



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 REGARDING STUDY ON COUNTY ASSEMBLIES

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

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.

Thus, this study is purposed towards establishing whether the county assemblies were in compliance with the law as regards their composition following the March 2013 General Elections.

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.

TABULAR REPRESENTATION OF THE RELEVANT LAWS AND DUTY BEARERS PERTAINING TO THE POPULATION OF SPECIAL SEATS IN THE COUNTY ASSEMBLIES

The entities and persons relevant to the population of the special seats in the county assemblies are mapped out in the table below in accordance with the respective laws in force immediately after the March 2013 General Elections.

S/No.	Applicable Law	Article/Section	Entity/Person Responsible	Role
1.	Constitution of Kenya	Article 90(2)(a) - 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 seats provided for under clause (1), within the time prescribed by national legislation;	Political Parties	Nomination of persons eligible for the various electoral positions available and preparation of the respective party lists required.
		Article 90 (2) - The Independent Electoral and Boundaries Commission (IEBC) shall be responsible for the conduct and supervision of elections for under Article 90 (1).	IEBC	<p>Ensure that;</p> <ol style="list-style-type: none"> 1. Each political party participating in the general election nominates and submits a list of persons to occupy seats provided under Article 177 (1) (a) and (b) 2. The list submitted comprises the appropriate number of qualified candidates and alternates between male and female candidates. 3. Seats are allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election.

S/No.	Applicable Law	Article/Section	Entity/Person Responsible	Role
	Constitution of Kenya	<p>Article 177 (2) -The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party ...in accordance with Article 90.</p> <p>Article 90 (1)- Elections for ... the members of the county assemblies under Article 177 (1) (b) and (c) shall be on the basis of proportional representation by use of party lists.</p>	Political Parties	Submit party lists for the respective seats available for nomination.
2.	Elections Act, No. 24 of 2011	Section 36 (1) (e) - A party list submitted by a political party under Article 177 (1) (b) of the CoK shall include a list of candidates reflecting the number of wards in the county.	Political parties	<ol style="list-style-type: none"> 1. Submit a party list with names of persons to fill seats provided under Article 177 (1) (b). 2. Ensure that the list provided reflects the number of wards in the county.
		Section 36 (1) (f) - A party list submitted by a political party under Article 177 (1) (c) 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 person representing a marginalized group.	Political parties	<ol style="list-style-type: none"> 1. Submit names of persons to fill seats provided under Article 177 (1) (c). 2. The list shall include eight candidates. At least two of whom shall be persons with disability, two youths and two representing persons representing a marginalized group.
		Section 36 (7) - For purposes of Article 177(1)(b) of the CoK, 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.	IEBC	Draw from party list such number of special seats members in the order given by the party necessary to ensure that no more than two-thirds of the members of the assembly are of the same gender

S/No.	Applicable Law	Article/Section	Entity/Person Responsible	Role
		Section 36 (8) - For purposes of Article 177(1)(c) of the CoK, the Commission shall draw from the list under subsection (1)(f) four special seat members in the order given by the party.	IEBC	Draw from party list four special seat members in the order given by the party
		Section 36 (9) - The allocation of seats by the Commission under Article 177(1)(b) and (c) of the CoK shall be proportional to the number of seats won by the party under Article 177(1)(a) of the CoK.	IEBC	Allocate seats provided under Article 177 (1) (a) and (b) to political parties proportional to the number of their elected members of the county assembly.