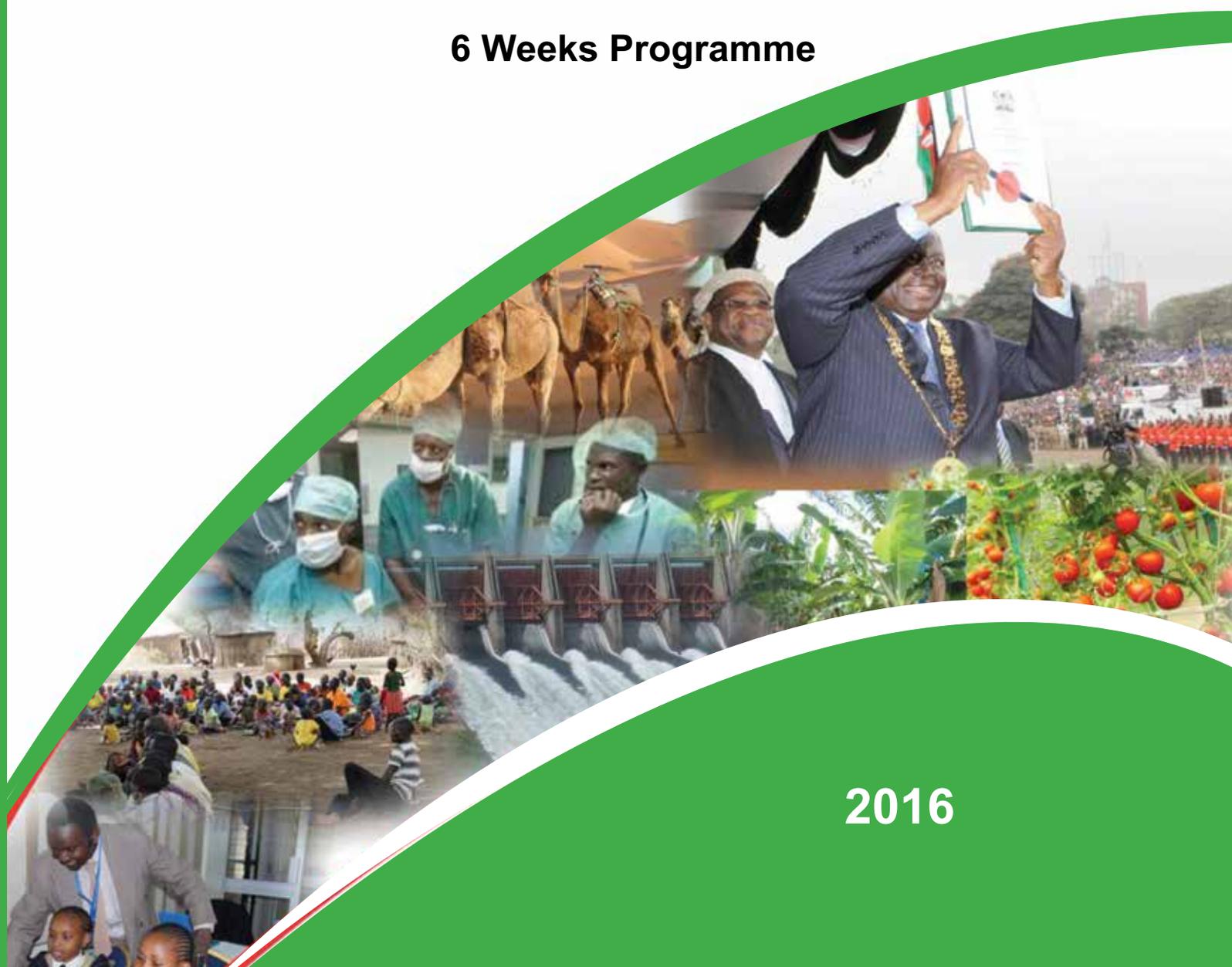




Devolution and Public Participation In Kenya

Civic Education Trainer's Manual for Learning Institutions

6 Weeks Programme



2016



REPUBLIC OF KENYA

Devolution and Public Participation In Kenya

Civic Education Trainer's Manual for Learning Institutions

6 Weeks Programme

2016



Ministry of Devolution
and Planning



Uraia



Council of Governors





Devolution and Public Participation in Kenya

Civic Education Training Manual

Youth Programme

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This publication should not be used as a substitute for officially published copies of the constitution, laws or other official government documents related to the topics discussed herein. Every effort has been made to ensure the accuracy of the information given. Any information in this manual deemed inaccurate or incomplete is not intentional and the author(s) should be notified immediately for correction and/or amendment.

National Anthem

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

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

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

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

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

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

Foreword

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

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

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

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

This manual has been developed to enhance the capacity of trainers of civic education and enable them to effectively train the target groups on the provisions of the constitution particularly, devolution and public participation. It is hoped that the trainer will find this manual an invaluable resource.



HON. MWANGI KIUNJURI, MGH

CABINET SECRETARY

MINISTRY OF DEVOLUTION AND PLANNING

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I recognize the contribution of Commission on Revenue Allocation, Commission for the Implementation of the Constitution, Kenya National Human Rights Commission,

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MWANAMAKA MABRUKI, CBS
PRINCIPAL SECRETARY, MODP

Preface

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

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

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

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

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



GRACE MAINGI
EXECUTIVE DIRECTOR , URAIA TRUST

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Abbreviations and Acronyms

| | |
|----------|---|
| CAJ | - Commission on Administrative Justice |
| CBEF | - County Budget and Economic Forum |
| CFA | - Election Campaign Financing Act, 2013 |
| CIC | - Commission for the implementation of the Constitution |
| COB | - Controller of Budget |
| CoK 2010 | - Constitution of Kenya, 2010 |
| CRA | - Commission on Revenue Allocation |
| CSOs | - Civil Society Organizations |
| EACC | - Ethics and Anti-Corruption Commission |
| IEBC | - Independent Electoral and Boundaries Commission |
| IEC | - Information, Educational and Communication |
| IRI | - The International Republican Institute |
| KNCHR | - Kenya National Commission on Human Rights |
| NEMA | - National Environmental Management Authority |
| NLC | - National Land Commission |
| NPC | - National Police Commission |
| PSC | - Public Service Commission |
| SRC | - Salaries and Remuneration Commission |
| TA | - Transition Authority |
| TSC | - Teachers Service Commission |



Introduction

Overview of the Training Manual

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

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

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

1. understand the constitution and its provision,
2. implement the civic education curriculum,
3. provide facilitating techniques for adult participants,
4. assess participants understanding of the constitution,
5. source for teaching and learning resources,
6. participate in the governance of their country.

The participants will in turn be able to:

1. demonstrate knowledge on the constitution,
2. appreciate the provisions of the Constitution of Kenya, 2010,
3. understand the importance of devolution,
4. participate in the governance of their country at county and national level
5. love their country.

HOW TO USE THE MANUAL

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

When using the manual the facilitator should note the following:

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

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

Module Introduction

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

General objectives

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

Specific objectives

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

Suggested learning resources

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

Suggested training method

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

Suggested assessment methods

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

Key notes

In every session, the trainer has been provided with key notes. This is the information that the trainer is expected to convey to the participants. The trainer

is encouraged to read and internalize these key notes before delivering the session.

Additional information

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

The Youth Manual

The training manual has been developed using the Civic Education Curriculum developed by Ministry of Devolution and Planning, Uraia Trust and Transition Authority. It has been designed to make it user friendly for civic educators and trainers.

This 6 week civic education manual has been developed to equip the professionals with desirable knowledge, skills, attitudes, values and competencies for effective participation in governance processes both at national and county levels.

The manual has the following three modules:

Module 1: The Constitution

Module 2: Devolution

Module 3: Public participation

Training Methods and Activities

The manual has provided a variety of training methods and activities. These are provided in every topic with a brief explanation on how it can be used during the training sessions. The training methods and activities are suggested. The facilitator can use any other approach they find fit for their situation as long as the topic specific objectives are achieved.

The following is an overview of the training methods used in the manual.

- Discussions
- Brainstorming
- Explanation
- Lecture
- Role play
- Simulations
- Field trip
- Buzzing
- Case studies
- Experience Sharing

1. Discussions

Discussions are verbal interactions on a given topic between participants and the trainer facilitating the session. Well organized discussions enhance full participation of all participants. The participants are able to share their thoughts, ideas and experiences while at the same time listen to those of others. It also encourages spontaneous flow of thought, ideas, and information; however, the trainer should be careful to moderate the discussions to ensure they do not go out of the topic. During discussions, participants should be encouraged to ask questions and raise any related issue. Discussions also develop skills such as listening and speaking, effective communication, assertiveness and critical thinking.

When planning for discussions thought should be given to what will be asked to keep the discussion alive. The trainer should therefore prepare a list of questions before the lesson.

Discussion can be organized for the whole class or in groups.

2. Class Discussion

Class discussion can be used to introduce a new topic or concept, to explain difficult terms, to get the participants experiences and to conclude a lesson.

A class discussion should be carefully planned to ensure the discussion is focused on the lesson objective(s). For a class discussion to work effectively, it is important for the trainer to elicit the participation of all the participants. This can be done by asking questions to which answers are sought and then discussed. The trainer should allow flow of ideas from the participants. After the participants give their feedback, the trainers can clarify, explain and/or add to the information given.

The summary of feedback from the participants and what the trainer adds can be used to summarize the session.

3. Group Discussion

Group discussion is a method where the trainer divides the class into small manageable groups and assigns each group a topic to discuss. When choosing a topic for a group discussion, it is important to take into consideration the participant's knowledge on the same. A topic that the participants are familiar with is easy to discuss. The facilitator should give clear instructions to the groups including how long the discussions ought to take.

In the formation of the groups, mix participants of different ability to ensure that all the participants are catered for. Remember, large groups tend to be difficult to control and some participants do not participate fully. Groups work better when there is a group leader to moderate the discussion. It is also important to have a secretary in the group to record the ideas agreed upon by the members. The training room should be arranged in such a way that groups do not interfere with each other.

The trainer should prepare adequately to ensure ample time is provided for the group discussion during the lesson. A hurried group discussion demotivates the participants when they are not able to exhaust all their ideas. However, there should be control so that the trainer

gets adequate time to summarize the lesson.

After the group discussion, each group should appoint one member to present what they have discussed to the whole class. During the presentation, other participants can give more ideas and ask questions. The trainer should correct any wrong information or misconceptions and add any extra information that may have been missed by the participants. It is important for the group's contributions to be appreciated to motivate the members. The trainer should use the information from the groups as part of the summary of the session.

After the discussions the trainer can summarize the session by:

- clarifying concepts or misconceptions, ideas and issues that may have arisen from the discussion and/or presentation;
- bringing out the main points of discussions;
- emphasizing on information they are expected to have gained based on the specific objectives of the lesson;
- building consensus where the group did not agree on a given matter.

4. Brainstorming

Brainstorming is a discussion where the participants think quickly and creatively about an idea or issue with a view of trying to understand it better. It does not allow time for reflection thus enables the trainer to understand what the participants think about a given phenomena. The discussions are spontaneous and every member of the class or group is encouraged to express their ideas freely and as they share their views and opinions. It gives each participant a clearer understanding of the issue or phenomena.

Brainstorming can be used when:

- introducing new ideas or concepts to the class;
- trying to understand an idea;
- seeking different views of the participants on certain situations;
- building consensus among the class.

When preparing for a brainstorming session the trainer should have a list of questions that can help lead the brainstorming. The questions will enable the trainer to:

- link familiar concepts to those that is unfamiliar;
- motivate the participants to think;
- encourage the participants to participate in the learning process;
- show the relationship between events or ideas;
- ensure the discussion remains focused on the topic specific objectives;

- understand the interpretation capacity of the participants;
- engage the whole group or class.

5. Buzzing

Buzzing is a training method where 2-3 participants are asked to consult with one another on an issue raised by the trainer. The issue is normally raised to the whole class and the participants are then asked to converse in low murmurs (buzz) amongst themselves. They record their views and thereafter share with the whole class.

6. Explanation

Explanation is a training method where the trainer expounds on an idea by giving reasons, clarifications, justifications and/or any other details that will enable the participants to understand. Explanations can be used together with other training methods. The trainer will explain, giving the facts needed to understand whatever is being discussed.

7. Lecture

A lecture is an instructional or educational speech or talk on a topic. This method can be used in the training sessions but with caution as adult participants do not enjoy it. The trainers can, however, use short forms of a lecture to highlight key points of the lesson, to introduce a topic or in a situation where the trainer may need to provide detailed and specific information in a short time.

The trainer can interrupt the lecture by introducing class discussions, brainstorming sessions and/or question answer sessions.

When planning for a lecture, the trainer should consider:

- length of the lecture to enable the trainer time them self;
- audio visuals and other materials that will be used during the lecture;
- the outline and sequencing of the information;
- the environment which the lecture will take place.

8. Role Play

Role play is acting out a part especially that of somebody with a particular role in society in order to interrogate their role and to understand it better. The play is carried out by the participants under the instructions of the trainer. Role play reinforces learning as participants will internalize the roles as they act them out or observe the others acting. Desirable attitudes can also be easily imparted using role play.

When planning for a role-play, the trainer should consider the following:

- Use this approach to teach a concept in a topic that participants are familiar with.
- The participants taking part in the role play should be identified before the lesson and properly guided on their roles.
- Introduce the lesson and ask the participants to role play at the appropriate time.
- Ensure that all the participants can clearly see what is being acted out.
- Inform the participants how long the role play should take to ensure adequate time for them to bring out the expected results.
- At the end of the role play the trainer should get feedback from the participants on what they have learned.
- The trainer should form the lesson summary from the feedback from the participants and include any other information that may have been left out.

9. Simulations

Simulation is the actual reproduction of an activity with the essential features. The trainer can use simulation when they want to duplicate an event as it happened or how it is supposed to happen, for example the voting process. It is similar to role play and can be planned as such. However, in simulations it is a replica of the event.

10. Case Studies

A case study is a study of a situation, person or condition in order to draw conclusions. The situation may be actual or imaginary. When used in a training situation it stimulates thinking, considerations and assessment. The case study is presented to the participants and then they are given time to discuss it. The discussion may be led by the trainer using prepared questions or they may arise from the discussions on the case study. During the discussions the following may arise:

- resolutions;
- empathy or other emotions;
- decision making;
- provoked to apply what is discussed in their day to day living.

The trainer should present case studies that are interesting and engaging to the participants yet addressing the topic specific objectives. It should also be written in a language that is applicable to the participants and also the use of vocabulary should be considered. The scenes presented in the case study should be something the participant can relate to.

A case study can be developed by the teacher or selected directly from newspapers, books or magazines. Case studies can be discussed in groups or the whole class.

11. Experience Sharing

In this method, the participants are given opportunities to tell the encounters in specific areas as indicated in the manual. Such experiences bring to life what is discussed in the constitution. The manual has suggested this method in various sessions of the training.

Display

This is a method where a trainer uses a collection of learning materials for the learner to see, feel and manipulate in order to enhance learning. The trainer can display charts, Acts of Parliaments, election materials and other resources for the participants to see and interact with.

Displays should be mounted before the session and should be placed where all participants can see. The trainer should provide time for the participants to ask questions and seek clarifications.

Training Resources

Resources are used to enhance learning as participants tend to retain more of what they see and feel than what they hear. Resources also increase participants' attention span and opens room for discovery and exploration. Resources are therefore very important in training. The manual has therefore provided a list of resources for use during the training. These include:

The Constitution of Kenya, 2010

The Constitution of Kenya 2010 is the main reference material for this training manual. It should be used and referred to in every session. The trainer should always carry a copy of the constitution during the training. It is also important for the trainees to have their own copies.

Information, Education and Communication (IEC) materials

These include posters, pictures, charts, pamphlets and other materials that are used to inform participants during the training sessions. The use of a variety of IEC materials ensures that all participants are catered for in ensuring the aims of the training are achieved.

Acts of Parliament

Acts of Parliaments are very important in facilitating the implementation of the constitution. The training manual has made reference to most of the current Acts. The trainer should make

reference to the same and provide them to the trainees so that they can interact with them. As new Acts are enacted the trainer should include them during the training in the relevant areas. A list of Acts is provided in appendix 1 in this manual:

Books

A number of books have been suggested as reference materials in this manual. The trainer is encouraged to source for them as they are widely available.

Social Maps

Social maps show social economic resources status and distribution of a nation. Such maps can be generated by the participants or the trainer.

Budgets

Where possible, the trainer can source for county and/or national budgets for the participant to interact with. This enables the participants to see how they look like and how they are developed.

Reports

Where relevant reports are available the trainer should provide a copy for the participants to interact with and see the information they provide and their importance. The reports referred to in the manual include:

The Hansard

This is a Parliamentary report. Both the national and county governments have Hansards which are the official published reports of proceedings in the parliaments. Where possible, the trainee can avail a Hansard report for the participants to interact with.

- Controller of Budgets reports.
- County governments' annual reports
- Social audit reports by Civil Society Organisations (CSOs)
- Commission for the Implementation of the Constitution (CIC) reports
- Auditor General reports

Plans

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

Internet sources

Where ICT infrastructure is available it should be used as they bring to life what is being discussed. They have therefore been suggested in relevant areas in the manual. A good example is:

YouTube can be used to show the difference between riots and demonstration

Kenya devolution and revenue sharing calculator (www.brookings.edu/research/interactives/2013/kenya). The trainer can use this calculator to determine how much money their counties are entitled to and how it is calculated.

Assessment Methods

Assessment means to make judgment on person(s) or situation(s) based on available information. It is an essential part of training. Assessment during the training sessions is based on the achievement of specific objectives and should be included in the planning of the session. The manual has provided suggestions on how each session can be assessed. The trainer can also use any other assessment method they may see fit to assess the achievement of the specific objectives. An assessment is important for the trainer as it:

- determines the extent of the achievement of the set objectives;
- enables identification of participants' strengths, weaknesses, attitudes, abilities and knowledge;
- assessment of their training methods;

The assessment methods suggested in the manual include:

Oral questions

Oral questions are used during the training regardless of the training method used. The questions are asked spontaneously or can be planned and asked during the training. This type of assessment gives immediate feedback on the learner's knowledge and attitudes. The trainer should use oral questions continuously during the training and also encourage the participants to ask questions. Such questions enable the trainer to assess the participants' level of understanding of the subject matter.

Question and answer

The trainer prepares questions for learners to answer during the training. It is important to plan the questions well in advance in order to allow learning to be more focused especially in meeting the session objectives. The responses from the participants will enable the trainer to gauge how much they have understood the content being discussed. The trainer can use this method to carry out discussions and build on the session content.

Observation

The trainer is expected to be vigilant and observe what is happening during the training. The trainer observes the participants contribution during brainstorming, discussion, experience sharing, role play, discussion, group activities and presentations. Participants who do not contribute maybe due to lack of understanding of what is being trained or they are not seeing the relevance of the information being provided. The trainer should ask such participant's questions based on the subject matter to gauge their understanding.

Glossary of Terms

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

- Civil society** - groups of active citizens concerned about a specific set of issues or focused on accomplishing a specific set of objectives.
- Community land** - land held by communities identified on the basis of ethnicity, culture or similar community of interest.
- Constitutionalism** - adherence to the principles of constitution or the rule of law.
- Council of County Governors** - an intergovernmental coordinating and consultative body for the 47 county governments.
- County** - a semi-autonomous unit of government devolved from the national level. There are 47 counties in Kenya.
- County Assembly** - the legislative body of the County.
- County executive** - the executive authority of county government. Equivalent to cabinet at national government.
- County Public Service Board** - is a county-level institution that establishes and oversees public servants for each of the counties.
- Decentralization** - a structural redistribution of power that takes a portion of the power vested in the national government and allocates it equitably to smaller sub-national entities.
- Delegation** - a type of decentralization that refers to the transfer of some of the central authority's power to semi-independent sub-national and/or non-government authorities, which have relative freedom to decide how to carry out their responsibilities, but they are ultimately accountable to the central authority.
- Democracy** - a system of government based on people's consent, or the 'will of the people.'
- Democratic Leadership** - a style of leadership where the person in charge acts in the interests of their people.
- Deputy Governor** - the second highest executive authority in a county. The Deputy Governor fulfils the duties of the Governor when absent or as is required under law.
- Devolution** - a type of decentralization that refers to the complete transfer of power from a central authority to near-autonomous sub-national authorities. Local citizens are empowered under devolution to elect their own leaders and

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

- Parliament** - the national legislative body established under Article 93 of Kenya's constitution. The National Assembly and the Senate comprise Parliament, whose legislative powers include representing the will of the people and exercising their sovereign power. Parliament also has the power to amend the Constitution as needed.
- Political party** - an organization that is constituted for the purpose of providing an organized form of participation by people with similar views on political issues and activities.
- Political rights** - rights that enable citizens to participate in the political processes that contribute to the functioning of a democracy.
- Private land** - registered land owned or leased by any person.
- Promulgation** - the act that brings a new constitution into effect and abolishes the old constitution.
- Proportional election formula** - parties win seats in proportion to the number of votes they receive (in parliament or nominated seats)
- Protests** - an expression of opposition on a particular issue that is done through picketing, sit-ins, boycotts, vigil, and hunger strikes.
- Referendum** - the process through which citizens decide, through a vote, whether or not they wish to make a significant change to the political landscape in which they operate.
- Relative majority** - or plurality, when the outcome of an election is determined by the candidate that receives the most votes.
- Revenue Fund** - a fund where each county deposits all money raised or received on behalf of the county government.
- Rule of law** - the principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced.
- Senate** - represents the counties, and serves to protect the interests of the counties and their governments.
- Sovereign power** - the supreme power that a sovereign State uses to govern itself independently and the power from which all citizens and government institutions derive their political power.

- Sovereignty** - collective power of the citizens exercised directly or through their democratically elected representatives at national and county levels.
- Speaker** - the Speakers lead each of Kenya’s legislative bodies at the national and county levels that is the National Assembly, Senate and county assemblies.
- Strategy** - a roadmap on how you or your organization will go about achieving its mission.
- Sub-county** - a semi-autonomous unit of government devolved from the county whose purpose is to improve government administrative functions and service delivery by bringing both closer to citizens.
- Sub-national** - a semi-autonomous decentralized unit of government below the national level. Each of Kenya’s 47 counties is known as sub-national units.
- Summit** - Also referred to as “National and County Government Coordinating Summit” is an intergovernmental relations body whose membership include the president, deputy president and the 47 governors.
- Super majority** - a vast majority (over 80%) consensus required to make major changes that will have a direct effect on the population of a country, such as an amendment to the Bill of Rights.
- Supreme law** - often used to refer to the Constitution as the highest law, and the based upon which all other laws are developed.
- Town** - an urban area as defined under Urban areas and Cities Act 2011
- Urban sub-county** - a unit of government devolved from the county level and has urban characteristics of development, service delivery and population.
- Values** - core beliefs that are shared among the stakeholders of an organization
- Vertical**
- Decentralization** - the process by which sovereign power is dispersed vertically between national and sub-national authorities (i.e. county) and/or semi-autonomous authorities (e.g. revenue authority).
- Ward** - a decentralized unit of county government governed by a ward administrator. Wards also serve as electoral units for electing members of the county assembly.



MODULE ONE: THE CONSTITUTION





Time: 10 hours

Introduction

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

General Objectives

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

- a) understand the historical background of the Constitution of Kenya,
- b) appreciate and promote Constitutionalism,
- c) appreciate and exercise rights and responsibilities enshrined in the Constitution,
- d) appreciate the importance of values and principles of governance as per the Constitution,
- e) acquire skills, knowledge and attitudes for protecting the environment,
- f) describe different ways of administration of natural resources,
- g) acquire knowledge and attitudes for active and effective participation in governance processes.

UNIT 1: HISTORICAL BACKGROUND OF THE CONSTITUTION IN KENYA

Time: 3 hours

Introduction

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

SESSION 1: Meaning, Purpose and Types of the Constitution

Time: 15 minutes

Session Objectives

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

- a) explain the meaning of the Constitution
- b) identify the purpose of the Constitution
- c) differentiate types of Constitutions.

Suggested Learning Resources

- The Constitution of Kenya, 2010
- The Citizen Handbook by uraia,IRI,2012
- Understanding the Constitution, KNICE,2010

Suggested Training Methods

- Brainstorming
- Discussion

Suggested Learning Activities

- i. Brainstorm on the meaning
- ii. Discuss the purpose and
- iii. Explain the types of Constitution
- iv. Summarize the topic

Suggested Assessment Methods

- Question and answer
- Observation on active participation in brainstorming session

KEY NOTES

Meaning of the Constitution

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

Purpose of the Constitution

A Constitution:

- Protects individual rights and freedoms
- Sets out and clarifies the divisions of power
- Limits and controls government power
- Sets out the principles, structures and processes of governance
- Nurtures and protects the well-being of the individual, family, Community and the nation
- Creates a society that is responsible, respect human dignity and that is patriotic united and democratic
- Establishes a system of governance that is fair accountable and participatory under public officers that are selfless, honest, competent and competitively selected

Types of Constitutions

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

SESSION 2: Constitution during the Pre-colonial and Colonial period

Time: 15 Minutes

Session Objective

By the end of the session the participant should be able to discuss the evolution of the Kenyan Constitution during the pre-colonial to the colonial period.

Suggested Training Resources

- Citizen handbook by Uraia, IRI, 2012
- Internet resources
- Resource person

Suggested Training Methods

- Sharing of experiences
- Use of resource persons
- Discussion

Suggested Learning Activities

- Introduce the resource person to share experiences regarding the Constitution during pre-colonial and colonial periods
- Participants ask and answer questions and share experiences on the subject
- summarize the session

Suggested Assessment Methods

- Question and answer
- Observation on active sharing of experiences

KEY NOTES

a) Customary Laws

- The following are some of the features of the customary Laws
- The laws were largely unwritten
- They mainly governed the economic, social, cultural and political issues such as marriage, birth, death, inheritance, cattle raiding, circumcision, movement from childhood to adulthood and war and leadership among others.
- Justice was administered mainly by clan elders. However, during the colonial period laws were administered by the native courts
- Laws were community based and therefore not uniform, although with few similarities. The variations were caused by differences in economic, political developments, differences in social and kinship systems; religious beliefs and cultural practices.
- During the colonial period, English law was superior while African customary law was subordinate.
- Where African customary law was deemed to contradict English law, the English law prevailed.

b) Lyttleton Constitution 1954

It was a product of an understanding between the Secretary of State, Oliver Lyttleton and Governor Evelyn Baring in 1954. It was named after the then Colonial Secretary, Sir Lyttleton. It was the first Multi-racial Constitution. It established a Council of 12 Ministers as follows:

- 6 were to be appointed by the Governor
- 6 Elected: 3 Europeans, 2 Asians and 1 African.

The African representatives rejected these arrangements as a result of inadequate representation of Africans

c) Lenox-Boyd Constitution 1958

It was adopted in 1958. It abolished the Executive Council and replaced it with a council of ministers. It increased the Council of Ministers to 16 that is, half elected and half appointed by the Governor. However, Europeans were still the majority, redistribution of land, release of political prisoners and repeal of repressive laws were not addressed. Demand for full independence was in the air. Africans demanded for a constitutional conference to negotiate for independence. It led to the colonial office acceptance of the need to hold a constitutional conference (Lancaster I House Conference of 1960), where Kenyan political leaders would meet to address the colony's constitutional future.

d) **Macleod Constitution 1960**

The Constitution resulted due to the failure of the first Lancaster House to provide an acceptable solution of representation in governance. It provided for a majority of Africans in the Legislative Council (LEGCO) of 65 Members and Council of Ministers. The Europeans refused to accept the Constitution. This led to the Second Lancaster House Conference of 1962 which made provision for independence and alluded to internal self- governance.

e) **Lancaster House or the Independence Constitution**

It reflected the compromises made at the three constitutional conferences held at Lancaster house. It provided for;

- A legislature with two houses that is; the house of representatives to represent national interests and Senate to represent regional interest)
- Ethno-regional devolution of power through a system known as Majimbo
- An independent Judiciary
- A parliamentary system of government with executive powers vested in Parliament
- The independence Constitution adopted the Westminster Model. This model of government centralizes power at the national level through a Head of State and Parliament.
- A continuation of direct rule where Jomo Kenyatta was invited to form the first autonomous government as Prime Minister and the Queen Elizabeth II of England as Head and Commander In Chief of the armed forces on 1st June 1963.
- A centralized system of governance that kept decision making process far from the reach of the common people
- A government structure consisting of 8 provinces which were abolished by the Constitution of Kenya, 2010. The 47 counties were operationalized in 2013 after the general elections.

What to note:

- *The first Lancaster House Conference of 1960 resulted in an interim Constitution that failed to grant substantial autonomy to Kenya*
- *The second conference in 1962 negotiated a framework for self-government in Kenya*
- *The third and final conference in 1963 led to the drafting and adoption of the independence Constitution. The 1963 Constitution marked the end of colonial rule and transformed Kenya into a dominion.*

SESSION 3: Constitutional Amendments between 1964-2010

Time: 30 minutes

Session Objective

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

Suggested Learning Resources

- The Kenya Constitution, 1963
- Citizen handbook by Uraia, IRI, 2012
- Resource person
- Relevant Acts
- Timeline chart

Suggested Training Methods

- Sharing of experiences
- Use of resource persons
- Discussion

Suggested Learning Activities

- i. Sharing experiences regarding constitutional amendments in Kenya between 1964-2010
- ii. Explanation of constitutional amendments in Kenya between 1964-2010
- iii. summarize the topic

Suggested Assessment Methods

- Question and answer
- Observation on active sharing of experiences

Evolution of Kenyan constitution 1964 to 1991

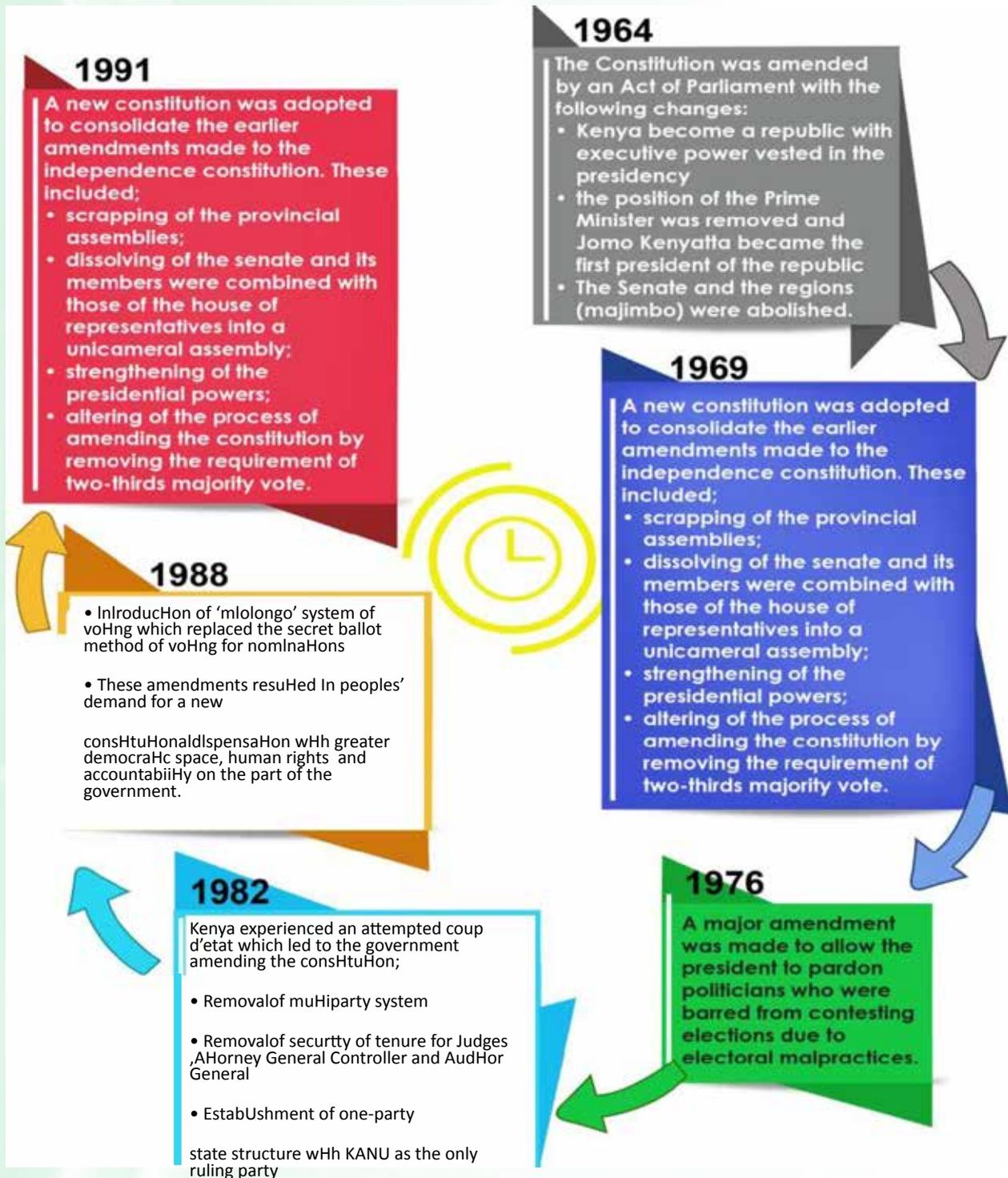


Figure 1: Evolution of Kenyan Constitution

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

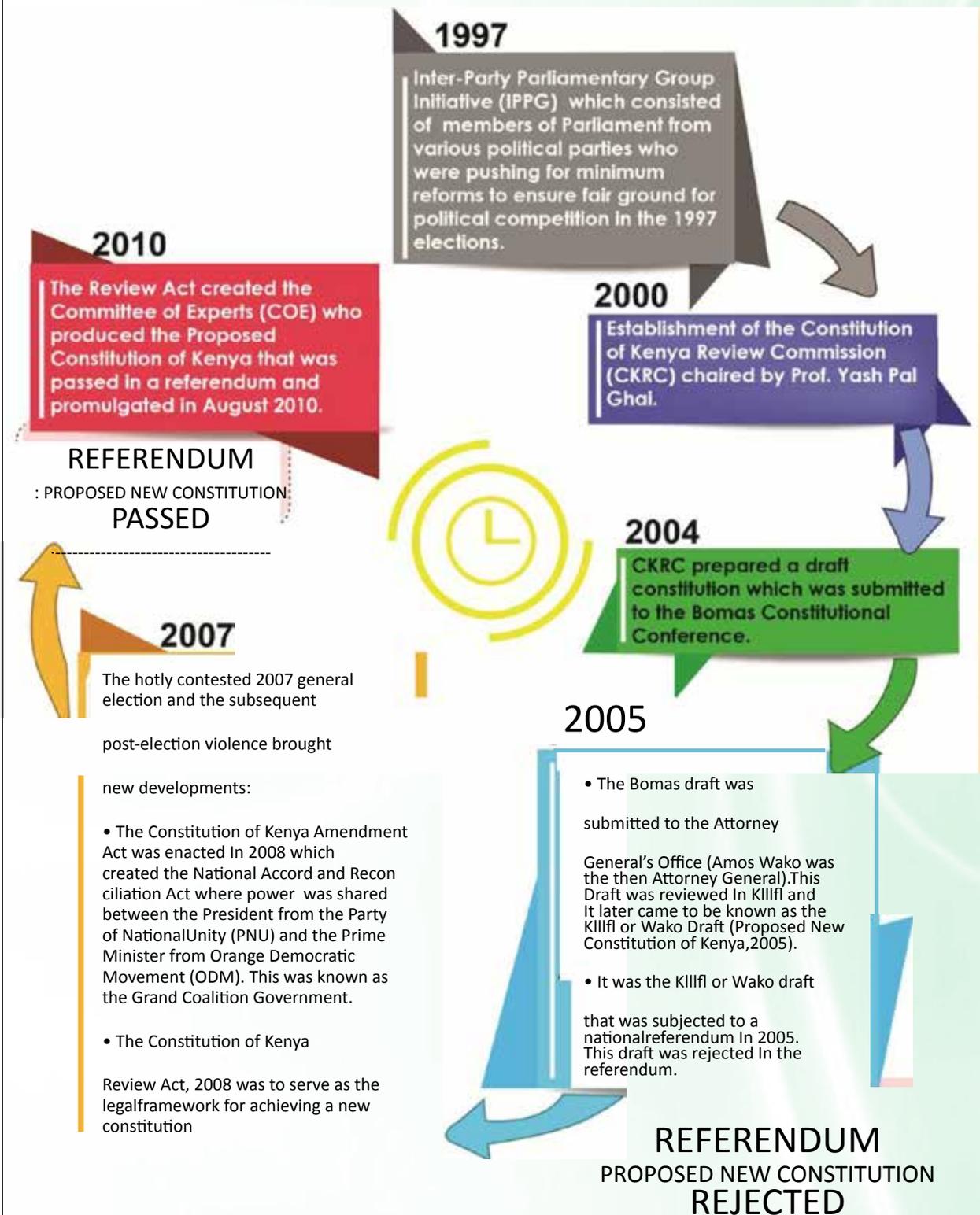


Figure 2: Events of the clamour of the new constitution

KEY NOTES

a) 1964

The Constitution was amended by an Act of Parliament with the following changes:

- Kenya became a Republic with executive power vested in the Presidency
- the position of the Prime Minister was abolished and Jomo Kenyatta became the first President of the Republic
- The Senate and the regions (Majimbo) were abolished.

b) 1969

A new Constitution was adopted to consolidate the earlier amendments made to the Independence Constitution. These included;

- Scrapping of the provincial assemblies
- Dissolving of the Senate and its members were combined with those of the house of representatives into a Unicameral Assembly
- Strengthening of the presidential powers
- Altering of the process of amending the Constitution by removing the requirement of two thirds (2/3) majority vote.

c) 1976

A major amendment was made to allow the President to pardon politicians barred from contesting in elections due to electoral malpractices. This amendment was resisted by a section of politicians who were incarcerated. These included, George Anyona and Martin Shikuku.

d) 198

Kenya experienced an attempted coup d'état which led to the government amending the Constitution by;

- Removing security of tenure for judges, Attorney General, Controller and Auditor General
- Removal of multiparty system, establishment of one-party state structure with Kenya African National Union (KANU) as the only ruling party
- Introduction of mlolongo system of voting which replaced the secret ballot method of voting
- These amendments resulted in peoples' demand for a new constitutional

dispensation with greater democratic space, human rights and accountability on the part of the government.

e) 1991

A KANU delegates meeting chaired by President Moi at the Kasarani Stadium, led to the repeal of section 2A of the Constitution which resulted in:

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

Continued pressure to demand for review of the Constitution led to a number of initiatives;

f) 1997

Interparty parliamentary group initiative (IPPG) which consisted of members of parliament from various political parties who were pushing for minimum reforms to ensure fair ground for political competition in the 1997 elections.

g) 2000-2010

- Continued pressure to demand for review of the Constitution led to a number of initiatives;
- Establishment of the Constitution Of Kenya Review Commission (CKRC) in 2000 chaired by Prof. Yash Pal Ghai
- CKRC prepared a draft Constitution which was submitted to the Bomas constitutional Conference in 2004
- The Bomas draft was submitted to Attorney General's office after which it was reviewed at Kilifi later to be known as Kilifi or Wako draft
- It was the Kilifi or Wako draft that was subjected to a national referendum in 2005. This draft was rejected in the referendum.
- The hotly contested 2007 general election and the subsequent post-election violence brought new developments. These include;
 - The Constitution of Kenya Review Act, 2008 which created the National Accord where power was shared between the president from the Party of National Unity (PNU) and the Prime Minister from Orange Democratic Movement (ODM). This was known as the Grand Coalition Government.

- The Constitution of Kenya Review Act, 2008 served as the legal framework for achieving a new Constitution.
- The Act created the Committee of Experts who produced a draft Constitution that was passed in a referendum and promulgated in August, 2010

UNIT 2: THE CONSTITUTION OF KENYA

Time: 4 hours

Introduction

The Constitution is the supreme law of the Country. It provides the limits for interaction between the state and its citizens. All policies, laws and regulations must be aligned to the Constitution. The Constitution of Kenya has eighteen (18) Chapters and six schedules. Each Chapter addresses a unique aspect of the relationship between the state and its citizens or between the citizens themselves. The purpose of this module is to give a brief overview of the Constitution and explain briefly the roles of the state vis-à-vis the rights of the citizens and their responsibilities.

SESSION 1: Key Provisions of the Constitution

Time: 1 hour

Session Objectives

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

- a) give an overview of the chapters and schedules of the Constitution of Kenya, 2010
- b) Name the institutions responsible for the implementation of the Constitution.

Suggested Learning Resources

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

Suggested Training Methods

- Brainstorming
- Group discussions

Suggested Learning Activities

- Introduce the topic and highlight major provisions of the Constitution
- Discuss the institutions responsible for the implementation of the Constitution
- Summarize the topic

Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

KEY NOTES

a) Overview of the Chapters of the Constitution of Kenya

- Preamble** captures the spirit of the Constitution and the aspirations of the people of Kenya.
- Chapter 1** - declares that all sovereign power belongs to the people of Kenya and must be exercised in a manner that respects the supremacy of the people and all laws must be based on the Constitution.
- Chapter 2** - defines the republic, national values, national language and symbols
- Chapter 3** - defines the citizens of Kenya and the manner in which citizenship is acquired or lost
- Chapter 4** - recognizes rights of citizens and others. It provides for situations when rights may be limited and provides mechanisms and procedures for the protection of rights.
- Chapter 5** – creates a framework for land, environment and natural resources and provides for their use and protection.
- Chapter 6** - sets out principles leadership and integrity and the conduct for state and public officers.
- Chapter 7** – provides for the election of leaders as the representative of the people, rules and principles of voting, framework for regulating political

- parties and creates the independent Electoral and Boundaries Commission.
- (ix) **Chapter 8** – establishes the National Assembly and Senate (Parliament).
 - (x0) **Chapter 9** – establishes the Executive headed by the President and the deputy and provides for mechanisms for the election or removal of the President. It also provides for establishment of the office of the Attorney General.
 - (xi) **Chapter 10** - Establishes the Judiciary and the system of courts in Kenya.
 - (xii) **Chapter 11** – expounds on the territory of Kenya and establishes county governments and their functions.
 - (xiii) **Chapter 12** – Makes provisions for the collection of taxes and allocation of funds from the National Treasury and provides for principles of accountability for national resources.
 - (xiv) **Chapter 13** – Establishes the Public Service and sets out the organization of the public service. It provides for principles of good governance in service delivery.
 - (xv) **Chapter 14** – Sets out principles of National Security and establishes institutions that provide security to the public.
 - (xvi) **Chapter 15** - provides for the roles, functions and independence of Constitutional Commissions and Independent Offices.
 - (xvii) **Chapter 16** - outlines how the Constitution can be amended, that is through the popular initiative, parliamentary initiative and referendum.
 - (xviii) **Chapter 17** - provides rules for interpreting the Constitution.
 - (xix) **Chapter 18** - deals with how the Constitution should be implemented.

B) Schedules of the Constitution

There are six schedules as follows:

- | | | | |
|------|-----------------|---|--|
| i. | First schedule | – | Provides for the names of the 47 Counties |
| ii. | Second schedule | – | Provides the National Symbols |
| iii. | Third schedule | – | Provides for the National Oaths and Affirmations |
| iv. | Fourth schedule | – | Provides for the distribution of functions between National and County Governments |
| v. | Fifth schedule | – | Provides for the Legislation to be enacted by Parliament |
| vi. | Sixth schedule | – | Provides for Transitional and Consequential Provisions |

C) The Institutions Responsible for the Implementation of the Constitution

The following are key institutions responsible for implementation of the Constitution:-

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

SESSION 2 : Rights and Fundamental Freedoms in the Constitution

Time: 45 Minutes

Session Objectives

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

- a) state the principles of human rights
- b) state the rights in the Constitution of Kenya
- c) identify the limitations of Rights and Fundamental Freedoms under the Constitution of Kenya.

Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen handbook URAIA, IRI, 2012
- Information, Education and Communication (IEC)
- Materials on Bill of Rights
- Understanding the Constitution, KNICE:

Suggested Training Methods

- Discussions
- Brainstorming
- Group work

Suggested Learning Activities

- i. Discussion on principles of human rights
- ii. Brainstorming on the Rights and Fundamental Freedoms under the Constitution of Kenya
- iii. Discussion on Rights and Fundamental Freedoms
- iv. Presentation in plenary
- v. Summarise the session

Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

KEY NOTES

Principles of Human Rights

i. **Universality and Inalienability:**

Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."

ii. **Indivisibility:**

Human rights are indivisible. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

iii. Interdependence and Interrelatedness:

Human rights are interdependent and interrelated. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.

iv. Equality and Non-discrimination:

All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

v. Participation and Inclusion:

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

vi. Accountability and Rule of Law:

States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights.

Rights under the Constitution (Chapter 4)

Rights under the Constitution include but are not limited to:

- (a) Civil and Political rights include the rights to:
- Life
 - Liberty
 - Security of person
 - Access to justice

- Political participation

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

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

(c) Cultural and environmental rights are:

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

(d) Rights of Specific groups of persons

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

- Women
- Children
- Persons with disabilities
- Youth
- Older persons
- Marginalized and minority groups
- Internally displaced persons
- Refugees

Freedsoms

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

- Freedom of the media
- Freedom of association
- Freedom of movement and residence

Limitation of rights and fundamental freedoms under the Constitution of Kenya

The Constitution of Kenya provides for the limitation of rights and fundamental freedoms. A



Figure 3: Human rights under the constitution

right or freedom may be limited by Law. A right or freedom may only be limited to the extent to which is reasonable and the institution which is limiting it can justify it in an open and democratic manner.

However, the following rights shall not be limited:-

- Freedom from torture and cruelty, inhuman or degrading treatment or punishment

- Freedom from slavery or servitude
- The right to a fair trial; and
- The right to petition a court to order a public body to produce any person it holds in its custody. Session 3: Land, Environment and Natural Resources use and management

SESSION 3: Classification and Systems of Land Tenure in Kenya

Time: 45 minutes

Session Objectives

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

- a) classify the three types of land;
- b) discuss the principles of land management under the Constitution of Kenya;
- c) discuss the various land tenure systems;
- d) state the functions of the National Land Commission, Ministry responsible for land and the County land management Boards;

Suggested Learning Resources

- The Constitution of Kenya,2010
- Citizen handbook IRI,2012
- Information, Education and Communication (IEC) materials
- Other Relevant Acts

Suggested Training Methods

- Brainstorming
- Discussion
- Cross referencing of content

Suggested Learning Activities

- i. Prompt the participants to Brainstorm on the classifications of land in Kenya
- ii. Explain the classification
- iii. Explain the principles of land management under the Constitution of Kenya, 2010.
- iv. Discuss land tenure system in Kenya
- v. Brainstorm on the function of National land commission (NLC)
- vi. Summarize the Topic

Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

KEY NOTES

The classifications of land in Kenya

A. Public Land

- (i) This is land which belongs to the either the national or county government or any State organ and held on behalf of the people. This can also be defined as land to which no individual or community claims ownership or which is defined by an Act of Parliament as public land.
- (ii) Any land in respect of which no heir can be identified by any legal process is also classified as public land.
- (iii) Public land includes any land upon which natural resources are deposited including: all minerals and mineral oils; government forests, Game Reserves, water catchment areas, National Parks, government animal sanctuaries; and specially protected areas;
- (iv) Roads and public utility land, all rivers, lakes and other water bodies, the territorial sea, the Exclusive Economic Zone and the sea bed; the

continental shelf; all land between the high and low water marks;

- (v) Any land not classified as private or community land under this Constitution; and any other land declared to be public land by an Act of Parliament is also public land.

B. Private Land

This is land registered and held by any person under any freehold tenure; under a leasehold tenure; or any other land declared private land under an Act of Parliament.

C. Community Land

Community land refers to land that is lawfully registered in the name of group representatives under the provisions of any law; or transferred to a specific community by any process of law; and any other land declared to be community land by an Act of Parliament; and land that is:

- (i) Lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
- (ii) Ancestral lands and lands traditionally occupied by hunter-gatherer communities;
- (iii) Lawfully held as trust land by the County Governments but not including any public land held in trust by the County Government.

The Principles of Land Management under the Constitution of Kenya

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

- (i) Equitable access to land;
- (ii) Security of land rights;
- (iii) Sustainable and productive management of land resources;
- (iv) Transparent and cost effective administration of land;
- (v) Sound conservation and protection of ecologically sensitive areas;
- (vi) Elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (vii) Encouragement of communities to settle land disputes through recognized local community initiatives.

Land Tenure System in Kenya

- (i) Leasehold – where a person or organization leases or pays rent to the national or county government for a period of time.
- (ii) Freehold – where a person or organization holds an absolute title to land acquired through purchase or inheritance. This tenure may however be limited by law.
- (iii) Partial Interest – where two or more people have rights over one piece of land such as a neighbour having access to social amenities.
- (iv) Customary interest – where land is held by a group of people based on their customary beliefs or lifestyle. However, this is limited if the custom conflicts with any principles or provisions of the Constitution.

Functions of the National Land Commission (Article 67)

The functions of the National Land Commission are to:

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

SESSION 4: Environment and Natural Resources

Time: 45 minutes

Session Objectives

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

- a) identify types of natural resources
- b) discuss ways of protecting environment and natural resources
- c) explain the agreements relating to natural resources.

Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen handbook IRI, 2012
- Information, Education and Communication (IEC) materials
- Environmental Management and Coordination Act, 2009
- Other Relevant Acts

Suggested Training Methods

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

Suggested Learning Activities

- i. Prompt the participants to suggest examples of natural resources in Kenya
- ii. Discuss natural resources and their conservation
- iii. Share their experiences in environmental protection.
- iv. Discuss agreements relating to natural resources
- v. Summarize the topic

Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

KEY NOTES

Types of Natural Resources (Article 260)

The Constitution defines Natural resources as the physical and non-human factors and components, whether renewable or non-renewable, including

- sunlight
- water on the surface of the earth and that below it
- forests, animals and plant life (biodiversity) and genetic resources
- rocks, minerals, fossil fuels and other sources of energy e.g. geothermal and hydroelectric power
- The Environmental Management and Coordination Act, 2009 identifies natural resources as air, land, water, animals and plants.

The Constitution states that “land” includes:

- the surface of the earth and the subsurface rock
- any body of water on or under the surface
- marine waters in the territorial sea and exclusive economic zone
- natural resources completely contained on or under the surface; and
- the air space above the surface

Ways of Protecting the Environment and Natural Resources

Land in Kenya is required to be held, used and managed in a manner that is equitable, efficient, productive and sustainable for current and future generations and in particular in the areas of:

- agriculture
- fishing, hunting and gathering;
- protection of animals and wildlife;
- water protection; and
- energy policy

The Cabinet Secretary responsible for the environment and natural resources and other relevant government agencies such as NEMA are required to publish regulations for protection of the environment including:

- Protection of rivers, riverbanks, lake shores, wetlands, exclusive economic zone;
- Protection of the interest of indigenous communities within or around lake; shores, wetlands, coastal zones, river banks or forests;
- Protection of hill tops, hill sides, mountain areas and forests;
- Re-forestation and afforestation of hill tops, hill slopes and mountainous areas.
- Conservation of energy and planting of trees or woodlots;
- Conservation of different species of animals and plants (biological diversity);
- Conservation of naturally occurring resources situated beneath the surface of the earth (biological resources in situ);
- Conservation of naturally occurring resources situated above the surface of the earth (biological resources ex-situ);
- Protection of the coastal zone;
- Protection of the ozone layer;
- Ensure access to genetic resources of Kenya by issuing guidelines and prescribing measures for their sustainable management and utilization.

Agreements Relating to Natural Resources

According to the Constitution the government may enter into an agreement with another government, a company or any other entity for the exploitation of any natural resource in Kenya. Where the agreement involves the granting of a right or concession by or on behalf of any person, the government is required to consult the National Environmental Management Authority (NEMA) and that agreement must receive the approval of Parliament. NEMA is also required to keep a register of all international treaties, agreements or conventions in the field of the environment to which Kenya is a party.

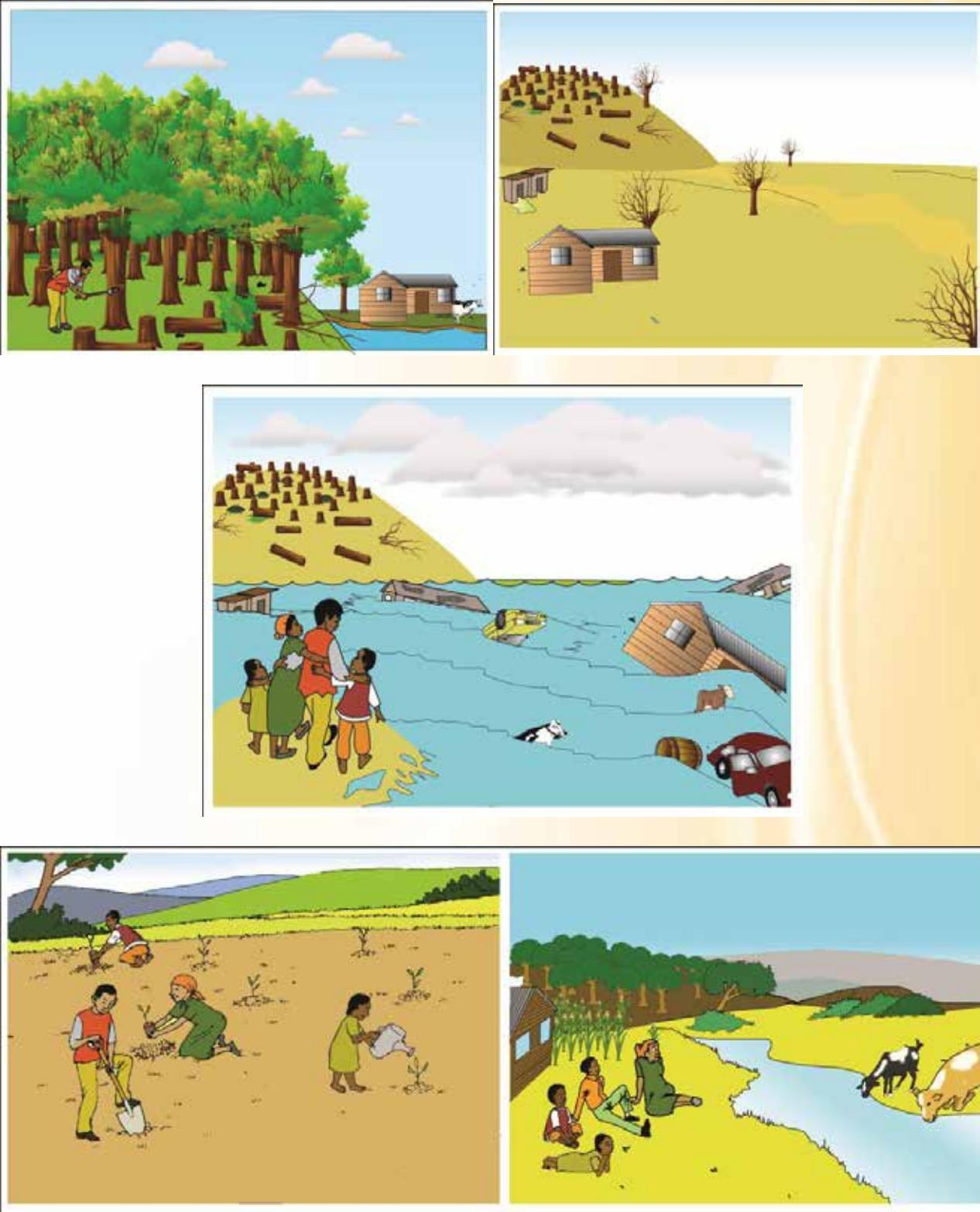


Figure 4:

SESSION 5: Principles of Leadership and Integrity

Time: 45 Minutes

Session Objectives

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

- a) discuss the national values and principles of governance under the Constitution;
- b) state the guiding principles of leadership and integrity under the Constitution;
- c) discuss the conduct of state and public officers as stipulated by the Constitution of Kenya;
- d) Discuss the function of the Ethics and Anti-Corruption Commission (EACC) in implementing Chapter Six of the Constitution.

Suggested Learning Resources

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

Suggested Training Methods

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

Suggested Learning Activities

- i. Distinguish between State and Public Officers
- ii. Discuss the principles of leadership and integrity and show the linkage to Article 10, National Values and Principles of Governance
- iii. Role play on the principles of leadership and integrity
- iv. Summarize the topic

Suggested Assessment Methods

- Question and answer
- Observation on active participation in discussions

KEY NOTES

The Guiding Principles of Leadership and Integrity (Chapter Six of the Constitution, 2010)

a) Patriotism

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

b) National unity

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

c) Sharing and Devolution of power

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

d) The rule of law

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

e) Democracy and public participation

Democracy is a legislative system in which all citizens participate directly or indirectly in governance of their country.

f) Human dignity

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

g) Equity

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

unjustified preference.

h) Social justice

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

i) Inclusiveness

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

j) Equality

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

k) Human Rights

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

l) Non-discrimination

Non-discrimination refers to fairness in treating people without prejudice irrespective of their gender, ethnicity, class, religion, race, geographical or even generational differences.

m) Protection of the Marginalized

Marginalization is the social process of becoming or being relegated or confined to a lower social standing. The Constitution provides for inclusiveness; that no individual or community should be discriminated against or marginalized.

n) Good governance

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

o) Integrity

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

p) Transparency and accountability

Transparency can be defined as openness in the management of public affairs. Public accountability means the obligations of persons or authorities entrusted with public resources to report on the management of such resources and be answerable to the public

q) Sustainable Development

Sustainable development may be defined as a pattern of resource use that aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come. It may further be described as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

Guiding principles of leadership and integrity

The guiding principles of leadership and integrity include

- i. selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- ii. objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
- iii. selfless service based solely on the public interest, demonstrated by;
 - a. honesty in the execution of public duties; and
 - b. the declaration of any personal interest that may conflict with public duties;
- iv. accountability to the public for decisions and actions; and
- v. discipline and commitment in service to the people.

The conduct of state and public officers as stipulated by the Constitution

- (a) In conducting their duties, state and public officers must:
- act in accordance with the law
 - treat members of the public and other public officers with courtesy and respect
 - exercise their power in the best interest of the people of Kenya
 - take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge

of the duties of the office

- carry out the duties of their office efficiently, honestly, transparently and in an accountable manner;
- keep accurate records and documents relating to the functions of the office;
- report truthfully on all matters of the organization which they represent
- carry out the duties of the office in a manner that maintains public confidence in the integrity of the office;
- maintain high standards of performance and level of professionalism within the organisation; and
- observe and subscribe to the ethical and professional requirements of any professional body they are members of

(b) State and public officers must avoid—

- Having any conflict between personal interests and public or official duties
- demeaning the office that officer holds
- engaging in activities that amount to abuse of office;
- using their office to unlawfully or wrongfully enrich themselves or any other person
- discriminating against any person
- misusing public resources;
- falsifying any records;
- engaging in wrongful conduct in furtherance of personal benefit
- committing criminal offences
- engaging in actions which would lead to their removal from the membership of a professional body
- violating the rights and fundamental freedoms of any person



Figure 5: Traffic Police officer refusing a bribe

Role of the Ethics and Anti-Corruption Commission (EACC) in implementing Chapter Six of the Constitution

In relation to state and public officers the Ethics and Anti-Corruption Commission has the following functions:

- i. develop and promote standards and best practices in integrity and anti- corruption;
- ii. develop a code of ethics
- iii. work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
- iv. receive complaints on the breach of the code of ethics by state and public officers;
- v. investigate and recommend to the Director of Public Prosecutions any acts of corruption or violation of codes of ethics or other matter prescribed under the Ethics and Anti-Corruption Commission Act, 2012 or any other law enacted pursuant to Chapter Six of the Constitution
- vi. recommend appropriate action to be taken against State or public officers alleged to have engaged in unethical conduct;
- vii. oversee the enforcement of codes of ethics prescribed for public officers;
- viii. advise, on its own initiative, any person on any matter within its functions;
- ix. raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 as to confidentiality;

- x. monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and
- xi. institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

UNIT 3: REPRESENTATION OF THE PEOPLE

Time: 3 Hours

Introduction

Representation refers to both the process of electing leaders by the citizens and the system of leadership. Sovereign power is delegated to Parliament and Legislative Assemblies in County Governments; National Executive and executive structures in the County Governments, the Judiciary and other Independent Tribunals.

SESSION 1: Key Provisions on Elections in Kenya

Time: 20 Minutes

Session Objectives

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

- a) identify key provisions on elections in Kenya
- b) explain the importance of elections in Kenya

Suggested Learning Resources

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

Suggested Training Methods

- Brainstorming
- Group discussion
- Role-play

Suggested Learning Activities

- i. Discussion on major provisions on elections in Kenya
- ii. Brainstorm on the Importance of elections in Kenya
- iii. Share experiences on elections in Kenya
- iv. Role-playing on issues which contradict the provisions of elections
- iv. Summarize the session

Suggested Assessment Methods

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

KEY NOTES

Key provisions on elections

- **Code of Conduct** – The Constitution provides for a code of conduct by which political parties, their nominees, independent candidates and the general public must comply with. The Code of Conduct is found in the Second Schedule of the Elections Act, 2011.
- **Voter registration** – The Constitution provides for qualifications for registering as a voter at elections and referenda. These include attainment of eighteen years of age and being in possession of a national identity card or Kenyan passport at the time of registration, being of sound mind, and not being convicted of an election offence during the previous five years.
- An eligible voter may only register at one registration centre and the registration process should not prevent eligible citizens from registering. Part 2 of the Elections Act, 2011 provides in-depth requirements regarding voter registration. It also provides for the rights of a voter.
- **Recall of a Member of Parliament**– Article 104 (1) provides a voter the right to recall a member of parliament representing their constituency or county before the end of their

term. The Elections Act, 2011, provides that a Member may be recalled when he/she is found, after due process of the law, to have violated Chapter Six of the Constitution (Leadership and Integrity), mismanaged public resources, or been convicted of an offence under the Elections Act, 2011. A recall can only occur 24 months after the election and no later than 12 months immediately before the next general election.

- **Independent Candidate** – A person does not have to be a member of a political

party in order to be a candidate for one of the six elective positions. According to Article 85 of the Constitution, any person may contest elections as an independent candidate if he or she is not a member of a registered political party and has not been a member for at least three months immediately before Election Day. A person must also satisfy the specific nomination requirements for independent candidates for election to the National Assembly, Senate or to one of the 47 County Assemblies.

- **Voting, vote counting and results** – IEBC is responsible for ensuring that the

voting method used during every election is simple, accurate, verifiable, secure, accountable, and transparent. Moreover, the Commission is responsible for implementing structures to prevent electoral malpractice and to ensure that each polling station promptly counts and tabulates votes and announces the provisional election results.

- **Allocation of party list seats** –The allocation of party list seats uses a proportional system outlined in Article 90 of the Constitution, which stipulates that the nominated seats in the National Assembly, Senate, and the 47 county assemblies are determined through nomination by party lists submitted to IEBC before a general election.

- **Electoral disputes** – Article 87 of the Constitution requires the quick and just resolution of disputes and allows citizens to petition the court in dispute of the results within 28 days of their declaration by IEBC. Presidential election disputes must be filed within seven days.

Importance of Elections in Kenya

- Provides an opportunity for citizen to choose their leaders
- Allows for political participation by citizens
- Enables people to exercise their democratic right
- Provides for self-corrective system where political parties are kept in check or review their performance

SESSION 2: Functions of independent Electoral and Boundaries Commission (IEBC)

Time: 20 Minutes

Session Objective

By the end of the session, the participant should be able to state the functions of Independent Electoral and Boundaries Commission (IEBC)

Suggested Learning Resources

- The Constitution of Kenya, 2010
- Citizen Handbook Uraia/IRI, 2012
- Information, Education and Communication (IEC) materials
- Independent Electoral and Boundaries Act, 2012
- Other Relevant Acts

Suggested Training Methods

- Brainstorming
- Discussion

Suggested Learning Activities

- i. Discussion on the functions of the IEBC
- ii. Summation of session

Suggested Assessment Methods

- Question and answer
- Observation on participation in discussions

KEY NOTES

Functions of IEBC

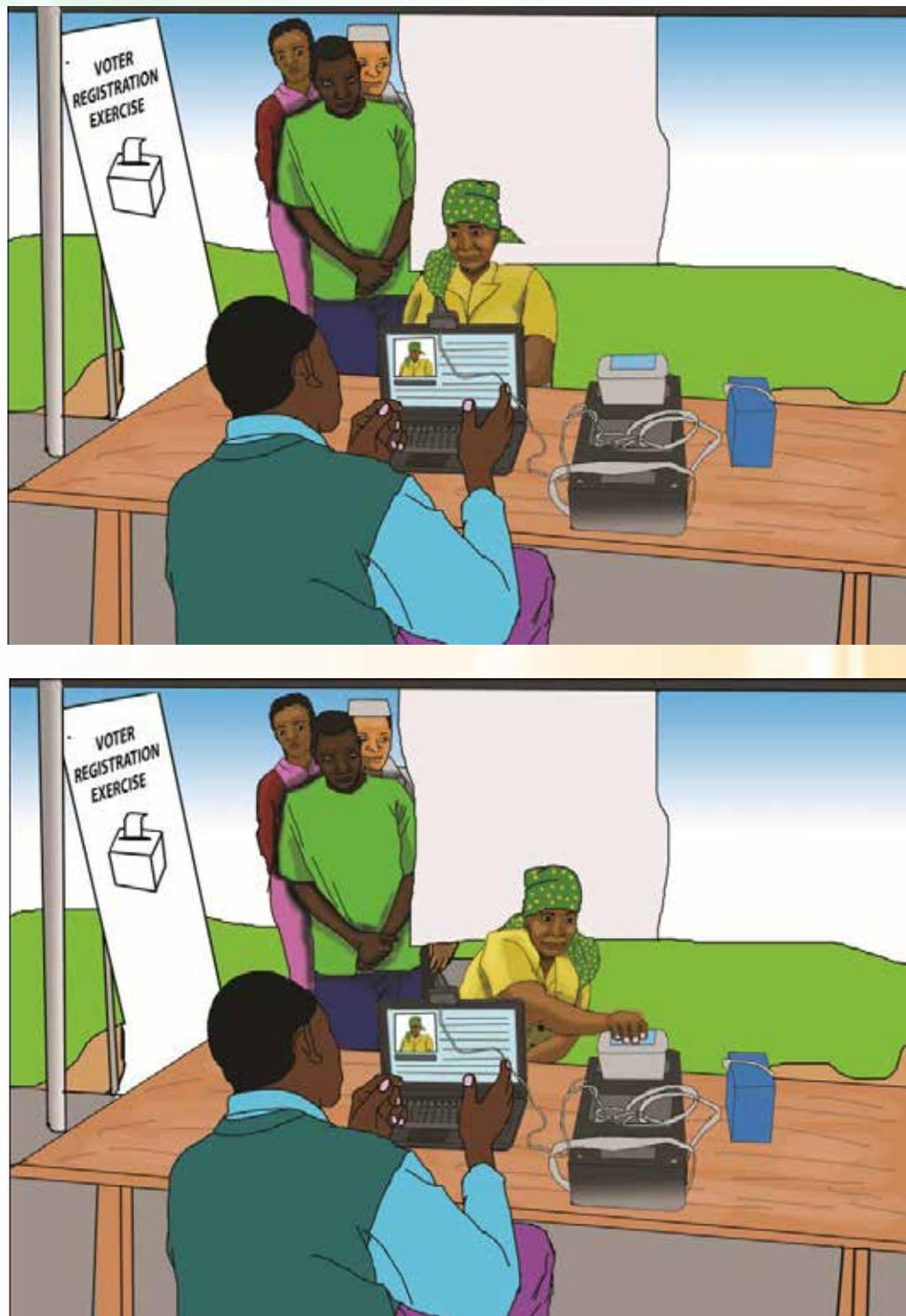


Figure 6: Voter registration process

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

The mandate of the IEBC is to carry out:

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

SESSION 3: Electoral system and Process in Kenya

Time: 40 Minutes

Session Objectives

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

- a) state the constitutional principles of the electoral system in Kenya. b) identify the elective positions in Kenya
- c) explain the electoral process in Kenya.
- d) describe ways of winning an elections in Kenya
- e) describe the roles, rights and privileges of election observers.

Suggested learning Resources

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

Suggested Training Methods

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

Suggested Learning Activities

- i. Discussion on the constitutional principles of the electoral system in Kenya
- ii. Brainstorm on the roles and rights of the election observers
- iii. Discuss the principles of the electoral system
- iv. Role-play the voting process.
- v. Explain ways of winning an election
- vi. Summation of session

Suggested Assessment Methods

- Question and answer
- Observation on participation in discussions and role play

KEY NOTES

Constitutional principles of the electoral system in Kenya

The electoral system is required to comply with the following principles:

- (a) All Kenyan citizens must be allowed and encouraged to freely exercise their political rights under Article 38

- (b) Participation of both men and women by ensuring that no more than two-thirds of the members of any elective public bodies shall be of the same gender;
- (c) Fair representation of persons with disabilities
- (d) Universal suffrage based on the aspiration for fair representation and equality of vote
- (e) Free and fair elections, which are:
 - (i) by secret ballot
 - (ii) free from violence, intimidation, improper influence or corruption
 - (iii) conducted by an independent body
 - (iv) transparent
 - (v) administered in an impartial, neutral, efficient, accurate and accountable manner.

Overview of Elective positions

There are six elective positions in Kenya as follows:

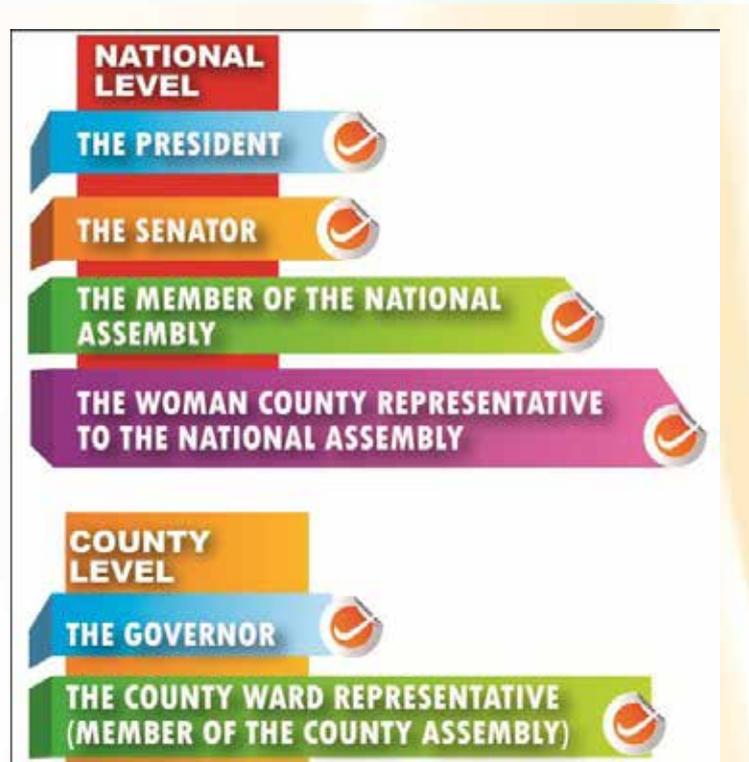


Figure 7: Elective posts



Figure 8: Elections in progress

The Electoral Process in Kenya

Presidential Election

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

Parliamentary Election

- The IEBC initiates a parliamentary election by publishing a notice in the Gazette as well as in the print and electronic media of national circulation
- The notice must be published at least sixty days before the date of a general election
- A notice of a by-election is made upon the office of a member of parliament becoming vacant
- The speaker of the respective Houses must notify the Commission of the vacancy.

County Governor Elections

Format and Content of the Notice

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

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

Winning elections in Kenya

- **Plurality:** This is the method used in determining a winner whereby the candidate with the most number of votes wins. This applies to all elective positions, except for the position of president.
- **Absolute majority:** This is the method whereby the winning candidate must

garner at least more than the half (50% +1) of all valid votes cast. In addition, the winning candidate must also receive at least twenty five percent (25%) of all valid votes cast in more than half of all the Counties. This method is used in the election of the President

- **Proportional formula:** This is done by use of party lists. The Independent

Electoral and Boundaries Commission is responsible for the conduct and supervision of elections for these seats. Each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled to all the Nomination seats in National Assembly, Senate and the County Assemblies. Each party list comprises the appropriate number of qualified candidates and alternates

between male and female candidates in the priority in which they are listed;

and except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya. The seats mentioned are allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

The role, rights and privileges of election observers

Election observation is the process of gathering information related to the electoral process in a systematic way and the issuing of reports and evaluations on the conduct of electoral processes based on information gathered by the accredited observers without interference in the process itself.

An election observer is accredited by the IEBC.

The Roles of Observers are to:

- i. Promote free and fair elections
- ii. Identify electoral malpractices and bring them to the attention of the electoral body
- iii. Compile and write reports on electoral malpractices in a political electoral unit;
- iv. Pursue corrective action to electoral malpractices
- v. Bolster voter confidence
- vi. Act as a deterrent to those interested in undermining the electoral system and process
- vii. Influence policy making by the IEBC on the unique nature of the electoral process.

Rights and privileges of election observers

- Access to polling stations, counting venues and the IEBC national and local offices;
- Obtain official information about the country and the election from all election officials as long as the information is factual, public and within the official's knowledge;
- Attend meetings convened for the briefing of election observers or for any other purpose;
- Receive co-operation from all election officials within the law;
- Communicate with any person inside the polling station (other than a voter) with the permission of the Presiding Officer in a manner that does not interfere with the flow of the polling Speak or communicate with any person at any place outside the polling station;

SESSION 4: Political Parties and Electoral Offences

Time: 40 Minutes

Session Objectives

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

- a) discuss the Electoral offences and punishment as outlined in the Elections Act, 2011.
- b) explain key provisions in the Elections Campaign Financing Act 2013

- c) discuss the roles and features of political parties as outlined in the Constitution of Kenya and Political Parties Act, 2011.
- d) describe the process of party nomination and dispute resolution

Suggested Learning Resources

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

Suggested Training Methods

- Brainstorming
- Group Discussion

Suggested Learning Activities

- i. Discussion on roles and features of political parties
- ii. Explanations on the process of party nominations
- iii. Explain key provisions of campaign Financing Act, 2013
- iv. Discussion on the electoral offenses, punishment and dispute resolution. v. Summation of session

Suggested Assessment Methods

- Question and answer
- Observation on participation in discussions

KEY NOTES

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

1. **Offences relating to register of voters** for example registering using falsified documents and use of a deceased person's documents. A person who commits offences relating to register of voters is liable, on conviction, to a fine not exceeding one million Kenya Shillings and to imprisonment for a term not exceeding six years or both.

2. **Offences relating to multiple registrations as a voter.** A person who commits the offence is liable, on conviction, to a fine not exceeding one hundred thousand Kenya Shillings or to imprisonment for a term not exceeding one year or both.
3. **Offences relating to voting** for example double/multiple voting and pretence on ground of disability or illiteracy so as to be assisted in voting. A person who commits the offence is liable, on conviction, to a fine not exceeding one million Kenya Shillings or to imprisonment for a term not exceeding six years or both.
4. **Offences by members and staff of the IEBC (including officers engaged for a particular election)** such as bias in the dispensation of duty and falsification of election documents. A person who commits the offence is liable, on conviction, to a fine not exceeding one million Kenya shillings or to imprisonment for a term not exceeding three years or to both.
5. **Offences relating to maintenance of secrecy at elections.** A person who contravenes the provisions of this section commits an offence and is liable on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.
6. **Personation, treating, undue influence, bribery and use of force or violence during election period.** A person who commits any of the offences is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.
7. **Use of national security organs** A candidate, or any other person who uses a public officer, or the national security organs to induce or compel any person



Figure 9: Bribery and undue force is an election offense

to support a particular candidate or political party commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding six years or to both.

Key provisions of the Election Campaign Financing Act 2013:

• Sources of campaign funds

The sources of funds for purposes of financing party nomination, election or referendum campaign are;

- a) contributions received from any person, political party or any other lawful source;
- b) contributions from a lawful source, not being directly from a foreign
- c) government;
- d) contributions from a harambee.

• Limits to expenditure

- o The IEBC shall, at least twelve months before an election, by notice in the Gazette, prescribe the spending limits. This may include limits on media coverage.
- o Any contribution from a person, organisation or any other lawful source to a campaign financing account shall not exceed the limit of the total contribution prescribed. However, a candidate's contribution to their own campaign financing account is limitless.
- o The IEBC shall, in prescribing spending limits take into consideration
 - geographical features and urban centres;
 - the type of election;
 - the population in an electoral area;
 - the number of party members in an electoral area. This does not apply to independent candidates.
 - the communication infrastructure in an electoral area
- o Where a candidate, political party or a referendum committee exceeds the spending limits prescribed due to unforeseeable and extraneous circumstances, the candidate, political party or referendum committee shall file a report with IEBC specifying the reasons for exceeding the limit, within such time as the Commission may prescribe and the Commission shall determine if such spending was justifiable.
- o A candidate who, or a political party or referendum committee which, exceeds the prescribed spending limits and fails to report this fact to IEBC commits an offence.

Features and roles of political parties as outlined in the Constitution of Kenya and Political Parties Act, 2011

Features of Political Parties

Political Parties in Kenya are registered by the Registrar of Political Parties. For a political party to be registered it has to satisfy the requirements stipulated by the Constitution and the Political Parties Act, 2011. The Constitution states that every political party shall:

- a) have a national character as prescribed by an Act of Parliament;
- b) have a democratically elected governing body;
- c) promote and uphold national unity;
- d) abide by the democratic principles of good governance, promote and practise democracy through regular, fair and free elections within the party;
- e) respect the right of all persons to participate in the political process, including minorities and marginalised groups;
- f) respect and promote human rights and fundamental freedoms, and Gender equality and equity;
- g) promote the objects and principles of the Constitution and the rule of law; and h) subscribe to and observe the code of conduct for political parties.

The Political Parties Act requires that for any political party to be fully registered, the party shall;

- a) apply in writing and the application signed by an authorized official of the political party;
- b) recruit as members, not fewer than one thousand registered voters from each of more than half of the counties
- c) ensure that membership reflects regional and ethnic diversity, gender balance and representation of minorities and marginalised groups
- d) have the composition of its governing body reflecting regional and ethnic diversity, gender balance and representation of minorities and marginalised groups
- e) have not more than two-thirds of the members of its governing body being of the same gender
- f) demonstrate that members of its governing body meet the requirements of

Chapter Six of the Constitution and the laws relating to ethics;

- g) have submitted to the Registrar;
 - i. a list of the names, addresses and identification particulars of all its members;
 - ii. the location of its head office, which shall be a registered office within Kenya and a postal address to which notices and other communication may be sent;

- iii. the location and addresses of the branch offices of the political party, which shall be in more than half of the counties;
- h) undertake to be bound by the Political Parties Act, 2011 and the Code of Conduct set out in the First Schedule of the act

Roles of Political Parties

- i. Promote freedom of association that allows people to belong to a political party of their choice
- ii. Provide an alternative government in situations where the ruling party fails to meet the needs of the people
- iii. Educate 'Wananchi' on national issues and the problems facing the country and the solutions to the problems
- iv. Encourage the respect of Human Rights and opposition parties as they act as people's representatives
- v. Make change of government orderly and lawful.
- vi. Promote democracy in governance

Legal Limits of a Political Party

Article 91 (2) prohibits political parties from:

- being founded on religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred;
- engaging in or encourage violence by, or intimidation of, its members, supporters and opponents;
- establishing or maintain a paramilitary force, militia or similar organization;
- engaging in bribery or other forms of corruption;
- accepting or use public resources to promote its interests or its candidates in elections, except where allowed under the constitution or by statute

The process of party nomination and dispute resolution

Political parties are required by the Elections Act to nominate their candidates for an election at least forty-five days before a general election and in accordance with its Constitution and nomination rules.

A political party is not allowed to change the candidate nominated after the nomination of that person has been received by the Commission. If a candidate dies, resigns, becomes incapacitated or violates the electoral code of conduct, the nominating party can substitute that nominee by notifying the IEBC. In such a case, the party must first notify the nominee of

the intention to substitute them.

Dispute Resolution Mechanisms

- Dispute resolution is the process of resolving disputes between a member of a party and the party.
- Common election disputes are disputes relating to or arising from nominations.
- IEBC is mandated to resolve all electoral disputes, including disputes relating to or arising from nominations but is excluded from settlement of election petitions and disputes subsequent to the declaration of election results which is a preserve of the Courts.
- An electoral dispute shall be determined within seven (7) days of the lodging of the dispute with IEBC.

SESSION 5: Process of Recall and Impeachment

Time: 20 Minutes

Session Objective

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

Suggested Learning Resources

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

Suggested Training Methods

- Brainstorming
- Lecture

Suggested Learning Activities

- i. Brainstorm on the difference of recall and impeachment
- ii. Discuss the process of recall and impeachment
- iii. Summation of session

Suggested Assessment Methods

- Question and answer
- Observation on participation in discussions

KEY NOTES

The process of recall and impeachment for MPs and member of the County Assembly

| Member of Parliament, Woman Representative or Senator: (Elections Act) | Member of County Assembly: (County Governments Act) |
|---|--|
| <ol style="list-style-type: none">i. The electorate in a county or constituency, except an unsuccessful candidate in a general or by election, have a right to recall their Member of Parliament before the end of the term of the relevant House of Parliament. A recall motion may be initiated two years after the general elections or when the member was first elected to Parliament and not later than twelve (12) months/one year before the next general elections.ii. A member of Parliament may be recalled on any of the following grounds:—<ul style="list-style-type: none">• is found to have violated the provisions of Chapter Six of the Constitution; | <ul style="list-style-type: none">• The electorate in a ward, except an unsuccessful candidate in a general or by election, have a right to recall their Member of County Assembly before the end of the term of the relevant Assembly. A recall motion may be initiated two years after the general elections or when the member was first elected to the County Assembly Parliament and not later than twelve (12) months/one year before the next general elections.• A member of the County Assembly may be recalled on any of the following grounds:—<ol style="list-style-type: none">i. is found to have violated the provisions of Chapter Six of the Constitution; |

- is found to have mismanaged public resources;
- is convicted of an offence under the Elections Act

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

Petition:

iii. A recall is initiated by a petition in writing which is to be filed with the IEBC and which cannot be filed more than once against a member of Parliament during their term. The petition must be:

- signed by a petitioner who—
 - i. is a voter in the constituency or county in respect of which the recall is sought; and
 - ii. was registered to vote in the election in respect of which the recall is sought;
- accompanied by an order of the High Court
- must specify the grounds for the recall;
- contain a list of at least thirty percent of the registered voters in the constituency or county and at least fifteen percent of the voters in more than half of the wards in the county or the constituency, as appropriate who support the petition including their names, address,, national identity card or passport number and signatures;
- iv. The petitioner must collect and submit to the IEBC the list of names within a period of thirty days after filing the petition

ii. is found to have mismanaged public resources;

iii. is convicted of an offence under the Elections Act.

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

Petition:

• A recall is initiated by a petition in writing which is to be filed with the IEBC and which cannot be filed more than once against a member of the County Assembly during their term. The petition must be:

- signed by a petitioner who—
 - i. is a voter in the Ward in respect of which the recall is sought; and
 - ii. was registered to vote in the election in respect of which the recall is sought;
- accompanied by an order of the High Court.
- must specify the grounds for the recall;
- contain a list of at least thirty percent of the registered voters in the Ward who support the petition including their names, address, national identity card or passport number and signatures;
- The petitioner must collect and submit to the IEBC the list of names within a period of thirty days after filing the petition
- The voters supporting the petition should represent the diversity of the people in the

- The voters supporting the petition should represent the diversity of the people in the county or the constituency; and

- v. The petition must be accompanied by the fee prescribed for an election petition.

Notification to Speaker:

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

- vii. The Commission, if satisfied that the requirements are met, must issue a notice of the recall to the Speaker of the National Assembly or Senate within fifteen days after the verification,

Framing of Question:

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

Conduct of Recall Election:

- ix. The Commission shall conduct a recall election within the relevant constituency or county within ninety days of the publication of the question.

- x. The voting at the recall election shall be by secret ballot and decided by a simple majority of the voters in the recall election.

- xi. A recall election must be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected county or constituency

ward; and

- The petition must be accompanied by the fee prescribed for an election petition.

Notification to Speaker:

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

- The Commission, if satisfied that the requirements are met, must issue a notice of the recall to the Speaker of the County Assembly within fifteen days after the verification,

Framing of Question:

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

Conduct of Recall Election:

- The Commission shall conduct a recall election within the ward within ninety days of the publication of the question.

- The voting at the recall election must be by secret ballot and decided by a simple majority of the voters in the recall election.

- A recall election shall be valid if the number of voters who concur in the recall election is at least fifty percent of the total number of registered voters in the affected ward.

Conduct of By-election:

- If a recall election results in the removal of a Member of County Assembly, the Commission shall

Conduct of By-election:

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

conduct a by- election in the affected Ward and the Member of County Assembly who has been recalled may run for re-election.

| Impeachment or Removal of the President | Impeachment or Removal of the Governor |
|--|---|
| <p>i. A member of the National Assembly can move a motion for the impeachment of the President. The motion must be supported by at least a third of all the members. This motion must allege any of the following offences:</p> <ul style="list-style-type: none"> • Gross violation of the Constitution or any other law; • Where the President has committed a crime under national or international law; or • for gross misconduct. <p>ii. The motion must be supported by at least two-thirds of all the members of the National Assembly by voting on the floor of Parliament.</p> <p>iii. If it receives the two-thirds support, the Speaker of the National Assembly shall inform the Speaker of the Senate of that resolution within two days. However, while this process is ongoing, the President continues to perform the functions of the office pending the outcome of the proceedings.</p> <p>iv. The Speaker of the Senate must within seven days after receiving notice of the resolution from the Speaker of the National Assembly, convene a meeting of the</p> <p>v. Senate to hear charges against the President.</p> <p>vi. The Senate can appoint a special committee comprising eleven of</p> | <ul style="list-style-type: none"> • A Member of the County Assembly initiates motion by notice to the Speaker. The motion must be supported by at least a third of all the members of the County Assembly. The member then moves a motion for the removal of the Governor under Article 181 of the Constitution. • If the motion is supported by at least two-thirds of all the members of the County Assembly the Speaker of the County Assembly shall inform the Speaker of the Senate within two days; meanwhile the Governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section. • The Speaker of the Senate must convene a meeting of the Senate to hear charges against the Governor within seven days after receiving notice of the resolution from the Speaker of the County Assembly. The Governor has the right to appear and be represented before the special committee during its investigations. • The Senate may appoint a special committee to investigate the matter and it must submit its report to the Senate within ten days on whether it finds the particulars of the allegations against the Governor to have been substantiated. |

its members to investigate the matter.

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

Removal of the President on Grounds of Incapacity

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

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

voting on the floor of Parliament.

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

- If a majority of all the members of the National Assembly vote in favour of ratifying the report, the President ceases to hold office.

MODULE TWO: DEVOLUTION



Introduction

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

General Objectives

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

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

UNIT 1: UNDERSTANDING DEVOLUTION

Time: 3 Hours

Introduction

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

SESSION 1: Kenya's Devolution

Time: 2 Hours

Session Objectives

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

- a) distinguish between decentralization and devolution
- b) discuss the objects and principles of devolution
- c) describe the distinct features of Kenya's devolution.

Suggested Learning Resources

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

Suggested Training Methods

- Explanation
- Discussion
- Buzzing
- Brainstorming

Suggested Learning Activities

- i. Distinguishing between Devolution and Decentralization
- ii. Discussion the objects and principles of devolution
- iii. Brainstorm distinct features of Kenya's devolution
- iv. Summation of the session

Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

KEY NOTES

Difference between Devolution and Decentralization

Devolution is the process that involves the transfer of functions, resources, power and responsibilities from the central government to county governments or other decentralized organs in order to promote participatory democracy and sustainable development for the benefit of all citizens.

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

Objects of Devolution

The primary objectives of devolution of Government are to:

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

Principles of Devolution

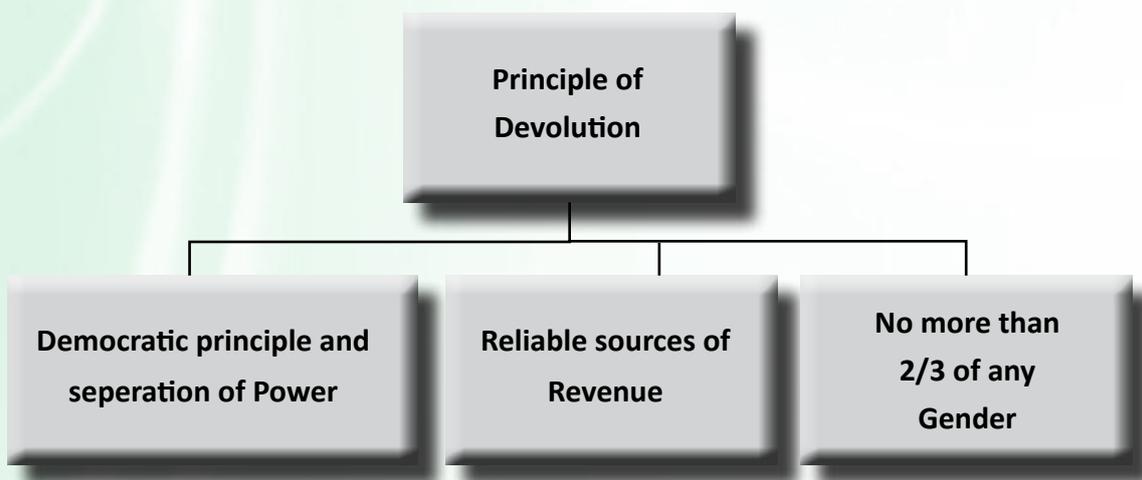


Figure 10. Principles of devolution

County governments shall be based on:

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

Distinct features of Kenya's devolution

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

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

SESSION 2: Kenya's Transition Mechanisms to Devolved Government

Time: 2 Hours

Session Objectives

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

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

Suggested Learning Resources

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

Suggested Training Methods

- Group work
- Sharing experiences

Suggested Learning Activities

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

Suggested Assessment Methods

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

KEY NOTES

Key legislation in transition

Transition mechanisms to devolved government

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

- County governments Act 2012
- Transition to Devolved Government Act 2012

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

Key institutions in transition to devolved government

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

- **Transition Authority (TA)** - It manages the transition to devolved system of government. It is also responsible for facilitating and coordinating the transition. TA also submits monthly reports on the progress in the implementation of the transition to CIC and CRA. Quarterly and annual reports are submitted to parliament and the president

- **Commission for Revenue Allocation (CRA)** - Proposes the equitable sharing of national revenue between the national and the county levels, and between the counties .At least 15% of the revenue collected by the national government will be allocated to county governments.

- **Parliament**

Enacts legislations to and ensure that they are in line with the new constitution. It also allocates budget to both levels of government and oversees the executive in the implementation of programmes and budgets. As an oversight body, it receives reports from Transition Authority on quarterly basis.

- **Commission for implementation of the Constitution (CIC)-** The

commissions functions are to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution .The commission also coordinates with the Attorney general and the Kenya Law reform Commission in preparation of legislation required for the implementation of the Constitution .It also reports regularly to the Constitution implementation oversight committee on its progress. The commission also works with other Constitutional commissions.

- **County Governments:**

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

- **National and County Government Coordination Summit**- This is a body for inter-governmental relations. It reports annually to the National Assembly, the senate and the county assembly within three months after the end of every financial year.

- **Intergovernmental Relations Technical Committee** – It is responsible for the day today administration of the Summit and the Council of Governors .It facilitates the activities of the summit and of the council and also implements the decisions of the Summit and of the council. It also charged with the responsibility of taking over the residential functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity. It convenes meeting of the forty seven county secretaries within 30 days preceding every summit meeting. It may also establish sectoral working groups or committees

Benefits of Devolution

The benefits of devolution are:

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

Challenges to Devolution

The following are some of the challenges facing devolution

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

Possible Solutions to the challenges

The possible solutions to some of the challenges include:-

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



Figure 11: Challenges to devolution

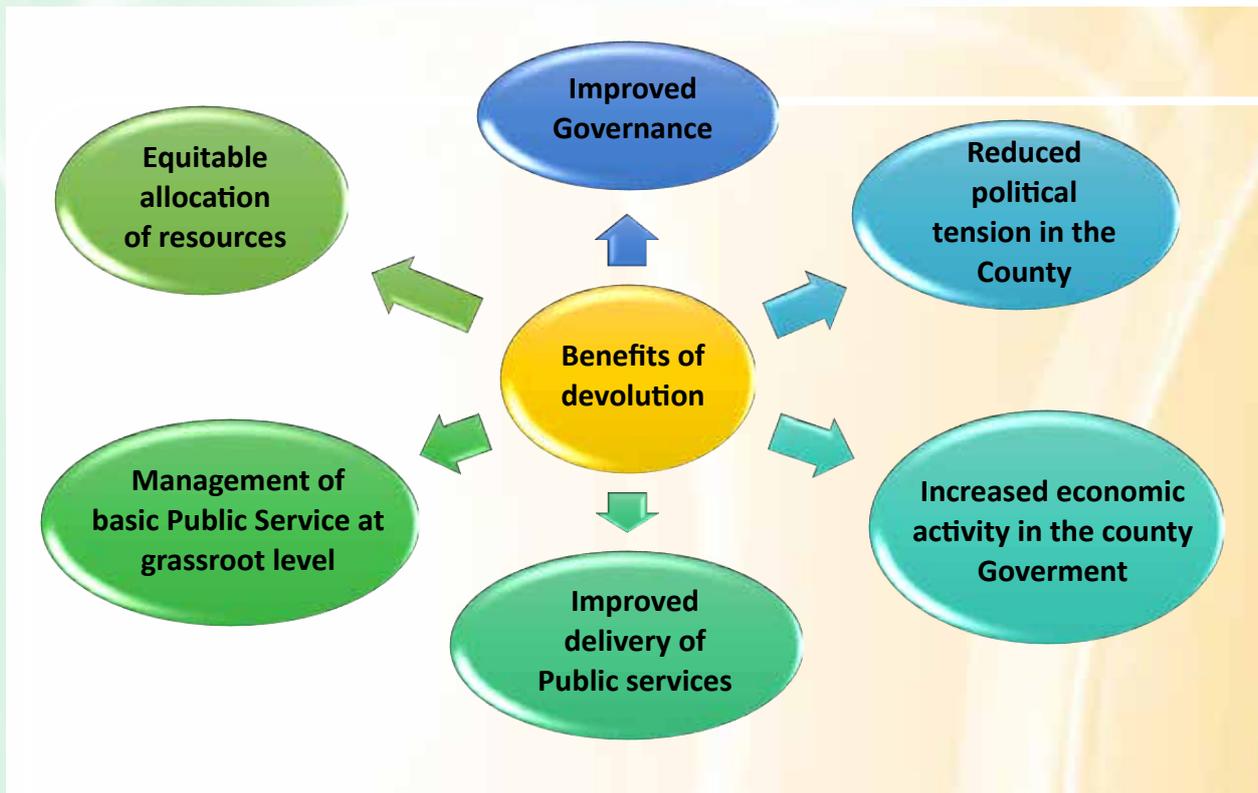


Figure 12: Benefits of devolution

UNIT 2: GOVERNMENT STRUCTURES

Time: 1 Hour

Introduction

This unit covers the structure, composition, functions and powers of National and County governments, decentralized units of County Governments a relationship between national and county governments and roles of the institutions shared between national and county governments.

SESSION 1: National Government

Session Objective

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

Suggested Learning Resources

- Constitution of Kenya, 2010
- Flow Charts on National government structure
- Citizen Handbook, Uraia/IRI (2012).

Suggested Training Methods

- Brainstorming
- Explanation
- Discussion

Suggested Learning Activities

- Brainstorm on the structure, composition, functions and powers of National Government
- Use a flow chart to outline the National Government structures
- Summarize the topic

Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

KEY NOTES Government Structures

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

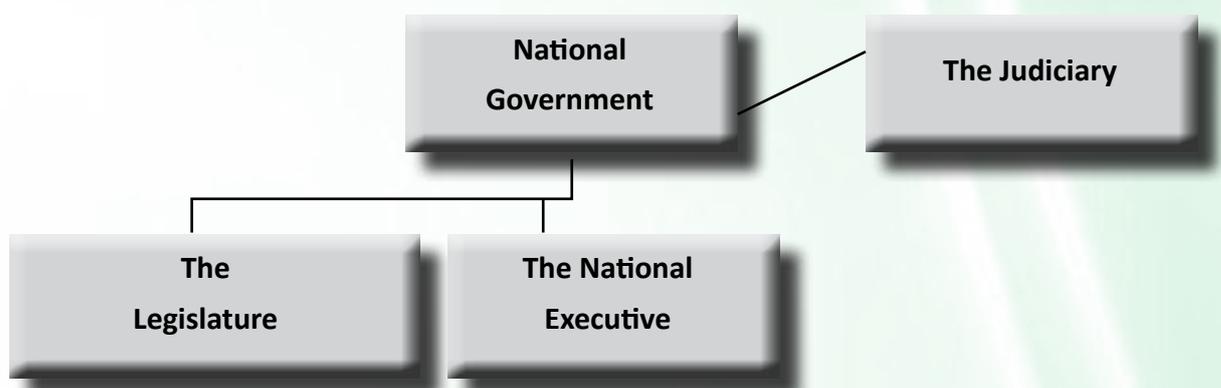


Figure 13: arms of Government

a) **The National Executive**

Principles of Executive Authority (Article 129)

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

The Composition of the National Executive (Article 130)

- The President, the Deputy President and the Cabinet Secretaries.
- The composition of the national executive shall reflect the regional and ethnic diversity of the people of Kenya.

Authority and Functions of the President (Article 131 and 132)

- Commander in Chief of the Kenya Defence Forces
- Chairperson of the National Security Council
- Symbol of National Unity
- Respect, uphold and safeguard the Constitution
- Safeguard the sovereignty of the nation
- Respect the diversity of the people and communities of Kenya
- Protect the Human rights and fundamental freedoms and the rule of law
- Promote and enhance the unity of the nation
- Addressing each newly elected Parliament
- Address a special sitting of Parliament once every year and any other time
- Nominate, appoint and dismiss the cabinet secretaries with approval of the National Assembly, Attorney General, The Secretary to the Cabinet, Principal Secretaries, High Commissioners, Ambassadors, Diplomatic and Consular representatives
- Chair Cabinet meetings, direct and coordinate the functions of ministries and government departments
- Addressing the Nation once every year on all measures taken and progress achieved in the realization of National Values
- Reporting to National Assembly regarding progress in fulfilling International obligations

- Receiving Foreign Diplomatic and Consular Representatives
- Declaring a State of Emergency
- Conferring Honours in the Name of the People and the Republic
- Declaring war with the approval of Parliament.

Functions of the Deputy President (Article 147)

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

The Cabinet (Article 152)

The Cabinet consists of

- The President;
- The Deputy President;
- The Attorney-General and
- Not fewer than 14 and not more than 22 Cabinet Secretaries

b) Legislature (Chapter 8)

National Assembly

Composition of the National Assembly

The National Assembly is made up of 350 members as follows:-

- two hundred and ninety (290) members directly elected from the Constituencies;
- forty seven (47) women members directly elected by each County;
- twelve (12) members to represent special interests including youth, persons with disabilities and workers, nominated by the parties represented in the National Assembly according to the number of votes won; and
- the Speaker of the National Assembly

Role of the National Assembly (Article 95)

They include:

- allocating national revenue between the levels of government
- appropriation of funds for expenditure by the National Government and other national state organs
- oversight over national revenue and its expenditure
- reviewing the conduct in office of the President, the Deputy President and other State officers
- initiating the process of removal of the President, the Deputy President and other State officers
- exercising oversight of State organs
- approving declarations of war and extensions of state of emergency
- vetting and approving persons nominated by the President for appointment to state offices

Composition of the Senate (Article 98)

The Senate is made up of sixty eight (68) members as follows

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

Role of the Senate (Article 96)

The Constitution provides that the Senate:-

- represents and protects the interests of the Counties and their governments;
- participates in the law-making by considering, debating and approving Bills that concerns Counties;
- determines the allocation of national revenue among counties and exercises oversight over national revenue allocated to the county governments; and

- participates in the oversight of State officers by considering and having the final vote on any resolution by the National Assembly to remove the President or the Deputy President from office.

C) The Judiciary

The Judiciary (Article 160)

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

Structure of the Judiciary

The Judiciary consists of:-

- The Chief Justice;
- The Deputy Chief Justice;
- Judges of Superior Courts (the Supreme Court, the Court of Appeal the High Court
- The Chief Registrar - who is the Chief Administrator and Accounting Officer of the Judiciary;
- Magistrates;
- Other judicial officers; and
- Staff

The Judicial Service Commission (JSC) may establish other offices of registrar as may be necessary

The system of courts at the Judiciary consists of:

- The Supreme Court;
- The Court of Appeal;
- The High Court, Land and Environment Court and the Industrial Court; and
- The Subordinate Courts such as the Magistrates Courts, Kadhis and the Courts Martial

Functions of the Judiciary

- The Judiciary interprets the laws
- Arbitrates on disputes between differing sides.

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

Additional Information

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

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

Functions of the National Government as per 4th Schedule of the Constitution

The following are the functions of the National Government as per Schedule 4 of the Constitution

1. Foreign affairs, foreign policy and international trade.
2. The use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. Police services, including—(a) the setting of standards of recruitment, training of police and use of police services; (b) criminal law; and (c) correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.

14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools , special education, secondary schools and special education institutions.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular—
 - (a) road traffic;
 - (b) the construction and operation of national trunk roads;
 - (c) standards for the construction and maintenance of other roads by counties;
 - (d) railways;(e) pipelines;(f) marine navigation;(g) civil aviation;(h) space travel;(i) postal services;(j) telecommunications; and (k) radio and television broadcasting.
19. National public works.
20. Housing policy.
21. General principles of land planning and the co-ordination of planning by the counties.
22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular— (a) fishing, hunting and gathering; (b) protection of animals and wildlife; (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and (d) energy policy.
23. National referral health facilities.
24. Disaster management.
25. Ancient and historical monuments of national importance.
26. National elections.
28. Health policy.
29. Agricultural policy.
30. Veterinary policy.
31. Energy policy including electricity and gas reticulation and energy regulation.
32. Capacity building and technical assistance to the counties.

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

SESSION 2: County Governments

Time: 1 Hour

Session Objectives

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

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

Suggested Learning Resources

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

Suggested Training Methods

- Discussion
- Question and answer

Suggested Learning Activities

- i. Describe the structure, composition, functions and powers of county governments
- ii. Summarizes the topic

Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

KEY NOTES

Structure of County Governments

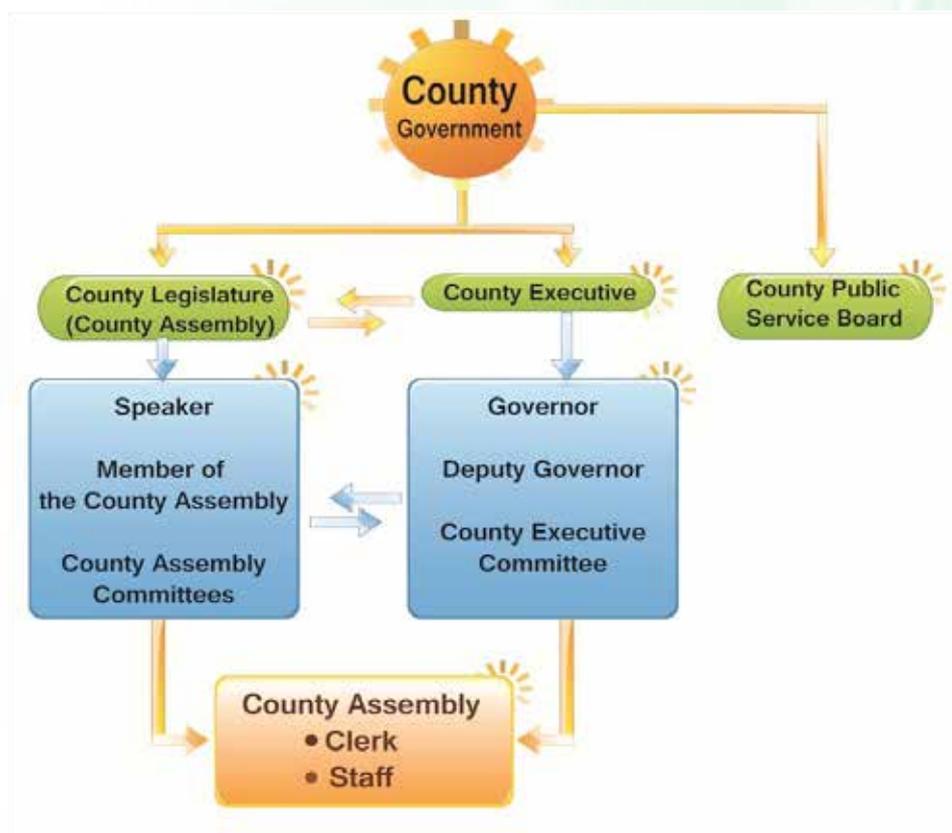


Figure 14: Composition and Functions of County Assembly

County Government Structure

The County Governments consist of the County Assembly and a County Executive. The County Assembly consists of members elected by the registered voters in the wards.

- Membership of the County Assembly should ensure that no more than two thirds are of the same gender.
- Marginalized groups including people with disabilities and the youth should be considered as prescribed by the Elections Act, 2011.
- The speaker is an ex-officio member. The Speaker will be elected by the County Assembly from among members who are not members of the assembly. The county assembly operates in a term of five years.

THE COUNTY ASSEMBLY

The County Assembly is the organ in which elected county leaders sit and make laws.

A county assembly consists of:-

- (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year;
- (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly
- (c) the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and
- (d) the Speaker, who is an ex officio member.

(1) The county assembly shall —

- (a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;
- (b) perform the roles set out under Article 185 of the Constitution;
- (c) approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220 (2) of the Constitution, guided by Articles 201 and 203 of the Constitution;
- (d) approve the borrowing by the county government in accordance with Article 212 of the Constitution;
- (e) approve county development planning; and
- (f) perform any other role as may be set out under the Constitution or legislation.

County Executive Committee

The Executive Authority of the County is exercised by the county executive committee. The Executive Committee consists of:

- County Governor
- Deputy County Governor
- Members appointed by the County Governor with the approval of the county assembly. They are not members of the County Assembly.

The number of members in the committee shall not exceed one third or more than ten of the members in the county assembly. The County Executive Committee is accountable to the county governor.

Functions of the County Executive Committee are as follows:

- (a) implement county legislation;
 - (b) implement, within the county, national legislation to the extent that the legislation so requires;
 - (c) manage and coordinate the functions of the county administration and its departments; and
 - (d) perform any other functions conferred on it by this Constitution or national legislation.
- (2) A county executive committee may prepare proposed legislation for consideration by the county assembly.
 - (3) The county executive committee shall provide the county assembly with full and regular reports on matters relating to the county.

Decentralized units of the County Governments

The decentralized units of the County Governments are as follows:

- Urban areas and cities
- Sub- counties
- Wards
- Village units
- Other units (Counties may establish smaller units)

Functions of County Governments

The Constitution of Kenya 2010 has provided for 47 counties in the country. County governments as stipulated in the fourth schedule are in charge of the following areas:



Figure 15: levels of decentralization

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

SESSION 3: Relationship between National and County Governments

Time: 30 Minutes

Session Objectives

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

- a) discuss the relationship between National and County Governments
- b) the roles and responsibilities of shared institutions between national and county governments
- c) explain National Government coordination structures at county level.

Suggested Learning Resources

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

Suggested Training Methods

- Brainstorming
- Discussion

Suggested Learning Activities

- i. Brainstorm on the relationship between the National and County Governments
- ii. Discussion on the role and responsibilities of the institutions shared between National and County Governments
- iii. Summation of session

Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

KEY NOTES

Relationship between National and County Governments

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

- Exercise their powers while respecting the functional integrity and the status of each level.
- Liaising with each other to exchange information, coordinate policies and administration and enhance capacity. They may also set up joint committees and authorities.
- Cooperating in the performance of functions and exercise of powers
- Providing procedures for settling intergovernmental disputes.

Roles and responsibilities of shared institutions between national and county governments

National Government Coordination Structures at County level.

The following are the National Government Coordination structures at County level.

- County Commissioner in respect of every county
- Deputy-County Commissioner in respect of every sub-county
- Assistant Deputy Commissioner in respect of every ward
- Chief in respect of every location



Figure 16: National Government Coordination at County Level

- Assistant Chief in charge of every sub-location.

Roles of Constitutional Commissions and Independent Offices

The Human Rights Commissions

The Kenya National Commission on Human rights (Article 59)

The functions of the Commission are to:

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

National Gender and Equality Commission

The functions of the Commission include to:

- Promote gender equality and freedom from discrimination
- Monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions
- Act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children
- Co-Ordinate and facilitate mainstreaming of issues of gender persons with disability and other marginalized groups in national development and to advise the government on all aspects thereof
- Monitor, facilitate and advise on the development of affirmative action

implementation policies as contemplated in the Constitution

- Work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws
- Co-ordinate and advice on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination.

The Commission on Administrative Justice

The functions of the Commission are to:

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

Other Shared Institutions

- Independent and Electorate and Boundaries Commission (**IEBC**) (**See Module 1: Unit 3: Session 2)(Article 88)**
- Judiciary (**See Module 2: Unit 2: session 1)(Article 71)**
- Parliament (**See Module 2: Unit 2: session 1)**

Ethics and Anticorruption Commission (EACC) (Article 79)

The key function of this Commission is to ensure that there is compliance by all public officers as required by Chapter Six of the Constitution. The specific functions of the commission include:

- enact legislation on enforcement of professional standards;
- develop and enforce codes of conduct and ethics for various categories of State officers;
- implement mechanisms to ensure accountability, transparency, responsibility, uniformity, and responsiveness by State Officers;
- conduct lifestyle audits for State Officers;
- implement transparent and effective conflict-of-interest guidelines for State Officers;
- enter into Integrity pacts at the personal and institutional levels;
- operationalize information disclosure mechanisms in State offices;
- institute civil society oversight instruments towards State offices;
- institutionalize community of practice.

Public Service Commission (PSC) Article 233

Public service refers to community service - a service that is performed for the benefit of the public or its institutions. This term can also be explained as a service which is provided by the government to its citizens, either directly or through the public sector.

Functions and Powers of the Public Service Commission

The Constitution in Article 234 states the functions of the public service as to:

- Establish and abolish offices in the public service
- Appoint and confirm persons to hold or act in positions in those offices
- Exercise disciplinary control over and remove persons holding or acting in those offices
- Promote values and principles in articles 10 and 232 throughout the Public service
- Investigate, monitor and evaluate the organization, administration and personnel practices in the public service
- Ensure that the public service is efficient and effective
- Develop human resource in the public service

- Review and make recommendations to the national government in respect of conditions of service, Code of Conduct and qualifications of the officers in the public service
- Evaluate and report to the Office of the President and Parliament on the extent to which the values referred to are complied with in the public service
- Hear and determine appeals in respect of the county government's public service.

National Land Commission (NLC)

The National Land Commission was established by Article 67 of the Constitution. The commission will manage public land on behalf of the National and County governments. The functions are:

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

Commission on Revenue Allocation (CRA)

Article 215 establishes the Commission on Revenue Allocation. The functions of the Commission are stated in Article 216. The main function of the CRA is to recommend how revenue raised by the national government will be shared between the national and county governments and among the county governments. Other functions include:

- making recommendations on matters concerning the financing of and the financial management by county governments
- determining, publishing and regularly reviewing policy which sets criteria for identifying marginalized areas

- submit its recommendations to the Senate, the National Assembly, the national executive, county assemblies and county executives

Salaries Remuneration Commission (SRC)

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

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

National Police Service Commission (NPSC)

The Commission is established under Article 246 and its functions are as follows:

- Recruit and appoint persons to hold or act in offices in the service
- Confirm appointments and determine promotions and transfers within the service
- Disciplinary control within the service
- Remove persons holding or acting in offices within the Service.
- The composition of the National Police Service shall reflect the regional and ethnic diversity of the people.

Teachers Service Commission

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

- register trained teachers
- recruit and employ registered teachers
- assign teachers employed by the Commission for service in any public school or institution
- promote and transfer teachers
- exercise disciplinary control over teachers

- terminate the employment of teachers
- Review the standards of education and training of persons entering the teaching service
- Review the demand for and the supply of teachers
- Advise the national government on matters relating to the teaching profession.

Auditor General (Article 229)

The role of the Auditor General is to audit and report annually the accounts of:

- The National and County Governments
- All funds and authorities of the National and County Governments
- All courts
- Every commission and independent office established by the Constitution
- The National Assembly, the Senate and the county assemblies
- Political parties funded from public funds
- The public debt
- Any other entity that legislation requires the Auditor-General to audit.

The Auditor-General may audit and report on the accounts of any entity that is funded from public funds. The audit report should confirm whether or not public money has been well utilized and should be submitted to Parliament or the relevant county assembly.

Controller of Budget (Article 228)

The Controller of Budget oversees the implementation of the budgets of the National and County Governments and authorizes withdrawals from public funds. Every four months, the Controller should submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.

Transition Authority

The Authority shall facilitate and co-ordinate the transition to the devolved system of government as provided under section 15 of the Sixth Schedule to the Constitution. The Authority shall;

- Facilitate the analysis and the phased transfer of the functions provided under the

Fourth Schedule to the Constitution to the national and county governments

- Determine the resource requirements for each of the functions
- Develop a framework for the comprehensive and effective transfer of functions as provided for under section 15 of the Sixth Schedule to the Constitution
- Co-Ordinate with the relevant State organ or public entity in order to facilitate the development of the budget for county governments during Phase One of the transition period
 - establish the status of ongoing reform processes, development programmes and projects and make recommendations on the management, reallocation or transfer to either level of government during the transition period; and
 - ensure the successful transition to the devolved system of government
- Prepare and validate an inventory of all the existing assets and liabilities of government, other public entities and local authorities
- Make recommendations for the effective management of assets of the national and county governments
- Provide mechanisms for the transfer of assets which may include vetting the transfer of assets during the transitional period
- Develop the criteria as may be necessary to determine the transfer of functions from the national to county governments
 - to guide the transfer of functions to county governments and
 - to determine the transfer of previously shared assets, liabilities and staff of the government and local authorities
 - carry out an audit of the existing human resource of the Government and local authorities
- Assess the capacity needs of national and county governments
- Recommend the necessary measures required to ensure that the national and county governments have adequate capacity during the transition period to enable them undertake their assigned functions
- Co-ordinate and facilitate the provision of support and assistance to national and county governments in
 - Advise on the effective and efficient rationalization and deployment of the human resource to either level of government
 - Submit monthly reports to the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation on the progress in the

implementation of the transition to the devolved system of government

- Perform any other function as may be assigned by national legislation. The National and the County Governments shall relate in the following ways:
- Each shall perform its functions and exercise its powers while respecting the functional integrity and the status of each level.
- Assist, support, consult the laws of the other level
- Liaise with each other to exchange information, coordinate policies and administration and enhance capacity. They may also set up joint committees and authorities.
- Cooperate in the performance of functions and exercise of powers
- Provide procedures for settling inter- governmental disputes

UNIT 3: INTER GOVERNMENTAL RELATIONS

Time: 1hour

Introduction

This unit discusses importance, principles and objects of inter-governmental relations, structures for coordinating inter - governmental relations and mechanisms for resolving inter-governmental disputes.

SESSION 1: Principles and objects of Inter-governmental relations

Time: 15 minutes

Session Objective

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

Suggested Learning Resources

- The Constitution of Kenya, 2010
- The Citizen Handbook by Uraia/IRI,2012
- Intergovernmental Relations Act
- Other relevant Acts
- Flow chart showing the relationship between National and County Governments

Suggested Training Methods

- Brainstorming
- Explanation

Suggested Learning Activities

- I. Brainstorm on the importance, principles and objects of inter – governmental relations
- II. Summation of session

Suggested Assessment Methods

- Question and answer
- Observing active participation in brainstorming sessions

KEY NOTES

The CoK 2010 provides that the governments at national and county level are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and co-operation. The intergovernmental relations Act 2012 was enacted pursuant to this provision to provide policy and operational mechanism.

Importance of Intergovernmental Relations

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

- Proper coordination among the various government entities in planning and service delivery.
- Management of conflicts among the national government and the county governments as well as between county governments

Principles of Intergovernmental Relations

- i. Recognizing the sovereignty of the Kenyan people
- ii. Inclusive and participatory governance
- iii. Promotion of national values, constitutional governance principles, and service delivery equality

- iv. Respecting the constitutional status of the government levels and institutions
- v. Objective and impartial decision-making
- vi. Minimizing intergovernmental disputes
- vii. Promoting accountability to the people
- viii. Institutionalizing the protection of marginalized groups.

Objects of Inter-governmental Relations

- i. Facilitating the implementation of the devolution objects and principles outlined in the Constitution
- ii. Facilitating cooperation and consultation between national and county governments and amongst county governments
- iii. Providing a forum for coordinating government policies, legislation and functions
- iv. Providing mechanisms for the transfer of power, functions and competencies to either level of government
- v. Promoting accountability between the two levels of government or amongst county governments.

SESSION 2: Structures for Coordination of Inter- Governmental Relations

Time: 30 Minutes

Session Objective

By the end of the session, the participant should be able to discuss the structures for coordinating of Inter-Governmental relations

Suggested Learning Resources

- The Constitution of Kenya, 2010
- The citizen handbook by Uraia/IRI,2012
- Relevant Acts

Suggested Training Methods

- Group discussion
- Description
- Question and answer

Suggested Learning Activities

- i. Discussions on structures for coordinating National and County Governments relations
- ii. Summation of session

Suggested Assessment Methods

- Question and answer
- Observing active participation during discussion

KEY NOTES

National and County Government Coordination

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

National and County Government Coordinating Summit

The Inter-governmental Relations Act, 2012 establishes the National County Government Coordinating Summit, which is the highest body of inter-governmental relations in Kenya. The Coordinating Summit ensures that intergovernmental relations between the national and county governments are effective and consultative.

The Summit is comprised of the President of the Republic or Deputy President in his/her absence who serves as the Chairperson, all Governors of the 47 counties, and the Chairperson of the Council of County Governors who serves as the Summit's vice chairperson.

Functions of the Coordinating Summit

The Summit, which must convene at least twice a year, submits an annual report to Parliament and the county assemblies within three months after the end of every financial year. Other functions of the Summit include:

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

Inter-governmental Relations Technical Committee

Inter-governmental Relations Technical Committee is comprised of a chairperson and not more than eight members appointed by the Summit. The body is responsible for the Summit's day-to-day operations, including the facilitation of Summit activities and implementation of Summit decisions. It is also responsible for submitting quarterly reports to the Summit and may establish sectoral working groups to assist in carrying out its functions.

The Technical Committee doubles as the National and County Government Coordinating Summit Secretariat. The Technical Committee is responsible for appointing a secretary to serve as the Secretariat's chief executive and financial officer. The Secretary is also responsible for the day-to-day administration of affairs of the Secretariat as well as the implementation of

decisions made by the Coordinating Summit and its Technical Committee.

Composition of Council of County Governors

The Council of County Governors serves as an inter-governmental coordinating and consultative body for the 47 County Governments.

The Council, which must convene at least twice a year, is comprised of 47 County Governors and a Chairperson and Vice-Chairperson selected from among its membership. The Council has the power to establish other inter-governmental forums (for example inter-city and municipality forums) and sector working groups or committees to assist in carrying out its functions.

Functions of the Council of County Governors

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

- Consultation amongst County Governments;
- Information sharing on the performance of the Counties;
- Considering matters of common interest to County Governments;
- Resolving disputes between counties;
- Facilitating capacity building for Governors;
- Receiving reports and monitoring the implementation of inter-county agreements on inter-county projects;
- Considering matters referred by a member of the public; and
- Considering reports from other inter-governmental forums on matters of National and County interest.

Intergovernmental Budget and Economic Council (IBEC)

This is established pursuant to Section 187 of Public Finance Management Act 2012. The membership include:

- i) Deputy President (Chairperson)
- ii) Cabinet Secretary responsible for matters relating to Finance
- iii) Cabinet Secretary, responsible for Intergovernmental Relations
- iv) Representative of Parliamentary Service Commission

- v) Representative of Judicial Service Commission
- vi) Chairperson of Commission on Revenue Allocation
- vii) Chairperson, Council of County Governors
- viii) Every County Executive Committee Member for Finance

Functions of the council

It provides a forum for consultations and cooperation between the national government and county governments on:

- i) The content of budget policy statements, the budget review and outlook paper and the medium term debt management strategy.
- ii) Budgets, economic and financial management and development planning at both levels of government;
- iii) Grants and borrowing by both levels of government;
- iv) Proposed national legislation or policy with implications on county finances;
- v) Disbursement of funds to the counties
- vi) Recommendations by Commission of Revenue Allocation (CRA) on equitable distribution of revenue between national and county government and amongst county governments;
- vii) Proposed regulations to the PFM Act 2012.
- viii) Any other matter which deputy president in consultation with council members may decide

The Council Meets at least twice a year. The National Treasury provides secretariat services and assigns officers as may be necessary.

Joint committees

The national or county government may establish a joint committee for a specific mandate where necessary for the achievement of objects and principles of devolution and Intergovernmental Relations Act 2012.

COUNTY INTERGOVERNMENTAL FORUM

Section 54 of the County Governments Act, 2012 establishes for every county a forum to be known as the county intergovernmental forum. This forum shall be chaired by the governor or in his absence, the deputy governor, or in the absence of both, a member of the county

executive committee designated by the governor.

The county intergovernmental forum comprises of -

- a) the heads of all departments of the national government rendering services in the county; and
- b) the county executive committee members or their nominees appointed by them in writing.

The intergovernmental forum is responsible for-

- harmonization of services rendered in the county;
- coordination of development activities in the county;
- coordination of intergovernmental functions; and
- such other functions as may be provided for by or under any law.

SESSION 3: Mechanisms for Resolving Inter-Governmental Disputes

Time: 15 minutes

Session Objective

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

Suggested Learning Resources

- The Constitution of Kenya, 2010
- The citizen handbook by Uraia/IRI 2012
- Relevant Acts

Suggested Training Methods

- Experience sharing
- Explanation

Suggested Learning Activities

- i. Sharing experiences on mechanisms for resolving inter-governmental disputes
- ii. Summation of session

Suggested Assessment Methods

- Question and answer
- Observation active participation

KEY NOTES

Mechanisms for Resolving Inter-governmental Disputes

According to the Intergovernmental Relations Act, 2012 the national and county governments should take all reasonable measures to resolve disputes amicably and utilize all alternative inter-governmental dispute resolution mechanisms before resorting to judicial proceedings. The Institutions mandated by the Constitution to resolve inter-governmental disputes are:

- The Senate
- The National and County Government Coordinating Summit
- The Council of County Governors
- The Transition Authority
- The Judiciary

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

Dispute Resolution Framework

Any agreement between the National Government and a County Government or amongst County Governments should include a dispute resolution mechanism. This mechanism should also provide alternative options for dispute resolution that leaves legal proceedings as the last resort. Art. 32(2) states that agreements not containing the above dispute resolution framework should utilize the framework established in the Inter-governmental Relations Act, 2012.

Declaration of a Dispute

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

party may formally refer the dispute to the Coordinating Summit.

After Declaration of a Formal Dispute

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

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

UNIT 4. PUBLIC SERVICE

Time: 1hour 30 minutes

Introduction

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

SESSION 1: Government officers and Public Service Commissions

Time: 45 Minutes

Session Objectives

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

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

Suggested Learning Resources

- Constitution of Kenya, 2010

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

Suggested Training Methods

- Question and Answer
- Discussion

Suggested Learning Activities

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

Suggested Assessment Methods

- Question and Answer
- Observation of participation in the discussions

KEY NOTES

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

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

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

Functions of the Public Service Commission (Article 233)

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

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

The functions of the County Public Service Board are to:

- establish and abolish offices in the county public service;
- appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
- exercise disciplinary control over, and remove, persons holding or acting in county public service offices;
- prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
- promote in the county public service the national values and principles of governance and values and principles of Public Service;
- evaluate and report to the county assembly on the extent to which the

national values and principles of governance and values and principles of public service have been complied with;

- facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;
- advise the county governments on human resource management and development;
- advise the county governments on implementation and monitoring of the national performance management system in counties;
- make recommendations to the Salaries and Remuneration Commission, on behalf of the county governments, on the remuneration, pensions and gratuities for county public service employees.

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

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

SESSION 2: Values and Principles of the Public Service

Time: 45 minutes

Session Objectives

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

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

Suggested Learning Resources

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

Suggested Training Methods

- Question and answer
- Discussion

4.2.4 Suggested Learning Activities

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

Suggested Assessment Methods

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

KEY NOTES

The Values and Principles of the Public Service

- High standards of professional ethics
- Efficient, effective and economic use of resources
- Responsive, prompt, effective, impartial and equitable provision of services
- Involvement of the people in the process of policy making
- Accountability for administrative acts
- Transparency and provision to the public of timely and accurate information
- Fair competition and merit as the basis of appointments and promotions

- Representation of Kenya's diverse communities.
- Affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service for; men and women, ethnic groups; persons with disabilities.

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

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

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

UNIT 5: PUBLIC FINANCE

Time: 4 hours

Introduction

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

SESSION: 1 Principles of Public Finance Management

Time: 1 hour

Session Objective

By the end of the session, the participants should be able to explain the Principles of Public Finance Management.

Suggested Learning Resources

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

Suggested Training Methods

- Question and answer
- Discussion

Suggested Learning Activity

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

Suggested Assessment Methods

- Question and Answer
- Observation on active participation during discussion

KEY NOTES

The Principles of Public Finance Management are as follows:

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

SESSION 2: Sources and sharing of Government Revenue

Time: 1 hour

Session Objectives

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

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

Suggested Learning Resources

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

- Sample of budgets and reports
- IEC Materials
- Relevant Acts

Suggested Training Methods

- Brainstorming
- Discussion

Suggested Activity

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

Suggested Assessment Methods

- Question and Answer
- Observation on participation during discussion

KEY NOTES

a) Sources of revenues for the National Government

The sources of revenue for the National government are:

| | |
|--|-------------------------|
| Taxes <ul style="list-style-type: none"> • Income tax • Customs and exercise duty • Value added tax • Sin tax, such as tax levied on alcoholic drinks and beer, cigarettes | Fees and charges |
| Penalties | Fines |
| Return on investments | Sale of public property |
| Grants | Loans |

b) Sources of revenue for the County Governments

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

c) Sharing of revenue between National and County Governments

Revenue raised nationally shall be shared equitably among the national and County Governments. County Governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally.

The following criteria shall be taken into account in determining the equitable shares:

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

based on similar objective criteria.

The Commission on Revenue Allocation (CRA) is mandated to recommend the basis for equitable sharing of revenues raised nationally between the National and the County Governments and sharing of revenue among the County Governments.

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

Total revenue raised nationally is 100%

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

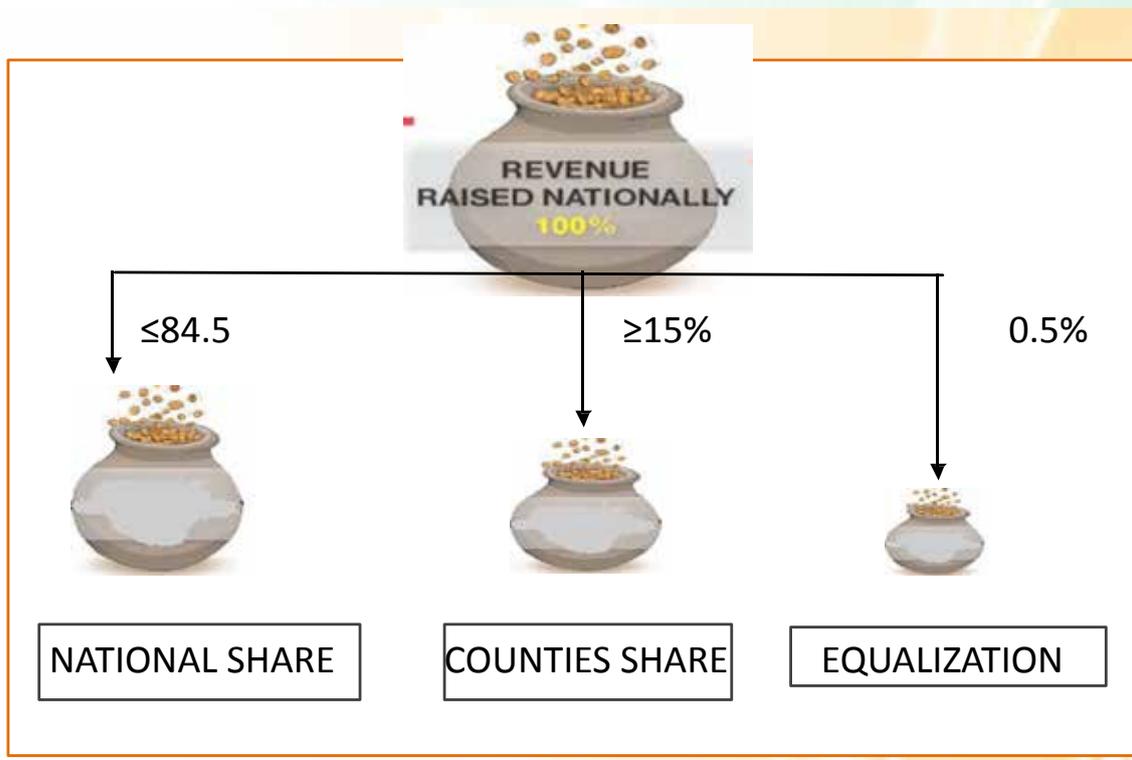


Figure 17: Revenue allocation adopted from CRA

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

- i. Population size
- ii. Basic equal share
- iii. Poverty level
- iv. Land area in km²
- v. Fiscal responsibility

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

Basis of sharing the 15% revenue for the Counties

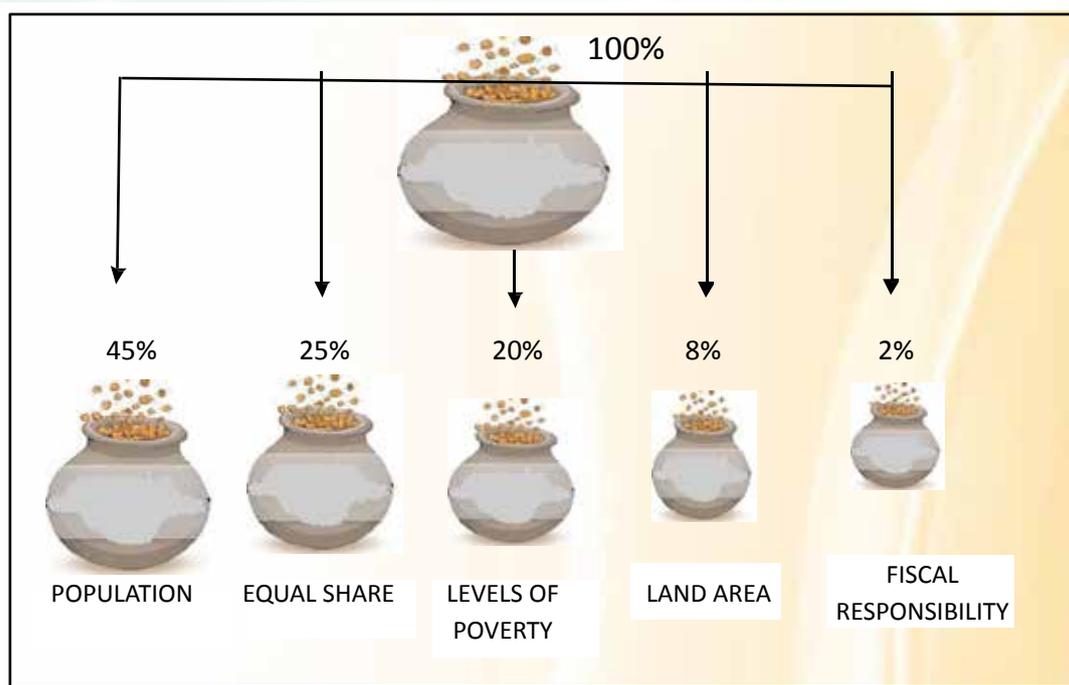


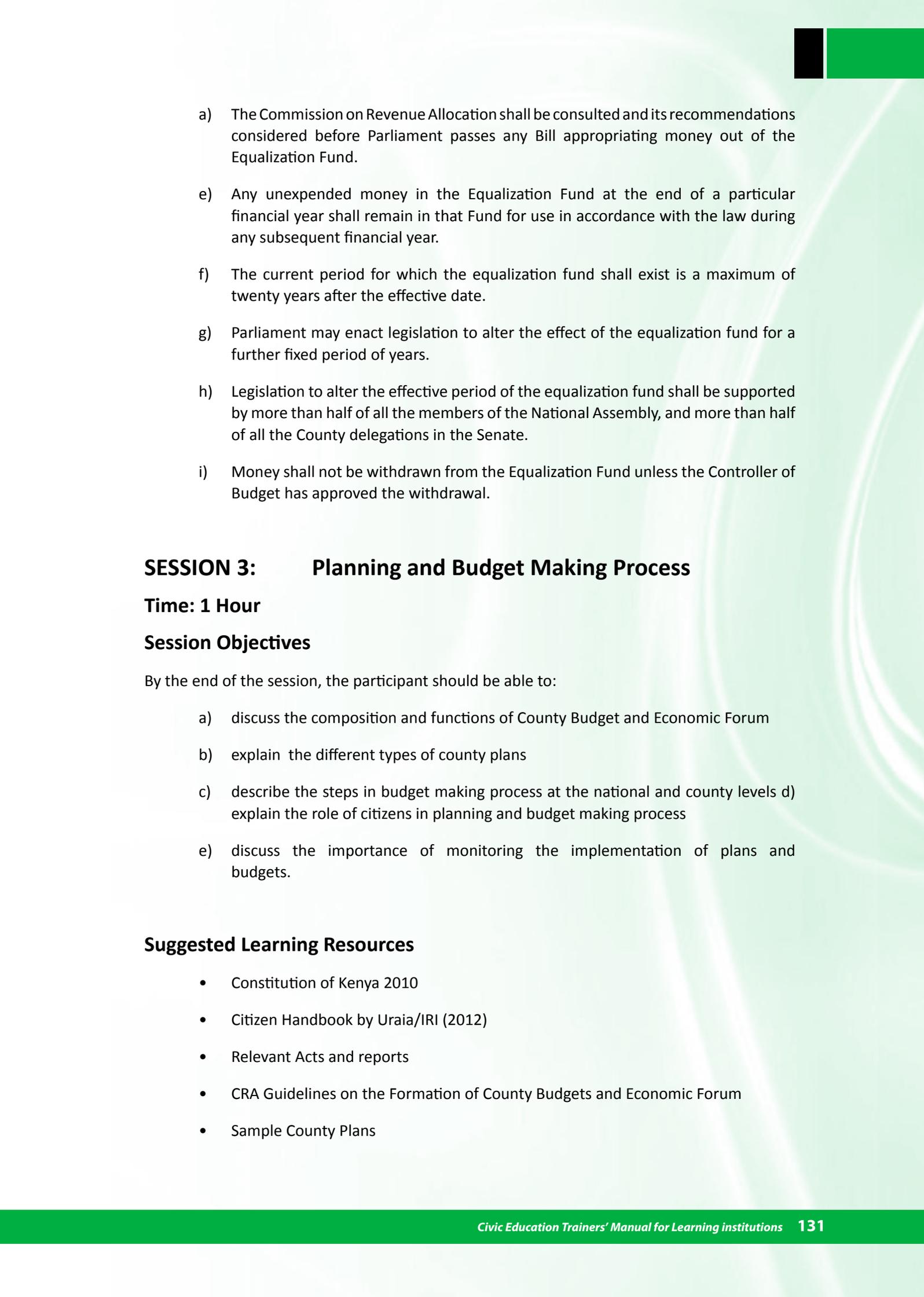
Figure 18: Basis of sharing the 15% revenue for the Counties adapted from CRA

NOTE: Article 217(1): Once every Five years, the Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government.

Despite Article 217 (1), the first and second determination of the basis of division of revenue among the counties shall be made at the three year intervals, rather than every five years as provided in that article (Section 16 of Sixth Schedule to the CoK, 2010)

Equalization Fund

- The Constitution of Kenya, 2010 establishes an Equalization Fund which is 0.5 per cent of all the revenue collected by the National Government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.
- The National Government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.
- The National Government may use the Equalization Fund :-
 - only to the extent that the expenditure of those funds has been approved in an Appropriation Bill enacted by Parliament; and
 - Either directly, or indirectly through conditional grants to Counties in which marginalized communities exist.

- 
- a) The Commission on Revenue Allocation shall be consulted and its recommendations considered before Parliament passes any Bill appropriating money out of the Equalization Fund.
 - e) Any unexpended money in the Equalization Fund at the end of a particular financial year shall remain in that Fund for use in accordance with the law during any subsequent financial year.
 - f) The current period for which the equalization fund shall exist is a maximum of twenty years after the effective date.
 - g) Parliament may enact legislation to alter the effect of the equalization fund for a further fixed period of years.
 - h) Legislation to alter the effective period of the equalization fund shall be supported by more than half of all the members of the National Assembly, and more than half of all the County delegations in the Senate.
 - i) Money shall not be withdrawn from the Equalization Fund unless the Controller of Budget has approved the withdrawal.

SESSION 3: Planning and Budget Making Process

Time: 1 Hour

Session Objectives

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

- a) discuss the composition and functions of County Budget and Economic Forum
- b) explain the different types of county plans
- c) describe the steps in budget making process at the national and county levels
- d) explain the role of citizens in planning and budget making process
- e) discuss the importance of monitoring the implementation of plans and budgets.

Suggested Learning Resources

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

- Other Relevant Acts and reports

Suggested Training Methods

- Brainstorming
- Question and answer
- Discussion
- Sharing of experiences

Suggested Learning Activities

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

Suggested Assessment Methods

- Question and Answer
- Observation on active participation during discussions

Keynotes

County Budget and Economic Forum

- a) The Composition of the County Budget and Economic Forum (CBEF) is as follows:
- The Governor of the county- Chairperson;
 - Other members of the County Executive Committee;
 - A number of representatives who are not county public officers, equal to the number of Executive Committee members appointed by the Governor from persons nominated by organizations representing professionals, the business community, labour sector, women, persons with disabilities, the elderly and faith based groups at the county level.

b) The Functions of the CBEF entails:

Providing a means for consultation by the county government on;

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

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

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

Types and Purposes of County Plans

Every county government shall prepare a development plan in accordance with Article 220(2) of the Constitution. **It should be noted that in both the national and county governments, the budget process starts with integrated development planning process which shall include**

both long term and medium term planning (PFMA, Sections 35 and 125 respectfully). Section 107(1) of CGA provides that, to guide, harmonize and facilitate development within each county there shall be the following plans:

- a) county integrated development plan;
- b) county sectoral plans (for departments);
- c) county spatial plan; and
- d) cities and urban areas plans as provided for under the Urban Areas and Cities Act (No. 13 of 2011).

County Integrated Development Plan

There shall be a five year county integrated development plan for each county which shall have:

- i. clear goals and objectives;
- ii. an implementation plan with clear outcomes;
- iii. provisions for monitoring and evaluation; and iv. clear reporting mechanisms.

Among others, the law requires that there shall be a resource mobilization and management framework which shall be reflected in a county's integrated development plan and shall at least:

- a) include the budget projection required under the law governing county government financial management;
- b) indicate the financial resources that are available for capital project developments and operational expenditure; and
- c) include a financial strategy that defines sound financial management and expenditure control, as well as ways and means of increasing revenues and external funding for the county and its development priorities and objectives, which strategy may address the following:
 - i. revenue raising strategies;
 - ii. asset management strategies
 - iii. financial management strategies iv. capital financing strategies;
 - v. operational financing strategies
 - vi. strategies that would enhance cost-effectiveness.

County Sectoral Plans

A County department shall develop a ten year county sectoral plan as component parts of the county integrated development plan. The County sectoral plans shall be:

- i. programme based;
- ii. the basis for budgeting and performance management; and
- iii. reviewed every five years by the county executive and approved by the county assembly, but updated annually.

County Spatial Plan

There shall be a ten year county GIS based database system spatial plan for each county, which shall be a component part of the county integrated development plan providing —

- i) a spatial depiction of the social and economic development programme of the county as articulated in the integrated county development plan;
- ii) clear statements of how the spatial plan is linked to the regional, national and other county plans; and
- iii) clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

Urban Areas and Cities plans



Figure 19: Unplanned and planned urban areas

Part V of UACA, 2011 deals with Urban Areas and Cities Integrated Development Planning. Sub-section 36(1) provide that every city and municipality established under that Act shall operate within the framework of integrated development planning which shall:

- a) give effect to the development of urban areas and cities as required by the Act and any other written law;
- b) strive to achieve the objects of devolved government as set out in Article 174 of the Constitution;
- c) contribute to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of the Constitution and the progressive realization of the socio-economic rights;
- d) be the basis for:
 - i. the preparation of environmental management plans;
 - ii. the preparation of valuation rolls for property taxation;
 - iii. provision of physical and social infrastructure and transportation;
 - iv. preparation of annual strategic plans for a city or municipality;
 - v. disaster preparedness and response;
 - overall delivery of service including provision of water, electricity, health, telecommunications and solid waste management; and
 - the preparation of a geographic information system (GIS) for a city or municipality;

NOTE: Sub-section 36(1) refers to city and municipality but in sub-section 10(2)(c) the existence of an integrated development plan in accordance with the Act is one of the criteria for classification of a town.

Sub-section 36(3) of UACA provides that, a county government shall initiate an urban planning process for every settlement with a population of at least 2,000 residents. Sub-section 37(1) of UACA provides that a city or urban area integrated development plan shall be aligned to the development plans and strategies of the county governments.

Role of citizens in planning and budget making process

Citizens should play an oversight role in the devolved units to safeguard their resources. The Constitution of Kenya, 2010, provides for budget making at two levels namely, the National and the County levels.

Steps in the Budget Making Process

The budget making process generally takes has four steps as follows:

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

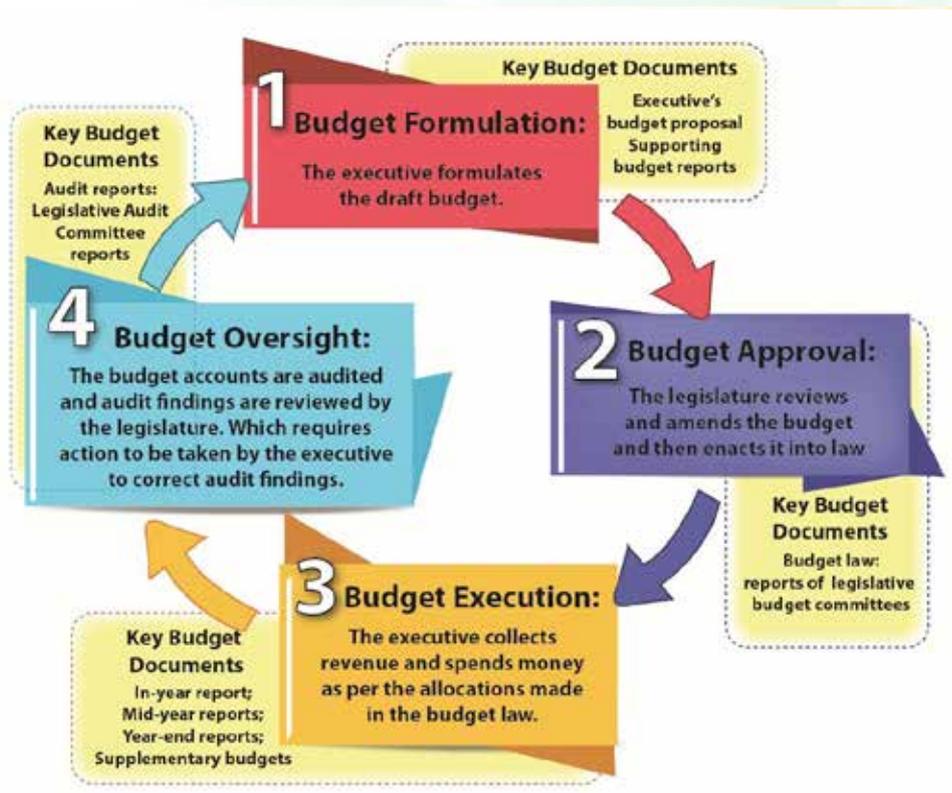


Figure 20: Budget making process

Opportunities for Citizen Participation at the County Level

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

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

- b) **County Budget Committee Hearings:** The Budget Committee of the County Assembly is obligated to organize hearings where citizens discuss their priorities. Here, the citizens have the opportunity to influence the final budget before it is approved.
- c) **Citizen fora:** These should be organized by the County Governments at all administrative levels of the County, namely: the sub-County, ward and village level. This is to ensure that all citizens have equal opportunities to participate. Citizens therefore have an obligation to demand for and attend these meetings and give their contribution
- d) **County Planning Units:** These units are also supposed to be set up at all the administrative levels. These planning units are meant to ensure citizens participate meaningfully in the planning and budget making process.
- e) **County communication platform and strategy:** The Constitution of Kenya, 2010 under Article 35 places an obligation on the County Governments to actively publish and publicize information affecting the citizens including all information relating to the budget process. Citizens are encouraged to take advantage of this provision to contribute to the budget- making process.

1. Post-budget reading period

The County Executive Committee member in charge of the County Treasury has a constitutional duty to publish an implementation report every quarter in the financial year. Therefore, every three months, this report is prepared and sent to the County Assembly for oversight. The implementation report outlines how the County has been implementing the budget in that period, and helps identify problems so that they can be corrected within the financial year.

These reports ought to be made public, so as to provide citizens with the opportunity to participate and raise questions about the implementation of items indicated in the budget.

In the post-budget period, citizens can participate by:

- Requesting for copies of the reports from the Finance Secretary;
- Reading the reports and discussing them with other citizens, and also with County assembly members;
- Providing comments and feedback on the reports.

Monitoring Implementation of Plans and Budgets

Monitoring implementation of plans and budgets is important for the following reasons:

- increases accountability among duty bearers;
- reduces corruption;
- ensures participation of citizens in all the processes at all levels;
- ensures constant communication between duty bearers and the general public;
- ensures higher rates of completion of the identified projects;
- ensures higher rates of budget absorption;
- creates cohesion among the duty bearers and the citizen they serve.

SESSION 4: Procurement of Goods, Works and Services

Time: 1 Hour

Specific Objectives

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

- a. explain how goods, works and services are procured in the public sector
- b. discuss the affirmative action for women, youth and persons with disabilities in public procurement.

Suggested Learning Resources

- Constitution of Kenya ,2010
- Public Finance Management Act 2012
- Public procurement and disposal act, 2005
- Public procurement and disposal Regulations, 2006 and 2013
- The Citizen Handbook by Uraia/IRI 2012
- County government Act 2012

Suggested Training Methods

- Question and answer
- Discussion,
- Sharing of experiences

Suggested Learning Activities

- a) Guide the participant to discuss on how public goods , works and services are procured
- b) Make presentations
- c) Summarise the session.

Suggested Assessment Methods

- Question and answer
- Observation on active participation during discussions

KEY NOTES

Procurement of Goods, Works and Services in the Public Sector



Figure 21: Corrupt practise in procurement



Figure 22: Ethical service in procurement

Introduction

Procurement means: acquisition by purchase, rental, lease, hire purchase, license, tenancy, franchise, or by any other means of any type of works, assets, services or goods including livestock or any combination.

Legal Framework Governing Public Procurement

1. The Constitution-Article 227
2. The Public Procurement and Disposal Act-PPDA, 2005
3. The Public Procurement and Disposal Regulations, 2006, 2011, 2013 and the amendments in Legal Notices 106 & 114
4. Procurement Manuals & Standard tender Documents
5. Circulars

Bodies involved in Public Procurement

1. Public Procurement Oversight Authority: ensure procurement procedures are complied with
2. Public Procurement Advisory Board: the Director with the approval of the Advisory Board debar contractors on grounds stated in the Act

3. Public Procurement Administrative Review Board (ARB - adjudicates on cases of persons aggrieved in a procurement e. g. the procurement of laptops

Objectives of the Public Procurement and Disposal Act, 2005

1. To maximize economy & efficiency
2. To promote competition and ensure that competitors are treated fairly
3. To increase transparency and accountability in procurement procedures
4. To increase public confidence in procurement procedures
5. To facilitate the promotion of local industry and economic development.

Objectives of Good Procurement (e.g. of drugs for a Level 5 Hospital) Acquisition in the most cost effective manner means drugs procured at the Right price (lowest evaluated price),

1. Right quantities
2. Right quality
3. Right source
4. Right time
5. Right place

The benefits of good procurement include: (e.g. for drugs at a Level 5 hospital)

1. Security of supply, that drugs are available in the hospital for the patients
2. Lower total cost in the procurement of the drugs
3. Reduced risk, by the procuring entities e.g. by the entity requesting tender security and performance bond
4. Improved quality, through developing of proper specifications and evaluation criteria
5. More added value
6. Greater efficiency
7. New innovations, by undertaking market survey to know the new products in the market and not using brand names in specifications

Importance of Public Procurement

Majority of Kenya Vision 2030 flagship projects to be delivered through public procurement.

Need for elimination of waste through strategic leadership in public procurement **& disposal.**

Internal organization of Procuring Entities

A procuring Entity shall establish the following committees as required by the regulations for the purpose of making decisions on behalf of the public entity as specified in the Act and regulations

1. Procurement Unit: manages the whole procurement & disposal process including inventory management
2. Tender Committee: adjudicates & award procurements above Kes.500,000
3. Procurement Committee: adjudicates & awards procurements below Kes.500,000
4. Tender Processing Committee: evaluates, negotiates & inspects and accepts goods, works and services
5. Disposal Committee: responsible for recommending to Accounting officer the most suitable method of disposal

The Public Procurement Process

1. Identify the Need
 - Responsibility for identification of requirements at Departmental level
 - Consider type of goods, works and services; and when and where needed
2. Undertake Procurement Planning
 - Departments supply their procurement plans which are consolidated
 - Procurement commenced on satisfaction that sufficient funds exist
3. Specification of Requirement
 - a) It consists of definitive descriptions on the object to be procured.
 - b) must be clear, accurate and complete otherwise will result to wrong procurement of goods/services/works
 - c) Provision of information that the supplier requires in order to reliably meet the user's expectation.

- d) Need for market survey to assist with preparation of specifications e) Specification to be drawn by the user of the product or service
- f) Consultants may be used in preparation of specifications and bidding document

Methods of Specifications

- a. Sample – part of the item to be procured is submitted to the buyer to be used to compare the delivered amount against it to confirm quality adherence and conformance. It is used in textile industry and so on
- b. Grading – this method is commonly used in cereals and cash crops to indicate the various quality levels e.g. grade I, II among others
- c. Technical illustration - this method is used to describe: quality of technical and complex artistic goods such as construction and building works which should be accompanied by technical drawings to confirm quality requirement.
- d. Brand name – this is used to describe quality of goods that are difficult to specify by other means. However, the words; “or equivalent” should be added when specifying using brand names (Section 34(4))

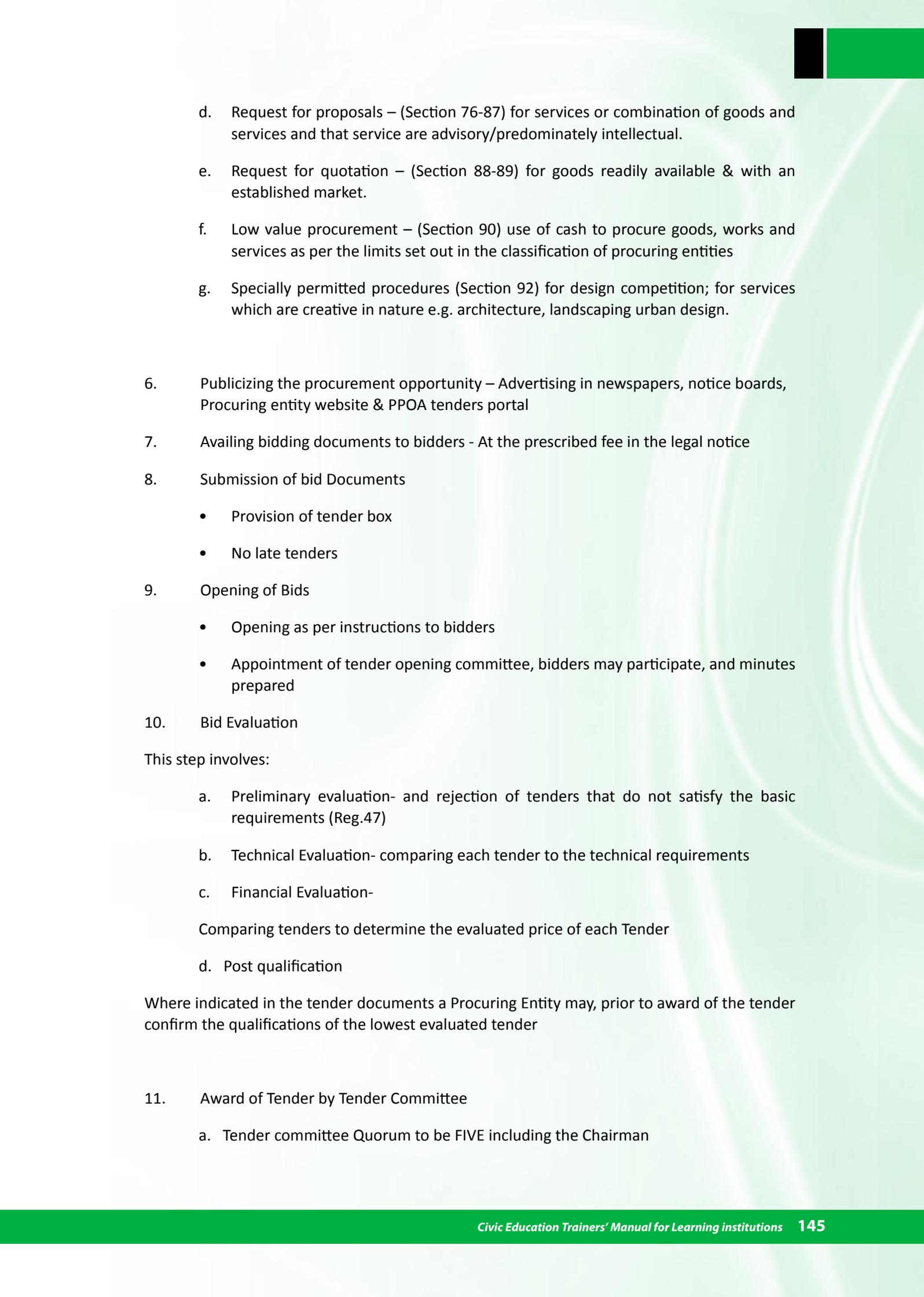
4. Preparation of Tender Documents

o Containing Specifications:

- Bills of quantities, drawings,
- Evaluation criteria,
- Price schedule, tender forms, sample contract,
- Preferences and Reservations for tenders set aside for the disadvantaged or for margin of preference application.

5. Choice of Procurement Method

- a. Open tendering (Open National Tender or International Open Tender)- preferred method- (Section 50 -71) fairest to the procuring entity and to tenderer.
- b. Restricted Tender – (Section 73) only if completion is limited due to complexity or specialization or time & cost to examine a large number of tenders would be disproportionate or there are only a few known suppliers
- c. Direct procurement – (Section 74-75) only if only one person can supply and no reasonable alternative or substitute or there is urgent need and that other methods impracticable & circumstances were not foreseeable or result of procuring entity’s dilatory conduct, & procuring negotiates the price.

- 
- d. Request for proposals – (Section 76-87) for services or combination of goods and services and that service are advisory/predominately intellectual.
 - e. Request for quotation – (Section 88-89) for goods readily available & with an established market.
 - f. Low value procurement – (Section 90) use of cash to procure goods, works and services as per the limits set out in the classification of procuring entities
 - g. Specially permitted procedures (Section 92) for design competition; for services which are creative in nature e.g. architecture, landscaping urban design.
6. Publicizing the procurement opportunity – Advertising in newspapers, notice boards, Procuring entity website & PPOA tenders portal
 7. Availing bidding documents to bidders - At the prescribed fee in the legal notice
 8. Submission of bid Documents
 - Provision of tender box
 - No late tenders
 9. Opening of Bids
 - Opening as per instructions to bidders
 - Appointment of tender opening committee, bidders may participate, and minutes prepared
 10. Bid Evaluation

This step involves:

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

Comparing tenders to determine the evaluated price of each Tender

- d. Post qualification

Where indicated in the tender documents a Procuring Entity may, prior to award of the tender confirm the qualifications of the lowest evaluated tender

11. Award of Tender by Tender Committee
 - a. Tender committee Quorum to be FIVE including the Chairman

- b. Decision through consensus
 - c. Minutes of Tender Committee to be prepared
12. Notification of Award and Appeal Window Period
- Notification to winner and losers simultaneously
 - Bidders have a right to seek administrative review on PE's decisions
 - Bidders right to seek judicial Review

13.Contract Management

- Execution of contract
- Inspection and quality assurance-by Tender Processing Committee
- Handling, claims and disputes
- Overdue payments to be paid with interest (Section 48)
- Variations to Contracts allowed on price and quantity as per Regulation (31)
- Contract Termination - To be approved by the tender committee.

13.Methods of Disposal of surplus, obsolete or/and unserviceable stores

- a. Transfer to another entity with or without financial adjustment
- b. sale by public tender: used mainly for disposal of high value items
- c. Sale by public auction- common means of disposing of large numbers of relatively low-value items through the engagement of a registered auctioneer
- d. Destruction, dumping or burying: need to get a certificate from NEMA
- e. Trade-in: contract for the purchase of the equipment may include provision for the trade-in of the existing equipment that it will replace or sell-back at a specified percentage of the original purchase price after a specified number of years

Restriction on disposal to employees set out in the Regulation 93.

Preference & Reservations Legal Notice 114

- Procuring entity to allocate 30% of its procurement spend to small enterprises owned by the disadvantaged (Youth, Women & PWDs – registered by the National & County Treasuries under AGPO)
- Implementation by the procuring entity is through its budgets, procurement plans, tender notices, contract awards
- Procuring entities to submitting quarterly reports to the PPOA
- PPOA to monitor the schemes and report to the National Treasury

MODULE THREE: PUBLIC PARTICIPATION



Introduction

Public participation is a process in which the public is informed, consulted or involved to ensure their concerns are considered throughout the decision making, particularly in governance processes. A variety of tools and techniques to inform the public, build consensus and reach agreement are discussed. The module therefore aims at equipping the participant with knowledge, skills, attitudes and values to enhance their participation in governance processes. It is intended to develop in the participant civic responsibility.

General Objectives

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

- a. appreciate the sovereign power of citizens as provided for in the Constitution of Kenya, 2010.
- b. acquire knowledge, skills, attitudes and values necessary for effective participation in governance processes.
- c. demonstrate ability to utilize tools and platforms for citizen participation in governance processes.
- d. promote citizen participation in governance processes.
- e. demonstrate creativity and critical thinking in addressing challenges in citizen participation.

UNIT 1: SOVEREIGNTY OF THE PEOPLE

Time: 1Hour

Introduction

This unit covers the peoples' power and how to exercise it. It explains how the citizens can delegate this power to different State organs and when they can use this power directly. In addition, it outlines the values and benefits of citizen power.

Information in this unit is intended to empower citizens to appreciate the power bestowed on them by the Constitution to enable them to use that power actively and responsibly in governance processes.

SESSION 1: Sovereignty, of the People

Time: 30 Minutes

Session Objectives

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

- a) explain the meaning of selected terms
- b) identify the source of the sovereign power of the people.

Suggested Learning Resources

- Constitution of Kenya, 2010,
- Uraia/IRI Citizen Handbook, 2012
- Hand-out on the case study

Suggested Training Methods

- Case study on Citizen Power
- Discussion

Suggested Learning Activities

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

Suggested Assessment Methods

Question and answer

KEY NOTES

Read the follows case study and answer the questions

CASE STUDY

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

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

Questions

- 1) Who nominated the leaders?
- 2) What qualities did the community look for in the leaders?
- 3) Were the citizens involved in the selection of the leaders?
- 4) Why is it necessary for a community to have leaders?

Note: The discussion can focus on the following:

- Nomination of leaders
- Chapter 6 of the Constitution of Kenya, 2010 on National values and integrity.

Meaning of Terms Related To Public Participation

Citizen

A citizen is a person who legally belongs to a country and has the rights and protection of that country.

Sovereignty

It refers to collective power exercised by the citizens. Citizens may exercise the sovereign power either directly or indirectly through their democratically elected representatives.

Public Participation

This is an action or series of actions a citizen takes to engage in the affairs of government or community. This may include:

- i. Participation in voting exercises.
- ii. Attending meetings, for example, the Chief's baraza.
- iii. Participating in public or private political discussion or debates on issues.
- iv. Signing a petition on a desired government action.
- v. Volunteering in the community.
- vi. Contributing money to a political party or independent candidate vying for election.



Figure 23: A citizen voting

Duty Bearers

These are actors who have a particular responsibility to respect, promote and realise human rights. Duty bearers are either state or non-state actors. An example of a state actor is a leader in the County Government. Depending on the context, individuals, local organisations, private companies, donors and international institutions can also be considered as duty bearers.

Rights holders

These are individuals or social groups that have particular entitlements in relation to specific

duty bearers. A citizen has a right to services in the County such as health, education and security among others rights; all of which a duty bearer has an obligation to provide.

Source of Sovereign Power of the People

The Constitution is the source of the sovereign power of the people As provided for in Article 1(1)

Types of Citizen Power

Citizen exercise power in different ways which includes the following:

a) Passive citizen power

This refers to participation that does not require direct physical actions; for instance, petition signing, voting; writing letters to complain or to demand for information or services.

b) Physical citizen power

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

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

Kenya, 2010. The Article directs that every person has the right to peaceably and unarmed to assemble, demonstrate, picket and present petitions to public authorities.

c) Fiscal citizen power

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

Value of Sovereign Power of the People

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

UNIT 2: SUCCESSFUL PUBLIC PARTICIPATION

Introduction

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

SESSION 1

Time: 1 Hour

Session Objectives

By the end of the session the participant should be to

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

Suggested Learning Resources

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

Suggested Training Methods

- Discussion
- Question and answer
- Experience sharing

Suggested Learning Activities

- i. Describe the process of forming community groups.
- ii. Explain the principles of partnership and networks.
- iii. Discuss the value of working with others.
- iv. Summarize the session.

Suggested Assessment Methods

- Question and answer
- Direct observation

KEY NOTES

- a) Steps to successful public participation
 - i. Identify community needs
 - ii. Assemble a citizen group
 - iii. Form partnerships and networks
 - iv. Utilize tools and strategies
 - v. Keep the community informed
 - vi. Seek feedback

- b) **Process of Forming a Community Group**
 - i. Identify the needs of the community
 - ii. Partner with others who share the same concerns
 - iii. Decide on the activities to be undertaken
 - iv. Structure the group based on activities to be conducted in terms of leadership, decision making, resource mobilization and membership recruitment and retention.
 - v. Draw up a constitution to govern the group. The constitution should have the following components:
 - Name of the group
 - Aims and objectives
 - Functions of the group
 - Registration of members
 - Election and nomination of officials
 - Management of the group
 - vi) Register the group with relevant government body.

c) **Basic Principles for Partnering and Forming Networks**

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

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

In forming effective partnership and networks following factors are considered:

- **Purpose for Partnering and Forming Networks**
This is the public value the community group and other partners wish to provide.
- **Goals for Partnering and Forming Networks**
These are set measurable performance goals which should be in congruence with policy and the national development agenda.
- **Objectives for Partnering and Forming Networks**
These are the intents of the community group and potential network partners which are derived from the goals.
- **Memorandum of Understanding (MoU)**

It is a written document describing the roles and a general description of the responsibilities of two (or more) parties which sets forth the basic principles and guidelines under which the parties will work together to accomplish the goals and objectives. It outlines the duties and responsibilities of individual organizations or partners in the network. The MoU indicates the shared and significant involvement in the technical, financial, publicity and administrative areas of the partnership. All MoUs should include:

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

- Contact information of signing parties

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

c) **Value of Working with Others**

The values of working with other individuals and organizations are that:

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

Meet legal requirements;

- Clearly articulate goals and objectives;
- Command political support;
- Be an integral part of the decision making structure;
- Receive adequate funding, staff, and time;
- Identify concerned or affected publics; and
- Delineate clear roles and responsibilities for participants.

UNIT 3: PARTICIPATION IN GOVERNANCE

Introduction

Public participation is an important part of Governance process as provided for in Article 10(2) of the Kenya Constitution, 2010 on national values and principles of governance. It is further re-emphasized in Part VIII the County Governments Act,

2012. The aim of this unit is to equip citizens with the knowledge, skills, attitudes and values to enhance their participation in governance processes. Under this unit, the participants will cover the following:

- Forms of public participation
- Stages of public participation
- Principles of Public participation

- Public participation at national and local contexts
- Benefits of public participation

SESSION 1: Forms and stages of Public Participation

Time: 4 Hours

Specific Objectives

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

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

Suggested Learning Resources

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

Suggested Training Methods

- Group discussion
- Question and Answer

Suggested Learning Activities

- i. Display the IEC materials on public participation.
- ii. Carryout group discussion on forms of public participation in governance processes.
- iii. Presentation in plenary.
- iv. Describe the stages of public participation.
- v. Summarize the session.

Suggested Assessment Methods

- Question and answer
- Observation inactive participation in group discussion

KEY NOTES

Forms of public participation

Public participation takes various forms which are:

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

The Stages of Public Participation

The stages of Public participation are classified into three categories;

Category One

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

Stage 1 - Manipulation

Stage 2 - Therapy



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

Category two: Tokenism

Tokenism consists of three stages; Stage 3 - Informing

Stage 4 - Consultation

Stage 5 - Appeasing or pacifying the people

The primary objective of this stage is to allow citizens to hear and be heard. The stage is considered a higher level because citizens have the ability to not just hear and be heard, but also to consult with power holders. This strategy is meant to appease the public. Nevertheless, the power holders can approve and make decisions without taking consideration of the public's input.

Category Three: Citizen Power

This category consists of three stages which are discussed below;

Stage 6 – Partnership

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

Stage 7 - Delegated Power

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

Stage 8 – Citizen Control

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

STAGES OF PUBLIC PARTICIPATION

The diagram below shows stages of public participation:

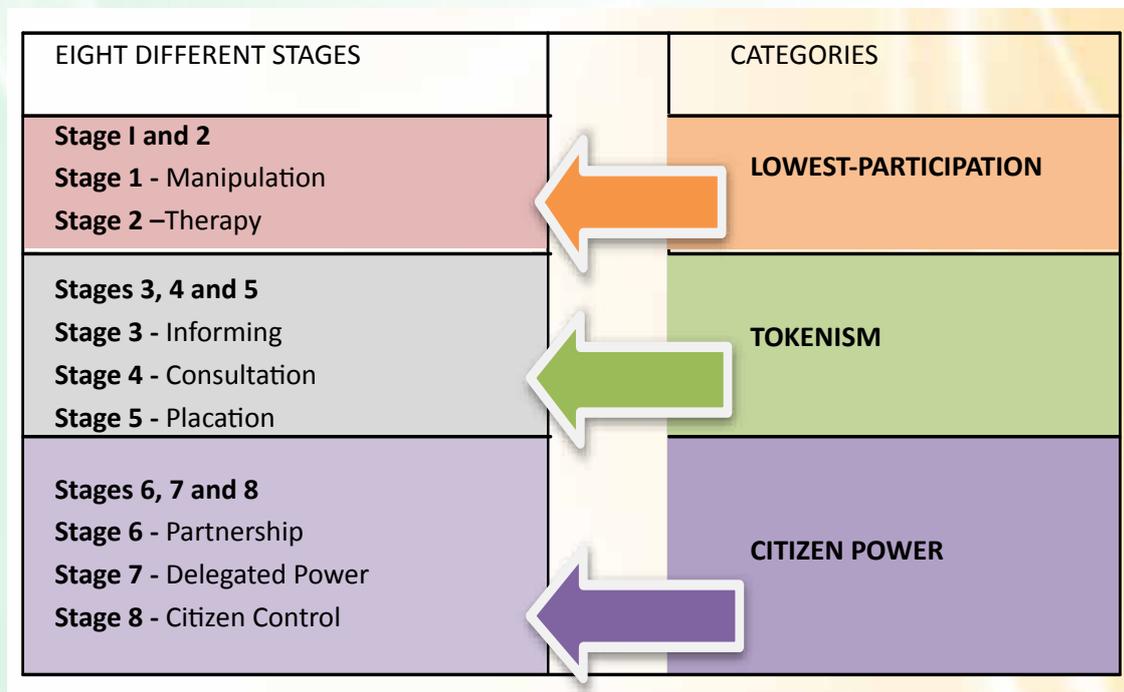


Figure 24: Stages of Citizen Participation

Adapted from sherry Amstein

SESSION 2: Principles, Application and Benefits of Public Participation

Time:

Session Objectives

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

- discuss the principles of public participation
- apply principles of public participation to national and county contexts.

Suggested Learning Resources

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

- County Government Act, 2012

Suggested Training Methods

- Discussion
- Role play
- Question and Answer

Suggested Learning Activities

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

Suggested Assessment Methods

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

KEY NOTES

a) The principles of public participation

- i. The scope of activities in any event or project in the community should be determined
- ii. The chain of authority should be clearly determined
- iii. The persons responsible for the various activities should be identified in good time
- iv. The resources to be used should be adequate
- v. The process should be inclusive with special support given to the marginalized
- vi. There should be transparency and accountability
- vii. Records of the process and outcomes should be kept for reference
- viii. Applying Principles of Public Participation to National and County Contexts

c) Application of Principles of Public Participation

Public participation at the National and County Governments involves:

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

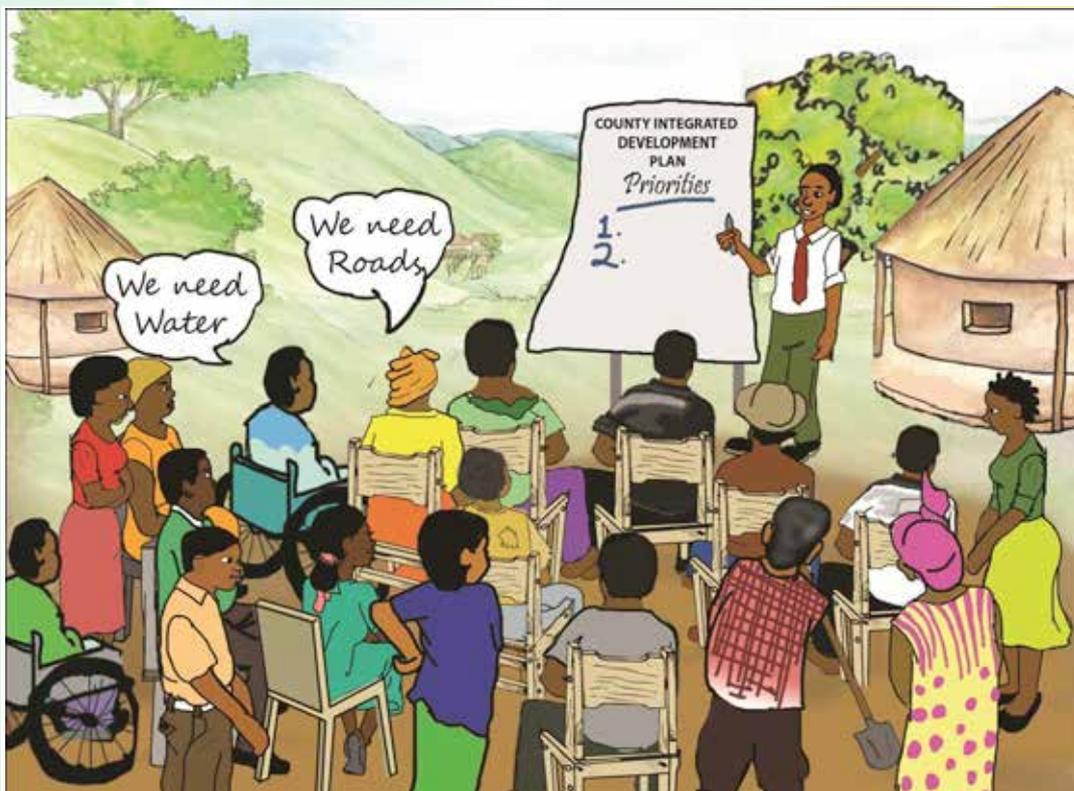


Figure 25: Members of a Public voluntary organization

d) Benefits of Public Participation

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

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

UNIT 4: TOOLS FOR PUBLIC PARTICIPATION

Time: 3 hours

Introduction

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

- Constitutional provisions for public participation
- Tools for effective public participation
- Ways in which the Constitution of Kenya promotes public participation
- Challenges facing public Tools for citizen participation
- Solutions to challenges facing public participation.

SESSION 1: Constitutional Provisions for Public Participation

Time: 30 minutes

Introduction

The Constitution provides a legal framework for public participation. The Constitution also makes public participation a central part of governance. Article 10(2) (a) provides for “participation of the people”. This is one of the country’s values and principles of governance,

Specific Objective

By the end of this session, the participant should be able to explain ways in which the Constitution promotes public participation.

Suggested Learning Resources

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

Suggested Training Methods

- Discussions
- Experience Sharing

Suggested Assessment Methods

- Question and Answer

Suggested Learning Activities

- i. Discuss on how the Constitution provides for public participation.
- ii. Discuss the case Study.
- iii. Summation of the session.

Note: Where time allows a Discussion on the case study: a “legacy of citizen participation in Kenya”-The Citizen Handbook Uraia/IRI (2012) (page 87)

KEY NOTES

The Constitution on Public Participation

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

i. Sovereign Power of the people

Public participation is anchored on the core of the Constitution and is reflected in Article 1, which indicates that all sovereign power is vested in the people of Kenya. This power can be exercised at the National and County levels either directly through public participation or indirectly through democratically elected representatives.

ii. Participation in Kenya's Governance

The Constitution of Kenya Article 10(2) (a) indicates that participation of the people is one of our country's values and principles of governance. While, the values and principles of public service contain a reference to citizen participation in Article 232(1) (d) this stipulates that public servants should include citizens in the process of policy making.

iii. Participation in Devolved Government

Article 174(c) in the Constitution of Kenya, 2010, indicates that an objective of devolution is to enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them. Article 184(1) (c) further stipulates that a national legislation is required by the Constitution to define the governance and management of urban areas and cities, which include mechanisms "for participation by residents in the governance of urban areas and cities.

iv. Participation in the Legislature

Articles 118(1) (b) and 196(1) (b) directs the National and County legislatures respectively to facilitate public participation in its work. In addition, Article 119(1) indicates that people have the right to petition Parliament to consider any matter within its authority. This means that every person can request Parliament to take up issues important to them.



Figure 26: National Assembly discussing a petition by citizens

v. Citizens' Access to Information

Article 35 indicates that citizens have the right to access all information held by the State or public officials. Public servants are also bound to share information with citizens. Articles 118(1) (a) and 196(1) (a) direct Parliament and County assemblies respectively to hold public meetings and conduct their work in full view of citizens (refer to the constitution article). Another reference to public information sharing is in Article 201(1) (a), which indicates that there be openness and accountability and public participation when it comes to public financial matters. Article 232 (1) (f) shows that the values and principles of public service include transparency and provision to the public of timely and accurate information.

SESSION 2: Tools for Effective Public Participation

Time:

Session Objectives

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

- a) identify tools for public participation;
- b) describe the tools for effective public participation.

Suggested Learning Resources

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

Suggested Training Methods

- Question and Answer
- Group Discussion

Suggested Learning Activities

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

Suggested Assessment Methods

- Question and Answer
- Observation during on presentations on the tools for public participation

KEY NOTES

Tools for Effective Public Participation

The following are the tools for effective public participation

a) **Public Petitions**

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

involve:

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

i) Writing a Petition

Writing a petition comprises identifying the target, carrying out research on the issue(s) of concern, clear communication and how to promote the petition.

- **Identifying the Target**

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

- **Content of the Petition**

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

- **How to Promote a Petition**

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

ii) Lobbying

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

Key Principles of Lobbying

The key principles of lobbying are:

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

Tips for Successful Lobbying

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

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

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

The following are tips for successful lobbying:

- i. Identify key decision-makers who have the greatest influence on the decision-making process. It is important to locate and contact information for key stakeholders during the initial research.
- ii. Develop a target list of names of community leaders, elected politicians, government officials, and other civil society groups.
- iii. Stay in touch informally with these contacts to develop a relationship of trust before approaching them.
- iv. Identify influential individuals who support or are interested in the issue under consideration. Even if the supporters do not have decision-making power directly linked to the issue of interest, they may help in exerting influence on the key decision-makers. Note that it is not the elected representatives only who hold influence. Maintain contacts and relationship with staff who work for the elected officials.

iii) **Advocacy**

Advocacy is the process by which an individual or group aims at influencing decisions within political, economic, social systems and institutions. Advocacy can include many activities that a person or organization undertakes including media campaigns, public speaking, commissioning, publishing research and conducting exit polls or filing of an amicus brief

(friend of the court). It can also be defined as any action that speaks in favor of, recommends, argues for a cause, supports or defends, or pleads on behalf of others.

Activities for Advocacy

The following is a list of suggested advocacy activities.

- **Organizing**
This is building power at the grassroots by mobilizing communities to take action on a given issue.
- **Educating decision makers**
This entails providing information on an issue to decision-makers to ensure that they are informed on a given issue facing the public.
- **Creating a Platform for meeting with Decision-Makers**
The communities have an opportunity to meet legislators and decision-makers face to face and discuss the issues that affect their lives. Not only do legislators receive the tools they need to represent their communities, but they are also equally empowered to influence the outcomes of policy debates.
- **Conducting Research**

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

- **Organizing a rally**

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

vi) Manifestos

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

v) Memoranda/ Memorandum

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

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

Memorandum

Subject title

To: The person receiving the memorandum

From: The person writing the memorandum

Date: Current date

Subject: A short description on the issue

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

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

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

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

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

vii) Communique

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

- **Preparing a One-Pager**

This is a summary of information on an issue prepared in one page. The information contained in it should be clear and concise. The name and contact information should stand out. Stakeholders should be given an outline of the situation to be discussed, facts and figures related to the issue and proposed solutions. There is need provide the necessary relevant reference that is; newspapers, website links and brochures for more information.

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

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

- **Phone Calls**

For effective use of phone calls:

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

- **Face to face meetings**

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

TOOLS FOR PUBLIC PARTICIPATION

- Advisory committees
- Public petitions
- Lobbying
- Advocacy
- Manifestos
- Memoranda/memorandum

UNIT 5: PLATFORMS FOR PUBLIC PARTICIPATION

Time: 1hr. 30 minutes

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

This unit covers the following;

Platforms for public participation which include:

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

SESSION 1: Platforms for Public Participation:

Time: 3 Hours

Session Objectives

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

- a) identify platforms for effective public participation;
- b) describe platforms for public participation;
- c) select appropriate platforms for public participation.

Suggested Learning Resources

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

Suggested Training Methods

- Brainstorming
- Group discussion
- Sharing experience

Suggested Assessment Methods

- Question and Answer
- Observation of presentations.

Suggested Learning Activities

- i. Brainstorm on platforms for public participation.
- ii. Group discussion on platforms for public participation.
- iii. Presentation in plenary.
- iv. Discuss the platforms for public participation.
- v. Summarize the session.

KEY NOTES

The following are the platforms for public participation:

a) Round Table Discussions

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

b) Benefits of Round Table

Round table discussions have the following benefits:

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

c) Tips for Successful Roundtable Discussion

- i. The venue for the discussion should be convenient for the participant
- ii. Simple language and where possible the local language should be used.
- iii. During the discussions, norms, values and culture of the community should be respected
- iv. Choice of the day, week or time of the year for the discussion should be convenient for all the participants
- v. The language and content of the presentations must be relevant and appropriate for the audience
- vi. Regular engagement with the community is necessary
- vii. The relevant government offices and structures should be involved
- viii. Divergent opinions should be embraced.

d) Advisory Committees

- i. The composition of the advisory committees is driven by the purpose for which they are constituted.
- ii. Members are chosen from respective fields and/or specific areas of expertise

- iii. The composition takes cognizance of constitutional provisions such as equity, inclusiveness, equality, non-discrimination, protection of the marginalized and gender balance.
- iv. The advisory committees provide guidance and input on a wide variety such as issues of public safety, business, environment and health care among others.

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

d) Community Forums

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

e) Social Media

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

f) Benefits of Social Media

The benefits of Social media are:

- i. People and processes are more visible
- ii. It increases participation by wider audience of for example, young adults hence raises the level of representativeness.
- iii. Leads to a more personalized connection with the audience
- iv. It is cost effective

These avenues of communication can be used to spread messages on Public participation in governance processes.

g) Public Consultations

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

h) Monitor all forms of media such as newspapers, FM Radio, websites, social media sites (such as face-book and twitter among others) to stay up to date with the on-going public consultations. These avenues of communication can also be put to good use for spreading messages on public participation in governance.

i) Public Barazas

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

e) Protests

A protest is a collective term denoting many different forms of expression such as picketing, sit-ins, boycotts, vigil, and hunger strikes. Protests may take place either passively or actively. Passive action, or protest, entails appealing for change within a system. This implies that a message is conveyed and gains attention, without disrupting the system. The picture below shows an example of a public protest.



Figure 27: The picture shows an example of a public protest

Selecting appropriate platforms for Public Participation

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

some examples of contexts in which the platforms could apply.

| Platform | Application | Relevant context |
|----------------------|---|---|
| Roundtable | <ul style="list-style-type: none"> • Conflict resolution • Self-expression • Building consensus on an issue • Consultative planning | <ul style="list-style-type: none"> • Boundary disputes • Food security • Disease outbreak • Strategizing on the community progress |
| Community fora | <ul style="list-style-type: none"> • Building consensus on issues • Building trust among groups • Appreciation of divergent views • Exchange of information | <ul style="list-style-type: none"> • Acquisition of a piece of land to put up a cattle dip |
| Public consultations | <ul style="list-style-type: none"> • Solicit for public views/ opinions • Identify community needs • Prioritizing community needs | <ul style="list-style-type: none"> • Acquisition of a piece of land to put up a social facility • Introducing new crops • Delimitation of boundaries |
| Social Media | <ul style="list-style-type: none"> • Building consensus • Notification on issues • Carrying out research • Influencing change • Awareness creation | <ul style="list-style-type: none"> • Campaign on substance use • Early warning on natural disasters • Paying tax • Controlling juvenile criminal behavior |

| | | |
|---------------|--|--|
| Public Baraza | <ul style="list-style-type: none"> • Dissemination of information • Raising awareness on government/public/social issues • Building capacity • Enhancing national cohesion | <ul style="list-style-type: none"> • Insecurity • Disease breakout • Distribution of nets, relief food, vaccination and seeds |
| Protests | <ul style="list-style-type: none"> • Appealing for change within a system • Expression of public opinion against a felt injustice • Seeking public empathy and support • Gaining attention | <ul style="list-style-type: none"> • Land grabbing • Embezzlement of public funds in school • Poor governance • Corruption |

Figure 28: Key notes

APPENDIX 1 ACTS OF PARLIAMENT

1. Public Procurement and Disposal Act, 2005
2. Political Parties Act, 2011
3. Elections Act , 2011
4. Urban Areas and Cities Act, 2011
5. County Governments Act, 2012
6. Code of Ethics for Public Officers 2012
7. Transition to Devolved Government Act, 2012
8. National Government Coordination Act , 2012
9. Inter-Governmental Relations Act 2012
10. Leadership and Integrity Act, 2012
11. Public Officer Ethics Act, 2012
12. Public Finance Management Act, 2012
13. Ethics and Anti-Corruption Act, 2012
14. The Commission on Administrative Justice Act 2012
15. Campaign Financing Act (CFA), 2013
16. The Kenya Law Reform Commission, 2013
17. The National Cohesion and Integration Commission Act, 2008
18. Land Act, 2012
19. Land Registration Act, 2012
20. Environmental and coordination Act,2009



Notes



Ministry of Devolution
and Planning



Uraia



Council of Governors

