



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 REGARDING COUNTY EXECUTIVES

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 as regards the composition of the County Executives is derived from Article 197 of the CoK that 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.

Thus, this study is purposed towards establishing whether the county executives 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 SEATS IN THE COUNTY EXECUTIVES

The entities and persons relevant to the population of the seats in the county executives 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 179 (2) - The county executive committee consists of— (a) the county governor and the deputy county governor; and (b) members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly. (3) The number of members appointed under clause (2) (b) shall not exceed— (a) one-third of the number of members of the county assembly, if the assembly has less than thirty members; or (b) ten, if the assembly has thirty or more members.	Respective county governor	Appoint members of the county executive committee with the approval of the assembly from among persons that are not members of the assembly.
S/No.	Applicable Law	Article/Section	Entity/Person Responsible	Role
		Article 197 (2)- Parliament shall enact legislation to; a) ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee and b) prescribe mechanisms to protect minorities within counties.	Parliament	Enact legislation to; 1. Ensure community and cultural diversity of a county is reflected in its county executive committee. 2. Prescribe mechanisms to protect minorities within counties.

S/No.	Applicable Law	Article/Section	Entity/Person Responsible	Role
2.	County Government Act, 2012	Section 35 (1)- the governor shall, when nominating members of the executive committee- 1. ensure that to the fullest extent possible, the composition of the executive committee reflects the community and cultural diversity of the county; and 2. take into account the principles of affirmative action as provided for in the Constitution	Respective county governor	1. Nominate members of the county executive committee. 2. When nominating to; a) Ensure to the fullest extent possible the composition of the executive committee reflects the community and cultural diversity of the county b) Take into account principles of affirmative action as provided for in the Constitution
		Section 35 (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, marginalised groups and communities; and (c) community and cultural diversity within the county.	Respective county assembly	1. Approve persons nominated to the executive committee by the governor. 2. In so doing to take into account; a) not more than two thirds of either gender; b) representation of the minorities, marginalised groups and communities; and c) community and cultural diversity within the county