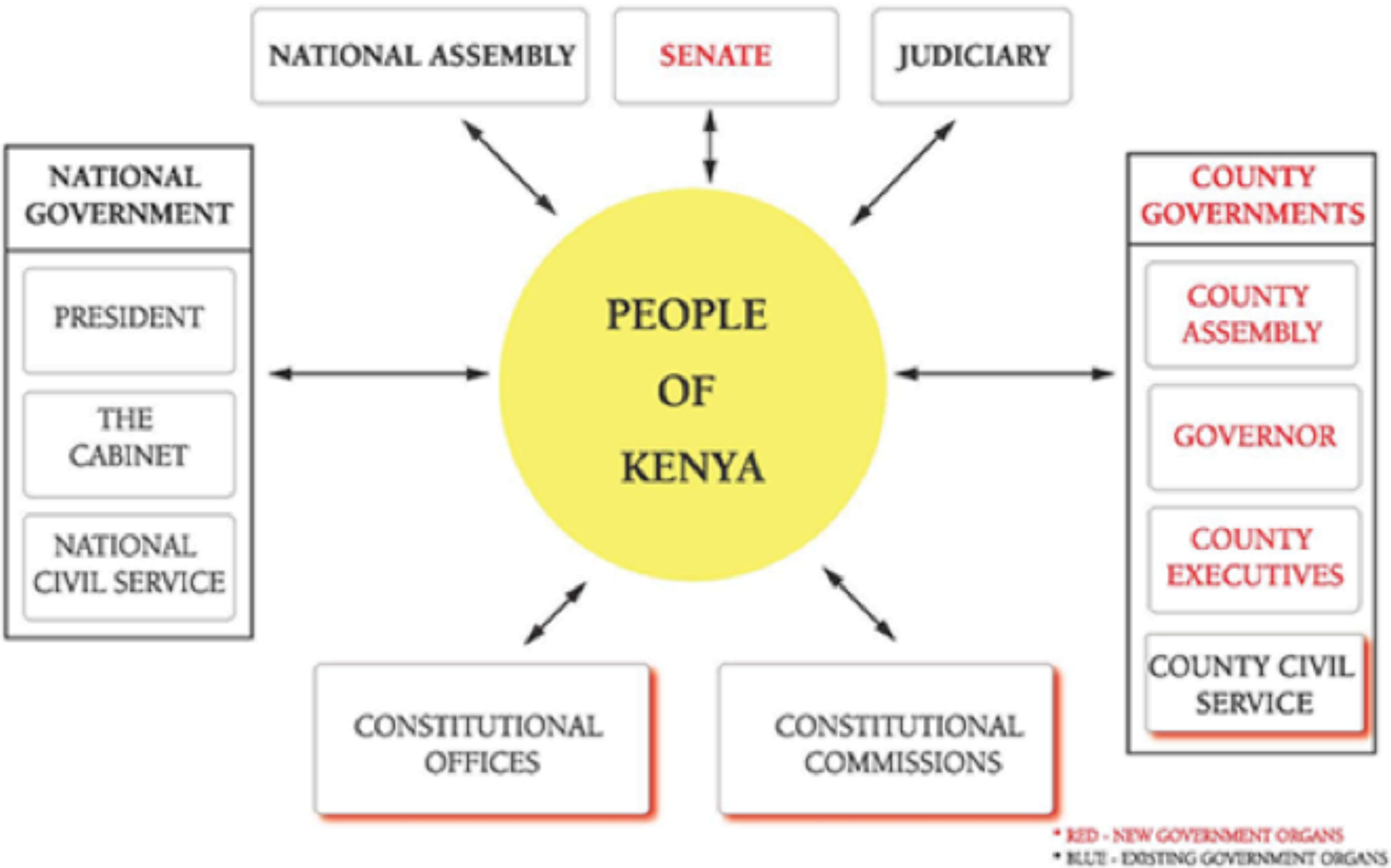
THE COST OF THE 2010 CONSTITUTION: A COST ANALYSIS OF THE NEW GOVERNANCE FRAMEWORK OF KENYA AND ITS IMPACT ON THE COUNTRY'S PUBLIC FINANCE

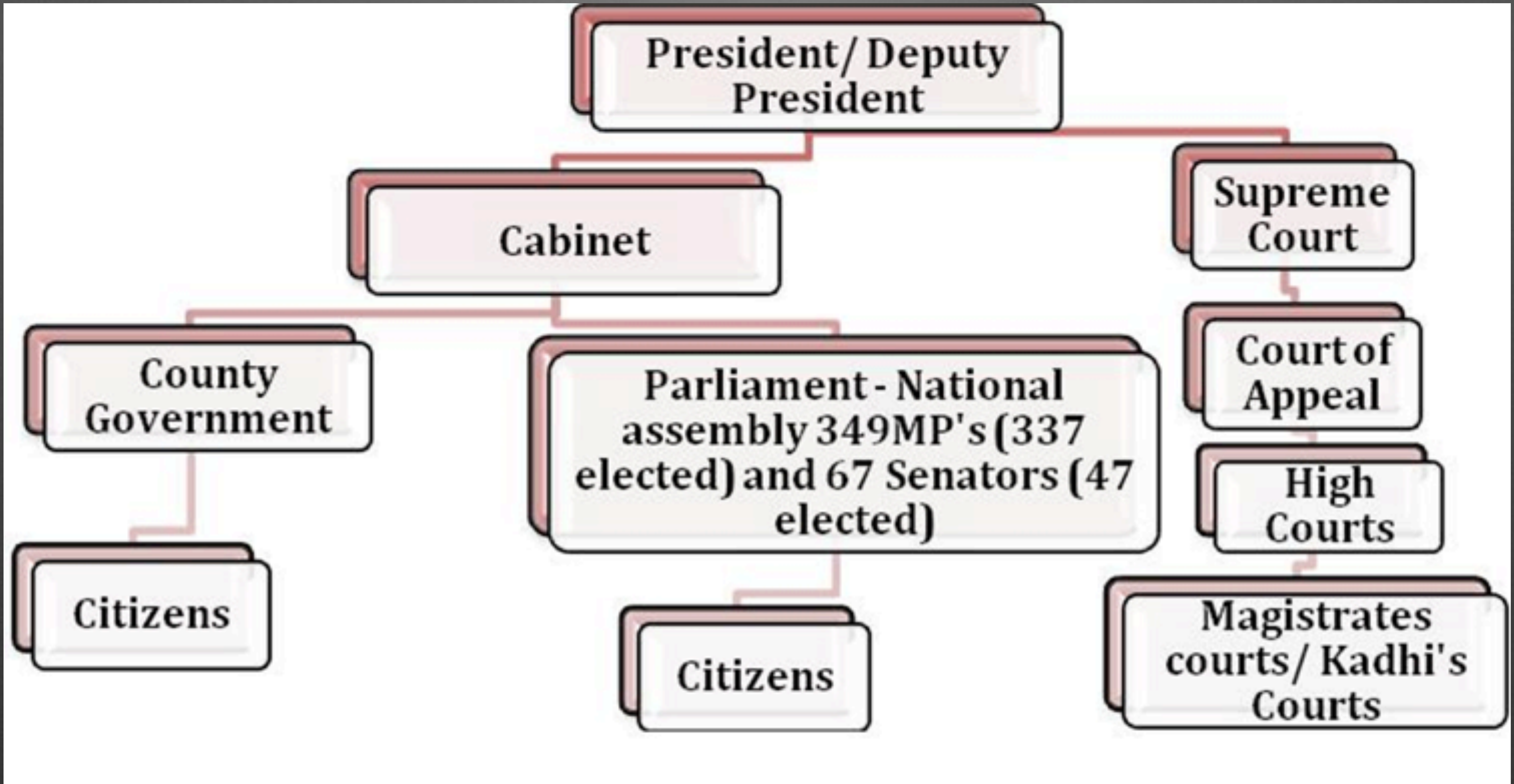
Dr Luis Franceschi

BIG BROTHER IS WATCHING

Successful constitutional processes and institutional reforms require huge economic, legal, human and political resources. However, Kenya's new constitutional dispensation, seen as the solution to poor governance, unfavourable economic policies, imprudent natural resource management and rising incidences of poverty, was spearheaded without a costing matrix.

KENYA'S NEW SYSTEM OF DEVOLVED GOVERNMENT




President/ Deputy President
Cabinet
Supreme Court
County Government
Parliament - National assembly 349MP's (337 elected) and 67 Senators (47 elected)
Court of Appeal
High Courts
Citizens
Citizens
Magistrates courts/ Kadhi's Courts

TOWARD THE SUCCESS OF KENYA'S DEVOLVED SYSTEM

- Actual and real costs are not clearly established;
- Lack of verifiable data and parameters;
- Tax regime;
- No analysis of the cost of implementing the new governance framework
- Take into consideration all additional and collateral costs and its impact on the country's revenue generation and expenditure patters.
- Look at the estimates and current expenditures in official Budget Policy Statements and Budget Review and Outlook Papers published by the National Treasury, as well as payment structures provided by the Salaries and Remuneration Commission.

TOWARD THE SUCCESS OF KENYA'S DEVOLVED SYSTEM

- The results show a remarkable increase in operating costs
- County governments are already operating at a deficit with recurrent expenditure outweighing development expenditure.
- Institutional reforms, such as those the ones carried out in the Judiciary, have resulted in an actual increased expenditure by 26.2%, 89.7% and 63.8% in the 2010/11, 2011/12 and 2012/13 financial years, respectively.
- Even though Kenya is considered a regional economic giant with vast natural resources, the Country needs to rethink revenue generation avenues and regard for basic principles of financial thriftiness by state officials. Development expenditure has reduced drastically in Kenya. The blame is being placed on the process of implementation of the 2010 Constitution.

OFFICE	Total Monthly Wage Bill at midpoint Pay (KSh.)
Kenya National Human Rights and Equality Commission	5,717,461
National Land Commission	5,717,461
Independent Electoral and Boundaries Commission	5,894,000
Women Representatives (47)	29,198,750
Senate (47 elected senators, 16 nominated women senators, 2 youth representatives and the speaker)	41,799,000
Deputy President	1,227,187.50
Cabinet Secretary	924,000
Principal Secretary	765,187.50
Supreme Court Judges and Deputy Chief Justice	4,774,937.50
County governments (Governor, Deputy-Governor and Speaker of County Assembly)	74,610,667
Commission on Revenue Allocation	5,096,211
Controller of Budget and Auditor - General	1,689,187.50
Salaries and Remuneration Commission	5,717,461
National Security (Inspector-General, 2 Deputy Inspector-Generals, Chairman of National Police Service Commission and 5 Members)	5,861,398.50
Commission for the Implementation of the Constitution	5,894,000
TOTAL	**194,886,910**

Public Employment for FY 2013/14		
	No of Staff	Wage Bill
TSC	274,729	138
State Corporations	115,493	83
Counties	107,184	71.2
Discipline Service	98,894	64.3
Security Services	157,791	42.4
Public Universities	21,527	26.4
Cost Civil Service	58,897	23.6
Constitutional Commissions	952	14.1
Parliamentary Service	490	8.91
Judiciary	4,439	6.5
Total		478.41
Other allowances		43.2
Total Wage Bill		**521.61**

THE CABINET

- Article 152 (1) (d) establishes that the cabinet should consist of not fewer than fourteen and not more than twenty-two Cabinet Secretaries.
- These are nominated by the President and approved by the National Assembly.
- Article 155 (1) establishes the office of Principal Secretary. The Principal Secretary is also nominated by the president following recommendations by the Public Service Commission, and appointed upon approval by the National Assembly.
- The current cabinet comprises of 18 cabinet secretaries and 26 principal secretaries.

PARLIAMENT

- Article 93 (1) of the 2010 Constitution establishes a two tier legislative house comprising of the National Assembly and the Senate (CoK, 2010).

- Senate. Article 98 (1)
- (a) 47 members each elected by the registered voters of the counties, each county constituting a single member constituency;
- (b) 16 women members who shall be nominated by political parties according to their proportion of members of the Senate elected under clause (a) in accordance with Article 90;
- (c) 2 members, being 1 man and 1 woman, representing the youth;
- (d) 2 members, being 1 man and 1 woman, representing persons with disabilities; and
- (e) the Speaker, who shall be an ex officio member.

- National Assembly: Article 95 of the Constitution, it comprises of 290 members, each elected by the registered voters of single member constituencies; 47 women, each elected by the registered voters of the counties, each county constituting a single member constituency; 12 members nominated by parliamentary political parties according to their proportion of members of the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and the Speaker, who is an ex officio member.

JUDICIARY

- Article 160 (1) of the Constitution establishes the judiciary's independence by stating that in its exercise, it shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority (CoK, 2010)

	Judiciary Budget Allocation						Projections		
	2006/07	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Recurrent		581	589	1,404	1,936	11,215	12,167	12,785	13,525
Capital		2,639	3,324	6,142	10,221	4,048	4,961	4,863	4,903
Total	**2,100**	**3,220**	**3,913**	**7,546**	**12,157**	**15,263**	**17,128**	**17,648**	**18,428**

COMMISSIONS & INDEPENDENT OFFICES

- Chapter 15 of the Constitution of Kenya
- They are independent and not subject to direction or control by any person or authority.
- The objects of the commissions and the independent offices are to: protect the sovereignty of the people; secure the observance by all State organs of democratic values and principles and; promote constitutionalism.

- The constitutional commissions are:
- 1. Kenya National Human Rights and Equality Commission
- 2. National Land Commission
- 3. Independent Electoral and Boundaries Commission
- 4. Parliamentary Service Commission
- 5. Judicial Service Commission
- 6. Commission on Revenue Allocation
- 7. Public Service Commission
- 8. Salaries and Remuneration Commission
- 9. Teachers Service Commission
- 10. National Police Service Commission
- 11. Commission for the Implementation of the Constitution
- Created by Acts of Parliament
- 1. The Ethics and Anti-Corruption Commission
- Independent Offices
- 1. Office of the Auditor-General
- 2. Controller of Budget

DEVOLVED GOVERNMENT

- Article 176 (1) of the Constitution establishes a county government for each county, consisting of a county assembly and a county executive.
- Every county government shall decentralise its functions and the provision of its services to the extent that it is efficient and practicable to do so (CoK, 2010).
- County governments established under the Constitution shall reflect the following principles:
    - based on democratic principles and the separation of powers;
    - have reliable sources of revenue to enable them to govern and deliver services effectively; and
    - no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

	BUDGET ITEM	2012/13	2013/14	2014/15
A	**Ordinary Revenue (excluding AIA)**	849,700	955,600	1,074,700
B	**National Interest [Article 203 (1)(a)]**	360,587	472,776	478,296
1. Defence and NIS		91,275	89,444	80,071
2. Parliament		14,542	20,004	19,243
3. Judiciary		12,157	15,700	17,687
4. Presidency		9,243	5,988	4,383
5. Office of the AG Office & Department of Justice		5,410	2,947	3,014
6. DPP		1,072	1,475	2,144
7. Police Services		53,441	67,386	68,481
8. Teachers Service Commission		140,412	165,739	162,345
9. Other Constitutional Commissions and IOs		7,749	8,949	8,902
10. Elections		25,286	4,160	3,816
11. National Strategic Interventions		-	90,984	108,211
C	**Public Debt and Other Obligations (Article 203)**	361,322	381,535	414,391
1. Debt Payment		320,322	331,167	353,477
2. Pensions, constitutional salaries & other		41,000	50,368	60,914
D	**Emergencies [Article 203 (1)(k)]**	5,000	5,000	5,000
E	**Equalization Fund [Article 203 (1) (g) and (h)]**	3,000	3,400	3,400
F	**County Gov Allocations less Loans and Grants**	168,974	193,419	228,489
H	**Balance available to Nat Gov after Article 203 (1)**	**(49,182)**	**(100,530)**	**(54,876)**

WHAT'S THE REAL COST?

- New offices: Currently, more than KSh500 billion, which accounts for over half of the government's collected revenue, goes toward paying salaries, forcing the government to borrow to finance its development agenda (Burrows, 2014).
- The government is spending close to $ 4.6bn in salaries, leaving only $2.3bn for development
- The wage bill has increased from KSh241 billion in the financial year 2008/2009 to KSh458 billion in 2012/2013.
- The Salaries and Remuneration Commission (SRC) reports that this amount is in excess of 50% of the total domestic revenues, which is way above the international best practice of not more than 35% recommended for countries in Sub-Saharan Africa.
- The biggest spenders, accounting for 56% of the wage bill being: The Teachers' Service Commission (KSh138 billion), State corporations (KSh 83 billion) and County governments (KSh71.2 billion).
- The expenditure by the State corporations has increased by 5.1%. The County governments' expenses have increased more than 15 times to KSh71.2 billion in 2013/2014

WHAT'S THE REAL COST?

- According to the Parliamentary Budget Office, the government has already tapped the maximum amount it can access from an overdraft facility at the Central Bank of Kenya.
- The spending continues to increase the country's international debt, which could reach about KSh1.1 trillion ($12.7 billion) by the end of June 2014, moving toward the state's KSh1.2 trillion debt limit.
- The ceiling on public debt is a rise from 2012's KSh800 billion.
- A wage bill which is slightly over 12% of the country's gross domestic product, is unsustainable and the country risks being uncompetitive in the region as well as having stagnant or insignificant economic growth.

The cost of financing Kenya's government operations: Budget figures

- 2013/2014 budget: KSh1.439.7 billion

National Government current expenditure*	780.7 billion
Development expenditure and net lending	439.1 billion
County allocation	210 billion
A contingency fund	5.0 billion
Constitutional Reform	1.5 billion
Equalization fund	3.4 billion

- **Total expenditure** 1,439.7 billion

Financing these Expenditures

• Total revenue (including AIA*)	1, 028.6 billion
• Donor grants	77.7 billion
• Net foreign financing	226.7 billion
• Domestic financing**	106.7 billion
• **Total financing**	**1,439.7 billion**

Sources for Financing Counties

- Equitable shares: This is an unconditional allocation to the county governments by the national government (not be less than 15% of most recent audited revenue received as approved by the National government.) The allocation for 2014/15 is not expected to be less than KSh102.3 billion, based on the largest audited revenues of KSh682 billion for FY 2011/12.
- Additional conditional and unconditional allocations from the share of National Government as contemplated under Article 202 (2) of the 2010 Constitution.
- Own revenues from specific county revenue-raising measures as authorised by an Act of Parliament.
- Borrowing provided national government guarantee is obtained as well as the approval by the respective county assembly.
- Grants and donations from development partners.
- Equalisation Fund for basic services provision in marginal areas in order to bring public services in these areas up to national standards.

Costs Associated with Devolved Functions

- The total cost for adjustment of salaries, pensions and gratuity is expected to be KSh16.6 billion in 2014/15.
- As a result, the cost of salaries and administration of the new county structures is expected to increase from KSh13.6 billion in 2013/14 to KSh 30.2 billion in 2014/15.
- Salaries alone for a county's Governor, Deputy-Governor and Speaker of County Assembly amount to KSh74,610,667

CONCLUSIONS & RECOMMENDATIONS

CONCLUSIONS & RECOMMENDATIONS

- Significant revenue shortfalls
- Transitional issues affecting timely disbursement to the counties
- Under-spending of KSh110.8 billion (based on disbursement) of which KSh30.6 billion was in respect to lower than projected disbursements. While recurrent expenditure was above target by 26.9 billion
- It is fairly clear that the new Constitution has great cost implications now and in the future. In effect, the cost associated with the new Executive and Legislative structures at both national and county levels of government, Constitutional Commissions, Independent Offices and other Constitutionally-created offices might be equally extreme if not more alarming.
- Limited funding for development expenditure.
- Prudent fiscal management will remain an illusion in Kenya as long as we are content with the current economic state - We cannot manage what we don’t measure.
- This analysis therefore recommends,
    - A reduction in the number of public service offices to get rid of duplication of roles, without jeopardising the intended reforms of the 2010 Constitution;
    - Either a reduction in the number of counties or the devolvement of more functions to allow for revenue generation and sustainability.
    - The curve will eventually normalise after some years…if we survive them.

THANK YOU

Lfranceschi@strathmore.edu