, forward the same to the AG's office. In each case, copies of the same should be submitted to CIC.
- (c) Develop and apply a change management strategy and plan. Change management is a structured and systematic approach to transforming individuals, groups of people or institutions, usually after a situational analysis. In the Kenyan case the change anticipated was triggered off by the coming in place of the Constitution of Kenya, 2010. Successful change management should therefore entrench the culture of constitutionalism within the institution and in its delivery of services to the people of Kenya. Specifically, each arm of government /institution

- needs to understand (i) where it is, (ii) where it wishes to be with respect to the demands of the Constitution, (iii) when, why, and what needs to be done to get there. To successfully manage the change into the new dispensation, each arm of government/institution will need to integrate implementation of the Constitution into its Performance Contracts. Each arm of government / institution is also to share its strategy and plan with CIC.
- (d) Apply the policies, laws and administrative procedures in the course of their daily activities. While CIC recognises that the people of Kenya will be receiving services as the above reviews/developments take place, CIC anticipates the exclusive provision of services under the new dispensation, once the development of the policies, laws and administrative procedures is completed. CIC will continuously monitor their application in order to ensure that the attitudes and behaviours of the employees of the three arms of government and other government institutions, during the delivery of services to the people of Kenya, are according to the requirements of the Constitution. Any deviation by any arm of government will require CIC to draw the attention of the concerned arm of government/institution to the anomaly and where the deviation persists, CIC will inform the public and if the implementing arm of government/institution does not rectify the situation, CIC may seek court intervention.

In determining whether any legislation, policy or procedure CIC reviews is consistent with the letter and spirit of the Constitution, CIC will take the following into account:

- The extent to which the public participated effectively in generating the policy or legislation;
- The consistency of any sessional papers; laws, by-laws and regulations; policies and administrative procedures with the letter and spirit of the constitution;
- The adequacy and sufficiency of the sessional papers; laws, by-laws and regulations; policies and administrative procedures in enabling the implementation of the Constitution;
- The impact of the sessional papers; laws, by-laws and regulations; policies and administrative procedures on other laws, institutions and at the two levels of government.

CIC, in pursuance of its mandate will from time to time undertake an audit of the different sectoral policies, laws, and administrative processes and structures and their day to day application. The aim will be to determine their compliance with the letter and spirit of the Constitution.

3. ACTIVITIES IMPLEMENTED DURING THIS QUARTER

As part of the strategy to accomplish its mandate, CIC has, in consultation with stakeholders, developed an interim strategic plan and organisation structure, together with job descriptions, to enable it to effectively deliver on its mandate. CIC has elected to adapt a results based planning approach and has defined key result areas at the outcome level. These result areas will assist in guiding CIC's work and providing the basis for accountability to the people of Kenya and government.

Box 2

Expected Results from CIC's Work

1. Laws that are compliant with the letter and the spirit of the Constitution.
2. Policies that are compliant with the letter and spirit of the Constitution.
3. Institutional frameworks and administrative procedures that are operating in accordance with the values and principles of the constitution
4. Observance of the requirements of the Constitution by all Kenyans

The interim strategic objectives of CIC are legislation, policy development, institutional frameworks and administrative procedures. These will form the core result areas and they are closely tied to the phases of the process CIC applies to perform its functions of facilitation, monitoring, oversight and coordination.

For each of the functions and phases of the process, the new dispensation brought about by the Constitution of Kenya 2010 may only be experienced by the people as they receive services related to the first fifteen chapters of the Constitution. These chapters informed CIC's development of eight thematic areas namely the Bill of Rights & Citizenship; Devolved Government; Executive & Security; Judiciary & Constitutional Commissions; Land & Environment; Public Finance; Public Service & Leadership; and Representation of the People and the Legislature. Each thematic area is headed by a Commissioner and serviced at two levels, technical and support. Technical support is provided by the three strategic objectives stated above while support assistance is provided by the Finance and Administrative units of CIC. The thematic teams report to the whole Commission. Commissioners are free to participate in the activities of any other thematic area. The Chairperson presides over activities and issues that are undertaken by CIC.

The national values and principles, together with the rights enshrined in the Constitution are crosscutting and so each theme, including sectors (e.g. health, education, housing and agriculture) which falls under the chapter on the Bill of Rights and the implementing arms of government and other government institutions shall mainstream these values, principles and rights into their activities.

A brief summary of the objectives of each theme follows.

Bill of Rights and Citizenship

The Constitution of Kenya 2010 is anchored on the fundamental human rights principles which are reinforced in nearly all the chapters. It is therefore imperative for all implementers in all sectors to appreciate their role in integrating human rights in their legal and policy frameworks. It has a whole chapter dedicated to the protection of specific civil, political, economic and social rights.

To implement the provisions of the Bill of Rights will require all implementing arms of government to integrate the relevant constitutional principles into their activities. Secondly, different sectoral implementers will be obliged to implement specific rights. Among these are the rights in Chapter Four of the Constitution, rights expressed in other Articles of the Constitution and rights stipulated in ratified international human rights treaties and conventions.

To ensure effective implementation of human rights, CIC will (i) apply a participatory approach of undertaking a stakeholders analysis to properly locate the different responsibilities relating to different rights; (ii) facilitate stakeholders to identify any priority legislation; (iii) monitor and oversee sectoral implementers as they implement the Constitution in order to ensure that they integrate the human rights approach in their policies and administrative/operational practices, and, the Bill of Rights and international human rights instruments into relevant sectoral laws and policies. Additionally, the thematic area will (iv) organise capacity building forums on human rights and the rights approach for CIC commissioners and staff and different implementing stakeholders.

Devolved Government

The devolution thematic area deals with all matters relating to the operationalization of the constitutional provisions on devolved government as provided for in Chapter Eleven of the Constitution. This includes the development of new policies legislation and administrative procedures and, in some cases, the review of existing policies, legislation and administrative procedures required to implement the devolved system of government. The thematic area monitors the status and progress made in the development of legislation, policies and administrative procedures required to implement devolution.

A list of legislation required for implementing devolution and the timeframes within which the legislation must be passed is given in the Fifth Schedule to the Constitution. CIC has, however, identified additional legislation required for the effective implementation of the devolved system of government. These were not listed in the Fifth Schedule. CIC has also revised the timeframe for the enactment of these pieces of legislation. In this regard the convener of the devolution thematic area works with the Ministry of Local Government which is responsible for the initiation and development of policies, legislation and administrative procedures required to implement devolution including the

establishment of county governments. However because the country operates a devolved system of government, virtually every function of government including those functions that are assigned to the national government, all Ministries are required to address those areas of their mandate that will be affected by devolution. In this regard Ministries have to determine the nature of the relationship between national level functions and how the performance of such functions will affect and be affected by devolution.

Ministries also have to determine how the two levels of government will work together for effective implementation of devolution. The devolution thematic team also works with non-state actors including civil society organizations to facilitate the implementation of devolution. In view of the fact that devolution is new, it is necessary to establish new structures especially at the county government level. The convener of this thematic area is responsible for developing work plans for the thematic area and for advising CIC on all matters relating to the timely and efficient implementation of devolution.

Executive and Security

Chapter Nine on the Executive provides for the functions and powers of the offices of the President, the Deputy President, the Cabinet and other offices such as the Attorney General and Director of Public Prosecutions; and their removal. The Executive formulates government policies and priorities. The legislation that requires enactment under this thematic area includes; Power of mercy- Article 133; Elections of the President Articles 136-142; and Domestication of International law- Article 2(5)

Under Chapter Fourteen, provision is made for the development of instruments and the establishment of institutions in the security sector. The institutions include the national security organs such as the Kenya Defence Forces, the National Intelligence Service and the National Police Service.

Issues relating to Presidential Elections shall be considered under the thematic area on Representation of the People to ensure consistency and uniformity in the development of electoral laws. Key tasks under this thematic area include; (i) Development of legislation in the Fifth Schedule and other relevant legislation including amendment of existing laws where necessary; (ii) Monitoring administrative procedures giving effect to the Constitution and other legislation; (iii) Reviewing existing administrative procedures and development of new procedures where necessary to ensure that they comply with the letter and spirit of the Constitution and reflect the principle that Executive authority in Kenya derives from the people and must be exercised for their benefit; (iv) Facilitating the development of a change strategy for the Executive and Cabinet with regard to decision making and a National Security Policy; and (v) Monitoring progress of implementation so as to ensure that service delivery is compliant with the letter and spirit of the Constitution.

Judiciary & Constitutional Commissions

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

Reforms of the legal and institutional frameworks of the Judiciary and Constitutional Commissions invariably involve the process of appointment to various constitutional and other public offices, which in turn, require adherence to (a) the national values and principles set out in Article 10; (b) the principles of justice set out in Article 159; and (c) in accordance with the guiding principles of leadership and integrity set out in Article 73(2) of the Constitution.

The thematic team works with sectoral stakeholders, including State and non-state organs, with the support of the Secretariat and technical advisors to effectively deliver on the Commission's mandate. The team convener is responsible for timely delivery of advice and reports to CIC in respect of the responsibilities set out in periodic work plans prepared and approved by the Commission. The convener is also responsible for building and sustaining consensus among respective sectoral stakeholders. All proposals by the thematic team are subject to consideration and adoption by the Commission.

Land and Environment

The Land and Environment thematic area is wide and covers the Ministry of Land, Ministry of Environment and Mineral Resources, Ministry of Forestry and Wildlife, Ministry of Water and Irrigation, Ministry of Tourism, Ministry of Northern and Arid Lands, Ministry of Regional Development and the Ministry of Livestock Development. The later Ministries are by and large focused on the rangelands of Kenya and therefore have great impact on the range ecology of the area.

CIC has written to many of these Ministries to advise CIC on their plans and programmes that respond to the Constitution. CIC has set in place tentative plans to engage with them and we await a response from them to date. CIC has also engaged with the Network of Environment CSOs and some low level consultations done already. Following these consultations a training workshop for selected Environment CSOs with support from WWF is now scheduled for April.

Public Finance

The thematic area on Public Finance is about guiding and coordinating the constitutional implementation activities relating to matters of Public Finance. The Public Finance Chapter deals with issues of public finance management both at the national and county

level, making the process of public finance management more participatory, and equitable than under the previous legal framework. The Constitution fundamentally transforms the fiscal architecture under which Kenya will be governed in the current constitutional order. In particular the public finance regime provided under the Constitution (i) Requires the setting of standards to achieve the progressive realization of economic and social rights; (ii) Establishes the principles that will determine the sharing of resources between the two levels of government namely (a) openness and accountability, including public participation in financial matters; (b) equity and fairness; (c) the need to make special arrangements for marginalized groups; and (d) prudent management of national resources. Additionally, the new architecture (iii) Makes the process of borrowing by the national governments more transparent; (iv) Separates the offices of Controller of Budget from that of the Auditor General so as to imbue effectiveness and accountability; and (v) Provides for the manner in which the national government must support the county governments whilst providing mechanisms for efficient utilization of resources at the devolved level.

There is need to enact legislation that covers the above issues and to review current policy, legislation and processes so that they respect and are consistent with the values of the Constitution and the principles of public finance management outlined in the Constitution. It is also important that cognizance is taken of the need to progressively attain socio economic rights under Article 43 of the Constitution. This will include the mapping of the current status with respect to the distribution of development resources and the setting of standards and guidelines to facilitate the state to demonstrate progression and accountability in the delivery of these rights.

National and county governments must also establish compliant administrative systems and processes that respect and enforce the new fiscal management environment. These should be in place long before the general elections considering that they will apply to the devolved governments from the day they are operational. Without this, there could be disruptions in the public finance sector and possible losses or mismanagement of public funds. Notwithstanding that the Constitution in Schedule 5 requires legislation under this Chapter to be concluded within more than one year, it is nevertheless essential that all legislation on this Chapter and any legislation dealing with fiscal management in other related chapters (e.g. on devolution) be fast tracked and completed within the next six months and at any rate before the next General Elections.

The role of CIC in this process is to oversee the development of legislation and administrative procedures that reflect the letter and spirit of the Constitution. It is also to ensure that in the development of such legislation and administrative procedures, a participatory approach is undertaken. To this end CIC will be liaising with the Ministry of Finance, as the key driver in Public Finance Management Reforms to ensure broad stakeholder involvement in the development of the legislation and the required procedures.

Public Service and Leadership

The thematic area covers Chapters Six and Thirteen of the Constitution and matters related thereto. The public service cuts across the entire government at both national and county levels. An efficient and effective public service is vital to the development of the country's economy. Transparent operations that are free of corruption all contribute to the efficient and effective delivery of public services. Implementation of Chapters Six on Leadership and Thirteen on the Public Service will ensure transparency, accountability, effectiveness and efficiency in the delivery of quality public services.

CIC will be working with players in the public service to ensure that the guiding principles of leadership and integrity as set out in Chapter Six of the Constitution and the values and principles of public service are guiding the conduct of business in the public sector. CIC notes that success in the implementation of the Constitution will be demonstrated by the commitment of the public service to the adoption of the culture of constitutionalism. Laws outlined in the Fifth Schedule of the Constitution will be developed or reviewed where they already exist.

Representation of the People and the Legislature

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

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

The team responsible for this theme is working towards achieving the above goal through consultations and discussions with key stakeholders, such as IIEC, political parties, parliament, responsible government ministries and institutions, county assemblies, civil society organisations and the people of Kenya. The discussions have led to the development of an IEBC Bill. Other discussions are planned at County levels so as to develop the Elections Bill and the Political Parties Bill and to facilitate the development of systems, process and administrative procedures for the electoral system and process.

CIC plans to simultaneously facilitate, monitor, oversee and coordinate all the activities by implementing arms of government so that all together work towards the implementation of the Constitution. However, because of time constraints, lack of a fully functioning secretariat and the forthcoming general elections, CIC is concentrating on facilitation, monitoring, coordination and overseeing of the development/review of policies, laws and administrative procedures related to laws in the Fifth Schedule whose deadline is in August 2011 and to the General Elections of August 2012.

3.2 Details of the Activities Implemented

The details of the activities related to the themes and CIC's core business, carried out during the January-March 2011 quarter are given below.

3.2.1 Public Participation and Stakeholder Engagement

A key part of the role of CIC is to ensure public participation in the constitutional implementation process. The initial discussions at CIC clarified the constitutional standard regarding public participation in public processes. In this regard, CIC recognises that public participation is a national principle under Article 10 of the Constitution and is stated in several other places in the Constitution. There is also a duty, direct or implied, that public participation be incorporated in the public processes. The implementation process is such a public process and CIC therefore made the decision from the beginning that it would have to put in place mechanisms for giving effect to this principle in its processes.

CIC has therefore elaborated a policy on public participation. It has therefore become standard practice to invite submissions by the public on matters to do with policies, legislation and administrative procedures, in any language using postal and electronic means. The public can also participate by expressing their views through the electronic and print media, attending and participating in workshops organized by government and other relevant institutions involved in initiating and developing the relevant policies, legislation and administrative procedures required for the implementation of the Constitution.

In order to ensure such public participation, CIC has advised the public on how they may participate effectively. In brief, members of the public, in their individual or collective capacities, should familiarize themselves with the entire Constitution; and identify aspects of any existing policies, legislation and administrative procedures which are not in line with the letter and spirit of the Constitution and submit their views to CIC. Every member of the public should be vigilant and ensure that the government and its institutions comply with the Constitution and with the new/revised policies, laws and administrative procedures (see details in Annex I).

3.2.2 Consultations with Stakeholders and Development Partners

The Commission for the Implementation of the Constitution will schedule consultative meetings and forums with each institution and sector to agree on sectoral implementation roadmaps for ensuring full compliance with the Constitution. The institutions are encouraged to develop reporting mechanism to ensure they also provide information to CIC and the public at large on the progress and impediments in their implementation of the Constitution.

In preparation for successful engagements with various stakeholders, CIC held meetings and consultations with different stakeholders. The purpose of these consultations were; first to enable CIC share its mandate with stakeholders; secondly to enable the stakeholders and CIC to agree on the modalities of working together in the process of implementing the Constitution; thirdly intended to get the stakeholders to own the process; and finally to build trust between the stakeholders and CIC. The meetings with civil society aimed at urging civil society to serve as one avenue of reaching out to the larger public and to incorporate the expectations of this sector of society in its preliminary planning.

CIC also held a three day retreat at Naivasha at which the Commissioners were inducted on the operational relationship between the Commission, the Ministry of Justice, National Cohesion and Constitutional Affairs and other stakeholders.

There have also been a series of meetings with development partners. The purpose of the consultation with development partners was mainly to brief the partners on the approach that CIC intended to follow in the discharge of its mandate and to explore ways through which the two would collaborate in the implementation of the Constitution.

A second tier of meetings that deserve specific mention is those that CIC has held with the top political leadership of the country. CIC met with His Excellency the President, Mwai Kibaki and the Right Honourable the Prime Minister, Raila Odinga, on 7th January 2011. This meeting was also attended by the Vice President. At one level, the meeting was a courtesy call. However, CIC also used the meeting to seek the support of the President and the Prime Minister for the work of the Commission. Both in private and through a statement that they allowed to be released to the press later, the President and the Prime Minister expressed support for the work of CIC and pledged that resources necessary for the discharge of its mandate would be provided to the Commission. Subsequent to this meeting the two principals have availed CIC opportunities to consult with them on various issues relating to the implementation of the Constitution.

CIC also held consultations with the media, through their representative organizations, such as the Kenya Editors' Guild, the Media Owners Association and the Parliamentary Reporters Association. The objectives of the consultations were to establish a positive relationship with the media, in the hope that this would enable CIC to discharge its functions more effectively to provide media practitioners with opportunity to state the expectations that they had towards CIC; and to provide a briefing to the media on the work of CIC thus far.

The full list of the various consultations and meetings that CIC has held with different stakeholders can be found in Annex II to this report. CIC will continue to hold consultations with stakeholders as the need arises.

3.2.3 Facilitation, Co-ordination and Monitoring Activities

Though CIC wished and still wishes that implementing arms of government first review/develop policies and sessional papers through comprehensive discourses where the public actively participates, before developing Bills, the need for making up for lost time meant that the January-March quarter had CIC concentrate on the reviewing of the urgent Bills in order to ensure that they were in line with the letter and spirit of the Constitution. The urgency still exists and the April to June, 2011 quarter will, to a large extent, work under the same pressures. It is therefore important that all arms of government invest their energies and resources in ensuring that the urgent laws and systems are put in place.

During the January-March 2011 quarter, CIC carried out the activities of its core business as summarised in table 1 below.

Table 1: Summary of Activities Implemented during the January-March Quarter

	Activity Implemented	Remarks
Policy Development	Meetings and consultations	Details are in Annex II
	Draft circular to guide the implementing arms of government and other government institutions is in place	
	Developed workplans at both CIC and thematic levels The workplans are being applied	The CIC workplan will be reviewed once the strategic planning exercise is carried out
	Thematic based meetings – all themes have written to their respective arms of government requesting for meetings	Most of these meetings will be held after the information sharing retreat with all Permanent Secretaries scheduled for the 4 th of April, 2011
Legislation	Procedure - for each bill a) CIC had stakeholders present their views b) Tracks CIC's comments in the body of the Bill and also consolidates the comments in a separate document	To ensure the constitutional requirement of participation by the people is held To have a trail for ease of communication
	Bills Reviewed and Handed over to the AG: a) Vetting of Judges and magistrates Bill b) Judicial Service Bill c) Independent Electoral & Boundaries Commission (IEBC) Bill d) Independent Offices Bill e) Salaries & Remuneration Commission Bill were reviewed and finalised and handed over to the AG	CIC, in consultation with AG and KLRC discussed and concluded the suggestions made by CIC CIC reviewed three versions of the IEBC Bill CIC awaits a meeting with the AG and KLRC to discuss CIC's suggestions
	Published Bills a) Vetting of Judges and magistrates Bill, and b) Judicial Service Bill	CIC had to inform Parliament of some amendments which were made to the bill

		with the letter and spirit of the constitution
	Bills assented to by the President: a) Vetting of Judges and magistrates Bill, and b) Judicial Service Bill	The bills are now law Once the Act is published, CIC will again review it to ensure it is still compliant with the letter and spirit of the constitution
Institutional Frameworks & Administrative Procedures	1. Procedures for Police Service recruitment	
Application of Policies, Laws & Administrative Procedures by Government Arms	CIC Monitoring and Overseeing: 1) Recruitment and Appointments - Nomination of Chief Justice, Attorney General, Controller of Budget and Director of Public Prosecutions - Recruitment to the Police Service - CIC helping the Service review its recruitment procedures 2) Ministry of Public Works and County jurisdictions 3) CIC is following up on other issues e.g. the nature of promotions taking place in government departments, that have come to CIC's attention	CIC objected to the way the exercise was being implemented The exercise is being repeated CIC wrote to the Service informing them that they have to recruit according to the letter and spirit of the constitution CIC has brought the issue to the attention of the Ministry of Public Works
	Court Interventions: 1) CIC has sought advisory opinion from the Court of Appeal, sitting as the Supreme Court, on various issues, in pursuance of Article 163 of the Constitution	Informed by the need to resolve issues, especially to do with the application of the national values and principles of the Constitution

3.3 CIC's Institutional Set-up

The efficient and orderly functioning of CIC is key to ensuring the effective implementation of the Constitution. Consequently, it is important to highlight the progress that has been made in setting up administrative systems, policies and regulations as well as other matters such as staffing to facilitate the work of CIC.

CIC Commissioners, as already noted, were sworn in on 4th January 2011. They occupied their offices at Delta House in Westlands and began work immediately. Initial discussions by the Commissioners identified a number of issues relating to the setting up and functioning of CIC that need to be addressed on a priority basis. Among these were staffing needs, financial arrangements, procurement procedures, communication strategy and outreach activities.

The second category of the initial internal discussions relating to the establishment of CIC addressed technical or programmatic issues. The discussions focussed on the mandate of the Commission. The Commissioners interpreted their mandate with a view to coming up with a correct and shared understanding of this mandate. This was necessary since the Commissioners have to work together towards its discharge. As part of this discussion,

CIC assembled relevant literature and background documents that will be used in the course of what will be a continuous interpretation of the mandate of the Commission.

CIC also spent a considerable amount of time identifying relevant stakeholders whose contribution to the work of CIC would be invaluable. Consultative meetings were held including the induction workshop organised by the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA) where different stakeholder discussed the role of CIC.(see Annex II) The specific activities relating to the establishment of a functioning secretariat outlined above are described in greater detail below.

3.2.1 Office Space

CIC was lucky because it did not have to struggle for office space. This is because it was able to work with some of the infrastructure left behind by the former CoE which was appointed under the Constitution of Kenya Review Act 2009, and whose work led to the enactment of the New Constitution. The Committee left behind a furnished and reasonably operational office, which CIC inherited. CIC was therefore saved the trouble, which can be considerable, of finding and equipping an office from scratch.

CIC is grateful to the Ministry of Justice, National Cohesion and Constitutional Affairs for facilitating a relatively smooth start, allowing it to concentrate on its core mandate earlier than it may have been able to.

3.2.2 Financial Arrangements

CIC is also grateful to MOJNCCA for preparing for the setting up of CIC by ensuring that the Treasury and Parliament allocated some fund towards the activities of CIC. As part of the introductory briefing by the Ministry, Commissioners were briefed that the Ministry had prepared a tentative budget and negotiated the allocation to CIC of Ksh.292 Million for the financial year ending June 2011. The Ministry informed Commissioners that it was aware that CIC was an independent entity that was supposed to have a separate vote but MOJNCCA would administer the funds for CIC until CIC had recruited its own CEO and the necessary staff to administer these funds in accordance with the relevant laws and regulations. During a subsequent meeting it was confirmed that the money allocated to CIC was Ksh.262 Million. In practice, CIC would like to report that the MOJNCCA has so far discharged its task of administering CIC funds in a reasonable manner. However, there can be no substitute for complete financial autonomy, which CIC expects to have by June/July 2011.

3.2.3 Staffing

CIC also devoted time, from the start, on its staffing needs and ways in which these might be addressed. In particular, CIC sought to put in place a basic staff complement to form part of its initial team. The Ministry has also deployed staff to assist CIC and support the process of its establishment including an acting Chief Executive Officer, deployed from the Public Service Commission (PSC), a Finance Officer, an Accountant, a Human Resource Management Officer and other administrative support staff. The Ministry also hired some casual staff and authorised the Commission to hire temporary staff that would supply the immediate needs of the Commission. CIC with the assistance of some development partners also hired consultants to assist with the discharge of specified tasks. For example, a media consultant and a Personal Assistant to the Chairperson were hired under this arrangement. CIC is grateful for assistance that it has received from DFID and SUNY KENYA which has enabled it to hire the two consultants. The Ministry has also approved the hiring of Research Assistants, on temporary basis, to support the work of the Commissioners.

In the meantime CIC, with the support of MOJNCCA and UNDP has been working on an organisational structure and a human resource policy to determine its interim staffing needs and guide operations relating to the hiring and working of staff at CIC. An interim policy and organisational structure have been discussed, in consultation with the Ministry of State for Public Service and MOJNCCA, and adopted by CIC. CIC is in the process of seeking the approval of Treasury of the remuneration structure after which the positions will be advertised.

3.2.4 Procurement Plan

After the preparation of a workplan, CIC prepared a procurement plan for the period ending June 2011 which it has submitted to MOJCA to facilitate the timely procurements for CIC. The plan encompasses both the administrative and programmatic procurement. The available funding will cover most of the activities but CIC is in discussion with development partners to support those that may not be covered by the Government funds.

3.2.5 Communications Strategy

Analyses of what it would take to give effect to the principle of public participation indicated that the public can only participate if it is provided with information to understand what is going on. With a view to doing so, CIC made a decision at the outset that it would create a capacity to generate relevant information concerning its work and that it would have to disseminate this information to the public in an organized manner. CIC would also need to place itself in a position where it would receive, analyze and respond to information coming from the public and which was deemed to be important for its work.

The upshot of this is that CIC decided to establish a communications function within its set up as one of the core capacities without which its work would be ineffective. With help from DfID, CIC hired, on an interim basis, a media relations consultant to oversee the development of communication strategy and to manage the communication function on its behalf in the interim.

To manage the public communication function CIC discussed and agreed on a protocol as to how this function would be managed. In terms of the Constitution the Chairperson of CIC is the spokesperson for CIC. Other members of CIC may, on the delegation of the Chairperson, also exercise this function on behalf of the Commission.

During the period covered by this report, CIC has from time to time communicated with the public. This has been done through media briefings, press conferences and statements, stakeholder forums and the participation by the Chairman in talk shows on television and radio.

4. PROGRESS IN THE IMPLEMENTATION OF THE CONSTITUTION

CIC should have been established 90 days after the promulgation of the Constitution, meaning by 27th November 2010. However, as already noted the Commissioners were only sworn in on 4th January 2011. Despite the delay, CIC is making good progress in delivering on its mandate. This section reports on the progress made on implementation during the quarter of January to March, 2011. It also highlights the key activities CIC has planned to work on and achieve during the April – June 2011 quarter. In assessing progress, the following should be borne in mind:

- i. Full implementation of the Constitution goes beyond the enactment of legislation and involves the effective development and application of policies and administrative procedures which ensure that the people of Kenya get the services they are entitled to and in a manner provided for under the Constitution. This means that even after a Bill is enacted, implementation would not have been achieved fully. CIC shall continue to monitor, facilitate and oversee implementation thereafter, in compliance with article 249.
- ii. The progress and effectiveness of the work of CIC is inevitably impacted on by the capacity, progress and effectiveness of its constitutional partners, the office of the Attorney General and the KLRC as well as that of implementing agencies such as line ministries and commissions and other arms of government.

4.1 Progress During the Quarter

In the January – March 2011 quarter, a number of achievements were recorded in relation to legislation, review of administrative procedures, creation of some of the Chapter Fifteen Commissions, staffing at CIC, among others. The legislations enacted during the period included the Judicial Service Act and the Vetting of Judges and Magistrates Act. With respect to reviews, the procedures for the recruitment of people into the Police Service were finalised. The CIC also developed a staff recruitment policy for the recruitment of personnel to CIC through a competitive process. The full details of the specific achievements are summarised in table 2 below.

Table 2: Summary of Progress in the Development and Application of Legislation and Administrative Procedures

Outcome Status	Start Date	Planned Date of Completion	Actual Date of Completion	Status or Comments
Legislation				
Judicial Service Act	January 2011	August 2011	March 22, 2011	Shall oversee the application of the law and compliance of administrative procedures with the Constitution
Vetting of Judges and Magistrates Act	January 2011	August 2011	March 22, 2011	
Judiciary Fund	January 2011	August 2011	March 22, 2011	

Review of Administrative Procedures Police Recruitment Guidelines	March 2011	March 2011	March 2011	Awaiting final draft of guidelines from the Police
CIC Process Circular for Implementing Agencies Draft Circular on Process	February 2011 March 2011	February 2011 April 2011	March 2011 N/A	Approval from AG, KLRC received. Awaiting sharing and discussing with Permanent Secretaries of Ministries
Notice to the public on how they can participate is ready awaiting the conclusion of the circular				
Recruitment of CIC Staff Development of staff recruitment policy, including a CIC organogram and job descriptions	January 2011 March 2011 March 2011	March 2011 March 2011 June 2011	March 2011 April 2011 N/A	Awaiting further action from MOJNCCA Awaiting procurement of the advertisements
Competitive recruitment of key personnel				Awaiting for advertisements to be circulated in the press by MOJNCCA
Deployed Staff	January 2011	February 2011	February 2011	Staff have been deployed pending competitive recruitment
Budget for 2011-2012				
Preparation of Budget and Work Plans (Thematic areas and CIC)	January 2011	March 2011	March 2011	Submitted on March 23, 2011
Chapter 15 Commissions Engagement with Commissions	January 2011	March 2011	April 2011	Awaiting establishment of

<p>Rapid Action Plan January-June, 2011 Rapid action work plan developed</p> <p>Article 249 Functions(protect the sovereignty of the people, secure observance by state organs of democratic values and principles and promote constitutionalism</p>	February 2011	February 2011	February 2011	Implementation of the plan is ongoing
<p>CIC's position on Nominations to Constitutional Offices</p>	January 2011	February 2011	February 2011	Nominations were withdrawn and post of Chief Justice and DPP has been advertised.
<p>Case filed in court seeking advisory opinion from the Court on interpretation of some provisions in the constitution</p>	February 2011	March 2011	June 2011	Proceedings are ongoing
<p>Police recruitment – CIC urged the police service to review their recruitment procedures so that they are in line with the letter and spirit of the constitution, before recruitment</p>				
<p>Ministry of Public works – Proposed County Assemblies, offices and governors' residences Standard March 23, 2011</p>				

As already noted, the progress of implementation may be impacted by the activities implementing agencies/institutions. To the extent that other actors are involved in the implementation process, it is difficult to be specific and certain of actual time bound deliverables. Through the use of a case study on one of the Bills with which CIC has been involved in (the Vetting of Judges and Magistrates Bill) the dynamics of the relationship between CIC and other actors and how this impacts on implementation can be demonstrated (Box 3).

Box 3

Case Study of CIC's Engagement on Legislation Vetting of Judges and Magistrates Bill

The Vetting of Judges and Magistrates Bill was initially published on 14th September 2010 and was then tabled before the National Assembly on 30th November 2010. CIC did not have opportunity to review the Bill before it was published because CIC had not been established. At the request of CIC the Minister for Justice withdrew the Bill to allow CIC to review it. Thereafter the Commission discussed the Bill internally and with the Attorney General, the Minister for Justice National Cohesion and Constitutional Affairs and the KLRC. CIC also undertook a series of stakeholder consultations on the content of the Bill. CIC had formed the impression that the views held by stakeholders regarding this particular bill were very strong and that in particular there was concern in the judiciary that the vetting process should be managed in a manner that did not lead to witch-hunting members of the judiciary. Following these consultations, a number of amendments were agreed on. CIC agreed with the Attorney General and the KLRC that these would be incorporated in a new Bill to be prepared by his office.

However, when the Bill was re-published CIC observed that not all the amendments agreed to during the stakeholders' forums had been incorporated in the re-published version of the Bill. First, a clause whose exclusion had been requested by CIC as it was not in line with the letter and spirit of the constitution, was retained. The clause reads as follows:

"Nothing in this section shall be construed as preventing the President, in consultation with the Prime Minister, from nominating and forwarding names, other than those submitted by the Public Service Commission to the National Assembly for consideration and approval."

CIC wrote to the Committee on the Administration of Justice and Legal Affairs, through which it took up this matter and reiterating its recognition of the need to involve the Executive in the process of nominating and appointing members to institutions, including under the Vetting Board. CIC noted that the Selection Committee, also provided for under the Bill, was largely comprised of representatives of the Executive to allow the Executive to play its role in recommending persons to serve in the Board, whilst at the same time facilitating a process that respects the national values and principles in Articles 10, 73 and 232 and the principles of leadership and of public service of the constitution including participation of the people, selection on the basis of competence and suitability and, fair competition and merit.

CIC has recognised the need to prioritize the activities for the implementation of the Constitution to meet various national needs. This need was reflected by the drafters of the Constitution who provided a time bound guide on the urgently required implementation laws in the Fifth Schedule to the Constitution. The timelines in the Fifth Schedule have not been strictly adhered to for various reasons and as a result there has been a delay in moving on some of the activities including: the establishment of CIC itself, the formation of the Commission on Revenue allocation (CRA) the appointment of the Chief Justice and the finalisation of the constituencies boundaries report.

The delays can be mitigated if all stakeholders prioritize the identified urgent tasks and work in a collaborative manner to ensure that further delays are not occasioned. It is also important that all the arms of government invest in ensuring that the urgent laws and systems are put in place.

Though the delays have occasioned the adjustment of timelines, it has, however, not resulted in the extension of time beyond that which has been provided in the schedule. If anything, the review has only resulted in the re-organisation of time, most of which has been shortened. Further, in the view of CIC, whereas the Fifth Schedule contains a good list of legislation that need to be enacted to give effect to the new Constitution, this list is not complete.

4.2 Key Activities Planned for the April-June 2011 Quarter

CIC has planned to implement the following activities between April and June 2011:

1. A retreat with all Permanent Secretaries on the 4th of April 2011 for CIC. The retreat will provide an opportunity for CIC to share the process to be followed by government ministries in implementing the constitution;
2. Retreats will also be held with the Judiciary and Parliament between the months of April and June;
3. Review and finalisation of the Bills listed in Table 3 below
4. Monitor, facilitate and oversee the review of Laws, policies, institutional systems and operational regulations and procedures required for conducting the next general elections.
5. Monitor, facilitate and oversee the review of Laws and regulations that are supportive of the electoral process such as those relating to the security sector, registration of persons and citizenship;
6. Monitor, facilitate and oversee the review of Laws and policies that relate to the organisation of governance structures and systems at the county levels;
7. Monitor, facilitate and oversee the review of Laws relating to the management of Public Finance;
8. Monitor, facilitate and oversee the review of Laws , regulations and systems relating to the establishment of a fully functional Judiciary;
9. Constitutional Implementation Conference to be held by June 2011;
10. County Implementation Forums to be held by June 2011;
11. Meetings with county stakeholders to seek their views and input on electoral processes and the police reform Bills.
12. Competitive recruitment of key staff by June 2011;
13. Establishment of financial systems necessary to support good management of Commission funds;
14. Engagement with Parliamentary Committees on published Bills.

The successful implementation of the Constitution may be impacted by the activities of other implementing institutions.

The list of the laws that in the view of CIC should be in place by the end of August 2011 is in table 3 below.

Table 3: Legislative Priorities for upto 27th August 2011

Article	Legislation	CIC Proposed Deadline	Schedu le 5 End Date	Status To date	Remarks
	Representation & Legislature:				
Art 88	IEBC	Mid-March 2011	26/8/11	Draft obtained from KLRC. Internal discussions and stakeholder completed. Final draft presented to AG on the 21 st March 2011	Bill should be published and passed by April 15 th to allow IEBC to be set up
Arts 82-90, 93-105, 136-142, 148	Elections related legislation including quotas for women and marginalized groups in elective offices	End of July 2011	26/8/11	Awaiting draft bill from KLRC. Expected by 8 th April	Bill urgent and should be concluded by early May to enable IEBC commence election planning
Art. 127	Parliamentary Service Commission	End of July 2011	26/8/11	Awaiting draft bill from Parliament and KLRC	
Arts 91-92	Political parties	End of June 2011	26/8/11	Draft bill received from KLRC. Undergoing internal and stakeholder review	Bill urgent and should be concluded by early May to enable IEBC commence election planning
	Judiciary:				
Art 163	Supreme Court	End of March 2011		Draft bill received from KLRC. Undergoing internal review and stakeholder consultation	This bill is urgent so as to conclude the judicial reforms in time for the general elections
Art 162	System of Courts	End of June 2011		Awaiting Bill from KLRC and implementing ministry	
	Public Finance:				
Art 201-214	Public Finance Management legislation including the budget process, the role of Treasury and matters of fiscal decentralization	End of June 2011	26/8/11	Policy on proposed public finance management law received from Treasury. Draft Bill under preparation by Treasury. Consultations ongoing and stakeholder forum planned for 8 th April 2011	There is urgent need to synchronise the Treasury team and devolution taskforce on fiscal decentralization issues and have PFM and related financing bills ready by end of June 2011
Art 215	Commission for Revenue Allocation	End of March 2011	31/3/11	Draft under discussion by CRA.	Bill should be enacted urgently since CRA is now in operation
Art 230	Salaries and Remuneration Commission	End of March 2011	31/3/11	Draft bill obtained from KLRC. Internal discussions and stakeholder completed. Final draft presented to AG on the 21 st March 2011	
Art 228 and 229	Auditor General & Controller of Budget	End of March 2011	31/3/11	Draft bill on appointments to the two offices obtained from KLRC. Internal discussions and stakeholder completed. Final draft	Bill on the appointments of independent offices should be published by end of April to allow appointment of officers. Substantive law on functions

				presented to AG on the 21 st March 2011. Bill on substantive functions and operationalisation of two offices to be prepared after PFM law.	and operational issues should be finalized by August when the current Auditor General shall leave office.
	Public Service & Leadership:				
Art. 79	Ethics and anti-corruption commission	End of April 2011	26/8/11	Awaiting bill from KLRC and KACC	
Art. 74-80	Legislation on leadership, foreign bank accounts for state officers, and disciplinary procedures in the public service	End of April 2011	26/8/11	Awaiting bill from KLRC and KACC	Legislation urgent to facilitate process of vetting state officers
Priority Two					
	Public Service & Leadership:				
Art 233	Public Service Commission	End of July 2011	26/8/11	Draft Bill received from PSC. Undergoing internal review and discussions with KLRC and AG	Bill urgent in view of the critical role of PSC in ongoing public service reform.
	Bill of Rights & Citizenship:				
Art. 11,12,14,15 & 18	Citizenship	End of July 2011	26/8/11	Awaiting task force report and draft bill	Bill urgent in view of citizenship implications on elections
Art 22 (3)	Rules to enforce human rights	End of July 2011	26/8/11	Rules awaiting appointment of Chief Justice	
Art 24 (5)	Limitation of rights to disciplined forces	End of July 2011	26/8/11	Draft bill on police including proposals on limitation received. Internal review completed. Undergoing stakeholder consultations	
Art 59 (4) and (5)	Kenya National Human Rights and Equality Commission	End of July 2011	26/8/11	Undergoing discussions with both commissions to build consensus on number and nature of ultimate commission (s).	
	Security Sector:		26/8/11		
Art. 238	Principles of national security: Amendment of existing rules and regulations to integrate the principles into the operations of the national security organs.	End of June 2011	26/8/11	Draft Bills on security sector received. Internal review completed. Undergoing stakeholder consultations	

Art. 240, 241	National Security Council	End of June 2011	26/8/11	Awaiting Bill from KLRC and implementing ministry	
Art. 242	National Intelligence Service	End of July 2011	26/8/11	Awaiting Bill from KLRC and implementing ministry	
Art 243	National Police Service and related Bills	End of July 2011	26/8/11	Draft Bills on National Police Service, Independent Police Oversight Authority Bill and Private Security providers Bill received from KLRC. Internal review completed. Undergoing stakeholder consultations	CIC fast tracking the Laws on security sector reforms in view of their critical impact on elections
	Devolution:				
Art 99, 177-196	County Assembly legislation including qualifications for election, gender balance and diversity and support for county governments	End of August 2011	26/8/11	Awaiting task force report and draft bill from KLRC and implementing ministry	Laws of devolution urgent in view of need to prepare structures and systems for elections in good time.
Art 189(4)	Settlement of intergovernmental disputes	End of August 2011	26/8/11	Awaiting task force report and draft bill from KLRC and implementing ministry	
	General				
Art. 2(6)	Incorporation of international Law obligations – Ratification through parliament	End of August 2011		Awaiting draft bill from KLRC and implementing ministry	
Art 67	National Land Commission	End of August 2011		Awaiting draft bill from KLRC and implementing ministry	In view of the sensitive nature of land it's important that this Commission be set up as early as possible so that it can oversee much needed land reforms.

5. KEY CHALLENGES AND POTENTIAL IMPEDIMENTS TO THE IMPLEMENTATION OF THE CONSTITUTION

A number of challenges, which are not necessarily impediments, have been encountered by CIC in the course of undertaking its work. The challenges can broadly be classified into the following categories.

- Institutional and organizational challenges.
- Political challenges.
- Core Business challenges.

5.1 Institutional and Organizational Challenges

The urgency with which the Constitutional timelines relating to implementation have to be met, combined with the high expectations of the public on implementation of the Constitution, has meant that the Commission has to commence substantive work before determining and hiring the necessary staff to support its work. The absence of the Salaries and Remuneration Commission (SRC) is an additional challenge since any determination of remuneration scales for staff without the SRC is interim. At the moment the Commissioners have to multi-task and work very long hours to ensure that they efficiently play their part with respect to the carrying out of its mandate.

5.2 Political Challenges

The political situation in the country has not been ideal for the implementation of the new Constitution. The existence of the Grand Coalition Government requires high levels of consensus on decisions by the Executive. During moments when the coalition partners have political differences, the differences manifest themselves in the making of key decisions of national importance. Such differences inevitably delay the progress of implementing the Constitution.

The national anxiety that was caused by the impasse on the nomination of the Chief Justice, Attorney General, Director of Public Prosecutions and the Controller of Budget caused delays in the setting up of these offices. It also resulted in a suit that is still before the court. For ensuring clarity in similar interpretations in future, CIC found it necessary to seek an advisory opinion from the Court of Appeal, sitting as the Supreme Court on the interpretation of the provisions relating to processes of appointing office holders to state offices and other Constitutional offices and the principles applicable in that regard.

The disharmony within the government has had an effect on perceptions towards the CIC by different political players. At different times, the actions of the Commission, however well meaning, are regarded as aimed at, or having the effect of, supporting or not supporting a given political preference. In these circumstances, CIC has had to emphasize its independence and non-partisan role in ways that it would not have had to do if the political situation was a little more trusting.

The independence of the CIC is not readily acknowledged by some institutions. This means that its authority to undertake its functions with such institutions may take a little longer to be accepted. The CIC nevertheless notes that it has a duty to work with all public agencies, and cannot discharge its mandate without functional and cordial partnerships with the different players on the implementation of the Constitution. This is a minor challenge that the CIC believes will not last long given the collaborative manner in which discussions on implementation with the executive authorities is taking shape.

5.3 Core Business Challenges

CIC feels that there is an erroneous perception that the implementation of the Constitution is only about drafting of certain new laws or only the ones in the Fifth Schedule. It will be important to ensure that implementers in all arms of government appreciate the need for a change in laws and also policies and operational regulations and guidelines for day to day use.

The promotion of constitutionalism as expected from Article 249 (1)(c) of the Constitution requires the assumption on the part of public officials and the Kenyan public, of new attitudes that will lead to a national culture that is supportive of the values and principles in the Constitution. These are matters about which there can be no legislation and the Commission has to mobilize all Kenyans to collectively address this challenge. The fear of and or resistance to change is likely to be the greatest challenge to the implementation. The need to urgently plan for and coordinate the implementation of some aspects of the Constitution such as devolution and the Bill of Rights is not well appreciated by some implementers. The consequence of this is likely to be confusion and unnecessary conflict.

6.0 RECOMMENDATIONS

For the process of implementation of the Constitution to move smoothly, CIC is making the following recommendations:

Both the President and the Prime Minister should remain steadfast in providing leadership that builds public respect and confidence in the implementation of the Constitution. Whereas political differences are normal and not an impediment by themselves, CIC would like to encourage the top leadership to champion the protection of the implementation process from any delays or other adverse consequences arising from such differences.

The process of implementation of the Constitution will be greatly facilitated in a context where all implementation partners share CIC's understanding of its nature as an independent Constitutional Commission, and of its mandate, the discharge of which requires an environment of mutual respect and trust, and a shared fidelity to the letter and spirit of the Constitution.

The CIC would also like to appeal to the political leadership to adopt a bipartisan approach on matters relating to the implementation of the Constitution. In this regard, Parliament is requested to facilitate faster processing of the priority laws during this session to ensure the setting up of the institutions and systems required for implementation of the Constitution.

CIC recommends that all the three arms of government prepare their Constitutional implementation plans and units and consult with relevant institutions and agencies to fast track the full implementation of the Constitution. Additionally, CIC has requested all government arms implementing the Constitution to audit all their policies, laws and administrative procedures against the Constitution to ensure compliance with the Constitution.

There is an urgent need for the different state organs working towards the preparation of operations at the county level to work together to determine and legislate mechanisms to assist the county governments become operational after the next general elections. These include the office of the President, the Office of the Prime Minister, the Ministry of Local Government, the Ministry of Finance and Ministry of Planning, National Development and vision 2030.

The implementation of the Bill of Rights, especially to ensure access to socio-economic rights, will require deliberate planning if the government is to demonstrate progression in the provision of the envisaged services. It is therefore imperative for the government to establish a mechanism to determine the current status of the available socio-economic services including health, water, education, housing etc and determine a road map for ensuring the progressive and equitable delivery of these services to all Kenyans.

The processes for establishing a Supreme Court and the vetting of Judges and Magistrates is important and needs to commence to ensure public confidence in the Judiciary's ability to professionally discharge its mandate to resolve any disputes in the country.

CIC recommends the urgent setting up of the Salaries and Remuneration Commission to facilitate the determination of staff remunerations for the various institutions in order to increase the capacity of these institutions to deliver on their respective mandates in a timely manner.

CIC, in the discharge of its mandate will facilitate continued civic education on various aspects of the Constitution, including what implementation is all about. The education should target all implementing agencies and the general public. CIC will additionally require to audit the content of the materials for the civic education carried out by other implementing partners, including the Executive.

7.0 Conclusion

The first quarter of CIC's work has been a learning and challenging experience for all those involved. As indicated in this report, CIC obtained take off support from MOJNCCA in setting up office which enabled CIC start work on the same day the Commissioners were sworn in. Work started with two Bills which were awaiting CIC's input. Since then, CIC has been on the run. During this quarter, CIC has also shared its mandate with various key players with the objective of having a common understanding of what is expected of each player in implementing the Constitution.

In the process of carrying out its work in this initial period, , CIC has learnt a lot; key being that the mandate of CIC is a mammoth task that calls for unity and positive focus by all players and therein are to be found the challenges. Different players have varying understanding and differing interests which keep on changing. Secondly, CIC learnt that implementation of the Constitution has no hard and fast rules, though it has basic guidelines. For CIC, the main guideline has been and continues to be, the Constitution of Kenya, 2010 and the best interest of the people of Kenya.

Adherence to the requirements of the Constitution is what has enabled CIC to stay focused and to genuinely serve the people of Kenya, amidst all the shifting interests by some of the key players. CIC recognizes that it is called upon to discharge a historic task in the process of giving Kenya a rebirth, as promised by the Constitution of Kenya 2010. Members of the Commission feel privileged to have been given this important responsibility to serve the people of Kenya in this capacity. CIC is devoted to remaining faithful to the demands of the Constitution of Kenya, 2010. This is the only way CIC will ensure that Kenya is on the right track to living the new dispensation brought by the Constitution..

Annex I

The Commission for the Implementation of the Constitution

The Process of Involving the Public in the Implementation of the Constitution

The Commission for the Implementation of the Constitution (CIC) wishes to inform the general public on how the public can participate in the process relating to the review of existing and, in some cases, the development of new policies, administrative procedures and legislation required for the effective implementation of the constitution, as provided for in the constitution.

Mandate of CIC

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

The functions of CIC are to:—

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

CIC is obliged to carry out the above functions with the ultimate aim of achieving the objects of the constitutional commissions and the independent offices stated in **Article 249 (1)** namely to:—

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

and 15 (2) d which requires Parliament to provide mechanisms that ensure that CIC can perform its role in monitoring the implementation of the system of devolved government effectively.

The Process for the Participation of the Public

Any person making submissions on matters to do with policies, legislation and administrative procedures can submit his/her views, in any language, directly to the CEO at the CIC offices in Delta House, Westlands, Nairobi, or through CIC postal address (PO Box 48041-00100, Nairobi) or email address (info@CICKenya.org or manager@CICKenya.org) or through CBOs, NGOs, Churches/Mosques, etc., and/or directly to the relevant arm of government or government institution.

The public can also participate by expressing their views through the electronic and print media, attending and participating in workshops organized by the relevant arms of government and other relevant institutions involved in initiating and developing the relevant policies, legislation and administrative procedures required for the implementation of the Constitution.

CIC advises the public that for the implementation of the Constitution to be successful, the steps listed below would be helpful:

1. Members of the public, in their individual or collective capacities, should familiarize themselves with the entire Constitution.
2. Members of the public, in their individual or collective capacities, are encouraged to
 - a. Identify aspects of any existing policies, legislation and administrative procedures which are not in line with the letter and spirit of the Constitution
 - b. Submit the aspects to the relevant arm of government e.g. line ministry or institution to facilitate the necessary reviews and development by the implementing arm of government or institution.

The recommendations may be copied to CIC for information purposes.

3. Every member of the public should be vigilant and ensure that the implementing arm of government e.g. ministries and institutions comply with the Constitution and; with the new/revised policies, laws and administrative procedures as they (government) serve the public
4. Note that:
 - a. In making any recommendations for the review/development of policy, administrative procedures and legislation, the public should take into account the fact that the implementing arm of government and institutions are expected to involve all relevant actors.
 - b. To facilitate the process of public participation, the public should proactively identify areas in which they can engage in during the process of implementing the Constitution, as set out in the work plans of various implementing agencies and institutions.

- c. In reviewing existing sectoral /issue policies, administrative procedures and legislation, and in determining the necessity of new laws, institutional policies and structures, and, administrative procedures, the public should take into account, among others:
 - i. The provisions relating to human rights in the Constitution and in particular the need to incorporate the requirement for progressive implementation of the socio-economic rights under Article 43 of the Constitution in appropriate legislation;
 - ii. The values and principles articulated in Articles 10 and 232 and; Chapter 6 (Leadership and integrity) of the Constitution;
 - iii. The principles of fairness, prudence, clarity, and the need for fiscal responsibility in the management of public resources articulated in Chapter 12 of the Constitution
- d. Ensure their consistency with the letter and spirit of the Constitution

Below is a summary of the process CIC will follow in engaging the different arms of government and government institutions.

CIC's Process of Engaging Government on the Implementation of the Constitution

CIC encourages:

1. Consensus building and common understanding with government and within government;
2. The relevant arm of government or government institution reviews its policies and sessional papers to be in line with the constitution;
3. The relevant arm of government/institution identifies new laws that may be required and the existing ones that call for review;
4. The relevant arm of government/institution develops and applies a change management strategy;
5. The relevant arm of government/institution reviews existing and where necessary, develops new structures, systems and administrative procedures;
6. The relevant arm of government/institution applies the new policies, laws and administrative procedures so that the public is served in the spirit of good governance.

Members of the public should demand to be served by the implementing arm of government or government institution according to the provisions of the Constitution, new policies, laws and administrative procedures. If services are NOT provided accordingly, every member of the public has a right to question, complain to the implementing arm of government or institution and to CIC and/or to seek legal redress.

At every stage, CIC will discuss, facilitate and examine the policies, laws and administrative procedures of each Arm of Government or institution, together with the process applied to develop/review them. The aim is to ensure that they are consistent with the letter and spirit of the Constitution and that the public participated in each of the stages.

Annex II

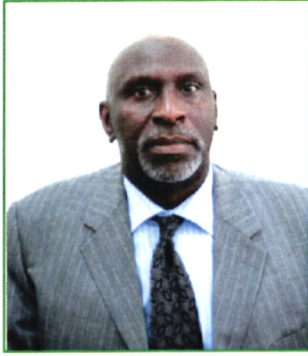
Consultations with Stakeholders and Development Partners

Meeting with Parliament	
Parliamentary Oversight Committee on the Implementation of the Constitution	18 th January, 2011 - 10.00 pm
Parliamentary Committee on Justice and Legal Affairs	3 rd February 2011- 8.00 am
Parliamentary Committee on Finance	3 rd February 2011- 8.00 am
Meeting with the Executive	
Secretary to the Cabinet	16 th March 2011 - 3 pm
PS in the Office of the Prime Minister	24 th February 2011- 11.00 am
The Minister for Justice National Cohesion and Constitutional Affairs and the AG	17 th Jan, 2011 8.00 am
AG and Chairman Kenya Law Reform Commission	28 th Feb. 2011 - 2.00 pm
Ministry of Justice National Cohesion and Constitutional Affairs and UNDP on constitution conference	21 st March, 2011 - 8.30 am
AG, Minister and the PS for Justice National Cohesion and Constitutional Affairs	21 st March, 2011 - 2.30 pm
Meeting with Constitutional Commissions	
Commission on Revenue Allocation (C.R.A)	12 th Jan, 2011 - 8.00 am
Judicial Service Commission	31 st Jan, 2011 - 11:00 am
Meeting with Development partners	
IMF/Treasury	14 th Jan 2011 -7.30 am
European Union to Kenya - Heads of Mission	16 th Feb, 2011 - 8.00 am
Department for International Development (DFID)	17 th January, 2011 - 8.00 am
United States Agency for International Development (USAID)	21 st February, 2011-8.00 am
The Danish Ambassador	7 th February, 2011- 8.00 am
UNPD Consultative meeting	14 th February, 2011- 2.30 pm
Embassy of Sweden and SIDA	15 th March, 2011- 2.00 pm
World Bank	25 th January, 2011- 8.00 am.
Development and Governance Donor Group (DGDG)	1 st Feb, 2011 - 3.00 pm

Stakeholders	14 th January, 2011- 11.30 am
Law Society of Kenya	18 th January, 2011 – 2.00 pm
Kenya Parliamentary Network	18 th January, 2011 – 03.00 pm
Various stakeholders Retreat – Induction for CIC Commissioners	24-26 th January, 2011
Kenya Editors Guild	8/02/2011 – 7:30 am
International Development and Law Organisation (IDLO).	8/02/2011- 2.30 pm
Workshop to validate the Association Professional Societies of East Africa (APSEA)	10 th Feb, 2011- 9 am
National Council for Churches of Kenya (NCCK) Courtesy call	15 th Feb, 2011 – 3.00pm
Institute of Certified Public Secretaries (Kenya) [ICPS(K)]	21 st March, 2011 – 7.00 am

THE COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

CHAIRPERSON: CHARLES NYACHAE



Charles Nyachae is an experienced lawyer who has practiced Commercial and Property Law for over 26 years. A graduate of the London School of Economics & Political Science, and a former Council Member of the Law Society of Kenya, Mr. Nyachae has chaired the Kenya Chapter of the International Commission for Jurists and has also been the Chairperson of the Institute for Education in Democracy, IED. Mr. Nyachae formerly served as a Commissioner with the Kenya Law Reform Commission and sits on the board of the Centre

for Governance & Democracy. He has vast experience in human rights, democracy & electoral laws.

VICE-CHAIRPERSON: DR. ELIZABETH MULI



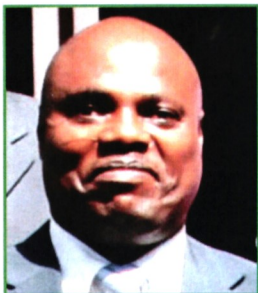
Dr. Elizabeth Muli is an Advocate of the High Court of Kenya, of 15 years standing. She is a Fulbright Fellow and holds a Doctoral degree from Stanford Law School. Prior to joining the CIC, she taught law at the University Of Nairobi School Of Law and was Chair, Department of Commercial Law. Her fields of expertise are Human Rights, International Law and Conflict Resolution. Dr. Muli has been a consultant to international organizations

and civil society organizations on human rights issues and been a member of boards of Human Rights Organizations and the National Committee on the Implementation of International Humanitarian Law. Before joining academia, she was a State Counsel in the Treaties & Agreements Department of the State Law Office.

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

COMMISSIONERS

IMAANA KIBAAYA LAIBUTA



Kibaya Laibuta holds a Bachelor of Laws degree from the University of Nairobi and Master of Laws from the London School of Economics and Political Science. Mr. Laibuta has been an Advocate of the High Court of Kenya for 23 years. He is a Chartered Arbitrator and Fellow of the Chartered Institute of Arbitrators. He has been a tutor and trainer, examiner, moderator and assessor for the Chartered Institute of Arbitrators. Mr Laibuta

has also been a senior Law Lecturer for 22 years. He chairs the National Council for Persons with Disabilities.

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

PROF. PETER WANYANDE



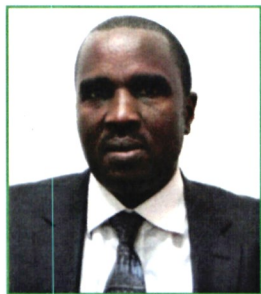
Professor Peter Wanyande holds a PhD degree in Political Science from the University of Florida, USA specializing in Comparative Politics and Public Policy. Prof. Wanyande also holds a Master of Arts (MA) in government and a Bachelor of Arts (BA) Hons. degree in Government & Sociology, both from the University of Nairobi. Prof. Wanyande has taught political science at the University of Nairobi for over 20 years. He has conducted research, authored and edited numerous scholarly publications including books, book chapters and refereed journals on issues relating to governance,

democracy, constitutional politics and civil society among others. Prof. Wanyande has also held administrative positions at the university. Immediately prior to joining the Commission for the Implementation of the Constitution Prof. Wanyande was Chairman Department of Political Science. He had also served as Dean, Faculty of Arts; University of Nairobi and in various capacities in many committees of the university.

Before joining the university Prof. Wanyande worked with the Ministry of Education and the Kenya National Examinations Council.

Prof. Wanyande is the Convener of the Devolution Thematic Team at CIC.

KAMOTHO WAIGANJO



Kamotho Waiganjo holds a Bachelor of Laws and Master of Laws degrees both from the University of Nairobi. He is a Chartered Arbitrator. Has been in private legal practice for over 20 years and was senior partner at Kamotho Maiyo & Mbatia Advocates specializing in Commercial and Conveyancing law. He has taught law at the Kenya school of Law. Has also been involved in wide ranging consultancy in Constitutional Law and was advisor to numerous bodies during the constitution making process. Mr. Waiganjo is extensively involved in public

interest work and sits in the boards of several charities and civil society organizations.

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

Ms. CATHERINE MUYEKA MUMMA



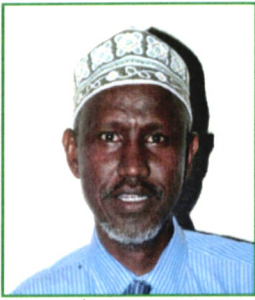
Ms. Catherine Muyeka Mumma is a human rights lawyer with a Master of Laws (LLM) degree from Queen Mary and Westfield College of the University of London and a bachelor of Laws (LLB) degree from the University of Nairobi.

She is an Advocate of the High Court of Kenya and has a work experience of 19 years. Catherine's experience includes work in the public service (State Law Office) and was one of the pioneer Commissioners to the Kenya National Commission on Human Rights (KNCHR). She also served as a Commissioner on the

Independent Review Commission (IREC) which was appointed to look into the electoral issues that affected the 2007 general election.

Ms. Mumma also has experience in the civil society sector where she has worked in communities with vulnerable populations and marginalized populations. She has broad experience of working on all human rights (civil and political; economic social and cultural rights).

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



DR. IBRAHIM M. ALI

Dr. Ibrahim M Ali obtained his Bachelor of Education degree from the University of Exeter and an MSc and PhD from the University of East Anglia both in the UK. He was Director of the African Conservation Centre and the Wildlife Clubs of Kenya. He also founded and set up the Syracuse Wildlife House and Research Centre behind Nairobi National Park. This is the first local private research centre in Kenya whose primary mission is to build capacity for development through training and research

Dr. Ali is a Science Teacher and Conservationist. He has particular interest in ideas, knowledge and attitudes about Environment and Conservation as well as research and research training.

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



Mr. PHILEMON MWAISAKA

Philemon Mwaisaka is a career Permanent Secretary, having served in the Ministries of Transport & Communications, Supplies & Marketing, Tourism & Wildlife, Co-operative development, Agriculture and Health. He holds a Bachelor of Arts (Hons) degree from University of Nairobi in Government and Sociology. He studied administration at the University of Birmingham He has served severally as a District Commissioner and was formerly the

Principal of Kenya Utalii College. He was also a Director of Industrial and Commercial Development Corporation . He is a Trustee of Wildlife Clubs and New Life Homes.

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



DR. FLORENCE OMOSA

Dr.Florence Omosa is a Decision Scientist and Institution Strengthening Expert. She has worked as a Lecturer at the University of Nairobi, a Deputy Director of the ISGM program; as a senior regional organization development and systems analyst expert of USAID/East Africa and; as a consultant with various regional and international organizations on decision making and institutional development. Dr. Florence holds a PhD and MSc in

Decision Sciences both from the London School of Economics and Political Science and an MBA (Finance) and BCom (Accounting) both from the University of Nairobi.

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