DEVOLUTION
frequently asked Questions
ANSWERED

amkeni waKENYA

CEDGG
CENTRE FOR ENHANCING DEMOCRACY AND GOOD GOVERNANCE
About CEDGG

The Centre for Enhancing Democracy and Good Governance (CEDGG) is a grass root civil society organisation that works to empower vulnerable and marginalized citizens to claim their rights in local development and governance processes. CEDGG has been in operation since the year 2001 and legally exists as a Non-Governmental Organisation. Our head office is in Nakuru Town – Nakuru County, in the Republic of Kenya. Our programme work covers mainly the mid rift valley region i.e. Nakuru, Baringo and Kericho Counties. The core problem that CEDGG is seeking to address in the society is the **low capacity of the marginalised and vulnerable groups to engage with and participate in the decision making processes** around the constitutional reform agenda and the development process in general.

Vision

A society that respects and protects marginalized and vulnerable peoples’ rights in all social, political and economic development processes

Mission

To develop the capacity of marginalized and vulnerable communities in Kenya to demand, adopt and implement sustainable best practices in democratic governance through advocacy, information dissemination, research and networking.

Core values

- Team work
- Social justice
- Professional excellence
- Integrity
- Tolerance

Programs/Key Result Areas

- Governance and Devolution.
- Partnership, Networking and Knowledge.
- Organizational Development.
Preface

Living the Constitution—‘Constitutionalism’—is indeed a daunting task! After years of struggle—a struggle that cost lives, livelihoods and careers, a struggle that had many gallant Kenyans incarcerated, maimed and traumatized forever, Kenyans gave unto themselves a new constitution that sought to address all those issues that were subject of the struggle.

Almost three years since promulgation of the Constitution, we pause and ask: Are we living the Document? You be the Jury!

The first step towards constitutionalism, in our view, is to know what it says. This can be facilitated through Civic Education. The next step is doing what it commands and ensuring that everyone does the same. This will require Civic Engagement. The third; Civic Disposition is knowing by heart what the Constitution says, believing in its Supremacy, faithfully following its commands and jealously and zealously defending it.

Constitutionalism is both an individual and collective responsibility. As such, you will have Kenyans trying to make the first infant steps at it, while there are those already at the last step!

In our effort to contribute towards constitutionalism, CEDGG has been involved in carrying out civic education in Nakuru County. The approach has been to work with communities to enable them understand what the constitution says, leverage the knowledge by demanding accountability from their government especially at the County level and vigilantly watch over it all the time.

In the course of this work, we have been confronted by several questions. This booklet is our humble attempt to respond to some of those questions we have been mostly frequently asked. Our hope and prayer is that it will, albeit in a small way make constitutionalism a reality.

To Amkeni Wakenya, our benefactor in this effort; we say a BIG THANK YOU!

Masese, Kemunche
CEDGG, Nakuru, April 2012
SOVEREIGNTY OF THE PEOPLE

The Constitution of Kenya is very clear on who holds power:

**Article 1:**
All the sovereign power belongs to the people of Kenya.
This power has been delegated to the other structures (sub article 2 and 3) to exercise the power on our behalf as follows;

**Fig. 1.0. Delegation of sovereign power by the people**

At the County Government level, the people delegate their power to County executive (Governor and County Executive Committee Members) and the County Assembly.

The meaning of Article one is that people are the ‘government.’ The focus of all Programs and activities conducted by all arms of government both at National and County levels must be on the people. For this reason, the constitution has made it mandatory for the people to participate in all programs and activities conducted by government. To facilitate participation of the people, the Constitution of Kenya 2010 has introduced among others, the devolved system of governance.

**What is devolution?**
Devolution is a form of governance that involves the transfer of power and resources by the central government of a sovereign state to governments at a lower level, usually at the sub-national level. Devolution is instrumental in ensuring that citizens are able to participate effectively in governance. This is because devolution allows citizens to contribute to decision making, financial
management and other functions of government. Devolution enhances the exercise of democratic governance. This in turn promotes development efficiency by reducing wastage of resources and ensuring that resources are channeled to projects that address the felt needs of the People.

Why is devolution important?

Some of the issues that have been set out as the objects and principles of devolution in Articles 174 and 175 of the Constitution of Kenya indicate that devolution is a good way for Kenya because:

- It will promote democratic leadership
- Leaders will be more accountable
- Services will be brought nearer to people
- Citizens will participate more in decision making with respect to governance
- Communities that have been marginalized will get an opportunity to participate in governance
- Resources will be shared equitably throughout Kenya
- More development will be realized
- It will be possible to monitor what leaders are doing

How will devolution in Kenya work?

Article 1 (4) indicates that there will be one (1) national government and 47 county governments.

A number of legislations have been enacted since the promulgation of the constitution 2010 to allow asymmetrical transition to the devolved systems of governments. These include:

- The county Government Act 2012
- The Transition to devolved Government Act
- The Urban Areas and Cities act 2011
- The Public Finance Act 2012
- The Intergovernmental Relationship Act
- The National Government Coordination Act

What has been devolved according to the Constitution?

- Government functions
- Financial resources
- Management functions
- Land resources
• Legislative powers
• Service delivery functions as stipulated in schedule 4

Will the functions and powers devolved remain at the headquarters of the County?
Section 48 of the county government act, “...the functions of county functions and provision of services shall be decentralized as follow: The Urban Areas and Cities Act 2011, urban areas will be classified into cities, municipalities and towns.

Urban areas the decentralized units include:

City
Should have population of at least 500,000
Should have a City Integrated Plan
Will be governed by a city board selected according to the criteria indicated on page-

Municipality
A population of at least 250,000
Governed by City Board

Town
A population of at least 10,000 people
Should have a development plan Managed by Town Committee

How
Through The cities and municipalities will be managed through corporate boards appointed by the county executive committee with approval from the county assembly. City and municipal boards will comprise eleven (11) and nine (9) members respectively out of which at least five (5) shall be nominated by;

• An umbrella body representing professional associations in the area;
• An association representing the private sector in the area
• A cluster representing registered associations of the informal sector in the area;
• A cluster representing registered neighborhood associations in the area; and
• An association of urban areas and cities

There shall be city and municipal manager for each city and municipality. The
managers shall implement the decisions and functions of the board.

Areas designated as town shall be governed and managed by a committee appointed by the county governor with approval by the county assembly. A town administrator shall be appointed to perform such functions as the town committee may determine.

What about the rural Constituencies?
Section 48 further provides for decentralization of function to the grassroots level of the county government.

<table>
<thead>
<tr>
<th>County Government</th>
<th>County Chief OFFICER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub County Administrator</td>
<td>County Chief OFFICER</td>
</tr>
<tr>
<td>Sub county level equivalent to constituencies</td>
<td>Sub County Administrator</td>
</tr>
<tr>
<td>Ward unit</td>
<td>Ward Administrator</td>
</tr>
<tr>
<td>Village unit</td>
<td>Village Administrator/ Village council</td>
</tr>
</tbody>
</table>

What is the role of the Administrators?
Their work is to coordinate, manage and supervise the general administrative functions in the Sub-county including: service delivery, development activities and more important; *facilitate and coordinate citizen participation* in the development of policies and plans and delivery of services

Who appoints them and what is the qualification for an administrator?
They shall be appointed competitively by the County Public Service Board. They should have professional and technical knowledge in administration

What about the Provincial Administration?
It will be restructured to conform to the structure of devolved government five years from 4\textsuperscript{th} August 2010
The restructuring of the Provincial Administration to conform to county Government systems has begun.
As an intervention to clear the ambiguity as regards the role of provincial administration, the National Government Coordination Act 2013 has provided distinct roles for the members of the earlier referred to as provincial administration.

**New Structure of what used to be called Provincial Administration**

<table>
<thead>
<tr>
<th>National level</th>
<th>President and Cabinet</th>
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<tbody>
<tr>
<td>County level</td>
<td>County Commissioner</td>
</tr>
<tr>
<td>Sub county level Deputy</td>
<td>County Commissioner</td>
</tr>
<tr>
<td>Ward Level Assistant</td>
<td>County Commissioner</td>
</tr>
<tr>
<td>Location</td>
<td>Chief</td>
</tr>
<tr>
<td>Sub-location</td>
<td>Sub-chief</td>
</tr>
</tbody>
</table>

**Who is powerful between the County commissioner and the County Governor?**

According to section 15 of the National Government Coordination act the main function of the administration officers is to coordinate and administer the functions of the national government (as in schedule 4 of the constitution) at the county level.
They are to report to the cabinet secretary in charge of Coordination of the national government function and the president.
Therefore there is no one who is powerful than the other since they have distinct roles and reporting responsibilities.
In any case, article 6 of the constitution states that the two levels of government are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation. Concerns have however been raised about duplication of roles by the two offices. There is a clear need to clarify reporting procedures so that the two offices work in harmony and parallel to each other.
What about when conflicts arise between the two levels of government?
The governor shall constitute a mediation team comprising of:
- Two eminent persons appointed by the governor
- Two eminent persons nominated by the cabinet secretary
The mediation team shall have 14 days to undertake its role. If the team is unable to stop the conflict they will refer it to the Summit as provided for in the Intergovernmental relationship Act

What criteria does the Transition Authority use to determine the transfer of functions to county government?
- The arrangements for and the extent of further decentralization of the function and provision of related services by the county government;
- whether there is the required infrastructure and systems to deliver the function;
- whether the county government has the necessary financial management systems in place; whether the county government has an approved plan in relation to the function; and
- any other variable as may be prescribed after consultations between the Authority, county governments and the Commission for the Implementation of the Constitution and the Commission on Revenue Allocation.

How will Citizens Participate in devolved governments?
In the constitution 2010, Participation is not just a principle of governance but also a right.
In the Urban Areas and Cities Act, second schedule, the rights and duties of residents of urban areas and cities are clearly stipulated.

What opportunities exist for the participation of Mwananchi in the county governance?

Citizen participation
Citizen participation refers to ways in which citizens exercise influence and control over decisions that affect them. Beyond elections, citizens ‘voices should be heard in influencing the making, implementation, monitoring and evaluation of decisions that concern their socio-politico-economic well-being and to demand accountability from their leadership.
Some mechanisms for citizen participation include;
- Elections
- Surveys
• Town hall meetings/public hearings/hotlines
• Direct community involvement in service delivery e.g. through committees
• Exit- for example switching to a different service provider in cases where government does not enjoy monopoly to express dissatisfaction with services provided by state agency
• Participatory planning and budgeting – participation in formal platforms where plans and budgets for service delivery are made
• The obvious way of citizens’ participation is through electing their representatives.
• Before electing them, citizens need to vet them

Citizen Fora
• The County Governments Act 2012 provides for how the county governments will decentralize to sub counties (constituencies), wards and villages. In this law, the ways in which citizens will participate are clearly outlined. It is envisaged that there will be **Citizen’s Fora** at the village level, the ward level, the sub-county level and the county level. These forums will be used to discuss budgets, priorities for development spending and other governance issues

Budget monitoring
**Is it my obligation as a citizen to monitor Government Spending?**
Public money is the total amount raised through the taxes **we all pay** and the grants and loans the government raises on **our behalf**. Again, we are the ones who repay the loans.
Some of the debt burdens we are carrying to date were transferred to us by the colonial government or as results to writing off huge debts of a few individuals in power without our consent.

**Is this participation guaranteed by the constitution?**
Chapter 12 of the constitution stipulates that “**there shall be openness and accountability including public participation in the financial matters**”

**What am I supposed to know so as to conduct monitoring effectively?**
For one to monitor and participate in the budgeting process it is important to understand the budget calendar. Table1 below shows the important dates and opportunities that exist for citizen’s to participate.
## Table 1: County Budget Calendar

<table>
<thead>
<tr>
<th>DATE</th>
<th>BUDGET ACTIVITY</th>
<th>OPPORTUNITY FOR CITIZEN PARTICIPATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>By August 30th</td>
<td>The county Executive officer in charge of finance shall issue a circular to all national government bodies that indicate how the public will participate in the budget-making process including specific opportunities and dates.</td>
<td>Mwananchi can get a clear calendar of county platforms for participation.</td>
</tr>
<tr>
<td>FEBRUARY 15</td>
<td>County Debt Management Strategy paper presented in parliament: this include plans without numbers of hw the government intends to raise and spend</td>
<td>The county budget committee shall seek and incorporate public input in their reports tabled at the county assembly.</td>
</tr>
<tr>
<td>30th APRIL</td>
<td>County Budget estimates: With amounts set aside for each government department and agency</td>
<td>Mwanachi can analyze the estimates to determine if important sectors are given commensurate allocation.</td>
</tr>
<tr>
<td>May and 30th June</td>
<td>The budget estimates should be made public as soon as practical</td>
<td>This provides the public the chance to assess and understand the estimates. During this period the County assembly can make changes in the budget as long as they don’t create deficits. The public can debate together with the county assembly members and make their suggestions in writing. The budget committee will hold public hearings on the budget.</td>
</tr>
<tr>
<td>30th June</td>
<td>The budget is passed through an appropriation bill. The bill shows how much the assembly is approving for each department or government agency</td>
<td></td>
</tr>
<tr>
<td>21 days later</td>
<td>The Budget is made public</td>
<td>The public can check if their view were considered in the final budget.</td>
</tr>
</tbody>
</table>


The budget committee is to table a quarterly report on the actual expenditure against the planned expenditure. This is an opportunity for the public to monitor the government spending.

| November | Budget review and outlook paper |

NOTE
The County Budget Strategic paper derives from the County Integrated Development plan which is developed from planning forums at decentralized units. The planning forums identify priorities that will be used to formulate the Integrated Development Plan for the County.

There shall be a county Budget and Economic Forum comprised of county government officials, nominees of the private sector and non-state actors. The forum should be consultative and also consults the public. It is the one that informs the County Fiscal strategic paper.

What about the newly enacted CDF Act, does it have provisions for public participation?
Mwananchi can participate through elections of the CDFCs which shall be conducted right from the ward level where each ward is expected to elect five members.

Prioritization of the CDF Project
Article 22 (1) of the CDF Act 2013, stipulates that Projects funded by CDF “.......shall be community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.” This implies that the citizens must be involved in need analysis and project prioritization.

Composition of the Constituencies Development Fund Committees
- A national government official
- Three men nominated by the ward development committees one of whom shall be a youth
- Three women nominated by the ward development committees one of whom shall be a youth
- One person with disability nominated by the wards development committees
- One person nominated from active NGOs in the constituency
The Chairpersons of the Constituency Development committees at the constituency shall be members of the County Project committee together with the senator, members of parliament, county women rep, the governor, the national government official, the office in charge of county planning and a member of the CDF Board.

**The County Project Committee Role:**
To coordinate and monitor the implementation CDF projects funded jointly by two or more constituencies

**Monitoring and Evaluation of the CDF projects**
Members of the public can also use the right to information provided in article 35 of the constitution and Section 96 of the County Government Act to conduct Social audit on projects to ascertain proper utilization of the public fund.
If citizens realize any misappropriation of fund they should write petitions to the CDF Board about it

**How can we access information about our county governance processes?**
Sections 93, 94, 95 and 96 of the County Governments Act clearly elaborate the principles, objectives, framework for access to county communication. County government should establish mechanisms to facilitate public communication and access to information in the form of media with the widest public outreach. Which may include?

- Televisions stations
- Information communication technology centers
- Websites
- Community radio stations
- Public meetings and
- Traditional media

**NOTE**
**Section 96**-Every citizen shall on request have access to information held by any county government or department

**Can the county ward members be recalled?**
Article 27: The electorate in a county ward may recall their member. The recall shall be initiated upon the judgment of the high court which shall
validate that the member of the county assembly:

- Has violated the provisions of chapter Six of constitution i.e. leadership and integrity
- Has mismanaged public resources
- Is convicted of an offence under the elections Act.

**What are the requirements?**
The recall shall be initiated by a petition filed with the IEBC and shall be;

- In writing
- Signed by petitioner, who should be a voter in the ward
- Accompanied by a court order
- Be accompanied A list of names of at least 30% of the registered voters in that ward
- Be accompanied by a fee prescribed for an election petition.

**How can we get to understand better more information about governance?**

- The national and county governments shall develop a programme and determine curriculum for civic education.
- Each county shall establish a **civic education unit**
- National and county government will facilitate civic education programmes
- The national and county government must involve non state actors as guided by regulations

**Citizen Service Centre**
*County Government Act 119*

A County Executive Committee shall establish a Citizen’s Service Centre at the county, sub-county, ward and other decentralized unit. It shall serve as the central unit for the provision of public services.

**What about the judiciary? Does it have provisions for the public participation?**

Though judicial functions are vested in the national government, there are reforms that provide for Judiciary week. These are open day where the public can engage the judiciary and make inquiries about business in the courts.

In addition, according to article 159 (2) the Judiciary is expected to promote alternative dispute resolution methods such as mediation, reconciliation, arbitration and traditional dispute resolution mechanisms.
Suppose we realise that the county governance process is not participatory, transparent or accountable, what can we do as citizens? The whole of Part VIII of the County Governments Act stipulates the principles that shall guide public participation. Citizens have a right to petition their county government on any matter under the responsibility of county government?

How is petitioning done?
For a petition to be credible it has to be in writing, clearly stating the issue and proposing remedial action from the responsible authority. The petitioners must also sign and state clearly their addresses, both physical and postal. This makes it easy for the authorities to make follow ups and boost the credibility of the petition.

Steps to follow in petitioning

1. Discuss the theme of the petition
2. Agree on the authority to be petitioned
3. Agree on the format of the petition
4. Write and sign the petition (at least 20 signatures)
5. Agree on how to present the petition to the authority
6. Carry out petitioning and agree on the follow up activities
7. Monitor actions of the concerned authority
8. Follow up until the issue is resolved