



A vibrant agency for responsive law reform

KENYA LAW REFORM COMMISSION

ANNUAL REPORT

2014 - 2015





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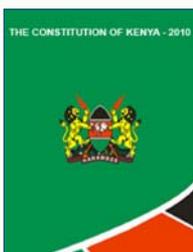
 [Kenya Law Reform Commission](#)

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Foreword by The Chairperson

Kenya's 2010 Constitution (the Constitution) marks a great milestone in the reform process. With its promulgation on 27th August 2010, Kenya has witnessed a remarkable transformation in the country's governance and social-economic, political and legal development. This has positively impacted on the lives of the people even as the Republic marches towards the realization of goals of Vision 2030.



The Kenya Law Reform Commission (the Commission) is privileged to be part of the country's constitutional history as one of the four organs of the implementation of the Constitution. Section 5(6)(b) of the Sixth Schedule requires the Commission to coordinate with the Attorney-General (AG) and the Commission for the Implementation of the Constitution (CIC) to prepare for tabling in Parliament legislation required to implement the Constitution. The primary statutory function however is to keep under review all the law and recommend its reform. The Commission is constituted of three full-time and four part-time commissioners who are responsible for policy direction and a Secretary who is the Chief Executive Officer (CEO) of the Commission.

In the reporting period (2014/2015), the Commission initiated various reform and realignment measures to accelerate and meet the demand for quality legislation at both levels of government. The Commission strengthened collaboration frameworks with the Executive and Legislative authorities at each level of government towards a fully participatory and consultative process of policy formulation, legislative development and reform of the law. The Commission also developed and published the Guide to the Legislative Process in Kenya, which we hope will come in handy as a key reference tool for, amongst others, policy makers, drafters, legislators and the public at large. Further, the Commission prepared and disseminated over 50

pieces of Model Laws for customization by County Governments. In the implementation of the Constitution, the Commission participated in the development and review of all Bills required during the fifth year of implementation of the Constitution.

Other measures the Commission undertook internally during the period under review included the development of the Human Resource Manual, Organization Structure and Career Progression Guidelines which, after formal adoption by the Commission, recommended the training and hiring of additional staff. These latter categories of activities are geared towards attracting the relevant skills for optimum performance and execution of the Commission's mandate. The Commission is also undertaking a Mid-Term Review of its 2013-17 Strategic Plan. These will enable the Commission to align its strategies not only with the Government's Mid Term Development Plan, but also the goals of Kenya's Vision 2030 especially in the context of the devolved system of government.

To effectively deliver on its constitutional and statutory mandate, the Commission continues to work with diverse stakeholders who comprise Ministries, Departments and Agencies (MDAs), Development Partners, Civil Society Organizations, Private Sector, Professional Associations, the media and the people of Kenya in realizing the true meaning of law reform. We have embarked on corporate social responsibility programmes targeting creation of awareness and ownership of the reform process by all stakeholders. We acknowledge support from the Government and other partners and do hope that this journey on which we have embarked will be sustained for the benefit of generations to come.

We are confident that the Commission, its partners and the people of Kenya will continue working closely in all areas in strengthening issue-based, citizen-centred, accountable and result-oriented law reform towards realizing our development goals as espoused in the Constitution and the Vision 2030 blueprint.



Mbage Ng'ang'a
Chairperson

Preface by the Secretary / Chief Executive Officer

This Special Edition of the Commission's Annual Report for the financial year 2014/2015 is being published as the Country celebrates the fifth anniversary of the promulgation of the Constitution of Kenya, 2010. In line with our clarion call in which the Commission envisions itself as a vibrant agency for responsive law reform, the Commission has taken clear, bold, ambitious and informed steps towards the realization of this vision. These steps have included building a solid, committed and motivated work ethic to meet the aspirations of those we serve. We have to this end anchored our mission on a value system comprising: integrity, professionalism, teamwork, transparency, equity and fairness, courtesy and equality.



To give practical effect to its vision and mission, the Commission has endeavoured to modernize its legal and policy research methodologies, intensified efforts in conducting public legal education, giving technical assistance, sharing information and cementing its partnerships with Ministries, Departments and Agencies (MDAs) at both levels of government and its key stakeholders including the Kenyan public. Although our priorities have revolved around the strengthening governance, justice, law and order sector, we have also covered a number of reform initiatives in the wider public sector. This foundation has seen an increase in the uptake of our services and commendable realization of outcomes in a more coordinated approach.

At the national level, we developed, reviewed and processed Bills in respect to implementation of the Constitution, Bills to align existing MDAs frameworks with the Constitution and other policies. At the county level, numerous County fora were held and a mapping of the existing legal frameworks done. The Commission further developed

and disseminated over 50 County Model Laws based on the functions of county governments as captured in the Fourth Schedule to the Constitution. The Model Laws are meant for customization by county governments. We are happy to report that the feedback on their uptake has been extremely positive. In an attempt to clarify the legislative process, the Commission has developed, published and launched a comprehensive Guide to the Legislative Process in Kenya. Pursuant to Article 35 of the Constitution on access to information, our website is increasingly being accessed by a significant number of Kenyans. Based on surveys and mapping undertaken by the Commission, we have remodelled our feedback mechanisms and enhanced public engagement.

The attainment of these successes has not been without equally significant challenges. The transition from a centralized to a devolved system of government which has required concurrent devolution and provision of services to county governments saw our staff capacity seriously overstretched. Although we managed to secure additional seven professional staff to bolster the Secretariat, we are still quite strained. In meeting the dynamic global trends in the IT sector, our communications equipment also proved inadequate in propelling our services to the far-flung areas of our Republic. While we acknowledge government support and assistance from our development partners, our budgetary allocation and available resources remain severely limited.

We have prioritized conquering these immediate challenges by systematizing our belief system towards focusing on key goals and building strategic partnerships to enhance our service delivery. In the reporting year, we have increased staff capacity in the Administration and Legal and Research Department and further established a Corporate Communications Department that will be working with the Legal and Research Department and responding on key public issues. Plans are underway to seek funding in order to fully operationalize our approved Organizational Structure, which requires a staff capacity of close to one hundred personnel against the current complement of fifty-two officers.

Finally, the Commission is auditing all existing and post-promulgation pieces of legislation in order to make proposals on their harmonization with the Constitution. This is a highly resource-intensive exercise in respect of which we shall continue appealing to the Executive and Parliament for more resources. We believe successful legal audit and implementation will see the Commission remain true to its mission of facilitating law reform conducive to social, economic and political development.



Joash Dache, MBS

Secretary /Chief Executive Officer

Acknowledgements

The Commission extends its utmost appreciation to Commissioners, staff, partners, stakeholders and all who in one way or another shared their constructive insights, precious time and commitment towards our activities in the financial year 2014/2015.

It is also important to acknowledge the unflinching support and guidance of the Attorney-General, numerous Cabinet and Principal Secretaries, Governors and Ministries, Departments and Agencies at both levels of government with whom we interact on a daily basis. The support of the Leadership of Parliament, individual Members of the National Assembly and Senate and Parliamentary Committees has and will always be invaluable. We are especially grateful to the Budget and Appropriations and Legal Affairs and Administration of Justice Committees for the allocation of resources which have facilitated our projects.

The publication of this Special Edition of the Commission's 2014/15 Annual Report has been made possible by the generous financial contribution of the International Development Law Institute (IDLO) through its Kenyan Office. Ms. Enid Muthoni, Team Leader and her dedicated colleagues, Mr. Felix Kyalo and Ms. Barbara Kawira, deserve special mention in this regard. In the same breadth, we want to sincerely thank Mr. Amos Omollo, Consultant Editor, for putting together this Report.

Finally, the Commission is indebted to the People of Kenya for entrusting us with this critical mandate and believing in our ability to deliver.

Asanteni Sana!

List of Acronyms

AG	Attorney General
CAJ	Commission on Administrative Justice
CEO	Chief Executive Officer
CIC	Commission for the Implementation of the Constitution
CIOC	Constitutional Implementation Oversight Committee
CoE	Committee of Experts
MDA	Ministry, Department or Agency
GJLOS	Governance, Justice, Law and Order Sector
IIBRC	Interim Independent Boundaries Review Commission
IICDRC	Interim Independent Constitutional Dispute Resolution Court
IIEC	Interim Independent Electoral Commission
KLRC	Kenya Law Reform Commission
MoJNCCA	Ministry of Justice, National Cohesion and Constitutional Affairs
PSC	Public Service Commission
SRC	Salaries and Remuneration Commission



CHAPTER ONE

Introduction to the Kenya Law Reform Commission

1.1 Introduction

The Kenya Law Reform Commission (the Commission) is established by the Kenya Law Reform Commission Act, 2013 (No. 19 of 2013) as a successor to the Law Reform Commission, previously established under the repealed Law Reform Commission Act, Cap 3. The Commission is a body corporate with perpetual succession, which serves both National and County governments in matters of law reform.

As is now well documented, our country endured such a difficult episode in the early months of 2008. Together with other players, the Commission was in its statutory capacity called upon to help return the country to normalcy. It is in this context that the Commission assisted in developing the Constitution of Kenya Review Bill, 2008 and the legislative frameworks for Agenda Four Commissions, among others. Upon enactment, these endeavours effectively set in motion the process of national healing through constitutional reform and the attendant legislative enactments. It is for this singular reason we are happy to report that the Commission played its small bit in bringing the new constitutional dispensation to fruition and as a matter of law, continues to shape the legal and constitutional reforms in our jurisdiction by being directly involved in the constitutional implementation process. This report captures the projects undertaken by the Commission in the execution of its dual constitutional and statutory mandate.

1.2 Brief History of the Commission

The Kenya Law Reform Commission was established by the Law Reform Commission Act, No. 2 of 1982 (now repealed) as a primary agency to spearhead law reform and review processes in the country. Its mandate as contained in section 3 of Chapter 3 of the Laws of Kenya (repealed Constitution) was: “to keep under review all the laws of Kenya to ensure its systematic development and reform, including

in particular the integration, unification and codification of the law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments and generally its simplification and modernization.”

At inception, the Commission operated as a Department within the Office of the Attorney-General. However upon reorganization of Government Ministries and functions vide Presidential Circulars Nos. 1 of 2003 and 2008, the law reform function and the Kenya Law Reform Commission were administratively moved to the Ministry of Justice, National Cohesion and Constitutional Affairs. Subsequently, KLRC’s critical role in law reform became central in the realization of the projected national development goals under Kenya’s Vision 2030.

The statutory mandate was expanded by the Constitution of Kenya 2010 (CoK2010) which, under Clause 5(6) (b) of the Sixth Schedule, requires the Commission for the Implementation of the Constitution (CIC) to coordinate with the KLRC and the Attorney-General (AG) to prepare for tabling in Parliament legislation required to implement the CoK, 2010. The CoK, 2010 placed the ultimate emphasis on law reform beginning with the express demand for construing of all laws existing immediately before its effective date. Specifically, the laws would be construed with alterations, qualifications and exceptions necessary to bring each into conformity with the CoK, 2010 (Article 262(7)). Further, both the County Governments Act, 2012 and the Kenya Law Reform Commission Act, 2013 require the Commission to assist County Governments and MDAs in the preparation and reform of their legislation respectively

Further, the Kenya Law Reform Commission Bill, Bill No. 67 of 2012 was passed by the 10th Parliament on 9th January, 2013, and assented to on 14th January, 2013 and set in motion the current functions under section 6 of the Kenya Law Reform Commission Act, 2013. It is on the basis of this constitutive Act that the current Commissioners were appointed and sworn into Office on 14th January, 2014.

The Commission therefore draws its current legal mandate from three primary instruments of governance which also inform its establishment, structure and operations. These instruments are the Kenya Law Reform Commission Act, 2013, the State Corporations Act (Cap 446) and the CoK, 2010.

1.3 Mandate of the Kenya Law Reform Commission

The mandate and functions of the Commission are set out in Section 6 of the Kenya Law Reform Commission Act (2013), which provides that the Commission shall—

- (a) keep under review all the law and recommend its reform to ensure—

- (i) that the law conforms to the letter and spirit of the Constitution;
 - (ii) that the law systematically develops in compliance with the values and principles enshrined in the Constitution;
 - (iii) that the law is, among others, consistent, harmonized, just, simple, accessible, modern and cost-effective in application;
 - (iv) the respect for and observance of treaty obligations in relation to international instruments that constitute part of the law of Kenya by virtue of Article 2(5) and (6) of the Constitution;
 - (v) keep the public informed of review or proposed reviews of any laws; and
 - (vi) keep an updated database of all laws passed and reviewed by Parliament;
- (b) work with the Attorney-General and the Commission for the Implementation of the Constitution in preparing for tabling, in Parliament, the legislation and administrative procedures required to implement the Constitution;
 - (c) provide advice technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law;
 - (d) upon request or on its own motion, undertake research and comparative studies relating to law reform;
 - (e) formulate and implement programmes, plans and actions for the effective reform of laws and administrative procedures at national and county government levels;
 - (f) consult and collaborate with State and non-State organs, departments or agencies in the formulation of legislation to give effect to the social, economic and political policies for the time being in force;
 - (g) formulate, by means of draft Bills or otherwise, any proposals for reform of national or county government legislation;
 - (h) upon request or on its own motion, advise the national or county governments on the review and reform of their legislation;
 - (i) undertake public education on matters relating to law reform; and
 - (j) perform such other functions as may be prescribed by the Constitution, this Act or any other written law.

1.4 Vision

“A vibrant agency for responsive law reform”

1.5 Mission

“To facilitate law reform conducive to social, economic and political development.”

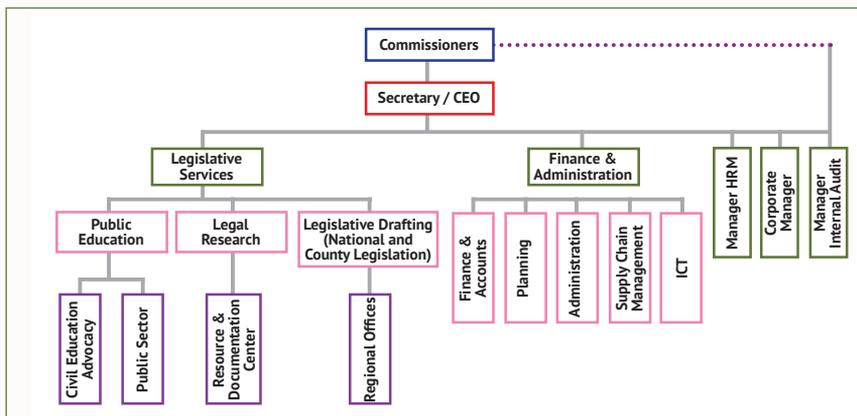
1.6 Core Values

The Core Values that guide the work of KLRC include –

- (a) Professionalism;
- (b) Integrity;
- (c) Innovation;
- (d) Teamwork;
- (e) Networking;
- (f) Accountability;
- (g) Consultative;
- (h) People Focused;
- (i) Results Oriented; and
- (j) Equity and Equality

1.7 Structure and Administration of the Commission

At the apex of the Commission is the Board of Commissioners headed by the Chairperson. This is the policy organ of the Commission. The Secretary is the Chief Executive Officer and is responsible to the Commission for day-to-day administration. All the Commissioners meet at least once a month to review projects and programmes of the Commission and provide appropriate direction to the Secretariat. When there is need, Commissioners may meet more frequently. The full organizational structure of the Commission is captured in the organogram below.



1.7.1 Commissioners

The Commission is made up of seven Commissioners and a Secretary/Chief Executive Officer. Of the Commissioners, three are full-time: the Chairperson, Vice chairperson and one Commissioner and four are part-time. The Secretary/CEO serves on full-time basis.

The current Commissioners are:

1. Mbage Ng`ang`a – Chairperson (full time)
2. Doreen Muthaura – Vice-Chairperson (full time)
3. Njoki Kahiga, OGW – Commissioner (full time)
4. Mary Wairagu – Commissioner (Part-time)
5. Apollo Mboya – Commissioner (Part-time)
6. Ruth Kirwa – Commissioner (Part-time)
7. Linda Murila – Commissioner (Ex-officio)
8. Mr. Joash Dache, MBS – Secretary/CEO

1.7.2 Representation in Appointment of Commissioners

According to the provisions of Section 8 of the KLRC Act, 2013, the Commission shall consist of –

- (a) a chairperson appointed by the President through an open and competitive process;
- (b) two members appointed by the Cabinet Secretary through an open and competitive process;
- (c) two members, one of whom shall be a member of the Law Society of Kenya appointed by the Attorney-General
- (d) a representative of the Director of Public Prosecutions appointed in writing; and
- (e) a representative of the Chief Justice appointed in writing;

In addition, Section 11 (1) of the KLRC Act, 2013, stipulates that the chairperson and members of the Commission shall be appointed by a selection panel to be constituted by the President whenever a vacancy arises. This panel comprises individual nominees from:

- (a) the Office of the President;
- (b) the Office of the Attorney-General;
- (c) the National Council for Science and Technology;
- (d) the National Economic and Social Council;
- (e) the Association of Professional Societies of East Africa;
- (f) the Law Society of Kenya;
- (g) the Federation of Women Lawyers; and
- (h) the National Council for persons with disabilities.

1.7.3 Role of Commissioners

The business and affairs of the Commission are conducted in accordance with the Second Schedule of the Kenya Law Reform Act, 2013, but the Commission may also regulate its own procedure. The Second Schedule provides that the Commission shall meet as often as may be necessary for the dispatch of its business, provided that it holds at least four meetings in any financial year. All the Commissioners meet at least once a month to review projects and programmes of the Commission. The Commissioners provide strategic policy guidance and general oversight on the operations of the Commission. In addition, the Part-time Commissioners carry out research and review of legislations and generally represent the commission in designated policy level meetings.

1.7.4 The Secretary/Chief Executive Officer

The Secretary/CEO of the Commission is appointed through an open, transparent and competitive recruitment process. Section 19 (6) of the KLRC Act, 2013, provides the functions of the Secretary as—

- (a) the Chief Executive Officer of the Commission;
- (b) the accounting officer of the Commission;



Chairperson Mbage Ng'ang'a looks on as Dr. Alexander Seger signs the KLRC guest book (Photo by KLRC Corporate Communications Department).

- (c) responsible for –
 - (i) carrying into effect the decisions of the Commission;
 - (ii) day-to-day administration and management of the affairs of the Commission;
 - (iii) supervision of the staff of the Commission; and
- (d) perform such other duties as may be assigned by the Commission.

The Secretary reports to the Chairperson and Commissioners on technical and administrative matters.

1.7.5 Composition of the Secretariat

Headed by the CEO, the Commission is comprised of a diverse cadre of professional and support staff. The Secretariat is organized into functional departments that include: Legislative Drafting, Supply Chain Management, Administration and Human Resources. In the reporting period, two new departments, namely Corporate Affairs and Communications and Finance were established. Among the key professional staff of the Commission are the Legal Officers, whose brief involves research work, review of legislation and policy, and preparation (drafting) of Bills at the Commission.

1.8 Principles and Attributes of the Commission

Other than our Vision, Mission and Values, the Commission subscribes to the principle that the law reform function should ordinarily repose in an agency with certain distinguishing characteristics that is to say: it should be permanent, authoritative, full-time, independent, generalist, consultative and implementation-minded. The Commission has strived to and continues to hold these ideals as it executes its mandate. What are the practical implications of these attributes for the Commission?

A. Permanent

The permanence of the Commission provides some inherent advantages over more ad hoc arrangements in furthering the law reform process. These include retention of process expertise, ability to engage in long-term projects and publicity.

B. Authoritative

A critical factor in winning and maintaining respect for the Commission is ensuring that its scholarship is absolutely first class. Law reform work must always proceed from a meticulous treatment of the law and a clear understanding of the surrounding processes. Only after that is it possible to consider intelligently the possibilities for reform and to make recommendations that are authoritative, realistic and achievable. So that even where they are not acted on immediately,

they may serve to shape attitudes, values and understandings into the future, laying the groundwork for reform at a later time.

C. Full-time

Many different models have emerged in the Commonwealth and elsewhere about how to structure and manage the operations of standing Law Reform Commissions- driven mainly by considerations of funding rather than optimal performance. Our view is that to be an effective law reform agency, the Commission needs at least some full-time and engaged Commissioners and a critical mass of excellent research staff in order to deliver a high quality products and services.

D. Independent

It is fundamental to success that the Commission maintains its independence. To some extent, this flows from its formal institutional establishment by statute—although our enabling Act specifically use the term ‘independent’.

Internally, this refers to the Commission’s intellectual independence—the willingness to make findings and offer non-partisan advice and recommendations to government ministries, departments and agencies without fear or favour. Without this essential quality, the Commission would be no different from a government department operating under political direction, or a consultancy contracted to deliver a desired result. Although intellectual independence must be fiercely guarded, it is also true that, as a public agency, the Commission must remain accountable and operate within boundaries defined by its constitutive legislation and other accountability frameworks in the public service.

E. Generalist

With the great proliferation and dispersal of law reform activity in Kenya, much of it in the hands of ad hoc Committees, Task Forces and other organizations, one of the most important contributions the Commission can now make is to remain a generalist body, endeavouring to work in any area of law or procedure, when asked, and making a virtue of this flexibility. Indeed, the most exciting references are those that take one outside their comfort zone.

F. Consultative

An additional defining characteristic of the Commission is that it operates fully in the public domain. A deep commitment to undertaking extensive stakeholder consultation as an essential part of research and policy development is the sine qua non of the Commission. Ultimately, this is the attribute that distinguishes the Commission from other bodies that have a law reform aspect to

their work. The leading case on the meaning of consultation is ***R v Secretary of State for Social Services ex parte Association of Metropolitan Authorities (1986) 1 All ER 164:***

The essence of consultation is the communication of a genuine invitation to give advice and a genuine consideration of that advice all these coupled with sufficient information and time supplied and given by the consulting to the consulted party to enable it to tender helpful advice..... (Webster J.)

The element of public participation is especially important since the Constitution itself demands public participation in various spheres—the National Values (Article 10); the principle that authority assigned to a State Officer is a public trust (Article 73); public participation in the legislative process (Articles 118 and 119); and involvement of the public in policy formulation (Article 232), amongst others.

G. Implementation-minded

Except for constitutional implementation bills, the Commission reports are not self-executing. The Commission may provide advice and recommendations about the best way to proceed, but implementation is always a matter for others. The extent to which the Commission can influence policy and maintain public confidence and the respect of both levels of government and stakeholders will depend substantially upon its ability to craft recommendations that are practical and susceptible to ready implementation.



Commission CEO, Mr. Joash Dache, MBS making a speech during a Capacity Building meeting.

CHAPTER TWO

Methods of Work

2.1 Introduction

The Commission carries out its work in accordance with its internal policies and structures that are expressly organized to deliver on its mandate as provided for in section 3 of the Kenya Law Reform Commission Act, 2013 and Clause 5(6) (b) of Sixth Schedule of the Constitution of Kenya, 2010. The latter requires KLRC to coordinate with the Attorney-General and the Commission for the Implementation of the Constitution (CIC) in preparing, for tabling in Parliament the legislation required to implement the Constitution. The implication here is that other than its statutory and on-going role of keeping under review all the law of Kenya, the Commission has the critical constitutional mandate of preparing the new legislation required to give effect to the Constitution of Kenya, 2010, including those on Devolution. As such, the Commission's methods of work are fairly straightforward, but variations may be accommodated given the exigencies associated with the constitutional implementation process.



The key methods of work adopted by the Commission, namely review of legislation, stakeholder consultation and public participation are discussed below.

2.2 Review of Legislation

In the Commission's work of review of legislation, a reference or proposal for reform may ordinarily originate from any MDA or any other person or institution. Such a reference or proposal for reform should be as concise as possible, disclose a cogent legal problem that necessitates reform and delineate the affected legislation. A decision by the Commission on whether or not to prioritize Reference or Proposal for Reform of the nature described above will be dependent upon the urgency of the proposed changes, the running programmes of the Commission especially as determined by the obligations in the extant Performance Contract and the available resources, including research personnel.

Where the Commission is for any reason unable to take on board such reference or proposal for reform, it will as soon as practicable, advise the person or institution originating the proposal and the reasons thereof. The Commission may also on its own volition conduct an enquiry.

2.2.1 The Project Committee

Where the Commission takes up a reference or proposal, a Project Committee comprising a Commissioner and one or two Legal Officers is constituted. In assembling the Project Committee, due regard is paid to specialization, experience and interest. It is the responsibility of the Project Committee to:

- (a) manage and undertake comprehensive research to determine the prevailing legal position and the deficiencies in the law that may require rectification;
- (b) set time-frames for the review;
- (c) receive, collate and analyze views, including peer review by other legal staff and Commissioners;
- (d) organize the requisite consultative fora;
- (e) prepare the necessary reports and draft bill; and
- (f) produce an Issues or Position (Discussion) Paper as a key product of its initial research. The Issues or Position (Discussion) Paper must generally include the background information and the specific issues identified for examination.



Ms. Doreen Muthaura, Vice Chair KLRC addressing a press briefing.

2.2.2 Stakeholder Consultations

Once prepared by the Project Committee, the Issues Paper is routinely circulated to all Commissioners for discussion and input which may generate further research on particular issues. For purposes of adopting best practices, comparative study of the position in other jurisdictions is undertaken. It is after such excursions that concrete proposals for reform are formulated.

Subsequently, a Discussion Paper which entails the products of the detailed research that has been taken up to that point is prepared. This reveals a range of arguments that may exist on any issue and provides an outline of likely proposals for reform. It is the Discussion Paper that normally forms the basis of consultations with external Stakeholders. Such consultations may take the form of workshops, seminars, retreats or regional public meetings. The stakeholders are also encouraged to make written submissions or memoranda, and the views emanating from these stakeholder consultations constitute the framework for the proposals for reform.

2.2.3 Stakeholder Feedback Mechanisms

After considering and analyzing the views and inputs generated as a consequence of stakeholder consultations and conducting further research where necessary, the Project Committee prepares a Law Reform Report outlining the proposed recommendations for reform which, in the interest of transparency, includes the reasons underlying



From left: Former A.G Amos Wako, Solicitor General Njee Muturi and current A.G. Prof. Githu Muigai.

those recommendations. For purposes of efficiency, the Commission ordinarily formulates the recommendations or proposals for reform by means of a Draft Bill. The Final Report together with the Draft Bill are eventually subjected to Stakeholder validation and then submitted to the respective head of the MDA for the requisite action.

2.4 Other Methods of Work

In addition to the foregoing, the Commission also engages in the following activities as part of its efforts in the execution of its mandate: Formulation and Review of Legislation; Research and comparative analysis; Programmatic Interventions for Law Reform; Capacity building and training activities; Research, development and dissemination of IEC materials; Public education, awareness creation and participation initiatives, including community forums, its regularly updated website, sensitization forums, etc.; Collaboration and Stakeholder consultations and feedback mechanisms; County, National and International engagements (Conferences and benchmarking visits); Technical Assistance and; Advisory Services to National and County Governments.

Through these strategies and interventions, the Commission is thus enabled to better discharge its mandate by reaching out to all segments of its diverse stakeholders.



KLRC staff members meeting Kakamega County officials.

CHAPTER THREE

Achievements of the Kenya Law Reform Commission

3.1 Introduction

Good quality legislation is one of the most fundamental tenets of any modern and civilized democratic society. The process of developing such legislation is as critical as the product. The Constitution of Kenya, 2010, heralded various changes in the legislative process in Kenya. Among these are:

- i. a Bicameral Parliament consisting of the National Assembly and the Senate;
- ii. creation of 47 County Assemblies in each of the 47 counties; and
- iii. the requirement for public participation in policy making and legislation.

The key achievements of the KLRC are outlined below.

3.2 Operational Milestones

3.2.1 Responsive laws to social, economic and political development of Kenya

In the reporting period, the KLRC focused on development of legislation, regulations and other administrative procedures to implement the Constitution of Kenya, 2010, as required in the 5th Schedule. In achieving this, the Commission received a number drafting instructions and draft legislative proposals from stakeholders and the public. Desk and comparative research was conducted on the envisaged legislation and technical drafting retreats and stakeholder consultative workshops on each Bill were held.

3.2.2 Institutional Strengthening

One of the core priorities of KLRC drawn from its mandate has been the strengthening of MDAs, County Governments and County Assemblies through various interventions, including technical support, capacity building, training and entrenching systems analysis for reform.

3.2.3 Diversity in Composition of the Commission

The historical composition of the Commission constituted a challenge in that all Commissioners from inception have ordinarily been lawyers. The Legal Officers (Researchers) and consultants appointed by Commission were often lawyers as well. This was obviously untenable in the new constitutional dispensation. This has now largely been overcome through diversification of the Commissioners to broaden the professional perspectives available to the Commission.

3.2.4 Enhanced Public Education

In line with its mandate of undertaking public education on matters relating to law reform, the Commission employed various strategies to reach targeted audiences. For instance through publishing and dissemination of information via print media and other Information, Communication and Education (IEC) materials, the public and stakeholders were kept abreast on various issues related to the Commission's work.

The Commission further employed ICTs in reaching online audiences, especially through our website, www.klrc.go.ke and social media platforms (facebook, twitter, blog) that enabled the Commission to garner an average monthly reach of over 700,000 visitors.

In addition, public fora and targeted community and sectoral workshops were held where presentations were made, feedback received and IEC materials presented and shared. Further, the Commission focused on a proactive programme of information sharing as envisaged in Article 35 of the CoK, 2010 and its Service Charter. Mass audience reach targeting was realized through use of community radio stations, which sensitized and

attracted valuable feedback in the execution of the Commission's mandate. The Commission further employed ICTs in reaching online audiences, especially through its website, www.klrc.go.ke and social media platforms (face book, twitter, blog) that enabled the Commission to garner an average monthly reach of over 700,000 visitors. The Commission also developed and installed a Public Database on laws under review or as well as those that had been reviewed and began subscription to online content providers and other publishers of international law journals. An up scaling of the initiative is anticipated in the following financial year.

Currently, the Commission has established the Corporate Communications Department with the aim of strengthening public education and outreach. The Department has developed an internal and external Communications Policy and Strategy on matters relating to law reform and is currently under review.

3.2.5 Improved Library and Research Services

The KLRC Library enhanced its traditional services of lending, reprography, reading and open access to staff and target stakeholders. It continued to boost the knowledge management function in the reporting period. Through coordination with legal and legislative service departments, a number of knowledge and learning materials were acquired and are being accessed by staff. These include Law Dictionaries, Statutes, Kenya Gazette Supplements, daily newspapers, reports of other institutions and other audio-visual resources. The library also contributed to capacity building and knowledge sharing through occasional visits and trainings for local universities and college law students. Through an exchange programme, the library received students and staff from neighbouring countries of Sudan and Rwanda who underwent rigorous training and exposure to law reform practice.

3.2.6 Open access to the Institutional Repository and Records

The institutional repository was built to enhance open access and ease of searching and retrieval of corporate knowledge. A comprehensive repackaging of corporate annual reports, brochures, fact sheets, files and manuscripts has been undertaken at the Records Management Unit. Plans are underway to automate this repository on d-space platform for enhanced open access.

3.2.7 Improved Human Resource Management and Development

In the reporting period, the Commission registered growth in staff capacity from 35 members of staff in 2013/2014 to the current 52 in 2014/2015. The Commission also recruited 7 additional staff (4 legal and 3 support officers). In addition to the previous departments, namely Legislative Drafting, Supply Chain Management, Administration and Human Resources, new departments such as Corporate Affairs and Communications and Finance were established. At the same time, the Commission also finalized the preparation and revision of the necessary HR and Administrative Documents. A comprehensive HR Policy and Career Progression Guidelines were developed to facilitate proper HR practices and staff optimization as well as attraction and retention of skilled and qualified staff for effective implementation of the Commission's mandate.

3.3 Post-Constitutional Promulgation Initiatives to Enable Implementation of CoK, 2010

3.3.1 Development of a Legislative Process Guide

The legislative process in Kenya is now devolved. The rules and procedures of making legislation have been sufficiently expanded and

- v. The technical assistance accorded to County Governments and a number of MDAs with the preparation, review and harmonization of their respective legislative frameworks with the Constitution.

3.3.3 Legislation on the Implementation of the Constitution

The Constitution of Kenya, 2010, recognizes the Commission as one of the agencies to assist in the preparation of legislation to ensure its full implementation. Major issues immediately arose around the implementation process including having the required legislation in place within the constitutionally stipulated time limits and the appointment of members to the newly created institutions.

To this end, the Commission working with the Office of the AG and the Ministry of Justice, National Cohesion and Constitutional Affairs, drafted the Commission for the Implementation of the Constitution (CIC) Bill, 2010, to provide for the functions, powers, qualification of, and appointment procedure for members of this Commission. The Bill was enacted in 2010 and the CIC is now carrying out its mandate in line with the Constitution.

3.3.4 New Electoral Laws

The Elections Bill project was intended to consolidate the various laws on elections. These included the former National Assembly and Presidential Elections Act (Cap. 7), Election Offences Act (Cap. 66) and provisions on elections of Governors and Members of the County Assemblies (MCAs), among others. The Commission was also involved in the drafting of the Independent Electoral and Boundaries Commission Bill, 2011. Both these laws have since been enacted. Closely associated with these are the Political Parties Bill, 2011 (now enacted) and the Campaign Financing Bill, 2011 (now enacted) developed in partnership the Office of the Registrar of Political Parties, the Independent Electoral Commission, Attorney General's Office, Political Parties and other stakeholders.

3.3.5 Judicial Reforms Legislation

The Commission was instrumental in the drafting of the Vetting of Judges and Magistrates Bill, 2011, the Judicial Service Commission Bill, 2011, the Supreme Court Bill, 2011, the Environment and Land Court, Bill, 2011 and the Industrial Court Bill, 2011 which have all been enacted into law.

3.3.6 Police Reforms Legislation

The Commission participated in the National Task Force on Police Reforms and the Police Reforms Implementation Committee which came up with a number of Draft Bills, namely: the National Police Service Bill; the Private Security Providers Industry Regulation Bill

and the National Coroners Service Bill. The National Police Service, the National Police Service Commission Bill and the Independent Policing Oversight Authority Bill have all since been enacted.

3.3.7 Article 59 Legislation

The Commission was involved in the drafting of 3 bills to operationalize Article 59(4) of the Constitution. These are the National Gender and Equality Commission Bill, the Kenya National Human Rights Commission Bill and the Commission on Administrative Justice (CAJ) Bill, 2011 all of which have since been enacted into law.

3.3.8 Devolved Government Legislation

The Commission was also represented in the Task Force on Devolved Government and its Steering Committee established by the then Deputy Prime Minister and the Minister for Local Government. The Task Force laid the framework for a number of Bills to operationalize the system of devolved Government. Amongst these was the Urban Areas and Cities Bill, 2011 in which the Commission played a leading role and which has since been enacted. The Bill seeks to provide a legislative framework to give effect to the provisions of Article 184 of the Constitution. Other Bills under this category included the County Governments Bill, 2011, the County Governments Public Financial Management Transition Bill, 2011 (expired), the Inter-Governmental Relations Bill, 2011, the Transition to Devolved Government Bill, 2011, and the Public Finance Management Bill, 2011 (all now enacted into law).

3.3.9 Salaries and Remuneration Commission Bill, 2011

The Commission worked with the former Ministry of State for Public Service and other stakeholders to develop the Salaries and Remuneration Commission Bill, 2011, which has since been enacted.

3.3.10 Ethics and Anti-Corruption Commission Bill, 2011

The Commission worked with the Kenya Anti-Corruption Commission and other stakeholders to develop the Ethics and Anti-Corruption



National Police Task Force meeting in progress.

Commission Bill, 2011 and the Leadership and Integrity Bill, 2012 both of which have since been enacted.

3.3.11 Legislation on Land Reform

The Commission was represented in the Land Reform Transformation Unit (LRTU), an entity established in the National Land Policy by the Ministry of Lands to among other things, facilitate the drafting of legislation on land. The following Bills were developed under this project: the National Land Commission Bill, 2011; the Land Registration Bill, 2011; the Land Bill, 2011 (all enacted into law); and the Community Land Bill, 2011.

3.3.12 Legislation on Family Law

After the promulgation of the Constitution, the Commission revised the following Bills to harmonize them with the Constitution: the Marriage Bill, 2011, the Matrimonial Property Bill, 2011 (both have since been enacted into law) and the Family Protection Bill, 2011.

3.3.13 Other Projects

Other projects the Commission worked on in the post-promulgation period include the development of a draft Citizenship and Immigration Bill; Power of Mercy Bill, development of legislation on Revenue Allocation Commission and the Independent Officers (Appointment) Bill, 2011 (all now Acts of Parliament); the Ratification of Treaties Bill; the Kenya School of Government Bill, 2011, the Public Service Commission Bill, the Teachers Service Commission Bill, 2011, and the agricultural sector review Bills (all now Acts of Parliament).



Stakeholders in a past KLRC forum.

The Commission also carried out an audit of all legislation impacting on access to justice. This audit identified the laws that impede access to justice and proposed the requisite amendments.

Over and above their everyday work, the Commissioners and legal officers of the Commission serve in various Inter-Ministerial and other Committees and Task Forces particularly those relating to law reform.

In recognition of the principle of involvement of the people in the process of policy making as enshrined in the Constitution, all these Bills were drafted after wide consultations with stakeholders.

3.4 Pre-Promulgation Initiatives

3.4.1 Completed Legislation on the National Accord and Agenda Four Commissions

The Commission also played a leading role in the development of legislation implementing the National Accord. Among the various pieces of legislation developed to realize the above included the Constitution of Kenya (Amendment) Bill, 2008 which created the Committee of Experts (CoE), Interim Independent Electoral Commission (IIEC), Interim Independent Boundaries Review Commission (IIBRC), and Interim Independent Constitutional Dispute Resolution Court (IICDRC).

The Commission also developed among others, the legal framework which established and operationalized the Truth, Justice and Reconciliation Commission, the National Cohesion and Integration Commission and the International Crimes Bill, 2008 which essentially domesticated the Rome Statute.



KLRC delivering assistance as part of its CSR programs.

3.6 Other Achievements

The various achievements as outlined above and related successful initiatives have contributed to demonstrable improvements in among other areas:

- i. The publication of the Guide to the Legislative Process in Kenya to improve the quality of legislation at both levels of government and to augment the capacity of stakeholders in legislation and policy making processes
- ii. Strengthened internal capacity to deliver on the Commission's mandate, including alignment of activities with service outcomes by promulgation of the Commission's Values and Service Charter;
- iii. Effective public engagements, which is a key requirement of the Constitution of Kenya, 2010, and whose contribution to effective, participatory and democratic governance cannot be gainsaid;
- iv. Increased collaboration with MDAs at both levels of government, which has contributed to ensuring that all stakeholders work in tandem to achieve the goals of the Constitution of Kenya, 2010;
- v. Improved ICT systems infrastructure, which has not only enhanced internal efficiencies, but also augmented the quality of our products and services through enhanced research capacity as well as seamless collaboration with partners both locally and internationally; and
- vi. Enhanced presence and more meaningful feedback through deeper and far ranging public engagement.





CHAPTER FOUR**Challenges and Constraints****4.1 Introduction**

The Commission achieved a lot in the discharge of its mandate in the period under review. However, the realization of these important milestones was not without challenges. Some of these challenges were operational; others were institutional while yet others were a combination of the two. These are briefly discussed in the following pages.

4.2 Institutional and Conceptual Limitations**4.2.1 Composition of the Commission**

The historical composition of the Commission has itself constituted a challenge in that all Commissioners from inception have ordinarily been lawyers. The Legal Officers (Researchers) and consultants appointed by Commission were often lawyers as well. This was obviously untenable in the new constitutional dispensation. This has now largely been overcome through diversification of the Commissioners to broaden the professional perspectives available to the Commission.

4.2.2 Appointment and Terms of Commissioners

The Commission's authorized establishment was until the 2013 Act for nine Commissioners and a Secretary. The challenge here was that, due to the non-staggered appointment of Commissioners, their terms lapsed at the same time, consequently disrupting the Commission's activities. This happened when the terms of the then six Commissioners lapsed on 8th January 2010 and were not renewed until mid-year. Perhaps there was need to provide in the Commission's constituting instrument that a person who serves as a Chairperson or Commissioner does not leave office until reappointed or replaced. We note with pleasure that the appointment of Commissioners has since been streamlined. In addition, the Commission is now in charge of the appointment of its own staff.

4.2.3 Poorly Coordinated Law Reform Initiatives

As the Kenya Law Reform Commission Act makes it fairly clear, the mandate of the KLRC in law reform is very broad. The rationale behind a permanent Law Reform Commission created by statute is to ensure systematic development and reform of the law. The Commission is supposed to ensure that all branches of the law develop in tandem and systematically so that proposals for change, amendment and reform are coordinated and consistent. The Commission fully appreciates the truism that law reform is not exclusively the mandate of the Commission. It is a generally accepted fact that many other institutions in society do and must initiate and spearhead law reform in one form or another. The critical issue however remains whether government Ministries, Departments and Agencies should individually and separately carry out law reform internally without reference to the Commission.

4.2.4 Complexities of Political, Economic and Social Change



There is a related challenge of the complexities of political, economic and social change. Kenya's constitution-making process had been protracted not because the reform process was not properly designed in the first phase, but because of the political, economic and social interests involved. These interests are no doubt an impediment to the

implementation. A case in point is the devolution debate, in which there have been tussles over the extent of sharing of national revenue and devolution of functions, among others. As drafters of legislation, the Commission has had to contend with myriad entrenched self-preservation and posturing impediments during with the process of re-engineering our institutions to conform to the Constitution of Kenya, 2010.

4.2.5 Generation of Sub-standard Bills

Legislation ought to stipulate rights and obligations and lay down powers, privileges and duties. While the notion of rule of law may be fluid, at its very basic, it demands that one should be able to articulate with reasonable confidence whether or not specified rules and procedures form part of the legal system. The only way to achieve this balance is through well internalized constitutional principles, and legislation validly enacted for that purpose under the Constitution. The Commission embarked on a comprehensive post-promulgation audit whose report will be shared with stakeholders for effective implementation. The Commission is however of the considered view

that a sustainable solution to the problem of low quality legislation would be attained if all legislation was preceded by and premised on an agreed and consultative policy framework.

4.2.6 The Challenge of Constitutionalism

A commonly occurring problem in Africa is that we have situations where Constitutions are talked about but there are no tangible commitments to the principles of the Constitution. The problem is principally of failure to adhere to the principles of constitutionalism (meaning control of state power) with numerous instances where constitutions have been abrogated. This is what the late eminent Kenyan legal philosopher, Prof Okoth Ogendo, meant when he talked of *'Constitutions without Constitutionalism'*. This is a prospect against which all Kenyans must maintain eternal vigilance even as we appreciate that the law is not static and must be capable (as circumstances demand) of addressing the needs of the society it serves.

4.2.7 Inadequate Capacity among Key Institutions and Stakeholders

Inadequacy of clear and compliant policies among government Ministries, Departments and Agencies have often led to inordinate delays, especially where disputes and disagreements on policy have cropped up either between a Ministry and its Departments or Agencies, a Ministry and its experts or task forces or between two Ministries.

4.2.8 Other Challenges

Other than the above challenges, the Commission has also noted a few other problems as follows:

- (a) Bureaucracy has hampered the enactment of the supporting legislation. It has been difficult to meet the enactment deadlines set out in the Constitution due to the lengthy process involved in the drafting of Bills;
- (b) Unrealistic public expectation. A majority of Kenyans seemed to have expected almost immediate changes but this has been dampened somewhat because implementation is in our view a process and not an event;
- (c) Lack of consensus among stakeholders. This has resulted in delays in the publication of the relevant Bills. In some instances, it has even resulted in numerous Bills on the same subject, resulting in confusion;
- (d) Tedious law making processes. The process of formulation of constitutional Bills has also been said to be tedious with a number of institutions involved. The challenge is compounded by the fact that so far no framework outside the Parliamentary

and County Assembly Standing Orders make provision for development and review of Private Members Bills, majority of which are intended to give effect to the Constitution in one way or the other;

- (e) Failure to fully unbundle the Fourth Schedule in respect of distribution of functions between the two levels of Government;
- (f) Lack of clear linkage between the Senate (as the guarantor of devolution) and County Governments;
- (g) Attempts to disregard and bypass the constitutional implementation process framework where for instance some bills with serious constitutional implications are presented to Parliament without involvement of the Constitutional Implementation Organs and other stakeholders;
- (h) Complexities of managing a transition within a transition (implementing a new constitutional dispensation within the context of a new political governance framework) and implementation in the context of an ever changing and fluid Kenyan political culture; and
- (i) The rise of ethnic and other vested interests at the expense of national cohesion.

4.3 Operational Challenges

4.3.1 Lack of Financial Independence and Inadequate Finances

As a result of the historical and institutional dependence on the Ministry and the Office of the Attorney-General, the Commission experienced sustained lack of financial independence. Though voted a separate budget, the Commission was not entirely in control of that budget. The funds allocated to the Commission were still subject to the control of the accounting officer in the Ministry or the Office of the Attorney-General. When the Commission was still under the Attorney-General, funds meant for the Commission were occasionally diverted to other departments within the Office of the Attorney-General.

It cannot therefore be overemphasized that over the years, the Commission has been grossly underfunded. Not even the added constitutional and statutory responsibilities in the context of devolved government as earlier canvassed have translated into commensurate resource allocation. In the period under review for instance, the Commission was allocated only Kenya Shillings Two Hundred and Eight Million (Kshs. 208M) for Recurrent and nothing for Development Expenditures. This means that programmatic work of the Commission was not funded at all.

We are glad to note that the Commission has since made giant strides towards achieving financial independence, including specific mention as a line item in the Office of the Attorney-General's vote. Also, the Commission has now been enabled to open and operate its own bank accounts. However, more still remains to be done, including having a separate vote from Treasury and need for the Commissioners' salaries to be paid from the Consolidated Fund to free up more resources for programmatic work.

4.3.2 Inadequate Staffing and Capacity Constraints

Although the Commission now has the legal authority to hire its own staff, inadequate allocation of resources to employ the optimal number is still a challenge. Of the 52 members of staff, only 7 have been specifically recruited by the Commission while the others are on deployment from other MDAs.

The situation is increasingly becoming untenable as the Commission has in the recent past lost more than five legal officers to other Government MDAs without replacement. The issue of lack of staff cuts across the board particularly in the Library, Registry and other cadres. Concomitant to this state of affairs is the fact that professional cadre especially lawyers have to undergo specialized training in matters relating to law reform, legal research on emerging areas of the law and legislative drafting. These highly specialized trainings require substantial resources.

CHAPTER FIVE

Lessons and Recommendations

5.1 Introduction

From its experience in the development, review and reform of legislation, the Commission has learnt some practical lessons that it believes can help improve the process of making legislation both in the counties and at the national level. It is in that spirit that the Commission puts forth the following recommendations.

5.2 Recommendations

- (a) Recommendations to the Executive
 - i. In order to augment the Commission's capacity and effectiveness, there is need to give further support to the Commission to enable it effectively take up and continue the role of overseeing the effective implementation of the Constitution of Kenya, 2010;
 - ii. Whereas the Commission garnered remarkable strides, especially since the launch of the GJLOS Reform Programme and, as result, was able to attract significant financial support for its programmes, it would be much more beneficial if the Commission got sufficient financial autonomy through a separate vote from Treasury;
 - iii. In order avoid disruption of the Commission's activities and programmes, which could ultimately hamper the effective discharge of its mandate, the Commission recommends that the appointment of Commissioners should be staggered so that their tenures of service overlap. Alternatively, a clause could be inserted in the Commission's constituting instrument to the effect that a person who serves as a Chairperson or Commissioner does not leave office until effectively replaced.
 - iv. Increased coordination between National Executive and the Legislature and between County Executives and County Assemblies especially to ensure the relevant processes in

the preparation of policies and Bills are undertaken in a timely and streamlined manner.

- b) Recommendations to the National Government and County Governments
 - i. To entrench civic education, the National Government ought to dedicate resources and implement the already designed framework of civic education;
 - ii. County Governments need to develop county legislation to provide the requisite institutional framework for purposes of facilitating and implementing civic education programmes. Customizing the Commission's Model Law on Public participation will be a good starting point;
 - iii. Uptake of Model Laws: In fulfilment of its responsibilities to County Governments, the Commission has prepared over 50 pieces of Draft Model Laws covering the broad constitutional responsibilities of County Governments as captured in the Fourth Schedule to the Constitution. It is hoped that the Draft Model Laws will operate as the basic building blocks for County Legislation as they encapsulate the broad minimum standards expected of such legislation. This process has now been augmented by publication of A Guide to the Legislative Process in Kenya (2015);
 - iv. The National Government and County governments should collaborate to urgently operationalize the Intergovernmental Relations Technical Committee to spearhead the resolution of disputes of a technical nature between the two levels of government and provide a framework of implementation of the Summit, Council and IBEC decisions;
 - v. On the matter of public communication and access to information, both levels of Government must create awareness on issues of governance, promote citizens understanding for purposes of peace and national cohesion, undertake advocacy on core development issues such as agriculture, education, health, security, economics, sustainable development among others and finally, the promotion of the freedom of media. Both levels of Government should ensure continuous feedback mechanisms to guarantee public participation; and
 - vi. The National Government and County governments should actively promote County-National Government Relations through, for example, development of a framework for the management of concurrent functions to avoid unnecessary overlaps and duplication.

- c) Recommendations to the Senate
- i. The Senate should seize the opportunity accorded by the dawn of a new constitutional dispensation to discharge its responsibility of safeguarding devolution by constructively engaging County Governments through policy and legislative frameworks.
- d) General Recommendations to All Stakeholders
- i. Whereas law-making in Kenya has been devolved and any and all actors have the right to participate in it, sometimes confusion may reign if the process is not properly shepherded. The Commission recommends that government Ministries, Departments and Agencies should not individually and separately carry out law reform internally without reference to the Commission;
 - ii. In order to engender a progressive culture of constitutionalism, there is need for all stakeholders to work together in helping midwife the transition. This calls for concerted efforts by all relevant stakeholders aimed at behaviour modification and culture change. That way, fundamentals principles and purposive interpretation of the Constitution of Kenya, which recognizes the ethnic, cultural and religious diversity of Kenya as one indivisible sovereign nation, based on the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law can be achieved. That effort would also go a long way in moderating public expectations and heading off any precipitate impatience or lingering resistance;
 - iii. There is need for a thorough and structured audit and review of the post-promulgation legislation to ensure that the challenges so far encountered in their implementation are addressed.
 - iv. Public Participation is a fundamental constitutional principle that Kenyans must endeavour to mainstream and observe especially at the county level where actual implementation of policies occurs. County Governments must establish structures for citizenship participation by way of County Legislation. The National Government must on the other hand develop and implement a comprehensive Public Participation Policy. On their part, the public, including individuals, organized groups and communities must take advantage of the opportunities offered to meaningfully participate in all matters that affect them, including actively seeking to develop and sustain their capacity to do so using various available means; and

- v. All stakeholders should cooperate in encouraging the political leadership to adopt and demonstrate servant leadership at all times and to help ensure that the implementation process is on track.

5.3 Conclusion

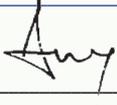
The Commission wishes to reiterate that constitutional implementation, like constitution making, is a process and not an event. This is a message that we must keep preaching as transitions the world over and particularly those of a constitutional nature are always complex, difficult and troubled processes. We hold the view that at this juncture, the debate that must continue is that of the modalities for managing the transition process through faithful implementation of the Constitution. As a Commission, we shall continue to play our assigned role in the transition and constitutional implementation process.



Financial Statements for the 2014/15 Financial Year

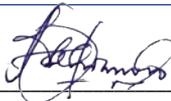
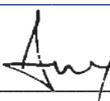
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STATEMENT OF FINANCIAL PERFORMANCE FOR THE YEAR ENDED 30TH JUNE 2015

	Note	2014-2015	2013-2014
		Kshs.	Kshs.
RECEIPTS			
Transfers from National Treasury	2	208,000,000	-
Other Revenues	3	1,329,172	-
TOTAL REVENUES		209,329,172	-
PAYMENTS			
Compensation of Employees	4	130,638,796	-
Use of Goods and Services	5	61,411,274	-
Acquisition of Assets	6	17,279,102	-
TOTAL PAYMENTS		209,329,172	-
SURPLUS		0	-
<p>The Accounting Policies and Explanatory Notes to these Financial Statements form an integral part of the Financial Statements. The Commission Financial Statements were approved on 30th June 2015 and signed by:</p>			
 _____ Chief Executive Officer/Secretary		 _____ Head of Finance	

STATEMENT OF FINANCIAL POSITION

AS AT 30TH JUNE 2015

	Note	2014-2015	2013-2014
		Kshs.	Kshs.
FINANCIAL ASSETS			
Cash and Cash Equivalents	7	7,993,311	-
Receivables	8	4,646,047	-
TOTAL FINANCIAL ASSETS		12,639,358	
LESS: FINANCIAL LIABILITIES			
Accounts Payable	9	2,884,828	-
TOTAL FINANCIAL LIABILITIES		2,884,828	-
NET FINANCIAL ASSETS		9,754,530	-
REPRESENTED BY			
Balance b/f		9,754,530	-
Surplus/Deficit for the Year		0	-
Prior Year Adjustments		0	-
NET FINANCIAL POSITION		9,754,530	-
The Financial Statements set out were signed on behalf of the Commissioners by:			
 _____ Chief Executive Officer/Secretary Date: 30th June 2015		 _____ Head of Finance Date: 30th June 2015	



STATEMENT OF CASHFLOWS

FOR THE YEAR ENDED AS AT 30TH JUNE 2015

	Note	2014-2015	2013-2014
		Kshs.	Kshs.
CASHFLOW FROM OPERATING ACTIVITIES			
Transfer from National Treasury	10	208,000,000	-
Other Revenues	11	1,329,172	-
Payments for Operating Expenses			
Compensation of Employees	12	130,638,796	
Use of Goods and Services	13	61,411,274	
Adjust for:			
Changes in Receivables	14	4,646,047	
Changes in Payables	15	2,884,828	
Net Cash flow from Operating Activities		19,040,321	
CASH FLOW FROM INVESTING ACTIVITIES			
Proceeds from Sale of Assets		0	
Acquisition of Assets		17,279,102	
Net Cash flow from Investing Activities		17,279,102	
CASH FLOW FROM BORROWING ACTIVITIES			
Proceeds from Domestic Borrowings		0	
Proceeds from Foreign Borrowings		0	
Net Cash flow from Financing Activities		0	
NET INCREASE IN CASH AND CASH EQUIVALENT			
Cash and Cash Equivalent at Beginning of the Year		0	
Cash and Cash Equivalent at End of the Year		7,993,311	

IV STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS FOR THE YEAR ENDED AS AT 30TH JUNE 2015

	Original Budget	Adjustments	Final Budget	Actual on Comparable Basis	Performance Difference
	2014-15	2014-15	2014-15	2014-15	2014-15
	Ksh. '000	Ksh. '000	Ksh. '000	Ksh. '000	Ksh. '000
REVENUE					
GoK Grants	208,000	0	208,000	208,000	0
Other Incomes	0	0	0	1,249	1,249
TOTAL REVENUE	208,000	0	208,000	209,249	1,249
EXPENSES					
Compensation to Employees	130,600	0	130,600	130,638	38
Goods and Services	57,400	0	57,400	53,982	3,418
Rent Paid	20,000	0	20,000-	24,629	4,629
TOTAL EXPENSES	208,000	0	208,000	209,249	1,249
Surplus for the Period	0	0	0	0	0

Notes to the Financial Statements for the Year Ended 30th June, 2015

1. Accounting Policies

The principal accounting policies adopted in the preparation of these financial statements are set out below:

a. Statement of Compliance

The financial statements are prepared in accordance with International Public Sector Accounting Standards (IPSAS).

b. Basis of Preparation

The financial statements are prepared on the accrual basis of accounting under the International Public Sector Accounting Standards (IPSAS).

c. Revenue Recognition

Revenue is recognized in the period in which it accrues. Government grant is recognized when it is received.

d. Accounts Payables

Payables are stated at nominal value, less amounts not expected to be payable.

e. Reporting Currency

These financial statements are presented in Kenya Shillings (KSh) as the reporting currency.

f. Income Tax

The Commission being a non-trading entity is not subject to taxation

2. Transfer from National Treasury

Represents grant received on approved budget of KSh. 208,000,000.

3. Other Income:

Other income is comprised of:

	2014/2015	2013/2014
	Ksh.	Ksh.
Sale of Tender Documents	47,000	-
Receipts from Disposal	2,000	-
Receipts from Consultancy	1,280,172	-
Total Other Income	1,329,172	-

4. Compensation of Employees:

Compensation of Employees is comprised of:

	2014/2015	2013/2014
	Ksh.	Ksh.
Salaries	130,638,796	-
Total Compensation of Employees	130,638,796	-

5. Use of Goods and Services:

Use of Goods and Services is comprised of:

	2014/2015	2013/2014
	Ksh.	Ksh.
Goods and Services	60,082,102	-
Total Use of Goods and Services	60,082,102	-

6. Acquisition of Assets:

Acquisition of Assets is comprised of:

	2014/2015	2013/2014
	Ksh.	Ksh.
Office Equipment and Furniture	4,538,102	-
Motor Vehicle	12,741,000	-
Total Acquisition of Assets	17,279,102	-

7. Cash and Cash Equivalents:

This represents cash at hand and cash at bank as follows:

	2014/2015	2013/2014
	Ksh.	Ksh.
Co-operative Bank Current Account	7,993,311	-
Total Cash and Cash Equivalents	7,993,311	-

8. Receivables:

Receivables are comprised of:

	2014/2015	2013/2014
	Ksh.	Ksh.
Staff Salary Advance	83,040	-
Prepayments & Deposits	4,563,007	-
Total Receivables	4,646,047	-

9. Accounts Payables:

Payables are comprised of:

	2014/2015	2013/2014
	Ksh.	Ksh.
Kenyatta University	82,440	-
Telkom Kenya	13,190	-
Tin Tin Restaurant	46,000	-
24 Interactive	210,000	-
Kimya Agencies	76,000	-
Edoo Enterprises	165,000	-
Sophytech Systems	190,240	-
Brimid Services	327,600	-
Lakeside Tourist Lodge Limited	230,000	-
Technology Analsysts Limited	530,124	-
African Braille Centre	10,069	-
Rommy Enterprises	11,900	-
The Scott Travel Group Limited	386,530	-
Telkom Kenya	49,135	-
Kenya Pipeline Co. Ltd	255,000	-
Advancebeyond Technologies	301,600	-
Total Payables	2,884,828	-

10. Transfer from National Treasury:

See Note 2.

11. Other Revenues:

See Note 3.

12. Compensation of Employees:

See Note 4.

13. Use of Goods and Services:

See Note 5.

14. Changes in Receivables:

See Note 8.

15. Changes in Payables:

See Note 9.

APPENDIX ONE

Commissioners of KLRC



Mbage Ng'ang'a
Chairperson



Doreen Muthaura
Vice-Chairperson



Njoki Kahiga OGW
Commissioner



Mary Wairagu
Commissioner



Apollo Mboya
Commissioner



Ruth Kirwa
Commissioner



Linda Murila
Commissioner



Joash Dache, MBS
Secretary/CEO

APPENDIX TWO**Other Legislation
Finalized by the
Commission in the
Post-Promulgation
Period****Bills Developed in the Year 2009/10**

- (a) the Companies Bill, 2010;
- (b) the Insolvency Bill, 2010;
- (c) the Limited Liability Partnership Bill, 2010 (now enacted);
- (d) the Partnership Bill, 2010; and
- (e) The Persons with Disabilities (Amendment) Bill, 2010

Bills Developed in the Year 2008/09

During the 2008/09 year, the Commission also participated in the formulation of the following Bills:

- (a) the Anti-Counterfeit Bill, 2008;
- (b) the Small Claims Courts Bill, 2008;
- (c) the Landlord and Tenant Bill, 2008;
- (d) the Land Disputes Tribunal (Amendment) Bill, 2008;
- (e) the Housing Bill, 2008;
- (f) the Community Service Orders (Amendment) Bill, 2008;
- (g) the Mutual Legal Assistance Bill, 2009 (now enacted);
- (h) the Proceeds of Crime and Money Laundering Bill, 2009 (now enacted);
- (i) the Law of Succession (Amendment) Bill, 2009;
- (j) the Consumer Protection Bill, 2009; and
- (k) Private Prosecutions Bill, 2009.

Bills developed in 2010-11 the Financial Year

- (a) Supreme Court Rules;
- (b) Transition to County Governments;
- (c) Rights of persons detained, held in custody or imprisoned;
- (d) Campaign Financing;
- (e) National Values System;
- (f) Teachers Service Commission;
- (g) Court of Petty Sessions; and
- (h) Review of the Employment Act so as to align it with the new Constitution

APPENDIX THREE

KLRC Annual Work Plan (July 2014 – June 2015)

Branding		LAW REFORM						
STRATEGIC OBJECTIVE	To ensure that the laws of Kenya are responsive to social, economical and political development							
Activities	Sub-Activities	2014		2015		Actors	Output	Cost (Kshs M)
		Q 1	Q 2	Q 3	Q 4			
1. Development of Legislation, Regulations and Administrative Procedures to implement the Constitution of Kenya, 2010 (5th Schedule Laws)	<ul style="list-style-type: none"> Receive Drafting Instructions or Draft legislative Proposals (if any); Undertake desk and comparative research on the envisaged legislation; Hold technical drafting retreats on each Bill; Hold stakeholder consultative workshops on each Bill; Hold validation workshops on the final draft Bills; Hold roundtable talks on each Bill with CIC and AG; Finalize drafting of each Bill; 					KLRC, AG, CIC, Stakeholders	Draft Bills on the following subjects developed: (a) Family (Article 45); (b) Community Land (Article 63); (c) Regulation of Land Use and Property (Article 66); (d) Agreements Relating to Natural Resources (Article 71); and (e) Promotion of Representation of Marginalized Groups (Article 100)	30
2. Development of Legislation, Regulations and Administrative Procedures to implement the Constitution of Kenya (Non-5th Schedule Laws)	<ul style="list-style-type: none"> Receive Drafting Instructions or Draft legislative Proposals (if any); Undertake desk and comparative research on the envisaged legislation; Hold technical drafting retreats on each or a set of Bills; Hold stakeholder consultative workshops on each Bill; Hold validation workshops on the final draft Bills; and Hold roundtable talks on each Bill with CIC and AG. 					KLRC, AG, CIC, Stakeholders	Relevant Draft Bills and Regulations developed including: (a) Legislation to achieve the one-third gender principle under Articles 27 & 81(b)	10
3. Audit and Review of existing Legislation	<ul style="list-style-type: none"> Receive Drafting Instructions or Draft legislative Proposals (if any); Undertake desk and comparative research on the envisaged legislation; Hold technical drafting retreats on each Bill; Hold stakeholder consultative workshops on each or a set of Bills; Hold validation workshops on the final draft Bills; and Hold roundtable talks on each Bill with CIC and AG (Only in respect of Bills with constitutional implications). 					KLRC, AG, CIC, Stakeholders	At least 10 Draft Bills to amend or repeal existing legislation prepared and forwarded to the Attorney General and respective Ministry, Department or Agency.	

Branding	LAW REFORM							
4. Undertake Audit of the Post-Constitutional Promulgation Legislation	<ul style="list-style-type: none"> • Formulation of ToRs by the responsible Committee; and • Apply the rest of the steps in Items 1, 2 and 3 with necessary modifications 					KLRC, AG, CIC, Stakeholders	Report on the Audit of the Post-Constitutional Promulgation prepared and validated for implementation	5
5. Undertake Preparation of a Legislative Guide for National and County Governments	<ul style="list-style-type: none"> • Formulation of ToRs by the responsible Committee; and • Apply the rest of the steps in Items 1, 2 and 3 					KLRC, AG, TA County Governments, Stakeholders	Legislative Guide Prepared and Validated for Purposes of Training	25
6. Provision of technical assistance to County Governments on the Development and Reform of County legislation.	<ul style="list-style-type: none"> • Undertake familiarization visits to the Counties to prioritize their needs in respect to urgent legislation; • Receive Drafting Instructions or Draft legislative Proposals(if, any); and • Apply the rest of the steps in Items 1, 2 and 3 with necessary modifications 					KLRC; AG; TA; County Governments; other stakeholders	Training/Capacity Building; Customization/Contextualization of Model Laws; and Provision of legal or policy advice to County Government Officers.	
7. Developing Regulations on relating to Marriage Act; Matrimonial Property Act; Teachers Service Commission Act; and the Companies and Insolvencies Act.	<ul style="list-style-type: none"> • Apply the steps in Items 1, 2 and 3 with necessary modifications 					KLRC; AG; Stakeholders	Draft Regulations on the Marriage Act, Matrimonial Property Act; Teachers Service Commission Act, Companies, Partnership, Limited Liability Partnerships and Insolvencies Legislation	
8. Assisting Ministries, Departments and Agencies (MDAs) to review and develop and align legislation with the Constitution	<ul style="list-style-type: none"> • Coordinate with MDAs to agree on the urgent legislation; • Receive Drafting Instructions or Draft legislative Proposals (if, any); and • Apply the rest of the steps in Items 1, 2 and 3 with necessary modifications 					KLRC, MDAs, AG, other Stakeholders	Reports, Bills and Advisories	15
9. Finalization Kenya Law Reform Strategic Plan, 2013-2018	<ul style="list-style-type: none"> • Organize a stakeholder's consultative workshop to get input on the draft KLRC Strategic Plan. • Incorporate views from stakeholders and finalize the Strategic Plan. • Hold validation workshop on the Strategic Plan. • Publish and print the final version of the Strategic Plan; • Hold official launch of the Strategic Plan. 					KLRC	Kenya Law Reform Commission Strategic Plan, 2013-2018 Finalized and Validated	5
10. Implementation of the Commission's Utalii Retreat Report (Unbundling of Functions)	<ul style="list-style-type: none"> • Receive and review reports and recommendations of relevant Committees 						Commission's Committees Reports Prepared, Validated and Implemented	5

Branding	LAW REFORM						
11. Development and Installation of a Public Database on Laws under review or reviewed and Subscription to Online Content Providers and International Law Journals	<ul style="list-style-type: none"> Procure the necessary software; Develop and host the Database; and Identify relevant and subscribe to online content providers and international law journals. 				KLRC	Public Database on Law Reform and Linkage with Online Content Providers	0.5
12. Conduct Comparative Studies on Matters Relating to Law Reform	<ul style="list-style-type: none"> Identify relevant jurisdictions/ organizations; and Organize study tours to the identified Countries/ and or organizations 				KLRC	At least 3 visits to Relevant jurisdictions on matters under Review during the Year	10
13. Implementation of the Kenya Law Reform Commission Delinking Report	<ul style="list-style-type: none"> Finalize the preparation and revision of the necessary HR and Administrative Documents 				KLRC	Relevant Instruments validated and implemented including:- (a) Organization Structure and Staffing; (b) Career Progression Guidelines; (c) Human Resource Manual ; (d) Medical Scheme; (e) Recruitment; (f) Provident Fund; and (g) Salary Structure;	3
14. Facilitate and conduct Training for Commissioners and Staff of the Commission	<ul style="list-style-type: none"> Carry out training needs assessment for Commissioners and Staff; Prepare training projections; Identify relevant training providers; and Hold training workshops and/or send officers for relevant training. 				KLRC	Training Needs Assessment implemented and Reports prepared	20
15. Conducting Public Education on Matters Relating to Law Reform	<ul style="list-style-type: none"> Develop an internal Policy on Public education on Law Reform; Develop content for Information, Education and Communication materials; and Disseminate IEC print materials in and through various fora and media. 				KLRC	(a) Relevant IEC Materials Prepared and Distributed; and (b) At least 5 Regional Seminars, Workshops and Retreats Held	20
16. Preparation and Publication of the Kenya Law Reform Commission Annual Report	<ul style="list-style-type: none"> Consolidate relevant information for inclusion in the Annual Report on quarterly basis; Prepare and circulate a draft report to Commissioners and Staff for comments; Edit and finalize the Annual Report; Submit the annual report to Commissioners for approval; Transmit the Annual Report to the President and Parliament; and Publish/print the Annual Report for dissemination. 				KLRC	Kenya Law Reform Commission Annual Report prepared, published and transmitted to the President and Parliament	1.5
TOTAL							265

APPENDIX FOUR**The Constitutional Implementation Process**

Following the promulgation of the Constitution of Kenya on August 27th 2010 by His Excellency, President Mwai Kibaki, the implementation process started in earnest. This was formally kicked off by issuance by the Office of the Permanent Secretary, Secretary to the Cabinet and the Head of Public Service of the Process Circular outlining the role of Government institutions and the CIC in the process of implementing the Constitution of Kenya, 2010 in May, 2011.

For purposes of the Commission, the following steps are critical in the constitutional implementation process.

Step 1

Since policy formulation is a function of the executive, a layman's or raw Draft Bill usually emanates from the responsible Ministry, Department or Agency (MDA). The public participation principle under Article 10 of the Constitution requires the originating entity to engage the public in the preparation of the policy or Bill. Often, the Commission and Attorney-General work with the MDA's in the generation of these Bills. The drafts are then released to the Commission and Office of the Attorney-General for preparation of Bills. As the Commission and the Office of the Attorney-General are the bodies responsible for preparation and drafting of Bills, CIC does not generate Bills. However, in the spirit of the Constitution, CIC or the Commission may require the MDA to state the process undertaken in the development of the policy informing the drafting of the Bill.

Step 2

The draft Bills from the Commission and the Office of the Attorney-General are then released to CIC. It is important to note here that the release of a bill to CIC takes place after both the Commission and the Office of the Attorney-General are in broad agreement on its substance. In the spirit of encouraging transparent debates and public participation from various stakeholders, CIC uploads the draft from the Commission and Office of the Attorney-General on its website to allow the public to review and give feedback on how best to make improvements on the draft. CIC also releases the draft Bills to the widest possible range of stakeholders.

Step 3

While receiving comments and input from various stakeholders, CIC convenes a series of stakeholder consultations to seek consensus and fill any gaps of a constitutional nature which will not have been addressed during the MDA public consultations. At this stage

CIC works with the Commission, the AG's Office and the responsible MDA to review how such gaps can be addressed.

Step 4

CIC then convenes a roundtable over the draft Bill incorporating the participation of the Commission, the AG's Office and the concerned MDA to finalize the Bill by making various amendments which will have been informed by the internal and external consultations.

Step 5

The Office of the Attorney-General finalizes the Bill for release to Cabinet for approval after which the Bill becomes the property of the Parliament.

It is worth noting that the Commission was always requested to participate in the deliberations of Cabinet Sub-Committee on the Implementation of the Constitution (under the Grand Coalition Government) and even in those of the Constitutional Implementation Oversight Committee (CIOC) with regard to a majority of the constitutional implementation Bills. The Commission also participates in the pre-publication scrutiny of all Bills remanded to the sectoral Parliamentary Committees under a working arrangement agreed with the leadership of both Houses of Parliament.

APPENDIX FIVE

Status of Fifth Schedule Legislation, August 2015

	Chapter and Articles	Title of Legislation Developed	Status of the Legislation
1	The Republic	The Culture Bill, 2015	Considered at a roundtable meeting and forwarded to the Attorney-General
		The Protection of Traditional Knowledge and Traditional Cultural Expression Bill, 2015 (Art. 11(3))	Forwarded to the Leaders of the Majority of both Houses
2	The Bill of Rights	The Protection against Domestic Violence Bill, 2014	Enacted in March 2015
		The Fair Administration Action Bill, 2014	Enacted in April 2015
		The Victims Protection Bill, 2014	Enacted in August 2014
		The Persons Deprived of Liberty Bill, 2014	Enacted in December 2014
3	Land	The Community Land Bill, 2015	Considered at a roundtable meeting and forwarded to the Attorney-General
		The Investigation and Historical Land Injustices Bill	Pending before Cabinet
		The Minimum and Maximum Land Holding Acreage Bill, 2015	Pending before Cabinet
		The Physical Planning Bill, 2015	Bill contains provisions on land use. Was approved by Cabinet and forwarded to CIC for post-Cabinet review.
		The Evictions Bill, 2015	Pending before Cabinet
4	Agreements relating to natural resources	The Mining Bill, 2014	In the Senate
		The Energy Bill, 2015	Forwarded to the Leaders of the Majority of both Houses
		The Petroleum Exploration and Production Bill, 2015	Forwarded to the Leaders of the Majority of both Houses
		The Seed and Plant Varieties (Amendment) Bill, 2015	Forwarded to the Leaders of the Majority of both Houses
		The Forest Bill, 2015	Forwarded to the Leaders of the Majority of both Houses
5	Representation of the People	The Bill on Representation of Marginalized Groups, 2015	The Attorney-General to publish the Bill incorporating CIC's comments on the Bill to give effect to Article 100
		The Two-third Gender Principle Bill, 2015	Bill published to amend Article 90, 97, 98 and 177 to ensure that membership of the National Assembly and the Senate conform to the two-third gender principle

	Chapter and Articles	Title of Legislation Developed	Status of the Legislation
6	Judiciary	The Organization and Administration of the Court of Appeal, 2015	Forwarded to the Leaders of the Majority of both Houses
		The Organization and Administration of the High Court, 2015	Forwarded to Parliament and published
		The Magistrates' Courts Bill, 2015	Forwarded to Parliament and published
		The Small Claims Court Bill, 2015	Forwarded to the Leaders of the Majority of both Houses
		The Legal Aid Bill, 2015	Forwarded to Parliament and published
		The Judiciary Fund Bill, 2015	
7	Public participation and county assembly powers, privileges and immunities		Addressed in the County Governments Act, 2012
8	Public Finance	The Public Audit Bill, 2014	Mediation Committee version of the Bill passed. Presidential Memorandum passed on 18/06/2015 & forwarded to the Senate for consideration. A Joint Committee formed to review memorandum
		The Public Procurement and Asset Disposal Bill, 2014	Senate amendments passed on 26/05/2015. Presidential Memorandum passed on 18/06/2015 & forwarded to the Senate for consideration. A Joint Committee was formed to review memorandum
9	Values and principles of public service	The Public Service (Values and Principles) Bill, 2014	Enacted in May 2015



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