



TITLE OF STUDY: 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**

GENERAL BACKGROUND TO STUDY

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.

SALIENT ENQUIRY REGARDING 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.

SALIENT ENQUIRY REGARDING COUNTY EXECUTIVES

The central enquiry as regards the composition of the County Executives 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) of the County Governments Act, 2012 reiterates the above provisions of the CoK and states,

(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.

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.

EXPECTED OUTCOMES FROM THE RESEARCH

1. Status report on the rate of compliance by county assemblies, county executives, and the facilitative and complementary agencies concerned with the requirements of the Constitution of Kenya, 2010 and various other laws as regards 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 with respect to the forthcoming 2017 General Elections;
3. Proposals on law reforms and policy making that can facilitate a more efficient and effective nominations and appointments process for the county assemblies and executives respectively;
4. Increased knowledge on the capacity and effectiveness of dispute resolution mechanisms located in political parties, the Independent Electoral and Boundaries Commission, the Political Parties Dispute Tribunal 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 parties responsible for the process of nominations of persons for the special seats in the county assemblies and appointment of members of the county executives;

DISSEMINATION OF RESEARCH FINDINGS

Following the process of collation, analysis and synthesis of the information and data collected from the fieldwork, a report will be prepared and the findings disseminated in a publicised event. The report will be placed on the DLM Advocates website (www.dlm-advocates.com) for the consumption of all concerned and interested parties.