



KENYAN YOUTH IN THE NEW CONSTITUTION

MARCH 2014

This Draft was prepared by:

Samwel O. Okute LL.B. (Hons) UoN

Published by :

THE YOUTH CONGRESS

©THE YOUTH CONGRESS

P.O.Box 44427 -00100 Nairobi Kenya

Tel: 0717 083783

Email: info@theyouthcongress.org

Website: www.theyouthcongress.org

Design & Layout:

Design Point Kenya Ltd.

Tel: 0720 616 405



TABLE OF CONTENTS

1.	INTRODUCTION.....
2.	DEVOLVED GOVERNMENT UNDER THE CONSTITUTION OF KENYA 2010.....
3.	DEPARTMENT FOR YOUTH AFFAIRS IN THE COUNTY GOVERNMENTS.....
4.	REVENUE ALLOCATION TO THE COUNTY.....
5.	SPECIFIC FUNCTIONS OF THE COUNTY GOVERNMENTS (PART 2 OF FOURTH SCHEDULE).....
6.	STRATEGIC OPPORTUNITIES FOR YOUTH PARTICIPATION.....
7.	CONCLUSION.....
8.	RESOURCES.....

1. INTRODUCTION

The Constitution of Kenya promulgated on 27th of August 2010 ushered in a new system of governance that was meant to devolve powers and resources to the 47 counties across the country. Under the devolved government, it is expected that the powers and resources located at the county level will facilitate more effective participation of citizens in matters affecting them and also how decisions are made. Most importantly, the new constitution created immense opportunities for the Kenyan youth to engage in transforming their respective counties and the nation at large.

The statistics show that majority of youth in Kenya are unemployed and underemployed, a rate that today stands at over 70 percent. This is partly due to the fact that crucial public resources needed for development have been centralized in Nairobi, leaving rural areas, where most of the youth currently live, without essential tools for development. Consequently, youth at county level are left deprived of the opportunities to meaningfully participate in transforming the devolved units to improve their individual and collective well-being.

Past government policies and practices excluded youth from participating in development processes, thus denying a majority of the population an opportunity to play a critical role in governance. The country, instead, witnessed a retrogressive move where desperate youth were used and abused by selfish politicians who exploited their vulnerability to achieve some political gains.

The drafters of the new constitution, when they created some provisions to specifically address the plight of the youth sought to address some of the root causes of the youth disempowerment in this country.

First, the Constitution expressly and explicitly calls upon the State to take measures that will enhance education and training among the youth. It also talks of the opportunity for the youth of both representation and participation in social, economic and political processes and access to employment. The constitution is very clear in protecting the youth from harmful cultural practices and exploitation. The foregoing, therefore, accords all the State organs the responsibility to promote the welfare of the youth and ensure their progress.

The devolved system of government has, as its main objective, aimed at enhancing participation in governance, development and creating national unity. This provides a platform through which Kenyan youth can be empowered as the devolution offers direct and specific opportunities targeting them and what roles they are supposed to play.

As a starting point, there is a growing importance to ensure that all the youth have information on the opportunities that the devolved system of government has created to empower them. This digest seeks to outline the structure of the devolved government and its attendant functions. It also seeks to identify the main avenues for youth empowerment. This will enable them to claim and occupy the social, economic, and political space that has been offered through the implementation and operationalisation of the new constitution.



2. DEVOLVED GOVERNMENT UNDER THE CONSTITUTION OF KENYA 2010

2.1 What is Devolution?

Devolution as captured in Chapter 11 of the Constitution is the process of transferring powers and resources from the centre and locating them at the sub national level. An important feature is that the devolved units have the autonomy to exercise powers and control resources for the purposes and objectives specified in the Constitution. Accordingly, a devolved system of government is one which comprises of a national government and devolved units to which powers and functions are transferred.

In Kenya, the devolved system of government comprises of the national government and the 47 county governments. The Constitution emphasizes that while the devolved system creates two orders of government (national and county), the two levels of government are inter-dependent and should conduct their affairs on the basis of mutual consultation and cooperation. The powers and functions of the national and county governments are set out in Parts 1 and 2 of the Fourth Schedule to the Constitution, respectively.

2.2 What are the county governments supposed to achieve?

Article 174 of the Constitution sets out nine objectives that the 47 county governments are required to achieve: Counties are supposed to promote democratic and accountable exercise of power; to give powers of self governance and enhance their participation in the exercise of powers of the State in making decisions affecting them; to promote social and economic development; to ensure equitable sharing of national and local resources; to facilitate the decentralization of State organs, their functions and services from the State capital and to enhance checks and balances and the separation of powers.

2.3 How are the objectives of county governments useful to the youth?

The objectives of the devolved system of government listed under Article 174 are useful to the advancement of the rights of the youth and youth empowerment.

- As members of the public and voters, the youth have an opportunity to ensure that money and power allocated to county governments are used for the common good of the people at the county level. The county governor, “ministers” and the members of county assemblies are all required to perform their functions in accordance with democratically agreed priorities for the youth and also other sections of the population at the county level.

- The youth can serve in various elective or appointive positions at the county level. Indeed, the Constitution and enabling legislation makes it mandatory for the youth to be represented in the county assemblies and other decision-making structures at the county level. Devolution has thus made it possible for the youth to directly participate in county governance and development.
- The Equalisation Fund that is established under Article 204 of the Constitution will enable the national and county governments to expand services and development to previously marginalised areas and communities in accordance with the objectives set out under Article 174. The youth from these areas will thus benefit from the affirmative action measures taken.
- Effective participation of the youth in public affairs at both the national and county level will lead to their integration in national and county development. The devolved system of government provides a chance for the youth all over the country to push for their empowerment.

2.4 How is the county government structured?

All county governments are divided into two organs: the county assembly and the county executive. This is meant to ensure that there is responsible and accountable exercise of power and use of resources by county governments. The county assemblies have the responsibility of scrutinizing the operations of the county executives and check how money that is collected or allocated to county governments is used.

2.4.1 The County Assembly

The county assembly consists of members who are elected from county wards. The law requires each county to have two nominated members who represent the youth. The county executive, on the other hand, consists of the county governor, his/ her deputy and the members of the county executive committee. Members of the county executive committee are nominated by the governor and approved by the county assembly.

Functions

The county assembly is mandated with the responsibility of making laws necessary for the effective performance of the functions of the county government. Other functions include:

- Checking the exercise of powers and use of resources by the governor and his/ her “ministers”, scrutinizing the plans and policies of the county executive on how the county’s resources will be used.
- Scrutinizing and approving the development plans and policies that are proposed by the county executive.

The county assembly plays a key role in developing and passing laws and approving policies meant to ensure county development. It is therefore of paramount importance that youth seek both the elective and nominated positions in the county assemblies in order for them to push for laws and policies that can advance their cause.

Important processes that they can use to push for their agenda in the county assembly include: participating in the scrutiny, amendment and approval of county development plans, approval of the budget which gives authority on the spending areas for a county government, ensuring accountability in the exercise of executive power and use of resources that are in the hands of a county.

Apart from pushing their agenda through the county assemblies, it is important for the youth who are not in political leadership to also support and lobby for the common interests. They should actively participate in public processes that will ensure that youth voices are heard and considered in the formulation and implementation of county policies.

The youth should ensure that they channel their views and concerns directly to counties and also through their elected officials especially youth representatives. However, this requires them to understand the dynamics of the county assembly; the most appropriate time to seek intervention, understanding of the national and county budget processes and at which point public participation and input is required in the preparation of the budget.

2.4.2 The County Executive Committee

Apart from the county assembly, the County Executive Committee also performs some important functions, which include:

- Implementing county laws and laws passed by the national parliament that require implementation in the counties.
- Managing and coordinating the functions of the county administration and its departments.
- Preparing legislation for consideration by the county assembly.
- Preparing reports on county matters.

The committee can be compared to the national cabinet and its role is important to ensure that county functions are implemented. It is important to ensure that the persons appointed to the county executive committees are individuals with adequate knowledge and skills, integrity and professionalism. This will ensure that the county government comes up with appropriate policies, which are practical and can be adequately implemented. Qualified youth should seek these positions.

3. DEPARTMENT FOR YOUTH AFFAIRS IN THE COUNTY GOVERNMENTS

3.1 Youth Departments

County governments have created departments for the dissemination of public information to their constituents and to allow public participation in governance. For example, Nairobi County has the department of Information, Communication and E-Governance. It also has a department on Education, Youth Affairs, Culture, Children and Social Services. Kiambu County boasts of departments of the Education, Youth and Social Services and that of information. This is replicated in the other counties. The proximity of the offices should allow the youth to access information and services quickly without having to travel long distances, which is very hectic, time consuming and expensive. The county government is also charged with the responsibility of issuing business permits and other licenses. Nairobi County is further decentralizing the licensing department to the sub-county level, which further eases the process of obtaining licenses.

3.2 The Linkage between the County and National Government

The National Government in collaboration with the County governments is expected to create a favourable environment to enable the youth to prosper. But the youth must be encouraged to be more vigilant in identifying and seizing opportunities that emerge in order to create jobs rather than waiting for handouts.

Some of the ways that the government has tried to assist the youth is through:

- Increased security to enable businesses to thrive and give people confidence that their properties are safe.
- Encouraging the youth to take advantage of the devolved system of governance by seeking employment opportunities in the counties.
- Starting initiatives like Youth Enterprise and Development Fund (YEDF) and Uwezo Fund where youth can access low interest rate loans to start or expand their businesses.
- Allocating at least 30% of all the government tenders to the youth to boost their earnings. Noteworthy, the 30% preference rule on procurement is also applicable in the county.
- Provision of Free Primary Education and cost sharing in public secondary schools to enable more students to acquire academic qualifications, which will in turn propel them into various career paths.
- Easing the process of registering companies and reducing the number of licenses required to operate a business. Some of the functions like issuance of business permits have been devolved to the county governments to bring services closer to the people.

3.3 Doing Business in the County

The devolution of government presents many opportunities for the youth to engage in various business ventures in the counties. While the county governments might be able to absorb a few young people directly, the majority should engage in other activities that can create income and enable them to be self reliant.

The Constitution has distributed several functions between the National Government and the County governments. By registering companies and groups, youth can provide the services allocated to the county government and also compete, not only for the 30% of tenders set aside for the youth, but also for the remaining 70 percent. To be competitive in the business arena, it is important for the youth to have a good understanding of how to run businesses and other associated requirements like understanding the tax regime, business registration and licenses.

Some of these functions have been devolved to the counties while others are still under the national government. The information and youth departments in the counties will be ideal offices for the youth to get information and advice on how to go about the process of starting business .

The youth should also seek collaborative forums with stakeholders in the corporate sector, civil society and development arena to build their capacity and become more informed on devolution, business matters, financial management and skills development.

Important information that the youth should seek:

- What functions have been devolved to the county government?
- How to register a company and be tax compliant; licenses required and other statutory requirements.
- The process of applying for a tender and what qualifies a company for application.

There are several resources available to assist the youth and other individuals on how to set up new businesses and the ventures to engage in at the county level. For example, the Youth Banner is a not-for-profit organization focusing on youth development and empowerment through entrepreneurship (youthbanner.org).

The registration of companies is guided under the Companies Act (Cap 486) of the laws of Kenya and the process is under the office of the Attorney General at Sheria House. Individuals and youth groups intending to register companies can get more information from Sheria House or seek advice from a lawyer/advocate.

Some key steps in the registration process are:

- **Name search:** You write a letter to the registrar to reserve your desired name. The name may be accepted or rejected based on businesses with a similar name or offending the rules on name reservation. This part takes two days. If accepted, the registrar will reserve the name for 30 days.
- **Prepare Memorandum and Article of Association and Statement of Nominal Capital:** These documents describe the objectives, rules, subscribers and authorized share capital of your company. They are prepared by an advocate.
- **Pay Stamp Duty:** The amount of money that you pay depends on your declared nominal capital.
- **Situation of Office Form 201:** Fill this form that notes the registered office address of the company, and to be signed by one director or the company secretary.
- **List of Directors Form 203:** Fill this form that lists the directors and secretary of the company. This is stamped by the company secretary.
- **Declaration of Compliance Form 208:** Get a commissioner of oath to sign this form on your behalf.
- **Registration:** Lodge the documents with the registrar of companies for registration.



4. REVENUE ALLOCATION TO THE COUNTY

The county governments need adequate resources and funding to be able to efficiently deliver services to the people. The counties are expected to come up with ways of raising resources through license fees, local tourism and other creative ways. The objects of devolution as set out in Article 174 of the Constitution advocates for the equitable sharing of local and national resources throughout Kenya.

The national government therefore has to ensure that:

- There is equitable sharing of revenue between the national government and county governments.
- That 15% of budget is allocated to counties.
- Equalization Fund (Article 204) to bring counties lagging behind in development to the level of the other counties.

County governments can borrow money with the approval of the county assemblies. The National government will guarantee the loan. Article 211 provides that parliament may by legislation prescribe the terms under which a county government may borrow. The Commission for Revenue Allocation (CRA) is established under Article 216 and is charged with the responsibility of making recommendations concerning the basis for revenue sharing between the national and county governments. In doing so, they are required to give effect to the criteria on equitable sharing as set out in Article 203. After every five years, the senate will by resolution review and determine the basis for allocating among counties the share of national revenue. They will likewise be required to:

- Consider the criteria set out in Article 203.
- Consider the recommendations of CRA.
- Consult the county governors and the cabinet secretary responsible for finance and organization of county governments.
- Invite the public, including professional bodies to make submissions on the matter.

5 SPECIFIC FUNCTIONS OF THE COUNTY GOVERNMENTS (PART 2 OF FOURTH SCHEDULE)

Some functions and services will be transferred from the national government to the county government. This will offer the youth a chance to engage in economic development. A devolved government will create the following opportunities:

- Agriculture
- County health services
- Advertising
- Cultural activities, public entertainment and public amenities
- County transport
- Animal control and welfare
- Trade development and regulation
- Pre-primary education, county polytechnics and home craft centres and childcare facilities
- County planning and development
- County public works and services
- Fire fighting services and disaster management

	DEVOLVED FUNCTIONS	OPPORTUNITIES FOR YOUTH TO ENGAGE
1	<p>Agriculture, including</p> <p>(a) Crop and animal husbandry; (b) Livestock sale yards; (c) County abattoirs; (d) Plant and animal disease control; and (e) Fisheries</p>	<ul style="list-style-type: none"> • Engage in small scale and large scale agricultural production supported by among others the Youth Enterprise Fund and Uwezo Fund. • Showcasing innovative technologies for green value addition in Agriculture.
2	<p>County health services including</p> <p>(a) County health facilities and pharmacies; (b) Ambulance services; (c) Promotion of primary health care; (d) Licensing and control of undertakings that sell food to the public;</p>	<ul style="list-style-type: none"> • Managing ambulance services. • Developing and replicating waste management programmes.

	<p>(e) Veterinary services (excluding regulation of the profession);</p> <p>(f) Cemeteries, funeral parlours, and crematoria; and</p> <p>(g) Refuse removal, refuse dumps, and solid waste disposal.</p>	
3	Control of air pollution, noise pollution, other public nuisances and outdoor advertising.	<ul style="list-style-type: none"> • Technology transfer for control of pollution. • Outdoor advertising using innovative channels.
4	<p>Cultural activities, public entertainment and public amenities, including</p> <p>(a) Betting, casinos and other forms of gambling;</p> <p>(b) Racing;</p> <p>(c) Liquor licensing;</p> <p>(d) Cinemas;</p> <p>(e) Video shows and hiring;</p> <p>(f) Libraries;</p> <p>(g) Museums;</p> <p>(h) Sports and cultural activities and facilities; and</p> <p>(i) County parks, beaches and recreation facilities.</p>	<ul style="list-style-type: none"> • Construction of sporting facilities and procurement of sporting equipment • Participating in sporting programmes • Forming companies that manage sporting facilities and county parks, beaches and recreational facilities
5	<p>County transport, including</p> <p>(a) County roads;</p> <p>(b) Street lighting;</p> <p>(c) Traffic and parking;</p> <p>(d) Public road transport; and</p> <p>(e) Ferries and harbours.</p>	<ul style="list-style-type: none"> • Design and construction of efficient integrated transport network • Management of ferries and harbours

6.	<p>Animal control and welfare, including</p> <p>(a) Licensing of dogs; and</p> <p>(b) Facilities for the accommodation, care and burial of animals.</p>	
7.	<p>Trade development and regulation, including</p> <p>(a) Markets;</p> <p>(b) Licenses (excluding regulation of professions);</p> <p>(c) Fair trading practices;</p> <p>(d) Local tourism; and</p> <p>(e) Cooperative societies.</p>	<ul style="list-style-type: none"> • Packaging and marketing of innovations in local tourism products • Showcase best practices in fair trading practices based on current technologies • Establish cooperatives to support various initiatives
8.	<p>County planning and development, including</p> <p>(a) Statistics;</p> <p>(b) Land survey and mapping;</p> <p>(c) Boundaries and fencing;</p> <p>(d) Housing; and</p> <p>(e) Electricity and gas reticulation and energy regulation.</p>	<ul style="list-style-type: none"> • Knowledge and technology transfer in large scale land survey and mapping • Design and construction of low cost, energy saving and high quality housing • Design and installation of integrated electricity and gas reticulation systems
9.	<p>Pre-primary education, village polytechnics, home craft centres and childcare facilities.</p>	<ul style="list-style-type: none"> • Opportunity to advance their skills for great economic engagement
10.	<p>Implementation of specific national government policies on natural resources and environmental conservation, including</p> <p>(a) soil and water conservation; and</p> <p>(b) Forestry.</p>	<ul style="list-style-type: none"> • Knowledge and technology transfer in soil and water conservation systems • Tree nurseries and planting

11.	<p>County public works and services, including.</p> <p>(a) storm water management systems in built-up areas; and</p> <p>(b) Water and sanitation services.</p>	<ul style="list-style-type: none"> • Design and construction of large scale storm water management systems
12.	<p>Fire fighting services and disaster management.</p>	<ul style="list-style-type: none"> • Management of Fire Fighting and Disaster equipment



6. STRATEGIC OPPORTUNITIES FOR YOUTH PARTICIPATION

Devolution can only work if the people are willing to engage in the process. This is even more critical during the early stages when the system is required to take root and start running smoothly. In *Devolution Made Simple*, Patrick O. Onyango affirms the constitutional basis for citizen participation as provided by the Constitution of Kenya in Article 1 (1), (2), (3) and (4).

Thus says; "All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution", "The people may exercise their sovereign power either directly or through their democratically elected representatives". It is therefore a right for the youth that should be exercised by participation through:

- Seeking elective positions in the county governments so that they can be directly involved in policy formulation and implementation.
- Making submissions and suggestions during budget deliberations and consultation processes. Active participation in planning, budgeting and implementation.
- Being vigilant and engaging in forums on the development agenda for the county so that priority is given to important projects. This should be done through well organized youth councils and organizations.
- Mobilizing pressure against corruption and self seeking, thus contributing towards transparency and accountability.
- Taking advantage of the devolved functions by applying for tenders and also seeking loans from initiatives like The Youth Enterprise Development Fund (YEDF) and Uwezo Fund to start business ventures and expand already existing ones.
- Educating other members of society about the laws, regulations and policies for better understanding and participation by the citizenry.
- Participating in the public vetting of public officials in order to ensure that only those of high integrity take public offices.

- Engaging with institutions responsible for implementation of the constitution; Constitutional **Implementation Oversight Committee (CIOC)**, established under Section 4 of the Sixth Schedule and responsible for overseeing the implementation of the Constitution, **Commission for the Implementation of the Constitution (CIC)**, established under Section 5 of the Sixth Schedule and the **Transition Authority (TA)**, established under the Sixth Schedule of the Constitution of Kenya and the Transition to Devolved Government Act 2012.
- Monitoring the transition to the devolved system of government. Transition is guided by Chapter Eighteen of the constitution as read together with the Fifth and Sixth Schedule.





07. CONCLUSION

Kenyan youth have a chance to define their destiny by tapping the immense opportunities created by the new constitution and opened up by the devolution of services to the counties. The youth, like the rest of Kenyans, have legitimate expectations for the government to meet its obligations in creating conducive environment for them to take advantage of the new opportunities to better their living standards.

On their part, the citizens must exercise their sovereign rights either directly or through their elected representatives by using the various avenues created by the new constitution for citizen participation. By doing so, and aided by the new laws and institutions, the youth will be able to break away from a past that was characterized by marginalization and poverty to move steadfastly into a new dawn of prosperity.

0.8 RESOURCES

Government Printer, 2010: *The Constitution of Kenya*

Government Printer, 2012: *Transition to Devolved Government Act*

Institute for economic Affairs (IED). 2013. *Features Bulletin, Issue No. 16,*

Institute for economic Affairs (IED). 2010 *Economic and Administrative Implications of the Devolution Framework Establish by the Constitution of Kenya*

Katindi S. 2010. *Youth Fact Book: Infinite Possibility or Definite Disaster?*

The Youth Congress: Locating the Youth

Obonyo R. 2010. *It's a brand new deal for the youth. Daily Nation 12th May 2010*

Obonyo R. 2010. *Our youth have spoken; anyone listening? Daily Nation 16th August 2010*

Onyango P.O. 2013. *Devolution Made Simple: Friedrich-Ebert-Stiftung*

The Kenya National Youth Charter 2013

Kiambu County (www.kiambu.go.ke)

Nairobi City County (www.nairobi.go.ke)