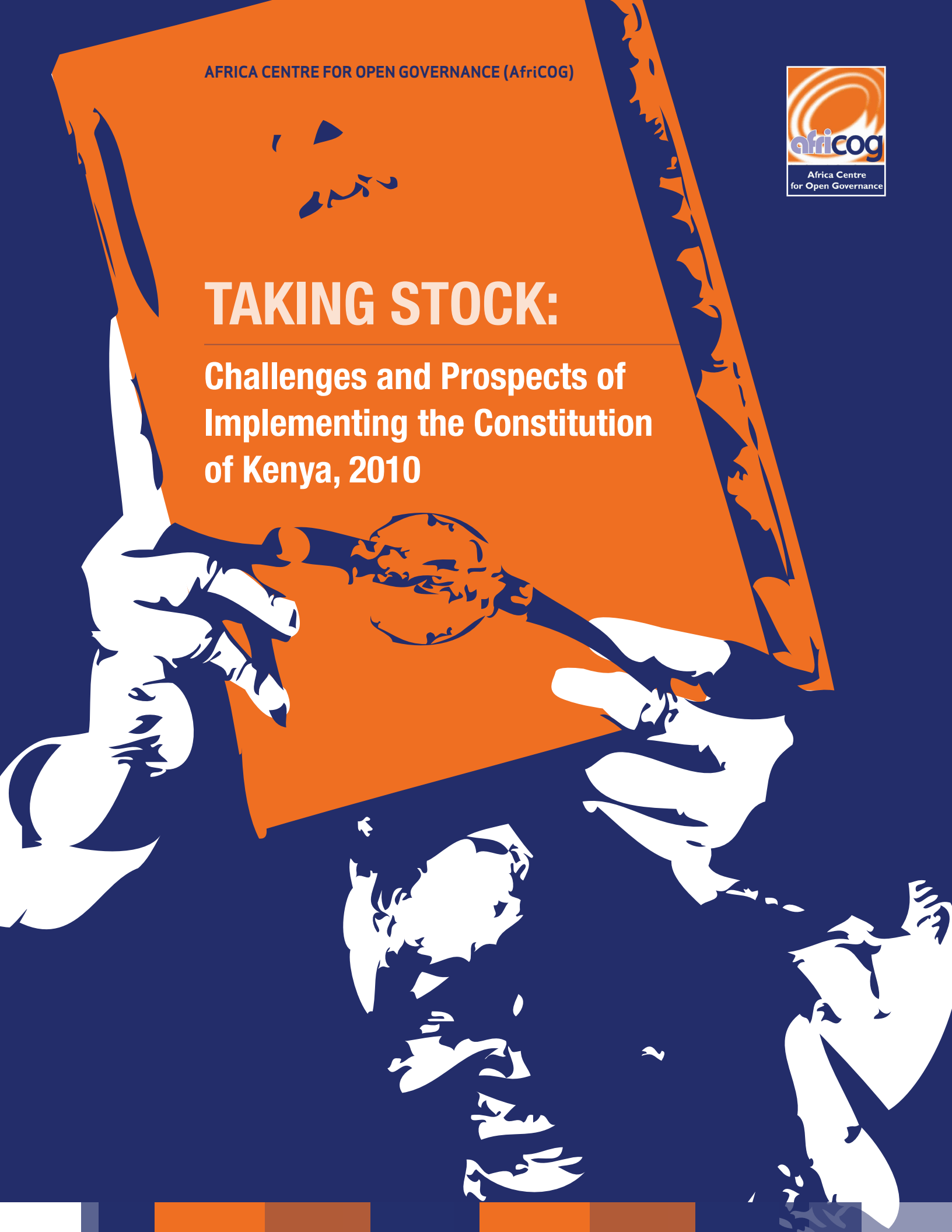


AFRICA CENTRE FOR OPEN GOVERNANCE (AfricOG)



# TAKING STOCK:

Challenges and Prospects of  
Implementing the Constitution  
of Kenya, 2010



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## Foreword

The development of a new constitution was meant to redress some of the underlying governance challenges facing the Kenyan state. The risk of not addressing these governance challenges was manifested in the 2007/2008 post-election crisis. Indeed, in what was referred to as the Agenda Item Four (4), the Kenya National Dialogue and Reconciliation Initiative identified some of these challenges as negative ethnicity, regional imbalances, unemployment and class disparities.<sup>1</sup>

As such, Article 10 of the current constitution, in a departure from the previous one, sets out the national values and principles of governance.<sup>2</sup> Further, the Constitution sets the framework and timelines for a series of institutional and legal reforms to be realised through constitutional implementation. The objective is to consolidate the rule of law, democracy, human rights, transparency, accountability and good governance. To meet this objective, the paper identifies broad interventions through which implementation of the Constitution is to be pursued, namely: developing enabling legislation (The Fifth Schedule identifies laws whose development is crucial to the full implementation of the Constitution), reviewing existing legislation, reforming existing institutions to make them responsive and aligned to the Constitution and setting up key institutions and new governance structures.

This paper discusses the progress in the implementation of the constitution with an emphasis on transparency, leadership and integrity and electoral, judicial and security provisions. In doing so, the paper provides an implementation progress matrix that focuses on leadership and integrity; accountability in leadership; transparency and openness; public participation; and reforms, including judicial and police reforms. Also, the paper has tabulated some of

the existing legislation that will require amendments to bring it into conformity with the Constitution as per Section 7(1) of the Sixth Schedule.

Other key issues discussed in this paper include the role of civil society in the implementation of the Constitution, the challenges in implementing the Constitution and existing strategies of constitutional implementation

There are numerous challenges facing the implementation of the Constitution of Kenya, 2010. Significant in this regard are divisive politics of the then grand coalition, entrenched impunity, negative ethnicity and a political culture of persons seeking to preserve the old order and self-seeking political interests. Another prevailing challenge being experienced in a post 2013 election environment is that political contests between the Jubilee and Cord political party Coalitions have affected implementation, especially at parliamentary level. This is because since the Jubilee Coalition controls both Parliament and the Executive, parliamentary oversight on the executive has diminished to being a rubber stamp of the Executive. Certainly, superiority contests between the Senate and the National Assembly have hampered timely implementation of the constitution.

However, there still remain opportunities for its effective implementation. Joint efforts from not only Kenya's leadership, but also civil society and the public can ensure that constitutional gains secured thus far are consolidated and that the pending legislative and institutional reforms are realised in the coming years. It is our hope that this paper contributes to this aspiration.

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<sup>1</sup>The Kenya National Dialogue And Reconciliation (KNDR) Monitoring Project, Project Context and Summary of Findings Report, January 2009

<sup>2</sup>Article 10, Constitution of Kenya, 2010

## Abbreviations and Acronyms

AfriCOG	-	Africa Centre for Open Governance
AG	-	Attorney General
CSOs	-	Civil society organisations
DPP	-	Director of Public Prosecution
IEBC	-	Independent Electoral and Boundaries Commission
JSC	-	Judicial Service Commission
K-NICE	-	Kenya National Integrated Civic Education
NPSC	-	National Police Service Commission
ODPP	-	Office of the Director of Public Prosecution
WPA	-	Witness Protection Agency

## 1.0 Introduction

Kenya promulgated a new constitution on 27 August 2010, which forms the foundation of the state's reorganisation and governance. The Constitution sets the framework for a series of institutional and legal reforms to be realised through constitutional implementation, aiming to consolidate the rule of law, democracy, human rights, transparency and accountability in governance, and good governance. To meet this objective, the Constitution's framework is designed to work through the enactment of new laws, the review of legislation in place at the promulgation date to ensure conformity with the new constitution in a systemic and progressive manner, establish new institutions of governance and transform existing institutions. This paper documents progress in implementation of the constitution with an emphasis on transparency, leadership and integrity and electoral, judicial and security provisions.

### Constitutional foundations

The former constitution was seen as primarily a stipulation of supreme law in the traditional sense. It was perceived to emphasise the coercive nature of law, rather than its underlying norms; it established state institutions and provided for their functions, but contained limited opportunities for accountability and transparency in both the institutions and their processes. It gave limited attention to the issues of nation building, relegated the protection of individual rights, and, through numerous amendments, weakened the accountability structure.

The Constitution of Kenya 2010, on the other hand, is value laden. The preamble sets out the aspirations of the people of Kenya for the organisation of their state. The first chapter declares the sovereignty of the people and supremacy of the Constitution as inseparable norms upon which the objectives of nation and state-building are founded. It asserts Kenya's position in

the ranks of civilised nations by giving direct effect to "the general rules of international law".<sup>3</sup> According to the Constitution, state power is delegated power, first divided between two interdependent levels of government and then separated among distinct but coordinated state organs with intrinsic checks and balances.

The current constitution, in a departure from the previous one, sets out the national values and principles of governance.<sup>4</sup> Each chapter further provides organising principles that are meant to aid its interpretation and implementation. Identified national values and principles of governance are:

- a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people
- b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised
- c) good governance, integrity, transparency and accountability
- d) sustainable development.

These national values and principles of governance bind all state organs, state officers, public officers and all persons who apply or interpret the Constitution, enact, apply or interpret any law, or make or implement public policy decisions.

The Constitution, in laying a strong normative foundation, grapples with the problem of nation-building. It recognises the diversity of Kenyan people, the need to deliberately create a national identity and to strive at a common vision. The strong focus on nation-building recognises the underlying

<sup>3</sup> Article 2(5), Constitution of Kenya

<sup>4</sup> Article 10, Constitution of Kenya

issues affecting Kenyan society: the politicisation of ethnicity and lack of accountability have emerged as some of the main challenges to governance and nation-building affecting the cohesiveness of the Kenyan state today.

The development of a new constitution was meant to redress some of the underlying governance challenges experienced by the Kenyan state. These challenges threatened the very social fabric holding the nation together and became more pronounced during the 2007/2008 post election crisis, forming part of the Agenda Item 4 discussions at the Kenya National Dialogue and Reconciliation Initiative. The discussions included negative ethnicity, regional imbalances, unemployment and class disparities.<sup>5</sup>

### 1.1 Negative ethnicity

Ethnicity has been an issue of concern in Kenyan politics since independence. While it becomes most prominent during electoral periods, it underlies the general social and political organisation. The scheme of the Constitution is sensitive to the lesson well stated by Tom Mboya,<sup>6</sup> that people have done their worst in “attacking tribalism by never differentiating what was positive and worth preserving”. The Constitution therefore makes a deliberate attempt to recognise Kenya’s diverse heritage; it provides for the preservation of culture and promotion of languages. The vision of this nation-building scheme is that good governance and economic progress will necessarily widen interaction between people, thereby creating other binding common interests that are independent of tribal affiliation. In this sense, the positive elements of identity complemented through a wider sphere of interaction, should serve to counteract negative divisions and facilitate true integration. This challenge runs through the Constitution and should inform legislative development.

### 1.2 Regional imbalances

Geographical imbalance is a persistent cause of tension in economic development in Kenya. This is particularly due to the following: inheriting a colonial economy that privileged the high yield agricultural belt at the cost of other areas; systemic government policy to undermine development in certain parts of the country, due to the perceived hostility of these areas to the political administration; and unofficial marginalisation. Slow economic growth and lack of clear affirmative action policies to equalise the country are perceived to sustain the legacy of the colonial economy. The Constitution makes a deliberate step to provide for devolution of power and resources and recognises the need to redress historical regional imbalances. It therefore has a clear agenda to mainstream marginalised groups and areas in national planning and goes on to establish a framework for affirmative action.

Any proposed legislation and policy must therefore integrate the measures envisaged in the Constitution. The National Dialogue and Reconciliation Initiative premised nation-building on greater devolution of resources to diminish the effects of profound imbalances. Increased development will facilitate the feeling of national belonging and help to achieve the objective of nation-building.

### 1.3 Unemployment and class disparities

Signs of dissatisfaction about employment and class disparities in Kenya are manifest through labour strikes and industrial action. The World Bank’s Social Analysis Report (2006) makes a direct link between lack of employment and social disparity and the level of crime.<sup>7</sup> The report finds that Kenya ranks among the top in Africa in terms of violent crime, while the National Dialogue and Reconciliation agenda found youth unemployment to be a major driver of the 2007/08 post-election violence.

<sup>5</sup> The Kenya National Dialogue And Reconciliation (KNDR) Monitoring Project, *Project Context and Summary of Findings Report*, January 2009

<sup>6</sup> Tom Mboya, *Freedom and After*, Andre Deutsch 1963

<sup>7</sup> Report available at: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEV/> visited on 18th August 2013

Addressing the issues of employment and social justice is therefore a critical concern of the new constitution. Social justice is provided for under the equality and non-discrimination provision in Article 27, the labour relations provision under Article 41 and the economic and social rights provision under Article 43. These rights are stated in positive language with further obligations by the state to take steps to ensure their enjoyment. National and county legislation, policy and planning must therefore seek to give effect to this fundamental constitutional objective.

## 2.0 The path to implementation

Recognising that there would be implementation challenges requiring concerted efforts to coordinate different state institutions and agencies, the Constitution establishes two key agencies tasked with the ultimate responsibility of overseeing and coordinating its implementation: the Commission for the Implementation of the Constitution<sup>8</sup> and the Parliamentary Constitutional Implementation Oversight Committee.<sup>9</sup> These two bodies play the critical role of coordinating and overseeing the faithful implementation of the Constitution.

Implementation of the Constitution is to be pursued through a number of interventions broadly captured under the following elements:

**a) Develop enabling legislation.** The Fifth Schedule to the Constitution sets out laws to be enacted to give full effect to the Constitution. This provision is informed by the fact that the Constitution is a document setting out general principles and that the details of issues to be legislated can be better dealt with through ordinary Acts of

Parliament, which are flexible in their enactment and amendment. However, these Acts are to be developed within the general principles and parameters set out by the Constitution. The Fifth Schedule identifies those laws whose development is crucial to the full implementation of the Constitution. The Schedule further provides a time frame for the National Parliament to enact these laws.

- b) Streamline laws with the Constitution by reviewing existing legislation.** Even though the Constitution establishes a new institutional, legal and normative framework for governance, it preserves, for purposes of legal continuity, the existing laws, subject to review, rationalisation, harmonisation or interpretation, with the adaptations necessary to ensure conformity with the Constitution.
- c) Reform existing institutions to make them responsive and aligned to the Constitution.** These reforms target the autonomy and management (including their financial management) of key governance institutions such as those in the judicial, security, electoral and public sectors. Some institutional reforms have been pursued through legislative interventions and others through administrative change in the structures and composition of the concerned bodies.
- d) Set up key institutions and roll out new governance structures.** The Constitution establishes various commissions and independent offices,<sup>10</sup> tasked with the overall responsibility of protecting the sovereignty of the people, and securing the observance by all state organs

<sup>8</sup> Section 5(1), Sixth Schedule of the Constitution and Section 4, Commission for the implementation of the Constitution Act, 2010 provides for the establishment and functions of the Commission for the Implementation of the Constitution

<sup>9</sup> Section 4, the Sixth Schedule of the Constitution

<sup>10</sup> Article 248(2) sets out the commissions and independent offices to be: the Kenya National Human Rights and Equality Commission, the National Land Commission, the Independent Electoral and Boundaries Commission, the Parliamentary Service Commission, the Judicial Service Commission, the Commission on Revenue Allocation, the Public Service Commission, the Salaries and Remuneration Commission, the Teachers Service Commission, the National Police Service Commission, the auditor-general and the controller of budget.

of democratic values and principles and the promotion of constitutionalism. The Constitution also establishes a devolved system of government, which was rolled out after the March 2013 general election. Devolved units are meant to be the organs through which power and resources are devolved to the grassroots; they provide a platform for people to participate in governance through local county structures. Equally, the 2013 general election marked the complete transition of the national government to the new system envisioned in the Constitution. This system provides for a National Executive comprising a

president, deputy president and not more than 22, but not less than 14 cabinet secretaries, and a National Legislature comprising the Senate and the National Assembly.

## 2.1 Implementation progress matrix

The tables below consider the different facets of constitution implementation by looking in detail at the interventions for implementation in the following areas: leadership and integrity; accountability in leadership; transparency and openness; public participation; and reforms, including judicial and police reforms.

### Development of enabling legislation

**Table A. Governance and transparency**

Statute	Time frame	Status
Ethics and Anti Corruption Act	One Year	Enacted
Leadership and Integrity Act	Two Years	Enacted Draft regulations in discussion
Kenya National Human Rights and Equality Commission Act; the National Gender and Equality Commission Act	One Year	Enacted
Salaries and Remuneration Commission Act	One Year	Enacted
Public Finance Management Act	Two Years	Enacted Draft Regulations in discussion
Public Service Commission Act	Five Years	Enacted Draft regulations in discussion
Legislation on Public Procurement and Asset Disposal (Article 227)	Four Years	Pending (Published awaiting Parliamentary debate)
Controller of Budget Bill (Article 228)	Five Years	Pending (Not yet published still at Attorney General (AG))
Central Bank of Kenya Law (Article 231)	Five Years	Pending (Received First Reading in Parliament)



**Table B. Bill of Rights and access to justice**

Legislation	Timeframe	Status
Freedom of the Media (Article 34)	Three Years	Enacted
Family Rights (Article 45)	Five Years	Enacted
Consumer Protection Act (Article 46)	Four Years	Enacted
Fair Administrative Action (Article 47)	Four Years	Pending (not yet published still at AG)
Fair Hearing (Article 50)	Four Years	Pending (Not yet published still at AG)
Rights of persons detained, held in custody or detained (Article 51)	Four Years	Pending (Received first reading in parliament)
System of Courts (Article 162)	One Year	Several Acts enacted: Supreme Court Act, Industrial Court Act, Environment and Land Court Act
Vetting of Judges and Magistrates Act (Section 23 of the Sixth Schedule)	One Year	Enacted Regulations passed
Judicial Service Act	One Year	Enacted

**Table C. Elections and representation of the people**

Legislation	Time frame	Status
Independent Electoral and Boundaries Commission Act	One Year	Enacted
Elections Act	One Year	Enacted Election, voter registration and voter education Regulations passed
Political Parties Act	One Year	Enacted
Promotion of Representation of Marginalised Groups (Article 100)	Five Years	Pending
Election Campaign Financing Act (Article 81)	Five Years	Enacted

**Table D. Devolution and public participation**

Legislation	Timeframe	Status
Urban Areas and Cities Act (Article 184)	One Year	Enacted
Transition to Devolved Government Act (Article 200)	Eighteen Months	Enacted
Intergovernmental Relations Act (Article 200)	Eighteen Months	Enacted
County Government Act	Two Years	Enacted
Public participation and county assembly powers, Privileges and immunities	Three Years	Pending (Received first reading in parliament)

**Table E. Security sector**

Legislation	Timeframe	Status
National Police Service Act (Article 245)	Two Years	Enacted
Independent Police Oversight Authority Act	Two Years	Enacted
National Security Council Act (Article 239)	Two Years	Enacted
National Intelligence Service Act (Article 239)	Two Years	Enacted
Coroners Bill	Five Years	Pending (Not yet published still at AG)
Private Security Sector Bill (Article 239)	Five Years	Pending (Received Second reading in Parliament)

## 2.2 Review of existing laws (at the promulgation date) to realign them with the Constitution

The state previously operated under a legal regime replete with Acts of Parliament made under the authority of the former constitution. This legal regime was supported by the then constitution and statutory codes made under the authority of that law. At the time of passage of those laws, the drafters could not have envisaged the provisions of the new constitution; as such it is only natural that some provisions of those laws may offend provisions of the new constitution. It

is therefore necessary that those Acts be reviewed to realign their provisions to the 2010 Constitution.

Section 7(1) of the Sixth Schedule to the Constitution allows for the continued application of those laws by providing that all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution. The table below looks at some of the existing legislation that will require amendments to do this.

Table F. Legislation requiring amendment

Act of Parliament/ Relevant Law	Constitutional Provisions and Basis for Amendment	Status
<b>Interpretation and General Provisions Act</b>	<p>The Constitution of Kenya, 2010 has made it necessary to review certain general legislative and administrative frameworks so that they are brought in line. These are:</p> <p>a) The Interpretation and General Provisions Act - This Act provides for the definition of words and phrases that are commonly used in legislation. For harmony in the statute book, these terms are defined so that there is often no need to further define them in the respective areas where they may appear. General administrative provisions are also set out in the Act.</p> <p>b) The Revision of the legislation: with the change in the constitutional law-making process, this function, which was under the Office of the Attorney General, should be reviewed so as to enable new actors like Parliament to participate in the law revision exercise.</p>	Pending
<b>Anti Corruption and Economic Crimes Act</b>	<p>This Act regulates corruption, economic crimes and related criminal activities, setting out penalties and sanctions for persons found liable. Chapter Six of the Constitution sets out general principles and provisions on the conduct expected of state officers. An amendment of this law will incorporate provisions of Chapter Six on financial probity and integrity of state officers and create offences for those who breach these provisions and the necessary sanctions applicable.</p>	Pending
<b>Public Officers Ethics Act</b>	<p>This Act seeks to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers; it requires asset declarations from certain public officers and provides for connected purposes.</p> <p>The Constitution equally seeks to regulate the conduct of state officers and public officers to ensure that they conduct themselves within the principles set out in Chapter Six. An amendment of this Act will be necessary to incorporate these principles into law and create the necessary sanctions for those who breach them. The amendment will equally aim to create criminal offences and sanctions for those who breach the principles.</p> <p>A review of this Act will also be necessary to ensure it is realigned with the provisions of the Leadership and Integrity Act, which also seeks to actualise the provisions of Chapter Six.</p>	Pending
<b>Judicature Act</b>	<p>The Act provides for the jurisdiction of the High Court, the Court of Appeal and subordinate courts, and makes additional provision concerning the High Court, the Court of Appeal and subordinate courts and the judges and officers of court.</p> <p>The Constitution sets out provisions on access to justice and a new structure of the courts not accommodated in this Act. An amendment of this Act is necessary to align it with the Constitution and specifically to recognise the other courts established by the Constitution and to enhance the number of judges of the High Court and Court of Appeal to meet the constitutional aspirations of access to justice.</p>	Pending

<p><b>State Corporations Act</b></p>	<p>The State Corporations Act is meant to make provision for the establishment of state corporations; for control and regulation of state corporations; and for connected purposes. The Act vests discretionary powers on the minister in the administration of state corporations and the Constitution of their managing bodies. This can be discerned from a reading of Article 4 of the Act. Section 3 gives the president the power to constitute state corporations.</p> <p>The provisions of the Act are presently in conflict with the constitutional values and principles of governance set out in Article 10 and Article 132 (4) on establishing offices in the public service. The Constitution requires, among other things, public participation and inclusivity, which the Act does not integrate in the administration of state corporations.</p>	<p>Pending</p>
<p><b>Kenya Information and Communication Act</b></p>	<p>The amendments create a Communication and Multimedia Appeals Tribunal, which falls under the State controlled Communication Authority. The Tribunal is granted power to impose hefty fines on media houses and journalists, recommend de-registration of journalists and make any order on freedom of expression. The communications authority falls under the Executive, giving the president and the cabinet secretary power to appoint and dismiss members of its board. The amendments have the effect of severely restricting press freedom and breaching the constitutional protections granted to the media by allowing the State to play a part in regulating the media.<sup>11</sup></p> <p>Article 34 of the Constitution provides that broadcasting and other electronic media have freedom of establishment subject only to licensing procedures that are necessary to regulate the airwaves and other forms of signal distribution. The provision further requires broadcast media to be independent of control by government, political interests or commercial interests. An amendment of the Kenya Information and Communication Act will aim to integrate the above-cited constitutional provisions within the Act. The regulatory framework of the Act must reflect the constitutional standards of regulation of broadcast media.</p>	<p>Draft amendments enacted;</p>
<p><b>Public Order Act</b></p>	<p>The Act regulates maintenance of order in public places and seeks to control public gatherings, processions and demonstrations through notification of police requirements.</p> <p>Article 37 of the Constitution grants the right to every person peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities. This right can only be restricted in terms of the provisions of Article 24 of the Constitution and that restriction must be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. The Act requires a review to ensure that it does not unreasonably restrict the rights granted under Article 37.</p>	<p>Pending</p>

<sup>11</sup> Article 19, Kenya: New Law Marks Major Set-Back for Media Freedom, 16 Dec 2013, <http://www.article19.org/resources.php/resource/37407/en/kenya:-new-laws-mark-major-setback-for-media-freedom>

<p><b>Evidence Act</b></p>	<p>The Act provides a framework through which evidence is admitted into civil and criminal court proceedings.</p> <p>Article 50 of the Constitution grants the accused the right to a fair hearing; its provisions relevant to admissibility of evidence include the right to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence; the right to adduce and challenge evidence, the right to refuse to give self-incriminating evidence. Further, Article 50 (4) provides that evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights, shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.</p> <p>An amendment to the Evidence Act will seek to incorporate the stated constitutional provisions on admissibility of evidence in the course of proceedings. The object of such an amendment will be to achieve the right to a fair hearing as stipulated in Article 50 of the Constitution.</p>	<p>Pending</p>
<p><b>Criminal Procedure Code</b></p>	<p>The Act makes provision for the procedure to be followed in criminal trials and proceedings. The Act sets out the criminal trial process from the time of arrest, arraignment in court, plea taking, bail bond requirements, trial, and examination of witnesses, to sentencing.</p> <p>Article 50(2) provides the right of every accused person to a fair trial which includes the right, amongst other things, to be presumed innocent until the contrary is proved, to be informed of the charge with sufficient detail to answer it; to have adequate time and facilities to prepare a defence; to a public trial before a court established under the Constitution; to have the trial begin and conclude without unreasonable delay; to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed; to choose and be represented by an advocate and be informed of this right promptly; to have an advocate assigned to the accused person by the state and at state expense if substantial injustice would otherwise result, and to be informed of this right promptly; to remain silent and not to testify during the proceedings; if convicted to appeal to, or apply for review by a higher court as prescribed by law; and to be given a copy of the proceedings.</p> <p>The Criminal Procedure Code will have to be amended to incorporate the rights granted to accused persons by the Constitution during the trial process and the manner in which criminal proceedings are expected to be undertaken.</p>	<p>Pending</p>

There are also Acts of Parliament that have been repealed as a consequence of the new constitution coming into force and the development of enabling legislation as required by the Constitution. Some of the affected legislation in the thematic areas covered in this report is:

- a) the National Assembly and Presidential Elections Act CAP 7

- b) the Political Parties Act 2007
- c) the Elections Offences Act CAP 66
- d) the Local Government Act CAP 265.

### 2.2.1 Reforms of existing institutions

The Constitution seeks to reform various existing institutions within the governance sector to ensure they respect the principles espoused within it and

perform their roles or deliver services in a manner responsive to the people and the Constitution. Different institutions have, as a result, been reformed to meet this requirement. Reforms initiated have tended to take the form of administrative and structural changes backed by legal reforms, and in some instances, personnel changes. Sectors within our sphere of intervention that have undergone some level of reform include the judiciary, electoral management and political processes, and the security sector. The jury is still out as to whether the reforms have succeeded in positive transformation of the institutions affected. The table below lists some of the sectoral reforms initiated.

### **Sectoral Reforms**

The constitution has brought about demonstrable gains as several areas have seen positive change; there is an increase in openness, transparency and public participation in governance, an increase in accountability of public officials, some institutions that needed to be created have been created and others that needed to be reformed are in the process of being reformed. Challenges to implementation have included irregular and illegal amendments to alter content of Bills, by the Executive and the Legislature who have leveraged their vested interests to prevent the passage of important laws. These challenges to implementation have been occasioned by delays in implementation.

Some challenges are elaborated here below.

The IEBC, which was intended to bring about transparent and credible election management to Kenya which has a vast history of sham elections, failed at its task in the management of the 2013 General Elections. Irregularities that were tantamount to massive electoral fraud and malpractice that apparently resulted in the technological failure were overseen by the IEBC. Consequently, the IEBC cannot be termed an effective, efficient and credible commission. It has been pointed out that if Kenya is

to ever have free, fair and transparent elections, the current electoral commission has to be restructured, including change in its management.

The Judges and Magistrates Vetting Board seemed to be working appropriately on its part of ensuring judicial reforms through vetting judicial officers and allowing for the removal from office of those who are corrupt and those who cannot perform their tasks as required by law. However, there has been an increase in the number of law suits that have been filed by judicial officers found unsuitable by the Board. Apart from a good number of these being upheld by the Court of Appeal, several judges sacked by the vetting team continue to enjoy privileges such as their salaries and allowances. Some of the cases pitting sacked judges against the board have been determined by the High Court, and the decisions later upheld by the Court of Appeal. In addition, some have argued that public interest is not sufficiently represented in the composition and the processes of the Vetting Board and therefore its decisions at times lack legitimacy.

Recently, there have been allegations against the judiciary, of maladministration of the institution, misappropriation and misuse of funds and overpaying of JSC commissioners. The public's confidence in the judiciary can be said to have decreased. Civil society and the public both have a role to play; they should remain vigilant and ensure that the judiciary remains on its reform path.

The Office of the DPP has also had some difficulties. The ODPP's staff levels are low, with only 93 prosecuting counsels, 295 police prosecutors and 132 central facilitation staff; against its requisite optimal staff needs of 927 prosecution counsels and 364 central facilitation staff. As the office of the prosecutor, the public's access to justice is, to a great degree, dependent on its effectiveness. In a country with an ever increasing surplus of advocates, who remain jobless or under-employed, it is reported, that

criminal cases are adjourned for lack of prosecutors, further contributing to the infamous backlog of cases in our courts.

The Witness Protection Agency has suffered from lack of adequate funding meant to cover, not only its day-to-day running costs, staff salaries, but most importantly the protection and relocation of witnesses in cases where necessary. This seriously affects investigations of cases especially post-election violence and others to do with the trafficking of drugs and arms. Strengthening the judiciary without strengthening other institutions with which it works closely, such as the DPP, the police and the WPA means that the entire justice system cannot function as required.

The Kenya National Human Rights Commission also suffered from a lack of adequate funding. Moreover, there was a long delay in appointment of its Commissioners, occasioned by an extended back and forth between the Executive and Parliament on candidates for the positions. These challenges, it has been said, can be attributed to the government and its need to control the institution charged with promoting and protecting the Bill of Rights as enshrined in the constitution.

The police reforms are being questioned. Police abuse continues to make headlines as the lack of accountability for security force abuses—including increasing instances of extrajudicial killings, torture, and other human rights violations by the police—and the government's failure to hold accountable perpetrators of the 2007–2008 post-election violence remain key concerns to be dealt with. There was a long delay in vetting of officers, largely due to resistance from senior officers. The continued violence and unchecked human rights violations are fuelled by the

fact that there has been no change in attitude in how the forces function subsequent to the passing of the constitution; they still function as they did when they were being used by past regimes to control, rather than protect the citizens. Furthermore, in Parliament, proposed amendments to the National Police Service Commission and the National Police Service Acts detailing illegal and repressive proposals, including giving police shoot-to-kill powers and whittling down provisions designed to check police excesses have been forwarded and remain in the agenda for debate by members of Parliament. The force has also been dogged by allegations of friction between Inspector General David Kimaiyo and the chairman of the National Police Service Commission (NPSC), Mr Johnstone Kavuludi which were said to be caused by battling over the power to appoint, transfer and discipline police officers, and recruitment of county commanders.

In general, attempts to mislead the public on some constitutional issues have been noted and are also hindering the implementation; this challenge can be addressed through civic education of the public and civil servants and an increased public awareness about the constitution, especially in rural areas. This will enable them to be aware of the contents of the constitution and what is expected of them in the new dispensation. Conversely, while we may have a good Constitution, it cannot sufficiently provide for the many big issues that affect its implementation and it therefore requires the political will to implement. The political class who were initially supportive of change, once they get into positions of power, need to remain loyal and maintain their belief in the changes that the constitution can bring. Kenyans need to embrace constitutionalism, the constitutional culture that dictates operating within the constitutional framework with utmost respect for the constitution.

**Table G. Sectoral reforms**

Sector	Reforms	Challenges
<b>Electoral Sector</b>	<ul style="list-style-type: none"> <li>• Enactment of the electoral sector laws: the Elections Act, the Political Parties Act and the IEBC Act</li> <li>• Establishment and constitution of a new electoral management body, the IEBC</li> <li>• Delimitation of electoral (constituency and ward) boundaries guided by the principles set out in the constitution<sup>12</sup></li> <li>• Delinking the Office of Registrar of Political Parties from the IEBC and making it an independent state office</li> <li>• Registration of political parties under the Act of 2011</li> <li>• Establishing the Political Parties Disputes Tribunal</li> </ul>	<ul style="list-style-type: none"> <li>• A weak electoral legal framework is prone to spurious and whimsical amendments by Parliament to meet prevailing political interests</li> <li>• The IEBC suffers credibility challenges arising from its conduct around the 2013 general election and in the immediate post-election period</li> <li>• Complete failure of the entire ICT infrastructure of the IEBC during the 2013 general election compromised measures meant to reduce malpractices.</li> <li>• Failure of voter education programmes impede effective participation of citizens in the electoral process</li> <li>• Political intrigues have immobilised the recruitment of a new and effective registrar of political parties and assistants; the current registrar has been retained in office. During her time, she has been known to be weak and has therefore been favoured by politicians who can have their way in matters involving the office by skirting the law.</li> </ul>
<b>Access to Justice</b>	<ul style="list-style-type: none"> <li>• Enactment of the justice sector laws</li> <li>• Establishment of new courts: Supreme Court, Industrial Court, Environment and Land Court</li> <li>• Vetting of judges and magistrates serving at the promulgation date</li> <li>• Appointment of new judicial officers in a transparent manner</li> </ul>	<ul style="list-style-type: none"> <li>• The Supreme Court is suffering credibility challenges arising from its handling of the presidential election petitions.</li> <li>• Uncertainty around precedence value of some positive decisions previously made by the High Court being overturned by the Court of Appeal e.g. the County Commissioners Case and the Mumo Matemu Case<sup>13</sup></li> <li>• Intrigues around the vetting of judicial officers has placed the success of the initiative in doubt</li> <li>• Acrimonious sacking of the then Chief Registrar of the Judiciary Ms. Gladys Shollei and the circumstances surrounding it raised serious integrity questions on the administration of the Judiciary Fund</li> </ul>

<sup>12</sup> Article 89

<sup>13</sup> Mumo Matemu Vs. Trusted Society Of Human Rights Alliance & 5 Others Civil Appeal 290 of 2012 which sought to appeal against a decision of the High Court which had upheld a petition questioning the constitutionality of the appointment of Mumo Matemu, by the President, as the Chairperson of the Ethics and Anti-Corruption Commission.



	<ul style="list-style-type: none"> <li>• Reconstitution of the Judicial Service Commission to include representatives of judges, magistrates and the bar</li> <li>• Setting up of the Directorate of Public Prosecutions and the Witness Protection Agency</li> <li>• Establishment of 3 Commissions to oversee enforcement of rights: the Kenya National Human Rights Commission, the Gender and Equality Commission and the Commission on Administrative Justice</li> </ul>	<ul style="list-style-type: none"> <li>• Low funding for the Office of the DPP and the Witness Protection Agency<sup>14</sup></li> <li>• The Kenya National Commission on Human Rights had been inactive for a long period. The recruitment process for its commissioners had stalled. However, after a directive of the High Court issued in January 2014, the President finally appointed the Chairperson and three other Commissioners of the Kenya National Commission on Human Rights in February 2014.</li> </ul>
<p><b>Security Sector</b></p>	<ul style="list-style-type: none"> <li>• Enactment of security sector laws</li> <li>• Appointment of the Inspector General of Police and deputy IGs</li> <li>• Establishment of the National Police Service Commission</li> <li>• Establishment of the Independent Policing Oversight Authority</li> <li>• Vetting of Police Officers on going</li> </ul>	<ul style="list-style-type: none"> <li>• Turf wars between the National Police Service Commission and the Inspector General</li> <li>• Parliamentary attempts to water down (using amendments to the Act) the powers of the National Police Service Commission</li> <li>• Vetting of serving police officers eventually commenced in December 2013 with the vetting of senior serving officers leading to the sacking of at least 7 officers thus far; the results have however been found to be unsatisfactory in some cases with allegations being made that the process is a sham and that the vetting team has shown bias towards some officers.<sup>15</sup></li> <li>• Extra judicial killings by police officers still rampant<sup>16</sup></li> <li>• Police services still reeling from financial strain</li> </ul>

<sup>14</sup> Standard Newspaper June 23 DPP Tobiko cries foul over budget shortfall. The Parliamentary Budget Committee attempted to remedy the low funding to the DPP by enhancing allocation to that office BY Kshs 500 million (Report of the Budget and Appropriations Committee on Estimates of Revenue Expenditure for FY 2013/2014).

<sup>15</sup> Three senior cops sacked after vetting, by Kamore Maina, 4th January 2014, <http://www.the-star.co.ke/news/article-149290/three-senior-cops-sacked-after-vetting>

<sup>16</sup> “This shoot-to-kill policy by police is an illegal way to fight criminals” by Maina Kiai in the Daily Nation 2nd August 2013. In the article the writer asserts that within a period of four months the Kenya Police had killed over 100 people alleging that they were criminals. ([www.nation.co.ke/oped/Opinion/This-shoot-to-kill-policy-by-police-is-an-illegal-way/-/440808/1935296/-/pxjkgn/-/index.html](http://www.nation.co.ke/oped/Opinion/This-shoot-to-kill-policy-by-police-is-an-illegal-way/-/440808/1935296/-/pxjkgn/-/index.html))

### 3.0 Civil society and implementation of the Constitution

Civil society organisations (CSOs) played a key role over decades in the struggle for a new constitution; in its development and in the campaign towards its adoption at the referendum. CSOs were the driving force behind the successful civic education on the then proposed constitution. It therefore goes without saying that these groups have a major role to play in ensuring the successful and genuine implementation of the Constitution. They are the unofficial check against its sabotage. CSOs have played this role in the Constitution's post-referendum phase. They strove to apply the necessary pressure to ensure adherence to the provisions of the Constitution and challenged acts by public servants that are contrary to its principles and provisions. They endeavoured to do this through different acts by diverse groups as shown below:

**a) Filing court proceedings to challenge the constitutionality of executive and legislative acts that are contrary to the provisions and principles of the Constitution.** The first court action by CSO groups was the case challenging the unconstitutional nominations for the Chief Justice, the Director of Public Prosecutions, the Attorney General and the Controller of Budget.<sup>17</sup> In this case, several civil society groups went to court to challenge the nominations made by the President to these offices, alleging that they were unconstitutionally and irregularly made. The court gave the CSOs temporary stay orders stopping the nominees from assuming those offices, or any person from making appointments to the same. As a result of the pressure, the then president recalled the nominations. Several other cases have been filed by CSO groups challenging various acts by the Executive and Legislature that are contrary to the Constitution e.g. a court challenge

to the nomination of Mumo Matemu as chair of the Ethics and Anti Corruption Commission, on the grounds of unsuitability, a court challenge on the implementation of the gender principle; and a court challenge on the forcible evictions of squatters and slum dwellers.

- b) Public demonstrations and agitations.** These were mainly held to protest acts by the Legislature against the spirit of the Constitution and where the Legislature has attempted to subvert the Constitution in pursuing its own interests. Notable was the CSO-organised public demonstration against a quest by Members of Parliament to raise their salaries although the function to determine salaries is not vested in them under the new constitution.
- c) Using mainstream and social media as avenues to champion the implementation of the Constitution.** CSO players have appeared on television and radio to champion the implementation of the Constitution and advocate for constitutionalism. CSO groups also have a robust presence on social media where they have succeeded in championing implementation of the Constitution and mobilising public opinion in its support. CSO leaders have also written many influential opinion pieces in different newspapers on matters relating to the Constitution and its effective implementation.
- d) Public forums and dialogue on the Constitution and its implementation.** CSO players have been active in holding public forums where different aspects of constitution implementation are discussed and knowledge on implementation shared. CSOs have provided technical assistance to state agencies on constitution implementation and governance generally. The devolved units have been the major beneficiaries of this technical assistance in terms of capacity enhancement and exposure to the new governance structures.

<sup>17</sup> Constitutional Petition No 16 of 2011

## 4.0 Challenges in implementing the Constitution

Implementation of the Constitution commenced against the background of political mobilisation for the 2013 general election. The then grand coalition government headed by President Kibaki and Prime Minister Raila Odinga oversaw the first phase of implementation. This was informed by the governance structure established under the old constitutional dispensation, but with a constitutional caveat that this was a transitory phase until new elections were held under the 2010 Constitution.<sup>18</sup>

Implementation is currently undertaken within a new political dispensation and governance structure. The task of implementing the new constitution has not been a smooth exercise but has been fraught with serious hurdles and attacks mounted by those who stand to lose from the changes brought about under it. In summary, some of the challenges that have impeded the implementation include the following:

**a) Implementation in the initial phase was undertaken within the context of a grand coalition government.** Partners were forced by the agreement that ended the post-election violence to coalesce, as opposed to forming a coalition on a willing basis. Divisive coalition politics at times threatened the implementation of the Constitution. This was most pronounced in regard to appointments of new office holders, where, though the Constitution required the two principals to consult, the president in most cases proceeded to unilaterally nominate persons for appointment to office.<sup>19</sup>

**b) An entrenched ethos of impunity and negative ethnicity, and a political culture of persons seeking to preserve the old order.** In the initial phase of implementation, it took time for bureaucrats and politicians to understand that a new legal dispensation was in place that emphasised integrity in leadership and that they needed to change their way of governing. A damning demonstration of this culture was witnessed when President Kibaki unilaterally nominated persons to serve in the offices of the Chief Justice, the Attorney General, the Director of Public Prosecutions and the Controller of Budget, without following the laid down procedure in the Constitution.

Resistance from the central government has contributed to the challenges of rolling out the structures and apparatus of devolution in accordance with the relevant devolution laws. The centralists still view devolved units as part of central government, subject to control and manipulation by the national government. This has contributed to a poor devolution roll out, seen through the illegitimate deployment of county commissioners, directors and similar functionaries from central government to 'frustrate' the process. In addition, lethargy or failure in the transfer of functions and the contentious allocation of funds for devolved units, causing territorial contests between central and devolved government units, were also factors in delayed roll out.

Negative ethnicity also threatens the proper implementation of the Constitution through ethnic mobilisation, such as when integrity questions, aimed at fulfilling the provisions of Chapter Six of the Constitution and the Leadership and Integrity Act, are asked about nominees to key positions.

<sup>18</sup> Sections 2 and 3, Sixth Schedule of the Constitution

<sup>19</sup> Nomination of Justice Al Nasir Visram as chief justice, Mr. Kioko Kilukumi as director of public prosecutions, Prof. Githu Muigai as attorney general, Mr. William Kirwa as controller of budget, Ms. Amina Masoud as chairperson of the National Police Service Commission were all made unilaterally without consulting with the prime minister as required under section 29 of the Sixth Schedule

Entire communities are whipped up to believe that they being unfairly treated when individuals within their community have their integrity questioned based on their past records. An example was when members of the public raised credibility questions about the nomination of Mr. Keriako Tobiko as Director of Public Prosecutions and Maasai politicians rallied members of their community to his support.<sup>20</sup>

**c) Political interests.** The initial phase of implementation preceded the general election held in March 2013. Political realignments in the run-up to the election affected the constructive implementation of the Constitution. Strict provisions of the draft Leadership and Integrity law, which aimed to fully implement the relevant chapter of the constitution, were removed by the National Assembly when the Bill was tabled before it. By doing this, parliamentarians protected themselves from the full application of the integrity requirements of the Constitution, which would have disqualified some of them from participating in the general election. The final Act is an emasculated version of the initial Bill presented before the Assembly and falls far short of what was envisaged by the new constitution.

**d) Implementation of the Constitution in a post 2013 election coalition environment.** The post election phase has seen its share of attempts by political interests to impede the successful implementation of the Constitution. Political contests between the two major coalitions, the Jubilee and Cord Coalitions have affected implementation, especially at parliamentary level. This has seen persons who may not fulfill

the constitutional requirements approved for appointment by the National Assembly just to protect the political interests of the nominating coalition. Since the Jubilee Coalition controls both Parliament and the Executive, their members in Parliament have not been exerting themselves in questioning decisions of the Executive or in scrutinising executive appointments presented to the House for approval. The end result is an Assembly reduced to being a rubber stamp of the Executive.

**e) Integration of gender concepts and affirmative action in all appointive and elective processes.** The Constitution requires recognition and integration of gender equity in all appointive and electoral processes. It provides that the state shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.<sup>21</sup> Realisation of this constitutional provision has not been achieved, especially in respect of elected positions. The Supreme Court ruled in response to a case filed by women's organisations that this requirement was only to be implemented progressively, rather than immediately through the 2013 elections.<sup>22</sup> After the 2013 general election, out of 349 members of the National Assembly there are only 65 women, translating to only 18 percent of Assembly members, while from 68 Senators, there are 18 women in the Senate which is 26 percent of its members.<sup>23</sup>

**f) Superiority contests between the Senate and the National Assembly.** The two houses of Parliament have been embroiled in a supremacy battle.

<sup>20</sup> The Star Newspaper, June 10, 2011, "Why MPs approved Tobiko" <http://www.the-star.co.ke/news/article-60766/why-mps-approved-tobiko>

<sup>21</sup> Article 27 (8)

<sup>22</sup> Advisory Opinion No. 2 of 2012, Supreme Court of Kenya, W.M Mutunga CJ; P.K Tunoi, J.B Ojwang, S.C. Wanjala and N.S Ndungu (SCJJ), December 11, 2012. <http://www.kenyalaw.org/newsletter1/Issue012013.php>

<sup>23</sup> <http://www.parliament.go.ke/plone/national-assembly/members-of-the-national-assembly/members> and <http://www.parliament.go.ke/plone/senate/senators-of-the-senate/senators>

This has watered down the quality of legislation affecting the counties that requires input from both Houses. Most affected was the Division of Revenue Act 2013. The National Assembly passed the final Bill without incorporating the Senate's input and the president assented to it. The Supreme Court, in an advisory opinion sought by the Senate, held that the Senate has a role to play in the enactment of the Division of Revenue Bill and that its input could not be ignored in developing this legislation.

**g) Lack of knowledge on the Constitution by a majority of the public.** The successful implementation of the Constitution requires a knowledgeable populace that is aware of their rights and obligations and empowered to enforce them. Unfortunately a majority of Kenyans are not aware of the provisions of the Constitution and how they can go about enforcing them.<sup>24</sup> CSOs have been conducting civic education efforts, but many Kenyans were not reached by these efforts due to capacity constraints. The culture of impunity thrives in societies where the population is ignorant.

## 5.0 Implementation under the new political order

Kenyans went into the first general election under the new constitution on 4 March 2013. The election rang in two changes: a political transition, in that the outgoing president was not eligible to contest, having served his maximum two terms in office, and the complete

transition into the new constitution with regard to the executive and legislative arms of government. The Constitution's provisions on devolution also took effect after the 2013 general elections. Implementation of the Constitution is currently rolling out within the new governance structures, informed by the new system and associated political dynamics. These political dynamics revolve around control of counties and finances devolved to the counties. County governments have made spirited calls for a referendum on the increment of sums allocated to them from the national revenue. Jostling for political space and positioning for the 2017 general elections is already influencing the political environment of the country.

The Jubilee Coalition won the presidency and a majority of seats in the Senate and the National Assembly, while the Cord Coalition controls a slight majority of 24 county governors. Political competition between the coalition partners and the dynamics of managing coalition politics has affected the approach member parties take in implementing the Constitution. Party politics and coalition survival, are the main considerations guiding debate and policy, rather than the faithful implementation of the Constitution.<sup>25</sup> The net effect of this is that the country suffers from weak parliamentary oversight of the Executive.

Rolling out a new parliamentary structure has been hindered by political differences and superiority contests between the two Houses. This undermined the passage and enactment of the Division of Revenue Act 2013, with each House passing its own version of the Bill and the president ultimately assenting to the National Assembly version.

<sup>24</sup> [http://www.bbc.co.uk/mediaaction/publicationsandpress/research\\_summary\\_understanding\\_accountability\\_kenya.html](http://www.bbc.co.uk/mediaaction/publicationsandpress/research_summary_understanding_accountability_kenya.html): 57% of Kenyans report knowing a "great deal" or "fair amount" about the new constitution. However, less than half (47%) of those claiming some understanding of the new constitution could identify that one of the main objectives of devolution (an element of the new constitution around which expectations are especially high) is to ensure equitable sharing of national and local resources.

<sup>25</sup> A good example is the parliamentary vetting of persons nominated to serve in appointive offices, where the National Assembly passes nominees without considering integrity issues, just because that person is nominated by their political party leader.

Despite the inception challenges witnessed with the new governance structure, there are opportunities for positive implementation of the Constitution with the new governance system in place. These include:

- a) **Maturity of all provisions of the Constitution.** The general election of 2013 brought into operation all provisions of the Constitution, including those that had been suspended until the first (post-Constitution) general election. The structure of the devolved system envisaged in the Constitution is now fully in place, the executive structure advanced is operational, as is the legislative structure encompassing a Senate, National Assembly and the new offices of Parliament. These new structures all have a role to play in advancing the course of constitution implementation.
- b) **Development of enabling legislation to fully implement the Constitution.** The Fifth Schedule to the Constitution sets out an implementation matrix within which certain laws must be enacted by Parliament to give full effect to the Constitution. The optimum period permissible by law within which those laws have to be enacted is five years from the promulgation date. The period remaining for this will lapse within the current parliamentary term. Interventions with the national Parliament and other institutions must therefore be fast tracked to meet the Constitution's five-year deadline for the enactment and harmonisation of laws.
- c) **Implementation to be undertaken within a reformed institutional framework.** The Constitution provides for the establishment of new institutions of governance like commissions, and the reforms of others, such as the judiciary, security services, public service and the financial sector. Institutions tasked with responsibilities

in these areas have undergone some level of reforms, though with challenges hindering their effective transformation. Implementation of the Constitution overseen by these institutions will benefit from their ongoing transformation.

## 6.0 Strategies of implementation

Implementation of the Constitution requires concerted efforts by all stakeholders in the governance sphere. They must employ effective strategies to ensure that implementation is not derailed in the pursuit of other interests. Possible strategies include:

- a) **Enhance the outreach level of the national civic education initiative.** This initiative was undertaken by the Department of Justice and termed the 'K-NICE'<sup>26</sup> initiative. K-NICE continues to carry out civic education on the Constitution and devolution, reaching people through the internet, television and radio.<sup>27</sup> It should also incorporate aspects of voter education and education on the constitutional order, which should cover both the content scope of the training and the geographical reach of the target audience. They should be specific enough to cover particular problematic issues; for example in disaffected areas such as Mombasa, devolution has been articulated as a precursor to secession.
- b) **Enhance sectoral, institutional and stakeholder collaboration.** This is important amongst the various state and non-state actors working on diverse aspects of constitution implementation. Implementation cannot be seen as a state-driven venture only, but as a collective initiative of the people of Kenya individually and in organised groups providing platforms to engage with state institutions.

<sup>26</sup> Kenya Integrated Civic Education

<sup>27</sup> <http://www.knice.go.ke/> and <https://www.facebook.com/Kenya.civic>

**c) Sustain national dialogue on constitutional implementation and citizen awareness of those institutions tasked with making it happen.**

Mainstream and social media provide a platform through which national conversation and vigilance on implementing the Constitution can be maintained. Strategies should be designed to engage with these means of communication. Responsible institutions must be tasked to proactively provide information and report to the public on implementation of the Constitution. The leadership of both the National Assembly and the Senate needs to proactively arbitrate the dispute between the two Houses in a spirit of mutual respect to ensure effective parliamentary functioning in legislative development and oversight.

**d) Develop mechanisms for realising public participation in governance and law-making processes.**

This will require the design of regulations and tools that will allow meaningful

public engagement, as well as facilitate and entrench positive, constructive and responsive public participation in the governance and law making process.

## 7.0 Conclusion

There are numerous challenges facing implementation of the Constitution of Kenya, 2010. However, there still remain abundant opportunities for its proper and timely implementation. Joint efforts from not only Kenya's leadership, but also civil society and the public can ensure that the gains secured thus far through implementation of the constitution are consolidated and that the pending positive legislative and institutional reforms are put into place in the coming years.

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