

**CELAK QUATERLY NEWSLETTER**  
**OCTOBER 2011 ISSUE**

---

**CELAK**

**NEWSLETTER**



**CELAK** is working with Kenyans to promote reforms and positive change through building a democratic political system that is issue-based, people centered, result oriented and accountable to citizens.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **CONTENTS**

(1) About CELA	3
(2) Introduction/Preamble and Problem Statement	5
(3) Executive Summary	7
(4) PAST ACTIVITIES	9

### **PART 1: IN PERSPECTIVE.**

[A] STRUCTURE OF GOVERNANCE	13
[B] INTRODUCTION	14
[C] INTRODUCTION TO KENYA'S DEVOLVED GOVERNMENT	18
[D] FREQUENTLY ASKED QUESTIONS ON THE NEW CONSTITUTION.	24
[E] TWO-THIRDS GENDER REQUIREMENT	44
[F] PRESIDENTIAL SYSTEM OF GOVERNMENT	45

### **PART 2: OPERATIONALIZATION AND IMPLEMENTATION OF THE CONSTITUTION**

A. DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL AND THE COUNTY GOVERNMENTS	48
B. TRANSITIONAL TO NEW KENYA	50
C. LEGISLATIONS	52
D. FIFTH SCHEDULE (Article 261 (1))PROPOSED BILLS	53
E. PROPOSED BILLS	54
F. PROBLEMS	

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **About CELA**

Centre for Economic and Libertarian Affairs Kenya (CELAK) was established as Community Based Organization (CBO) in the name of "Citizen Literacy & Justice" in 1998 at the height of the struggle for second liberation and registered as Non-Governmental Organization in 2004 to increase our outreach by acquiring National status and improve our fundraising capabilities. CELAK is a Kenyan indigenous non-profit organization (NGO), with the prime purpose of Advancing Political and Economic Reforms, Education, Entrenchment of the Culture of Constitutionalism, Democratisation, through Capacity Building, Civic/Political/Constitutional Education and Economic empowerment of the Vulnerable and poor ignorant masses. CELAK target Rural based Ignorant masses of the diverse communities of Kenya, Women, Marginalized and Vulnerable groups. CELAK is a National NGO with a robust management system and high aspirations for reforms through enhancing citizen participation especially Women, Youth, Marginalised, small towns, Rural communities and Vulnerable groups while fostering strong relationship with other organizations. It has had to learn quickly how to survive in the challenging world of development, with increasing donor and citizen demands in an increasingly complex and challenged world. CELAK has had to grow up in a fast changing context within Kenya.

**VISION:** Responsible citizens participating effectively in governance and equitable sustainable development based on solidarity and subsidiary principles in a stable, peaceful, democratic and secure environment.

**MISSION:** To strengthen Civil Society and communities become effective agents of positive change through Capacity Building, Education, provision of Civic/Political/Constitutional Education to enhance greater informed participation and decision-making, and enable citizens seek for political, economic, and social reforms.

**OBJECTIVE:** To promote National Democratic Participatory Culture of Pluralism in Governance to ensure Equity, Equality, Inclusiveness, Justice, unification, informed, Gender sensitive, and well functioning connected diverse self-managed communities of Kenya through Education Entrenchment of Democratic values and culture of constitutionalism.

**AIM:** Building a strong solidarity and subsidiary-based Devolved Regional Governance and strong Democratic National Institutions to enhance citizen participation , through Devolution and Decentralization, Civic/Political/Constitutional Education, Freedom of Information, Education, Economic Empowerment, Human Rights awareness, Capacity building, Advocacy, innovation, lobbying, supportive initiatives, participation, partnerships, and mobilization of local resources to achieve our social, political, cultural, and economical justice.

**CELAK Core Approach:** In building, strengthening and fostering of capacity and Organizational Development CELAK use the approach of workshops, Training of Trainers, Radio Call-in Sessions, Outreach Programs and Civic Campaigns to reach the targeted civil society and communities for mobilization to achieve a given goal.

**POLICY:** We do not discriminate on gender, creed, tribe, race, age, colour, political party affiliation or religious beliefs.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

**PRINCIPLE:** An idea starts from an individual to the community and to National government. Our work is guided by principles of Networking, Participatory Process, Reliability, Independence, Trust, Honesty, Commitment and Quality.

### **CORE PRINCIPLES & VALUES:**

- A. CELAK's Vision and Mission are its basic values, which guide us on not only what we do but also how we do it.
- B. CELAK shall be Accountable, Responsive, Committed, and Respectful.
- C. People of Kenya are the sole source of Legitimate Sovereign Authority and government must use it to benefit them.
- D. The collective will of the people as expressed in the Constitution is supreme and drives the wheels of governments.
- E. Kenyans as a body politic are the Sole Source of Legitimate Sovereign Authority individually and collectively.
- F. Endurance Democracy is founded on Respect for Human Rights, Dignity, Gender Equality, Equity, Justice and Peace.
- G. Decentralization, Devolution, Decongestion to enhance citizen participatory governance.
- H. Sanctity of alienable, universal Human Rights as defined in the treaties, universal Declaration of Human Rights, and constitutions.
- I. All people have an intrinsic worth and human rights that are universal, inalienable and fundamental.
  - a. CELAK focuses on specific areas of CSOs Capacity Building, Education, Community and Resources Mobilisation, Advocacy, Cost Effectiveness, Participatory Appraisal, Monitoring and Evaluation.
  - b. CELAK promotes the strengthening of institutional reforms on Democratisation, Mobilisation of resources, Human Rights, Sustainable Economic and Social Development, Public Policy and Information, and Growth of Private Enterprise.
  - c. CELAK promotes principles of Devolution, Decentralisation, accountability, citizen participation, solidarity, subsidiarity.
  - d. CELAK works with policymakers and legislators to influence policy on the thematic areas we are actively involved.
  - e. CELAK works with community based organizations to build sustainable organizations that effectively manage community owned projects/activities to benefit community members.
  - f. CELAK promotes savings and credit, income generation activities and micro-enterprises.
  - g. CELAK works with both Local and International partners and collaborators to achieve the set objectives.
  - h. CELAK connects government, business and Civil Society sector. Our humanitarian activities converge where Politics and Economics meet.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **Introduction/Preamble and Problem Statement**

#### **Civil Society Building and Institutional Development**

At independence our leaders identified three problems:- Ignorance, Decease and Poverty. Overtime we have added another problem of Bad Governance. CELAK as a National NGO decided to intervene and deal with Ignorance and Bad Governance through civil society empowerment because our post independence leaders have continued to use Ignorance of the masses to oppress, exploit, mismanage, embezzlement of public resources through corruption and misuse of public offices. CELAK through Education, Capacity Building, Awareness Creation and provision of Skills has greatly contributed to informing civil society, enhancing citizen participation in governance and management of both Natural and Public Resources hence reduction of property. When civil society is well informed about citizenry role and responsibilities, they ensure better allocation of their Sovereign Authority individually and collectively.

A strong civil society is needed for the growth and development of democracy. Civil society represents the reservoir of resources -- political, economic, cultural, and moral -- to complement and, when necessary, to check the power of the State. A dynamic and diverse civil society directly stimulates social and political participation, increasing the involvement and commitment of citizens and promoting an appreciation of the obligations as well as the rights of citizenship. By providing many potential avenues for political, economic and social expression, a civil society with a rich associational life gives people a stronger stake in the social order. This, in turn, creates a climate within which mutual respect, tolerance, negotiation, and compromise actually makes sense, and flourishes.

CELAK focuses on strengthening civil society as a sector by building networks and coalitions, increasing contact and collaboration between civil society and other sectors (including government), and improving the legal and regulatory environment impacting civil society development. CELAK programs develop a civil society that is able to mobilize citizens, represent constituencies, participate in the development of public policy, ensure government accountability, foster respect for human rights, provide for the rule of law, and promote reforms to strengthen democratic governance.

CELAK believes that Devolution, Decentralization, Inclusiveness, Equality, Equitable distribution of National resources and to enhance citizen participation in the management of both natural and public resources is the only sure approach to ensure Cohesiveness, Citizen participation, transparency, accountability, effectiveness at all levels and good governance to enhance Democracy, stability and eliminate impunity, disparity, corruption, opaqueness and poverty. We believe that our approach shall develop citizen passion, skills, knowledge and other tools on advocacy and lobbying to engage policy and law makers to make necessary reforms for positive change. We also believe that homegrown solutions are best as they are grounded on local realities, enhance ownership, sustainability and are therefore more long lasting.

In assisting the institutional development of civil society organizations, CELAK combines formal training with tailored technical assistance services to individual organizations. This approach is often complemented by financial support for practical experience in applying new knowledge, skills and competencies. CELAK improves CSO capacity in areas such as:

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

strategic planning; organizational development and administration; internal governance, membership development, mobilization of constituencies; advocacy; program design, monitoring and evaluation; financial management; and resource mobilization. Participating organizations learn to better sustain themselves as institutions in order to make enduring contributions to democracy.

CELAK networks with other CSOs, NGOs and Private Sector Initiatives in promoting collaboration, mutual understanding to effectively play the role of Informing and Mobilizing Civil Society for a given action. CELAK like other NGOs working in Kenya recognise that the option of doing nothing is not available to us in this situation, consequently we are determined to create working relations of purpose and ideals with other CSOs to ensure that ignorance, bad governance and ethnicization of both politics and conflicts becomes obsolete by empowering civil society and building dialogue among the diverse ethnic communities and demanding the strengthening of governance institutions and rule of law.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **Executive Summary**

. Although in past, Constitutional making process in Kenya has been marred, hindered and stalled for various reasons including distribution of political power and resources, minority and majority interests, the role of government and that of citizens in the review, Human Rights, ethnic and National interests, Institutional infighting, Competition among institutions and intrigues etc, the 2007/8 post-election ethnic violence served as awaking bell and became a higher National Call for a New Constitution. Consequently, the New Constitution was listed under Agenda Four.

Kenyans continued to have hopes in the New Constitution because it would be a beckon for structures that would address issues of injustices, inequality, exclusivity, selectiveness, patronage, marginalization, inclusiveness, tranquility and guarantee stability, inequitable distribution of resources and political power. It would also address issues of governance by providing for Devolution of power, independent governance institutions, separation of powers, checks and balances, transparency, and accountability of public institutions etc. A New Constitution would provide political (law and order), social (morality and institutions) and economic (infrastructure, commerce and resource management) structures that can help Kenyans maintain and build on their hard-won progress to create lasting transformational change.

When majority of Kenyans ratified the Proposed Constitution on 4th August 2010, they acknowledged that there is No Constitution that can be accepted by ALL citizens, there will always be dissatisfied critics. We endorsed this Document because of the good provisions in the State, Republic, Multi-party Democracy, Bill of Rights, Reforms, Governance, Checks and Balances, Freedom, Social Justice, Separation of powers where our Sovereign Authority is allocated to Legislature, Executive, Judiciary and Commissions, shall end the Imperial Presidency, Ensure Equitable Distribution of Resources, Inclusiveness, Gender Equality, Devolution, Reduction of ministers and appointing them from outside Parliament,, elimination of Assistant Ministers, etc. No Constitution can address ALL Challenges; we shall perfect ours over time. In any case any contentious issues can be changed through parliament and a popular initiative.

The few Kenyans who voted “NO” may not have agreed with the Majority, who voted “YES”, but they must defend our right for voting “yes” and The reverse is also true. In this way the Majority shall have their way and minority their say.

***We must understand that only the Citizens as a body politic are above the Constitution and we are the Generation privileged to make a Constitution.*** We must acknowledge that this document is the Depository of the peoples’ will, which sets out the terms of engagement between State (Governors) and the people (the Governed).

CELAK in its quest to empower and enhance citizen participation in the operationalization and implementation of the New Constitution targets CSOs because of their capacity to acquire and impart knowledge, skills, transform attitudes and therefore enhance people’s involvement in both the management of public affairs and voting wisely in electing their leaders.

# **CELAK QUATERLY NEWSLETTER** **OCTOBER 2011 ISSUE**

---



Gender Empowerment.



Workshop at Homabay

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **PAST ACTIVITIES:**

In 1998, Provision of Voter Education under the hostile political environment of one-party rule.

In 2001, CELAK was accredited by Constitution of Kenya Review Commission to be Civic Education providers in the Nyanza region. Our Executive Director's book "***THE PEOPLE, THE CONSTITUTIONAL REVIEW AND THE GOVERNMENT in 1999***" was used Nation wide in the provision of Civic Education

In 2002, the Executive Director Billy Onwong'a was elected a delegate to the National Constitutional Conference through NGO Council where he was elected the convenor (chairman) of one of the thirteen technical working committees. -- ***Preamble, Sovereignty of the people, Supremacy of the Constitution, The republic and national values, goals and principles and a member of the NCC Steering Committee.***". Since the Executive Director left Bomas he has written two books of the review process: ***THE KENYAN RENAISSANCE AND THE KENYAN SECOND LIBERATION.***

### **2005-2006 DOMESTICATING OF THE HOMEGROWN CONSTITUTION:**

Provision of Civic Education in Nyanza, unpackaging and Domesticating the Homegrown Bomas Draft Constitution, Wako Draft Constitution in preparation for a National Referendum. However, the government manipulated and fundamentally altered the governance structure envisaged in the Bomas Draft and the resultant document infamously referred as "Wako Draft Constitution" was rejected by Kenyans in the Referendum held on 21<sup>st</sup> November 2005. This project was supported by Westminster Foundation for Democracy, Constitution of Kenya Review Commission (CKRC) and Action Aid International.

### **2006-2010 LOCAL AUTHORITIES AND DEVOLVED FUNDS:**

Civic education on the role of local authorities and devolved funds in Nyanza and Western Provinces through workshops held at each District Headquarters. This project empowered citizens on the role of local authorities and devolved funds, citizen involvement, participation and effective engagement of public officers. This project was supported by National Endowment for Democracy.

### **2011- PRESENT: OPERATIONALIZATION AND IMPLEMENTATION OF THE CONSTITUTION.**

Since the Ratification and promulgation of the Constitution of Kenya 2010 the governance structure of centralization of resources and political power and authority in Kenya is gradually changing to adopt the new structure of decentralization and devolution of resources, political power and authority from National to County governments. It has been a long road of struggle since 1963 when Kenya got independence.

However, the process requires enactment of 49 legislations to operationalise and effectively undertake the implementation process. In the mean time there is need to empower Kenyans through civic education and building of skills to participate effectively in this process. This Constitution is a major political landscape that has given birth to a Second Kenyan Republic and Kenyans are optimistic and expecting major political and economic changes in the

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

country especially in the management of public affairs. CELAK must remind Kenyans that they have a major role to play in making Kenya a better democratic governance and country of sustainable equitable development, without corruption and impunity.

Since Kenya is going through a transformational change governance structure, CELAK must focus on the immediate needs of domesticating the Constitution of Kenya 2010 and empower citizens through civic education on its provisions, the role of State and citizens in the new dispensation. This will enable citizens to participate effectively in governance the formation of both county and national government. There is need for citizens to recognize that good management of natural and public resources starts from national values, leadership and integrity. Kenyans need responsible, responsive, qualified, accountable leaders to effectively manage public affairs and eliminate corruption, impunity which have stagnated development.

Kenyans must participate effectively in the legislation processes to ensure that the enabling implementation legislation conform to the letter and spirit of the constitution to protect it from personal interests, anti-reformists and misrepresentation. Article 261(5). *Injustice anywhere is a threat to peace nationwide*



Homabay Workshop

# **CELAK QUATERLY NEWSLETTER** **OCTOBER 2011 ISSUE**

---



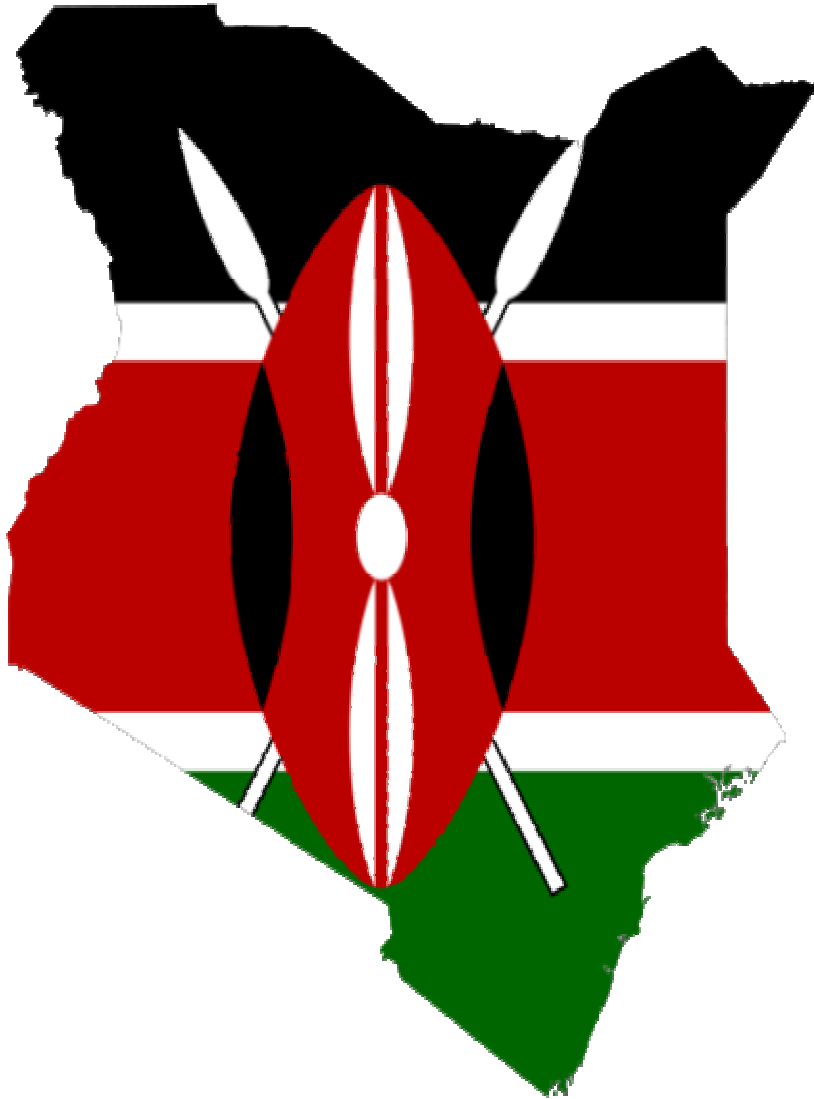
Workshop at Migori



Kisumu County

**CELAK QUATERLY NEWSLETTER**  
**OCTOBER 2011 ISSUE**

---



# CELAK QUATERLY NEWSLETTER

## OCTOBER 2011 ISSUE

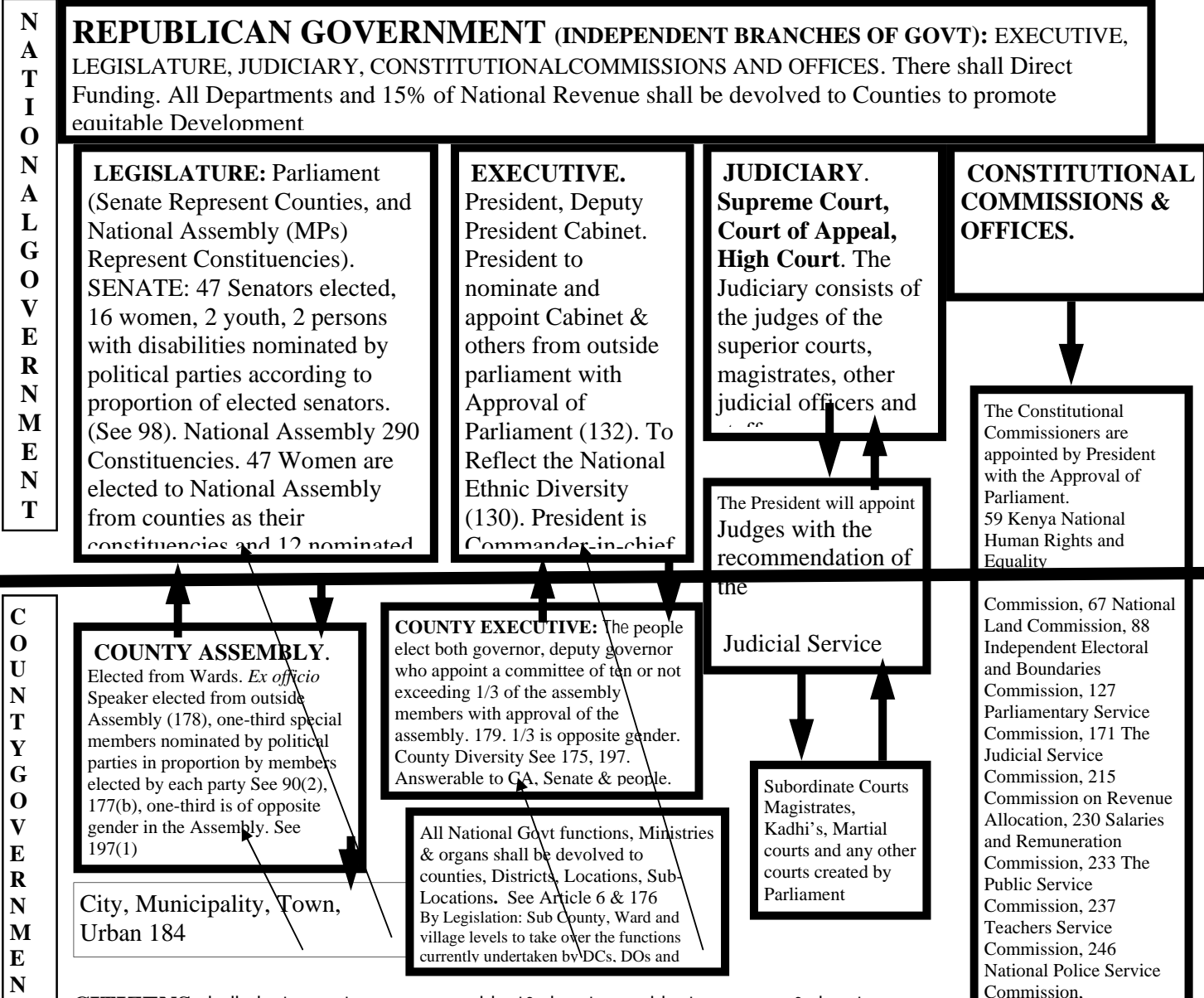
**GOD:** Ten Commandments, Universal and Morality Law. *God blessed them and said to them. "Be fruitful and increase in number; fill the earth and subdue it. Rule over the sea and the birds of the air and every living creature that moves on the ground. Genesis 1 V28*

*Each level is a creature of a lower level.*

**CITIZENS OF A SOVEREIGN STATE.** The only Source of Legitimate Sovereign

*Citizen Sovereign Authority expressed in the Constitution.*

**CONSTITUTION:** Supreme Law, Citizens Aspirations, Depository of the peoples' will, which sets out the terms of engagement between State (public officers) and the people.



# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **INTRODUCTION:**

Kenya is emerging from a state of poor governance demonstrated by widespread corruption, ethnic conflicts, inequality, inequity, marginalization, exclusivity, insecurity, political uncertainty; and poverty among others. Poor governance has resulted in, among other negative outcomes, the alienation of large portions of the society from the mainstream economy; the squandering of public resources leading to low levels of development and massive poverty, ethnic animosity due to perceptions of historical injustices; and cut-throat political competition and intolerance. Kenyans ratified this constitution because it addresses equity and equality for all; Poor services, insecurity, poverty, discrimination in appointments to key state jobs, Country divided based on inequalities in social, economic, political development, Stop Discriminatory policies which have contributed to underdevelopment of the northern Kenya sub-region, Skewed relationships between the people and their leaders.

### **Clamour for the New Constitutional Dispensation:**

The clamour of Kenyans to determine their destiny through governance was a crucial issue that could be a disgrace if not achieved, as that patience was running out fast. The clamour for a New Constitution for Kenya dates back to 1964, resulting to the achievement of many Constitutional milestones. Constitutional Reforms in Kenya have been a major issue since Kenya gained independence. There were repeated attempts to amend the Constitution of Kenya (1963), intensifying in the late 1990s and early 2000s, but only finally reaching success following the outbreak of post-election violence in early 2008, and the intervention of the African Union through a mediation team headed by Dr. Kofi Annan. It was therefore clear that Kenya had historically experienced personalized and highly centralized governance systems and practices. By 2010 over forty amendments had been made to the Constitution drawn at independence but they fell short of providing the country with the best institutional and governance structures and therefore, failed to enable Kenya achieve its full potential in fostering peace, economic growth and social harmony among its peoples. Instead, the parliamentary amended Constitution introduced an Imperial Presidential that was highly personalized and centralized power and distribution of resources.

There has been five types of local governance eras: Colonial, post-colonial, under KANU autocratic centralised Kenyatta and Moi regimes, NARC, PNU and ODM coalition government, which were partly under the old constitution and Constitution of Kenya 2010. The first political phases had a few attributes in common including using Local governments as instruments for political manipulation of grassroots and promotion of national development. Both colonial and KANU regimes preferred Provincial Administration as a instrument of political and economic development.

### **The Historical perspective of citizens.**

The post-election crisis was largely due to weaknesses in key institutions of governance including the constitution, the judiciary, the police, the executive, the electoral system, and parliament. The weaknesses of these institutions can be traced back to constitutional and legal amendments made during the first three decades of independence in order to centralize power in the executive and minimize

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

checks on executive power by other institutions. The changes resulted in not only centralisation of power but also monopolisation of power as opposition political parties, were initially frustrated and eventually outlawed. This ultimately resulted in state capture by small elite that wielded political power. The political elite used the state to accumulate wealth at the expense of national development. The monopolisation of power also led to stifling of democratic development as the governance of the country drifted from constitutional rule to personal rule, which distorted national goals set at independence of fighting poverty disease and ignorance. The struggle for constitutional reforms has its roots in the desire to correct the deficiencies in the governance framework of the country.

A central objective of the struggle has been the restoration of power to local communities to manage their affairs particularly in matters of local development. The Constitution of Kenya, 2010 has fundamentally altered this defective governance framework of the country through various far reaching reforms. The most critical of these reforms are: the Introduction of a new normative framework/value system-achieved through the preamble, Article 10 and chapter six of the constitution; devolution of power through the creation of two levels of government (chapter eleven);constraining of executive power through the Introduction of various checks on the powers of executive, particularly the president (approvals for key appointments and consultation before making key appointments, creation of various independent commissions to safe-guard democracy and constitutionalism) and the Introduction of a modern expansive bill of rights. Of these far reaching reforms devolution is likely to have the most profound impact on governance. This section attempts to contextualise devolution by outlining the origins and challenges created by the centralization of power and exploring the opportunities created by the new constitutional dispensation.

The struggle of citizens has all along been to retrieve their sovereignty and usurped powers of participation in governance. At last, the objective was achieved through the Constitution of Kenya 2010.

### **From darkness to light: landmarks that make the new Constitution stand out**

Kenyan's ratified the Proposed New Constitution at a Referendum held on 4th August 2010 and President Mwai Kibaki promulgated and signed it into law at Uhuru Park, Nairobi on August 27, 2010. The new Constitution has ushered in changes that have dramatically altered Kenya's socio-economic and political landscape. It captured the aspirations of the ordinary citizen, the letter and spirit of the document has hit government systems like a thunderbolt, shaking its hitherto entrenched foundation of Executive authority, judicial lethargy and generally bullish insensitivity.

Some have likened the realisation of the new Constitution after nearly two decades of struggle to a bloodless revolution.

### **The end of the imperial presidency and rise of people power**

The promulgation of the new Constitution this day last year sounded the death knell to the omnipotent presidency that characterised the reign of presidents Jomo Kenyatta, Daniel Arap Moi and the better part of the Kibaki administration and gave immense power to citizens over their government. The powers of the president have been significantly whittled down — his or her appointive powers have been subjected

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

to consultations with various commissions and approval by the National Assembly. This is a key departure from the past when then President Moi stopped by the roadside at a rural outpost and announced that he had appointed Prof George Saitoti the new vice-president and sarcastically asked the country "if that would add ugali on their sufurias."

The president also no longer enjoys the unbridled prerogative of dismissing a State officer. No less a personage than President Kibaki, considered the last monarch, has faced the might of the new Constitution. In February, he ate humble pie and withdraw a list of nominees to four constitutional offices after a public outcry over the manner of the nominations, which many said were not proper.

### **Professional Cabinet and powerful Parliament**

For the first time since independence, ministers, who will be called cabinet secretaries, will be appointed from outside the National Assembly. The first real separation of power between the legislative and the executive arms of government, the change will bring professionalism into the running of government as the secretaries are expected to come from the areas they are trained in. This is a major departure from the past in which an army general has held the medical portfolio.

A true revolution! Sadly for some, it will take awhile for them to realize that the ground has shifted! Brilliant Kibaki was jolted, but has quickly learnt the dance steps!

Kenyan beware! The constitution is good but we need to guard against abuse of the executive arm through loop sided appointments done through consensus of two individuals at the expense of kenyan. The courage and pride of our People made this to happen- Kenya juu!

Article 152 (1) (b) also sets the limit of the number of secretaries to between 14 and 22.

### **Devolution**

Chapter 11 of the Constitution is another exciting feature of the new dispensation. This is a transformation that directly places ugali on the sufuria of Wanjiku by stipulating that 15 per cent of the country's revenue, approximately Sh3 billion, will be given to the counties. A big improvement on the Constituency Development Fund concept, this is the first time such huge resources are being poured to the grassroots. This fundamentally changes the way citizens look at their government, a far cry from the past when they depended on the magnanimity and whims of the president. Whole regions have been pushed into poverty and neglect because of the political position of their leaders.

### **The land chapter and the issue of historical injustices**

The authority to allocate public land is no longer vested in the President but in an independent National Land Commission. This is perhaps the face of the impunity of yesteryears when the president gave out water towers, national forests and road reserves to well-connected people. Changes in the land tenure system, especially the reduction of 999-year leases to 99 years, are set to address the historical problem of absentee landlords in places like the Coast. The requirement that public

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

land irregularly allocated can be repossessed also provides an opportunity to address such injustices.

### **The Bill of Rights is one of the most progressive in the world**

A disgruntled Kenyan can now go to court and compel the government to provide basic human needs. A true revolution! Sadly for some, it will take awhile for them to realize that the ground has shifted! Brilliant Kibaki was jolted, but has quickly learnt the dance steps!

### **The two thirds clause**

Article 81(b) of the constitution, provides that one principle of the electoral system is to ensure that no more than two-thirds of members of elective public bodies shall be of the same gender. Moreover, article 27(8), which is within the Chapter on the Bills of Rights, prescribes that the state shall take legislative and other measures to implement this principle. While it is currently facing teething problems, its implementation will fundamentally change the Kenyan work space.

In the past, the country was used to hearing during the one o'clock news bulletins that someone had been appointed, or sacked, to this or that position. The next thing, the same state radio would relay the appointee's gratitude to the head of state for "his wisdom and faith in appointing me, or in giving me an opportunity to serve"

Thanks to Chapter 6 of the new Constitution on integrity and leadership, the public has the right to know beforehand who is being appointed and they can subject them to scrutiny.

### **Independence of the judiciary**

The judiciary has literally been shaken out of its flowing robes and choking wigs. This has seen the creation of the Supreme Court and the institutionalisation of stringent appointment procedures. The Chief Justice, deputy, Supreme and High Court judges were appointed through highly open interviews. Right from its financing and strengthening of the Judicial Service Commission, the new Constitution has brought with it a strong judiciary.

Chapter 12 brings far reaching changes to handling public finances and revenue allocation. It creates the Commission on Revenue Allocation to oversee equitable sharing of resources between national and county governments. It also makes the Finance ministry more open and accountable.

Article 221 (Budget estimates annual appropriation bill) storms the Treasury, yanks open the much-vaunted briefcase and flings it to the dustbin of history.

It now requires the Finance Secretary, now minister, to open the briefcase and lay bare its contents to the National Assembly at least two months prior to the reading of the annual estimates. This provision effectively ends the era of surprise and attack in budget presentation.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **INTRODUCTION TO KENYA'S DEVOLVED GOVERNMENT**

The Success of devolution depends on a proper architecture and design of the system. A properly designed system will necessarily have the following characteristics:

- (1) Constitutional creation of two or more levels of government with each having sovereignty and directly impacting upon its citizens.
- (2) The first design question one must therefore address is that of the total number of orders or levels of government one would like to create. A well designed devolved system would normally have three levels of government; namely, the national, sub-national and local government. Many of the old federal and good devolved systems are designed in this manner. The USA for instance, has the Federal, State and County or local government levels; Germany has the Federal, Lander and local government levels; and South Africa has the National, Provincial and Municipal levels of government. In most of these systems the third level of government is normally the traditional local government level which has developed into two streams of rural and urban local government.
- (3) Constitutional creation of geographic units of governance at the sub-national level into which the country shall be divided and the clear delineation of their boundaries. The second design question one has to confront is the determination of the total number of geographic units of devolution into which the whole country should be divided. A number of scholars have suggested certain factors which may need to be taken into account when addressing this question. The scholars observe that the more comparable the constituent units are in size, institutional structure, administrative capacity, economic viability and financial strength, the more stable the system will be as a whole. It is emphasized that a proportion be observed between the total territorial size and the number of the constituent units. The larger the territory, the greater the number of tolerable constituent units that can comprise the devolved system. Efforts ought to be made to avoid the reality of operational dangers of having too many constituent units.
- (4) A formal constitutional distribution of governance and development functions of each level of government clearly delineated and ensuring some areas of autonomy for each. In the assignment of functions, it will be observed in a later chapter of this report that a number of principles are relevant. These include the principles of subsidiarity, transferability and the three categories of functions; namely, the exclusive, concurrent and residual functions.
- (5) Constitutional provisions setting out clear rules for the allocation of resources among the levels of government ensuring that each level of government has sufficient resources to enable it discharge its responsibilities. The main operational principle in this respect is that resources must follow and match responsibilities.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- (6) Constitutional establishment of governance institutions at each level of government with designated representation of distinct regional views within the national-policy making processes and institutions. Notably, the concept of shared decisions necessitates the creation of some shared institutions.
- (7) A supreme written constitution that is not unilaterally amendable by any one level of government, but instead, requires the consent of a significant proportion of the constituent units. Since we have noted that the protection of the two levels of government is rooted in the fact that each is created by the constitution; the functions they perform are assigned by the constitution; and the resources the use are provided for by the constitution, it would undermine devolution if only one level of government were to be empowered to amend the constitution. To do this would enable such level to use constitutional amendments to abolish or adversely adjust the position of the other level of government. Chapter sixteen which deals with amendments to the constitution has taken this into account and ensure that only one level of government can alone amend the constitution. Through the bicameral parliament the county levels of government have been given an opportunity to participate in constitutional amendments.
- (8) A constitutionally entrenched system of cooperative government with constitutional processes and institutions for facilitation of intergovernmental cooperation and collaboration for the areas where governmental responsibilities are shared or inevitably overlap.
- (9) A constitutionally entrenched system of intergovernmental relationship with provision for dispute resolution, and provision for an umpire, such as the Constitutional or Supreme Court to rule on any disputes between governments. These factors which go into the architecture and design of a good devolved system will be discussed in detail in some of the subsequent with efforts being made to set out the ideal and general approach in many other places; followed by an analysis of how the constitution of Kenya has handled them. But before this discussion is done one needs to appreciate that devolution cannot be properly implemented in isolation from other very important aspects of the constitution. The constitution is a comprehensive totality that is interlinked, interlocked and interdependent. Indeed, devolution permeates all the other parts of the constitution. Identified among these very important aspects is the concept of the value foundations of the constitution. These are very important because they are overarching and permeate all other aspects of the governance system, including devolution.

The Ministry of Local government appointed Taskforce Task-force on Devolution and has identified six Devolution bills which will be effective in the implementation of the cooperative devolved systems. As the reality on the establishment of the devolved governments dawns the project is bringing in new developments with each passing day. The issue of County Governments has attracted many Kenyans some of them politicians who have declared their intentions to vie for the seats. However Kenyans interested in leadership positions should now brace themselves for the new unveiling on the qualifications demanded for one to be declared fit for the office.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

Persons vying for the governor seat be holders of a first degree from a recognise university, while members of County Assemblies in the County Governments are required to have post secondary education such as Diploma.... "Kenyans expressed the view that a first degree from a recognized university, and knowledge and experience of not less than five years in relevant disciplines in private or public sectors are required."

To avoid double standards leadership candidates must also produce certificates of good conduct and criminal-free record from the anti-crime agency. This requirement might jeopardize some candidates' plans thus hitting where it hurts most and I am almost certain that it is loathed by many. It clearly cuts interested candidates with corruption skeletons in their closet out of the race. With KACC recently focused on what they do best persons of questionable integrity should not dare to vie for seats lest they end up losing the little they have.

It had been earlier reported that many candidates interested on the seats are targeting the CDF money allocated to the counties. It was agreed that with the County Government in place the funds will cease to be handled by MPs and transferred to the Governors.

And in as much as a cliché this might sound it does not require a rocket scientist to figure out the reason behind many politicians setting eyes on the governorship. It is evident the County Government had seemed to them a perfect channel to squander Mwananchi hard earned money in the spirit of serving Kenyans.

But it seems that this time they miscalculated their moves only to be presented with a shocker. Candidates contesting for Governors posts will be expected to provide original copies of certificates of clearance from the Ethics and Anti-Corruption Commission before being cleared to run for office. The devolution bills 2011 ensure the functional and institutional integrity of the County Government as is stipulated under Article 189 (1) of the constitution. With these Bills in place it's a clear testimony that the country is now moving steadily towards the full implementation of the Constitution.

\ The Bills will now provide the necessary resources for the management of County Governments, and ensure functional and institutional integrity. It is a clear that the country is now moving steadily towards the full implementation of the Constitution.

The six Bills are;

- [A] The Devolved Government Bill, 2011, Bill,**
- [B] Urban Areas and Cities Bill, 2011, Bill,**
- [C] Intergovernmental Relations Bill, 2011, Bill,**
- [D] Intergovernmental Fiscal Relations, 2011, Bill,**
- [E] County Governmental Financial Management Bill, 2011 and**
- [F] Bill Transition to County Governments Bill, 2011.**

[A] **Devolved government's bill, 2011:** The Devolved Governments Bill deals with the government's powers, functions and responsibilities to deliver services as

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

established by the Constitution. Its key provisions are powers and functions of County Governments and the functioning of the County Assembly. The Bill on the devolved government sets out how the County Government will work how the governor and county executives would operate and spells out various structures at the county level. It sets out the qualifications of the Governor, County Assembly members, its Speaker, Deputy Speaker and County Cabinet. The Governor will provide general political guidance over fiscal and financial affairs of the county. Each county will seek to establish the position of County Chief Secretary who will head the Public service. To be a governor or members of County Assemblies in a County Government, one is required to produce a first degree. Candidates for Governor's posts will be expected to provide original copies of certificates of clearance from the Ethics and Anti-Corruption Commission before being cleared to run for office. Governors can be impeached before expiry of their terms when they fail to perform in the same way the President can be removed under Article 145 of the Constitution.

Those holding leadership positions in County Governments must also produce certificates of good conduct and criminal-free record from the anti-crime agency. The Taskforce team wants about 1,500 wards spread over 175 local authorities to be abolished or merged in order to make economic sense.

- [B] **The inter-governmental relations bill, 2011:** This bill establishes a framework for co-operation and consultations between National and County Governments and among County Governments themselves. It spells out mechanisms for consultation and co-operation between County Governments and other State organs such as National Assembly and government officers. It also outlines measures to take in solving disputes. The Intergovernmental Relations Bill establishes a framework within which the different levels of government can relate to each other. It also outlines measures to take in solving disputes. The Inter-Governmental Relations Bill establishes a framework for cooperation and consultations between National and County Governments. The Bill also establishes a framework for co-operation and consultations between National and County Governments and among County Governments themselves. It spells out mechanisms for consultation and co-operation between County Governments and other State organs such as National Assembly and government officers.
- [C] **Intergovernmental fiscal relations bill, 2011:** This Bill highlights is how to ensure that the principle of Devolution is practiced by National Treasury and therefore protects County Governments from being financially muzzled.
- [D] **The urban centres and cities bill, 2011:** Another crucial Bill under the devolved system is the Urban Centres and Cities Bill, which provides for classification and establishment of urban areas, governance and management of cities and urban areas within the counties. It gives out details of the criteria for classification of urban areas and how the areas would be managed within the context of the County Government. Generate revenues: The Bill spells out drastic changes in the management of urban centres. Cities and urban areas are seen as centres of economic activity to generate revenues for the County Government. These arrangements are provided in the Intergovernmental Fiscal Relations Bill, County

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

Government Financial Management Bill, and Transition to County Government Bill. Urban and city areas will be decentralized units of, and answerable to, County Governments. Cities and urban areas are seen as centres of economic activity to generate revenues for the County Government. Urban and city areas will be decentralized units of, and answerable to, County Governments.

[E] **The County Government financial management bill, 2011.** The Government Financial Management Bill seeks to put checks on cases of corruption at the county level. The Bill has tight controls on public resources and seeks to operationalise Chapter Six of the Constitution and with strict guidance on the management of public resources for the full benefit of devolution. Intergovernmental Fiscal relations Bill, highlights on how to ensure that the principle of Devolution is practiced by National Treasury and therefore protects County Governments from being financially muzzled. Another crucial Bill whose details would be availed today (Tuesday) is County Government Financial Management Bill, which is different but complimentary to National Financial Management Bill.

[F] **The transition to devolved government bill, 2011.** It proposes a Transitional Authority that shall consult with the PSC and relevant ministries to "facilitate the redeployment, transfers and secondment of staff to the national and County Governments."

These Bills when passed into laws will anchor the smooth operation of the 47 County Governments by facilitating smooth operation of the County Governments. County Governments and will start work after next year's general election. The Bills will now provide the necessary resources for the management of County Governments, and ensure functional and institutional integrity. The Bills would devolve power to the sub-county level as provided for in the Constitution and also devolve resources both vertically and horizontally. The Six Bills that in letter and spirit constitute a transformation in how Kenya will be governed once County Governments are in place in conformity with the Constitution promulgated last August. These bills shall lay a foundation to for state officers giving the country the best services. The Bills spell out duties and obligations leaders and citizens have. It marks the process of debates which will refine the laws as we strengthen proposals into Acts of Parliament to be adopted by Parliament," he explained.

With a new Kenyan constitution in place retaining the governorship seat will not come easy and the persons elected will have to convince Kenyans by working hard to avoid being recalled pre maturely. This fact is reinforced by the bills which say that "If the leaders are not accountable or misbehave, they ought to be removed from office. The taskforce proposes that impeachment procedure in Article 145 be replicated in the Elections Bill 2011 to enable impeachment of the Governor."

Kenyans are used to having projects imposed on them without their consent most of the times. However this will soon end as leaders will no longer impose ideas and projects on the people. There is a provision for citizen participation in County governance through access to information. Citizens would have the right to petition and challenge decisions, host local referendums and demand provision of County communication framework and infrastructure.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

**Provincial Administration:** PCs, DCs, chiefs: The Devolved Government Bill leaves no room for the entire Provincial Administration system which presently controlled by the central government. This may signal the end of the powerful machinery that has been the symbol of government in the lives of Kenyans since colonial days. District commissioners, district officers, chiefs and assistant chiefs will lose their functions as agents of the central government across the country if a Bill on county structures becomes law. This reinforces fears that the days of the administrator as agents of central government at the grassroots could be numbered. There was no need to provide for PCs, DCs, DOs in the administrative structure of counties because they never existed in any law in the first place. Chiefs at the lowest level of the Provincial Administration structure, however, were provided for under the Chiefs Authority Act.

The taskforce also proposes creation of positions of Administrators at the Sub County, Ward and village levels to take over the functions currently undertaken by DCs, DOs and Chiefs including coordinating, managing and supervising the general administrative tasks in their respective areas of jurisdiction. A grey area is whether these administrators will be appointed by the County Governments or whether they will be employees of the central government as has often been suggested by the Office of the President. However, the bills have proposed to reduce number of ward from 3000 to less than 2000 while some of the current 175 local authorities will be amalgamated into larger and more efficient authorities.

Although Bills are providing an administrative structure for counties in line with what is the Constitution and recognise that The Provincial Administration is not and has never been in the constitution, to legislate for it will be tantamount to elevating it to higher status. It was up to the Office of the President, under which the Provincial Administration falls, to figure out how to fit in the new dispensation. "They will need to restructure themselves to fit in the new set-up. The taskforce provided a window for the restructuring in a Bill on Transition to County Governments.

However, With the fate of eight PCs, 30 regional commissioners, approximately 210 DCs — all with numerous assistants — and at least 1,000 DOs hanging in the balance, the Office of the President has been quick to issue assurances that nobody will be left jobless. Government insists that DCs, DOs and chiefs will be absorbed into the devolved system, and that only PCs would be phased out.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **FREQUENTLY ASKED QUESTIONS ON THE CONSTITUTION OF KENYA 2010.** *Separate Myths from Reality.*

According to the New Kenyan Constitution Ratified at a Referendum on 4<sup>th</sup> August and Promulgated by the President on 27<sup>th</sup> August 2010, Kenyans are the sole source of Sovereign Authority Expressed in this Constitution and can only be exercised according to this Constitution. Higher Laws include the Ten Commandments, Laws that Navigate the Universal Order and Morality.

#### **(1) GAINS ACHIEVED.**

- [a] An advanced Bill of Rights that among other things recognizes Socio-Economic rights of the Kenyan citizens. (Chapter Four).
- [b] The removal of age limit of 35 yrs to run for President. Constitution of Kenya 2010 allows people to run as long as they are of adult age. Article 137(b)
- [c] Right to Recall legislators(Senators and Members of the National Assembly).(Article 104)
- [d] Representation in elective bodies has to effectively meet a gender equity constitutional requirement of at least a third of women in its make up. Chapter 7, Article 81(b)
- [e] Integrity Chapter, requires an Independent Ethics Commission to be set up that will monitor compliance with Integrity in all government institutions and make investigations, recommendations to the necessary authorities i.e. Attorney General and any other relevant authority.(Chapter Six)
- [f] An advanced Human Rights and Equality Commission that will also have power to investigate and summon people involved in Human Rights abuses within the government and with the public.(Article 252)
- [g] Establishment of National and County Government to devolve both executive powers and resources hence move away from unitary centralization, imperial presidency and winner-take-all. Chapter 9 and 11 respectively.
- [h] Equitable Sharing of resources between the National and County Governments through a resolution of Parliament. Chapter 12- Part 4.
- [i] An Equalization Fund to improve basic access to basic needs of the marginalized communities. (Article 204).
- [j] Any member of the Public has a right to bring up a case against the government on the basis of infringement of Human Rights and the Bill of Rights - Article 23(1)(2). The courts and government institutions are bound to the Bill of Rights as per the constitution Article 2(1), Article 10(1).
- [k] The Salaries and Remuneration Commission that is an Independent entity and has the power of regularly reviewing salaries of all State officers to ensure the Compensation bill is fiscally sustainable. Article 230(5).
- [l] Independence of the Judiciary is affirmed Article 160.
- [m] An Independent National Land Commission created to maintain oversight

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

and manage all Land (Public) belonging to National and County Government and recommend policy on addressing complaints from public, advise the National government on ways of improving National and County land management, planning, dispute resolution. Article 67.

[n] Environmental Rights are recognized under Chapter 5(Part 2)

[o] Freedom of Media establishment from penalty on expression, by the State on any Opinion and dissemination of media. Article 34. This is subject to the Article 33.

(2) **Bill of Rights: Are our Rights Protected?** This is the fundamental Rights, Freedoms and Protections of citizens. The State and the Courts will ensure application, implementation and enforcement. They include Right to life, dignity, religion, belief, opinion, Freedoms: Expression, media, association, assembly, demonstration, picketing and petitions. Political rights include movement, residence, property, labour relations and good environment. Economic and Social Rights include Health, Housing, Food, security, education, choice of language and culture. Other Rights include those of family, consumers, arrested persons, those in custody or imprisoned, children, persons with disabilities, youth, minorities, marginalized, older persons etc. See *article 19-59*. The key test for policy makers will come in implementation of the Bill of Rights A similar set of provisions in the Bill of Rights in South Africa has not led to the universal provision of these services but has put citizens in a position to sue service providers who fall short of expectations. Kenya National Human Rights and Equality Commission was established to promote these Rights and Freedoms. Any future amendments to this section shall be jointly by a Referendum and Parliament.

(3) **PROTECTION OF MINORITY RIGHTS:** To protect the rights of minorities, a Senate will be formed to act as the Upper House of Parliament. No Bill affecting Counties may come into law without the Senate's approval, a provision designed to shield against reversal of the objects of Devolution in the Constitution of Kenya 2010.

(4) **Citizenship:** The Constitution of Kenya 2010 makes important reforms to the previous framework on citizenship, in particular by ending gender discrimination in relation to the right of a woman to pass citizenship to her children or spouse; by ending the prohibition on dual citizenship; and by restricting the grounds on which citizenship is taken away.

[a] A person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen (Art 14(1)).

[b] A person who has been married to a citizen for a period of at least seven years is entitled on application to be registered as a citizen (Art 15(1)).

[c] A person who has been lawfully resident in Kenya for a continuous period of at least seven years, and who satisfies the conditions prescribed by an Act of Parliament, may apply to be registered as a citizen (Art 15(2)).

[d] Foreigners married to citizens can become Kenyans after a period of seven years. Dual citizenship: Kenyans abroad shall not lose citizenship for acquiring citizenship of another country. Article 15& 16. The text has been

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

criticized, however, for not providing sufficient protections against statelessness for children or adults.[9]A person who is a citizen does not lose citizenship by reason only of acquiring the citizenship of another country (Art 16) and persons who are citizens of other countries may acquire Kenyan citizenship (Art 15(4)).

[e] A person who as a result of acquiring the citizenship of another country ceased to be a Kenyan citizen is entitled, on application, to regain Kenyan citizenship (Art 14(5)).

- (5) **LAND:** Among the most far-reaching changes in the Constitution of Kenya 2010 are those on land use. Land disputes were identified by the Waki commission as an underlying cause of the blood-letting that followed the last General Election. It's one of the items listed under Agenda Four and the government must ensure that it's ratified. The Constitution of Kenya 2010 says land in the new Kenya will be ***"held, used and managed in a manner that is equitable, efficient, productive and sustainable"*** Article 60(1). This provision has been consisted since Bomas therefore; this is the views of the people. Land is an Economic Resource and if we are talking about equitable distribution of resources, land must be the foundation of this provision. The ownership of land is divided into three groups: **Public, Community and Private.** **Public land** is one held by government, Minerals, Forests, water catchment areas, National parks, Roads, Rivers, Lakes, Sea, etc and is vested in and held by Counties for the benefit of residents. **Community Land:** This is the land held by communities such as parks, Forests, Grazed land, hunt-gatherers, land of groups etc. **Private Land:** Land held by individual citizens under lease and freehold tenure. No citizen shall be deprived of his/her title or ownership of land. In fact, the Constitution protects our right to own land. The problem and propaganda is because of inequity in the distribution of land in this country, hence the individuals with large hectares of land, are threatened that the land they grabbed will be repossessed, Article 40(6) and given to the poor or landless. The Constitution sets out to address the disparities that have seen a few individuals own large tracts of land even in highly populous areas by requiring Parliament, in Article 68 (c)(i), to ***"prescribe minimum and maximum land holding acreages in respect of private land"***. See article 67. On the effective date, any freehold interest in land in Kenya held by a non-citizens shall revert to the Republic of Kenya to be held on behalf of the people of Kenya, the State shall grant to the person a ninety-nine year lease at a peppercorn rent. The National Land Commission is the Administrative organ and implements the provisions of land. See *Transitional and Consequential clause 3*. Land has become contentious because the powers of allocating public (Government) land which were vested in the President and Commissioner of Lands as Trustees have been removed to the Counties. The grabbers of Public Land fear Repossession.
- (6) **QUESTION:** What type of Executive will Kenya have? **ANSWER:** Kenya shall be governed under a Presidential System of government based on service to the people but not ruling them. Executive Authority will be vested in the presidency. The State President is elected by direct adult suffrage. The State President is the Head of State and Government, Commander-in-Chief;

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

chairperson of the National Security Council; and symbol of National unity. The National Executive of the Republic comprises President, Deputy President and the Cabinet, representative of our ethnic diversity. *See article 130(1)(2)*. The Constitution of Kenya 2010 promises a more open and just society where National Resources will be shared equitably and the leadership held to account. A State President is accountable to the people, fair distribution of State resources; land rights and fair representation of women are the key highlights of the Constitution of Kenya 2010. The Constitution of Kenya 2010 will change the face of Kenya by introducing the most far-reaching institutional reforms the Nation has seen since independence. The Constitution of Kenya 2010 has eliminated ethnic based State Presidential candidate jokers. The State President will, however, have to contend with a strong Parliament that will have powers to ratify or reject his decisions on key appointments. The State President shall serve for a maximum of two terms. *See article 131-146*

- (7) **CHECKS AND BALANCES:** The pure Presidential system will be checked by Parliament, which will have the power to vet all Presidential appointments including that of the Cabinet, Attorney-General, Chief Justice, ambassadors and principal secretaries (now known as permanent secretaries) *See article 132(2)*. Reduction of Imperial Presidency powers- President by impeachment 145. Executive and Legislative Authority is devolved to Counties, where the Governors and County Assemblies is elected directly by the people. *Article 177, 180*
- (8) **QUESTION:** What are the qualifications of a State Presidential candidate? **ANSWER:** Must be a citizen by birth; must be qualified to run for MP; must be nominated by a political party or run as an independent candidate. Should be nominated by not less than 2,000 voters, from more than half of the Counties One will be disqualified if s/he has served a prison sentence of six months or have been found guilty of abuse of public office. *See article 137*.
- (9) **QUESTION:** How are State Presidential candidates elected? **ANSWER:** The candidate shall stand elected if s/he garners more than 50% of the votes cast, otherwise there shall be a rerun of the first two within thirty days and whoever wins becomes the President-elect. If the President-elect dies before being sworn into office, election shall be held after 60 days after the date set for the previous election. *See article 138*. If the President-elect dies after being declared President, but before assuming office, the Deputy President shall be on acting capacity and election for State President shall be held after 60 days from the date set for previous election. *See article 139*. If a petition is filed; it must be determined within 14 days by the Supreme Court and the decision will be final. *See article 140*.
- (10) **QUESTION:** When will the State President be sworn into office? **ANSWER:** To prevent a situation such as the controversial swearing in of President Kibaki following the 2007 General Election, the Constitution of Kenya 2010 requires, in Article 141(1), that the swearing-in of the new State President shall be "in public before the Chief Justice or, in the absence of the Chief

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

Justice, the Deputy Chief Justice". The State President will be sworn in on the first Tuesday after 14 days following the declaration of results of the General Election, to avoid a hasty swearing in before possible legal challenges to the election have been settled. A petition is filed at the Supreme Court within seven days after the date of the declaration of the results of the Presidential election and is determined within fourteen days and its decision is final. In this circumstance the swearing-in will be on seventh day following that on which the court rules his or her election was valid. The swearing-in ceremony must be in public. However, if the Supreme Court finds the election invalid a fresh election shall be held within sixty days after the determination. *See article 140.* It is important to note that all other State Presidential candidates shall go back home just as Senatorial and members of Parliament candidates who lost. However, the State President can choose to appoint them to public service or get jobs in private sector. The swearing in of the Deputy President-elect shall be before the Chief Justice or in the absence of the Chief Justice, the Deputy Chief Justice and in public. *See article 148(4)*

- (11) **QUESTION:** Can a State President be prosecuted under a treaty signed by Kenya, such as that which set up ICC? **ANSWER:** Yes, the immunity of the State President is limited to criminal and civil proceedings while in office. *See article 143 (1)*, but does not include, "prosecution under any treaty to which Kenya is party and which prohibits such immunity".
- (12) **QUESTION:** What are the functions and role of Executive branch of government? **ANSWER:** Government Structure: The key changes in the Constitution of Kenya 2010 include Separation of Powers between the three arms of government i.e. Executive, Legislature and Judiciary. The executive at the National government will be constituted of a President, Deputy President and the Cabinet. Key functions of the President:
- [a] Shall be the Head of State & Head of government of the Republic of Kenya.
  - [b] Shall not be a Member of Parliament
  - [c] Commander-in-Chief - and will declare war and State emergency upon approval by the National Assembly and Cabinet respectively.
  - [d] Head of Government - will yield executive authority and will co-ordinate and supervise all major sections of the executive branch.
  - [e] Shall nominate, appoint with prior approval of the national assembly, and dismiss Cabinet Secretaries.
  - [f] Preside over Cabinet meetings.
  - [g] Shall assent bills into law or refer them back to parliament for further review.
  - [h] Shall nominate, and after approval of Parliament, appoint a Chief Justice (The President will however need to consult with the PM on this appointment during the Transitional period).
  - [i] Shall nominate, and after approval of Parliament, appoint an Attorney General
  - [j] Shall nominate, and after approval of Parliament, appoint a Director of Public prosecution.
  - [k] Shall appoint Judges to the Superior Court recommended to him/her by

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

an independent Judiciary Service Commission.

[I] Shall appoint Ambassadors/High Commissioners to Kenyan embassies abroad.

- (13) **QUESTION:** How is the State President impeached? **ANSWER:** Removal of the State President can be initiated by an MP supported by at least a third of all the members on the grounds of gross violation of the Constitution or any other law, or out of serious reasons the State President has committed a crime under National or international law. The State President can also be impeached for gross misconduct. If the Motion is supported by at least two-thirds, the Speaker shall inform the Senate within two days and the State President continue in office pending the proceedings of the Senate, which shall decide his or her fate. The State President can choose to appear before the relevant committee of Senate on the case. In the end the Senate shall vote on the impeachment charges. If two-thirds vote against him s/he shall cease being in office. *See article 145.* The People have also the power recall non-performing MPs.



- (14) **QUESTION:** What will happen to roadside declarations? **ANSWER:** The State President must put in writing and sign all major announcements and has them put under seal of office. *See article 135*
- (15) **QUESTION:** Who is the Deputy President? **ANSWER:** During campaigns those running for State President will have to name a running mate who will automatically become Deputy President and take over as State President if the top office falls vacant mid-term. *See article 146(2a)*

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- (16) **QUESTION:** Who qualifies to be a Cabinet minister? **ANSWER:** The State President will pick his Cabinet Secretaries from outside Parliament but the nominees will have to be approved by Parliament. *See article 152(2).* An MP who is appointed a minister will have to relinquish his or her seat. This provision embraces the principle of *one man one job*. Under the Constitution of Kenya 2010al order, the State President will find his powers to exercise political patronage severely diminished. The composition of the National Executive shall reflect the Regional and ethnic diversity of the people of Kenya. *See article 130(2).* The Cabinet, which will be from outside Parliament (Article 152(3), will be composed of a minimum of 14 ministers (to be named Cabinet Secretaries) and a maximum of 24. There are NO Assistant Ministers. *See Article 152(1)(d).* This will translate into savings for taxpayers, who will no longer have to pay the salaries and perks of a government such as the current grand coalition, which at formation included 40 ministers and 52 assistant ministers. This time the Cabinet Secretaries will be swearing or affirming faithfulness to the people and Republic of Kenya and obedience to this Constitution, before the President; unlike then where they swear or affirm to the President. *See article 152(4).* The position of assistant ministers will be history under the Constitution of Kenya 2010al order as will be that of Prime Minister. **Cabinet of professional technocrats:** The Cabinet to be named after 2012 will in theory be composed of technocrats because MPs will not be eligible for appointment, giving the State President a chance to base appointments on the expertise of nominees rather than parochial considerations. The Cabinet Secretaries will be made accountable to the people by the powers given to Parliament to vet them. Under Article 152(10)(b) of the Constitution of Kenya 2010, “the State President shall dismiss the Cabinet secretary” if a majority of Parliamentarians pass a resolution requiring that action. *See article 152-156.*
- (17) **QUESTION:** What type of Parliament does Kenya have? **ANSWER:** According to the New Law, Parliament will comprise of the National Assembly and the Senate. The National Assembly, with a membership of 349 MPs, will have roles similar to its current functions. Out of the 349 MPs, 290 will be elected from constituencies. There will be 47 women elected by Counties acting as constituencies and 12 nominated MPs to represent special interests including the youth, persons with disabilities and workers. A candidate will be disqualified if s/he has served a prison sentence of six months or have been found guilty of abuse of public office. *See article 97.*
- (18) **QUESTION:** What does it take to run as Senator? **ANSWER:** The candidate shall be nominated by a political party and supported by at least 2,000 registered voters and be qualified to run as MP. The citizens of each County shall elect one Senator. One will be disqualified if s/he has served a prison sentence of six months, or have been found guilty of abuse of office, is a State officer or other public officer, other than a member of Parliament; or has, at any time within the last five years immediately preceding the date of election, held office as a member of the Independent Electoral and Boundaries Commission; *See article 99.*

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- (19) **QUESTION:** What is the role of the Senate? **ANSWER:** Senate is established as the Upper House to Legislate on Devolved government. The Senate represents the Counties and serves to protect the interests of the Counties and their governments. The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning Counties, as provided in Articles 109 to 113. The Senate determines the allocation of National Revenue among Counties, as provided in Article 216 and exercises oversight over National Revenue allocated to the County Governments. The Senate participates in the oversight of State officers by considering and determining any resolution to remove the State President or Deputy President from office in accordance with Article 145. The resolution to remove State President and the deputy will originate from the National Assembly, but the Senate must vote by two-third to impeach the President. The Senators shall be elected from Counties, which have about three to four regular constituencies and shall have more responsibilities and manage bigger budgets than MPs. The membership of the Senate is 68 (47 from Counties, 16 women, 2 youth, 2 persons with disabilities and 1 speaker). *See article 98.*
- (20) **QUESTION:** When will elections be held? **ANSWER:** Presidential and Parliamentary (National Assembly and Senate) and County elections will be held on every second Tuesday of August every five years. *See article 177(1).*
- (21) **QUESTION:** What does it take to run for MP? **ANSWER:** An MP must be a registered voter, be nominated by a political party, or is an independent candidate who is supported by at least 1,000 registered voters in the constituency. Candidate will not run for both MP and Presidency. *See article 99.* A candidate will be disqualified if the person is a State officer, member of Electoral Commission five years preceding the Election Day, a member of County assembly etc.
- (22) **QUESTION:** What does it take to recall your MP? **ANSWER:** Article 104(1). The electorate under Articles 97 and 98 has the right to recall the Member of Parliament representing their constituency before the end of the term of the relevant House of Parliament. (2) Parliament shall enact legislation to provide for the grounds on which a member is recalled and the procedure.
- (23) The Constitution of Kenya 2010 will alter the architecture of the State permanently, paving the way for many changes that were proposed by the Judicial Commission of Inquiry into Post Election Violence headed by Mr. Justice Philip Waki. Provisions aimed at preventing a return to the killings, which followed the last General Election spring from almost every page of the Constitution of Kenya 2010. The Constitution of Kenya 2010 makes provisions to improve service delivery in marginalized areas in measures designed to tackle a sense of exclusion which the Waki commission said contributed to the fighting in 2007/2008 that resulted in about 1,300 deaths, more than 900 acts of Documented rapes and sexual violence, approximately 350,000 displaced persons and 3,561 reported acts of serious injury.
- (24) **QUESTION: What** is the structure and role of the Judiciary? **ANSWER:** There

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

will be 3 superior courts:

- [a] **Supreme Court** - highest judiciary organ consisting of the Chief Justice, the Deputy Chief Justice and five other judges. This court will handle appeals from the Appeals and Constitutional courts. It will also preside over Presidential impeachment proceedings.
  - [b] **Court of Appeals** - will handle appeal cases from the High Court and as prescribed by Parliament. It will constitute not less than 12 judges and will be headed by a President appointed by the Chief Justice.
  - [c] **An Independent Judiciary Service Commission** will be setup to handle the appointment of Judges. They will recommend a list of persons to be appointed as Judges by the President (this article will be enforced after the transitional period). The commission will consist of the following: A Supreme Court judge - elected by members of the Supreme Court to chair the commission. Court of Appeal judge - elected by members of the Court of Appeals to chair the commission.
- (25) **JUDICIARY:** Supreme Court, Court of Appeal, High Court. The Judiciary consists of the judges of the superior courts, magistrates, other judicial officers and staff. The President will appoint Judges with the recommendation of the Judicial Service Commission and approval of Parliament. Subordinate Courts Magistrates, Kadhi's, Martial courts and any other courts created by Parliament.
- (26) **QUESTION:** What happens to judges and magistrates? **ANSWER:** Parliament will enact legislation establishing mechanisms and procedures for vetting suitability of all judges and magistrates. A removal or a process leading to removal of judges shall not be challenged by court. The Chief Justice will leave office within six months after the Constitution of Kenya 2010 takes effect. He may retire or face vetting.
- (27) **QUESTION:** What will be the structure of the County Governments? **ANSWER:** Each County will have its own government that will consist of a County Assembly and a County Executive. County Assembly consists of members elected by the registered voters of the wards. Each ward will elect one member to the assembly on the same day as the election of Members of Parliament. There will also be special seats for marginalized groups, including persons with disabilities and youth as prescribed by an Act of Parliament. Not more than two-thirds of the members should be of the same gender. Each County has a Speaker as *ex officio*. The Legislative authority and oversight role is vested in the County Assembly *See also forth schedule*. The Head of Executive is a Governor elected directly by the people with a Deputy Governor as a running mate. The Governor will appoint members not exceeding ten or one-third of the members of the County Assembly with the approval of the County Assembly. The Governor can be removed from office on violation of the Constitution and abuse of office. The County Assembly's term is five years. *See articles 176-200*. The responsibility of the citizens of each County is to elect qualified Governors and Legislators (possibly with university education), participation in efficient management of devolved funds and Public Resources.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- (28) **QUESTION:** What are the functions of County Government? : **ANSWER:** County Governor's team is to promote: Agriculture, Animal control and welfare, primary health services and license restaurants and bars, Control of air pollution, noise pollution, other public nuisances and outdoor advertising, Cultural activities, public entertainment and public amenities, County transport, roads, street lightings, traffic and parking, public road transport, ferries and harbours. The team shall be involved in County planning and development County statistics, survey land, boundaries, ensure proper housing and regulate energy, Pre-primary education and ensure provision of nursery schools education, oversee village polytechnics, home craft centres and childcare facilities. County public works and services, Fire fighting services and disaster management, Control of drugs and pornography. Counties shall implement specific National Government policies on Natural Resources and environmental conservation, it will also be the responsibility of the County Governments to develop sports, promote cooperative societies. The County Government shall expand trade in away that attracts investment, Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level. See FOURTH SCHEDULE, (Article 185(2), 186(1) and 187(2)
- (29) **QUESTION:** What is Devolution? **ANSWER:** Devolution is a process that is gaining popularity Worldwide as a mechanism for bringing government closer to citizens in order to enhance local service delivery and local participation. Devolution is one of the three forms of decentralization. Decentralization is the process through which central government transfers powers to local governments. These powers include administrative, financial and political.
- (30) **QUESTION:** What are the functions of County Government? **ANSWER:** County Government is the second level of government, which shall consist of County Assembly and Executive. There are 47 counties. Each county will have a County Executive headed by a County Governor elected directly by the people and; a county assembly elected by voters from wards within the county. Devolution to the County Governments will only be autonomous in implementation of previous distinct functions as listed in the Fourth Schedule (Part 2). This is in contrast with the Federal System in which Sovereignty is constitutionally divided between the Federal government and the States. The Kenyan Devolution system still maintains a Unitary Political Concept because of the distribution of functions between the two levels of government under the Fourth schedule and also as result of Article 192 which gives the president the power to suspend a County Government under certain conditions. A conflict of laws between the two levels of government is dealt with under Article 191 where National legislation will in some cases override County legislation. The relationship between the National Government and the Counties can be seen as that of a Principal and a limited autonomy Agent as opposed to an Agent and Agent relation in the Federal System. More checks and balances have been introduced as requirements for accountability of both levels of

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

government. The Parliament (Senate and National Assembly) has much discretion on the budgetary allocations to the County Governments. Every Five years the Senate receives recommendations from the Commission of Revenue Allocation (Article 217) and a resolution is passed on the criteria for Revenue allocation. The National Government is constitutionally barred from intruding with the County Government role under the Fourth Schedule unless in certain cases which may require parliament approval Article 191 and 192. The National Government has a role to play in the County level by performing all the other functions that are not assigned to the County Government as listed on the Fourth Schedule (Part 1).

- (31) **QUESTION:** What are Administrative powers? **ANSWER:** Administrative power decision-making includes the power to employ and discipline staff, collection of planning data to inform decision made by central government, power to conduct functions such as registration of birth, issuance of Identification cards etc. The District Focus for Rural development (DFRD) introduced in 1993 have been an example of administrative decentralization in Kenya.
- (32) **QUESTION:** What are financial powers? **ANSWER:** Financial Devolution means the transfer of finances from central government to the local level where planning priorities are made with citizen participation. This is a situation where public funds collected through taxation are forwarded by the National Government to Counties hence enables the Counties to prioritize their own development agenda and implement them. In the Constitution of Kenya 2010 article 203(3), 15% of the National Revenue shall be devolved to the Counties yearly. The Counties have the powers to collect taxes. The constituency development fund (CDF) and Local Authority Transfer Fund (LATF) are examples of financial Devolution.
- (33) **QUESTION:** What are political powers? **ANSWER:** Political Devolution of power includes the transfer of administrative, financial and political power to local governments. In this case the local governments enjoys independence to form its own parliament, appoint its own Executive, make its laws and manage its resources in accordance with the local needs but within the National Government framework and the Constitution.
- (34) **QUESTION:** What is the role of Devolution? **ANSWER:** All functions of National Government are devolved to Counties. It shall bring services near the people and improve service delivery at grassroots. Promote democracy, accountability, National unity, and citizen participation in governance and management of public resources, interests of minorities and equity in distribution of National Resources, decentralization of State organs, checks, balances and separation of powers. See *article 174*.
- (35) **DEVOLUTION OF 15%:** To address inequality and ensure implementation of the system of Devolution at least 15 per cent of National Revenue shall be sent directly to the Counties, giving wananchi and local leaders, far greater authority in managing resources. See *article 203(2)*. Calculated against the

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

revenues in the 2008/2009 financial year when the Kenya Revenue Authority collected Sh480.6 billion, it means Counties would get a minimum of Sh72 billion for local use this year if the Constitution of Kenya 2010 was the law of the land.

- (36) **DECENTRALIZATION:** The objective of this change, the Constitution of Kenya 2010 says in Article 174 (h), is to “facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya and to enhance checks and balances and the separation of powers”.
- (37) **QUESTION:** Will County Government deliver? **ANSWER:** The Constitution of Kenya 2010 was published on Thursday 6<sup>th</sup> May, 2010 and for the second time it was left for the Kenyan voters to decide the fate of the Document at the Referendum on 4<sup>th</sup> August 2010. It was indeed ratified and presidential promulgation on 27<sup>th</sup> August 2010 hence became the Constitution of Kenya 2010 of Kenya. One of the most contentious issues of the 2005 Constitutional Referendum was Devolution and many Kenyans were not well informed on the advantages of Devolution. Then many voters feared that Devolution or Majimbo would promote tribalism and divide the country along ethnic lines. Although Kenya, under this Constitution of Kenya 2010 remains a Unitary State with two levels of governments (National and County), there is decentralization of authority and resources to 47 Counties. However, through awareness creation and provision civic education, during the second Referendum the playing field was very different, many voters viewed Devolution as the key to equitable growth, creation of local job opportunities and improved service delivery.
- (38) **QUESTION:** What are the objects of County Government? **ANSWER:** The Objectives of the County Governments are the objects of the devolution of government are— To promote democratic and accountable exercise of power. Foster National unity by recognising diversity; enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them. To recognise the right of communities to manage their own affairs and to further their development; the interests and rights of minorities and marginalized communities; social and economic development and the provision of proximate, easily accessible services throughout Kenya. Ensure equitable sharing of National and local resources throughout Kenya; facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and enhance checks and balances and the separation of powers. See *article 174*. So will the County Government deliver? Time will tell.
- (39) **QUESTION:** How effectively will the Constitution of Kenya 2010 deal with these challenges? **ANSWER:** The relationship between National and local government is one of subsidiary and complementarily whereby local government is fully responsible for the use of local resources to meet local interest to the extent that they are complimentary to overall National interest. Thus, central government retains overall responsibility to develop policy and ensure accountable and effective local government, but cannot interfere with local government operations unless local government is breaching

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

requirement for cohesion, accountability, National security and National Values. These values include: patriotism, National unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, Integrity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; good governance, integrity, transparency and accountability; and sustainable development. However for the County Government to work efficiently it requires independence, competent staff, effective citizen engagement, strong accountability measures and sufficient resources.

- (40) **QUESTION:** How effectively will the Constitution of Kenya 2010 deal with policy-making? **ANSWER: Policy-making is an integral part of the Constitution of Kenya 2010:** policy-making is the process by which a government (or any other entity) translates its vision into statements and actions to achieve desired outcomes. In government however, good policy-making is essential if government is to achieve its aims and deliver real change and benefits. It's important that the management of public policy be guided by strategic principles which foster policy and juridical dynamism, in which policy management is seen as a process of social learning. Policies in Kenya are embodied in a wide array of documents: parliamentary sessional papers, national development plans like the "*Economic Recovery Strategy*" and "*Vision 2030*", presidential circulars, ministerial and departmental circulars, parastatal strategic plans and policies, political party manifestos, and, quite incredibly, presidential or ministerial roadside declarations. While the link between policy-making, governance and development has dominated academic and internal bureaucratic discourse since independence, it has received lip-service in the public, and specifically, political domain. This is mainly because of the prominence given to constitutional and legislative frameworks of governance. Indeed, despite the adoption of a Constitution of Kenya 2010 on August 27, 2010, some skeptics doubted whether the new dispensation would secure a better political and social economy, especially at the household level. This skepticism emanates from two factors: first, the previously missing link between constitutionalism and policy-making, and second, limited appreciation of the place of policy-making in the Constitution of Kenya 2010.

However, in the Independence, under the 1969 and 2008 constitutions, there was no mention of "policy" in the constitutional text. In contrast, the Constitution of Kenya 2010 mentions the word at least 23 times. This time Policy-making has been constitutionalised in three main ways: first, under *Article 10*, the Constitution has provided a set of comprehensive national values and principles of governance to bind all State organs, State officers, and all persons in making or implementing public policy decisions. Second, *Article 21* tasks the government with taking policy measures to achieve progressive realisation of the comprehensive economic and social rights guaranteed under *Article 43*. Third, *Article 232* provides that the values and principles of the public service involve the people in policy-making. The policy-making cycle conventionally entails policy initiation, formulation, debate, implementation and review.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

These activities will be conducted by a number of organs and officers at different governance levels: the President, Deputy President, Cabinet, Cabinet Secretaries, Principal Secretaries, constitutional office-holders, constitutional commissions, County Governments, individual State officers in the national and County Governments, parastatals, and agencies. In terms of the process, the Constitution requires that it be participatory, inclusive, transparent, and embody integrity and accountability. While in terms of outcome, the process of policy-making should secure patriotism, national unity, sharing and devolution of power, the rule of law, democracy, equity and equality, social justice and non-discrimination.

Constitutionalising the policy-making framework is significant in at least three ways. First, it opens up the process for different kinds of participation by State organs and officers, and non-State actors such as academia, civil society and, the general public. This is significant in terms of value addition in the process of governance. Grassroots participation in policy-making is secured. Second, the constitutional provisions supply a framework for measuring the constitutionality of the policy documents. These provisions require that the policies should secure such outcomes as equity, equality and social justice. Third, constitutionalising policy-making is significant because it makes the process and outcome of the policy process subject to the rules of administrative justice under *Articles 47 and 48* (on fair administrative action and access to justice). These provisions then require that the State and non-State actors in the policy-making process should be equipped with the capacity to carry on the process within the constitutional requirements.

- (41) **QUESTION:** What was wrong with Kenya Decentralization under the Old Constitution? **ANSWER:** The problem with Kenya's then decentralized/devolved institutions is largely that they suffered under excessive political interference from central government and parliament, poor citizen participation, low capacity resources spread out too thin across numerous schemes and poor accountability. The different types of devolved funds were scattered and managed by different various committees hence lacked accountability. There were twelve types: Constituency Development Fund, Constituency Road Fund, Constituency Bursary Fund, Constituency HIV/AIDS Funds, CACC etc, Local Authority Transfer Fund (LATF), Free Primary Education Grants to Schools, Road Maintenance Levy Fund (RMLF) Poverty Eradication Commission Funds, Youth and Women Funds and Both free Primary and Secondary schools funds, Political Parties Funds.
- (42) **QUESTION:** What are the Principles of effective decentralization? **ANSWER:** The Constitution of Kenya 2010 in designing devolved County Governments has taken into account the following democratic decentralization characteristics:
- [I] Constitutional policy and statutory reforms to devolve power not only to local governments but also local communities;
  - [II] local government capacity strengthened in terms of finance , personnel, organization structures, management systems, data and information, facilities, networks etc;
  - [III] Local government accountability to citizens and central government,

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

transparency and responsiveness;

- [IV] Enhancing the role of civil society both at local level and National levels (practicing what we prefer to call horizontal decentralization) and
- [V] Showing both intent and progress in improving the quality of life of the local people (i.e. enhancing people's access to public goods and services).

To be effective, devolved governments should have autonomy and independence from the central government and ought to have clear and legally recognized geographical boundaries over which to exercise authority and perform public functions. The political framework governing the electoral process under the devolved government level ought to facilitate the direct participation of users of services in the election of political leaders; clear and well defined chain of accountability of the devolved government to both the central government and the local communities and public services to the practical extent should be devolved to the local level for the local communities to realize the benefit of Devolution.

- (43) **QUESTION:** What is the overall strengths and Weakness? **ANSWER:** This can be addressed in various levels including: Autonomy, Relationship between National and County Government, Representation, Sharing of Revenue, Accountability, Citizen Participation and weakness.

**Autonomy: (1).** The governance structure is well defined and empowered to address local level management and leadership. (2). Under the Constitution of Kenya 2010 the County Government and its structures are legally protected in the supreme law of the land, which mean they are protected from political interference. (3). Boundaries cannot be changes arbitrarily; they can only be altered through parliamentary and senate approval.

**Relationship between National and County Government: (1).** There is established structure for the operational relationships between the County and National Governments which includes support from the National Governments as well as accountability to the National Government. (2). Neither the National Assembly nor the Executive can determine operations of the Counties through the law without direct involvement of the Senate. (3). The County Governments have independence and autonomy in implementation of their functions. The National Assembly in turn has power to oversee performance of Counties. (4). The president is only empowered to suspend a County in cases of war or other exceptional circumstances with senate approval. (5). The Senate provides checks and balances on the Executive and National assembly in regard to the renewal of President and Deputy President from office.

**Representation Gender, Youth Disability:** Integration and equity are core principles of a County Government through gender balance, representation of marginalized groups, diversity and protection of minority groups in the County. This is provided for in the Constitution of Kenya 2010 through direct elections and special seats for women, youth and people with disabilities. No more than

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

two thirds of the County assembly can be from one gender. The following articles in the Constitution serve the interest of the youth, women and Persons with Disabilities. **Youth** 55, 97, 98, 177. **Women:** 3, 20, 22, 27, 28, 29, 58, 81, 97, 98, 102, 175, 177, 188, 197. **People with disabilities:** 7, 21, 54, 81, 82, 97, 98, 100, 158, 177, 232, TCP5.

**Sharing of Revenue: 1).** There is established a commission on revenue Sharing whose principal function is to make recommendations concerning the basis for the equitable sharing of revenue raised by the National Government between the National and County Governments and among the County Governments. (2). The Counties are empowered to participate in determining revenue allocation through the Senate. (3). Not less than 15% of annual revenue collected by the National Government is allocated to County Governments to enable them carry out their functions. (4). During every financial year, 0.5% of the revenue collected by the National Government shall be paid into the established Equalization Fund to provide basic services including water, roads, health facilities and electricity in the marginalized areas. (5). County Governments is given additional allocations from the National Governments' share of the revenue either conditionally or unconditionally. This provision allows for the continuation of such funds as Local Authorities transfer Fund (LATF) and roads Maintenance Levy Fund (RMLF) that currently are channeled through Local Authorities.

**Accountability:** There is a clear linkage as well as checks and balances between the County assembly and County Executive committee. All State officers are bound by provisions of the leadership and integrity chapter 6, which deals with LEADERSHIP AND INTEGRITY:. Responsibilities of leadership (1) Authority assigned to a State officer (a) is a public trust to be exercised in a manner that— (i) Is consistent with the purposes and objects of this Constitution; (ii) demonstrates respect for the people; (iii) brings honour to the Nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office; and (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them. See also Article 73(1)(b). (2) The guiding principles of leadership and integrity include—(a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections; (b) objectivity and impartiality in decision-making and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices; (c) selfless service based solely on the public interest, demonstrated by—(i) honesty in the execution of public duties; and (ii) The declaration of any personal interest that may conflict with public duties; (d) Accountability to the public for decisions and actions; and (e) Discipline and commitment in service to the people. The Constitution of Kenya 2010 provides for access to information for all State records. Improve Financial Management and Accountability, accountability, transparency and integrity in the governance and management of Devolved Funds to gradually eradicate, Ignorance, corruption and poverty.

**Citizen participation: (1).** The Constitution of Kenya 2010 provides the following explicit provisions or public involvement through direct election of

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

Senators and governors. (2). Local communities are also empowered to manage their own affairs and County Governments are obligated to provide support for this. (3). In the division of revenue members of the public and professional bodies will be invited to make their submissions. (4)Public scrutiny of parliamentary and assembly proceeding is safeguarded. The empowered citizens at grassroots through capacity building will make Informed Choices/Decisions, raise level of engagement between Devolved Funds managers and citizens hence Responsive, Responsible, Accountable Governance, improved and extension of Service Delivery to the citizens and ownership of projects.

**Transition: (1).**The phased implementation of the devolved structures provides for capacity building of County Government to ensure that County Governments will not be assigned tasks they cannot perform. (2). The commission implementing the Constitution is required to monitor the implementation process. (3). The Constitution of Kenya 2010 provides for the restructuring of the provincial administration in line with the new County structure. (4). Local authorities will continue to exist and subsequent legislation will deal with their fate.

- (44) **TAXES:** In the new Kenya, All citizens including MPs will pay taxes *Article 210(3) & 260.*
- (45) **PUBLIC FINANCE:** The management of Public Finance must be with openness, accountability and peoples' participation. There is equitable sharing between National and County Governments. *Article 201.*
- (46) **EQUALISATION FUND:** The Constitution of Kenya 2010 will see the creation of an Equalisation Fund, which will send 0.5 per cent of annual revenue to marginalized communities. The Fund provide basic services including water, roads, health facilities, electricity to the areas This would have given the areas Sh2.4 billion from the 2008/2009 revenue collection. The fund is expected to lapse 20 years after the Constitution comes into force, although it is expanded by Parliament and the Senate. *See article 204*
- (47) **ACCESS TO INFORMATION:** Individuals will have a right to access information held by the State and a right to privacy will be enhanced by a clause in *Article 35(3)* that States "every person has the right to the correction or deletion of untrue or misleading information that affects the person".
- (48) **MEDIA:** Determined efforts by the government to control the media will hit a dead end once the Constitution of Kenya 2010 becomes the law of the land. Numerous sections of the Constitution of Kenya 2010 require that the State shall not exercise control over the media and any media regulator formed by Parliament shall "be independent of control by government, political interests or commercial interests".
- (49) **QUESTION:** What changes do we expect in the election process? **ANSWER:** Elections in the new Kenya will be much more civilised affairs than they

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

currently are, if the law is implemented. Political Parties will be forced to hold regular internal elections. Political parties will have to reach outside the ethnic cocoons in which they draw support because they will receive public funding based on their strength in Parliament, which might lead to the emergence of a few more ideological and less parochial parties. A cap on how much candidates can spend during campaigns will be imposed and candidates who lose during party nominations will not defect to other parties. See 92-93

- (50) **QUESTION:** What will women gain from this Constitution of Kenya 2010? **ANSWER:** Women are the main winners under appointments and the new electoral system, enjoying at least a third of seats in all appointive and elective bodies, a move which will edge Kenya towards the situation in countries that boast high levels of gender parity around the World such as Rwanda and Sweden. See article 81(b), 175(c), 177(b), 197(1) etc.
- (51) **CREATION OF EMPLOYMENT:** This Constitution shall create many new employment opportunities including 22 Cabinet Secretaries (appointed from outside Parliament) Article 152(3), 68 Senators see 98, 80 MPs see 97, 94 Governors and Deputies and 470 Committee members in the Executive See 179, 47 ex officio Speakers of County Assemblies elected by County assembly from outside the Assembly See 178, 10 Constitutional Commissions of 15 Commissioners each (150) see 248 etc. If each County Employees 100 technical and supportive staff (Accounts, Managers, clerical and Program officers etc), there will be about 47,000 jobs.
- (52) **QUESTION:** What will happen to the Grand Coalition? **ANSWER:** All elections – Presidential, Parliamentary, MPs, Senate and Counties – shall be held within 60 days after the end of the current Parliament. If Parliament is dissolved before 2012 and elections, those of the Counties will be held in 2012, but all others under the Constitution of Kenya 2010.
- (53) **QUESTION:** Can retired President Moi and President Kibaki run again? **ANSWER:** No, a person who was elected President under the old Constitution can stand as State President under the Constitution of Kenya 2010. It is silent on whether they can stand for Parliamentary elections.
- (54) **QUESTION:** Will the President consult the Prime Minister on major decisions during transition from the current to the Constitution of Kenya 2010? **ANSWER: Prime Minister:** Although the Prime Minister's position will eventually be abolished, the current PM will have an input on all major appointments as required under the National Accord and Reconciliation Act 2008 until the next General Election. See *Transitional and Consequential Provisions # 12*. They include the AG's, Chief Justice, Chief Government Prosecutor, Police Commissioner, Controller of Budget and Auditor/General. See *Transitional and Consequential clause 3*.
- (55) **QUESTION:** When will the Constitution of Kenya 2010 come to force? **ANSWER:** It came into force when majority of voters 57% voted 'Yes' at the Constitutional Referendum held on 4<sup>th</sup> August, followed by Presidential

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

promulgation on 27<sup>th</sup> August 2010. However, if the President failed to promulgate it, it could automatically on the expiry of 14 days from the date of publication in gazette of the final results of the Referendum ratifying it become a Constitution of Kenya 2010. In this Constitution of Kenya 2010 the powers of the State President, women's rights are guaranteed and systems of land use and management radically changed to ensure equity. *See article 263.*

- (56) **QUESTION:** How will the Constitution be amended? **ANSWER:** The Constitution shall be amended by both Parliament (National Assembly and Senate) and through citizen popular initiatives at a Referendum. *See articles 255-257.*
- (57) **QUESTION:** What can be amended by the people in a Referendum? **ANSWER: Pillars and the Foundation Clauses** that can alter the nature and Structure of Constitutionalism. **Supremacy** of this Constitution; territory of Kenya; sovereignty of the people; National values and principles of governance mentioned in Article 10 (2) (a) to (d); Bill of Rights; term of office of the President; independence of the Judiciary and the commissions and independent offices functions of Parliament; objects, principles and structure of devolved government; or the provisions of this Chapter. To amend these parts of the Constitution is by obtaining one million signatures of registered voters, two-thirds MPS, Referendum. *See article 257.* Unlike then Constitution where citizens have NO role in the amendment of the Constitution.
- (58) **QUESTION:** What are the overall weaknesses: **ANSWER:** The Constitution of Kenya 2010 has some missing links or weaknesses that have potential undermine it effectiveness in providing accountability leadership and services delivery. These include among others:
- [a] **Unit of development is not defined:** The Constitution of Kenya 2010 does not expressly deal with the constituency development and it's possible the members of parliament may wish to continue the fund parallel to the County structure. Thus the strength of County Government at local level is determined by parliament. Will parliament be willing to give the CDF if favor of strong County Government?
  - [b] **Political appointees on revenue commission undesirable:** The commission of revenue allocation is comprised of political nominees. This is undesirable and is likely to undermine the professionalism of this very important body and may result in political horse trading or political wrangles which will undermine development needs in funds allocations.
  - [c] Distance between citizen and County too wide the Counties are few (47) and cover very wide areas which remain far removed from the ward level. Whereas this has the benefits of reducing the cost burden of supporting too many Counties, it means the distance between the citizen and County is very wide.
  - [d] **There is no reporting mechanism between County Governments and the senate:** Apart from making laws, the senate has no power to provide wider oversight to the County Governments.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- [e] **County Executive lack policy making role:** The County Executive lacks express policy making powers/role, systems stem from the Executive.
- [f] **Constitution of Kenya 2010 fails to decentralized health, education and administrative functions:** the National Government will still maintain some functions and services that would better be managed and coordinated by the country governments in line with the principle of subsidiary such as primary and secondary education and primary health care. In regard to administrative Devolution, the Constitution of Kenya 2010 does not provide for the decentralization functions services carried out by central government or its semi-autonomous agencies such as insurances of IDs, birth certificates, etc.
- [g] **It fails to enforce discipline in borrowing by County:** although the Constitution of Kenya 2010 provides for the borrowing powers of devolved governments, it does not restrict the County Governments from borrowing from recurrent expenditure it is the case currently with some local authorities. In principle the devolved government should be given borrowing powers only for infrastructure or capital expenditures.
- [h] **Fate of local authorities unclear:** The Constitution of Kenya 2010 does not expressly provide for the transition of existing local government into County Governments. This will depend on the future parliamentary provisions.

**Missing gaps: (1).** The right of recall for member for parliament is provided (article 104) but is not provided for senate or County level. (2). The right to petition parliament is provided but is not provided for at County level. (3). Whereas the Constitution of Kenya 2010 provides for the taxations of all public officers including MPs it does not set upper limits on the amounts they earn. This are set by the salaries commission. (4). The Constitution of Kenya 2010 provides for the introduction of freedom of information legislation, it does not give a time frame for the enactment of the law on right to information. This may delay the transparency of local governance and allow public officers to destroy records older than 6 years in line with the procurement law.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **TWO-THIRDS GENDER REQUIREMENT.**

We must read the Contentious two-thirds clause together with other articles including articles: 21(a), 22, 27(8), 38(1-3), 81, 87, 89(1), 90(1), 97, and 101(2). Since article 27(8) can only be amended through a Referendum as stipulated by article 255(e), it's advisable to amend article 97 through parliament as provided in article 256 in order to meet the requirements of article 81(b) which, states that **“not more than two-thirds of the members of elective public bodies shall be of the same gender;”** However, we must appreciate that this will be a process but not an event. In reference to the composition of National Assembly, I propose that we amend article 97 and insert article 97(1)(c) as follows:

**97. (1) The National Assembly consists of — 414 members as follows:**

[a] Two hundred and ninety members, each elected by the registered voters of single member constituencies;

[b] Forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;

**[c] Eight seven women members shall be nominated by IEBC, spread equitably in all 47 counties based on the highest votes received by candidates in the county during the immediate election, irrespective of party affiliation and for the purpose of article 81(b)**

[d] Twelve members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and

[e] The Speaker, who is an *ex officio* member.

(2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1) (a).

### **NOTE.**

(1) There are 349 Members of National Assembly. The required One-third is 116. Less 47 women County representatives and political parties one-third  $(12/3)$   $[116-47-4] = 65$  women members required. Therefore Total Members shall be  $349+65 = 414$ . The one-third women Members of National Assembly required is  $414/3 = 138$ . The Balance required  $(138-47-4) = 87$ .

(2) The 87 women members required to satisfy article 81(b) shall be varied by IEBC from one election to another depending on the number of women elected from the 290 constituencies in each election. **For Example** if 20 women are elected in the 2012 regular elections; to achieve the requirement of article 81(b), IEBC shall nominate at least 67  $(87-20)$  women Members spread equitably in all 47 counties, e.g. 1 nominated woman Member per a county. The remaining required nominees  $(67-47) = 20$ . IEBC shall nominate women who got the highest number of votes from the constituency with the highest registered voters.

(3) Political parties shall nominate the 12 members and one-third shall be women.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- (4) The nominations shall be made by IEBC based on candidates who received the highest number of votes in the county during the immediate election irrespective of party affiliation.
- (5) Women shall have the opportunity to participate in political party politics and in the various elective offices.
- (6) Political parties shall increase the number of women candidates in each election.
- (7) During the time they will be serving as nominees they will have a chance to populous themselves with the electorate.
- (8) **The Salaries and Remuneration Commission shall determine the salary.** However I suggest that the total current wage bill remain the same. Since Kenyans are prepared to pay an MP Kshs.850,000 hence 349 Members stipulated in the constitution Kshs. 3.5598 Trillion yearly and Kshs.296,650,000 monthly, its therefore clear that without burdening Kenyans with salaries of 414 members each MP shall receive Kshs. 716,550 per month.

**Yours truly,**

**Dr. Billy C. N. Onwong'a**

**Former Chairman of "Preamble Committee" at Bomas National Constitutional Conference.**

### **PRESIDENTIAL SYSTEM OF GOVERNMENT.**

The State Consists of Territory, People, Sovereignty (Expressed through Constitution) and Government.

### **PRESIDENTIAL SYSTEM OF GOVERNMENT Example USA**

- (1) The Chief Executive of the country is called President
- (2) President is Head of State and Government
- (3) The President is independently elected and involves direct voting of citizens by universal suffrage.
- (4) The President's party form government whether with majority or minority members in Legislature
- (5) There is clear separation of powers even though there is fusion of State and government
- (6) Party Delegates elect political party officials and Presidential candidates through political caucuses. The Presidential candidates are nominated by party members through caucuses popularly referred as Primaries to vie for Presidential election along other contenders from other parties. The contenders are popular party candidates and may not necessarily be party officials. The winner will form the government.
- (7) Political parties go through a Presidential nomination process involving party members and the chairperson may not necessarily be the nominated Presidential candidate.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- (8) The President or Presidential candidate shall Appoint or choose running mate or vice-President to deputise him/her.
- (9) The President serves for a fixed term of office unless impeached; in Kenya, the President serves five-year term and for a maximum of two terms.
- (10) Since President exercises the Executive Authority, Presidential Dictatorship may emerge.
- (11) There is separation of powers among the three branches of government (Executive, Legislature and Judiciary) with inbuilt checks and balances to reduce concentration of powers and government tyranny.
- (12) Legislature provides checks and balances.
- (13) Political party office bearers are professional managers elected from the membership because the people elect those who form government. In Kenya, it is a mix of the two. Presidential system overtakes Parliamentary system when the President is elected directly by citizen.
- (14) Legislature vet Presidential appointments to ensure fairness equity and professionalism.
- (15) Cabinet Secretaries are appointed from non-members of the Legislature.
- (16) Professionals and experienced citizens are appointed to cabinet based on qualification, gender and geographical equity to advance policy and government agenda.
- (17) President wields veto powers over the legislature.
- (18) Impeachment of President possible but process is slow and laborious.
- (19) President is not a Member of Legislature.
- (20) President exercise direct sovereign authority of the people and is directly answerable to the citizen or through the Senate.
- (21) Legislature has both Minority and Majority party Leaders.
- (22) There is permanent relevance of minority because decision-making is fragmented among different branches and the President may not come from the majority party in the legislature.
- (23) President set policy and reigns supreme.
- (24) There is one Dictator- the President.
- (25) This system involves citizens directly in the formation of government. (e.g. electing of President)
- (26) System is more stable and direct sovereignty of the people limit powers of the state.
- (27) President to be elected by direct voting of citizen through Regional Electoral College votes
- (28) The minority or majority party that form government shall be the basis of forming a coalition
- (29) One party with majority members among those remaining in Legislature to form opposition and shall be the basis of coalition building.

### **Demerits of the Presidential System**

- (1) Presidential Dictatorship
- (2) Process of removing President is long and cumbersome usually through judicial process or impeachment
- (3) Centralised authority exercised by one person.

# **CELAQ QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

- (4) System expensive to put in place as it involves direct voting by the universal suffrage
- (5) System can be less accountable and dictatorial if no checks and balances are put in place
- (6) There are many levels of elected government to ensure checks and balances.
- (7) Centralize political power and opportunities.
- (8) Promote inequality, inequity and marginalization if no adequate checks and balances.
- (9) Encourage the cult of personality institutionalism
- (10) Fused State and government makes it difficult for President to be a symbol of National unity because of political conflicts.
- (11) When the President's party has a majority in the Legislature, they can pass unpopular legislations or filibuster.

The Approval of this Constitution shall bring upon us reorganization, restructuring, reconstruction, reengineering, and prosperity. The New Constitution shall be the Foundation of achieving The National Accord and Agenda four Reforms, without which the Reforms will Stop.

***There is NO Perfect system of Government, but since we have chosen Presidential system we shall overtime perfect it to address our unique circumstance. We need a government of the people, by the people and for the people.***

**GENERATIONAL CHANGE IS A CONSTANT PHENOMENON, BUT SOCIETY MUST ADJUST WHILE PRESERVING MORALITY AND LIFE.**

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

**FOURTH SCHEDULE (Article 185(2), 186(1) and 187(2))**  
**DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT**  
**AND THE COUNTY GOVERNMENTS**

<p><b>Part 1 – National Government</b></p> <ol style="list-style-type: none"> <li>1. Foreign affairs, foreign policy and international trade.</li> <li>2. The use of international waters and water resources.</li> <li>3. Immigration and citizenship.</li> <li>4. The relationship between religion and state.</li> <li>5. Language policy and the promotion of official and local languages.</li> <li>6. National defence and the use of the national defence services.</li> <li>7. Police services, including—             <ol style="list-style-type: none"> <li>(a) The setting of standards of recruitment, training of police and use of police services;</li> <li>(b) criminal law; and</li> <li>(c) Correctional services.</li> </ol> </li> <li>8. Courts.</li> <li>9. National economic policy and planning.</li> <li>10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.</li> <li>11. National statistics and data on population, the economy and society generally.</li> <li>12. Intellectual property rights.</li> <li>13. Labour standards.</li> <li>14. Consumer protection, including standards for social security and professional pension plans.</li> <li>15. Education policy, standards, curricula, examinations and the granting of university charters.</li> <li>16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.</li> <li>17. Promotion of sports and sports education.</li> </ol>	<ol style="list-style-type: none"> <li>18. Transport and communications, including, in particular—             <ol style="list-style-type: none"> <li>(a) road traffic;</li> <li>(b) The construction and operation of national trunk roads;</li> <li>(c) standards for the construction and maintenance of other roads by counties;</li> <li>(d) railways;</li> <li>(e) pipelines;</li> <li>(f) marine navigation;</li> <li>(g) civil aviation;</li> <li>(h) space travel;</li> <li>(i) postal services;</li> <li>(j) telecommunications; and</li> <li>(k) radio and television broadcasting.</li> </ol> </li> <li>19. National public works.</li> <li>20. Housing policy.</li> <li>21. General principles of land planning and the co-ordination of planning by the counties.</li> <li>22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—             <ol style="list-style-type: none"> <li>(a) fishing, hunting and gathering;</li> <li>(b) protection of animals and wildlife;</li> <li>(c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; (d) Energy policy.</li> </ol> </li> <li>23. National referral health facilities.</li> <li>24. Disaster management.</li> <li>25. Ancient and historical monuments of national importance.</li> <li>26. National elections.</li> <li>28. Health policy.</li> <li>29. Agricultural policy.</li> <li>30. Veterinary policy.</li> <li>31. Energy policy including electricity and gas reticulation and energy regulation.</li> <li>32. Capacity building and technical assistance to the counties.</li> <li>33. Public investment.</li> <li>34. National betting, casinos and other forms of gambling.</li> <li>35. Tourism policy and development.</li> </ol>
--	--

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **PART 2—COUNTY GOVERNMENTS**

The functions and powers of the county are—

1. Agriculture, including—
  - (a) crop and animal husbandry;
  - (b) livestock sale yards;
  - (c) county abattoirs;
  - (d) plant and animal disease control; and
  - (e) Fisheries.
2. County health services, including, in particular—
  - (a) county health facilities and pharmacies;
  - (b) ambulance services;
  - (c) promotion of primary health care;
  - (d) licensing and control of undertakings that sell food to the public;
  - (e) veterinary services (excluding regulation of the profession);
  - (f) cemeteries, funeral parlours and crematoria; and
  - (g) Refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities, including—
  - (a) betting, casinos and other forms of gambling;
  - (b) racing;
  - (c) liquor licensing;
  - (d) cinemas;
  - (e) video shows and hiring;
  - (f) libraries;
  - (g) museums;
  - (h) sports and cultural activities and facilities; and
  - (i) County parks, beaches and recreation facilities.
5. County transport, including—
  - (a) county roads;
  - (b) street lighting;
  - (c) traffic and parking;
  - (d) public road transport; and
  - (e) Ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
6. Animal control and welfare, including—
  - (a) licensing of dogs; and
  - (b) Facilities for the accommodation, care and burial of animals.
7. Trade development and regulation, including—
  - (a) markets;
  - (b) trade licences (excluding regulation of professions);
  - (c) fair trading practices;
  - (d) local tourism; and
  - (e) Cooperative societies.
8. County planning and development, including—
  - (a) statistics;
  - (b) Land survey and mapping;
  - (c) boundaries and fencing;
  - (d) housing; and
  - (e) Electricity and gas reticulation and energy regulation.
9. Pre-primary education, village polytechnics, homecraft centres and childcare facilities.
10. Implementation of specific national government policies on natural resources and environmental conservation, including—
  - (a) soil and water conservation; and
  - (b) Forestry.
11. County public works and services, including—
  - (a) storm water management systems in built-up areas; and
  - (b) Water and sanitation services.
12. Fire fighting services and disaster management.
13. Control of drugs and pornography.
14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **TRANSITIONAL TO NEW KENYA**

- (1) New Education and capability skills
- (2) Transitional problems with the same Leaders. They use the New Law to get a due advantage and stagnate the country.
- (3) Do we pay salaries as rewards or payment for services rendered.
- (4) Leaders must understand chapter 10 sustainable development
- (5) Disconnect the past from the future
- (6) Identify the Fundamental knowledge gaps and fil them
- (7) Change traditional behaviours and adopt values of transitional change
- (8) We cannot continue the same old leadership that has failed us and expect different results—success.

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### FIFTH SCHEDULE (Article 261 (1))

CHAPTER & ARTICLE	LEGILATION	PERIOD
CHAPTER Three-- Citizenship: (Article 18)	Legislation on citizenship. <b>Article 18 THE KENYA CITIZENSHIP AND IMMIGRATION BILL, 2011</b>	One year
CHAPTER Four-The Bill Of Rights: (Article 59)	Kenya National Human Rights and Equality Commission. <b>Article 59 THE KENYA NATIONAL HUMAN RIGHTS COMMISSION BILL, 2011</b>	One year
CHAPTER Six-Leadership And Integrity: (Article 79)	Ethics and anti-corruption commission. <b>Article 79 THE ETHICS AND ANTI-CORRUPTION COMMISSION BILL, 2011</b>	One year <b>LAW</b>
CHAPTER Seven-Representation Of People: (Article 82)	Legislation on elections <b>Article 82 THE ELECTIONS BILL, 2011</b>	One year
CHAPTER Seven-Representation Of People: (Article 87)	Electoral disputes.	One year <b>X</b>
CHAPTER Seven-Representation Of People: (Article 88)	Independent Electoral and Boundaries Commission. <b>Article 88 THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL, 2011</b>	One year
CHAPTER Seven-Representation Of People: (Article 92)	Legislation on political parties. <b>Article 92 THE POLITICAL PARTIES BILL, 2011</b>	One year
CHAPTER Eight-The Legislature: (Article 103)	Vacation of office of Member of Parliament	One year <b>X</b>
CHAPTER Nine-Executive: (Article 133)	Power of mercy. <b>Article 133 THE POWER OF MERCY BILL, 2011</b>	One year
CHAPTER Ten-Judiciary: (Article 162)	System of courts.	One year <b>X</b>
CHAPTER Ten-Judiciary: (Article 168)	Removal from office.	One year <b>X</b>
CHAPTER Ten-Judiciary: (Sixth Schedule, Section 23)	Vetting of judges and magistrates (Sixth schedule, Section 23). <b>THE VETTING OF JUDGES AND MAGISTRATES BILL, 2011</b>	One year
CHAPTER Eleven-Devolved Government: (Article 178)	Speaker of a county assembly	One year <b>X</b>
CHAPTER Eleven-Devolved Government: (Article 183)	Urban areas and cities. <b>Article 183 THE URBAN AREAS AND CITIES BILL, 2011</b>	One year
CHAPTER Twelve-Public Finance: (Article 208)	Contingencies Fund. <b>Article 208 THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUNDS BILL, 2011</b>	One year <b>LAW</b>
CHAPTER Twelve-Public Finance: (Article 213)	Loan guarantees by national government. <b>Article 213 THE NATIONAL GOVERNMENT</b>	One year <b>LAW</b>

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

	<b>LOANS GUARANTEE BILL 2011</b>	
CHAPTER Five-Land And Environment: (Article 68)	Legislation on land	18 months
CHAPTER Eleven-Devolved Government: (Article 181)	Removal of a county governor	18 months
CHAPTER Eleven-Devolved Government: (Article 194)	Vacation of office of member of county assembly	18 months
CHAPTER Eleven-Devolved Government: (Article 200 And Sixth Schedule, Section 15) And	Legislation to effect CHAPTER eleven ( 200 and Sixth Schedule, section 15)	18 months
CHAPTER Twelve-Public Finance: (Article 207)	Revenue Funds for county governments .	18 months
CHAPTER Six-Leadership And Integrity: (Article 80)	Legislation on leadership	Two years
CHAPTER Eight-The Legislature: (Article 104)	Right of recall	Two years
CHAPTER Eight-The Legislature: (Article 105)	Determination of questions of membership of Parliament	Two years
CHAPTER Eight-The Legislature: (Article 119)	Right to petition Parliament	Two years
CHAPTER Nine-Executive: (Article 141)	Assumption of office of president	Two years
CHAPTER Ten-Judiciary: (Article 173)	Judiciary Fund	Two years
CHAPTER Twelve-Public Finance: (Article 225)	Financial control. <b>PUBLIC FINANCIAL MANAGEMENT BILL 2011</b>	Two years
CHAPTER Fourteen-National Security: (Article 239) (Article 245)	National security organs. Command of the National Police Service. <b>THE NATIONAL POLICE SERVICE BILL</b>	Two years <b>LAW</b>
CHAPTER Four-The Bill Of Rights: (Article 34).	Freedom of the media	Three years
CHAPTER Eleven-Devolved Government: (Article 190)	Support for county governments	Three years
CHAPTER Eleven-Devolved Government: (Article 196)	Public participation and county assembly powers, privileges and immunities	Three years
CHAPTER Eleven-Devolved Government: (Article 197)	County assembly gender balance and diversity	Three years
CHAPTER Four-The Bill Of Rights: (Article 46) .	Consumer protection	Four years
CHAPTER Four-The Bill Of Rights: (Article 47)	Fair administrative action	Four years
CHAPTER Four-The Bill Of Rights: (Article 50)	Fair hearing	Four years
CHAPTER Four-The Bill Of Rights: (Article 51)	Rights of persons detained, held in custody or detained	Four years
CHAPTER Five-Land And Environment: (Article 72)	Legislation regarding environment	Four years

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

CHAPTER Twelve-Public Finance: (Article 226)	Accounts and audit of public entities	Four years
CHAPTER Twelve-Public Finance: (Article 227)	Procurement of public goods and services	Four years
CHAPTER Thirteen-Public Service: (Article 232)	Values and principles of public service	Four years
CHAPTER Two-Republic (Article 11(3))	Legislation in respect of culture	Five years
CHAPTER Four-The Bill Of Rights: (Article 45) .	. Family.	Five years
CHAPTER Five-Land And Environment: (Article 63)	Community land	Five years
CHAPTER Five-Land And Environment: (Article 66)	Regulation of land use and property	Five years
CHAPTER Five-Land And Environment: (Article 71)	Agreements relating to natural resources	Five years
CHAPTER Eight-The Legislature: (Article 100)	Promotion of representation of marginalised groups	Five years
General:	GENERAL: Any other legislation required by this Constitution	Five years

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

### **PROPOSED BILLS**

- (1) Article 18 THE KENYA CITIZENSHIP AND IMMIGRATION BILL, 2011
- (2) Article 18 THE KENYA CITIZEN & FOREIGN NATIONALS MANAGEMENT SERVICE BILL, 2011
- (3) Article 59 THE KENYA NATIONAL HUMAN RIGHTS COMMISSION BILL, 2011
- (4) Article 79 THE ETHICS AND ANTI-CORRUPTION COMMISSION BILL, 2011
- (5) Article 82 THE ELECTIONS BILL, 2011
- (6) Article 88 THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL, 2011
- (7) Article 92 THE POLITICAL PARTIES BILL, 2011
- (8) Article 133 THE POWER OF MERCY BILL, 2011
- (9) Article 183 THE URBAN AREAS AND CITIES BILL, 2011
- (10) Article 208 THE FINANCE BILL, 2011
- (11) Article 208 THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUNDS BILL, 2011
- (12) Article 213 THE NATIONAL GOVERNMENT LOANS GUARANTEE BILL 2011
- (13) Sixth Schedule, Section 23. THE VETTING OF JUDGES AND MAGISTRATES BILL, 2011

### **ENACTED LAWS**

- [A] THE CONTINGENCIES AND COUNTY EMERGENCY FUNDS BILL
- [B] THE NATIONAL GOVERNMENT LOANS GUARANTEE BILL
- [C] THE NATIONAL POLICE SERVICE BILL
- [D] THE INDEPENDENT ETHICS AND ANTI-CORRUPTION COMMISSION BILL, 2011

### **THE SIX DEVOLUTION BILLS ARE;**

- [A] THE DEVOLVED GOVERNMENT BILL, 2011 BILL,
- [B] URBAN AREAS AND CITIES BILL, 2011 BILL,
- [C] INTERGOVERNMENTAL RELATIONS BILL, 2011 BILL,
- [D] INTERGOVERNMENTAL FISCAL RELATIONS, 2011 BILL,
- [E] COUNTY GOVERNMENTAL FINANCIAL MANAGEMENT BILL, 2011 AND
- [F] THE TRANSITION TO DEVOVED GOVERNMENT BILL, 2011

# **CELAK QUATERLY NEWSLETTER**

## **OCTOBER 2011 ISSUE**

---

THE BIRTHS AND DEATHS REGISTRATION BILL, 2011  
THE COMMISSION ON REVENUE ALLOCATION BILL, 2011  
THE CONTROLLER OF BUDGET BILL, 2011  
THE DATA PROTECTION BILL, 2011  
THE EMPLOYMENT AND LABOUR COURT BILL, 2011  
THE IDENTIFICATION AND REGISTRATION OF KENYA CITIZENS BILL, 2011  
THE INDEPENDENT POLICING OVERSIGHT AUTHORITY BILL, 2010  
THE JUDICIAL SERVICE BILL, 2011  
THE KENYA CITIZENS AND FOREIGN NATIONALS MANAGEMENT SERVICE  
BILL 2011  
THE MARRIAGE BILL, 2011  
THE MATRIMONIAL PROPERTY BILL, 2011  
THE NATIONAL CORONERS SERVICE BILL 2010 & 2011  
THE NATIONAL GENDER AND EQUALITY COMMISSION BILL, 2011  
THE NATIONAL INTELLIGENCE SERVICE BILL, 2011  
THE NATIONAL LAND COMMISSION BILL 2011  
THE NATIONAL POLICE SERVICE COMMISSION BILL, 2010  
THE NATIONAL SECURITY COUNCIL BILL, 2011  
THE PRIVATE SECURITY INDUSTRIAL REGULATION BILL, 2010  
THE PUBLIC APPOINTMENTS BILL, 2011  
THE PUBLIC FINANCIAL MANAGEMENT BILL 2011  
THE RATIFICATION OF TREATIES BILL, 2011  
THE REFUGEE BILL, 2011  
THE SALARIES AND REMUNERATION COMMISSION BILL, 2011  
THE SUPREME COURT BILL, 2011

**For Details please access our website [www.celak.org](http://www.celak.org)**