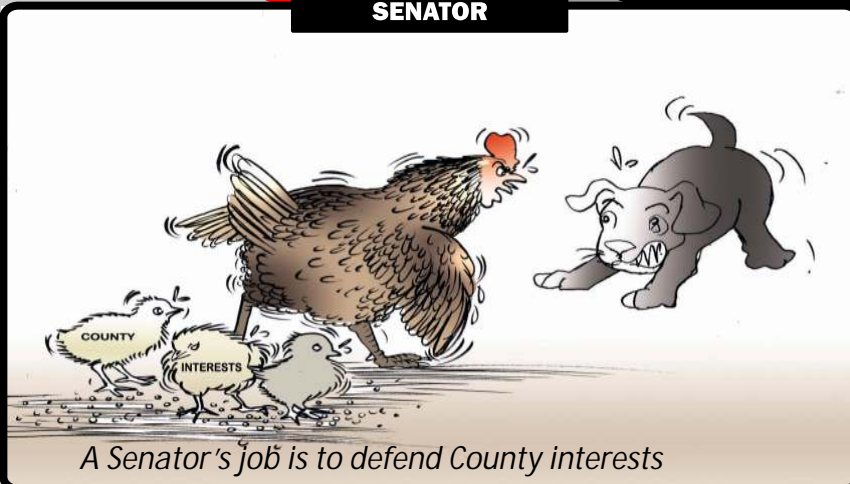


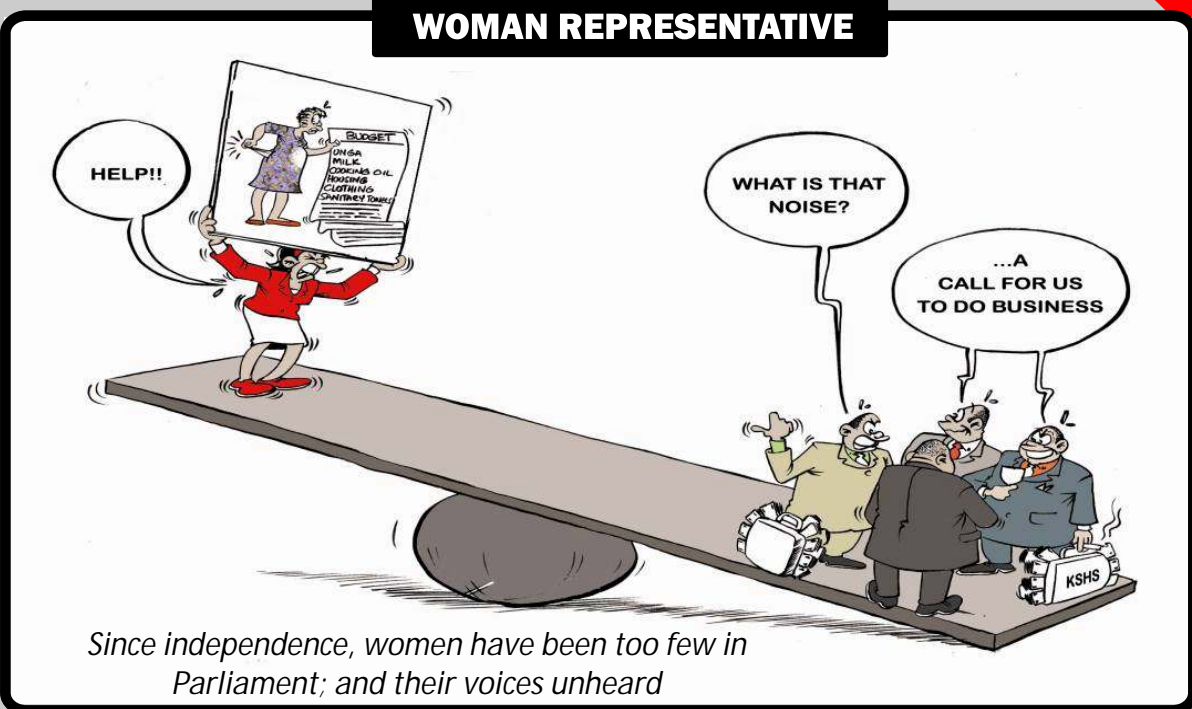
FUNCTIONS OF ELECTED STATE OFFICERS

SENATOR



A Senator's job is to defend County interests

WOMAN REPRESENTATIVE



Since independence, women have been too few in Parliament; and their voices unheard

Making A Complete Shift From The Past



Functions and Responsibilities of Elected State Officers

March 2013

ISBN: 9966-941-81-9

Published by:

Kenya Human Rights Commission (KHRC) Opposite Valley Arcade, Gitanga Road,
P.O. Box 41079, 00100 GPO, Nairobi, Kenya.

Tel: +254 020-2106709 / 2044545 / 202106763

Fax: +254 020-3874997

Email: admin@khcr.or.ke

Website: www.khrc.or.ke

All parts of this publication may be reproduced freely, provided the Kenya Human Rights Commission is duly acknowledged.

© KHRC 2013



Table of Contents

1.INTRODUCTION.....6

1.1 Elected State Officers..... 8

1.2 Proposed Remuneration Structure of Elected State Officers..... 9

2.0 KEY FUNCTIONS OF LEGISLATORS IN ALL LEVELS OF GOVERNMENT 10

2.1 Separation of Powers: The Three Arms of Government 10

2.2 Key Functions of All Legislators – Regional, National, Senate and County Assembly:..... 11

2.3 Functions and Responsibilities of Legislators in National Government..... 15

2.2.1 Constituency Representative to the National Assembly (MPs)..... 15

2.2.2 Woman Representative to the National Assembly (MPs) 16

2.3 Functions of Legislators in County Government 20

2.3.1 County Representative..... 20

3.0 ELECTED STATE OFFICERS IN EXECUTIVE ARM OF GOVERNMENT NATIONAL GOVERNMENT.....21

4.0 ELECTED STATE OFFICERS IN EXECUTIVE ARM OF COUNTY GOVERNMENT.....24

4.1 Functions of Governor and Deputy.....24

5.0 THE RESPONSIBILITIES / DUTIES OF CITIZENS.....27

The Kenya Human Rights Commission (KHRC) is most grateful to the many community based human rights networks (HURINETs) that have continuously insisted that there exists a knowledge gap on what exactly politicians do, how much they earn and hence, the lack of an effective yardstick to measure their performance.

The desire to fill this knowledge gap inspired this publication. We hope that it will nudge readers' interest in how government both at County and National level ought to run and contribute to citizen participation which is now a right and duty enshrined in Kenya's Constitution. We hope that this publication will be useful to community based social auditors and other trainers in identifying which duty bearer should be held accountable for what function.

The KHRC is greatly indebted to Nduta Kweheria who heeded the call to compile this comprehensive yet simple publication. The KHRC also thanks Grace Mutung'u, Davis Malombe, George Morara, Peter Kibiru, Lillian Kantai, Bill Mureithi, Vincent Musebe, Jamilla Wahome and Beryl Aidi for their editorial input on this brief.

Lastly, but by no means the least, KHRC thanks the Royal Norwegian Embassy (RNE) for their continued support to its work and this publication in particular.

The Kenya Human Rights Commission (KHRC) is a Non-Governmental Organisation (NGO) founded in 1992. Since its founding, KHRC has worked towards entrenching human rights and democratic values in Kenya. KHRC is different from the government's Kenya National Commission on Human Rights (KNCHR) which was established in 2003.

KHRC's strategic planning process is re-directing the KHRC towards Vision: A human rights state and society; Mission: To foster human rights, democratic values, human dignity and social justice; and to work towards the Goal of: Enhanced human rights centred governance at all levels.

The key objectives of KHRC in the 2013-18 period are to be implemented through four Programmes namely: -

- i) Justice and Governance;
- ii) Equality and Non-Discrimination;
- iii) Economic Rights and Social Justice; and
- iv) Organisational Development and Institutional Sustainability.

Our Work

KHRC has a long history of capability and tenacity to comprehensively deal with different human rights issues and violations at the different levels of society. This has been achieved through the use of a rights based approach to research; social movement building; documentation of human rights violations, evidence-based advocacy and litigation.

KHRC has been able to identify human rights entry points and provide intellectual leadership that integrates a human rights based approach to various sectors in society thereby expanding the human rights discourse and constituency. Notably, KHRC has undertaken pioneering work in addressing livelihoods and labour rights; sexual minority issues; social auditing through the Peoples' Manifesto and Scorecard Initiative; constitutional reform, electoral governance and transitional justice issues all from a human rights perspective.

KHRC has also built a human rights movement by nurturing community-based Human Rights Networks (HURINETs) and incubation of nascent human rights organisations at all levels; and works with many networks, coalitions and other platforms at local, national, regional and international levels.

KHRC's enduring achievements are credited to a highly passionate, competent and multi-disciplinary human resource base, committed to and capable of dealing with diverse incidents and patterns of human rights violations in the society. Through its work, KHRC has greatly contributed to the production of a pool of nationally and internationally acclaimed human rights workers and scholars within the fields of governance and human rights.

Finally, KHRC also attributes its achievements to sound organizational governance and effective Monitoring and Evaluation (M&E) systems which it is constantly striving to improve.



Citizens demonstrate against impunity. Source: KHRC

Throughout Kenya's 50 years of independence and ten general elections, it has not been clear to most citizens exactly what work Members of Parliament (MPs) and other elective office holders do.

In 2007, KHRC's Peoples' Manifesto and Scorecard Initiative was premised on the fact that political party manifestos and the development performance promises they contain did not mean much to the electorate besides being colours that distinguished one group of voters from another and more from an ethnic perspective rather than ideology.¹ Two major factors have served to illuminate this gap in public awareness on the functions and responsibilities of those elected.

The first is the fact that the 2013 general election is the first to be held under the new Constitution promulgated in August 2010. The Constitution creates eight elective positions to be filled through the use of six ballot papers. This is an increase from the three elective positions that existed since independence. KHRC's February 2013 election monitoring report which also looked at people's awareness of the Constitutional elective positions (yet to be published) finds that over 80% of citizens either do not know or are not sure about the extent of the new electoral boundaries.² Further, over 70% cannot clearly articulate the functions of the President despite this elective position having existed since independence; and less than 25% confidently know the functions of the holders of the other elective positions: - Senator (13%), Woman Representative (15%), Governor (24%) and County Representative (16%). The same has been observed in similar studies by other civil society organisations.³

This is further complicated by the fact that for the first time ever, the Constitution requires voters to look at the integrity and capability of those they elect to office as well as the fact that the March 2013 general elections coincide with Kenya having three suspects indicted by the International Criminal Court (ICC) on

¹ Nduta Kweheria, *Voters Manifestos Key to Genuine Representation* Saturday Nation, November 3, 2007, pp 14

² *Countdown to The March 2013 General Elections: Interim Elections Monitoring Report*, KHRC, 2013

http://www.khrc.or.ke/resources/publications/doc_download/52-countdown-to-the-march-2013-general-elections-interim-election-report.html

³ See Africa Centre for Open Governance (AfriCOG) Report on Devolution, June 2012 available at <http://www.africog.org/reports/devolution> accessed March 14, 2013



Citizens and members of civil society organization demonstrate outside parliament building over the proposed retirement package: January 16th, 2013

charges of crimes against humanity that occurred around the 2007 general elections. There has been great public debate generated on whether or not; those indicted by the ICC met integrity standards for elected state officers or would be able to perform their functions while at the same time attending trial at the ICC in Hague.

Secondly, the 10th Parliament (2008 and 2013) enjoyed salaries and allowances amounting to Ksh851,000 per month, at a time when Kenya's per capita income was less than Ksh2,000 per month (i.e. 425 times less than MPs' monthly pay and minimum wage at Ksh4,050 per month; hence over 210 times less than MPs monthly pay. The same MPs in the 10th Parliament in October 2012 passed a bill to pay themselves a further 'retirement package' of over Ksh9Million (USD 110,000) each for the 210 MPs. Had this passed, at the time, it would have meant that at Ksh2,000 per month, it would take 61 years for the average Kenyan to earn the Ksh9M bonus that MPs had proposed for each of themselves. In addition to the bonus, the proposed retirement package for MPs included diplomatic passports for them and their spouses, a state funeral and access to the nation's VIP airport lounges. The proposal was thwarted following demonstrations by KHRC and other civil society organizations and public outcry on all media and that resulted in the President slashing the bonuses by half.

In addition, the same 10th Parliament lobbied the then Minister for Finance Hon. Njeru Githae to authorize (on January 2, 2013) the release of over Ksh10Billion to them in the form of Constituency Development Fund (CDF) apparently to implement CDF projects in just eight weeks before the March 4, 2013 General Elections. This was stopped by a court ruling on the matter.¹

The fact that majority of citizens do not know their electoral boundaries or the functions of those that they elect to take office suggests that i) voters do not link elections to rights access through service delivery; ii) voters do not think that the taxes they pay entitle them to demand a certain level of performance, which implies voters' acceptance of poor - mediocre performance from those elected. This ought to be a cause for alarm; more so when one asks the question "If it is not the expectation of quality and timely service delivery and performance by elected leaders or of voters getting their money's

¹ Petition No.71 of 2013 to determine the constitutionality of disbursement of Ksh10.1Billion to the CDF Management Committee to enable Members of Parliament to complete pending projects. See <http://www.tisa.or.ke/uploads/Court-Order.pdf> accessed March 14, 2013

(taxes) worth, that drives Kenyans to vote at general elections, then what does?’ This is clearly an interesting area for further study.

Exactly what mandate, function, duty or responsibility do MPs and the elected state officers serve in order to earn the pay and benefits that they do, and even to think they deserve more?

This brief provides short explanations on the functions that the different elected state officers should perform. It is developed in response to studies¹ that have noted the need to build the capacity of legislators to understand and better perform their role. The brief also takes cognizance of the right to and duty of citizen participation now recognised in the Constitution of Kenya 2010. It is therefore also intended to help citizens to understand what functions each of the elected state officers ought to perform, be aware of how much s/he as a taxpayer is paying each elected state officer to perform these functions and create awareness on the fact that the Constitution now provides for citizens to recall non-performing elected state officers. Finally, this brief provides a breakdown of some of the responsibility that citizens ought to take to fulfil their duty of citizen participation.

1.1 Elected State Officers

The Constitution of Kenya (Art 260) defines “State”, as the collectivity of offices, organs and other entities comprising the government of the Republic under the Constitution. It proceeds to list state offices as including all the eight offices occupied by the eight leaders elected at general elections to serve in both national and county governments which mean that all the eight are state officers.

Article 73 of the Constitution of Kenya notes that authority assigned to a State officer is a public trust to be exercised in a manner that (i) is consistent with the purposes and objects of the Constitution;(ii) demonstrates respect for the people;(iii) brings honour to the nation and dignity to the office; and (iv) promotes public confidence in the integrity of the office. The Constitution of Kenya vests in the State officer the responsibility to serve the people, rather than the power to rule them.

The guiding principles of leadership and integrity include (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;(b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;(c) selfless service based solely on the public interest, demonstrated by (i) honesty in the execution of public duties; and (ii) the declaration of any personal interest that may conflict with public duties; (d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.

A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids (a) any conflict between personal interests and public or official duties; (b) compromising any public or official interest in favour of a personal interest; or (c) demeaning the office the officer holds.

¹The Open Budget Survey, 2012, and the Africa Parliamentary Strengthening Program (APSP) for Budget Oversight which develops the African Parliamentary Index (API) have both noted the need to build the capacities of Legislators to be able to effectively perform their core functions. Open Budget Survey is an independent measure of the state of budget transparency, accountability, and participation around the world. See <http://www.internationalbudget.org> accessed on March 14, 2013.

1.2 Proposed Remuneration Structure of Elected state Officers

Kenyan taxpayers will in the 2013-2018 period spend a huge amount of money to pay the over 2000 people elected, nominated and appointed following the March 4, 2013 general elections. These include the President and Deputy President (2); at least 350 Members of the National Assembly; at least 68 Members of the Senate; 47 Governors; 47 Deputy Governors and 47 Speakers of County Assemblies; and at least 1450 Ward representatives to County Assemblies. These numbers state the lowest possible as the non-election of women will mean nominations, to meet the two thirds gender rule¹ particularly in County Assemblies, where the rule applies immediately after the 2013 General Elections.

According to the Salaries and Remuneration Commission (SRC)², Kenya's wage bill has taken up more than one third (35%) of all taxes / revenue collected annually and is the highest compared to other African Countries (29.5%); Asia (23.1%) and the European Union (16.3%). While a review of the same has been proposed, it remains critical to ensure that both the elected and tax payers are aware of the quality of work they should expect from paying these hefty amounts and are able to constantly monitor performance in order to get their money's worth.

Elective Office	PROPOSED MONTHLY REMUNERATION		TOTAL PER YEAR (MINIMUM)	ANNUAL TOTAL FOR ALL ELECTED IN THIS POSITION	TOTAL EARNED PER PERSON IN 5 YEARS	TOTAL EARNED IN 5 YEARS BY ALL IN THIS POSITION
	MINIMUM	MAXIMUM				
1. President (1)	1,237,500	1,650,000	Ksh 14,850,000	Ksh 14,850,000	Ksh 74,250,000	Ksh 74,250,000
2. Deputy President (1)	1,115,625	1,487,500	Ksh 13,387,500	Ksh 13,387,500	Ksh 66,937,500	Ksh 66,937,500
3. Speaker of National Assembly (1)	990,000	1,155,000	11,880,000	11,880,000	59,400,000	Ksh 59,400,000
4. Deputy Speaker of NA (1)	792,000	1,056,000	Ksh9,504,000	Ksh9,504,000	Ksh47,520,000	Ksh47,520,000
5. Member of National Assembly - MP (at least 349)	Ksh532,500	Ksh710,000	Ksh6,390,000	Ksh6,390,000	Ksh31,951,000	Ksh11,150,900,000
6. Speaker of Senate (1)	Ksh1,237,500	1,320,000	14,850,000	14,850,000	74,250,000	Ksh 74,250,000
7. Deputy Speaker of Senate (1)	990,000	1,056,000	11,880,000	11,880,000	59,400,000	Ksh 59,400,000
8. Member of Senate (67)	Ksh532,500	Ksh710,000	Ksh6,390,000	Ksh6,390,000	Ksh31,951,000	Ksh2,140,717,000
9. County Governor (47)	640,681	854,241	7,688,172	7,688,172	38,440,860	Ksh1,806,720,420
10. Deputy Governor (47)	461,250	615,000	5,535,000	5,535,000	27,675,000	Ksh, 1,300,725,000
11. Speaker of County Assembly (47)	225,000	300,000	3,600,000	3,600,000	18,000,000	Ksh 846,000,000
12. Member of County Assembly (at least 1450)	79,200	105,600	950,400	950,400	4,752,000	Ksh 6,890,400,000

Source: Salaries and Remuneration Commission (SRC), Kenya Gazette Notices No. 2885, 2886, 2827 and 2888 Remuneration and Benefits of State Officers in the Executive, Dated 2th February 2013 and Effective, March 1, 2013

¹ The Supreme Court in December 2012 ruled that Article 81 (b) of the constitution which states, "not more than two-thirds of the members of elective public bodies shall be of the same gender," be progressively implemented. However, this ruling exempts County Assemblies as Article 77(2) reads, "A County Assembly consists of the number of special seat members necessary to ensure that no more than two-thirds of the membership of the Assembly are of the same gender."

² Salaries and Remuneration Commission, Pay Determination for State Officers in the Government of Kenya, February 2013



The World's oldest Parliament is in Iceland (The Althing) that first sat in the 10th Century on 23^d June, 0930. Source: Wikipedia.

2.1 Separation of Powers: Three Arms of Government

The functions of the government are many and diverse. It is necessary to divide these functions amongst specific organs, so that the responsibility for performing them is clear and does not result in concentration of power in one organ. The division of governmental power under any constitution is done in two ways - vertically and horizontally. Horizontally, government consists of three arms each with specific functions – the Legislature which makes law or legislation especially on the use of national revenue ; the Executive which implements the by making and spending on budgets approved in law by the legislature; and the Judiciary, which resolves disputes by interpreting laws.¹ Each arm has separate and independent powers and areas of responsibility so that no arm has more power than the other branches.

Like other democratic states, the Constitution of Kenya establishes three arms of government - The Legislature, The Executive and The Judiciary are well known to many. Of the eight state officers elected following the March 2013 elections, four; namely The President, Deputy President and the Governor and Deputy Governor will serve in the Executive arm of government; while the other four will serve in the Legislative arm of government namely the Constituency Representative (MP) and Woman Representatives to the National assembly, the Senator and the Ward Representative to the County Assembly (County Representative).

The functions and responsibilities of those serving in the Executive are different from those of elected leaders serving in the Legislature. This brief therefore summarizes:-

- i) The general function and responsibilities of the four legislators elected in Kenya; then explains the slight differences in the roles each legislator will play.

¹ Baron Montesquieu was a French philosopher who asserted that concentrated power is dangerous and leads to despotism of government and is credited as the originator of the theory of separation of powers.

- i) The specific function and responsibilities of the President and deputy president; and separately the role of the Governor and deputy governor, who serve in the Executive arm of government.

Further, the Constitution of Kenya 2010 creates two levels of government - national and county; which are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation. Under the Constitution of Kenya, 2010 the Legislative and Executive arms of government will now be at the two levels – National and County government; while Article 6 (3) of the Constitution requires the Judiciary as a national state organ to ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.

Because Kenya now has two levels of Government, three new elective positions have been established precisely to serve at the County level. These are the Governor and Deputy Governor who will serve in the Executive arm of the County government and the county representatives who will serve as the legislators or legislative arm of the County assembly. Senators will serve in the legislative arm of the national government but unlike the national assembly, the key role of the Senate and thus senators is to articulate interests of their counties at national level.

2.2 Key Functions Of All Legislators - Regional, National Senate And County Assembly

One of the major changes that the Constitution of Kenya 2010 introduced is in the definition and composition of 'Parliament'. Article 93 (1) states that the Parliament of Kenya now consists of two houses; the National Assembly and the Senate. This means that the term 'Member of Parliament' or MP now refers to all the elected state officers who will sit in both the National Assembly and the Senate.

At national level, the Legislative arm of government refers to Parliament i.e. the National Assembly and Senate. Kenya is part of the East African Community (EAC) which also has three arms of government – the Executive, Legislature and Judicial arms. The legislators that voters elect into the Parliament in Kenya are the ones that appoint legislators to the East African Legislative Assembly (EALA). This means that the peoples' choices at the national general elections also influence Kenya's strength at regional level.

At county level, the Legislative arm of government refers to representatives elected from each ward to serve in County Assemblies in each of the 47 Counties. The term legislators therefore refers to all members sitting not only in the three houses – Senate, National Assembly and County Assembly, but also to legislators that will be appointed by political parties to the East African Legislative Assembly (EALA).

The Constitution of Kenya, 2010 in line with international best practice identifies eight key functions that at national and county level should perform which are also largely the same as those of members of the East African Legislative Assembly (EALA); save for differentiations arising from the level of government. With the exception of function sixth function, which only applies to national level legislators, the other seven functions apply to all legislators, with the rider that County Representatives in County Assembly check the performance and can remove the governor from office; while Parliament checks the performance of and can remove the President from office; while the EALA legislators ought to check the performance of the regional executive.

Globally¹, there are six key functions that legislators at whatever level must undertake. These are:-

¹ See African Parliamentary index and the Open Budget Survey, 2012 available at www.parlcent.org/en/.../API-African-Parliamentary-Index.pdf accessed 14, March 2013

check the performance and can remove the governor from office; while Parliament checks the performance of and can remove the President from office; while the EALA legislators ought to check the performance of the regional executive.

Globally¹, there are six key functions that legislators at whatever level must undertake. These are:-

1. Representation²: Legislators have a duty to represent the people, that is; to listen to and express the will of the people in Parliament. To do this, legislators must:-
 - Listen to the people; interact constantly with the different groups they represent to know their views on different issues.
 - Special interests: Equality/ Non-Discrimination: The people of Kenya are not homogeneous; neither are the 47 counties. The needs of all women, or all poor people, minorities or marginalised people are not the same. All legislators have a duty to ensure that the diverse needs of different groups they represent are addressed in decision-making, law and budgeting. In particular women representatives and MPs who are in Parliament to represent special interests must be particularly firm in ensuring that the needs of those they represent are addressed.
 - Articulate citizens' concerns to implementing institutions.
 - Be accessible to the people and always act in the peoples' best interests both locally and internationally.
 - Ensure that parliamentary proceedings are open to the public and the media.
 - Ensure that citizens always know what their legislator is doing, what position or opinion s/he holds on crucial issues and why.
2. Legislation³: Legislators have a duty to make laws by researching, considering, debating then passing bills introduced by the Executive or by private members. They can also repeal or amend laws. Some of the critical aspects about legislators duty and power to make laws include:-
 - International Agreements and Treaties: Legislators have a duty to authorize or prevent the Executive arm of government from entering into international agreements / treaties that do not favour the interests of Kenyans.
 - Laws on compliance with international Law: Under Article 2 (5) Parliament has a duty to make laws that facilitate compliance with international laws and commitments that Kenya has entered into e.g. Millennium Development Goals (MDGs); the Rome Statutes etc.
 - Constitutional amendment and County Boundaries: Parliament may consider and pass amendments to the Constitution including the alteration of county boundaries but only if such amendments are in the best interests of the people including special interest groups; and is in line with the Constitution- Article 94 (3).
 - Legislators must act responsibly because they have the power to overrule the President in law making. Under Article 115 (4) of the Constitution, a bill that the President has expressed reservations on can still become law without the President's assent if two thirds of the National Assembly and two thirds of Senate vote to have the bill become law irrespective of the President's reservations. Further, a bill that has gone through all the constitutional requirements becomes law if the President does not sign it within seven days of it being presented to her/him for assent.
 - Make laws on how government will raise money from taxes and approve government spending.

¹ See African Parliamentary index and the Open Budget Survey, 2012 available at www.parlcent.org/en/.../API-African-Parliamentary-Index.pdf accessed 14, March 2013

² Articles 3 (a) and 95(20), Constitution of Kenya

³ Articles 94 (5-6) and 2(5), Constitution of Kenya

1. Power of the Purse and Fiscal Oversight: The people of Kenya finance government through their taxes.¹
 - Citizen participation in budget making: Ensure that the people (including minorities) are aware of and participate within the stipulated time each year in community level budget making processes and ensure that the Executive publishes the simplified / Citizen Budget and has adequate time to give their views on the budget.
 - Horizontal division of revenue: Determine how national revenue (public funds) will be divided between National and County Governments.² This is largely a function of the Senate.
 - Vertical division of revenue: Decide how much money will be allocated to different development priorities / cabinet portfolios to meet constitutional obligations e.g. on economic, social and cultural rights.³ This is a function of legislators in the National Assembly.
 - The Appropriation Act is one of the most critical laws that Parliament makes each year because it authorizes the Executive to spend public funds as proposed in the Executive Budget Proposal. Legislators have a duty to scrutinize the national budget ⁴(Pre-Budget statement and executive Budget proposal) to check that budget responds to her/his peoples' needs or interests; ask the Executive to make changes to the budget proposal (supplementary budget) and only if satisfied that the peoples' needs have been addressed, pass the Appropriations Bill into that will allow government to spend public funds (ex-Ante approval).
 - Taxation: By approving the Appropriations Bill which outlines how the Executive proposes to raise national revenue, legislators have the responsibility and power to determine the taxation regime.
 - Monitor government's use of public funds by scrutinizing the quarterly reports of the Controller of Budgets and the annual Auditor General's report to ensure that spending has complied with approved budget.
 - Prevent waste and corruption by demanding explanations on complaints about any government spending that does not comply with the approved budget.
 - Prevent Poverty: Research / study economic indicators, understand the effect of taxation and how inflation, recession and unemployment happen and make laws to prevent these adverse economic effects or poverty.
 - Ensure that laws made create budget support offices that have adequate authority and money to properly do their work. These include the Public accounts Committee of Parliament, the Office of the Auditor General, Controller of Budgets, the Commission for Revenue Allocation (CRA) and the Salaries and Remuneration Commission (SRC) etc.
 - Wealth declaration: In order to assure the citizens that they have the good will and integrity to undertake the above, legislators have a responsibility to open themselves up to scrutiny by publicly declaring their wealth as a measure that facilitates transparency and accountability.
2. General Oversight: Legislators have an oversight duty with respect to:-
 - Compliance with the Constitution: Ensure that all state officers perform their duties in line with the Constitution, recognize that all state organs exist to serve citizens and treat citizens with respect. Where a complaint is made on the conduct of any public officer, legislators can raise questions and motions in Parliament which the Executive must answer.
 - Vetting public appointments by Executive: Legislators have a duty to vet and approve candidates being considered for appointment before they are appointed to serve in other state offices created by the Constitution.

¹Taxes include the CESS paid by farmers, business license fees paid by traders (including fisher folk and herders), Value Added Tax (VAT) and other taxes paid on all goods and services; excise duty paid on all imports; property tax such as rates on leased land and fees for processing title deeds etc

² Article 95(4) and Chapter 12, Constitution of Kenya

³ Article 43, Constitution of Kenya

⁴ Article 95 (4), Constitution of Kenya

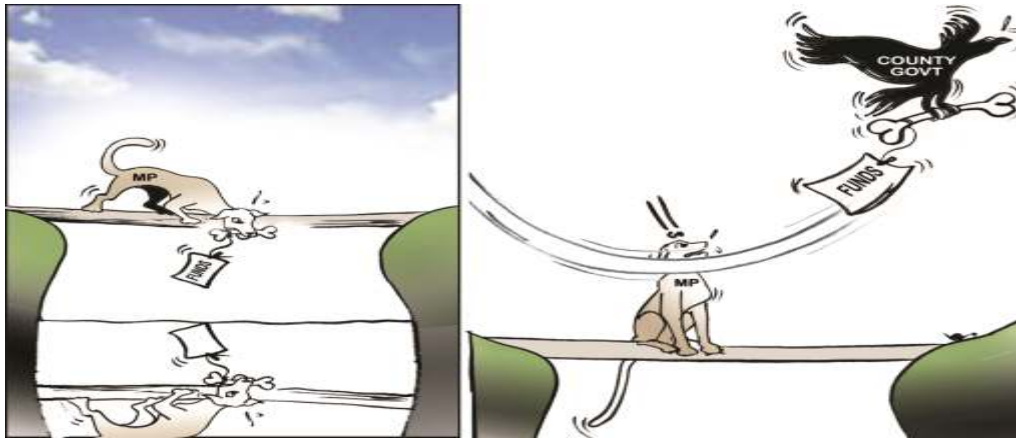
- Natural resources: Under Article 71 of the Constitution, Parliament has a duty to consider and only if satisfied, ratify or authorize a transaction that involves the grant of rights or concessions by or on behalf of national government, for the exploitation of any natural resource of Kenya; and to enact legislation on the extraction of natural resources.
 - Check the President's and Executive's performance: Article 132 of the Constitution requires the President to report once a year in an address to the nation on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10; and report on progress made in realisation of international obligations. Legislators have a duty to scrutinize and debate this report and on behalf of the people hold the Executive accountable for its performance.
 - Constitutional commissions: Parliament has a duty to receive, consider and act on petitions for the removal from office of any member of independent constitutional commissions on the grounds of violating the constitution, gross misconduct, incompetence, bankruptcy or physical or mental incapacity.
 - Public access to parliamentary proceedings¹: Legislators have a duty to ensure that they conduct Parliament's business in an open manner, and its sittings and those of its committees shall be open to the public; facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and ensure that the public and any media are not excluded from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.
1. Review and remove President from office: Legislators have a duty to review the work and conduct of the Executive and if unsatisfactory, Parliament can initiate a process to remove the President and Deputy President from office. County Assemblies too can also remove their Governor from office but only after the Senate approves their decision to do so.
 2. Declare war; extend state of emergency and term of Parliament: Parliament / MPs in both the National Assembly and Senate have a duty to approve declarations of war and the extension of state of emergency. MPs can reverse the President's decision to go to war by recommending a withdrawal of Kenyan troops. They can also bring to a stop the suspension of freedom of movement, information and other rights that are suspended during a state of emergency in an area where there is internal insecurity. When Kenya is at war, Parliament can by a two thirds majority vote extend the term of Parliament; but not by more than twelve months.

Differentiating between the Different Legislators:

While the above eight functions are generally the key mandate of legislators at all levels, there are a few critical differentiations that come about in the specific job descriptions depending on what level each legislator is serving in. These are explained below.

¹ Article 118 of the constitution of Kenya

2.3 Functions and Responsibilities of Legislators in National Government



Separation of powers means that the 290 Constituency Representatives to the National Assembly (MPs) should no longer manage CDF

2.2.1 Constituency Representative to the National Assembly (M.Ps)

Article 95 (1) of the Constitution states that the National Assembly represents the people of the constituencies and special interests. This means that the 290 constituency representatives, the 47 women representatives and the 12 nominated women and men representing other special interests are all referred to as MPs who sit in the National Assembly.

Members of the National Assembly have in the past (2008 -2012) been paid a monthly pay and allowances totalling Ksh851,000, which has been over 425 times higher than the average (per capita) income of Kenyans and over 210 times higher than the minimum wage of Ksh4,050 as at December 2012. The Salaries and Remuneration Commission (SRC) in 2013 proposed a downward review of MPs salaries from Ksh 851,000 per month paid to the 10th Parliament (2008- 2012) to a range of Ksh532,500 – Ksh 710,000 per month. If they earn the minimum proposed, each Member of the National Assembly will earn from taxpayers over Ksh6.3M a year and over Ksh31M in the five years s/he will be in office. In total, all the 349 members of the National Assembly will in five years cost Kenyans over Ksh11Billion in salaries and allowances only. It is therefore critical for Kenyans to know exactly what mandate, functions or job description citizens are paying these hefty amounts for.

The key functions of legislators enumerated earlier apply to the letter to all the members of the National Assembly.

It is critical to note that in the past constituency representatives to the National Assembly have been patrons to and had direct access to implement executive functions using the Constituency Development Fund (CDF) which has comprised 2.5 - 7.5% of annual national revenue. Separation of Powers is a principle and best practice in democratic governance that requires that those who make laws e.g. to approve the national budget and monitor its use (Legislative role) are not the same ones that implement or use the money (Executive role); as this would mean that they are monitoring themselves. The strict application of this principle of separation would mean that the 290 constituency representatives to the National Assembly should no longer be involved in project implementation using CDF or other public funds.

KHRC recommends that that CDF remains a function of the National Government but is transferred to County governments as stipulated under Article 187(1) as a conditional grant that facilitates the achievement of goals and targets that Kenya has committed to e.g. under the Millennium Development Goals (MDGs). This way, National Government would be able to specifically target these funds to uplift different constituencies in the different ways that they have not met targets that the government is striving to achieve. It is therefore necessary to amend the CDF Act, 2003 to ensure that MPs do not touch public funds and instead stick to their oversight role of monitoring how the Executive – County or National Government uses these funds.

2.2.2 Woman Representative to the National Assembly (M.Ps)



The very small number of women has meant that women's issues are rarely heard or supported in Parliament which makes decisions through simple majority voting.

Why Women Representatives

- Democracy is about respecting the will of the majority while protecting the interests of minorities and the marginalised.
- It is possible for a large group of people to be marginalised or discriminated against through law making and budget allocation e.g. under the Apartheid laws in South Africa or the Colour Bar in pre-independence Kenya. In the 50 years since independence, the number of women in Kenya's Parliament has not exceeded 10%. This very small number of women has meant that women's issues are rarely supported in Parliament which makes decisions and allocates funds based on simple majority voting.
- Discrimination is expensive and undesirable. For example, despite there being over 7 Million unemployed people in Kenya, today, the culture of most Kenyan communities allows men to decide whether or not to work especially where the family derives its livelihood from agriculture. This means that patriarchy robs Kenya of a huge workforce, which could increase Kenya's agricultural productivity and thus Kenya's revenue that could have been generated if both men and women were working side by side on farms.
- Development is measured not by looking at how wealthy the wealthiest are or the total income a country generates (GNP, GDP, per capita) but by looking at what proportion of the population is poor; how badly off the poorest are; how the wealth is distributed and the gap between the rich and the poor. This means discrimination or the marginalization of any group decreases the chances for a country to be rated as developed or scoring high on the Human Development Index¹.
- In Kenya, the gap between the rich and the poor is greater today than at independence. This suggests that 50 years of a male dominated Parliament (90% male) has not been able to represent and address the interests of the poor; majority of whom are women and other minorities and marginalised groups.

¹ The Human Development Index (HDI) is a composite statistic that measures development by looking at life expectancy (which is influenced by nutrition and food security, health, access to water and sanitation, security, education) and income indices and ranks countries into four tiers of human development. It was created by economists Mahbub ul Haq and Amartya Sen in 1990, and published by the United Nations Development Programme (UNDP).

- Development happens when the poor, marginalised and minorities are involved and speak for themselves.
- In August 2010, the people of Kenya addressed the above challenge by overwhelmingly voting for Constitution of Kenya, 2010 which is categorically against discrimination; recognises Kenya's diversity and promotes equality.
- In the past, at less than 10% of Parliament, the women in Parliament were too few to garner the support or votes needed to advance women's issues because decision making in Parliament is done by voting; where the majority always wins.
- The Constitution specifically tasks the entire Parliament to embrace diversity and be sensitive to the interests of minorities and marginalised groups.
- The Constitution goes further to provide specific mechanisms to ensure that marginalised groups and minorities are representation in Parliament. Examples of such mechanisms include Article 27 which embeds equality in Kenya's Constitution; Article 81 (b) which requires that no more than two thirds of any elective body should be of the same gender; Article 90 that requires the nomination of youth, persons with disabilities and workers as special interest groups; Article 97 which establishes the 47 women representatives to the National Assembly.

Article 95 (1) of the Constitution states that the National Assembly represents the people of the constituencies and special interests. This means that the 290 constituency representatives, the 47 women representatives and the 12 nominated women and men representing other special interests are all referred to as MPs who sit in the National Assembly.

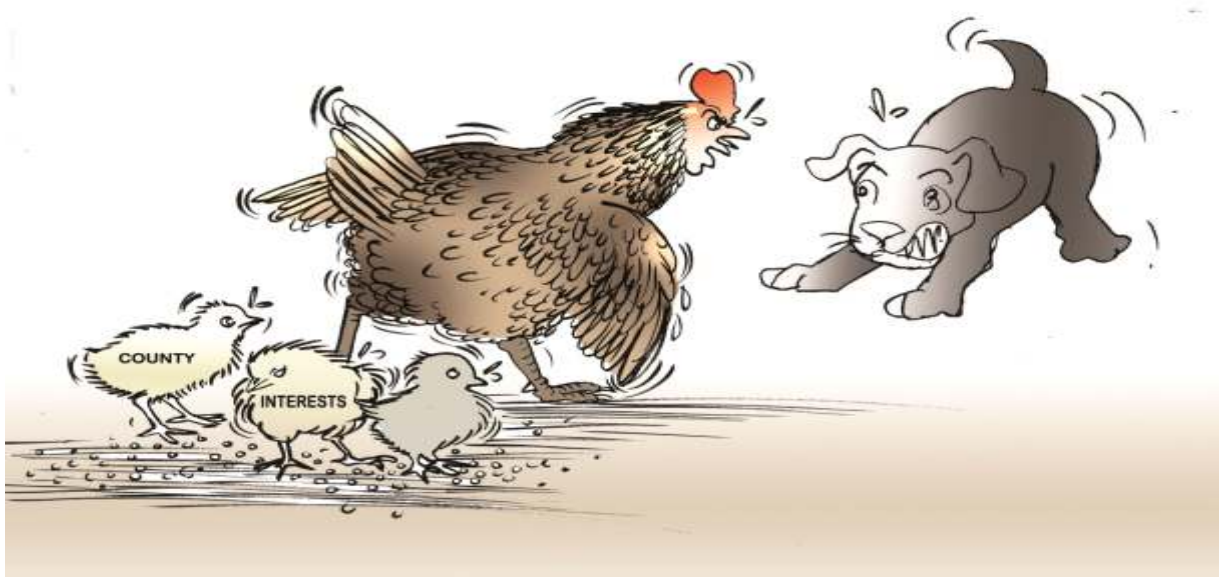
The Salaries and Remuneration Commission (SRC) proposes that the 47 women representatives just like the other members of the national Assembly will be paid a total salaries and allowances range of range of Ksh532, 500 – Ksh710,000 per month. By using the minimum, each woman representative to the County Assembly will earn from tax payers over Ksh6.3M a year and over Ksh31M in the 5years s/he will be in office. It is therefore critical for Kenyans to know exactly what mandate, functions or job description citizens are paying the 47 women representatives to undertake.

The key functions of legislators enumerated earlier apply to the letter to all the 47 women representatives as they too are members of the National Assembly.

It is critical to note that the Constitution of Kenya, 2010 created this position of woman representative to National Assembly specifically to increase the voice of women in Parliament so that women's views are heard or not drowned by male perspectives as has been the trend in the previous ten Parliaments or fifty years from independence to 2013.

All voters must therefore carefully monitor women representatives to ensure that they articulate women's views on each law, budget or any other decision made in the National Assembly. For example, how will each law affect women? How much of the money set aside in each year's national budget will benefit women? How has the President and Deputy President performed in ensuring that women are employed in the Executive arm of government and are paid an equal pay for equal work? How is the government performing on women specific issues and targets such attaining gender parity in education at enrolment, completion and performance; or in the provision of maternal healthcare? Is water accessible to women in all parts of the county to facilitate health, hygiene and dignity for women and children and to ensure that no woman in Kenya spends more than 30minutes to fetch 20litres of water? These are some of the areas that Kenyans must monitor all MPs and in particular women representatives to the National Assembly on.

2.2.3 Senators



The key role of the Senator is to ensure that decisions, laws and budgets made address and protect specific and unique county interests

The term 'Parliament' collectively refers to National Assembly and Senate - Article 93 (1). The Senate consists of 68 members namely 47 members each elected by registered voters from counties; 16 women members nominated by political parties according to their proportion of Senate members elected; two youth members – one female one male; two persons with disabilities – one female and one male; and the speaker in an ex-officio capacity.

As previously mentioned, the Salaries and Remuneration Commission (SRC) proposed a downward review of MPs salaries from Ksh851,000 per month paid to the 10th Parliament (2008- 2012) to a range of Ksh532,500 – Ksh710,000 per month. By using the minimum, each Member of the National Assembly will earn from tax payers over Ksh6.3M a year and over Ksh31M in the 5years s/he will be in office. In total, all the 67Senators will in 5years cost Kenyans over Ksh2Billion in salaries and allowances only. Once again, it is critical for Kenyans to know exactly what mandate, functions or job description citizens are paying these hefty amounts for.

Because Senators are also Members of Parliament (MPs) their duties are largely similar to those members of the National Assembly. However, it is critical to make the distinction in the role of Members of National Assembly and Senators.

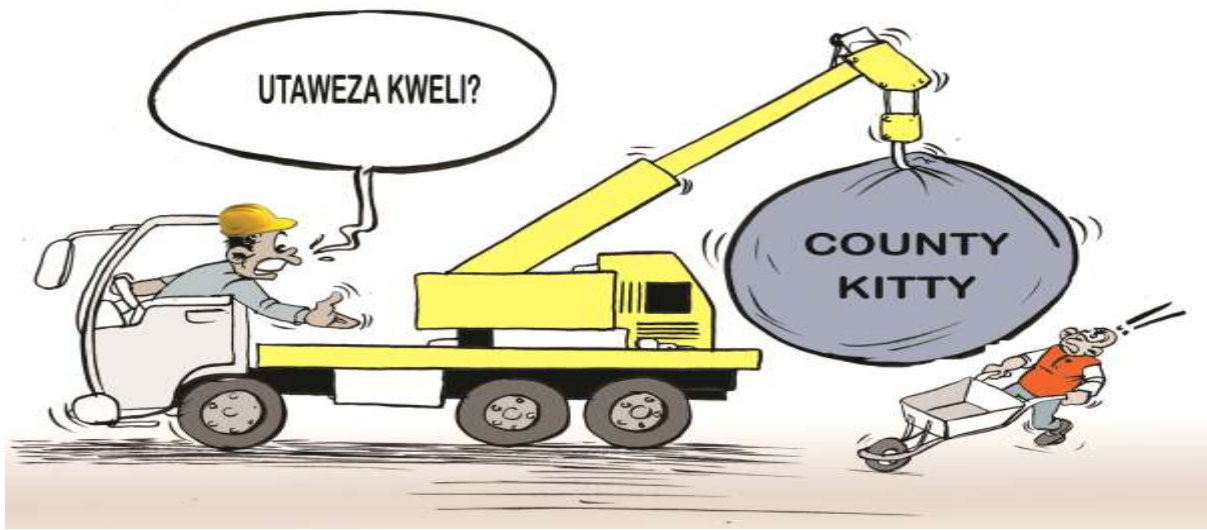
Members of the National Assembly are responsible for vertical division of national resources; while senators are responsible for horizontal division of national resources. This means that members of the National Assembly are responsible for laws and decisions on budgets that go to the national government through the different Cabinet portfolios to facilitate reasonable access in all parts of the republic to national government functions such as security as outlined in article 6(3) of the Constitution. Senators on the other hand are responsible for ensuring that laws and decisions on budgets favour equitable division of funds to all counties based on the different needs ad priorities of each county. The key difference between a Senator and Members of the National Assembly is therefore that Senators' duty is to determine how national revenue will be divided horizontally i) between National Government and Counties and ii) between the various counties.

Article 203 of the Constitution states that 'For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.' This means that 15% is the minimum that can be allocated to Counties. For this amount to rise above 15%, Senators make a strong case such a decision by articulating the unique needs of each county.

Counties are neither homogeneous in the challenges they face nor are they similarly endowed with resources. Senators have a duty to ensure that the unique features, opportunities and requirements of their counties are recognised at national level, and accordingly addressed in decision making, law and budgeting. Article 202 states that revenue raised nationally shall be shared equitably among the National and County Governments. County governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally. Again, whether or not this happens for the benefit of a particular county will depend on how its senator performs her/ his duty.



2.3 Functions of Legislators in County Government



The Ward Representative to the County Assembly will make laws on how the county will be taxed and monitor how the Governor is spending the County's Money

2.3.1 County Representative

unprofessional and uncouth behaviour; were often uneducated violent hoodlums who were supposed to monitor the Executive (Town Clerk) but lacked the legal basis to do so resulting in a situation where most of the 175 Local Authorities, more than 80% of all funds allocated to them were spent on administrative expenses not projects to benefit citizens. The Ward Representative to the County Assembly is completely different and a shift from this past.

Ward Representatives to the County Assembly have largely the same eight functions of legislators enumerated earlier but will serve at county level in the County Assembly. The key difference is that instead of considering the performance of the President (executive arm of national assembly); Ward Representatives to the County Assembly will review and remove Governor from office but only with Senate's Approval. Members of the County assembly have a duty to assess the work done by the Governor, the County Executive Committees and county public service and if unsatisfactory hold Governor accountable for the poor performance of the Executive arm of county Government. Further, in recognition of the fact that often technical skills are lacking at the sub-national level, Ward Representatives to the County Assembly are also expected to extend to the County Assembly, professional knowledge, experience or specialized skills on any issue for discussion.

Ward representatives to the 47 County Assemblies will be paid a minimum of Ksh79,200 to a maximum of Ksh105,600 per month. In December 2012, the Supreme Court ruled that the two thirds gender principle in Article 81 (b) of the Constitution be progressively implemented in Senate and the National Assembly. However, this ruling does not apply to County Assemblies because Article 77(2) of the Constitution already provides a formula for achieving the rule in County Assemblies. All 47 Counties have 1450 Wards, but taxpayers who are also the voters will pay salaries and allowances to a higher number of County Representatives because they did not elect women. This price for discriminating against women will be highest in big County Assemblies such as Kiambu which elected only four women out of 60 Wards, hence another 24 will have to be nominated and paid by taxpayers (who are also the voters) for five years.



The President has a duty ensure that i) Kenya is not poor; ii) Kenya is safe / secure; and iii) Kenya is internationally respected for adhering to international laws it has committed to

3.1 President and Deputy President

Kenya's 1963 independence constitution provided for the position of a President and a Vice President, who was appointed by the President and served at the pleasure of the President. It was common to hear in the news that the President had 'dropped' one Vice President and picked another with no explanation as to why. At one time, Kenya even stayed for a year without a vice president, raising questions on whether there was really any role that vice presidents played if the country could run for several months without one.

The Constitution of Kenya 2010 provides for a president of the Republic of Kenya, but this time with a Deputy President. The key departure from the past is that President's job is now requires her /him to lead the national Executive team and focus more externally (regional and international) as County Governors will be playing an executive role locally while Senators, MPs (including women representatives) and County Reps will play a law making and monitoring / watchdog role locally.

The Salaries and Remuneration Commission (SRC) proposed a downward review of the President's salary and allowances from the Ksh2.4M per month paid in the 2008-2012 term to a range of Ksh1,237,500 to a maximum of Ksh1,650,000 per month. By using the minimum, the President will earn from tax payers over Ksh14.8M per year and over Ksh74M in the 5years s/he will be in office. It is therefore critical for Kenyans to know exactly what mandate, functions or job description citizens are paying these hefty amounts for. The key mandate, job description, functions or duties of the President is to ensure that:-

1. Kenya is united and all peoples are treated fairly and affirmative action measures are taken to address historical injustices. The President is a symbol of national unity and a custodian of national values stipulated under Article 10 of the Constitution.
2. Government respects and adheres to the Constitution – rule of law: Article 129 (1-2) states that the President's executive authority is derives from the people of Kenya and must be exercised in accordance with the constitution and in a manner compatible to the principle of service to the people of Kenya and for their well-being and benefit.

1. Kenya is not poor¹

As Head of Government the President has a duty to:-

- Ensure compliance with obligations that Kenya has made under international law
- Establish a competent national government team by nominating and appointing with the approval of the National assembly, certain public officials including Cabinet Secretaries, the Attorney-General, Secretary to the Cabinet, Principal secretaries, High Commissioners, Ambassadors, Diplomatic and Consular representatives
- Chair cabinet meetings, direct and coordinate functions of ministries and government departments, serve a residual role in the absence of absence a minister and exercise executive authority of the Republic
- Exercise the power of mercy
- Confer honour in the name of the people and the Republic of Kenya
- Ensure that the Executive
 - Develops and implements national policies that ensure that Kenya is food secure - not starving or importing food for local consumption; is safe (security) and meets international minimum standards on access to rights such as water, education, healthcare and other service delivery concerns all of which contribute to poverty reduction.
 - Effectively collect taxes and use public funds in accordance with the principles and framework of public finance outlined in the Constitution
 - Maintain an effective, efficient, disciplined and motivated civil service that works in a manner compatible to the principle of service to the people of Kenya and for their well-being and benefit
 - Promotes democratic governance which includes preventing corruption and waste of public resources
 - The President also has a duty to chair the Summit, which is a forum comprising for the President to meet with all the 47 Governors to promote inter-governmental relations between national and county governments in a manner that upholds inter-dependence and cooperation.

2. Kenya is economically viable and competitive in international trade and relations

As Head of State, the President has a duty to:-

- Scrutinize and assent bills to make laws; including the power to seek adjustment of bills by asking the legislature to reconsider certain matters or provisions
- Receive diplomatic and consular representatives
- Address the opening of each newly elected Parliament and at least one special session of Parliament each year
- Represent Kenya's interests in international affairs / foreign policy including the formulation, ratification and domestication of international laws; and ensure that international trade and other laws advance Kenya's interests and that all Kenyans profit / benefit from the sale of its produce in a competitive international market.
- Negotiate with other States in a manner that advances the best interests of all Kenyans e.g. by ensuring that her/his team negotiates fair prices for goods and services that Kenya exports to other countries.
- Control inflation by ensuring that Kenya produces adequate food and avoids spending most of its foreign exchange on buying food for local consumption.
- Control unemployment by identifying markets for Kenya's agricultural and livestock produce; minerals etc to ensure that farmers, herders etc are gainfully employed or self employed
- Ensure through drafting of government bills tabled in Parliament, that foreign investors partner with Kenyans to establish, own, control and benefit from investments made in Kenya and that the rights of Kenyan workers involved with such investments are protected.
- Ensure that sustained competitiveness of Kenya's goods and services by investing in research, innovation, technology and other infrastructure that makes Kenya's produce more marketable in the international market

¹ Daniel Nyassy and Bozo Jenje , "Poverty amid minerals, world class beaches and arable land" Daily Nation, February 4, 2013 available at <http://elections.nation.co.ke/news/Poverty-amid-minerals-world-class-beaches-and-arable-land/-/1631868/1684472/-/12qbghd/-/index.html> accessed March 14, 2013

1. Kenya is secure both locally and from external aggression
As Commander in Chief of the Kenya Defence Forces (KDF) the President:-
 - Chairs the National Security Council (NSC) and receives regular updates from the National Intelligence Council
 - Appoints and can remove the Chief of Defence Forces, three chief and three service commanders of the army, air force and navy; and is ultimately responsible for the organization and command of the KDF
 - Can declare a state of emergency
 - Can declare war with the approval of Parliament
 - Promotes internal cohesion and internal security by addressing injustices such as impunity, inequality, poverty and unemployment which often lead to civil strife
 - Ensures policing in Kenya meets international standards in recruitment, training, equipment, remuneration and other parameters
 - Ensures that Kenya's foreign policy that maintains good relations with other nations in order to avoid external aggression; while firmly asserting Kenya's interests
 - May suspend a County Government in an emergency arising out of internal conflict, war or other exceptional circumstances
2. Annual State of The Nation Report: Article 132 –c requires the President to each year present to the people the State of The Nation Report as a way of being accountable and transparent to the people of Kenya on her/his functions as outlined in Chapter 9 of the Constitution.



The Governor must curb corruption in service delivery, local and international trade in order to reduce the gap between the rich and poor

4.1 Governor and Deputy Governor

Under the Constitution of Kenya, 2010 Kenya now has a Governor and Deputy Governor for each of the 47 Counties.

In the past, the term 'the Executive' referred to the President, Ministers (now Cabinet Secretaries) and the Public Service. Under the devolved system of government, the term 'The Executive' extends to county level to also include the Governor, Deputy Governor, County Executive Committees and the County Public Service. The 47 Governors are now form part of the Executive, but at County level and are expected to sit with the President in The Summit to identify areas of interdependence and cooperation between The Executive at National level and at County level.

The Salaries and Remuneration Commission (SRC) has set the Governor's salary and allowances at Ksh 640,681 to a maximum of Ksh854, 241 per month. This means that in a year, each of the 47 Governors will be paid over Ksh7.6M and in 5years they will each have earned over Ksh38M from tax payers. In total all 47 Governors cost Kenyan taxpayers Ksh1.8Billion, while their deputies will be paid a minimum of Ksh 1.3Billion. It is therefore critical for Kenyans to know exactly what mandate, functions or job description citizens are paying these hefty amounts for. The key mandate, job description, functions or duties of the President is to ensure that:-

1. Implement both National and County Legislation: As the chief executive at county level (article 179 (4-6), the Governor is tasked with leading the adherence and implementation of the Constitution and other national legislation (to the extent required at county level) and also implementing County legislation.
2. Raise money for the County by:
 - o Understanding finance and taxation laws;
 - o Efficiently collecting taxes
 - o Borrowing loans from both local and international financial institutions
 - o Negotiate and receive local and international aid

- Negotiate fair prices for agricultural produce, minerals and other resources generated in the county
 - Motivate and empower locals to invest in trade
 - Understanding, and adhering to foreign investment policy and laws in the county
 - Complying with international trade laws that Kenya has committed to
 - Representing county interests in the formulation or review of Kenya's position in formulation of international trade agreements
2. Use public funds prudently and in line with public finance principles in the Constitution and various laws, including to:
- Maintain, supervise and lead a lean, effective, efficient, disciplined and motivated civil service that works in a manner compatible to the principle of service to the people of Kenya and for their well-being and benefit
 - Support the county in prudently procuring essentials such as drugs and farm inputs (fertilizers, tractors etc)
 - Promotes democratic governance which includes preventing corruption and waste of public resources
3. Ensure that the County is not poor:
As the County's Chief Executive to whom all County Executives and County public Service reports to, the Governor has a duty to:-
- Equitably deliver adequate, quality and timely services to the people: Ensure that the county meets international minimum standards on access to human rights such as water, education, healthcare, housing, the right to work, the right to development and other rights that contribute to poverty reduction.
 - Ensure the county is food secure by implementing national policies on agriculture, livestock development and land and natural resource development that ensure that the county is food secure
 - Contribute to control of national inflation by ensuring that the county exports more than it imports
 - Create employment by innovatively and sustainably exploiting the county's resources, while ensuring compliance with national trade and labour laws and international commitments
 - Innovate – Invest in research, innovation, technology and other infrastructure that upscale local, practical ideas on wealth creation
 - Reduce gap between rich and poor
4. Represent the County at National Level
The Governor has a duty to:
- Attend meetings of The Summit (between the President and all 47 Governors)
 - Represent county interests to the National Executive. This includes relaying the peoples' complaints about poor service delivery by National Government on functions national government is performing within the County
5. Perform any functions of National Government transferred to County level in compliance with Article 187. These include:-
- Performing State functions assigned by the President following mutual consultation.
 - Negotiating for or a transfer of functions and funds from National Government to County Government if the function or power would be more effectively performed or exercised by the County Government and its transfer is not prohibited by any law
6. Ensure the County is Secure:
Article 239 (5) states that 'National security organs are subordinate to civilian authority'. This means as the County's Chief Executive, the Governor has a duty to:-
- Recognise that without security, the County government cannot run and therefore the Governor has a huge residual security role

- Promote equity, internal cohesion and internal security by addressing injustices such as impunity, inequality, poverty and unemployment which often lead to civil strife
 - Negotiate with National Government to ensure that the County has adequate well trained, equipped and remunerated police service; and promote order in the County
 - Establish inter-governmental relations (with national government and with other counties) promote open communication and rapid response county's security needs e.g. for adequate policing
1. Annual State of the County Report:
As the chief executive the Governor has a duty to:
 - Recognise that s/he is part of the Executive; and that under Article 132 c, the s/he must contribute to the President's Annual State of the Nation Address by similarly preparing in good time an Annual State of the County Report
 - Lead the county in implementing and reporting on compliance with human rights, democratic principles and commitments under international law (Art 10; Art 132 c)
 - As head of the County Executive Committee, provide the county assembly with full and regular reports on matters relating to the county, including an annual progress report on the implementation of County plans. (Art 183 (3))
 2. Ensure competent Deputy Governor, County Executive Committee and Public Service:
As the Chief Executive of the County, the Governor has a duty to:
 - Appoint professional and competent County Executive Committee members from among people who are not members of the County assembly; with the approval of the County assembly - Article 179 (2) b.
 - Ensure that the County Executive Committee members do not exceed one third of the total number of the County Assembly and adhere to laws, values and principles of public service.
 - Supervise and motivate County Public Service
 - Identify a competent Deputy Governor who under Article 180 (5), the Governor cannot fire at will
 3. Assent Bills; Publish County Gazette: Consider, approve and assent bills passed by the County Assembly into law and publish the County Gazette Notice of all policy decisions formally made by the County Executive Committee or Governor
 4. Ensure that the County is economically viable and competitive in local and international trade and relations

Article 1 of the Constitution of Kenya, 2010 recognises that “(1)All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. (2) The people may exercise their sovereign power either directly or through their democratically elected representatives. (3) Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—

- (a) Parliament and the legislative assemblies in the county governments;
 - (b) the national executive and the executive structures in the county governments; and
 - (c) the Judiciary and independent tribunals.
- (4) The sovereign power of the people is exercised at (a) the national level; and (b) the county level.”

This means that Kenya belongs to its people. The money that runs government or is generated from any land and other natural resources all belong to the people of Kenya. When they elect leaders, the people delegate to them the work of running the county on their behalf. However, this does not mean that people who do not hold elective positions abdicate their responsibility to run the county simply because they are not state officers. The people can still exercise their sovereignty directly Article 1 (2) in the following ways:-

1. Leadership and Integrity: Citizens have a responsibility not to offer or accept bribes, during elections and at all times. Citizens must monitor those elected and all public officers to ensure that they not only have a track record of integrity before they are elected, but also act with integrity throughout their term of service.
2. Paying taxes and taking an interest in how their money is used. Citizens do not have a choice about paying taxes. They must pay taxes. It is the only way a democracy can function.
3. The purpose of taxation is to guarantee the taxpayer quality and timely access to rights through service delivery. The responsibility of citizens does not end with paying taxes. They must also remain vigilant to monitor how their taxes in the form of public resources are used. Public funds at the disposal of National and County Governments are taxes paid by citizens in order for government to provide services and guarantee access to rights such as the right to clean, safe and adequate water and sanitation, accessible, quality and relevant education, security etc.
4. Citizen participation: Identifying the various mechanisms provided for citizens to express their views especially to articulate their development needs and priorities and be involved in budget making processes. The Constitution places a duty on citizens to participate in governance. Various laws have made provisions for citizen participation e.g. in the budget making process; in the development of County, Constituency and Ward Development Plans etc. Citizens must identify these opportunities and use them to tell County and National Governments and state officers what the peoples' priorities are.

Take Action - Complain: Using constitutional, legal and non-violent means to assertively complain about poor service delivery. Today, citizens can express their views through social media, telephone calls to radio and television stations, letters and memoranda written and delivered to leaders through Parliament or County Assemblies or the internet, articles in newspapers, press conferences and even by ensuring that 'home coming' parties organised by leaders following their election become a forum to not only celebrate, but also to instruct elected state officers on the work that voters expect them to do and the time frames for when the work should have been done. The culture of citizen participation in development planning, monitoring, social budgeting and social auditing has started in Kenya through the formulation of documents such as the 5year Constituency Development / Strategic

1. Plan. This can be replicated at any level – Ward, Constituency, county or National and with the elected state officers responsible for each level.
2. Be the change you wish to see: Mahatma Gandhi is credited with this renowned quotation. This is a call to each citizen to make the changes s/he wishes to see in Kenya. A citizen who wishes to see Kenya having enough water for all must start by not wasting the water s/he has. A Kenyan, who wants to see an end to corruption, must start by not offering or accepting bribes in cash or kind - preferential treatment. Section 62 of the Elections act, 2011 states that a voter who accepts or takes any food, drink, refreshment, provision, any money or ticket, or adopts other means or devices to enable the procuring of food, drink, refreshment or provision knowing that it is intended to influence them commits the offense of TREATING. One must demand that all public officers do the job that they are paid to do without offering them further incentive / bribes to do so because bribing someone to do the job s/he is already generously paid to do simply turns rights or service delivery that citizens have paid for through taxes into privileges thereby excluding the poor who are not able to pay extra over and above the taxes they have already paid.
3. Recall Non-Performing Elected State Officers: Elections provide an opportunity for citizens to advertise a 5year job or work contract, vet various applicants or candidates by listening to them and looking at their political party manifestos and elect one for each position. However, even after rigorous vetting of candidates, there is still the possibility that some of those hired for a job will not perform it to the employers' satisfaction. It is for this reason that the Constitution of Kenya, 2010 provides a way for citizens as the employers of each of these elected State Officers to recall or fire them if after 18-24months of working, there are still no tangible results. This right of recall and the procedure to do so has been provided for citizens to recall all elected State Officer:-
 - Article 104 of the Constitution states that the electorate has the right to recall any Member of Parliament (members of the National Assembly and the Senate) before the end of the term of the relevant House of Parliament. The Elections Act provides the procedure on how to do so.
 - County Representative members can be recalled on grounds of misconduct that is likely to bring hatred, ridicule, contempt or disrespect to the office, lack of integrity, mismanagement of public resources, desertion of and absence from the electorate without good reasons, failure to adequately represent citizens views, failure to report to voters on the work of the County assembly.
 - Article 144s and 145 of the Constitution provide a procedure for removal of President on the grounds on physical or mental incapacity or impeachment for violation of the Constitution, gross misconduct or where there are serious reasons for believing that the President has committed a crime under national or international law.
 - Article 181 of the Constitution of Kenya states that the County Governor can be removed from office for violating the Constitution, abuse of power, gross misconduct, where there is serious reason for believing the Governor has committed crimes under national or international law or for physical or mental incapacity.

For Kenya to truly enjoy the transformation that citizens aspired for as they passed the Constitution of Kenya, through a referendum in 2010, each citizen must accept her/his responsibility by taking an interest in governance, knowing how the taxes each citizen pays are used and holding those entrusted with state office accountable to do a job; worth the money that they are paid.

FUNCTIONS OF ELECTED STATE OFFICERS

Making A Complete Shift From The Past

In the period 2008- 2012, Kenyan taxpayers paid Members of Parliament Ksh 851,000 per month and the President Ksh 2.4M per month. In the same period, Kenya's per capita income has been Ksh 2,000 per month, while minimum wage remained Ksh 4,050 per month. This means the President earned over 595 times than the average citizen, while MPs in the 10th Parliament earned over 425 times more than the per capita income and 210 times more than the minimum wage paid to the many workers in the agriculture, plantations and allied sector whose sweat is the backbone of Kenya's economy.

What exactly should to elected state officers be doing to earn this money and are they actually offering Kenyans their money's worth?



**KENYA HUMAN RIGHTS
COMMISSION**

Valley Arade, Gitanga Road
P.O. Box 41079, 00100
Nairobi, GPO Kenya

Tel: +254-020 2044545 / 020 2106709 / 020 2106763
0733 629034, 0722 264497
Fax: +254-020-3874997

Email: admin@khrc.or.ke
Website: www.khrc.or.ke