

PRIMARY RESEARCH TO ESTABLISH THE RATE OF COMPLIANCE BY
COUNTY ASSEMBLIES AND COUNTY EXECUTIVES WITH THE
CONSTITUTIONAL AND STATUTORY REQUIREMENTS PERTAINING TO
THEIR COMPOSITION FOLLOWING THE 2013 GENERAL ELECTIONS
AND IN LIEU OF THE 2017 GENERAL ELECTIONS

CONCEPT NOTE

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ABBREVIATIONS AND ACRONYMS

CECs	County Executive Committees
CoG	Council of Governors
CoK	Constitution of Kenya, 2010
DLM	Dr Linda Musumba & Company Advocates
IEBC	Independent Electoral and Boundaries Commission
IED	Institute of Education in Democracy
KNBS	Kenya National Bureau of Statistics
MCAs	Members of County Assemblies
NGEC	National Gender and Equality Commission
PWDs	Persons with Disability

LIST OF LEGISLATIONS

Constitution of Kenya, 2010
County Governments Act, 2012
Elections Act, 2011
Political Parties Act, 2011

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1.0 BACKGROUND

The Constitution of Kenya, which was promulgated in August 2010, provides the framework for the creation of the various organs of the state. Bearing in mind Kenya's incumbent constitutional design, some of the organs created by it are new; these include among others the Senate, various constitutional independent commissions and offices, and of importance in this project, a two tier government comprising the national and 47 county governments. The objects and principles of devolved government are clearly provided for in Article 174 of the Constitution of Kenya, 2010 [CoK] and include, among others, fostering national unity by recognising diversity; promoting democratic and accountable exercise of power; enhancing public participation; promoting and protecting the interests and rights of minorities; and ensuring equitable sharing of national and local resources.

In accordance with Article 176 of the CoK, each of the 47 county governments have a legislative and an executive arm referred to as the county assembly and county executive respectively. The CoK also prescribes the composition and functions of the assemblies and executives elaborately. The county governments and other new state organs formally came into being following the first General Elections held under the CoK on 4 March 2013.

In light of the foregoing, the key objective of this project is to establish whether and to what extent the county assemblies and county executives as presently constituted, are fully compliant with the requirements laid out in the various constitutional and statutory provisions with regard to the diversity of their composition. However, cognisance is taken of other important factors pertaining to the composition of the county assemblies and executives including minimum education

requirements as well as knowledge and exposure as applicable, even though they will not constitute part of the parameters to be studied on this occasion.

1.1 Enquiry Pertaining to County Assemblies

The central enquiry with regard to the composition of the county assemblies pertains to the population of the special seat members referred to in Article 177 (1) (b and c) of the CoK, who can only be designated following the conclusion of the general election. They include, *“the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender... and the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament.”* This provision contributes to the realisation of the principle of devolved government provided for in Article 175 (c) of the CoK that *“not more than two-thirds of the members of representative bodies in each county government shall be of the same gender”*.

Section 36(8) of the Elections Act, 2011 indicates the total number of persons required to represent the aforesaid groups of marginalized persons as four. According to Section 36(4) of the Elections Act, 2011, the Independent Electoral and Boundaries Commission [IEBC] is duty bound to designate these respective party representatives within 30 days after the declaration of election results from each of the qualifying party lists on the basis of proportional representation.

1.2 Enquiry Pertaining to County Executives

As regards the county executives, the key enquiry relating to their composition is derived from Article 197 of the CoK which provides that,

“not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender; Parliament shall enact legislation to ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee; and prescribe mechanisms to protect minorities within counties.”

Section 35(1 and 2)¹ of the County Governments Act, 2012 reiterates the above provisions of the CoK. Notably, it is the duty of the governor to appoint the county executives in accordance with the laid down stipulations with the approval of the county assembly.

From the foregoing, it is evident that the Constitution and supporting legislation outline a procedure to ensure the deliberate inclusion of previously marginalised persons in decision-making processes. Clearly, through the involvement of Kenyans across the board in national decision-making processes, the ownership of the outcome of the decisions is increased, as well as the impact of the decisions on the lives and wellbeing of the majority.

1.3 The Processes of Populating the Special Seats in the County Assemblies, and the Appointment of Members of the County Executive

The processes of filling the special seat member positions in the county assemblies and the appointment of members of the county executive are provided for in the CoK and other relevant

¹ 35.(1) The governor shall, when nominating members of the executive committee - (a) ensure that to the fullest extent possible, the composition of the executive committee reflects the community and cultural diversity of the county; and (b) take into account the principles of affirmative action as provided for in the Constitution. (2) The county assembly shall not approve nominations for appointment to the executive committee that do not take into account - (a) not more than two thirds of either gender; (b) representation of the minorities, marginalized groups and communities; and (c) community and cultural diversity within the county.

statutes. Article 27 (6–8) of the CoK, which contains affirmative action provisions, is applicable to the elective and appointive positions in the county assemblies and county executives respectively and states,

Article 27 – Equality and freedom from discrimination

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

The specific procedure for populating the respective positions in the county assemblies and the county executives is reviewed here below.

1.3.1 Procedure for Filling in of Seats in the County Assembly

With reference to elective positions and taking into account the provisions of Articles 27 and 197 outlined above, Article 81(b) of the CoK provides that, “*not more than two-thirds of the members of elective public bodies shall be of the same gender.*” Further, Article 90 provides that the elections, both for nominated members in Parliament and special seat members in the county assemblies shall be supervised by the IEBC, and will be based on proportional representation through use of party lists. Under the circumstances, the allocation of seats to political parties is expected to reflect

the proportion to the total number of seats won by candidates of each of the qualifying political parties at the general election.

More specifically, Article 177 provides for the membership of county assemblies. It indicates that in addition to the members elected from each ward, which constitutes a single member constituency, a county assembly shall also comprise, *“the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender; ...the number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament.”* Article 177 further specifies that the members so referred to shall be nominated by qualifying political parties *pro rata* to the seats garnered in that election in the county after the declaration of elected members from each ward.

The detail of the procedure for filling seats in the county assembly is further elaborated in the Elections Act, 2011 which provides guidance for the nomination of party lists members, submission of party lists and allocation of special seats. Section 34(4) of the Elections Act provides that, *“A political party which nominates a candidate for election under Article 177 (1) (a) shall submit to the Commission a party list in accordance with Article 177 (1) (b) and (c) of the Constitution.”* Section 34 further clarifies that the party lists so submitted are expected to be: in order of priority; in accordance with the Constitution as well as the nomination rules of the respective parties; and to be valid for the entire term of that Parliament.

Section 36 of the Elections Act elaborates further the subsequent procedure for allocation of the special seats as follows:

Section 36

(1) A party list submitted by a political party under—

(e) Article 177 (1) (b) of the Constitution shall include a list of the number of candidates reflecting the number of wards in the county;

(f) Article 177 (1) (c) of the Constitution shall include eight candidates, at least two of whom shall be persons with disability, two of whom shall be the youth and two of whom shall be persons representing a marginalized group.

(2) A party list submitted under subsection (1) (a), (c), (d), (e) and (f) shall contain alternates between male and female candidates in the priority in which they are listed.

(3) The party list referred to under subsection (1) (f) shall prioritise a person with disability, the youth and any other candidate representing a marginalized group.

(7) For purposes of Article 177 (1) (b) of the Constitution, the Commission shall draw from the list under subsection (1)(e), such number of special seat members in the order given by the party, necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender.

(8) For purposes of Article 177(1) (c) of the Constitution, the Commission shall draw from the list under subsection (1)(f) four special seat members in the order given by the party.

(9) The allocation of seats by the Commission under Article 177 (1) (b) and (c) of the Constitution shall be proportional to the number of seats won by the party under Article 177 (1) (a) of the Constitution.

Based on the above summary, it is evident that political parties have a significant part to play in ensuring that the special seats are appropriately populated. Clearly, political parties have a duty to familiarise themselves with the law applicable and to adhere to it in the preparation of party lists under the various categories. This is a pre-requisite to enabling the IEBC to carry out its mandate in designating the appropriate candidates to the special seats.

1.3.2 Procedure for Appointment of Members to the County Executive

In addition to the provisions of Articles 27 and 197 of the CoK outlined earlier, Article 179(1) (b) states that the county governor shall appoint members of the county executive with the approval of the county assembly from among persons who are not members of the county assembly. Article 179(3) prescribes the limits of the membership to a county assembly to one-third of the number of members of the county assembly where the assembly has less than 30 members. Where the members of the assembly are 30 or more, the membership of the county executive is placed at 10. Notably, Article 179(6) indicates that members of the county executive committee are accountable to the county governor for the performance of their functions as well as exercise of their powers.

Section 35 (1-2) of the County Governments Act provides the fine details of the procedure for appointment of the members of the county executive by the governor from a perspective of diversity, gender, and one's status as either a minority or marginalised person in the County.

Section 35

- (1) The governor shall, when nominating members of the executive committee.
 - (a) Ensure that to the fullest extent possible, the composition of the executive committee reflects the community and cultural diversity of the county; and
 - (b) Take into account the principles of affirmative action as provided for in the Constitution.
- (2) The county assembly shall not approve nominations for appointment to the executive committee that do not take into account.
 - (a) Not more than two thirds of either gender;
 - (b) Representation of the minorities, marginalized groups and communities; and
 - (c) Community and cultural diversity within the county.

Evidently, the governor appears to have much leeway in the choice of who serves in the county executive committee provided the law on the parameters for choice is observed. For instance, there is no requirement for the governor to pick members from his or her party or from a pre-approved list. Under the circumstances, it is incumbent upon the governor to ensure that they observe the law regarding affirmative action and inclusivity by straddling the county in their search for potential candidates. The county assembly also plays an important oversight role with its power of approval of the governor's nominees and it must certainly take cognisance of the requirements of the law too in the exercise of this power.

2.0 STATEMENT OF THE PROBLEM

The evidence available is that following 30 days after the 4 March 2013 General Elections, several county assemblies had not yet been properly constituted in accordance with the law. This is based on the myriad court cases that were filed and press reports of the barrage of complaints that were directed towards political parties' complaints mechanisms by disgruntled aspirants. Appreciably, the Country was going through a steep learning curve in many respects during and after the 4 March 2013 General Elections because of the new governance structures that had been created by the CoK. This may potentially be the reason for the dithering, confusion, and even outright disobedience of the relevant laws by various actors when it came to ensuring the requirements pertaining to the composition of the county assemblies and executives were met following the said elections.

With reference to the filling of the special seats in the county assemblies, there were claims of persons being designated to special seats while not appearing on the formal party list of the sponsoring party; or while not coming from the respective constituency in question; and/or while

not being qualified to represent the groups of persons identified as marginalised according to the law. In other cases, there were allegations of the fraudulent replacement of names on party lists and the designation of able bodied persons to occupy the seats for disabled persons.

Indeed in March 2013, the National Gender and Equality Commission (NGEC) moved to the High Court soon after the General Elections to challenge the nomination lists submitted by political parties on the basis that the rights of women, Persons with Disability (PWDs), youths, marginalised groups and other special groups had been violated. They sought interim orders to stop the gazetting and swearing in of persons to be designated under these categories pending the determination of the substantive suit to avoid prejudicing the case before the court. These orders were granted with respect to the swearing in of special seats members. The Association of the Physically Disabled of Kenya, International Federation of Women Lawyers (FIDA), Kenya Paraplegic Association, the National Council of Persons with Disabilities, and Rongai Environmental Action Initiative were also enjoined in this case.² Following the determination of this suit and the subsequent conclusion of the exercise of designating the special seats members by the IEBC, there still arose further court cases pertaining to the party lists and the qualification of persons so designated to represent the category of special interests indicated.

Among the counties where such cases were filed in court were Nyeri, Nyandarua, Garissa and Lamu. In Garrisa, Mr. Dubat Ali challenged the nomination of Gedi Adow to the special seat of Persons with disability in the County Assembly of Garissa. The petition was dismissed. Evidence was presented in court to the effect that the petitioner was in the gender top up list and not in the special groups list. The Court observed that Article 177(1) and (2) creates two types of special

² *National Gender and Equality Commission vs. Independent Electoral and Boundaries Commission & another*, Petition 147 (2013) eKLR

seats; the gender top up and the other for marginalized groups. The slot that was available for nomination at the County Assembly of Garissa was in respect of marginalized groups and not gender top. Since the petitioner was listed in the gender top up list and not the list for marginalized groups, he was not eligible to be nominated for the marginalized group slot which became available for Orange Democratic Movement after the general election and thus the appointment of the 3rd respondent was upheld.³

As regards the appointments to the county executives by the governors, there were vast claims of persons being appointed without reference to the two-thirds constitutional gender rule; the requirements regarding the incorporation of community and cultural diversity; and the requirement that minorities be included. For example, in Garrisa County, the Northern Nomadic Disabled Person's Organisation filed a suit claiming that the Governor had failed to meet the requirement of Article 54(2) of the CoK that obliges the state to ensure progressive implementation of the principle that at least five percent of members in elective and appointive bodies in the counties should be persons with disabilities. The petition was however dismissed on the ground that the petitioner failed to prove his case as it did not provide evidence that any of its members applied for the posts and further no evidence was attached to the petition showing qualified members who were not considered. The Court observed that the failure by the petitioner to enjoin the County Assembly was grave to his petition since the appointive role of the Executive Committees is not a preserve of the Governor.⁴

³ *Dubat Ali Amey v Independent Electoral and Boundaries Commission & 3 others* [2014] eKLR. See also *Lydia Nyanguthii Githendu vs. The Independent Electoral and Boundaries Commission (IEBC) & 17 others* (2015) eKLR and *Jennifer Ekhuya v County Assembly of Vihiga & another* [2015] eKLR

⁴ *Northern Nomadic Disabled Person's Organization (Nondo) vs. Governor County Government of Garissa & another* [2013] eKLR. See also *John Kipng'eno Koech & 2 others v Nakuru County Assembly & 5 others* [2013] eKLR; Jr Miscellaneous Civil Application 10 of 2013; and *Simon Wachira Kagiri v County Assembly of Nyeri & 2 others* [2013] eKLR.

Notably, according to a study carried out by FIDA Kenya following the 2013 General Elections, only 16 out of the 47 Counties at the time were in compliance with the two-thirds constitutional gender rule.⁵ This important study did not however delve into the reasons why this was the case, which the current study sets out to investigate among other things.

2.1 Five Issues arising where a County Assembly or County Executive is not Compliant with the Requisite Legal Requirements Regarding its Composition.

1. **Firstly**, as a matter of fact, such a county assembly or county executive as an entity stands in breach of the law applicable to the nomination or appointment of members respectively. Essentially, that county assembly or county executive is illegally constituted.
2. **Secondly**, where a county assembly or county executive stands in breach of the law as such, this imperils the propriety of its transactions due to the question of whether there is a legitimate quorum to transact business. Thus, the decisions thereby made risk being rendered nugatory. In addition, the quality of such faulty decision making processes is weakened by the absence of the useful and important perspectives brought to bear during discussions and decision-making by the interest groups identified under the law as being in need of protection through preservation of special seats.
3. **Thirdly**, the political parties that sponsor unqualified individuals for designation as special seat members to the county assembly; the governors that nominate unqualified persons to the county executive; as well as the members of the county assemblies that ultimately approve unqualified members to the county executive; stand in breach of the law. This

⁵ See study done by FIDA Kenya (2013) Key Gains and Challenges: A Gender Audit Of Kenya's 2013 Election Process, online at <https://www.ndi.org/files/Kenya-Gender-Audit-2013-Electoral-Process.pdf> [accessed on 28.010.2015]

raises questions about the premium that is placed on the obedience to the law generally by leaders at such high-ranking levels in Kenya, at which levels there is an implied term that the leadership ought to demonstrate total fidelity to the law to serve as examples to citizens.

4. **Fourthly**, worthy and rightful candidates who ought to occupy the special seat member seats in the county assembly and the county executive positions in the county executive through fair and transparent nomination and appointment processes are denied the opportunity;
5. **Lastly**, the ultimate objective of ensuring a fairly balanced inclusion of both genders in elective and appointive positions in Kenya through the implementation of the two-thirds constitutional gender rule, as well as the inclusion of the groups of persons identified in the category of marginalised persons, is defeated. This is done through non-adherence to the law prescribing the composition of the county assemblies and executives.

Undoubtedly, the court battles that must be waged to rectify the mistakes in the scenarios above not only exert untold mental and physical pressure on the litigants, but also impose a heavy financial burden on them owing to the costs of litigation and lawyers' fees. Furthermore, the above sets of circumstances inevitably weaken the process of devolution that is a key pillar of Kenya's political and governance trajectory onwards into the future.

3.0 PROPOSED PRIMARY RESEARCH TO ESTABLISH COMPLIANCE RATES, POSSIBLE EXPLANATIONS, AND CO-RELATIONS

For the purposes of ameliorating or eliminating the consequences of the five problems outlined in the previous section insofar as the forthcoming 2017 general elections are concerned, Dr Linda Musumba & Company Advocates [DLM] proposes to carry out a robust investigative primary research with regard to the county assemblies and executives. The key aim of the research is to establish the rate of compliance by county assemblies and executives with the law regarding their composition, possible explanations for compliance or any deviations, as well as any useful correlations between the relevant factors. It is hoped that by sharing with the relevant stakeholders any useful information or leads discovered as a result of the research, that the same would impact positively on the preparation, administration, and management of the forthcoming elections.

Indeed a meticulous study of Kenya's first experience with regard to populating the special seats in county governments and with the appointment of members of the county executives provides a rich ground for improving the second and other subsequent occasions by the actors so responsible. Ultimately, through interrogating the integrity and efficacy of the elective and appointive processes involved, DLM expects to contribute to the advancement and deepening of the process of devolution in Kenya. In this regard, DLM anticipates that the research will also illuminate relevant policy suggestions and considerations to interested actors in the policy making process on the various issues that will be identified by the research which need a policy to address them. In particular, our focus will be on the lessons learnt where there was non-compliance to the Constitution and statutory requirements. As such, the lessons learnt would be able to point to the issues that led to non-compliance, which would in turn provide guidance for the

determination and proposal of specific policy instruments able to address the root cause of the problems.

Notice is hereby taken of recent studies carried out both by the Council of Governors [CoG] and the Institute of Education in Democracy [IED] that are likely to inform this research. In particular, the CoG launched its publication titled, *'Sectoral Policy and Legislative Analysis, April 2015'* at the close of its second annual Devolution Conference in Kisumu held in April 2015. Among other issues the publication outlines the laws that are inconsistent with the implementation of devolution and thus in need of revision. On the other hand, the IED released its report titled *'From Law to Practice. A Report on the Assessment of Political Parties Adherence to the Law in Kenya'*, in June 2015. The report essentially documents various aspects of non-compliance by political parties with the requirements of the law pertaining to the registration and management of political parties in Kenya.

3.1 Conceptual Framework for the Research

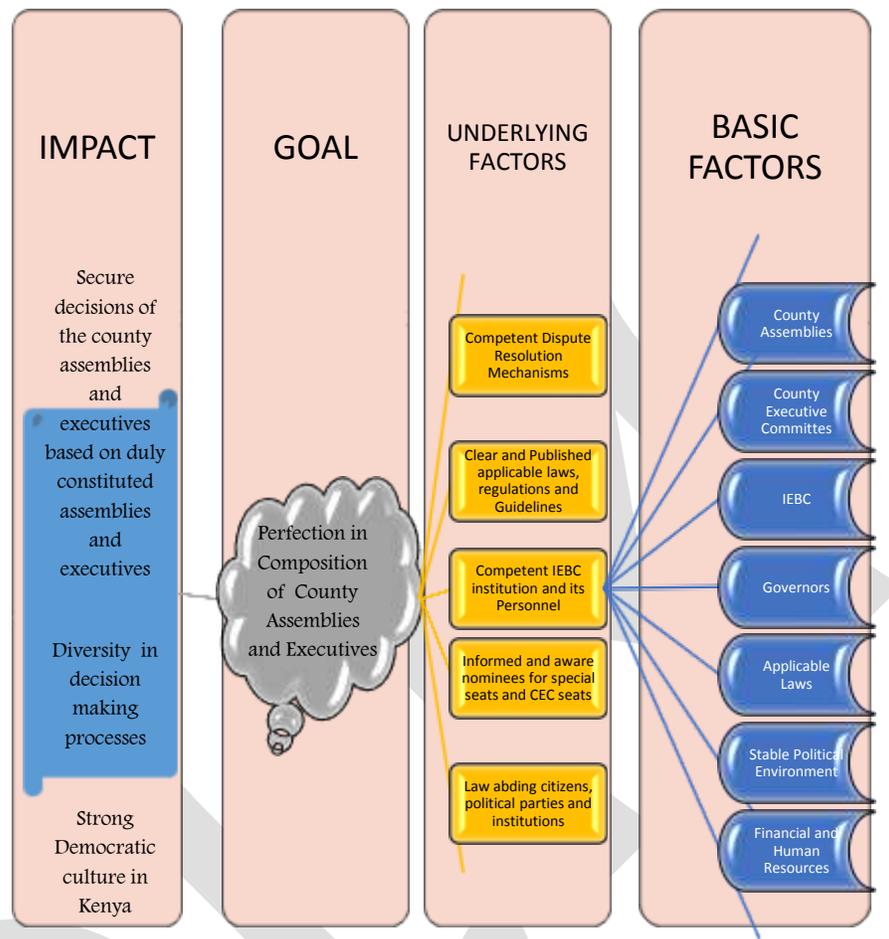
The research will be based on the following conceptual premises: That,

1. The achievement of perfection in the composition of the county assemblies and executives based on the procedures prescribed by the law is actually attainable;
2. For perfection in the composition of the county assemblies and executives respectively to be achieved countrywide, there must be a consistent and fair application of the law and accompanying regulations across the board and at all times;
3. All the actors concerned to perform a role in the nominations and appointments processes were sufficiently aware of the requirements of the law beforehand and their responsibility

with reference to ensuring the perfect composition of the county assemblies and executives;

4. All the actors concerned in the nominations and appointments processes are law abiding citizens and thus the achievement of perfection in the composition of the county assemblies and executives is possible;
5. Where county assemblies and executives are populated in accordance with the law, this leads to: secure decision-making processes in these forums which cannot be challenged based on illegalities in the composition of the county assembly and executive; inclusivity of the diversity of Kenya in decision-making processes; and ultimately a strong democratic culture in Kenya.

3.2 Diagrammatic Representation of the Conceptual Framework



KEY: Conceptual Framework

ITEM	EXPLANATION
Impact	Ultimate result that will be achieved once the counties assemblies and county executives have been duly constituted
Goal	The goal of the research is to establish whether county assemblies and county executives have complied with the constitutional and statutory requirements pertaining to the diversity of their composition
Underlying Factors	These are the factors that need to be critically taken into consideration if we want to achieve perfection in the composition of county assemblies and county executives
Basic Factors	These are the systems that need to be in place to help in attaining perfection in the composition of county assemblies and county executives

3.3 Research Design & Methodology

To accomplish the objectives of the research outlined in this concept note, DLM has considered the various imperatives carefully and proposes to utilise the research design and methods outlined below so as to yield the required outputs.

3.4 Rationale: Qualitative & Quantitative Methods

This study will employ a mixed methods approach, whereby both quantitative and qualitative research methods will be utilised. This triangulation of methods will afford the research the ability to nuance interactions or relationships between factors of interest.

Quantitative methods of data analysis can be of great value to a researcher who is attempting to draw meaningful results from a large body of qualitative data. The main beneficial aspect is that it provides the means to separate the large number of confounding factors that often obscure the main qualitative findings. For example, in this study one of the main objectives is to establish the extent to which the 47 county assemblies and county executives are in compliance with the constitutional and statutory requirements pertaining to the allocation of special seats. Participatory discussions with a number of focus groups and in-depth interviews may give rise to a wealth of qualitative information. But the complex nature of inter-relationships between factors requires some degree of quantification of the data and a subsequent analysis by quantitative methods. This quantification of components affords DLM the ability to subsequently focus on the individualistic qualitative nature of the phenomenon under study.

Furthermore, the use of quantitative analytical approaches in this study will allow the reporting of summary results in numerical terms to be given with a specified degree of confidence. For example, a statement such as 45% of the county assemblies do not comply with the stipulated laws pertaining to the composition of the same, may be enhanced by providing 95% confidence limits

for the true proportion that complies, as ranging from 42% to 48%. As such, it is possible to say with more than 95% confidence that about half the county assemblies do not comply, since the confidence interval lies entirely below 50%. Thus, the utilization of quantitative methods in analysing qualitative information can also lend greater credibility to the research findings by providing the means to quantify the degree of confidence in the research results.

Quantitative analysis methods are also useful when the research encounters repetitions from a data extraction process such as focus group discussions and in-depth interviews. It is expected that common features will emerge from such participatory processes. Consequently, the value of a quantitative analytic process arises when it is possible to identify features that occur frequently across the many participatory discussions aimed at studying a particular research theme. If there are common strands that can be extracted and subsequently coded into a few major categories, then it becomes easier to study the more interesting qualitative aspects that remain.

In as much as this study has a primarily qualitative angle, quantitative methods of data analysis will still be employed once the data is packaged as categorical. Subsequently, analytical methods such as cross tabulations will be explored in a bid to investigate the possibilities of interactions, though not necessarily causal, between variables of interest emanating from the data.

On the other hand, the qualitative approach, which adopts an interpretive approach to data, studies and things within their context in order to derive the subjective meanings that can be imported to the respective situation, will be utilised to determine the reasons for the phenomena that will emerge from the quantitative studies. The emerging jurisprudence from the courts on the subject matter as well as the prevailing trends and patterns witnessed with respect to the nominations and appointments processes will provide a background for interpreting the

information and data resulting from the quantitative studies. Discourse analysis will be employed for the qualitative data derived from the in-depth interviews and focus groups discussions.

The fine details of the research design and method(s) that will be used for analysing the resulting data will be reviewed by the Kenya National Bureau of Statistics (KNBS). This is the principal agency of the government for collecting, analysing and disseminating statistical data in Kenya as well as the custodian of official statistics. DLM considered it necessary to seek the views and concurrence of KNBS on the research design given its immense expertise arising from its core mandate of acting as the principal agency of the government for collecting, analysing and disseminating statistical data in Kenya. Notably, the concurrence of KNBS is important towards building the confidence of stakeholders and the public in the results of the research. This is essential given that the purpose of the research is to make a positive contribution towards the 2017 general elections that constitute a very important public process that reaffirms our adherence to democratic ideals.

Following on from the above, it is important to note that before the details of the research design are completed, the opinions and advice of a number of distinguished scholars competent in various aspects of constitutional law, devolution, and research will be sought with respect to how the concept note and research design can be improved. The views of the Council of Governors, County Assemblies Forum, Independent Electoral and Boundaries Commission, as well as the officers responsible for the preparation of party lists in the five most frequently nominating political parties nationally will also be sought on the research design in order to ensure that the research design and exercise is much more focused and productive.

3.5 The Sources of Data

For purposes of this study, two sources of data will be utilized –secondary and primary.

3.5.1 Primary Sources

This will be a nationwide study. As such data will be acquired from participants at both the national and county levels. This will entail initiating face-to-face interviews as well as focus group discussions. All 47 counties will be studied, with details on the actual informants to be determined at the commencement of the study. There will be two groups of informants; the first group will comprise of county executives, relevant county assembly players, candidates for the special seats, youth, whilst the second will be comprised of informants from the national level who are engaged in the policing of compliance policies at the county level.

3.5.2 Secondary Sources

This study will also collect and analyse information from secondary data sources to distinguish models, patterns, relationships and trends on perceptions of compliance. This desk review will be accomplished using literature and internet sources to establish the law and available facts pertaining to the nomination of candidates for the special seats in the county assemblies and appointment of members of the CECs. This will include such sources as the IEBC website, relevant editions of the Kenya Gazette, respective county government websites, etc.

3.6 Data Collection Methods

3.6.1 Questionnaires

These will be the main instruments used to collect data and will be differentiated according to the targeted key informants. There will be separate questionnaires for the target sample. As such, the governors who are the key implementers of the policies at the county level will have a specific

questionnaire, whereas the speakers of the county assemblies will have their own customized questionnaire. These questionnaires will be close-ended.

3.6.2 Guide for Focus Group Discussions

Focus groups will be conducted with members of political parties that occupy seats in the said assemblies, as well as those that do not. Individuals from the marginalized communities will also be included in these sessions.

3.6.3 In-depth Interviews

Key in-depth interviews will be conducted with individuals from the political parties & marginalized communities such as the disabled and youth.

3.7 Research Objectives

1. To establish the extent to which the 47 county assemblies and county executives in Kenya are in compliance with the constitutional and statutory requirements pertaining to the allocation of special seats and the appointment of county executives following the 4 March 2013 General Elections;
2. To establish the extent to which the constitutional and legal framework pertaining to the allocation of special seats and the appointment of county executives is enabling;
3. To establish best practice from relevant actors where there was compliance and lessons learnt where there was non-compliance;
4. To establish the extent of the utility of the various dispute resolution mechanisms and sites that were utilised by disgruntled persons or parties;

5. To document the processes and experiences of political parties in the filling in of the special seats in the county assemblies and those of governors in the appointment of county executives;
6. To share the research findings with all the stakeholders in the electoral process including IEBC, political parties, the 47 county assemblies and county executives, relevant government and non-government organizations, relevant departments/schools of law and political science in all the Universities in Kenya, and all other interested publics both in Kenya and abroad.

3.8 Proposed Outcomes of the Research

1. Status report on the rate of compliance by county assemblies and executives with the requirements of the CoK and various other laws with regards to their composition;
2. Proposals on how best the exercise of populating the special seats in the county assemblies and the membership of the county executive can be improved;
3. Proposals on law reforms that can facilitate a more efficient and effective nominations and appointments process for the county assemblies and executives;
4. Increased knowledge on the capacity and effectiveness of dispute resolution mechanisms located in political parties, the IEBC and the courts, to mediate electoral disputes related to nominations and appointments processes in the county assemblies and executives respectively;
5. Increased levels of public awareness on the contingencies and factors that impinge on the nominations, designation, and appointments processes by the concerned parties including political parties, the IEBC, and governors;

6. Increased levels of awareness on the preferred sites for dispute resolution by aggrieved candidates, and the specific preference of site for men and for women respectively;

3.9 Target Market for the Research

DLM expects that the research will be useful to the following audiences:

1. Members of county assemblies [MCAs] and members of the county executive committees [CEC];
2. Governors, personnel of the county governments, and speakers of county assemblies;
3. The three arms of the National Government based on their respective functions pertaining to devolved governments;
4. Political parties;
5. Policy makers;
6. The academia;
7. Kenya's development partners, both local and foreign that support the process and structures of devolution through working directly with the national and devolved governments, or with non-government organizations;
8. Kenyans at large as the process owners of devolution and its accompanying structures.

3.9.1 Research Parameters

The methods of research and rationale for the same are discussed hereunder.

3.9.2 Number of Counties in which the Research will be undertaken

1. The research will cover all the 47 Counties.
2. It is expected that all counties will be visited except where there are severe logistical challenges that cannot be surmounted within the time allocated for the field visits. In the event any county cannot be visited physically, the various persons targeted to be interviewed at the county will be interviewed in another geographical location where possible or by telephone following an advance communication of the research instrument to them.

3.9.3 Assumptions made before the Research

1. That the standards prescribed by the law with regard to the process of filling up the special seats in the county assembly and appointment of members to the county executive are actually attainable practically;
2. That the process of filling up the special seats in the county assembly and appointment of members to the county executives is quite clear and user friendly for all the concerned parties to understand and implement;
3. That as at the date of this research, all county assemblies and county executives are compliant with the law as regards their membership in accordance with the law;
4. That all the concerned parties have clear and defensible records about the processes that were used to fill up the special seats and appoint members of the CECs following the conclusion of the March 2013 General Elections;
5. That to the extent of their responsibility, the speakers of the county assemblies took active steps to ensure compliance of the assemblies with the requirements of the law pertaining to their composition with reference to the special seats;

6. That to the extent of their responsibility, the governors took all reasonable care to populate the CECs in accordance with the law;
7. That political parties were fully cognisant of their obligations under the law and adherent to the law with respect to the exercise of nominating the candidates for the special seats and their ultimate allocation to these seats;
8. That where aggrieved, nominees for special member seats in the county assemblies first used their party dispute resolution mechanisms to resolve their grievances before presenting them to the courts;
9. That men and women nominees who were aggrieved by the nomination and appointment processes both took active steps alike to present their claims before dispute resolution mechanisms;
10. That the verdicts issues by the respective dispute resolution mechanisms approached by aggrieved nominees for the special seats and positions in the CECs were fully executed;
11. That the media played the most significant role in highlighting any irregularities in the nomination and appointment exercises;

3.9.4 Research Questions and Selection of Key Informants

1. The specific research questions will be based on the premises asserted in the conceptual framework and among others include such questions as: whether the various actors were aware of their roles and responsibilities as regards the nominations and appointments processes; to what extent the various institutions were prepared to execute their mandate respectively; where relevant, the possible reasons for why perfection was not achieved; and the appropriateness of the law in prescribing the mechanisms for achievement of perfection in the composition of the assemblies and executives.

2. The key informants to be interviewed with respect to the county assemblies include the heads of relevant political parties; the team responsible for designation of the special seats at the IEBC; the team responsible for resolution of disputes at the IEBC; speakers of county assemblies; select special seat member MCAs, select nominees for special seats and organisations that were aggrieved by the nomination and designation exercise.
3. The key informants to be interviewed with respect to the county executives include the governors, relevant county government personnel in charge of assisting the governor with the recruitment exercise, select county executives, select citizens and organisations that may have approached the courts with regard to the implementation of the appointments processes.

4.0 PROPOSED KEY ACTIONS TO ACHIEVE TASK

This research exercise will be achieved through the performance of three (3) key actions namely:

1. **Preparation for Research** – during this stage DLM will make contact with relevant persons and institutions necessary for the various stages of the research to be undertaken successfully, as well as prepare the instruments of research.
2. **Field Work** – during this stage a team of field researchers will administer the instruments of research on the various persons from the institutions and 47 counties.
3. **Synthesis, Interpretation and Publication of the Research** – at this point the data collected from the field will be collated and processed with the resultant conclusions made public.

4.1 Diagrammatic Representation of the Proposed 3 Actions

S/No	ACTION 1 PREPARATION FOR RESEARCH	ACTION 2 FIELD WORK	ACTION 3 SYNTHESIS, INTERPRETATION AND PUBLICATION OF THE RESEARCH
	↓	↓	↓
Activity 1	Development and internal Discussion of Concept Note	Identification of field researchers	Inspection of all the Research Instruments to ensure the integrity of the data.
Activity 2	Sharing of Concept Note with distinguished individuals for peer review and improvement of Concept Note	Workshop for field researchers	Synthesis and interpretation of the research findings and analysis.
Activity 3	Refinement of Concept Note following feedback	Commissioning of field researchers	Validation Workshop incorporating stakeholders to discuss and authenticate research findings.
Activity 4	<ol style="list-style-type: none"> 1. Desk review of the law and facts pertaining to the nominations and appointments processes for the county assemblies and executives. 2. Preparation of the various Research instruments 	Monitoring of field researchers during the course of field work	Conversion of Research into a Book/Publication format and seeking of copyright for the book.
Activity 5	Preparation of elaborate Schedule for Field Work and Budget.	Focus Group Discussions	Hosting of cocktail to disseminate research findings to the key publics
Activity 6	Approach the various persons and institutions necessary to seek permission/an appointment to facilitate the research.		Publicizing of book locally and abroad.