



2011/2012
Annual
Report

Statement from the Chairperson



The Commission for the Implementation of the Constitution (CIC) is a constitutional mechanism established to monitor, facilitate, co-ordinate and oversee the implementation of The Constitution of Kenya 2010.

Members of the Commission were sworn in on 4th January, 2011, slightly over four months from the date of the Promulgation of the Constitution. In view of the legislative timelines in the Fifth Schedule of the Constitution, the Commission had to hit the ground running. Working with other implementation partners and, in particular the Attorney General and the Kenya Law Reform Commission as well as the various Ministries, the Commission has been able to deliver on its mandate on legislative implementation.

However, there have been a few occasions when apparently differing appreciation of the CIC mandate and the constitutional process have threatened to affect the process. Indeed, in Parliament where most of the legislation contemplated in the Fifth Schedule has been subjected to the constitutional process, difficulties continue to manifest themselves from time to time as regards draft legislation that finds its way to the National Assembly outside the constitutional process. The Commission continues to engage the Executive to ensure that the process used in all legislation remains faithful to the Constitution.

Whereas it is accepted by all implementation partners that policy should precede legislation, in many cases this has not been so and CIC continues to impress upon the Ministries, Departments and other agencies originating legislation, the need to develop policies and subject them to review for constitutional compliance before developing legislation based on them. Following the enactment of legislation required to implement the Constitution, CIC continues to review regulations and other administrative procedures to ensure they comply with the letter and spirit of the Constitution.

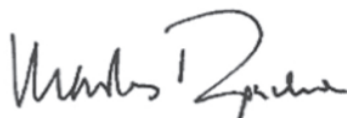
In most instances, the legislative process has benefitted from the co-operation of the implementation partners. However, there have been instances where significant deviation from this common purpose has been, in the view of CIC, fundamentally injurious to the process. A case in point is the Leadership and Integrity Act 2012, which is now the subject of litigation arising from CIC's conviction that the law passed does not meet the threshold required by the Constitution.

The Commission continues to have grave concerns regarding post-legislative implementation. This is due to the slow pace (and sometimes seeming reluctance) to implement that which has already been enacted. There are numerous examples: The Ethics and Anti-Corruption Commission, The National Police Service Commission and The National Land Commission have to date not been appointed, despite the respective Acts having been enacted more than a year ago. In the case of The Police Reforms, the story is even more worrying, with the evident refusal by the Executive to appoint The Inspector-General of Police and the two Deputies. This, in the view of CIC, apart from being a violation of the Constitution, does not portend well for the implementation process generally. Additionally, the several instances of blatant contempt for the rule of law and for court orders by Constitutional Office holders and the Executive poses the risk of derailing the Constitution and its implementation.

In the discharge of its mandate, CIC continues to place a high premium on the constitutional principle of Public Participation. This has been done through consultative fora with Civil Society Organizations, community engagement at County level and through the media. The Commission continues to be encouraged by the uncompromising commitment of the people of Kenya to their Constitution and its faithful implementation.

Institutionally, the Commission has received the requisite support from the Government of Kenya, and also appreciates supplementary support given by development partners.

The members of the Commission and staff of CIC remain fully committed to the Commission's mandate to ensure that the Constitution of Kenya, 2010 is fully and effectively implemented in both letter and spirit for the benefit of the people of Kenya.



Charles Nyachae
Chairperson

Statement from the Secretary/Chief Executive Officer



The Commission for the Implementation of the Constitution (CIC) established its secretariat immediately upon assumption of office on 4th January 2011 to facilitate its day-to-day administration and the effective management of its affairs. In order to effectively deliver on its statutory mandate, the CIC developed and implemented its organisational structure comprised of a staff compliment of 108 with the requisite approval of the Ministry of State for Public Service. The Commission continues to strengthen its secretariat in accordance with its strategic objectives. To this end, it appointed key officers, including its Secretary/Chief Executive Officer, directors of programmes and management services, heads of monitoring and evaluation, communication, procurement, finance and accounts, principal, senior and other programme officers.

In order to effectively discharge its mandate, the Commission continues to build its capacity. During the period under review, it trained its programme staff in policy review and development and legislative drafting. In addition, other members of staff in various support functions including procurement, finance and accounts, were trained in their respective fields.

In January 2011, the Commission developed an interim strategic plan from which annual work plans were derived to guide the implementation process. This was in compliance with the constitutional timelines for the formulation of various policies and administrative procedures, and for the enactment of various legislations necessary for the implementation of the Constitution. The 2013-2015 Strategic Plan is expected to be finalised in October 2012.

In discharging its mandate, CIC upholds the principle of public participation. In order to enhance public and stakeholder participation, the Commission engages the

public through various channels, including programme-based consultative forums, workshops, conferences, print and electronic media, an interactive website, social networks and periodic reports.

The Commission takes this opportunity to express its gratitude for the financial support it has received from the Ministry of Finance, Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) and from various development partners such as the United Nations Development Programme (UNDP), United Nations High Commissioner for Refugees (UNHCR), United Nations Office of the High Commissioner for Human Rights, Government of Japan, The Royal Netherlands Government, United States Agency for International Development (USAID), SUNY-Kenya, Department for International Development (DfID), GIZ-Deutsche Gesellschaft für Internationale Zusammenarbeit, Swedish International Development Cooperation Agency (SIDA), Danish International Development Agency (DANIDA), International Development Law Organisation (IDLO), International Rescue Committee (IRC) and Worldwide Fund for Nature (WWF). It also appreciates the technical support from the Kenya Law Reform Commission, the office of the Hon. Attorney-General and various civil society organisations in addition to the collaborative effort of all its stakeholders.



Amb. Peter O. Ole Nkuraiyia, CBS
Secretary/ Chief Executive Officer

Executive Summary

The Constitution was promulgated on 27th August 2010. On 27th August 2012, Kenyans celebrated the second anniversary of the promulgation of the Constitution. Despite ongoing challenges, Kenyans can look back with pride at the ground they have covered towards the satisfaction of their long-held aspirations of good governance as enshrined in the Constitution. Among the demonstrable gains so far include more openness and transparency in governance, increased accountability of public officers, the restructuring and reform of public institutions and the creation of new ones, expanded democratic space, and greater Government responsiveness to public demands.

As provided for in The Commission for the Implementation of the Constitution (CIC) Act, 2010, the mandate and functions of CIC are to: monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution; co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement the Constitution; report every three (3) months to the Constitutional Implementation Oversight Committee on progress in the implementation of the Constitution and any impediments to its implementation; and; work with each Constitutional Commission and Independent Offices to ensure that the letter and spirit of the Constitution is respected and; exercise such other functions as are provided for by the Constitution or any other written law.

As the country moves ahead with the implementation of the Constitution, it has continued to garner valuable lessons that are sure to inform the process moving forward. Among the lessons learnt include the following:

- For effective public participation as envisaged in the Constitution, there is need for structured and continuous public engagement.
- The need for a comprehensive change management programme

addressing policy, legislation, administrative procedures and institutional framework gaps leading to constitutionalism and informed consent.

- All actors involved in implementing the Constitution need to act together in line with the constitutional 'duty to cooperate', not just with CIC, but with all partners in the process of implementation.
- When implementing the Constitution, the national principles and values should act as a guide to be upheld by all actors.
- The need to forgo short term political gain and instead focus on implementing the Constitution and upholding national interests.

In view of the experiences of implementing the Constitution and the lessons learnt therefrom, among the recommendations that CIC offers to help drive the process of implementation include the following:

- Streamlining of the legislative process
- Civic education
- Responsible political leadership
- Respect for the imperative of public participation
- Fast-tracking the operationalization of constitutional offices
- Development of a national government framework
- Increased co-ordination in the Executive
- Fostering changes in attitudes and mind-sets
- Development of policies prior to preparation of bills, regulations and administrative procedures

In the pursuit of its mandate, CIC has continued to work tirelessly as guided by its mission objective, which is "To ensure that policies, laws, structures, systems and administrative procedures developed and applied at all levels are consistent and in accord with the letter and spirit of the Constitution of Kenya." In that endeavour, CIC adopted the results-based approach and defined expected key result areas to guide the Commission's work and provide the basis for its accountability to other institutions and the public at large as follows:

- **Result 1:** A respected, well-functioning and independent Commission effectively delivering on its mandate.
- **Result 2:** Policies which are compliant with the letter and spirit of the Constitution.
- **Result 3:** Laws which are compliant with the letter and spirit of the Constitution.
- **Result 4:** Effective institutional frameworks and administrative procedures for the implementation of the Constitution.

In addition, CIC adopted a thematic approach and divided its executive function into eight thematic areas, each convened by a Commissioner who acts as its convenor. The Commission's thematic structure comprises eight thematic areas drawn from the subject matter of the different chapters of the Constitution as outlined below:

1. Human Rights and Citizenship
2. Land and Environment
3. Public Service and Leadership
4. Representation of the People & the Legislature
5. The Executive and Security
6. The Judiciary and Constitutional Commission
7. Devolved Government
8. Public Finance

Other modalities adopted by CIC to facilitate its work include: stakeholder engagement, sector-based approaches, advisory opinions, judicial intervention, public participation, collaborative arrangements with other partners such as constitutional commissions and independent public offices, comparative analysis and incorporation of international best practises and monitoring and reporting, among others.

As specifically provided for in Section 27 (1) of the CIC Act, that means that every public officer, State Organ or State office shall at all times co-operate with the Commission in ensuring the successful implementation of the Constitution and shall in particular:

- respond to any inquiry made by the Commission;
- furnish the Commission with periodic reports as to the status of implementation of the Constitution in respect of the question raised;
- provide any other information that the Commission may require in the performance of its functions under the Constitution and any other written law.

Such cooperation is necessary to enable CIC carry out its functions with the ultimate aim of achieving the objects of the constitutional commissions and independent offices as stated in Article 249 (1), and in so doing: protect the sovereignty of the people; secure the observance by all State organs of the democratic values and principles; and promote constitutionalism. A concerted effort among all the partners, and which is guided by the National Values and Principles of Governance would enable CIC achieve its vision of "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.”

In the reporting period, CIC recorded significant achievements and milestones in each of the key areas of its mandate. A review of these initiatives and achievements is given in this report. However, the journey of implementation has not been without its challenges. Specifically, among the challenges that the Commission has encountered in the discharge of its mandate include the following:

- Irregular amendment of bills by the Executive and the Legislature
- Attempts to mislead the public on some constitutional issues
- Delay in operationalizing some constitutional offices
- Disregard of the constitutional implementation process and mandate of the CIC
- Late submission of bills
- Failure to develop policies prior to preparation of bills
- Non-compliant regulations and administrative procedures
- Lack of legislation on national government
- The role of the Attorney-General’s office in the new dispensation
- Unconstitutional provisions in the enacted laws and disregard of due process
- Limited civic awareness on the Constitution
- Resistance to change and the continuing culture of impunity

In spite of the challenges in implementing the constitution, CIC remains firmly convinced that all the challenges in the path of implementation of the Constitution are not insurmountable. The Commission looks forward to a cooperative, amicable and enthusiastic working partnership with all partners in the implementation process that is anchored on unswerving commitment to constitutionalism and rule of law, adherence to the constitutional principles on leadership and integrity, and the wholehearted participation of all Kenyans.

List of Acronyms

AG	Attorney General
APS	Administration Police Service
CDF	Constituency Development Fund
CRA	Commission for Revenue Allocation
CIC	Commission for the Implementation of the Constitution
CIOC	Constitutional Implementation Oversight Committee
CKRC	Constitution of Kenya Review Commission
CoE	Committee of Experts
CSOs	Civil Society Organizations
DANIDA	Danish International Development Agency
DPP	Director of Public Prosecutions
ECK	Electoral Commission of Kenya
ICJ	International Commission of Jurists
IDLO	International Development Law Organization
IEBC	Independent Electoral and Boundaries Commission
IIEC	Interim Independent Electoral Commission (Now IEBC)
IED	Institute for Education in Democracy
IRC	Independent Review Commission
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KDF	Kenya Defence Forces
KLRC	Kenya Law Reform Commission
KPS	Kenya Police Service
LATF	Local Authority Transfer Fund
MTEF	Medium Term Expenditure Framework
MoJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
NARC	National Rainbow Coalition
NGOs	Non-Governmental Organizations
NSAs	Non-State Actors
NPS	National Police Service
NSS	National Security Service
PEV	Post-Election Violence
PSC	Parliamentary Service Commission
SIDA	Swedish International Development Cooperation Agency
SRC	Salaries and Remuneration Commission
TISA	The Institute for Social Accountability
TA	Transitional Authority
UNDP	United Nations Development Programme
WWF	Worldwide Fund for Nature

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Celebrating women's gains in the new Constitution

SECTION 1

Introduction

The Constitution of Kenya, 2010 was promulgated on 27th August 2010 following its adoption in a referendum on 4th August 2010 by 67% of the votes cast. It replaced the independence constitution in force since 1963. The adoption of the Constitution of Kenya 2010 was preceded by years of agitation for constitutional reform during which the reformists called for political pluralism, presidential term limits, and expanded political freedom. These demands led to the repeal of Section 2A of the old constitution that had made Kenya a *de jure* one party state since 1982. Additional constitutional reforms were introduced in 1997 leading to the enactment of the Constitution of Kenya Review Act of 1998, which provided for a legal framework for the comprehensive review of the independence constitution.

The constitutional review process that followed was designed to be inclusive and consultative, leading to a representative constitution-drafting conference in 2000 steered by the Constitution of Kenya Review Commission (CKRC)

under the chairmanship of Professor Yash Pal Ghai. The proposed new constitution developed by that Commission was rejected by 57 % of the votes cast in a referendum conducted on 25th of November 2005. The rejection of the draft constitution, however, did not mark the end of the clamour for a new constitution. The urgency for the enactment of a new constitution was underscored by the Post-Election Violence (PEV) that followed the hotly disputed 2007 presidential election results. The violence was ended through the mediation of a team of eminent African personalities led by former UN Secretary General Kofi Anan. The team of eminent African personalities that included Dr. Graca Machel and former President of Tanzania Benjamin Mkapa recommended, among other things, constitutional, institutional and legal reforms as a way of addressing some of the causes of the violence.

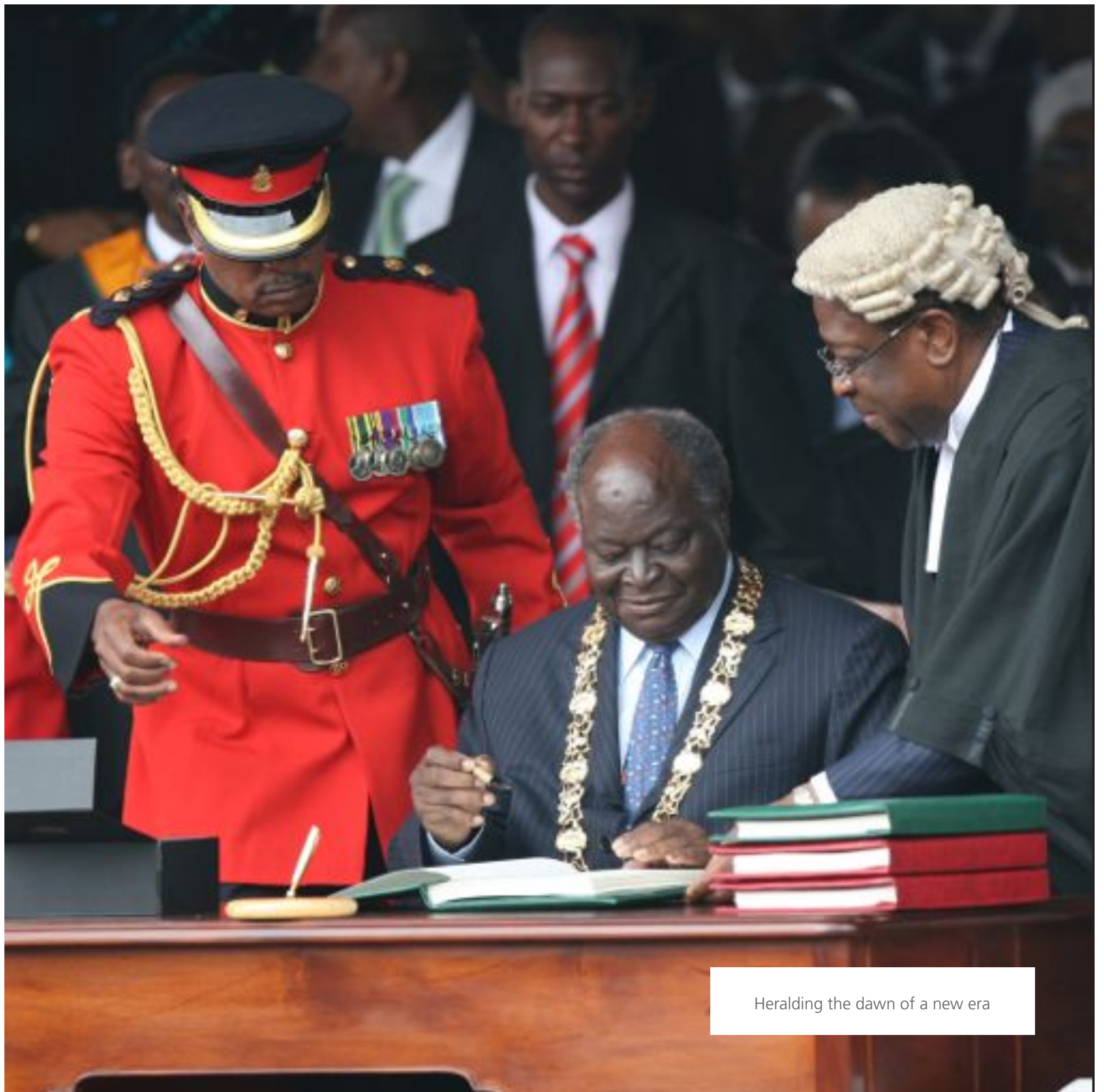
In light of the recommendations of the team of eminent African personalities, the Government of Kenya established the Independent Review Commission (IRC) headed by Justice Johann Kriegler, a retired South African Judge. This Commission recommended, among other things, constitutional and legal reforms which ultimately led to the establishment of the Committee of

CIC meeting with stakeholders



Experts (CoE) through the Constitution of Kenya (Amendment) Act 2008. On the 17th of November 2009, the CoE published a Draft Constitution that was approved by the National Assembly and subjected to a referendum conducted by the Interim Independent Electoral Commission (IIEC), the body that had replaced the discredited Electoral Commission of Kenya (ECK). In the referendum conducted on 4th August 2010, the Draft Constitution received 67% support of those who voted and, in accordance with the enabling law, came into force on 27th August 2010 in a promulgation ceremony presided over by His Excellency President Mwai Kibaki.

The new Constitution, which is transformative in many respects, gives hope for improved governance, political stability and economic prosperity. The implementation of the Constitution began in earnest immediately after its promulgation and the Commission for the Implementation of the Constitution (CIC) was established through an Act of Parliament to oversee its full implementation. The Commission is required in the Act to submit an annual report to the President and Parliament for each financial year. This is the first annual report for the period January 2011 to June 2012.



Heralding the dawn of a new era

SECTION 2

The Commission for Implementation of the Constitution (CIC)

2.0 The Mandate and Role of the Commission

The Commission for the Implementation of the Constitution is established under Section 5(1) of the Sixth schedule to the Constitution. Section 4 of the Commission for the Implementation of the Constitution Act, 2010 read together with section 5(6) of the sixth schedule to the Constitution specifies its mandate, functions and objects, namely to:

1. Monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution;
2. Co-ordinate 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 every three (3) months to the Constitutional Implementation Oversight Committee (CIOC) on:

- a. progress in the implementation of the Constitution; and
 - b. any impediments to its implementation;
4. Work with each Constitutional Commission to ensure that the letter and spirit of the Constitution is respected, and;
 5. Exercise such other functions as are provided for by the Constitution or any other written law.

This mandate is further amplified by Article 249 (1) which sets the objects of the constitutional commissions. Section 15 (2) (d) of the Sixth Schedule to the Constitution enhances the functions with the empowerment of Parliament, by legislation, to provide mechanisms that ensure that CIC will effectively perform its role in monitoring the implementation of the system of devolved government. The Commission is obligated to carry out the above functions with the ultimate aim of achieving the objects of the constitutional commissions and other independent offices as stated in Article 249 (1), namely to:

1. Protect the sovereignty of the people;
2. Secure the observance by all State organs of the democratic values and principles; and
3. Promote constitutionalism.

Article 249(2)(a) provides that the Commission is to be subject only to the Constitution and the law and, in the performance of its mandate, is independent and not subject to direction or control by any person or authority. Accordingly, CIC performs its functions by ensuring that it is accountable to the people of Kenya, upholding the principle of public participation and securing the observance of all State organs of the values and principles of governance without fear or favour.

In its operations, CIC is guided by the National Values and Principles of Governance as prescribed in Article 10(2) of the Constitution, among others. These principles regulate all public policy decisions and are binding upon all State organs, State officers, public officers and all persons whenever any of them enacts, interprets or applies the Constitution or any law. The National Values and Principles of Governance are outlined in Box 1.

One of CIC's functions is to see to it that devolution is successfully implemented.

- Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- Good governance, integrity, transparency and accountability; and
- Sustainable development.

Box 1: National Values and Principles of Governance

The Commission is mandated to oversee the full implementation of the Constitution and, to that end, 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. The Commission adopted the following vision and mission.

2.1 Vision

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

2.2 Mission

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

2.3 Strategic Outcome Results

In the execution of its mandate, CIC has adopted the results-based approach and defined expected key result areas to guide the Commission's work and provide the basis for its accountability to other institutions and the public at large. These are as shown in Box 2.

Result 1: A respected, well-functioning and independent Commission effectively delivering on its mandate

Result 2: Policies which are compliant with the letter and the spirit of the Constitution

Result 3: Laws which are compliant with the letter and the spirit of the Constitution

Result 4: Effective institutional frameworks and administrative procedures for the implementation of the Constitution

Box 2: Key Result Areas

2.4 Implementation in the Context of the Commission's Mandate

The implementation of the Constitution with regard to the Commission's mandate involves:

1. Monitoring, facilitating and overseeing the Development of laws, policies and administrative procedures required to implement the Constitution;
2. Reviewing existing laws, policies, administrative procedures and legislation required to implement the Constitution;
3. Monitoring, facilitating and overseeing the putting in place of structures necessary to give effect to the Constitution, especially in relation to devolved government;
4. Ensuring active public participation by the people of Kenya in governance at both the County and National Government levels and in the constitutional reform process in accordance with the national values and principles prescribed in Articles 1, 10, 118, 232 of the Constitution.

5. Ensuring that the legislative process adheres to the provisions of Article 261 of the Constitution;
6. Coordinating with the Attorney-General and the Kenya Law Reform Commission in drafting bills in consultation with originating institutions;
7. Coordinating with the Attorney-General and the Kenya Law Reform Commission, the Constitutional Implementation Oversight Committee (CIOC) and parliamentary committees to ensure timely enactment of bills in Parliament.
8. Coordinating development of change-management strategies.
9. Monitoring effective implementation of the Constitution in devolved units of governance.



◀ CIC and MoJNCCA: Developing a framework on public participation in the implementation of the Constitution



CIC at work: a consultative approach to the implementation of the constitution

SECTION 3

Implementation Modalities

3.0 Introduction

In carrying out its constitutional mandate as stipulated in The Commission for the Implementation of the Constitution (CIC) Act, 2010 and other constitutional provisions, CIC has adopted appropriate organization structures, processes and strategies. In this regard CIC operates at two main levels: at the Commission-wide level, and its two directorates, namely the Programmes and Management Services.

3.1 Thematic Areas

The Commission carries out its technical work through eight thematic areas drawn from the subject matter of the different chapters of the Constitution as outlined below:

1. Citizenship and Bill of Rights: This thematic area coordinates

activities dealing with human rights and citizenship as found in Chapters Three and Four of the Constitution.

2. **Land and Environment:** This thematic area coordinates activities with regard to the implementation of Chapter Five of the Constitution on Land and Environment.
3. **Public Service and Leadership:** This thematic area coordinates the implementation of Chapter Six of the Constitution on Leadership and Integrity and Chapter Thirteen on Public Service.
4. **Representation of the People and The Legislature:** This thematic area deals with the implementation of Chapters Seven and Eight on Representation of the People and the Legislature respectively.
5. **Executive and Security:** This thematic area coordinates the implementation of Chapters Nine and Fourteen of the Constitution on the Executive and Security respectively.
6. **The Judiciary and Constitutional Commissions:** This thematic area coordinates the implementation of Chapter Ten of the Constitution on the Judiciary and Chapter Fifteen of the Constitution on Constitutional Commissions and Independent Offices.
7. **Devolved Government:** This thematic area coordinates the implementation of Chapter Eleven of the Constitution and Section Fifteen (2)(d) of the Sixth Schedule to the Constitution.
8. **Public Finance:** This thematic area coordinates the implementation of Chapter Twelve of the Constitution.

3.2 Stakeholder Engagement

The Commission works with different stakeholders in fulfilling its mandate. This has taken various forms which include inviting submissions by the public on matters to do with policies, legislation and administrative procedures developed to effect the Constitution. To facilitate this, CIC issued guidelines to the public on the steps to be followed to make their participation in the implementation of the Constitution effective. The Commission held public consultative meetings, forums, workshops and seminars in all the counties as part of facilitating public participation in the implementation of the Constitution.

In 2011 the Commission issued guidelines to Government Ministries and public corporations on the ways in which these entities can assist, in a systematic way, the implementation of the Constitution. These guidelines require Ministries and public corporations to submit their implementation plans to CIC. These reports have been used by CIC in monitoring the status of implementation of the Constitution by Ministries and public corporations.

The Commission also engaged other public institutions such as the Judiciary, Legislature and the Executive, as well as the constitutional offices including the Attorney General and the Kenya Law Reform Commission through meetings and consultations on matters relating to the implementation of the Constitution. In addition, CIC engaged Non-State Actors including civil society and the media. The Commission underscores the need for a consultative approach by all state and non-state actors in the implementation of the Constitution.

3.3 Advisory Opinions

As part of its strategy of public education for meaningful public involvement, CIC issued a number of advisories on pertinent constitutional matters. These were meant to clarify the relevant issues and to clearly communicate the Commission's position on any raging constitutional matter of the day. Such advisory opinions were widely disseminated through the mainstream media outlets as well as in the CIC website.

3.4 Comparative Analysis and Incorporation of Best Practises

In appreciation of the fact that there are comparative cases of constitution-making and implementation that bear direct relevance to the Kenyan case, CIC undertook benchmarking studies to India, Uganda, South Africa, Canada, Brazil and Indonesia. These studies provided CIC with valuable lessons on implementation of the Constitution.

3.5 Reporting on Implementation Activities

As required by the Constitution, CIC has prepared and submitted quarterly reports to the Constitutional Implementation Oversight Committee (CIOC). These reports contain information on progress in the implementation of the Constitution and any impediments to its implementation. To date six such reports have been submitted to CIOC. The reports have also been presented to the President and the Prime Minister and made accessible to the public.

CIC Commissioners led by Chairman, Mr. Charles Nyachae engaging the public through the media





Positive Kenyan spirit during the promulgation of the new Constitution

SECTION 4

Achievements in the Implementation of the Constitution

4.0 Introduction

During the period under review, the Commission recorded significant gains in the discharge of its functions. This section highlights the main achievements of the Commission in relation to its core mandate during the period between 4th January 2011 and 30th June 2012.

4.1 Development of Legislation and Administrative Procedures

During the period under review, the Commission coordinated and facilitated the formulation and enactment of all legislation and related rules and regulations required for the implementation of the Constitution within the timelines specified in the Fifth Schedule. However, the National Assembly

extended the period prescribed for the enactment of the bills relating to Public Finance Management, Land and County Government to allow time for more comprehensive public participation and to address what the respective ministries considered to be contentious issues. The table below lists the legislation whose enactment the Commission has facilitated:

A. LEGISLATION ENACTED BY 26TH AUGUST, 2011 UNDER THE FIFTH SCHEDULE TO THE CONSTITUTION AND THE AGREED SCHEDULE OF BILLS

	BILL	CONSTITUTION TIMELINE	STATUS
1	Supreme Court: The Supreme Court Act, 2011 (Article 163)	One year	Enacted in June 2011
2	Independent Electoral and Boundaries Commission: The Independent Electoral and Boundaries Commission Act, 2011 (Article 88)	One year	Enacted in July 2011
3	System of Courts: The Industrial Court Act, 2011 (Article 162)	One year	Enacted in August 2011
4	Urban areas and Cities: The Urban Areas and Cities Act (Article 184)	One year	Enacted in August 2011
5	System of Courts: The Environment and Land Court Act, 2011 (Article 162)	One year	Enacted in August 2011
6	Kenya National Human Rights and Equality Commission: The National Gender and Equality Commission Act, 2011 (Article 59)	One year	Enacted in August 2011
7	Ethics and Anti-corruption Commission: The Ethics and Anti-Corruption Commission Act, 2011 (Article 79)	One year	Enacted in August 2011
8	Legislation on elections: The Elections Act, 2011 (Article 82)	One year	Enacted in August 2011
9	Legislation on citizenship: The Kenya Citizenship and Immigrations Act, 2011 (Article 18)	One year	Enacted in August 2011
10	Commission on Revenue Allocation: The Commission on Revenue Allocation Act, 2011 (Article 215)	Five years	Enacted in August 2011
11	Power of mercy: The Power of Mercy Act, 2011 (Article 133)	One year	Enacted in August 2011

12	Vetting of Judges and Magistrates: The Vetting of Judges and Magistrate Act, 2011 (Article Sixth Schedule Section 23)	One year	Enacted in August 2011
13	The Judicial Service Act, 2011 (Chapter 10)	One year	Enacted in August 2011
14	Attorney General and Independent offices: The Independent Offices (Appointment) Act, 2011 (Article 156&248)	Five years	Enacted in August 2011
15	Kenya National Human Rights and equality Commission: The Kenya National Human Rights Commission Act, 2011 (Article 50)	One year	Enacted in August 2011
16	Kenya National Human Rights and equality Commission: The Commission on Administrative Justice Act, 2011 (Article 59)	One year	Enacted in August 2011
17	Legislation on political parties: The Political Parties Act, 2011 (Article 92)	One year	Enacted in August 2011
18	Salaries and Remuneration Commission: The Salaries and Remuneration Commission Act, 2011 (Article 230)	One year	Enacted in August 2011

B. LEGISLATION ENACTED BY 26TH FEBRUARY, 2012 UNDER THE FIFTH SCHEDULE TO THE CONSTITUTION AND THE AGREED SCHEDULE OF BILLS

	BILL	CONSTITUTION TIMELINE	STATUS
1	Legislation on Chapter 11: The Transition to Devolved Government Act, 2012 (Article 200 & Sixth schedule, Section 15)	Eighteen months	Enacted in February 2012
2	Legislation on Chapter 11: The Intergovernmental Relations Act, 2012 (Article 200 & Sixth schedule, Section 15)	Eighteen months	Enacted in February 2012
3	Legislation on Land: The Land Registration Act, 2012 (Article 68)	Eighteen months	Enacted April 2012
4	Legislation on Land: The Land Act, 2012 (Article 68)	Eighteen months	Enacted April 2012
5	National Land Commission: The National Land Commission Act, 2012 (Article 67)	Eighteen months	Enacted April 2012
6	Legislation on Chapter 11: The County Government Act, 2012 (Article 200 & Sixth schedule, Section 15)	Eighteen months	Enacted in June 2012
7	Teachers Service Commission: The Teachers Service Commission Act, 2012 (Article 237)	Five years	Enacted June 2012
8	Legislation on Chapter 12: The Public Financial Management Act, 2012 (Chapter 12)	Two years	Enacted July 2012
9	The Public Service Commission: The Public Service Commission Act, 2012 (Article 233)	Five years	Enacted August 2012

C. LEGISLATION ENACTED BY 26TH AUGUST, 2012 UNDER THE FIFTH SCHEDULE TO THE CONSTITUTION

BILL	CONSTITUTION TIMELINE	STATUS	
1	Judiciary Fund (Article 173)	Two years	Provided for in the Judicial Service Act, Enacted in March 2011
2	Determination of Questions of Membership of Parliament (Article 105)	Two years	Provided for in the Elections Act, 2011
3	The Public Finance Management Act, 2012	Two years	Enacted May 2012
4	Financial Control (Article 225)	Two years	Legislation included in Public Finance Management Act, 2012. Enacted May 2012
5	Legislation on Leadership: The Leadership and Integrity Bill, 2012 (Article 80)	Two years	Enacted in August 2012
6	Right to Petition Parliament: The Petition to Parliament (Procedure) Bill, 2012 (Article 119)	Two years	Enacted in August 2012
7	Assumption of Office of the President: The Assumption of the Office of the President Bill, 2012 (Article 141)	Two years	Enacted in August 2012
8	National Security Organs: National Intelligence Service Bill, 2012 (Article 239)	Two years	Enacted in August 2012
9	National Security Organs: National Security Council Bill, 2012 (Article 239)	Two years	To be enacted by August 2012
10	National Security Organs (Article 239): Kenya Defence Forces Bill, 2012	Two years	Enacted in August 2012
11	Command of the Police Service: National Police Service Act, 2011 (Article 245)	Two years	Enacted in August 2011
12	Independent Police Oversight Authority Act, 2011	Two years	Enacted in November 2011



CIC Public engagement forum in
Garissa County

In an attempt to provide guidance to public institutions on the process of implementation of the Constitution, the Commission facilitated the issuance of Process Circular No. OP/CAB/17/84/1A highlighting the role of Government institutions in the implementation of the Constitution. Pursuant to this Circular, Ministries and State Agencies have set up working teams to revise existing policies and administrative procedures.

Working through its thematic teams, CIC engaged with the different implementers to ensure that there is adequate public participation and stakeholder consultation in the development and review of policies. Some policies identified for review and development include policies relating to Disaster Management, Access to Justice, Gender Mainstreaming, Refugees, Foreign Relations, National Housing, Education and Health.

The Commission facilitated the development and implementation of administrative procedures, especially those aimed at promoting equality and non-discrimination in the recruitment of National Youth Service and the Kenya Police Service personnel. The Commission also monitored judicial reforms and related administrative procedures designed to transform the Judiciary in its endeavour to deliver equal access to justice.

4.2 Reporting to Parliament

The Commission has prepared and published in the Kenya Gazette and other mass media channels quarterly reports for distribution to the people of Kenya. The reports offer an important tool of informing Parliament and the people of Kenya on progress in the implementation of the Constitution. The reports are available on CIC website: www.cickenya.org.

4.3 Work with Constitutional Commissions and Independent Offices

Chapter 15 of the Constitution establishes ten commissions and requires Parliament to establish one more under Article 79. During the period under review, CIC worked with these constitutional commissions in undertaking consultative forums and consultative county visits.

The Commission partnered with other Constitutional Commissions in the formation of the 'Chairpersons' Forum' to deal with governance issues of public concern relating to the effective implementation of the Constitution, and to help coordinate constitutional commissions and independent offices for the effective discharge of their respective constitutional and statutory mandates.

4.4 Transition to Devolved System of Government

The Commission reviewed and facilitated laws dealing with Devolution including County Governments Act 2012, Urban Areas and Cities Act 2012, Inter-Governmental Relations Act 2012, Transition to Devolved Government Act 2012, Elections Act 2011 and Public Finance Management Act 2012.

During the period under review, the Commission sensitized and consulted with Local Authorities in a bid to ensure participation, ownership and smooth transition to devolved government. As required by law, CIC continues to hold consultative meetings with the Commission on Revenue Allocation (CRA) and the Transition Authority (TA) to address issues relating to transition to devolved government.

4.5 Judicial Intervention

In exercise of its mandate and to promote constitutionalism, CIC sought the court's guidance through legal proceedings in cases of real or perceived misinterpretation or misapplication of the Constitution. These cases include:

1. *Constitutional Petition No. 65, 74 & 82 of 2011 (Consolidated) seeking the Determination of the Date for the Next General Elections*
2. *Constitutional Petition No. 208 of 2012 and Judicial Review No. 207 of 2012 (Consolidated) challenging the Appointment of County Commissioners*
3. *Constitutional Petition No. 94 of 2012 seeking to Clarify the Procedure for the Preparation of Legislation to Implement the Constitution*
4. *Constitutional Petition No. 137 of 2011 seeking to Determine whether Members of Parliament (MPs) should Pay Income Tax*

For a detailed presentation on CIC judicial interventions, see Annex III.

In conclusion, the Commission endeavoured and achieved good success in key areas of its mandate in the period under review. However, it also encountered some challenges from which it drew valuable lessons.



The Supreme Court: upholding the sanctity of the Constitution



Challenges: matters of grave concern

SECTIONS 5

Challenges and Impediments to the Implementation of the Constitution

5.0 Introduction

The implementation of the Constitution began immediately after its promulgation on 27th August 2012. While great strides have been made in the implementation, the process has also been affected by a range of challenges. The following challenges were experienced during the reporting period.

5.1 Irregular Amendment of Bills by the Executive and the Legislature

The Executive altered the content of some of the bills which had been finalized by CIC, the originating Ministry, the AG and the Kenya Law Reform Commission and forwarded for publication. This was done without reference to CIC as required by a process agreed upon by implementing agencies including CIOC. This challenge was however sorted out in subsequent discussions between CIC, the AG and the Executive.

Taking stock of the challenges in implementing the Constitution



5.2 Attempts to Mislead the Public on Some Constitutional Issues

There were some instances in which some politicians attempted to mislead the public on aspects of the implementation of the Constitution. These included instances of use of hate speech, attacks on constitutional offices, and disregard of the authority and mandate of constitutional offices for example attempts to review terms of service of parliamentary office holders. Such actions led to anxiety and uncertainty that risk compromising implementation, such as regarding the date of election, for example.

5.3 Delay in Operationalizing Some Constitutional Offices

During the reporting period, the Executive failed to appoint key members to some institutions and commissions whose mandate are critical for the implementation of the Constitution. The affected institutions and commissions included the Registrar of Political Parties, the Ethics and Anti-Corruption Commission, the National Police Service Commission, and the National Land Commission.

5.4 Disregard of the Constitutional Implementation Process and Mandate of CIC

A number of bills were approved by the Cabinet and subsequently passed by Parliament without being reviewed by CIC. Also, some of these bills were not subjected to public participation as required by the Constitution. A number of Private Members Bills were also published and subsequently debated in Parliament without review by CIC yet they have a direct bearing on the implementation of the Constitution.

5.5 Late Submission of Bills

Some Constitution implementing partners failed to submit bills originated by them to CIC in good time. As a result, some bills were reviewed by CIC within very tight deadlines. In addition, Parliament was in some instances forced to enact pieces of legislation without first critically scrutinizing the content to avoid offending the constitutional and agreed timelines.

5.6 Failure to Develop Policies Prior to Preparation of Bills

Most Ministries have prepared and submitted bills to CIC for review without first elaborating the requisite policy framework. This has led to a situation where policies are subsequently prepared to meet the provisions of the law rather than the other way around. The danger of this approach is that there may be incongruence between such policies and the law.

5.7 Non-compliant Regulations and Administrative Procedures

Many Ministries and institutions are yet to develop regulations and/or administrative procedures to accord with the laws that have been enacted. At the same time, other Ministries and institutions are yet to review existing regulations and administrative procedures to make them consistent with the letter and spirit of the Constitution. Similarly, local authorities are yet to review their by-laws to make them consistent with the Urban Areas and Cities Act 2011.

5.8 Lack of Legislation on National Government

The Executive is yet to develop and submit to CIC for review, a law to govern the operations of the National Government. This legislation should have been developed together with the bills dealing with County Governments which were enacted in February 2012.

5.9 The Role of the Attorney-General's Office in the New Dispensation

In some instances, the Attorney-General failed to give sound legal advice to the Executive on matters relevant to the implementation of the Constitution. In other cases, The Attorney-General's advice was ignored by the Executive, and this led to violation of some key provisions of the Constitution by the Executive. However, subsequent discussions between CIC and the Attorney General have since ironed out this challenge.

5.10 Unconstitutional Provisions in the Enacted Laws and Disregard of Due Process

There were instances in which Parliament introduced unconstitutional provisions in the bills. A case in point is the introduction of unconstitutional provisions in the County Government Bill 2012, which, subject to the operational command structure set out in the National Police Service Act or any other National Security legislation, purported to give the Governor the power to chair the County equivalent of the National Security Council as provided in Article 239 (5) of the Constitution. This provision contravened Chapter Fourteen of the Constitution, which places the National Security Council under the National Government. Further, National Security is not among the functions of County Governments as set out in Part Two of the Fourth Schedule to the Constitution, hence there is no County equivalent

of the National Security Council. The President declined to assent to the bill and this led to a delay in its enactment.

5.11 Limited Civic Awareness on the Constitution

Although the Constitution was promulgated on August 27th 2010, there is evidence that the majority of Kenyans are yet to adequately understand and internalize the provisions of the Constitution. Under such circumstances, it becomes very difficult for the people to identify violations of the Constitution by public servants and to defend the Constitution. This has posed a major challenge to the implementation of the Constitution.

Involving the youth in implementing the constitution at a youth forum



5.12 Resistance to Change and the Continuing Culture of Impunity

Partly as a result of limited understanding of the Constitution, CIC has observed with concern the resistance of the full implementation of the Constitution by some forces in society.



Sharing experiences with others during a visit to Indonesia

SECTION 6

Lessons Learnt and Recommendations

6.0 Introduction

Two years after the promulgation of the Constitution, the people of Kenya have started experiencing the fruits of a new dawn manifested in the implementation of the Constitution. There has been increased openness, transparency in governance, accountability of public officers, restructuring and reform of public institutions to accord with the institutional framework prescribed by the Constitution, and creation of new institutions leading to increased democratic space and greater Government responsiveness to public demands.

6.1 Lessons Learnt

A number of lessons have been learnt in the process of implementing the constitution that will advise the implementation going forward. These include:

- For effective public participation as envisaged in the Constitution, there is need for structured and continuous public engagement.
- The need for a comprehensive change management programme addressing policy, legislation, administrative procedures and institutional framework gaps leading to constitutionalism and informed consent.
- All actors involved in implementing the Constitution need to act together in the line with the constitutional 'duty to cooperate', not just with CIC, but with all partners in the process of implementation.
- When implementing the Constitution, the national principles and values should act as a guide to be upheld by all actors.
- The need to forgo short term political gain and instead focus on implementing the Constitution and upholding national interests.

6.2 Recommendations

Streamlining of the Legislative Process

The Commission recommends that all draft bills are reviewed by CIC before being submitted to Parliament. In the same manner, CIC recommends that, just as is provided for in the Constitution, public participation should be incorporated in the review and development of all legislation, policies and administrative procedures.

Civic Education

There is need for urgent civic education to increase awareness, especially at the grass-roots regarding the opportunities, procedures and the rights relating to participation in legislative policy and other processes. In this regard civic education should be rolled out while ensuring that the content complies with the letter and spirit of the Constitution.

Responsible Political Leadership

The political leadership have a direct responsibility to practise and propagate responsible politics, and to promote constitutionalism and rule of law in order to ensure achievement of the vision of a united, peaceful and prosperous

Kenya in which all citizens respect the rule of law, uphold national values and live by the Constitution.

Respect for the Imperative of Public Participation

Public participation is a principle in the Constitution that needs to be respected and facilitated. The people's participation in any legislation is a key element in according it legitimacy and acceptability. The Commission calls upon all partners to do their part in engendering effective public participation whenever deciding on matters that affect them.

Fast-tracking the Operationalization of Constitutional Offices

The Executive should prioritise operationalization of constitutional commissions to ensure reforms are on track. Although the Ethics and Anti-Corruption Commission has continued to function, it is imperative that commissioners are successfully appointed and take up offices as soon as possible. The Police Service Commission is another fundamental organ that needs to be urgently constituted and rolled out.

Development of a National Government Framework

The Commission recommends the development of a bill to specifically provide for issues relating to operations of National Government and transition from the existing structure to the two-tier system of government.

Increased Co-ordination in the Executive

There is need for increased co-ordination within and from the Executive to ensure that relevant processes in the preparation of the bills are undertaken in a timely manner.

Fostering Changes in Attitudes and Mind-sets

The Commission recommends the development and implementation of programmes to foster attitude change, entrench constitutionalism and propagate the values enshrined in the Constitution.

Development of Policies Prior to Preparation of Bills, Regulations and Administrative Procedures

Development of policies to guide the preparation of bills is necessary to ensure a comprehensive approach to development of legislation. Further, there is need to develop regulations and administrative procedures to accord with the laws that have been enacted. Additionally, there is need for implementing agencies to review existing regulations and administrative procedures. Similarly local authorities need to review their by-laws to make them consistent with the Urban Areas and Cities Act 2011.



Recognition for a job well done:
Koffi Anan during a courtesy call
on the Commission



Financial Statements for the 2011/2012 Financial Year

CONTENTS

- Commission Information
- Statement of Commission Responsibilities
- Auditors Report of the Commission
- Financial Statements:
 - Appropriation Statement
 - Notes to the Financial Statements
 - Statement of Appropriations In Aid
 - Statement of Assets and Liabilities

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KENYA COMMERCIAL BANK LIMITED

SARIT CENTRE BRANCH
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AUDITORS

KENYA NATIONAL AUDIT OFFICE
P O BOX 30084 - 00100
NAIROBI

**STATEMENT OF COMMISSION RESPONSIBILITIES
ON THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30TH JUNE 2012**

The CIC Act 2010 requires the Commission to prepare financial statements for each financial year, which give a true and fair view of the state of affairs of the Commission as at the end of the financial year and of the operating results for that year. It also requires the Commission to keep proper accounting records which disclose, with reasonable accuracy, the financial position of the Commission. They are also responsible for safeguarding the assets of the Commission.

The Commission accepts responsibility for the annual financial statements, which have been prepared using appropriate accounting policies supported by reasonable and prudent judgements and estimates, in conformity with Government of Kenya financial regulations and the generally accepted accounting principles. The Commission is of the opinion that the financial statements give a true and fair view of the state of the financial affairs of the Commission and of its operating results. The Commission further accepts responsibility for the maintenance of accounting records, which may be relied upon in the preparation of financial statements, as well as adequate systems of internal control.



Amb. Peter O. Ole Nkuraiya, CBS
SECRETARY/CHIEF EXECUTIVE OFFICER

28th September 2012

.....
Date

REPORT OF THE COMMISSION FOR THE YEAR ENDED 30TH JUNE, 2012

The Commission submits their report and the unaudited financial statements for the year ended 30 June, 2012 which show the state of the Commission financial status.

1. AUDITORS

The Kenya National Audit Office is responsible for the statutory audit of the Commission books of account in accordance with the CIC Act. Currently the audit of the financial statements is on-going.

2. The Commission was established under section 5 (6) sixth schedule and the CIC Act 2010. It has been in existence since January 2011. CIC was initially allocated Kshs 262 million in the FY 2010/11. The expenditure was carried out under the Ministry of Justice, National Cohesion and Constitutional Affairs (MOJNCCA). CIC managed to spend 215 million during that period.

During the FY 2011/12, CIC was allocated Kshs. 514 Million.

Major achievements include review of various bills in accordance with the constitutional and agreed timelines, monitoring and reporting on the implementation of the Constitution, as well as institutional development for the Commission. The major challenges experienced were initially to do with release of funds but this has been addressed since the Commission has managed to get an independent vote. CIC had requested for an allocation of Kshs 1.2 billion. However in the printed estimates released by the Treasury CIC was allocated Kshs 514 Million.

Although CIC has received additional bilateral donor support of an equivalent of Kshs 300 million, the amount falls short of the estimated expenditure for the FY 2012/2013. CIC fears that this will negatively impact on its ability to effectively deliver on its mandate. The Commission hopes that Parliament will exercise its mandate to review CIC's allocation and ensure the Commission is adequately resourced.

During the current MTEF period, the Commission will continue to be guided by the following four key result areas in its work namely;

1. A respected, well-functioning and independent Commission effectively delivering on its mandate
2. Policies which are compliant with the letter and spirit of the Constitution
3. Laws which are compliant with the letter and spirit of the Constitution
4. Effective institutional frameworks and administrative procedures for implementation of the Constitution.

ACCOUNTING OFFICER PUBLIC FUNDS REPORT

During the year under review, the Commission has been able to dispense with various bills which Parliament has so far enacted into law. The medium term plan is to focus on bills with deadlines to facilitate implementation of the Constitution. The priority plan is to have participation by the people of Kenya in the implementation process by carrying out County visits to enlighten and seek opinion of the public on various bills to be enacted. The Commission achieved most of the targets despite the challenge of not having adequate staff to carry out the functions. It is worth stating here that during the financial year, there was change of guard when the Commission recruited the Secretary /Chief Executive Officer. We would like to appreciate the assistance and cooperation so far extended to the Commission by the Treasury.

a) APPROPRIATION ACCOUNT

APPROPRIATION ACCOUNT FOR THE YEAR ENDED 30th JUNE, 2012

SUB VOTE	APPROVED ESTIMATES Kshs	ACTUAL EXPENDITURE Kshs	SURPLUS/DEFICIT Kshs
General Admin & planning	414,000,000.00	390,867,192.50	23,132,807.50

The exchequer released to the Commission Kshs. 414 Million during the financial year 2011/12. The Commission spent Kshs. 390 Million on its programmes and therefore Kshs. 23 Million was not used. This amount had been earmarked for partitioning of the Commission's offices.

Below, see the detailed appropriation account.

COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION (CIC) RECURRENT APPROPRIATION ACCOUNT FOR THE YEAR ENDED 30TH JUNE 2012

ITEM	TITLE	REVISED ESTIMATES	EXPENDITURE	UNDER EXPENDITURE	OVER EXPENDITURE
2110200	Basic Wages - Temporary Employees	90,204,256.00	91,522,774.15		1,318,518.15
2110300	Personal Allowance - Paid as part of Salary	4,470,744.00	4,572,863.25		102,119.25
2210100	Utilities Supplies and Services	1,500,000.00	1,275,980.40	224,019.60	
2210200	Communication Supplies and Services	4,500,000.00	5,739,044.00		1,239,044.00
2210300	Domestic Travel and Subsistence, and other Transport Costs	47,650,000.00	42,916,983.75	4,733,016.25	
2210400	Foreign Travel and Subsistence, and other Transport Costs	18,048,500.00	16,672,589.84	1,375,910.16	
2210500	Printing, Advertising and Information Supplies and Services	38,501,280.00	38,843,850.00		342,570.00
2210600	Rentals of Produced Assets	32,500,000.00	32,500,309.65		309.65
2210700	Training Expenses	4,500,000.00	3,783,812.00	716,188.00	
2210800	Hospitality Supplies and Services	33,551,500.00	34,802,293.25		1,250,793.25
2210900	Insurance Costs	15,000,000.00	14,927,708.45	72,291.55	
2211000	Specialized Materials and Supplies	5,600,000.00	1,886,440.00	3,713,560.00	
2211100	Office and General Supplies and Services	4,500,000.00	5,018,995.00		518,995.00
2211200	Fuel Oil and Lubricants	7,900,000.00	8,899,682.00		999,682.00
2211300	Other Operating Expenses	14,550,000.00	12,512,322.67	2,037,677.33	
2220100	Routine Maintenance -Vehicles and other Transport Equipment	3,000,000.00	3,593,232.00		593,232.00

2220200	Routine Maintenance - Other Assets	1,200,000.00	1,418,802.00		218,802.00
3110300	Refurbishment of Buildings	50,000,000.00	37,888,481.10	12,111,518.90	
3110700	Purchase of Vehicles and other Transport Equipment	14,962,720.00	14,962,719.40	0.60	
3111000	Purchase of Office Furniture and General Equipment	11,000,000.00	9,694,809.80	1,305,190.20	
3111400	Research, Feasibility Study & Project - Preparation, Design, Supervision	12,000,000.00	8,572,499.78	3,427,500.22	
	GROSS TOTAL	415,139,000.00	392,006,192.49	29,716,872.81	6,584,065.30
	Less A.I.A	1,139,000.00	1,139,000.00		
	NET TOTAL	414,000,000.00	390,867,192.49	29,716,872.81	6,584,065.30

NOTES 1

Basic Wages - 2110200.

The over-expenditure on basic wages of Kshs. 1,318,518.15 was due to re-allocation of funds to undertake partitioning during the year which was under-budgeted.

NOTES 2

Domestic Travel - 2210300

The under-expenditure of Kshs.4,733,016.25 was occasioned by the time frame within which programmes which had been planned could not be undertaken due to deadlines for legislation.

NOTES 3

Foreign Travel – 2210400

The under-expenditure of Kshs.1, 375,910.16 was occasioned by the cancellation of some benchmarking study tours for the Commission to Hong Kong and Singapore.

NOTES 4

Communication supplies and services - 2210200

The over-expenditure of Kshs. 1,239,044.00 was occasioned by underestimates at the time of budget.

NOTES 5

Hospitality supplies and services – 2210800

The over-expenditure of Kshs 1,250,793.25 was occasioned by the underestimates made at the time of the budget.

NOTES 6

Specialised materials and supplies – 2211000

The under-expenditure of Kshs 3,713,560 was caused by the prolonged procurement procedures before the closure of the financial year.

NOTES 7

Other Operating Expenses

The under-expenditure of Kshs 2,037,677.33 was occasioned by the lack of sufficient personnel.

NOTES 8

Refurbishments of buildings – 3110300

The under-expenditure of Kshs. 12,111,518.90 was caused by the prolonged procurement procedures which requires the Ministry of Public Works to be on board in line with the Public Procurement Act of 2005.

NOTES 9

Purchase of Office furniture and General Equipment – 3111000

The under-expenditure of Kshs. 1,305,190.20 was occasioned by the lengthy procurement procedures.

NOTES 10

Research, Feasibility study and Project Preparation, Design and Supervision – 3111400

The under-expenditure was caused by the prolonged procurement procedures as per the Public Procurement Act of 2005 which requires the consultants to be selected through competitive bidding.

b) REVENUE STATEMENTS APPROPRIATION IN AID STATEMENT

SUB VOTE	APPROVED ESTIMATES Kshs	ACTUAL EXPENDITURE Kshs
AIA	1,139,000.00	1,139,000.00

The Commission managed to collect the above amount being from advertisement and subsequent sale of tender documents. The amount was not submitted to the Treasury but was spent.

c) STATEMENT OF ASSETS AND LIABILITIES

ASSETS AND LIABILITIES STATEMENT FOR THE YEAR ENDED 30th JUNE 2012

SUB VOTE	AMOUNT Kshs.	GENERAL ACCOUNTS OF VOTE (GAV)
TEMPORARY IMPREST	9,110,812.75	1,139,000.00
SALARY ADVANCE	1,903,450.00	
BANK BALANCES(PMG)	10,215,095.25	21,229,358.00
TOTAL AMOUNT	21,229,358.00	21,229,358



JOSEPH YAMO
HEAD OF ACCOUNTING UNIT

ANNEXES

ANNEX I

Biographies of Commissioners



Mr. Charles Nyachae

Mr. 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 (ICJ) and has also been the Chairperson of the Institute for Education and Democracy, IED. Mr. Nyachae formerly served as a Commissioner with the Kenya Law Review Commission and sits on the board of the Center for Governance & Democracy. Mr. Nyachae has vast experience in Human Rights, Democracy & Electoral laws. As the Chairperson, Mr Nyachae is the official spokesman for the Commission.

Dr. Elizabeth Muli

Dr. Muli is an Advocate of the High Court of Kenya of more than 16 years standing. She is a Fulbright Fellow and holds a doctorate degree from Stanford Law School, a Masters of Laws from the University of Bristol and a Bachelor of Laws degree from the University of Nairobi. 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. Elizabeth has served as a consultant to international organizations and civil society organizations on human rights issues and is a member of the boards of human rights organizations. She has served as a member of 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 Vice-Chairperson of CIC and Convener of the Executive & Security Thematic Team at the CIC.



Mr. Kibaya Imaana Laibuta

Mr. Kibaya Imaana Laibuta is a Ph.D. candidate at the University of Nairobi Law School. He holds a Master of Laws Degree from the London School of Economics and Political Science (University of London) and a Bachelor of Laws Degree from the University of Nairobi. He has a Post-Graduate Diploma in Law from the Kenya School of Law. Mr. Laibuta is a Mediator, a Chartered Arbitrator and a Fellow of the Chartered Institute of Arbitrators. He is an Advocate of the High Court of Kenya of 25 years standing. Before his appointment to CIC, Mr. Laibuta was a legal practitioner and a law lecturer at the Kenya Polytechnic University College of the University of Nairobi for 24 years. He sits on the International Board of the Voluntary Services Overseas (VSO) Federation and the Kenya Institute for the Blind (KIB). He also served as the Chair of VSO (Kenya) and of the National Council for Persons with Disabilities. Mr. Laibuta also served as a Board member of Export Processing Zone Authority, the National Development Fund for Persons with Disabilities and the Kenya Society for the Blind. He is a writer in the areas of Commercial Law and Poetry. 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; a Master of Arts (MA) degree in Government and a Bachelor of Arts (BA, Hons.) degree in Government & Sociology from the University of Nairobi. Prof Wanyande has taught political science at the University of Nairobi for over 20 years. He has conducted research, and 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 CIC, Prof Wanyande was Chairman, Department of Political Science at the University of Nairobi. Before that, Prof Wanyande had also served as Dean, Faculty of Arts, University of Nairobi. In addition, he has served in various capacities in many committees of the University of Nairobi. Prof. Wanyande is the Convener of the Devolution Thematic Team at CIC.



Mr. Kamotho Waiganjo

Mr Waiganjo holds a Bachelor of Laws and Master of Laws degree both from the University of Nairobi. He is also a Chartered Arbitrator. Has been in private law practice for over 20 years and was a senior partner at Kamotho Maiyo & Mbatia Advocates specializing in commercial and conveyancing law. He has taught law at the Kenya School of Law. In addition, Mr Waiganjo has been involved in wide ranging consultancies in constitutional law and was advisor to numerous bodies during the constitution-making process. He is extensively involved in public interest work and sits in the boards of several charities and civil society organizations in Kenya. Mr. Waiganjo is the Convener of the Public Finance Thematic Team.

Mrs Catherine Muyeka Mumma

Mrs 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 spanning more than 19 years. Catherine's experience includes work in the public service (State Law Office), and she 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. Mrs Mumma also has experience in the civil society sector where she has worked in 42 communities with vulnerable populations and marginalized populations. She has broad experience of working on all areas of human rights. Mrs Mumma is the Convener of the Bill of Rights and Citizenship Thematic Team.



Dr. Ibrahim M. Ali

Dr. Ibrahim M Ali was previously Director of the African Conservation Centre and the Wildlife Clubs of Kenya. Dr. Ali 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. In addition, Dr. Ali is a science teacher and conservationist with a keen interest in ideas, knowledge and attitudes about Environment and Conservation as well as research and training. Dr. Ali holds a PhD from the University of East Anglia and an M.Sc degree from the same university, as well as a Bachelor of Education degree from the University of Exeter—all in the UK. Dr Ali is the Convener of the Land and Environment Thematic Team.





Mr. Philemon Mwaisaka EBS, SS.

Mr. 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 has served severally as District Commissioner and was formerly the Principal of Kenya Utalii College. He was also a Director of the Industrial and Commercial Development Corporation. Mr Mwaisaka holds B.A. Hons degree from the University of Nairobi in Government & Sociology; he has also studied Public Administration at the University of Birmingham. He is a trustee of Wildlife Clubs and New Life Homes. Mr Mwaisaka is the Convener of the Public Service and Leadership Thematic Team.



Dr. Florence Omosa

Florence is a Decision Scientist and Institution Strengthening Expert. She has served as a lecturer at the University of Nairobi, and as deputy director of the ISGM program—as well as a senior regional Organizational Development and systems analyst expert of USAID/East Africa. In addition, she has served as a consultant with various regional and international organizations on decision making and institutional development. Dr Omosa holds a PhD and MSc in Decision Sciences both from the London School of Economics and Political Science and an MBA (Finance) and B.Com (Accounting) both from the University of Nairobi. She is the Convener of the Representation of the People & the Legislature Thematic Team.

ANNEX II

Commissioners and Staff of CIC

Chairperson

Mr. Charles Nyachae

Vice – Chairperson

Dr. Elizabeth Muli

Commissioners

Comm. Mrs. Catherine Mumma

Comm. Dr. Florence Omosa

Comm. Dr. Ibrahim Ali

Comm. Mr. Kibaya Imaana Laibuta

Comm. Mr. Philemon Mwaisaka EBS,SS

Comm. Prof. Peter Wanyande

Comm. Mr. Kamotho Waiganjo

Secretary /Chief Executive Officer

Amb. Peter O. Ole Nkuraiya, CBS

Administration

Lily Koros, Director, Management Services
 Kennedy Malinda, Supply Chain Management
 Khalid Salim, Head of Communications
 Mugita Gesongo, Head of Monitoring and Evaluation
 Bernard Cherutich, Ag. Head, Finance and Accounts
 Brian Ikol, Legal Services
 Timothy Kariuki, Head of Planning
 Evans Nyabuti, Internal Audit
 Joseph Yamo, Senior Accountant
 James Kamucha, Head of Transport
 Fred Oromo, Snr. Supply Chain Management Officer
 Kikanae Topati, Personal Assistant to the Secretary/
 Chief Executive Officer
 Hassan Abdi, Accountant II
 Pauline Kamurutu, Accountant II

Programmes

Esther Kodhek, Director of Programmes
 Elizabeth K. Obiero, Principal Programme Officer,
 Institutional Strengthening
 James Wagalla, Principal Programme Officer,
 Institutional Strengthening
 Ruth Muthui, Senior Programme Officer
 Valerie Nangidi, Senior Programme Officer
 Sophia Sitati, Senior Programme Officer
 Victor Odhiambo, Senior Programme Officer
 Abdirazak Abdi, Senior Programme Officer
 Christine Njeru, Senior Programme Officer

Doreen Muthaura, Senior Programme Officer
 Mary Goretti Orwa, Senior Programme Officer
 Edith Cheramboss, Senior Programme Officer
 Jeremiah Nyakundi, Personal Assistant to the
 Chairperson
 Caroline Gaita, Personal Assistant to Comm. Laibuta

The Commission is supported by a dedicated team of officers who play an important role in ensuring that the Commission's mandate is efficiently and effectively discharged.

ANNEX III

Update on CIC Judicial Intervention

	Parties and Case Reference	Subject Matter/ Issue	CIC Role & Representation	Status
1	Milton Mugambi Imanyara & others v AG & others & CREAM & another v CIC & Others Petition Civil Appeal No. 74&82 of 2012 (Consolidated)	In the matter of construction, interpretation and determination of date of the next general elections	Petitioner Letangule & Co. Advocates	Judgment issued by Court of Appeal on 31st July 2012. Court ruled that: 1. The date of the next general elections remains 4th march 2013 2. President and PM lack constitutional mandate to dissolve parliament fix elections date. 3. The death of the grand coalition cannot trigger dissolution of Parliament to allow for elections. 4. Only IEBC has constitutional mandate to fix and conduct elections. 5. CREAM, one of the appellants lacks locus standi to participate in the appeal.
2	FIDA-K & Others v AG & others Constitutional Petition No. 102 of 2011	In the matter of the recommendation by the JSC of persons for appointment to the offices of Judges of the Supreme Court under the Constitution of Kenya. The correct interpretation, full tenure, meaning and effect of Article 27 of the Constitution of Kenya 2010 and the proper approach to the interpretation of the Constitution.	Amicus Curiae 1.Njoroge Regeru Advocates 2.Judy Thongori & Co Advocates 3.Azania Legal Consultants	Judgment issued 25th August 2011. Petition rejected. Appeal pending hearing before Court of Appeal
3	Japeth Kiio v ODM & Others Constitutional Petition No. 107 of 2011	Case on Sec. 2 and Sec 15 of the Political Parties Act and interpretation of the provisions of Article 77(2) of the Constitution, the prohibition on state officers to hold office in a political party.	Interested party	Hearing date to be issued

4	Dr. Timothy Njoya, TISA, Youth League & Others Constitutional Petition No. 137 of 2011	Interpretation of the Constitution to determine: whether all State Officers, including MPs, are under an obligation to pay tax as per Article 210 as read with 201 and 230 of the Constitution; whether the Executive or the transitional clauses saves or exempts the MPs from payment of tax; whether Government could legally settle the tax burden of MPs using public resources or tax payer's money.	Interested Party No representation	Case coming up for submissions September.
5	CIC v AG & Others Constitutional Petition No.145 of 2011	Clarification of the procedure for enactment of legislation for implementation of the Constitution (arising out of the AG's unconstitutional conduct in the finalization of two Bills, namely the Contingencies Fund and County Emergency Funds Bill, 2011 and the National Government Loans Guarantee Bill 2011 without consulting CIC).	Petitioner Njoroge Regeru Advocates	Case overtaken by events because the Public Finance Management Act repealed the Contingencies fund and county emergency funds Act and the national government loans guarantee Act.
6	Republic v IEBC Judicial Review Misc. App. 94 Of 2012	IEBC delimitation of constituency and wards boundaries case.	Petitioner	Judgment issued 9th July 2012. The court reviewed some civic boundaries and also ruled that: 1. There is need to develop a legal framework for the creation and determination of sub-locations to ensure population parity can be achieved. 2. Parliament should address the issue of County boundaries for accuracy of information as to the location of sub-locations in counties.

7	Patrick Njuguna, Augustino Neto, Charles Omanga and others v AG & others. Constitutional Petition No. 21 of 2012	Advisory Opinion and the Interpretation of Articles 10(1) & (2) Articles 73, 75 and 80 of the Constitution and the charges on the Kenyan situation in the International Criminal Court regarding eligibility of Hon. Uhuru Kenyatta and Hon. William Ruto to run for Office of the Presidency and the implication of persons charged with serious crimes taking up appointive or elective office in view of Chapter Six of the Constitution.	Interested Party No representation	Hearing on 27th September 2012
8	Consortium for the Empowerment and Development of Marginalized Communities & others v AG & others Petition No. 385 of 2012	Alleged Contravention constitutional provisions and the Kenya National Commission of Human Rights Act 2011 by failing to give fair and equitable representation to the minority and marginalized communities in the shortlisting of candidates for appointment of Chairperson and members of the Kenya National Commission on Human Rights.	Respondent No representation	Hearing on 24th September 2012
9	Andrew Okiya Omtatah Okoiti, & others v AG & others Constitutional Petition no. 351 of 2012	Application for Interpretation of President's executive powers under Sec. 22 and Sec. 23 of the former Constitution of Kenya in respect of Presidential immunity under Sec. 14 of the former Constitution and Articles 131 and 132 of the Constitution of Kenya	No representation	

10	CIC v AG & others Constitutional Petition No. of 2011	Contravention of Section 34(9) of the Elections Act of the provisions of Article 81, 90, 91, 97, 98, 100, 129 to 148 and 177 of the Constitution	Petitioner Kilonzo & Co. Advocates	Awaiting allocation of hearing date. (TBC)
11	CIC v Ag and others Constitutional Application No. 1 of 2011	Advisory Opinion seeking the Court's opinion on several questions relating to appointments to state offices and commissions and the relationship between the Sixth Schedule of the Constitution and these appointments. Under Article 163(6) CIC is seeking the meaning of nine articles and Section 21(2) of the transitional clauses.	Petitioner 1.Njoroge Regeru Advocates	Application withdrawn and court file closed due to passage of time leading to the issues raised in the case being overtaken by events.
12	Centre for Rights Education & Awareness (CREW) & six others V AG & others Constitutional Application No. 208 of 2012 and Judicial Review No. 207 of 2012 (Consolidated)	Petition and Judicial review application question the constitutionality of the appointment or deployment by the President of 47 County Commissioners	CREAW No representation	The court delivered its judgment on 29th June 20102, held as follows: 1. The President has no power to appoint or deploy County Commissioners. 2. Even if the President had had such power the appointments or deployments violated Article 10 and 27 of the Constitution. 3. The purported deployment of County Commissioners by Gazette Notice No. 6937 of 23rd May 2012 was therefore unconstitutional, null and void.
13	Daniel Kipchirchir Sang' v AG & 4 others High Court Petition No. 237 of 2011	Application contesting removal of members of the Parliamentary service Committee to comply with Constitution.	Respondent Ojiambo & Co. Advocates	Petition withdrawn by applicant.

ANNEX IV

Development Partners

The Commission acknowledges and appreciates the material, technical and financial support from the following development partners:

- Government of Japan
- The Royal Netherlands Government
- International Development Law Organisation (IDLO)
- International Rescue Committee (IRC)
- GIZ - Deutsche Gesellschaft für Internationale Zusammenarbeit
- United Nations Office of the High Commissioner for Human Rights
- Danish International Development Agency (DANIDA)
- Swedish International Development Cooperation Agency (SIDA)
- United Nations Development Programme (UNDP)
- United Nations High Commissioner for Refugees (UNHCR)
- United States Agency for International Development (USAID)
- World Wide Fund for Nature (WWF)
- SUNY-Kenya
- Department for International Development (DfID)