The Citizen Handbook

Empowering citizens through civic education...

URAIA Trust ● International Republican Institute
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Disclaimer

The Citizen Handbook intends be a civic education resource on Kenya's constitutive process, key parts of the constitution, citizen participation, and the country's devolved governance model. This publication should not substitute officially published copies of the *Constitution of Kenya, 2010*, the Laws of Kenya or any official government documents related to the topics discussed herein.

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How to Use this Handbook

The Citizen Handbook intends to provide useful information to anyone seeking to learn about civic education. This includes critical provisions of the Constitution, the devolved system of government and the concept of and tools for active citizen participation.

The handbook starts every chapter and section by identifying some important issues the reader expects to learn and then provides basic content on the topic. Most of the content is fact-based and primarily drawn from the constitution, existing laws, and other authoritative literature. Often paired with the factual content are reflections on how a person may use the information to impact the political and social areas of their lives.

The section on devolution addresses the technical and practical aspects of devolved governance and the devolution process established in the constitution. It also outlines the structure of the country's devolved system of government and transitional laws that support implementing the devolution process in accordance with the constitution. The reader will need to pay close attention to newly established government structures at the county level, which will replace local authorities currently responsible for governance and service delivery in local communities. They will also need to think about the new ways in which they will interact with their new county government.

The section on citizen participation is elaborate and mostly takes an interactive approach. The section intends to empower the reader's interaction with their constitution and government. Specifically, it seeks to improve the reader's understanding of public participation principles and values in the Constitution. It also provides the reader with useful tools to improve their civic engagement. The tools incorporate practical realities of different geographical and social settings, and help the reader identify how he/she can best educate or influence others in their community.

Finally, this handbook is most effective when used with the voter education curriculum developed by the Independent Electoral and Boundaries Commission (IEBC). IRI and Uraia recommend that users of this civic education resource also use IEBC voter education material as the primary source for to prepare voters for general elections scheduled for 2013. ■

National Anthem of Kenya

As written in the Second Schedule of The Constitution of Kenya, 2010

1

Ee Mungu nguvu yetu
Ilete baraka kwetu.

Haki iwe ngao na mlinzi
Natukae na undugu

Amani na uhuru
Raha tupate na ustawi

2

Amkeni ndugu zetu
Tufanye sote bidii

Nasi tujitoe kwa nguvu
Nchi yetu ya Kenya,

Tunayoipenda
Tuwe tayari kuilinda.

3

Natujenge taifa letu
Ee, ndio wajibu wetu

Kenya istahili heshima
Tuungane mikono

Pamoja kazini
Kila siku tuwe na shukrani.

1

O God of all creation
Bless this our land and nation.

Justice be our shield and defender
May we dwell in unity

Peace and liberty
Plenty be found within our borders.

2

Let one and all arise
With hearts both strong and true.

Service be our earnest endeavour,
And our Homeland of Kenya

Heritage of splendour,
Firm may we stand to defend.

3

Let all with one accord
In common bond united,

Build this our nation together
And the glory of Kenya

The fruit of our labour
Fill every heart with thanksgiving

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Introduction

Civic Education

What is Civic Education?

The Constitution of Kenya, 2010 promotes public participation at all levels of governance. This participation is only possible when the public is educated on issues affecting their lives and how to influence the relevant decision-makers of such issues. In this regard, civic education is a critical tool for enhancing public participation. Civic education, for example, informs community members of government development plans and their contribution to ensure the implementation of the plan is successful. Moreover, civic education helps citizens challenge the necessity or legitimacy of specific government policies and actions. Citizen can better contribute to the development of their country when they know how their government works and how to support issues important to them.

Some examples of civic education include:

- attending a public forum organized by local leaders to understand how local elected officials make decisions on community issues;
- participating in a discussion on a government policy affecting the community (e.g. the introduction of new laws on waste management, proper usage of water, etc.); and
- educating the community about a proposed public or private development in their area and the potential impact this may have

Why Does Civic Education Matter?

Civic education informs citizens of major social economic and political issues that affect their lives. It also educates citizens on their specific civic roles and responsibilities, which will help them to:

- be active participants in democratic processes such as the election of leaders and referenda;
- build better advocacy skills and increase levels of understanding of their constitution;
- engage authorities (i.e. public officers, politicians, civil servants, police, medical health officers, teachers, councillors, etc.) on a regular basis;
- promote public understanding of the rights and responsibilities required of citizens to maintain and improve good governance, proper leadership, the rule of law and democratic principles; and
- keep their fellow citizens informed about government initiatives and encourage greater citizen participation in service delivery and other related issues.

Democracy and Governance

Democracy

Democracy refers to a system of government based on people's consent, also known as the 'will of the people'. Simply put, democracy means rule by the people. The basic principles of democracy include the following:

- recognition that power belongs in the hands of the people;
- the greatest possible freedom for all;
- a just society;

- the same rules for all;
- equality before the law;
- respect for the rule of law; and
- equal opportunity for all.

In a democracy, people govern themselves either directly through voting by referendum or indirectly through representatives they elect to make decisions for them. Democracy also applies to decision making at the local level and through interactions between citizens.

Governance

Governance refers to the management of public affairs as well as the relationships between and among people and their organizations. Citizens in a democracy have the power to exercise political control. They may become involved in their government by meeting with elected and government officials to express their concerns or by petitioning and demonstrating peacefully in support of an issue or action.

Citizens in a democracy also can vote for candidates who make convincing arguments to improve their lives and re-elect those leaders who actually fulfil their promises once elected. Media groups can report freely about government activities, including matters of corruption and the misuse of public resources. In addition, under a democratic system, the President and other public officials are responsible for enforcing the rule of law provided for in the Constitution.

In a democracy, citizens must get involved in the governing process to ensure that public officials are responsive their needs. If citizens are not actively involved in the political and decision-making process, public officials can make decisions with little accountability to the public. Without citizen input, these decisions may also harm rather than help the community. Citizen involvement in governance, however, does not happen overnight. It takes time for people to first, recognize the role they can play in their country's democracy, and second, to take the appropriate steps to become involved in the democratic process.

It is difficult for a citizen to get involved in the political process without understanding how their government works. Citizens need skills and the confidence to voice their concerns in order to hold public officials accountable. They must also know their rights and responsibilities and have the necessary skills to make informed choices.

The Constitution has created more opportunities for citizens to participate in the management of their country. It is important for citizens, therefore, to take advantage of these opportunities not only by staying informed about the campaign platforms of politicians, but also by participating in government decision-making processes.

Civic education helps to create an informed and responsible citizenry that plays a critical role in enhancing democracy. The Constitution directs all citizens to be active participants in the governance process. Civic education is the first step in empowering Kenyans to be responsible citizens who are aware of their rights and responsibilities and are prepared to contribute to a fair and equitable society.

Good governance: Explained

Good governance provides effective service delivery that is free of abuse and corruption, gives priority to human-rights based approaches, and supports the rule of law. Some of key components of good governance are as follows:

- *Participation* – Participation by both men and women, the poor and the rich, people of all religious persuasions, people of all races and ethnic groups and people with different physical abilities are a vital aspect of good governance. This participation can be either direct or indirect through legitimate institutions or representatives.
- *Rule of law* – The management of public affairs occurs in strict accordance with established laws. Good governance requires fair legal structures that are enforced without favouring any party or individual and fully protect human rights particularly those of marginalized and minority communities. The rule of law also means

an independent judiciary and a police force that is impartial and not corrupt.

- *Transparency* – Decisions taken and enforced by the government adhere to rules and regulations and occur in an open manner. Moreover, those affected have free and open access to information on the decisions taken and their enforcement.
- *Responsiveness* – Institutions and processes try to serve all the people within a reasonable timeframe. In addition, the priorities of public institutions are responsive to the priorities of citizens.
- *Consensus-driven* – The different interests in society are included in order to reach a broad consensus on what is in the best interest of the community as a whole.
- *Equity and inclusiveness* – All groups in society, especially the most vulnerable, have the opportunity to maintain or improve their health and security. This ensures that all members of society feel that they are equal stakeholders.
- *Effectiveness and efficiency* – Institutions and processes produce results that meet the needs of society while also ensuring they are making the best use of available resources. It also means the sustainable use of natural resources and the protection of the environment.
- *Accountability* – Governmental institutions, private sector, and civil society must be accountable to the public and their institutional stakeholders. In general, organisations and institutions are accountable to those impacted by their decisions or actions.
- *Strategic vision* – Leaders and the public should have a broad and long-term outlook on good governance and human development, along with a sense of the requirements for such development. There should also be an understanding of the historical, cultural, and social factors that inform this outlook.

Key Issues in Good Governance

The 1997 *UNDP Mayors Survey* identified and ranked the eight most important quality of life issues for urban areas. They are as follows:

1. Employment/job creation
2. Solid waste collection and disposal
3. Urban poverty
4. Shelter and housing
5. Water and sanitation
6. Public transport and traffic
7. Health services
8. Civil society participation

The above list of issues should not be limited to urban areas as they reflect major issues in rural areas as well. Resolving these issues requires good governance. Therefore, as we adopt the county model of government through devolution, the above issue areas will be critical when measuring the performance of local elected leaders and public officials.

Challenges of Good Governance

Different societies have achieved certain notable measures of development through completely different governance approaches. There are some context-specific challenges that can hinder good governance. They include:

- *Destructive conflict* – Peace is a necessary pre-condition for good governance. A history of violent conflict fuelled by intolerance, beginning particularly in the colonial times, left our country's government and civil society institutions in ruins. Therefore, it is critical to promote a peaceful coexistence as a basis for governance.
- *Lack of democracy* – Although democracy is a difficult process that requires watchfulness and support, it is essential to successful good

governance. Political leaders at all levels in our country must make democracy a key part of their collective agenda through actions and not just words.

- *Weak civil society* – A strong relationship must exist between the state and civil society if democracy is to endure and good governance is to prevail. Political leaders, however, sometimes view civil society as their competitors and believe they require greater control from the government.
- *Discrimination* – Good governance cannot thrive without the mainstreaming of women, young people, and both the marginalized and minority sections of society into politics and governance. Excluding these sections of the population from real political power in Kenya, whether at the national, community or household level has ensured wide social, economic, and political inequalities in our country today.
- *Weak institutions* – Good governance and effective citizen participation requires investment in improving the capacity institutions and citizens. Our country needs capacity building and improvement across the whole spectrum of institutions of governance, including the Legislature, Judiciary, political parties, and human rights commissions. Our citizens must also have their capacities strengthened through delivery of strong social services and universal education, so they can contribute to the governance process.
- *Poor ownership* – While the fundamentals of good governance are universal, specific institutions and systems of good governance cannot be simply imported. Instead, they must be homegrown and something that is "lived" rather than one that is "received" from others. Therefore, the only way to sustain our country's reform process towards good governance is if it earns long-term commitment from our political leaders.

Understanding Constitutions

What is a Constitution?

When people live or work together, they need to agree on how they will run their affairs. In a political state, as well as in some organizations, this agreement takes the form of a constitution. A constitution establishes the most important principles, rules, and structures that govern a political state or organisation. It also regulates the power of the state or organization and reinforces its accountability to its members. Furthermore, a constitution is the most important law of a state or organization, also known as the 'supreme law.' This means that all other laws subsequently passed by the state or organization must find their basis in the constitution.

Some of the issues any constitution must address are:

- determine which people belong to that state or organization and are governed by the constitution;
- provide entitlements to the people belonging to that state or organization;
- decide how leaders representing the people are to be chosen, their roles and duties and how they are to be removed;
- define how the resources of the state or organization are to be managed and distributed; and
- provide ways to resolve conflict within the state or organization when they arise.

Two Types of Constitutions

There are two basic types of constitutions. The first is a *written (codified) constitution*, which is contained in a single document and serves as the single source of constitutional law. The second type is an *unwritten (un-codified) constitution,* which is not contained in a single document but rather consists of

several different sources that may be written or unwritten. Most countries in the world, including Kenya, have codified constitutions. Both historical and political factors determine how a country adopts its constitution. Codified constitutions find their legitimacy, and often longevity, in the way countries adopt them. Furthermore, changes to most codified constitutions require exceptional procedures. These procedures may be to:

- convene a special constituent assembly;
- hold a referendum process; or
- create requirements so that it is more difficult for a legislature to amend a constitution than it is to pass a law.

Written Constitutions

Written (codified) constitutions normally include a ceremonial preamble, which provides the goals of the State, motivation for the constitution, and several articles containing the substantive provisions. Omitted from some codified constitutions, the preamble may also contain a reference to religion and/or to fundamental values of the nation such as liberty/freedom, democracy, or human rights.

Unwritten Constitutions

Unwritten (un-codified) constitutions often represent an 'evolution of laws' and pacts over time. Countries considered that have un-codified constitutions include Israel, Canada, Saudi Arabia, New Zealand, and the United Kingdom. Countries with written constitutions may also have aspects of an unwritten constitution as part of its laws. In other words, a written constitution is not necessarily a comprehensive document of the values, principles, and rules that govern a country.

The Role of the Constitution

A constitution's primary role is to set the values, principles and rules to guide people who exist as a unit (i.e. country, organization, etc.). In this regard, the constitution defines the role of the people, creates the organs of governance, and outlines the powers and functions of those organs. It also establishes guidelines for the relationship between the people and the organs of governance. An important role of a modern constitution is to state principles and rules on how people of one nation recognizes and adheres to the rule of law. This occurs by establishing credible institutions and just values, rules and principles.

Constitutionalism & the Rule of Law

The rule of law is the principle that all people and institutions are subject and accountable to law fairly applied and enforced by the government. Constitutionalism refers to society's adherence to the principles of the constitution. It seeks to prevent undemocratic governance and intends to guarantee the liberty and rights of individuals on which free society depends. In other words, the purpose of constitutionalism is to ensure that those who govern do so within the rules that prescribed by the constitution and the law. Moreover, constitutionalism requires both citizens and leaders to be aware of their rights and responsibilities as prescribed in the constitution. ■

CHAPTER ONE

The Constitution of Kenya, 2010: The People's Power

1.1. The History of Constitutional Reform in Kenya

This Section...

- Provides an overview of constitution making from the pre-independence period to the adoption of *The Constitution of Kenya, 2010*
- Outlines different stages of constitutional development and the effect these changes have had on constitutionalism and rule of law
- Highlights challenges our nation faced in its attempt to build a constitution that enhances democracy, and ensures that all citizens prosper and live a life of dignity

1.1.1. Pre-1897

Prior to 1897, there was no written constitution in Kenya. The customary law and practices of our nation's different ethnic groups provided the structure of government. In most communities, a council of elders had the leadership and political power, and clans and age defined our social hierarchy.

1.1.2. 1895 – 1962: The Colonial Period

Great Britain's control of our country began in 1895. What are today the boundaries of our country was formerly a portion of the British East Africa

Protectorate, which stretched into Uganda. The British claimed this land largely due to its attractive arable land. Under the protectorate, the British ruled the East African Protectorate as a foreign territory. It was not until 1920 that the British named our country a "Crown Colony." In doing so, British settlers' confirmed full control over our country and officially established Kenya as part of the British Empire. Regional authority over our country was vested in a Commissioner of the East African Protectorate; as a colony, our country was vested in a Governor of Kenya – the British Crown appointed both positions. A Council of Ministers assisted the Executive and Legislative Council and formal courts were established.

The Lyttleton Constitution of 1954

The Lyttleton Constitution of 1954 introduced the concept of a Council of Ministers comprised of European, Asian, and African members. The British appointed a Commission of Inquiry in 1955 due to growing frustrations by Kenyans unable to elect their own representatives. Consequently, the first African members of the Executive and Legislative Council gained their seats in 1957.

Lennox-Boyd Amendments

Unfortunately, elected Africans were ill equipped to hold their positions in the Council, which resulted in government accomplishing very little work. In 1958, the then-Secretary of State for the Colonies, Alan Lennox-Boyd, proposed a series of constitutional amendments aimed at resolving the issue. Several of the amendments made it into the Constitution of Kenya until 1961. Known as the Lennox-Boyd amendments, they included six additional seats on the Executive and Legislative Council reserved for African members and the election of twelve "Specially-Elected Members" who fell under the jurisdiction of the Governor.

The African contingency of leaders strongly opposed Lennox-Boyd's introduction of Specially-Elected Members (as well as the process of election). Their disapproval of the Lennox-Boyd amendments ultimately inspired the

formation of our nation's first African political entity in 1959 – the Kenya Independence Movement.

1.1.3. 1963: The Independence Constitution

Lancaster House Template

When our country gained independence from Britain in 1963, the constitution followed Britain's *Lancaster House template*. Known as the Independence Constitution, it reflected the compromises made at the three constitutional conferences held at Lancaster House. The main features included a legislature with two houses, ethno-regional devolution of power through a system known as *majimbo*, independent judiciary, and a parliamentary system of government.

Westminster Model

Our nation's first constitution provided a continuation of direct rule – Queen Elizabeth II was the Commander-in-Chief and she exercised her control over the country through a Governor-General. Known as the *Westminster model*, this model of government centralized power at the national level through a strong head of state and a parliament. While the Westminster model is a democratic form of government, its centralised system of governance kept the decision-making process far from the reach of the *common mwananchi*.

Introduction of the Provinces

The 1963 Constitution introduced a government structure consisting of eight provinces: (1) Coast province, (2) North Eastern province, (3) Eastern province, (4) Central province, (5) Western province, (6) Nyanza province, (7) Nairobi province, and (8) Rift Valley province. This structure remained in place throughout the evolution of the country's constitution in the post-Independence

era. The 2010 Constitution, however, abolishes the provincial governance structure and establishes counties in their place.

1.1.4. 1964 – 1997: Constitutional Amendments

The full integrity of the 1963 Independence Constitution was short-lived. In 1964, our country's first native Kenyan president, Jomo Kenyatta, came to power. The 1964 Constitution established Kenya as a republic and created the presidential office. Additionally, the Constitution abolished regional governments and the Senate and preserved the provincial structure.

Several amendments to the Independence Constitution occurred between 1964 and 1997. A summary of the major amendments and their effects are below:

- *Introduction of the Republic* – the status of the country changed into a Republic with the President as the head of state and of the government;
- *Abolishment of majimbo* – the ethno-regional form of devolved governance known as *majimbo* was abolished and political power was re-centralised into the national government;
- *Amendment process changed* – the process of amending the constitution was changed, including removing the requirement of two-thirds majority votes for certain amendments;
- *Unicameral legislature established* – the bi-cameral (two-chamber) legislature comprised of the House of Representatives and Senate were merge into a unicameral (one-chamber) legislature known as the National Assembly;
- *Removal of office for MPs* –members of Parliament had to vacate their seats if they left the political party they were elected to Parliament under or if they miss a number of sittings of Parliament;

- *Removal of security of tenure* - the security of tenure for judges, Attorney General, Controller and Auditor General was removed (the security of tenure for these office was returned through later amendments);
- *One-party structure* – a one-party state structure was established (a later amendment reintroduced provisions for a multiparty democracy);
- *Electoral commission membership* – the number of members of the Electoral Commission was increased to accommodate opposition parties' nominees to the Commission;
- *Sexual discrimination abolished* – sex-based discrimination was abolished providing for equal suffrage and rights among the sexes; and
- *Presidential term-limits* – the President's time in office was limited to two five-year terms.

1.1.5. 1998-2005: Constitutional Review Processes

Constitution of Kenya Review Commission (CKRC)

Various discussions and processes to review the Constitution took place between 1998 and 2005. The key constitutional review body established during this period was the Constitution of Kenya Review Commission (CKRC). The purpose of the CKRC was to develop a constitution that addressed the needs and requirements of the citizens.

Bomas Draft

The famous Bomas Draft captured the views of citizens. Adoption of the Bomas Draft occurred after a long deliberation of a national delegate's conference at the Bomas of Kenya. The reason for the lengthy deliberation was that it faced stiff resistance due to its progressive nature.

Wako/Kilifi Draft

The Office of the Attorney General diluted many provisions contained in the Bomas Draft, preserving the old repressive order. The final document produced by the Attorney General, referred to as the Wako/Kilifi Draft, was put to and defeated through a national referendum in 2005.

1.1.6. 2008: Constitution of Kenya Review Act

The Constitution was identified as an important tool for improving national cohesion following the 2007/2008 post-election violence. Kenyans viewed its framework as inadequate to meet the challenges of national cohesion and did not support good governance.

In response to this, the National Assembly passed *The Constitution of Kenya Review Act (No. 9 of 2008)*, which facilitated an assessment of the constitution. The Act established the following organs as the legal institutions to develop and adopt a new constitution:

- *The Committee of Experts (COE)* was to blend past constitutional proposals and create a harmonized and, later, draft Constitution;
- *The Parliamentary Select Committee (PSC)* was to review and edit the Harmonized Draft Constitution developed by the COE;
- *The National Assembly* was to review and edit the Proposed Draft Constitution developed by COE and PSC; and
- *The Referendum* was for all citizens to vote to accept or reject the Proposed Constitution.

1.1.7. 2008: The National Accord

In 2008 the *National Accord and Reconciliation Act (No. 4 of 2008)* was enacted following violence that erupted after the disputed results of the presidential elections on December 27, 2007. More commonly known as the National Accord, the main aim of the Act was to end violence and, more importantly, put the country on the path to reform and reconciliation.

The National Accord introduced a coalition government, and made one fundamental change to the former constitution by reintroducing the post of prime minister to coordinate government functions and participate in a coalition government. The National Accord also created two deputy prime minister positions and set forth four agendas to help move the country forward. In brief, these agendas were as follows:

- Immediate action to stop violence and restore fundamental rights and freedoms;
- Address the humanitarian crisis and promote national healing and reconciliation;
- Resolve the political crisis (power-sharing); and
- Develop an implementation matrix on long-term issues and solutions and reform the existing constitution. ■

1.2. The Constitution of Kenya, 2010: My Constitution, My Future

This Section...

- Highlights selected articles from *The Constitution of Kenya, 2010* and their implication on the common *mwananchi*
- Explains the ways in which the 2010 Constitution increases the sovereign power of citizens to have more control over the affairs of their everyday life
- Provides an overview of the key rights of every citizen
- Outlines constitutional aspects of land use, natural resource management and environmental preservation
- Discusses leadership and good governance qualities added to the Constitution
- Provides the roadmap and mechanisms for the successful and full implementation of the 2010 Constitution

1.2.1. An Overview of the 2010 Constitution

The Constitution of Kenya, 2010 consists of 18 Chapters and six Schedules. It emphasizes on the sovereign power of the people; noting that all constitutional power derives from the people. It stipulates that the government must consult citizens in the formulation of policies and decisions that affect them, other citizens, and the country as a whole.

The Constitution contains a chapter on values that intends to guide citizens and leaders alike. It also has a chapter addressing leadership, integrity, and accountability. A detailed Bill of Rights is included, which discusses social, economic, and cultural rights among other issues. The Bill of Rights offers protection to and opportunities for participation in governance for people with disabilities, the youth, women, marginalized groups, and minorities.

The system of governance established in the Constitution has important checks and balances, where the country's three separate branches of government – Judiciary, Executive, and Legislative – are independent of one another. Furthermore, the Constitution distributes power from the national level to subnational levels. This way of de-centralizing power, called devolution, intends to enhance resource distribution and public participation. The Constitution also establishes a Senate at the national level to protect and enhance the newly created devolved system of government.

Chapters of the 2010 Constitution

1. Sovereignty of the People and Supremacy of this Constitution
2. The Republic
3. Citizenship
4. The Bill of Rights
5. Land and Environment
6. Leadership and Integrity
7. Representation of the People
8. The Legislature
9. The Executive
10. Judiciary
11. Devolved Government
12. Public Finance
13. The Public Service
14. National Security
15. Commissions & Independent Offices
16. Amendment of this Constitution
17. General Provisions
18. Transitional & Consequential provisions

The public finance provisions of the Constitution intend to assist with the management of government finances in a more accountable manner. These include regulations that ensure equitable distribution of resources. Another important feature of the Constitution is the creation of various independent commissions and offices that serve to check and balance the powers of

government. They are also tools for citizens to use to ensure that the government adheres to the principles of the Constitution.

The constitutional provisions relating to land are comprehensive and include the creation of a National Land Commission as well as an improved land tenure system. The land provisions also emphasize the need for the nation to address historical injustices that relate to land, and deals with matters of the environment and conservation.

1.2.2. The Constitution, the Nation, the People, and the Values

Sovereignty of the People and Supremacy of the Constitution

The Constitution says that it derives its power from the people, and the persons in positions of leadership or the various institutions of governance should only exercise that power on behalf of the people. The Constitution further states that the people shall exercise their power directly or indirectly through their chosen representative(s).

An emphasis on the sovereignty of the people in the Constitution represents an important change from previous constitutions in terms of the relationship between the people of Kenya and both governing institutions and people in positions of leadership. Finally, the Constitution is the 'supreme law' in the country, meaning that every citizen is bound to it and is required to respect and adhere to its rules and principles.

Defending the Constitution

The Constitution requires citizens to defend it when necessary. Any citizens may defend the constitution either acting on their own behalf or on the behalf of others. This also includes citizens acting as a member of a group or in the public interest.

Guiding Values for Kenyans

Article 10 of the Constitution outlines the values that all citizens, particularly leaders, should apply when implementing any action required by the Constitution. These values seek to ensure that all citizens live a life of dignity, equity, and fairness. The Constitution also defines what the Republic of Kenya is and what it stands for, including its territorial borders. It further sets the qualifications for, and the rights of, citizens. Additionally, it explains that culture is a foundation of the State and creates an obligation on the government to promote and protect culture.

Application & Implication

The Constitution aims to change and improve the way we govern our country. It contains provisions that acknowledge the fact that all sovereign power belongs to the people of Kenya. Citizens will now have an opportunity to get involved and participate in the decision-making process. They will also play a role in ensuring accountability on the part of leaders, public servants, and officers of the State. Finally, the Constitution improves the planning, governance, and service provision with adequate funding at the county and sub-county level.

1.2.3. Rights under the Constitution

One of the primary purposes of modern constitutions is to grant and define rights. *The Constitution of Kenya, 2010* provides two sets of rights: (1) civil and political rights, and (2) economic, social, and cultural rights.

The Bill of Rights

A bill of rights is a list of the most important rights for citizens in their constitution. These rights belong to each individual and are not granted by the State but protected in the constitution. It is usually very difficult to modify a bill of rights under the normal constitutional amendment procedures. Any modification often requires extraordinary actions like a referendum or a

supermajority of votes in Parliament (a special majority that is greater than a simple majority of 50 per cent plus one vote).

> **"The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings."**
>
> – Article 19(2), *The Constitution of Kenya, 2010*

The Bill of Rights in our constitution is comprised of rights listed from Article 19 to 59, and is considered one of the most progressive Bills of Rights in the world. This is because our Bill of Rights guarantees a variety of fundamental rights and freedoms, including political, civil, and social economic rights.

Civil Rights

Civil rights refer to the entitlement of an individual to personal freedom or liberty. The Constitution guarantees civil rights, including:

- *Right of equality and freedom from discrimination* states that every person is equal before the law and has the right to equal protection and equal benefit of the law. Equality includes the full enjoyment of all rights and fundamental freedoms.
- *Right to freedom and security* includes the right to no arbitrary detention, no physical or mental torture, and no inhumane or degrading treatment.
- *Right to freedom of conscience, religion, and opinion* entitles every person the right to join or participate in any religion or to choose not to participate.
- *Right to freedom of movement and residence* means that all citizens have a right to freedom of movement within the country. It also means that citizens have a right to enter, remain in, and reside

anywhere in Kenya. Citizens also have the right to leave the country at any time.

- *Right to freedom of expression* refers to freedom to seek, receive, or communicate information and ideas, artistic creativity and academic freedom including scientific research.
- *Right of access to information* ensures that every citizen has the right of access to information held by the State; and information held by another person and required for the exercise or protection of any right or fundamental freedom. Every person also has the right to have the State correct or delete untrue or misleading information about him or herself. Furthermore, the State shall publicize any important information affecting the nation.

Limits to the Right of Freedom of Expression

The right of freedom of expression does not extend to the following areas:

- propaganda for war;
- incitement to violence;
- hate speech;
- expressions of hatred that constitutes ethnic incitement, and vilification of others;
- inciting others to cause harm; and
- expression that is based on any ground of discrimination.

Article 33(2), *The Constitution of Kenya, 2010*

- *Right to freedom of the media* is the right to prevent the state from attempting to control or interfere with any person engaged in broadcasting, the production, or circulation of any publication or the dissemination of information by any medium; or to penalize any person for any opinion or view or the content of any broadcast, publication or dissemination.

- *Right to freedom of association* means that every person has the right to associate freely, to include forming, joining or participating in the activities of an association of any kind. This right also protects a person from forceful membership in a specific group, and from having their registration withheld or withdrawn without first receiving a fair hearing.

Political Rights

Political rights refer to two broad categories of rights. The first guarantees a fair trial for any accused person. The second category refers to rights to making political choices and participation in political activities. Article 38 of The Constitution states that every citizen is free to make political choices, which includes the right to form, or participate in forming, a political party; participate in the activities of, or recruit members for, a political party; or to campaign for a political party or cause. Furthermore, every adult citizen has the right to:

- free and fair elections;
- be registered as a voter;
- vote by secret ballot in any election or referendum;
- be a candidate for public office, or office within a political party of which the citizen is a member; and
- hold office, if elected.

Social, Economic, and Cultural Rights

Social economic rights are referred to as "second generation rights" in the human rights naming system, and are one of the most significant achievements of the Constitution. Inspired by the United Nation's International Covenant on Economic, Social, and Cultural Rights (ICESCR), these second generation rights intend to protect an individual's access to education, housing, an adequate standard of living, and good health. Other rights in this grouping include rights of citizens to practice their indigenous languages and to family.

The Constitution contains numerous economic and social rights, including:

- *Economic rights* provide the right to secure a living under certain working conditions;
- *Social rights* guarantee access to basic services such as health, social security, housing, food, water and education;
- *Cultural rights* provide citizens with the rights to preserve and practice cultural activities unless they harm or discriminate against a particular group, or violate other human rights in the Constitution;
- *Environmental rights* mean that citizens have a right to an environment that is not harmful to people's health and wellbeing. These rights further call on citizens to protect the environment and conserve vegetation and wildlife for future generations; and
- *Developmental rights* give citizens the right to live in prosperity and have enough resources for current use as well as saving some for future generations.

Limitation of Rights and Fundamental Freedoms

Article 24(1) of the Constitution stipulates that "a right shall not be limited except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom and taking into account of all the relevant factors" including the:

- nature of the right and fundamental freedom;
- importance and the purpose of limitation;
- nature and the extent of the limitation has provision on the nature of rights which can be limited; and
- circumstances that will necessitate the limitation of those rights.

However, the Constitution also clearly states that the following rights and fundamental freedoms shall not be limited to:

- the right to *habeas corpus*;
- freedom from torture and cruel inhuman or degrading treatment or punishment;
- freedom from slavery or servitude; and
- the right to a fair trial.

What does Habeas Corpus mean?

Habeas corpus **is a legal action that calls for the release of a prisoner for unlawful detention due to not having enough cause or evidence. The prisoner, or a person acting on his/her behalf, may seek *habeas corpus*.**

Application and Implications of the Bill of Rights

The Bill of Rights aims to protect all citizens so they can live a life of dignity where there is social justice and respect for human rights and the rule of law. It is important as a citizen that you to be aware of your rights in order to fulfil your responsibilities in ensuring that all citizens live peacefully with one another. Resources may not be immediately available to implement fully all economic and social rights because the Constitution allows for their gradual implementation.

The State, however, must demonstrate genuine and organized efforts towards full implementation of these rights. The State's efforts can take the form of clearly published programs and implementation plans on all areas covered by the Bill of Rights. Such plans must include verifiable information on the actions the government is taking to ensure the realization of these rights.

1.2.4. Land Use & Management

This section outlines the land provisions captured in the Constitution. It highlights the different categories of the land tenure system. Land ownership has been a controversial issue ever since the struggle for independence.

> **"All land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals."**
>
> - Article 61(1), *The Constitution of Kenya, 2010*

One major reason that land ownership has historically been an issue is because of poor land laws in the past, which allowed for the seizure of land from its rightful owners by corrupt individuals, including landowners' own community peers, and government officials.

Principles on Land Management

Our country has experienced land related clashes since independence because of competition for land ownership and corruption. The clashes have persistently threatened the national cohesion of our country. In an effort to resolve this historical problem, the Constitution includes general principles for the management of land matters. Some of the key provisions on land management in the Constitution are:

- ensuring equitable access to land;
- encouraging efficient, productive and sustainable usage of land;
- enforcing transparent and cost effective administration of land;
- requiring the conservation and protection of ecologically sensitive areas;
- eliminating gender discrimination in laws, customs and practices related to land and property in land; and
- encouraging communities to settle land disputes through recognized local community initiatives consistent with the law.

Types of Land

The Constitution classifies land into three categories: (1) public land, (2) community land, and (3) private land. Below is an explanation of each:

Public Land	Public land includes un-alienated land, land set aside for public use, land used or occupied by a state organ, national parks, sanctuaries and game reserves. It also includes all main roads and access roads, rivers and lakes and territorial sea and any other land not classified as private or community land under the Constitution. The specific type of public land determines whether people in a county entrust that land to their county government or the people of Kenya entrust it to the national government.	Article 62 (1)
Community Land	Community land shall vest in and be held by communities identified based on ethnicity, culture or similar community of interest. Community land includes: • Land lawfully registered in the name of group representatives or transferred to a specific community; • Ancestral lands as well as lands occupied traditionally by hunter gatherer communities; • Land managed or used by specific communities as community forests, grazing areas or shrines; • Land held as trust land by the county governments (excluding any public land held in trust); and • Land declared to be community land by Parliament	Article 63 (1)
Private Land	Private land includes registered land held by any person under any freehold tenure or leasehold tenure and any other land declared private land under an Act of Parliament.	Article 64

Land Tenure

Reforms in land ownership are one of the key features of the 2010 Constitution. Specific types of land ownership outlined in the Constitution are below:

- *Freehold tenure* is the ownership of land with the right to pass it on through inheritance. The landowner may have acquired the land through purchase or inheritance.
- *Leasehold tenure* is the temporary ownership of land through the payment of land rent. This is similar to renting a house and paying the property owner rent at an agreed amount without actually owning the house.
- *Partial interest tenure* is land that has many different interests or stakeholders on a specific parcel of land. This can include easements where one landholder has rights to certain parts of another landholder's land. Examples of partial interest tenure include government regulation, zoning or even by negotiation among private and/or public parties.
- *Customary tenure* is land ownership granted through traditions. The Constitution does not recognize customary tenure when it conflicts with the principles or provisions of the Constitution on issues such as disinheritance because of gender.

Role of the State in Regulating Land Use

"The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning."

Article 66 (1), *The Constitution of Kenya, 2010*

The maximum leasehold is now 99 years, which is a major shift from the previous system that allowed citizens to lease land for up to 999 years. A person who is not a citizen may hold land based on leasehold tenure only, which is different from the old system allowing for the most valuable land to be owned by

foreigners. The new land provisions in the Constitution will, therefore, make land more accessible to many citizens and help to reduce poverty in the country.

Laws on Landholding

Parliament has already passed three laws that support the various land provisions in the Constitution. They are:

- *The National Land Commission Act, 2012*
- *The Land Act, 2012*
- *The Land Registration Act, 2012*

Some additional complimentary laws are still required for aspects of land provisions in the Constitution. At a minimum, this includes laws to regulate community land, address historical injustices related to land ownership, and address the rights of informal settlers like protection from arbitrary eviction.

Establishment of the National Land Commission

Article 67 of the Constitution and provisions in the *National Land Commission Act, 2012* establish the National Land Commission. Some of the Commission's primary functions are to:

- manage public land on behalf of the national and county governments;
- develop a national land policy;
- advise the national government on matters related to land titles and monitoring;
- oversee land use throughout the country;
- investigate present or historical land injustices and recommend the appropriate redress; and
- encourage the use of traditional dispute resolution mechanisms in land conflicts.

In accordance with Article 6(3) of the Constitution, the headquarters of the National Land Commission is in Nairobi, but it is required to provide access to citizens in all parts of the country. The Commission is required to produce an annual report, which includes the following information: financial statements, progress report on work conducted so far, and any recommendations or challenges. The Commission should publish their report for public viewing as soon as it is practical after each financial year.

Application & Implication

The Constitution contains a full chapter dedicated to land management and environmental issues. This chapter is critical given the country's unique history of land disputes dating back to pre-colonial years. Historically, land ownership has been the root of many disputes. The establishment of the National Land Commission, and the implementation of constitutional provisions on land use and management, will increase accountability and transparency as well as reduce the possibility of illegal land seizure. New land laws passed by Parliament require the review of all grants or dispositions of public land and illegal land ownership. The constitutional provisions on land will also prevent the elite from occupying vast tracts of land. Finally, the Constitution requires efficient and effective land use.

1.2.5. Environment & Natural Resources

The Environment is the space in which we live and operate – whether it is the office, street, village, sea, or forest. Whatever one's daily surroundings may be, every citizen has the right to an environment that is healthy, clean, safe from pollution and protected from destruction.

The Constitution includes provisions to ensure that citizens have a sustainable environment that they are also required to protect. The Constitution ensures that the use of our country's natural resources benefit citizens, investors as well as the overall environment.

The Constitution delegates to the State the responsibility of managing several aspects of the country's environment and natural resources. This includes a requirement for the State to maintain a national tree cover of at least ten per cent. Our country's current tree cover is approximately 2.3 per cent, which means that it will take hard work on the part of the government and all of us Kenyans to achieve and maintain this goal. Finally, the government is required to utilize the environment and natural resources for the benefit of the people of Kenya and not just a particular group of people or geographic area.

Protecting Our Natural Resources

Like many other countries, Kenya is working to benefit from its natural resources such as oil, minerals, forests, geothermal energy, mangroves, etc. The Constitution requires Parliament to be fully involved in the negotiation of agreements pertaining to the use of our country's natural resources and/or the environment. Specifically, Parliament must approve any transaction involving the granting of rights to the management of any natural resource in the country to any individual or entity. In other words, Parliament must approve any use of our natural resources.

Members of Parliament should be accountable and support the progress of the nation as a whole. This quality of our leaders will ensure that laws enacted do not end up enriching wealthy elite while impoverishing the majority of the population in our country. Citizens must also be vigilant when it comes to the use of natural resources to ensure that it is in line with the constitutional prescriptions for sustainable land management.

Application and Implication

Every citizen has a responsibility to ensure that our country's natural resources are managed in such a way that it benefits all Kenyans. The Constitution also grants citizens the right and ability to enforce a healthy and sustainable environment. Specifically, citizens can apply to the Court to seek action when others, including the government, infringe on, threaten, and violate these rights. This type of citizen action can help to protect our environment.

1.2.6. Leadership & Good Governance

This section describes how the Constitution aims to revolutionize leadership and governance in the country. It outlines the principles and values that leaders are required to adhere to and the ways in which citizens can use them to evaluate the performance of their leaders.

Emphasis on Leadership

The Constitution includes specific qualifications for and the means to regulate leadership. Chapter Six emphasizes that public trust is basis for leadership and authority given to state or public officials. This means that the people assign authority to a leader, and the leader is only the custodian of this authority. In this regard, citizens are responsible for directing how the State exercises its authority. This includes determining the requirements of those who seek leadership and the type of actions that disqualify people from leadership positions. Chapter Six of the Constitution exists to ensure that the priority of leaders is the service of their people and their nation. As such, leadership is an instrument of service in the Constitution and not a means of personal enrichment or pride.

Authoritarian vs. Democratic Leadership

The quality of a country's capacity to lead is a key factor in determining good governance. In this context, active participation by citizens in governance is as important as having leaders who are accountable. It is important, therefore, to look briefly at the two most general types of leadership styles: (1) authoritarian leadership and (2) democratic leadership.

- *Authoritarian leadership* is a style of leadership where the person in charge does not consult with her/his people or even with her/his colleagues when making decisions. In this type of leadership style, the leader believes that s/he has the right to decide what is best for her/his people. Authoritarian leaders are not tolerant of opposing

views or differences of opinion, nor do they safeguard the civil and political rights of the people they lead.

- *Democratic leadership* is a style of leadership where the leader acts in the interests of his/her people. S/he is prepared to make her/his-self accountable to the people s/he serve and to the institutions they lead. This type of leadership encourages as many people as possible to be part of the decision making process. One way of being accountable to citizens is by not interfering with their right to organize and participate in the management of public affairs.

It is important to differentiate between authoritarian and democratic leadership because previous political leadership in the country used it as a way to create wealth quickly without much effort. People who run for public office sometimes do abuse positions of authority in order to enrich themselves through illegal deals, bribes and other corrupt practices. The Constitution no longer tolerates such poor leadership by elected officials. It requires leaders to uphold a certain set of morals, standards and integrity, and empowers citizens to question the actions and decisions of their leaders.

Oath of State Officers

In an effort to reinforce the importance of leadership and level of integrity expected of all those elected to serve positions of power, the Constitution requires newly elected state officers to take an oath upon the commencement of their term of service. The Third Schedule of the Constitution provides a series of oaths for State officers and positions of President, Deputy President, Cabinet Secretaries, Chief Justice, Court of Appeals and High Court Judges, members of Parliament and the Speaker and Deputy Speaker of the Senate.

Guiding Principles of Leadership and Integrity

The Constitution revolutionizes the standard of leadership of public and state officers by placing a strong emphasis on the importance of exercising honesty, transparency, and integrity. It stresses that the responsibility of

representing the people of Kenya is a privilege and that individuals who fill this role must be dedicated to expressing their gratitude by ensuring that their actions meet the moral standards expressed in the Constitution.

Specifically, Chapter 6 of the Constitution includes a thorough explanation of the ways in which the characteristics of leadership and integrity should shape the actions and governance by leaders serving our people. The principles of leadership and integrity in the Constitution, therefore, should serve as guidelines for citizens to consult when electing their representatives.

Citizenship and Leadership

The Constitution links citizenship to several opportunities to hold public leadership positions. For example, only citizens may pursue an appointment as a state officer. The Constitution also prevents individuals holding dual citizenship from serving as state officers or members of the Kenya Defence Forces.

Conduct of State Officers

Article 75 of the Constitution gives an overview of the expected conduct of state officers in their service as leaders, their interactions with members of the public, and their private lives. Specifically, state officers are required to prevent personal interests from influencing or hindering their function and decision-making as leaders.

Article 75(2) outlines the consequences and penalties associated with violating the leadership and integrity obligations of a state officer. Furthermore, Article 76 explicitly prohibits state officers from

Expected Conduct of State Officers

Article 75 (1) of the Constitution stipulates that "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."

Article 75 (1), *The Constitution of Kenya, 2010*

absorbing public financial contributions, from having a bank account outside of the country, and from receiving loans that can potentially interfere with the integrity required of a state officer.

Restriction on State Officers

There are several prohibited activities of state officers outlined in Article 77 of the Constitution. For example, state officers may not pursue or accept any other form of employment or occupy any leadership position in a political party. The intention of Article 77 is to ensure a state officer remains focused solely on serving citizens in a manner that demonstrates honesty, integrity, and accountability.

Leadership & Integrity Legislation

Article 80 of the Constitution directs Parliament to enact legislation on Chapter 6 of the Constitution on Leadership and Integrity. This legislation, according to the Constitution, should include provisions on enforcing Chapter Six as well as prescribing penalties for violators. Additionally, the Constitution directs Parliament to establish a commission for ethics and anti-corruption, which will assist in promoting and enforcing the principles of leadership and integrity.

The Ethics and Anti-Corruption Commission

"Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under Chapter Fifteen, for purposes of ensuring compliance with, and enforcement of, the provisions of this Chapter."

Article 79, *The Constitution of Kenya, 2010*

The Leadership and Integrity Act (No. 19 of 2012), assented to on 27 August 2012, establishes procedures and mechanisms for the effective administration of Chapter Six of the Constitution. The Act also provides a general Leadership and Integrity Code for State officers, which covers such issues citizenship, public trust, and financial integrity.

Furthermore, the Act addresses personal behavioural issues of state officers like impartiality, bullying, and conduct of private affairs. It also outlines specific enforcement measures and penalties to ensure all state officers follow the Code. The Act has two Schedules: the First Schedule includes a "Self-Declaration Form" that must be completed by state officers, and the Second Schedule, which gives a list of "interests" all state officers should disclose publicly. This includes any existing contracts for goods and services held by a state officer, directorships in public or private companies, and land or property in their possession.

Application and Implication

The Constitution provides clear principles on integrity for our leaders to follow no matter what level of government. The implications for our leaders are that they have clearly written values to guide them in their work and to hold them accountable in a realistic way. Similarly, the Constitution's principles on leadership and integrity arm you with the power to hold your leaders accountable. These principles are also something you can consult during the process of selecting an individual to represent you in government.

1.2.7. Implementation of the Constitution

This section will examine the major changes that will occur in the country's political landscape through the full implementation of the Constitution. It will also review the institutions responsible for carrying out the implementation process and list the laws needed to be enacted as stipulated in the Fifth Schedule of the Constitution. Finally, this section will examine some of the major challenges to the transition process.

Institutions Responsible for Implementation

There are several government institutions responsible for implementing the 2010 Constitution. These institutions are as follows:

- Commission on Implementation of the Constitution (CIC)
- Kenya Law Reform Commission
- Attorney General Office
- Constitution Implementation Oversight Committee (CIOC) of Parliament

Transitional Legislation

Chapter 18 of the Constitution provides a framework for the transition from the previous Constitution to current one. Specifically, Article 261 stipulates the role of Parliament to enact legislation critical to the transition process. The Fifth Schedule outlines the specific pieces of legislation and the deadline for their passage by Parliament.

What Are Some Bills Parliament Must Pass?

See the Appendix 1 for a full list of transitional legislation that Parliament must pass in accordance with the Fifth Schedule of the Constitution.

The Attorney General, in consultation with the CIC, is in charge of preparing the relevant legislation for consideration by Parliament. According to Article 261(5), (6) of the Constitution, if Parliament fails to pass the required legislation in the necessary timeframe, any person may petition the High Court on the matter and the Court can force Parliament to act.

Challenges to the Transition

Our country faces several challenges on the path to a successful constitutional transition. The following are some of the major obstacles that we face:

- *Delay in enactment of laws* – The intention of having timelines for enactment of laws is to ensure timely legislation, which is an important aspect of the implementation process. It is important for

citizens, therefore, to ensure Parliament sticks to the constitutional deadlines for passing transitional legislation.

- *Low level of awareness* – Another obstacle to implementation is lack of awareness on the implications of the Constitution. In order for the Constitution to function properly and deliver visible results, you and other citizens must have a full understanding of the Constitution. The most effective way to ensure citizens understand the Constitution is through civic education.
- *Widespread corruption practices* - Corruption floods all sectors of government and society. The Constitution puts emphasis on transparency and accountability (see Article 10), creates a system of checks and balances, and enhances the separation of power. Citizen participation in governance is another feature that runs through the whole Constitution. All of these mechanisms are useful in the fight against corruption.
- *Capacity of county governments* – Devolution is a new part of the governance system established in the Constitution. Implementing devolution requires a re-orientation from centralized, national planning and governance and moving it closer to the people and communities at the local level. From the experience of local government since independence, capacity has been a challenge in local governance particularly in the areas of revenue generation and service delivery.
- *Passive citizenry* – A major challenge to transition is the inaction of citizens in the affairs of governance. The Constitution requires full participation of the citizens on all aspects of governance processes. However, not all citizens can organize themselves to participate effectively. Minimal participation by citizens means less vigilance in preventing those opposed to the Constitution from undermining its full implementation. ■

1.3. Elections: Representation of the People

This Section...

- Reviews the electoral system outlined in the Constitution as well as key laws that comprise the legal framework of elections
- Discusses the role of the Independent Electoral and Boundaries Commission as the independent body responsible for conducting and overseeing elections
- Highlights the responsibilities of eligible voters to register and vote as an expression of their sovereign power and contribution to the democratic process
- Outlines the six elective positions including their roles and responsibilities, qualifications and system used for electing each position

Genuine democratic elections are an expression of sovereignty, which belongs to the people. This free expression of voters provides the basis for authority and legitimacy in government. The rights of citizens to vote, and be elected, through periodic democratic elections are internationally recognized human rights. Furthermore, genuine democratic elections are central to maintaining peace and stability and establishing a mandate for democratic governance.

The Universal Declaration of Human Rights (Article 21), the International Convention on Civil and Political Rights (Article 25), and the African Charter on

Human and Peoples' Rights (Article 13) provide everyone the right and opportunity to participate in the government and public affairs of his or her own country without discrimination or unreasonable restrictions. A person can exercise this right directly through referenda and standing for elected office, or s/he can exercise it through freely chosen representatives.

What is Your Role in Elections?

The Constitution recognizes the will of the people as the basis for the authority of government. This is determined through genuine periodic elections that guarantee every eligible voter the right and opportunity to participate in free and fair universal suffrage. An election must occur through secret ballot, or equivalent free voting procedures. Furthermore, the results should be accurate, announced in a timely manner, and respected.

Not all of us are in a position to serve as elected leaders. As such, we must periodically participate in a democratic process of elections to agree on representatives to communicate and respond to our needs. This is why your vote is so important during elections. Some of the specific roles you play in elections are to:

- make informed choices in electing leaders of integrity;
- participate in the electoral process (e.g. by registering as a voter and voting during elections);
- promote a peaceful electoral process;
- refrain from activities that breach peace; and
- refrain from engaging in activities that constitute electoral offences;

1.3.1. The Electoral System

Our electoral system is comprised of three formulas for winning elections - (1) absolute majority, (2) plurality, and (3) proportion. Below explains each formula in detail:

Absolute Majority

An absolute majority formula means that a candidate must receive at least 50 per cent plus 1 vote of the total valid votes to win the election. If there is no winner by absolute majority, then there is usually a second round of fresh voting, also known as a 'run-off,' which occurs between top two candidates of the first election. In the run-off election, a candidate does not need an absolute majority to be the winner. Instead, the winner of the run-off election is the candidate that receives the most votes. See below sample election results using the absolute majority formula:

50% plus 1 vote not achieved. Therefore, the two candidates with the most votes go to a run-off. In this case it is Candidates A and D

Candidate	Number of Votes	Per cent of Votes
► Candidate A	5,367,439	43.95%
Candidate B	163,901	1.27%
Candidate C	501,287	3.9%
► Candidate D	3,612,903	28.16%
Candidate E	1,972,283	15.37%
Candidate F	938,103	7.31%
Total Votes:	12,825,915	

Based on the example above, the top two candidates receiving the most votes are Candidate A and Candidate D. Since the candidate who received the highest number of votes (Candidate A) did not reach the required absolute majority of 50% plus 1 vote, Candidate A must compete against Candidate D in a fresh run-off election. The candidate with the most votes will win the run-off election. The absolute majority formula applies to presidential elections in our country where a run-off election occurs if no presidential candidate receives an absolute majority of the total votes cast and more than 25 per cent of valid votes cast in at least half of the 47 counties.

Plurality

Under the plurality formula, the candidate who receives the most valid votes in the election is the winner. Unlike the absolute majority formula, plurality does not require a candidate to receive a total of 50 per cent plus 1 vote to win the election. See below sample election results using the plurality formula:

Candidate B received less than 50% plus one votes, but is still the winner of the election because he/she won the most votes, which is all that is required under the plurality formula.

Candidate	Number of Votes
Candidate A	1,643
Candidate B	3,768
Candidate C	905
Candidate D	78
Candidate E	697
Total Votes:	7,091

No candidate received 50 per cent of the total votes. Candidate B, however, received more votes than the other candidates received and therefore wins the election. The plurality formula applies to elective positions of the National Assembly, Senate, county executive committees, and the county assemblies. Candidates contending for one of these positions must compete in a specific electoral constituency, which can be a ward, constituency, or county depending on the elective position.

Proportional

A proportional election formula is one in which parties win seats in proportion to the number of votes they receive. The proportional formula helps to ensure that elected bodies (i.e. National Assembly, Senate, etc.) reflect the political views of the whole society, and not just the majority.

There are different types of proportional formulas used by countries for their elections. In Kenya, the type of proportional formula used is in the form of 'party

lists,' where political parties nominate candidates to specific lists for special nominated seats in Parliament and the county assemblies. The IEBC determines the allocation of special nominated seats based on the proportional number of elective seats won by each political party in that election (e.g. National Assembly, Senate or 47 county assemblies). Section 3.2 of Chapter 1 covers more on party lists.

Overview of Electoral Formulas

	Absolute Majority	Plurality	Proportional
What does a candidate need to win the election?	Candidate must receive at least 50 per cent plus 1 vote of the total valid votes cast.	Candidate must receive the highest number of votes of any other candidate.	Political party must receive a specific proportion of the total valid votes cast.
How does the formula apply in Kenya?	Election of the President: A presidential candidate must receive 50 per cent plus 1 vote of the total valid votes cast and at least 25 per cent of the total valid votes cast in at least half of the 47 counties to be declared the winner.	Elections for elective members of the National Assembly, Senate, county executive committees and county assemblies; Presidential Run-Off: if no one wins an absolute majority in the presidential election, the run-off election is also determined by the plurality formula	The IEBC determines the allocation of special nominated seats based on the proportional number of elective seats won by each political party in that election (e.g. National Assembly, Senate, and the 47 county assemblies).

1.3.2. Legal Framework on Elections

Constitutional Provisions

Our current Constitution's electoral process is far more comprehensive than previous ones. Notably, it gives the explicit right of each citizen to vote and to compete as an electoral candidate, requires party lists during elections to ensure additional seats for special representation (i.e. women, youth, persons

with disabilities and labour), and reinforces the value and privilege imbedded in the right to vote for leaders through democratic elections.

Chapter Seven of the Constitution outlines the electoral system and process, establishes the Independent Electoral and Boundaries Commission (IEBC), and defines the role of political parties in the electoral process. Meanwhile, Chapters Eight and Nine establish the country's elective positions and qualifications for Parliament and the National Executive respectively. Chapter Eleven creates the elective positions and qualifications for elections to the 47 county executive committees and county assemblies. The Sixth Schedule gives a framework on how to handle elective posts and the electoral management body during the transition period.

Constitutional Principles of the Electoral System

Our nation's electoral system must comply with specific principles outlined in Article 81 of the Constitution. These principles are as follows:

- Freedom of citizens to exercise their political rights under Article 38;
- Not more than two-thirds of the members of elective public bodies shall be of the same gender;
- Fair representation of persons with disabilities;
- Universal suffrage based on the aspiration for fair representation and equality of vote;
- Free, fair and transparent elections, which are conducted by an independent body, with a secret ballot; and
- Elections administered in an impartial, neutral, efficient, accurate and accountable manner in an environment that is free from violence, intimidation, and improper influence;

Overview of Key Provisions on Elections

- *Code of Conduct* – Article 84 of the Constitution stipulates that all candidates and all political parties must comply with the code of

conduct on the electoral process. Readers can find the Electoral Code of Conduct in the Second Schedule of *The Elections Act, 2011*.

Some key provisions of the Code of Conduct include certain principles during the election period, a process for enforcing the code and dealing with violators. The Code also establishes peace committees to reconcile disputes and prevent violence during the election period.

- ***Voter registration*** – Voter registration is the process by which eligible voters register with IEBC for eligibility to vote in an election. According to Article 83 of the Constitution, a person qualifies to register as a voter at elections and referenda if he/she is an adult citizen, is of sound mind, and not convicted of an elections offence during previous five years.

  An eligible voter may only register at one registration centre and the registration process should not prevent eligible citizens from registering. Furthermore, an eligible voter will need to have either a National Identity Card or Kenyan Passport at the time of registration. See Part 2 of *The Elections Act, 2011* for more information on the law regarding voter registration to include the right to vote, the voters' register, and the qualifications a person needs to register.

When Do You Register as a Voter?

The IEBC usually announces a nationwide voter registration period before a general election or referendum. The Commission declared a national voter registration drive from November 2012. Registration will occur 8am-5pm daily including on weekends.

Source: *ABC of Voter Registration*, IEBC (2012)

- ***Recall of a Member of Parliament*** – Article 104 (1) provides the electorate the right to recall a Member of Parliament representing their constituency before the end of their term. According to Article 45 of *The Elections Act, 2011*, a Member may be recalled when he/she is found, after due process of the law, to have violated

Chapter Six of the Constitution (Leadership and Integrity), mismanaged public resources, or been convicted of an offence under *The Elections Act, 2011*.

A recall can only occur 24 months after the election and no later than 12 months immediately before the next general election. A Member of Parliament may have only one recall petition filed against him/her once per term. Furthermore, a person who unsuccessfully contested an election is not eligible, directly or indirectly, to initiate a petition for recall. See Part 4 of *The Elections Act, 2011* for more on the recall of a Member of Parliament.

- ***Independent candidates*** – A person does not have to be a member of a political party in order to be a candidate for one of the six elective positions. According to Article 85 of the Constitution, any person may contest elections as an independent candidate if he/she is not a member of a registered political party and has not been a member for at least three months immediately before Election Day. A person must also satisfy the specific nomination requirements for independent candidates for election to the National Assembly, Senate or to one of the 47 county assemblies. See *The Elections Act, 2011* for more information on independent candidates.
- ***Voting, vote counting and results*** – According to Article 86 of the Constitution, IEBC is responsible for ensuring that the voting method used during every election is simple, accurate, verifiable, secure, accountable, and transparent. Moreover, the Commission is responsible for implementing structures to prevent electoral malpractice and to ensure that each polling station promptly counts and tabulates votes and announces the election results.
- ***Allocation of party list seats*** – The allocation of party list seats uses a proportional system outlined in Article 90 of the Constitution, which stipulates that the nominated seats in the National Assembly, Senate, and the 47 county assemblies are determined through nomination by party lists submitted to IEBC before a general election.

Political parties will submit their lists prior to the general election. The list must be organised in priority order and cannot change after submission. Except in the case of the 16 women-only nominated seats for the Senate, the lists must alternate between male and female candidates and must not contain the name of any presidential or deputy presidential candidate. The party lists for the National Assembly and Senate nominated seats must also reflect the regional and ethnic diversity of the country

Allocation of Party List Seats

"Within thirty days after the declaration of the election results, the Commission shall designate, from each qualifying list, the party representatives on the basis of proportional representation."

- Article 36(4), *The Elections Act, 2011*

Once the election results are official, IEBC bases the allocation of seats on the proportion of the total seats won by candidates of the political party in the National Assembly, Senate and the 47 county assemblies respectively. See Part 3 of *The Elections Act, 2011* and election regulations released by IEBC for more information on how to allocate seats under the party list system.

- *Electoral disputes* – Disputes are common in an electoral process but they should be resolved peacefully. Article 87 of the Constitution requires the quick and just resolution of disputes and allows citizens to petition the Court in dispute of the results within 28 days of their declaration by IEBC. This petition process allows citizens to dispute the results of an election but does not include Presidential elections, which has a different process mentioned in the section on presidential elections later in this chapter. Part Seven of *The Elections Act, 2011*, provides the dispute resolution mechanisms referred to in Article 87 and above.

The Elections Act, 2011

Article 82(1) of the Constitution directs Parliament to enact legislation to provide for key aspects of the electoral process including:

- delimitation of electoral units;
- nomination of candidates;
- continuous registration of citizens as voters;
- supervision of elections and referenda to ensure it is simple, transparent
- conduct of elections that takes into account the needs of special groups; and
- registration of eligible Kenyan diaspora as voters.

The Elections Act, 2011, signed into law on 27 August 2011, is the primary law governing the conduct, oversight, and management of the electoral process. The Act addresses the above mentioned aspects of elections outlined in Article 82 (1) of the Constitution. It addresses other aspects of elections including, but not limited to, the processes to resolve electoral disputes, recall members of Parliament, and nominate candidates. The Act also establishes the Electoral Code of Conduct and outlines electoral offences and the punishments for violators of the Act.

The IEBC Act, 2011

Article 88 of the Constitution establishes IEBC as the independent body responsible for conducting and supervising any election. *The Independent Electoral and Boundaries Commission Act, 2011* (also referred to as The IEBC Act), which became law on 5 July 2011, is intended to assist with establishing and appointing IEBC and to further define the Commission's roles and responsibilities. The IEBC Act, among other things, specifically:

- provides for the operations, powers, responsibilities and functions of IEBC to supervise elections and referenda at the national and county levels;
- establishes legal framework to identify and appoint the Commission's chairperson, members and secretary; and
- prescribes the manner in which the Commission will exercise its powers, responsibilities, and functions.

The IEBC Act addresses the above mentioned aspects of the Commission outlined in Article 88 of the Constitution. It addresses other characteristics of IEBC including, but not limited to, prescribing how the Commission conducts its work, funding mechanisms, and specific procedures for appointing the Commission chairperson and its members. The Act also establishes Code of Conduct for Members and Employees of the Commission. Section 1.3.3 of this Chapter covers the IEBC in detail.

The Political Parties Act, 2011

Political parties are important stakeholders in the electoral process, specifically in terms of candidate nominations, election monitoring, and participating in the election campaign period. Article 92 of the Constitution directs Parliament to enact legislation to provide requirements for political party finance, registration and establish a mechanism to regulate political parties. *The Political Parties Act, 2011*, which became law on 27 August 2011, provides, among other things, the:

- requirements of a political party;
- rights and privileges of a political party;
- establishment of a 'Political Parties Fund' and 'Registrar of Political Parties';
- regulation of party financial reporting related to elections; and
- process of forming coalitions among two or more political parties.

The Political Parties Act also addresses other aspects of the political parties, which include, but are not limited to, specific roles and functions of the Office of the Registrar of Political Parties, regulations on political party funding and assets, and ways in which political parties may form coalitions and merge their structures. The Act also establishes the Political Parties Disputes Tribunal to hear and settle party disputes. Section 1.3.4 of this chapter covers political parties in detail.

The Leadership and Integrity Act, 2012

Leadership and integrity are important qualities to consider when choosing any leader. This is especially important during times of elections when voters must consider the positions and programs of many different candidates all competing for a limited number of elected positions.

Chapter Six of the Constitution provides citizens with specific principles on leadership and integrity. These principles can be useful to voters when judging whether a candidate has the necessary qualities to serve as their representative in government. As mentioned in Section 1.2.6 of this handbook, *The Leadership and Integrity Act, 2012* establishes a Leadership and Integrity Code. This code covers various issues areas such as citizenship, public trust, and financial integrity. It also deals with matters related to the personal behaviour of leaders like impartiality, bullying, and the conduct of private affairs. The Leadership and Integrity Code can be useful to voters when deciding which candidates are likely to serve them best.

The Act also requires candidates for State office to submit to the public specific pieces of personal information. Clause 13(2) of the Act states that candidates for elected State office must submit a self-declaration form to the IEBC. Found in the First Schedule of the Act, the self-declaration form collects several pieces of relevant information from a candidate including marital status, country of birth, and educational qualifications. It also asks a series of yes or no questions on moral and ethical issues. By completing this form, candidates are giving important details about their lives, experiences and interests, which will provide a greater level of transparency on candidates vying for elected office.

1.3.3. Independent Electoral and Boundaries Commission

As discussed above in the overview of *The IEBC Act, 2011* above, IEBC is an independent body responsible for conducting and supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by statute. Other important functions of IEBC include, but are not limited to, the following:

- conduct continuous registration of citizens as voters;
- revise and safely keep the voters register;
- review the names and drawing of electoral boundaries;
- regulate political party candidate nominations for elections and monitor their compliance with the Law;
- settle electoral disputes before the declaration of election results;
- register candidates for election;
- conduct and oversee voter education;
- facilitate the observation, monitoring and evaluation of elections;
- regulate the amount of money spent by parties and candidates in elections;
- Develop and enforce a Code of Conduct for political parties and candidates; and
- Investigate and prosecute electoral offences by candidates, political parties and their agents.

Constitutional Principles

In fulfilling its mandate, IEBC must observe the following constitutional principles:

- freedom of citizens to exercise their political rights;
- not more than two-thirds of the members of elections public bodies must be of the same gender;
- fair representation of persons with disabilities and other persons or groups with special needs;
- universal and equal suffrage based on the aspirations for fair representation and equality of votes;
- free, fair and regular elections; and
- ethical and fair conduct.

Chairperson and Commissioners

The IEBC consists of a chairperson and eight other commission members. All nine are appointed using procedures, which can be found in the First Schedule of *The IEBC Act, 2011*. Appointment of the chairperson and commission members is on a full-time basis for a single term of six years without reappointment. The candidate for chairperson must be qualified to be a Supreme Court Justice, while a member of the Commission must be a citizen, hold a university degree, and have proven professional experience in one of several technical fields (i.e. finance, governance, law, etc.). He/she must also meet specific requirements outlined in Chapter Six of the Constitution.

Commission Secretary

The Secretary of the Commission heads IEBC's secretariat, which is responsible for the Commission's day-to-day administrative functions. The Commission must competitively recruit and appoint the Secretary. This person is directly answerable to the Commission and serves a five-year term with the possibility of a re-appointment by the Commission for an additional five years.

The Secretary must meet the same qualifications as a commission member. He/she must fulfil several important roles on the Commission, including serving as IEBC's chief executive officer, head of the secretariat, accounting officer, and

custodian of all records. In addition to these roles, the Secretary is responsible for the following:

- executing decisions of the Commission;
- assigning duties and supervising all employees;
- facilitating, coordinating and ensuring execution of IEBC's mandate;
- ensuring staff comply with public ethics and values; and
- any other duties as assigned by law and the Commission.

Commission Secretariat

As mentioned above, the secretariat handles the day-to-day administrative functions of IEBC. It is comprised of professional, technical and administrative officers who are appointed by the Commission to carry out its work. The Commission second public officers to assist the secretariat in its work. Not more than two-thirds of IEBC employees may be of the same gender, and the staff must include persons with disabilities and represent regional and other diversity qualities of the country.

1.3.4. Role of Political Parties

A political party is an organization that provides an organized form of participation by people with similar views on political issues and activities. This is especially the case in elective politics, where the party generally aims to gain state power to influence government policy and legislation.

Features of a Political Party

The Constitution provides detailed guidelines and features on the formation of political parties. Article 91(1) of the Constitution states that every political party must:

- have a national character;
- have a democratically elected governing body;
- promote and uphold national unity;
- abide by the democratic principles of good governance and internal democracy through regular, free and fair party elections;
- respect the political rights of all persons, including minorities and marginalized groups;
- respect and promote human rights and fundamental freedoms, and gender equality and equity;
- promote the Constitution and the rule of law; and
- subscribe to and observe political parties code of conduct.

Limits to Political Parties

Political parties are an important feature of the electoral system and the wider democratic process. They also can have a negative effect if their activity is without limits, which is why the Constitution outlines specific limitations on political parties. As such, Article 91(2) stipulates that political parties shall not:

- be founded on a religious, linguistic, racial, ethnic, gender or regional basis or seek to engage in advocacy of hatred on any such basis;
- engage in or encourage violence by, or intimidation of, its members, supporters, opponents or any other person;
- establish or maintain a paramilitary force, militia or similar organisation;
- engage in bribery or other forms of corruption; or
- accept or use public resources to promote its interests or its candidates in elections, except where allowed under the Constitution or by statute.

Rights and Privileges

In addition to those provided for in the Constitution, *The Political Parties Act, 2011* outlines specific rights and privileges for registered political parties. As such, Article 15(1) of the Act states that any registered political party is entitled to:

- hold and address public meetings in any area in the country for the purposes of publicising the political party and recruiting members;
- be provided protection and assistance from the State security agencies for the purposes of facilitating peaceful and orderly meetings; and
- be provided fair opportunity by the State to present the political party's programmes to the public by ensuring equitable access to the State-owned media.

Restrictions on Public Officers

Public officers are limited in their participation in political parties. These limits intend to prevent conflicts of interest and favouritism. As such, Article 12(1) of *The Political Parties Act, 2011* states that a public officer shall not:

- be eligible to be a founding member of a political party (this does not apply to a sitting President, Deputy President, member of Parliament, governor or member of a county assembly);
- be eligible to hold office in a political party;
- engage in political activity that may compromise or be seen to compromise the political neutrality of that person's office; or
- publicly indicate support for or opposition to any political party or candidate in an election.

1.3.5. Elective Positions

Elective positions are those positions that require an election through a secret ballot by registered voters. On Election Day, each registered voter will have to vote for six different elective positions, which are:

(1) The President;

(2) Senator (Senate);

(3) Member of the National Assembly;

(4) One woman representative from each county (National Assembly);

(5) Governor; and

(6) Ward representative (County Assembly).

There are no directly elections for candidates for Deputy President and Deputy Governor. These candidates serve as the running mate of the President and Governor respectively and their name will appear on the ballot next to the President or Governor candidate who nominated them. There is no separate election for the Deputy President and Deputy Governor, but a candidate for either position will win if the candidate who nominated them as a running mate (President or Governor respectively) wins the election. The table below highlights each of the six positions a voter will choose through elections.

Overview of Elective Positions

Level		Elective Position		Body
National	►	President (and Running Mate)	►	National Executive
County	►	Senator	►	Parliament: Senate
County	►	Women Representative	►	Parliament: National Assembly
Constituency	►	Member of National Assembly	►	Parliament: National Assembly
County	►	Governor (and Running Mate)	►	County Executive
Ward	►	Ward Representative	►	County Assembly

Adapted from "A Handbook on Elective Positions," IEBC, 2012.

President

The President is the head of the Executive branch of the National Government and Commander-in-Chief of the Kenya Defence Forces. Below is an overview of the functions of the President, procedures for presidential elections and candidate qualifications as written in the Constitution.

Presidential Authority

The President has specific authority outlined in Article 131 of the Constitution and listed below:

- is the head of State and Government;
- exercises the executive authority of the Republic, with the assistance of the Deputy President and cabinet secretaries;
- is the Commander-in-Chief of the Kenya Defence Forces;
- is the chairperson of the National Security Council; and
- is a symbol of national unity

The President shall also -

- respect, uphold and safeguard the Constitution;
- safeguard the sovereignty of the Republic;
- promote and enhance the unity of the nation;
- promote respect for the diversity of the people and communities of Kenya; and
- ensure the protection of human rights and fundamental freedoms and the rule of law.

Functions of the President

Article 132 of the Constitution outlines the basic functions of the President. They are as follows:

- address the opening of each newly elected Parliament;
- address a special sitting of Parliament at least once every year;
- address the nation annually on all actions taken and progress achieved in realising the national values referred to in Article 10 of the Constitution;
- submit an annual report for debate to the National Assembly on the progress made in fulfilling the nation's international obligations;
- nominate and, with approval of the National Assembly, appoint, and dismiss constitutional Executive Government posts (e.g. cabinet secretaries, attorney-general, ambassadors, etc.);
- chair cabinet meetings and both direct and co-ordinate the functions of ministries and government departments;
- assign responsibility for the implementation and administration of any Act of Parliament to a cabinet secretary so long as it does not conflict with any Act; and
- ensure that the international obligations of the Republic are fulfilled through the actions of the relevant cabinet secretaries.

The President *may* also:

- perform other executive functions provided for in the Constitution or in national legislation;
- establish an office in the public service in accordance with the recommendation of the Public Service Commission;
- receive foreign diplomatic and consular representatives;
- confer honours in the name of the people and the Republic;
- declare a state of emergency in accordance with Article 58 of the Constitution; and
- declare war with approval from Parliament.

Functions of the Deputy President

Article 147 (1) of the Constitution outlines the basic functions of the Deputy President, which are as follows:

- be the principal assistant of the President and be deputised by the President in certain instances to the execute the President's functions;
- perform the functions provided in the Constitution and any other functions the President may assign;
- act as President, subject to the Constitution (*Article 134*), when the President is absent or is temporarily incapacitated, and during any other period that the President decides; and
- must not hold any other State or public office.

Qualifications for President

There are specific requirements in the Constitution that a person must meet to be eligible to be a candidate for President or nominated as a Deputy President by his/her presidential running mate. The qualifications are as follows:

- hold a university degree recognized in Kenya;
- be a citizen by birth;
- qualify to be a member of Parliament;
- be nominated by a political party or, if an independent candidate, be nominated by at least 2,000 voters from at least 24 counties;
- declare a running mate before the election to be Deputy President if he/she wins a Deputy President running mate must meet the same qualifications as a candidate for President;
- does not owe allegiance to a foreign state; and

- must not be a public officer or is not serving in any State or other public office (this does not apply to a sitting President, Deputy President or member of Parliament).

Presidential Elections

A President's term is five years and is limited to only two terms. *The Elections Act, 2011* and election regulations developed by IEBC outline the specific procedures for presidential elections. Article 136 of the Constitution, however, provides general procedures for presidential elections. They are as follows:

- *Candidate nomination* – If there is only one candidate nominated for President, there will be no election, and he/she will be the President. Elections will occur in each constituency throughout the country where there are two or more nominated candidates for President.
- *Absolute majority* – A candidate is the winner of the presidential elections if he/she gets a total national vote of at least 50 per cent plus 1 vote (also known as an 'absolute majority') and at least 25 per cent of total votes cast in at least 24 counties.

THE FORMULA FOR VICTORY: PRESIDENTIAL ELECTION

More than half of all the valid votes cast in the election (50% +1) + At least 25% of the valid votes cast in at least 24 counties = Winner of the presidential election

Adapted from "A Handbook on Elective Positions," IEBC, 2012.

- *Run-off election* – If no candidate gets the required number of votes, then the top-two candidates with the most votes will compete in a second election, known as a run-off. The run-off election for President, according to Article 138(5) of the Constitution, "shall be

held within thirty days after the previous election," and the presidential candidate with most valid votes in the run-off elections is the winner.

THE FORMULA FOR VICTORY: PRESIDENTIAL RUN-OFF ELECTION

Adapted from "A Handbook on Elective Positions," IEBC, 2012.

- *Declaration of results* – The IEBC Chairperson must declare the results of the election and deliver a written notification of the results to the Chief Justice of the Supreme Court and the current President within seven days after the election.

- *Disputing the results* – A person may challenge the official results of the presidential election by petitioning the Supreme Court within seven days after they are officially declared by the Chairperson of IEBC. The Court must review and rule on the petition within 14 days; its decisions is final. If the Court determines the presidential elections are invalid, a fresh election is held within 60 days.

Parliament

Parliament represents the national legislative authority of the Republic. This authority exercises its legislative power through bills it passes. The role of Parliament is to represent the diversity of the nation and the will of the people. Parliament may consider and pass amendments to the Constitution and alter county boundaries. The national legislative authority also must protect the Constitution and promote democratic governance in the country.

The term of Parliament is five years and there is no limit on how many terms a person may serve. *The Elections Act, 2011* and election regulations developed by IEBC provide specific processes for parliamentary elections. Article 99 of the Constitution stipulates specific qualifications and disqualifications for a candidate for Parliament. They are as follows:

Parliament consists of two bodies: (1) National Assembly and (2) Senate. Each parliamentary body has specific roles and a different number of elective and nominative positions, and each has a Speaker who serves as an *ex-officio* member. The following tables provide an overview of the specific role and composition of each body in Parliament as well as the procedures and candidate qualifications for parliamentary elections as written in the Constitution.

Parliament Composition

	NATIONAL ASSEMBLY	SENATE
Elective Positions	290 members, each elected by the registered voters of a single member constituency 47 women each elected by the registered voters of the counties, which comprises a single member constituency	47 members, each elected by the registered voters of the counties each consisting of a single member constituency
Nominative Positions	12 members representing special interests seats (i.e. the youth, persons with disabilities and workers) nominated by parliamentary political parties through party lists according to their proportionate members of the National Assembly One Speaker of the National Assembly who serves as an *ex-officio* member and is selected by the membership of the National Assembly, but may not be chosen from amongst existing National Assembly members	16 women members nominated by political parties 2 members (1 man and 1 woman) nominated by political parties representing the youth 2 members (1 man, and 1 woman) nominated by political parties representing persons with disabilities One Speaker of the Senate who serves as an *ex-officio* member and is selected by the membership of the Senate, but may not be chosen from existing Senators

Articles 97 (1) and 98 (1), *The Constitution of Kenya, 2010*

Roles of Parliament

NATIONAL ASSEMBLY	SENATE
According to the Constitution, the specific role of the National Assembly includes the following: • represent the people of the constituencies and special interests; • deliberate on and resolve issues of concern to the people; • enact legislation in accordance with the Constitution; • determine the allocation of national revenue between the levels of government, as provided in the Constitution; • appropriate funds for expenditure by the national government and other State organs; • exercise oversight over national revenue and its expenditure; • review the conduct in office of the President, the Deputy President and other State officers and initiate the process of removing them from office (impeachment), if necessary; • exercise oversight of State organs; and • approve declarations of war and extends of states of emergency.	According to the Constitution, the specific role of the Senate includes the following: • represent the counties, and serve to protect the interests of the counties and their governments; • participate in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided for in the Constitution; • determine the allocation of national revenue among counties, as provided in the Constitution; • exercise oversight over national revenue allocated to the county governments; and • participate in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with the Constitution.
Article 95, *The Constitution of Kenya, 2010*	Article 96, *The Constitution of Kenya, 2010*

Candidate Qualifications and Disqualifications

QUALIFICATIONS	DISQUALIFICATIONS
According to the Constitution, the qualifications a person must meet to be a parliamentary candidate are as follows: • be a registered voter; • hold a post-secondary qualification; • satisfy moral and ethical requirements set by the Constitution and relevant Acts of Parliament; • either: (1) be nominated by a political party; or (2) be an independent candidate nominated by: a. at least 1,000 registered voters from the constituency where he/she is contesting for the National Assembly; and b. 2,000 registered voters from the county where he/she is contesting for the Senate.	According to the Constitution, the following will disqualify a person from being a parliamentary candidate: • is a State or public officer, other than a member of Parliament; • was a member of the IEBC in the last 5 years before the election date; • has not been a citizen for at least 10 years before the election date; • is a member of a county assembly; • is of unsound mind; • has been declared bankrupt; • has been sentenced to at least 6 months in prison at the time of registering as a candidate or the date of elections; or • has been found to have misused or abused a State or public office.

Article 99, *The Constitution of Kenya, 2010*

County Assembly

The county assemblies serve as the legislative arm of the county government. More information about the county assemblies is available in Chapter 3 of this handbook, which deals with role of the county assemblies in the devolution process. Below is an overview of the specific role and composition of the county assemblies as well as the procedures and candidate qualifications for county assembly elections as written in the Constitution.

Article 193 of the Constitution consists of specific qualifications and disqualifications for a county assembly candidate. They are as follows:

Candidate Qualifications and Disqualifications

QUALIFICATIONS	DISQUALIFICATIONS
According to the Constitution, the qualifications a person must meet to be a County Assembly candidate are as follows: • be a registered voter; • hold a post-secondary school qualification • satisfy the moral and ethical requirements in the Constitution and law; and either: (1) be nominated by a political party; or (2) be an independent candidate nominated by at least 500 registered voters from the county ward where he/she plans to contest elections.	According to the Constitution, the following will disqualify a person from being a County Assembly candidate: • is a State or public officer, other than a member of a county assembly; • was a member of the IEBC in the last 5 years before the election date; • has not been a citizen for at least 10 years before the election date; • is of unsound mind; • has been declared bankrupt; • is serving a prison sentenced of at least 6 months; or • has been found to have misused or abused a State or public office.

Article 193, *The Constitution of Kenya, 2010*

The County Assembly, according to Article 177 (1) of the Constitution, consists of both elective and nominative positions, as well as the Speaker who serves as an *ex-officio* member. The elective and nominative positions, as outlined in Article 177 (1), are as follows:

Elective and Nominative Positions

Elective Positions	Nominative Positions
One ward representative elected from the registered voters of each ward in the county	A number of candidates to ensure that no more than two-thirds of the membership of any county assembly is from the same gender A number of members nominated by political parties representing persons with disabilities A number members nominated by political parties representing the youth

Articles 177 (1), *The Constitution of Kenya, 2010*

Elections

Members of the county assemblies serve five-year terms. Unlike the President, Deputy President and the 47 county governors and their deputy governors, there is no limit on how many terms a person can serve in a county assembly. If there is only one nominated candidate for an elective position in a ward, he/she automatically wins that position. If there are two or more nominated candidates for an elective position in a ward, that position have an election. Registered voters directly elect members of the county assembly by a plurality formula, meaning the candidate with greatest number of votes in the ward is the winner of the election.

Nominations

There are several nominative positions in the county assemblies. These positions include a number of nominated seats for marginalized groups (including Persons with Disabilities and youth), as well as a number of special seats to ensure that no more than two-third of the county assembly's members is from the same gender. These positions are determined through party lists, which political parties submit to IEBC prior to elections. The party lists must rank candidates in order of priority and they cannot change once political parties submit them.

According to Article 7 (2) of *The County Governments Act, 2012*, nominated party lists for county assembly must have candidates that reflect the community and cultural diversity of the county and there must be adequate representation to protect minorities within the county. The actual number of persons nominated to the county assembly will depend on the number of wards determined by the IEBC in each county.

County Governor

A county governor is the leader of the county's executive committee, which is in charge of the executive functions of county government. The executive committee consists of a Governor, Deputy Governor and members appointed by the Governor and approved by the National Assembly. A member of the executive committee can be a member of any county assembly and vice versa.

Qualifications

In order to be a candidate for county governor, a person must hold a recognized university degree and be eligible for election to the county assembly. Each candidate for governor must nominate a qualified person as his/her running mate to be deputy governor in the event he/she wins the governor election. A deputy governor running mate must meet the same qualifications as a governor.

Roles & Responsibilities

A county governor has general roles and responsibilities, which include:

- acting as the head of the county executive;
- being in charge of all county services;
- appointing the county executive committee with the approval of county assembly; and
- appointing town committees and municipal boards for towns and municipalities within the county area.

See Clause 30 (1) of The County Government Act, 2012, for additional functions and responsibilities of a county governor.

Elections

A county governor and deputy governor may only serve a maximum of two five-year terms. Registered voters in each of the 47 counties directly elect their governor. A deputy governor wins election if their running mate for governor wins the election. A plurality formula decides the winner of a county governor election, meaning that the candidate with most votes wins the election. *The Elections Act, 2011* and electoral regulations developed by IEBC outline specific processes for county governor elections.

1.3.6. Election Monitoring and Observation

No election in any country is completely free of mistakes. People run elections and people are prone to making mistakes. Additionally, because elections produce winners and losers – and no one wants to lose – some people may try to interfere with the electoral process to affect the outcome in their favour. Effective election observation and monitoring, therefore, can:

- reduce mistakes and fraud;
- build confidence in the electoral process;

- enhance democratic methods of decision-making; and
- promote peaceful resolution of conflicts.

What is Election Observation?

The IEBC, in its *Voter Education Training Manual*, defines election observation as:

> **"The process of gathering information related to the electoral process in a systematic way and the issuing of reports and evaluations on the conduct of electoral processes based on information gathered by accredited observers without interference in the process itself."**
>
> Source: "Voter Education Training Manual," IEBC (2012)

The manual further states that the purpose of election observation is to:

- detect malpractices in the electoral process;
- provide information that can be used in the improvement of an electoral system;
- highlight pertinent issues unique to certain electoral units;
- influence future policies governing an electoral system; and
- identify instances of voter and human-rights violations.

Primary Activities of Observers

The four main activities of election observation are to:

- observe processes and activities organized during elections;
- collate facts and observations;
- interpret the facts gathered against the laws governing elections as well as basic democratic standards, in order to see whether or not

the elections meet the threshold of credibility as defined by law and accepted by the international community; and

- outline the findings and the interpretation based on them in a document or report that is normally shared with the public.

Specifically, IEBC's *Voter Education Training Manual* further outlines the roles of election observers. They are to:

- promote free and fair elections;
- identify electoral malpractices and bring them to the attention of the electoral body (e.g. IEBC);
- compile and write reports on electoral malpractices in a political electoral unit (e.g. ward, constituency, county, etc.);
- pursue corrective action to electoral malpractices;
- bolster voter confidence;
- act as a deterrent to those interested in undermining the electoral system and process; and
- influence policymaking by IEBC on the unique nature of the electoral process.

Types of Election Observers

Domestic Observers

Representatives from civil society organizations (CSOs) observe voter registration processes in nearly all countries holding democratic elections around the world. These domestic observers act as impartial and independent actors who seek to determine the fairness and transparency of the electoral process, including voter registration, polling, counting of votes, and tabulating election results.

International Observers

The international community is also interested in the conduct of elections in Kenya. A transparent and credible electoral process will be crucial in determining whether or not our general elections meet international standards of free, fair, and transparent democratic elections. This will influence the perception of donor and development partners on the political and electoral processes in our country.

Party and Candidate Agents

Party and candidate agents are representatives chosen by political party or independent candidates to monitor elections on their behalf at a specific polling station on Election Day. Unlike domestic and international observers who must be neutral in their work, party or candidate agents have a partisan interest and support a party or candidate on the ballot in a given ward, constituency or county. They cannot, however, disrupt the polling process or interfere with voters regardless of their partisan interest.

Accreditation, Rights and Privileges

Accreditation Requirements

A foreign mission, political party, independent candidate, or organization must designate a person or group seeking to observe elections. Interested persons and groups should consult with IEBC on any additional requirements for observer accreditation. In order to get access to any polling station on Election Day an observer must have an IEBC-issued accreditation badge, letter of appointment, and a signed oath that he or she will not disclose how a person has voted.

Right and Privileges

According to IEBC's *Voter Education Training Manual,* every officially accredited election observer has specific rights and privileges, including scrutinizing the official list of electors, entering polling stations and places appointed for vote counting, seeking information and clarification from IEBC officials, and entering and leaving a polling station at will. ■

CHAPTER TWO

Citizen Participation

2.1. Understanding Citizen Participation

This Section...

- Outlines the basic principles of citizen participation, including defining the meaning of citizen participation and the source of power for citizens to be active participants in their community
- Discusses the three different types of citizen participation – active, passive and fiscal
- Reviews the importance of citizen participation, and particularly as it relates to civil society and marginalized groups
- Discusses several different forms of citizen participation
- Provides an overview of citizen participation in our country and the benefits of greater participation

2.1.1. What is Citizen Participation?

Citizen participation or 'public participation' is an action or series of actions a citizen takes to participate in the affairs of his or her own government and/or community. When done correctly, citizen participation can bring the government closer to its citizens, produce more transparent public policies and decisions, and enable citizens to hold government leaders more accountable. In order for a

democratic government to function properly, citizens need to participate actively in decision-making, policy formation, and service delivery. Citizens also need to understand their rights and ways to use them effectively.

Participation as a Two-Way Process

Citizen participation is a two-way process where the government provides opportunities for citizen involvement and citizens to choose whether to utilize those opportunities based on their level of concern, interest, and desired outcome. It is in the interest of governments, therefore, to encourage active participation from citizens and to ensure that citizens are educated on public issues so they can make valuable contributions to their decision-making process.

Participation as a Group

Citizen participation is in its most potent form when citizens act together and utilize their collective voice to impact government policies and decisions regarding their community. As a group, citizens can more effectively articulate their concerns and build consensus on solutions to issues in a way they would otherwise be unable to do on their own. Discussed later on in this chapter is the process of organizing a citizen group and ways in which citizens can work with other like-minded citizens on a particular set of issues.

2.1.2. Roots of Citizen Power

Citizen participation is a categorical term for 'citizen power', or the power granted to citizens within their community or state. Article One of the Constitution grants each Kenyan citizen sovereign power. It purposely assigns specific citizen powers to all Kenyans and specific powers to those traditionally marginalized from decision-making in their communities and government. Also outlined in the Constitution are a series of responsibilities, which compliment citizen powers. It is through the coordinated and shared use of citizen power that citizens can directly affect their local governments.

Types of Citizen Power

There are three basic types of citizen power: passive, fiscal and physical. These powers form the base of citizen participation in democratic systems and can be used individually or as part of a group.

- ***Passive citizen power*** relates to participation that does not require direct physical action, like petition signing, writing letters, voting and releasing publications;
- ***Physical citizen power*** requires direct physical participation like protesting, volunteering, working for government or boycotting; and
- ***Fiscal citizen power*** *relates* to financial action like taxes, donations, endorsement spending, and consumption.

2.1.3. Importance of Citizen Participation

The impact of citizen participation is not just limited to those who participate. The actions a few citizens can have a large impact on an entire community. Therefore, the more citizens participate, the more their government and community will feel the impact of their actions.

Crucial Role of Civic Duty

The foundation of every democracy is the duty of its citizens to participate in the governance process. Citizen participation in governance is a right guaranteed under a country's democratic system through its constitution and laws. Citizens have an equal level of responsibility under a democratic system. This is especially the case with a devolved government system, like in Kenya, which incorporates citizens in their government's decision-making process. Therefore, citizens in a democratic system, have a civic duty to be active participants in local government and community affairs.

Benefits of Citizen Participation

There are numerous benefits from active citizen participation. Examples of some of these benefits include:

- public officials who are better able to understand and respond to the needs of their community;
- increased credibility between public officials and the community on important issues and services;
- citizens who feel they belong and trust in their community and local government;
- alternative views from a greater diversity of citizens contributing to the public debate on issues and decision-making;
- citizens who are better informed on projects and proposals undertaken by the government;
- community concerns that are more focused and prioritized for public officials to address;
- citizens' diverse and unique skill sets are revealed to government officials and the community;
- a public that is more aware of community concerns and can thus more effectively judge government responses;
- increased capacity of citizens to contribute to future public debates and decisions impacting their community; and
- citizens who feel they have greater ownership over government decisions when public officials consult them.

Minority and Marginalized Groups

Marginalized groups (women, youth, minorities, etc.) do not always have access to the necessary resources and local government positions for the public to hear their voices. Citizen participation is one way to ensure minority and

marginalized groups have a voice and contribute meaningfully to public debate on local issues and resource allocation. Article 56 of the Constitution provides for representation of minority and marginalized groups in our country's governance and other spheres of life. It grants them access to special education, economic and employment opportunities. The implications of these new forms of representation and opportunities for marginalized and minority groups are that there is a greater chance that government policies and services will incorporate their concerns.

Civil Society

Citizen participation makes important contributions to the development of civil society, which is a crucial stakeholder in the governance process. Civil society consists of active non-state actors concerned about specific issues or focused on accomplishing specific objectives. Civil society organizations, while sometimes partners with the government, serve as independent stakeholders within the community and thus are critical channels for citizen participation.

It is important that all levels of government ensure proper linkages between government decision-making and service delivery and the civil society. The benefit of these linkages is that civil society organizations can provide alternative views on such things as the community impact from government decisions and policy implementation. Moreover, civil society has deeper roots in local communities than governments, and as such, is a good resource for governments to learn more about specific community needs.

2.1.4. Forms of Citizen Participation

One of the most common and best-understood forms of citizen participation is voting in elections or referenda. When citizens lined up outside polling stations on August 4, 2010, they were exercising their citizen power by voting in a referendum to either accept or reject the *Constitution of Kenya, 2010*. Voting, however, is not the only form of public participation. Other ways for citizens to participate include:

- searching for information in newspapers, magazines, and reference materials to judge its accuracy;
- participating in a public or private political discussion or debate on issues;
- convincing a member of Parliament to vote a certain way for an issue important to you;
- signing a petition on a desired government action or policy;
- writing letters or emails to elected officials to express your opinion on an issue of concern;
- contributing money to a political party or candidate you would like to see elected into government;
- attending public meetings or rallies to learn, discuss or support an issue of concern to you;
- campaigning for a political candidate or issue that will be voted on by the public;
- demonstrating a position on an issue, cause or government policy through marches, boycotts, sit-ins, or other forms of peaceful protest;
- vying as a candidate for elected office;
- volunteering in the community or holding State office;
- serving the country through military or other service to the country; or
- conducting peaceful civil disobedience of laws or policies seen as unjust and taking the consequences for such actions.

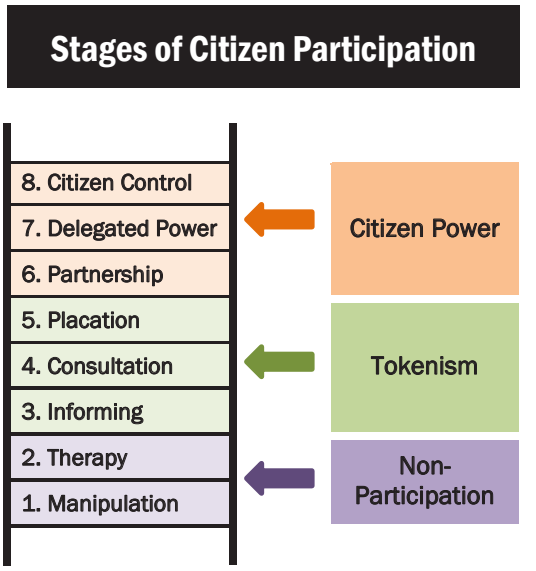
Stages of Citizen Participation

If you separate citizen participation into specific stages, it is possible to visualize where you stand in terms of your level of participation in relation to the governance process. There are eight different stages of citizen participation in government, which fall into three specific categories. Citizens may use these

stages as a way of visualising their own level of participation in governance. Doing so can help them set goals to reach a more effective stage of participation. Below is a description of each stage of citizen participation in governance and their corresponding categories.

Non-Participation (Stages 1 and 2)

The lowest stages of citizen participation are *(1) Manipulation* and *(2) Therapy*. The primary objective of these two stages is to simply educate or cure citizens of their concerns or anxieties through such things as arranged public events. Such participation seeks to manipulate or give therapy to citizens so they think they are participating in governance when in fact they have no role in the process of decision-making or planning - their involvement occurs only after decisions or plans are already completed. This is why the Manipulation and Therapy stages fit into the "Non-Participation" category.



Arnstein, Sherry R. "A Ladder of Citizen Participation," *Journal of the American Planning Association*, Vol. 35, No. 4, July 1969, pp. 216-224.

Tokenism (Stages 3, 4 and 5)

The lower-middle stages of citizen participation are *(3) Informing* and *(4) Consultation*. The primary objective of the power holder in these two stages is to explain to, and hear from, citizens on policies and decisions. While the goal is for these power holders to inform citizens and get their input on policies and issues, these actions will ultimately not affect the outcome of the government's decision-making or planning process. This is why the Informing and Consultation stages of citizen participation fit into the category of "Tokenism."

The upper-middle stage of citizen participation, *(5) Placation*, is a higher level of tokenism because citizens have the ability to not just hear and be heard by power holders, but also to provide advice during the deliberation process. Still with placation, the power holders keep the authority to make the final decisions, and as such, citizen participation in this stage is more symbolic than meaningful.

Citizen Power (Stages 6, 7 and 8)

The highest stages of citizen participation reveal increasing degrees of "citizen power," particularly in the decision-making process of government. The lowest of these stages is *(6) Partnership*, which means that citizens can negotiate with power holders and thus decision-making responsibilities are shared. The two highest stages of citizen participation are *(7) Delegated Power* and *(8) Citizen Control*. These two stages reflect increasing levels of citizen power, particularly as it relates to citizens having greater power over the decision-making process through such things as more seats on a committee or even full managerial power of a project.

2.1.5. Citizen Participation in Kenya

Citizen participation in Kenya finds its early roots in development projects that benefitted local communities. Throughout the post-colonial era, the country took legislative steps to provide ways for citizens to be active participants in the governing of their country. Most of these ways, however, were limited to local authorities and the implementation of laws incorporating citizen participation did not reach their full potential because citizens did not fully understand their rights or embrace the opportunity. Finally, local authorities struggled to promote local funding and planning processes to citizens, like the Local Authority Service Delivery Action Plan (LASDAP) and the Constituencies Development Fund (CDF).

The Constitution on Participation

The Constitution provides a strong legal framework for citizen participation. The challenge will be to educate as many citizens as possible on these new

rights and responsibilities and to provide them with tools to make valuable contributions to the governance process. This is why constitutional reforms, the establishment of county governments, and support for the full implementation of the Constitution are so important to the future of the nation. Below are specific references to citizen participation in the Constitution.

Sovereign Power of Citizens

Citizen participation is a core part of the Constitution. It starts with Article 1, which states that all sovereign power is vested to the people of Kenya. The exercise of this power occurs at the national and county levels either directly through citizen participation or indirectly through democratically elected representatives. Examples of direct citizen participation include:

- contesting for elections
- registering to vote
- becoming informed on issues and policies
- scrutinizing candidates and political parties
- maintaining peace during elections
- debating issues
- attending community or civic meetings for sensitization
- being members of private, public and voluntary organizations
- paying taxes
- protesting
- petitioning the government

More on Citizen Participation

Please see Section 3.2.4 of this handbook to learn more about citizen participation at the county level of government.

- recalling elected members of Parliament and county assemblies

Citizens can also indirectly participate by electing leaders to represent them in national and county governments. The use of citizens' sovereign power, therefore, serves as a cornerstone of Kenya's Constitutional authority and its democratically elected government.

Participation in Kenya's Governance

The Constitution makes citizen participation a central part of Kenya's governance. Article 10(2)(a) states that "participation of the people" is one of our country's values and principles of governance. Article 232(1)(d), meanwhile, instructs public servants to include citizens "in the process of policy making."

Participation in Devolved Government

In terms of direct constitutional references to citizen participation in devolved government, Article 174(c) says that an object of devolution is to "*enhance the participation of people in the exercise of the powers of the State and in making decisions affecting them*." Article 184(1)(c) further requires that mechanisms "for participation by residents" be included in national legislation to urban areas and cities governance and management.

Participation in the Legislatures

The Constitution provides citizens with the right to participate in the decision-making process and other duties of the national and county legislative bodies. Specifically, Articles 118(1)(b) and 196(1)(b) directs the national and county legislatures respectively to "facilitate public participation" in its work. Additionally, Article 119(1) states that citizens have the "right to petition Parliament to consider any matter within its authority," meaning that Kenyans can request Parliament to take up issues important to them.

Citizens' Access to Information

The Constitution supports access to information by all citizens, which is a key ingredient to effective and active citizen participation. Kenya's national and

county legislative bodies, for instance, are directed by the Constitution to conduct their work in an open and transparent manner; Articles 118 (1) (a) and 196(1)(a) specifically direct Parliament and the county assemblies respectively to hold public meetings and conduct their work in the full view of all citizens. Another reference to public information sharing is in Article 201 (1) (a), which states that there be "openness and accountability" and public participation when it comes to public financial matters.

In addition to information gathered from the official business of the legislatures and public finances, Article 35 of the Constitution stipulates that citizens have the right to access all information held by the State or public officials. Public servants must also share information with citizens. Article 232 (1) (f) states that the values and principles of public service include "transparency and provision to the public of timely and accurate information". ■

Case Study: A Legacy of Citizen Participation in Kenya

Kenya icon and Nobel Laureate Wangari Maathai transformed the simple of idea of planting a tree to preserve the environment into a national and international movement for environmental activism and the promotion of human rights, empowerment of women, social responsibility and the restoration of democratic principles in Kenyan society.

Wangari Maathai's story teaches us that citizen participation is not for the privileged few or educated elite in Kenya. It also teaches us that citizens with the simplest of ideas can make a monumental impact on their community.

"I found myself not just a woman wanting to plant trees to provide food and firewood. I found myself a woman fighting for justice, a woman fighting for equity."

— Wangari Maathai during a 2005 speech at Northwestern University, USA

The actions of Maathai's Green Belt Movement attracted the attention of tens of thousands of women across Kenya who joined to make changes in their community. The Movement created a national network of more than 6,000 village nurseries and its more than 50,000 women members have planted about 20 million trees in total. Their actions as a group had a far-reaching impact on not only the future of Kenya's environment, but also the role of women in social and political change and the protection of human rights for all Kenyans.

2.2. Activating Citizen Power

This Section...

- Provides an overview of the roadmap to successful citizen participation
- Outlines the strategic planning process and tactics to engage the community and local leaders
- Offers best practices on ways citizens can identify community needs
- Details the process for assembling a citizen group and how to use that group to impact your community
- Gives basic components of partnering and forming networks and the benefits and disadvantages of both

2.2.1. Getting Started

Now that you have a better understanding of citizen participation, it is time to harness your citizen power in a practical way that affects your community and local government. This starts with organising yourself, conducting research and planning what it is you want to do.

Roadmap to Successful Participation

The roadmap to successful citizen participation in local governance and community affairs can fit into six steps:

1. Identify community needs
2. Assemble a citizen group

3. Form partnerships and networks
4. Utilize tools and tactics
5. Keep the community informed
6. Seek feedback

You should first identify the needs or issues of your community and then assemble a group of citizens to address those needs or issues. Once you form a group, it should seek to work with other likeminded groups through partnerships and networks. This will improve the overall impact of your group's work. Finally, your group and its partners should utilize tools and tactics to engage the community and then follow up with citizens to keep them informed of the progress and/or challenges they face.

Importance of Strategic Planning

Planning is important to the success of any citizen-driven effort. A plan sets the direction of your path to success. Without a plan, you and your group will most likely waste valuable resources. The many unexpected events and challenges that happen during the course of your work will also easily distract you. By planning and budgeting, you and your team will be able to identify short-term goals, calculate the costs, and create a series of clear steps that lead to your ultimate goals. A plan will also help you establish indicators so that you can measure the progress of your work and make adjustments, if necessary.

In order for your plan to be effective, it will need to be flexible, have a central theme or vision, specific objectives and messages. Your plan should guide you through the various decisions you need to make during your work such as setting fundraising goals, the number of volunteers you will need, and the type of communication strategy you will use.

The tactics used in the course of your work (i.e. door-knocking campaigns, rallies, petition initiatives, etc.) should fit into your plan's objectives and overall strategy. It is important that you and your other group members spend time to develop a strategy and activities that support your objectives. Finally, all

members of your group should understand your plan and work hard to implement it.

Three Basic Questions

A strategic plan usually answers three basic questions:

- **What must you do in order to achieve your goals (desired change)?**

  Identifying ways to put your mission into action will help clarify your mission, the vision behind it and the overall goals driving your efforts.

- **Whom does your mission serve?**

  It is important to consider the population you want to target (i.e. youth, workers, etc.). Your plan will be likely to succeed if you are able to customize it to the needs of your target population.

- **How will you successfully achieve your goals (desired change)?**

  Once you have a clear understanding of the purpose of your mission and target population, you must then outline the details of your objectives and the tactics you will use to achieve them.

Components of a S.M.A.R.T. Objective

When creating objectives, you should apply the following S.M.A.R.T. criteria:

- ✓ **Specific:** Is the objective specific?
- ✓ **Measurable:** Is the objective measurable?
- ✓ **Achievable:** Is the objective realistic?
- ✓ **Relevant:** Will the objective support the overall strategy or plan?
- ✓ **Time-bound:** Does the objective have a defined timeline?

Components of a Strategic Plan

1. Vision

Your vision defines how your group will change over time in pursuit of your mission. A vision is how your organization views itself over an extended period of time, or what you envision your organization standing for or representing through its mission and actions.

2. Mission

A mission describes the major reason why you are doing your work – the overall impact/desired change that you hope to achieve from your activities and efforts. A mission generally describes why a group exists and what it does to achieve its vision. A mission can be used to outline an individual's or a group's efforts in the future and the ways in which they will work together to accomplish a specific task. A mission statement details the type of work that will be done and how it will affect the target population.

Test Your Strategy

Once you have developed your strategy, see if it can pass the below test to ensure it is something you can actually implement. Answer the following questions:

- ✓ Are you comfortable with this strategy?
- ✓ Can you really get the resources to implement it?
- ✓ Have you tested the strategy on those closest to you?
- ✓ Does your strategy fit available data and research?
- ✓ Is your strategy easily understood and conveyed to others in your group?

3. Values

Values are core beliefs shared among the stakeholders of a community or group. They drive priorities and provide a framework for decision-making. A group will often refer to its values by making tough decisions on future strategy and goals.

4. Strategy

A strategy is a roadmap for how you or your group will go about achieving the mission. A strategy must be realistic, and as such should be able to answer six basic questions:

1. Who?
2. What?
3. When?
4. Where?
5. Why?
6. How?

5. Tactics

Tactics are the tools you will use to implement your strategy. They can range from specific functions or events like rallies or meetings with members of Parliament or specific communication tactics like SMS campaigns or Facebook communication. When selecting tactics the first rule is to make sure that they complement your strategy. Always remember that you have limited resources so it is important that the tactics actually help, and not cripple, your strategic plan.

6. Budget

The success of your strategic plan will depend on the resources available to you and/or your group. Therefore, you should develop a written budget to reflect the cost of your strategic plan. Your budget should outline the cost of each activity, item or service you will need to implement the tactics in your plan.

Sample Template Budget		
Item	Estimated Cost	Date Needed
1.		
2.		
3.		
4.		
5.		
Total Cost:		

7. Implementation Timeline

An implementation timeline includes specific dates, resources needed; person(s) assigned to specific tasks, as well as anticipated external events, policy changes and other important events that may affect the strategy (i.e. elections, public holidays, leadership changes, etc.) This timeline should be available to all group members and partners. A simple example of an implementation timeline is below:

Sample Implementation Timeline

Date	Activity/Task	Assigned	Resources Needed	Cost
2-Oct	Organize a baraza in town	Moses	Flyers and airtime for mobilization; refreshments; venue; tents; chairs; list of speakers; agenda; hand outs	2500 KES
7-Oct	Print results of community survey (100 copies)	Said	Final survey results on flash disk; paper; toner; borrowed printer and computer; stapler	3700 KES
12-Oct	Update Facebook page	Moses	Borrowed computer and Internet USB; airtime credit; photos and report on 2-Oct baraza; copy of community survey results	300 KES
13-Oct	Meeting with local MP and District officer	Said/ Moses	Printed copy of community survey; report from 2-Oct barazas; transport money; airtime for follow-up calls	200 KES
17-Oct	Monthly group meeting (Up to 20 pax)	Moses	Airtime for mobilization; printed agenda; copies of community survey; borrowed computer and printer; toner; paper; refreshments; venue (Said's house?)	500 KES

Before you begin scheduling events on your timeline though, take time to think through each detail of each activity. You will need to assess what you need to accomplish for the activity to be a success, including such things as preparation time, mobilization and resources.

For instance, if you plan to conduct small community meetings in each of the villages comprising your community, you should ask yourself the following questions:

- How many villages do I need to visit to achieve my objective?
- Where should I begin these meetings and where do I need to finish them?
- Am I including the necessary travel time between villages?
- How many residents am I trying to meet in each village?
- Will I hold a meeting with community, tribal or political leaders in certain villages? If so, who are they?
- Will I need to bring printed materials like information brochures and posters? If so, when will I need to print them? How will they be delivered?
- Are there other likeminded individuals and/or groups doing similar meetings in the areas I am targeting? If so, when are the meetings and where?
- Are there any other important events (i.e. religious services, community meetings, holidays, etc.) that will affect my visit?

You can begin placing each activity on the timeline once the details of each activity are clear. This timeline will help you ensure that your strategic plan stays on track. It will hold you and/or your group accountable for the plans committed to in your strategic plan and will help with measuring short-term progress and goals.

8. Monitoring & Evaluation

Monitoring involves observing and collecting information, and keeping track of every step taken in the process of implementing your plan. Monitoring will help answer questions from supporters and the community about your activities. Evaluation, meanwhile, is the use of information collected during monitoring in order to make judgments about the progress and success of a project. Evaluation is an assessment of how well a project or an activity is doing with regard to the fulfilment of objectives and the achievement of the desired impact. Information obtained can be used to make changes and improvements based on lessons that are learned during the implementation of activities.

What Should Be Monitored and Evaluated?

You can apply monitoring and evaluation to various elements of your project. The following components are examples of things that you can monitor and evaluate within your project:

- *Team members* – It can be useful to learn about the ways in which different people involved in the implementation of the project feel about the progress, successes or challenges associated with the project. What evidence of an overall impact have they observed? What recommendations do they have? What specific aspects of the project are working or not working?
- *Target population* – It is also useful to consult those who are directly affected by the work you are doing in order to collect valuable feedback about things that are working or not working within your project's implementation. They are also best equipped to provide on-going assessments of the project's progress.
- *Budget* – It is vital to monitor the financial and other resources used throughout the implementation of your activities. For instance, you might ask is if the project's resources are being used according to the strategic plan? Can you anticipate overspending? Have you remained within the boundaries of funds allocated to specific line items within your budget?

- *Implementation of activities* – It is crucial that you monitor the implementation of your activities to ensure that they are taking place in a timely and efficient manner. Monitoring implementation of your activities will ensure they are going according to plan, completed on time, and there are enough resources available to accomplish all of the planned activities.
- *Quality of activities* – You can use monitoring and evaluation to ensure that your activities are meeting your desired standard of quality and reflect the values of your organization.

2.2.2. Identify Community Needs

Knowing the specific needs of your target community will guide your activities to ensure they are effective. Understanding the common concerns in your target community will help you to do things like build support for an issue, recruit volunteers for a project or identify partners for collaboration.

Consultations can occur in many ways and modified to meet resource and/or time constraints. Specific methods like questionnaires and surveys are helpful, but informal meetings such as in women chamas, community events (e.g. weddings, funerals, cultural dances, etc.) and open-ended discussions (e.g. village debates, barazas, etc.) are more useful. Open citizen forums are the most effective, especially when they include common *mwananchi* and community leaders. Below are specific ways you can identify community needs.

Local Stakeholder Interviews

You should meet with important local leaders who have a stake in what you are doing or are planning to do. They are often the best people to know about the needs of the community. These stakeholders may be heads of community groups, local religious and tribal leaders, and public officials serving the community. Ask these stakeholders to identify important issues in their

community, solutions to these issues, and to describe previous efforts to address them.

Also, use the opportunity to identify additional persons or sources of information that will be helpful in your research. Understanding how stakeholders talk about issues is just as important as knowing what those issues are, so take careful notes about the language and terms they use during their interview. Finally, use these meetings to build relationships that you can use in the future.

Background Research

The demographic and political make up of a community is critical to assessing the public's list of issues and concerns. You should start by using open government sources on economic and social statistics. Also, search for the latest available census data, which will provide a demographic make-up of the community. Identify possible marginalized or minority groups that might have different or more pressing needs.

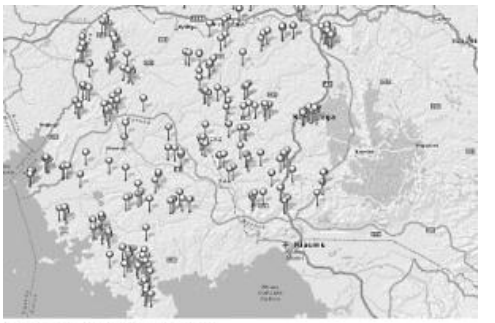
Furthermore, you should identify existing government policies or actions taken by local authorities on key community issues, including budgets and regulations. Finally, always locate the boundaries of the community you are studying. If no official boundary exists, utilize any existing data to understand the physical boundaries that defines the community.

Websites for Statistical Research

- *Kenya National Bureau of Statistics (KNBS)*
  http://www.knbs.or.ke
- *United National Development Program (UNDP)*
  http://hdrstats.undp.org
- *World Health Organization (WHO)*
  http://www.who.int/gho/countries/ken/en/
- *The World Bank*
  http://data.worldbank.org/country/kenya

Community Mapping

One way of organizing your research is through a process known as 'community mapping'. This is a way of visualizing and linking the information you collect to places and groups of people in your community. A basic map will include representation data by geography or location. Putting this kind of information into a visual map will help you to better identify trends and patterns within your community. These patterns will be useful later when determining where to conduct your work and when prioritizing your limited resources.



SOURCE: http://maps.worldbank.org

An example of The World Bank mapping its projects in Kenya

Polling & Questionnaires

A public opinion survey or questionnaire is a very useful research tool to identify community needs, particularly if no other research exists on the community. This tool can be very formal with statistical accuracy, but such a poll will cost money and require other scarce resources that may not be available to you.

A simple survey that measures public attitudes on local issues and concerns can be handed out along a street, from market stalls, in churches and mosques, posted out (if mailing addresses are available), or inserted into local newspapers. Make sure that your questions are direct and simple enough for people to understand. You should also provide proper instructions on how to fill out the survey and, if mailed or handed out, how to return it.

You should sort and record the data you collect from the survey to identify patterns in the community on common concerns and issues. For instance, youth might be more concerned about a specific set of issues than elders in a community might. Such a pattern is useful, especially if you are targeting youth.

Sample Community Questionnaire									
Name:					Date:				
Survey Location:					County:				
Rank your answer based using the following scale of 1 to 4 (1= Very Important/Satisfied, 2 = Somewhat Important/Satisfied; 3 = Somewhat Not Important/Satisfied; 4 = Not Important/Satisfied)									
Topic/Issue		How important is this to you...				How satisfied are you with...			
1.	Access to local health facilities	1	2	3	4	1	2	3	4
2.	Availability of goods in the market	1	2	3	4	1	2	3	4
3.	Response time of police to emergencies	1	2	3	4	1	2	3	4
4.	Government officials listening to your needs	1	2	3	4	1	2	3	4
5.	If you could change one thing about the services in your community, what would it be?								

Focus Groups

A very effective method of identifying community needs is to gather a group of people from the local community around a table to discuss current issues, why they matter so much, their causes, previous attempts at resolving them, and possible future solutions. This exercise, known as 'focus grouping', will provide a lot of information, including citizen needs, specific language and terms citizens use when talking about their concerns, and the challenges and possibilities for introducing alternative solutions to community problems.

Conducting a Focus Group

Below are key steps in the focus group process:

1. Define the purpose;
2. Establish a timeline;
3. Identify the participants;
4. Generate questions;
5. Develop a discussion guide;
6. Select a facilitator;
7. Choose the location;
8. Conduct the focus group; and
9. Analyse and summarize the results.

Source: Blank, Glen. "Conducting a Focus Group." Lehigh University, http://www.cse.lehigh.edu/~glennb/mm /FocusGroups.htm (Accessed July 2012).

Focus groups are a good way to identify opinions, but not always the facts behind issues. Do not assume the focus group results are factual. It is important to check statements before taking action. Finally, it is usually a good idea to audio or video record a focus group. This will help later when referring back to the information gained from the discussion. Be sure though that the participants give their consent before any recordings are made.

Discussion Guide

You should develop a discussion guide prior to hold your focus group. This guide should include specific questions and direct the facilitator to lead the participants into specific topic areas. It is important that the facilitator remain neutral yet curious throughout the focus group. You will have limited time, which means you will only be able to ask a few different questions. Keep your questions open-ended like the ones below in order to encourage greater discussion.

Question 1: What do think are some of the concerns of this community?

Note: You might want to use a checklist to ensure that important topics are covered (e.g. health, education, safety). If towards the end of this part of the discussion no one has brought up a certain topic then introduce it into the discussion.

Question 2: What do you think are some of the strengths of this community? With what aspects of your community are you satisfied?

Note: Be careful to keep the discussion on track. You will find that some of the participants want to talk about their concerns immediately.

Question 3: What do you value about your community? What aspects of your community do you consider important?

Note: This is asking participants what makes them proud of their community (this is not necessarily the same as a strength of a community but rather what the individual's value for themselves and their families).

Source: Sharma, Aparna, et al. "A Community Needs Assessment Guide," Loyola University, 2000.

2.2.3. Assemble a Citizen Group

Once you identify the needs of citizens within a community, it is then time to organize with others who share these concerns. As discussed earlier, citizen power is your power to affect change and governance within your community. This power grows when citizens join to pursue their objectives together.

Structure and Organization

It is very important that your group structure itself to reflect its mission and vision. The structure you choose will directly affect how your group conducts its activities, so you need to put some serious thought into it. For instance, some groups may choose to have a less formal leadership structure that is consultative and decentralized. This will help to ensure flexible decision-making and will use fewer resources to maintain. Other groups, however, may want a more formal and centralized structure with tiered leadership to ensure effective governance of a strong and diverse membership. Such a structure will also help your group deliver on ambitious goals and objectives.

Key Function Areas

As you develop your group structure, you should consider several functions, including:

- *Executive leadership* – Executive leadership in a group usually includes a chairperson and/or president and other key leadership positions like a treasurer to manage finances and a secretary to record the actions and plans of the group. You may create other positions as part of your group's executive leadership, but these are the basic ones.
- *Decision-making* – A group structure should facilitate decision-making that is efficient and representative of its members. This could be as formal as an executive committee could or as informal as the creation of a rule to make group decisions based on the votes of those who attend meetings. Either way, it is important to have

clear rules on decision-making from the outset to ensure the fullest participation of members.

- *Resource mobilization* – Every group operates with some level of limited resources. These resources can be financial or physical (i.e. donated office space, computers, vehicles etc.). A member or committee should have the responsibility of mobilizing the resources for the group. They should handle how the group budgets and monitors its spending. A treasurer should be responsible to account for the usage of the group's resources.

- *Membership recruitment and retention* – A member or committee should lead the group's membership recruitment efforts. This will include explaining the benefits of joining to non-members, including the impact they will make on their community if they join. This person or committee should also be in charge of the membership process. Good membership relations are critical as they create greater internal communications and ensure that all members remain engaged in the work of the citizen group.

- *Fundraising and development* – A member or committee should be responsible for fundraising and developing strategies to mobilize resources among the group's members and supporters. The people in charge of fundraising should not be afraid of being told "no." Rejection will occur when asking others to donate to your cause. so

What to Achieve During Your First Meeting

Use the following tips to help you have a successful first group meeting:

- ✓ **Balance formality with informality so the group has an opportunity to interact and begin building internal networks and relationships;**
- ✓ **Ensure that everyone knows the date, time and place of the meeting;**
- ✓ **Request members to make a list of their aims for the group before the meeting (i.e. an agenda)**
- ✓ **Make sure that one person chairs the meeting and another one takes notes.**

you need people who are persistent and understand the overall goal of fundraising.

- *Issues development and planning* – A member or committee should be in charge of developing the issues and policies the group would like to address through their work. This function area also includes developing the group's strategic plan and complimentary activities. A group planning process usually works best by forming a committee and then assigning each member a specific task or responsibility in the planning process.

Internal Democracy

It is important that your group leaders follow democratic practices so that all members share in decision-making and planning. This will ensure that group members have ownership over group actions and are thus motivated to be more active. Some of these key internal democratic practices include:

- *Choosing leaders* – The process of choosing leaders for your group can be done indirectly through representatives or directly through elections open to all members. The formality of the process depends on the group. What is most important though, is that group members have a say in how leaders are chosen.
- *Making decisions* – The process for decision-making should be clear and transparent. It should also differ depending on importance. For instance, it is not practical for member to vote on everything. Doing so will slow down the group's work and weaken its leadership. Instead, your group can delegate decision-making on every day matters to the leadership, while a larger group of members can either vote or provide input on decisions that are more important.
- *Balancing the power of leaders* - Leaders may no longer relate to group members or might make decisions that do not reflect the original agreed mission and vision of the group. As such, there should be a process to check the power of group leaders. This

includes ways in which members may seek information and review the performance and decisions that group leaders make.

- *Dispute resolution* – A group of people will not agree on everything. In fact, it is possible that group members will have often have different views or positions on specific issues. Without a clear process for resolving internal disputes, the group may not accomplish its goals and objectives. Therefore, it is a good practice to have a committee to resolve disputes or a process for members to bring an issue or dispute before the general membership for a vote.

Constitution

As your group grows, the members may decide that they want it to be more formal. In such a case, your group may want to have a constitution to outline the way it will operate and govern itself. A constitution should be simple and effective, and should give a framework for managing the group's ordinary and extraordinary operations. It should also manage activities such as decision-making, coordination and supervision of organizational duties. Ultimately, a constitution should serve the interests of the group's leadership and general membership.

Elements of a Constitution

There are key elements that define a constitution. To avoid confusion, it is important that each element is clear and concise. This will help prevent disagreement among members and the leadership over its meaning. These key elements are as follows:

1. *Name of the organization* – This section should contain the full name of your group. Make sure the name is simple and represents the group's membership well.
2. *Aims and objectives* – This section should clearly state the group's aims and objectives. Be reasonable when defining them.

3. *Powers and functions* – This section should address specific functions of your group. You should assign responsibilities to specific leadership positions and internal structures to ensure the smooth operation of the organization.
4. *Membership and recruitment* – This section should outline who can join as a member and how. It is important that the requirements of membership are not too difficult and do not discriminate.
5. *Meetings* – This section of the constitution should address several different kinds of meetings, including general meetings, executive committee meetings, annual general meetings, and extraordinary meetings.
6. *Executive committee* – This section deals with the executive leadership and management of your group. It should cover the number of members on the committee, their selection process, duties and responsibilities and the term of service.
7. *Finances* – If you decide to seek funding from donors, it will be important that this section of the constitution is clear about how to raise, use and manage the group's money.
8. *Amendments* – It is important that your group's constitution is written to be a living document; meaning that it can be changed and updated as the group progresses. It is equally important to have the appropriate procedures in place to protect the constitution from careless and unnecessary amendments.
9. *Adoption* – The final stage of the constitution-making process is its adoption as the legal framework governing the group. Your group's leadership should call a meeting of everyone who has been involved to date and give everyone a chance to raise any questions.

2.2.4. Form Networks & Partnerships

A network or partnership develops among community groups based on a set of common issues, concerns or principles. A network or partnership may have different degrees of formality, but its primary function is to expand the reach and influence of its individual member groups. A network or partnership may support common objectives. Member groups may even pool their resources to advance a common cause or sustained effort in the community.

When building your network or partnership it is important that member groups have a clear understanding of its purpose, goals and objectives from the very beginning. This will help members make collective decisions more easily. You can formalise your relationships with other groups through a written agreement such as a Memorandum of Understanding (MoU), which all partners should sign. The MoU can either have an end date or be an open agreement among partners. By building a network or partnership among groups within your community, can help individual groups overcome five key challenges:

1. *Lack of information* (little knowledge about local resources and the legitimate and efficient use of them);
2. *Lack of political influence* (little credibility with local authorities and support services such as finance agencies and legal services);
3. *Lack of political credibility* (small scale of influence with which to negotiate and poor knowledge of the rules and regulations surrounding your issue);
4. *Lack of administrative experience* (no history with the bureaucracy of the newly devolved government); and
5. *Lack of collective confidence* (few joint experiences on which to establish mutual trust and from which to take calculated risks).

Creating a network or partnership will also benefit the others. It develops community capacity, builds a support network for everyone and promotes independence.

How to Build a Community Network

Creating a network requires planning and a clear set of ideas and objectives in order to attract other groups. Below are some best practices to help you should you decide to form a network:

- *Community awareness* – talk to other local groups or even an NGO working in the area to support your citizen participation efforts and find out what steps need to be taken to attract support for your group's work in the community.
- *Form an association* – see if a loose or formal association of other committees, businesses or local leaders might strengthen both your cause and theirs. Remind these colleagues that community members who agree to form such an association are stronger because they can undertake joint actions together.
- *Management formalisation* – agree exactly what legal and financial activities are required in order for you to be officially recognized as a local interest group, and over what timeframe. ■

2.3. Citizen Tools for Participation

This Section...

- Provides specific tools to empower citizens to be active participants in their community
- Highlights the use of community forums and Barazas to get direct feedback from the grassroots level
- Provides the role of advisory committees and roundtable discussions as a means of further developing solutions to community issues
- Highlights ways in which to organize and conduct successful public rallies to reach large audiences and how to use public petitions to engage government officials and institutions on specific issues or policies
- Discusses the role of lobbying and advocacy as a way to engage specific policy-makers in the local governance process

2.3.1. Community Forums

The best way to gain the support of a community or to engage them on important issues is to hold open forums where local citizens can learn more information and provide feedback. Such community forums can deepen community ownership because they feel genuinely consulted on their views. Used correctly, these forums will build trust. This method of identifying community needs takes time and dedication, but community forums are vitally important to finding consensus among different factions of community members. They also serve as an invaluable recruiting tool for future advocacy efforts.

One type of community forum is a citizens' parliament, or *Bunge La Mwananchi*, which is a platform for communities to discuss, share and exchange information on matters that affect them. These citizens' parliaments can be specific to youth, men and women. In making your stories and issues known throughout your community, it may be helpful for you to use a *Bunge La Mwananchi* to assist you. They can help you better understand what the government plans to do about an issue or problem. The citizen parliaments are also an opportunity for you to share information with the community on your research, planned activities, ideas, and success stories. Through these forums, others will know about your efforts to solve community problems and they will attract the attention of elected officials.

Steps for a Successful Community Forum

Below are specific steps you can take to help you have a successful community forum:

Step 1: Identify the objective and topic of the forum

Step 2: Find a location that is easily accessible

Step 3: Invite a neutral moderator to facilitate discussion

Step 4: Develop printed flyers to publicise the event

Step 5: Contact as many people as possible in the community to attend

Step 6: Advertise the forum on radio, and in public spaces, newspapers and places of worship

Step 7: Arrange for refreshments, seating and public address system

Step 8: Make sure all participants register so you can have their contact information for follow-up later on

Step 9: Have a list of questions and discussion topics ready

Step 10: Listen closely to citizen responses (but keep them on topic)

Step 11: Analyse and summarize the data collected from the discussion

Step 12: Utilize the data when developing policies or solutions to issues

A Word of Caution: Keep the Politics Out

Politicians and other officials may view your community forum as an opportunity to advance their own political agenda. This may prevent your community forum from reaching its intended goal, which is discussing community needs on a specific topic or issue in a non-political setting. Moreover, having politicians as the focus of your event may give the impression that you and/or your organization have your own political agenda or are promoting a particular candidate or elected official.

Therefore, avoid including political speeches by elected officials in your community forum. Politely explain to those who insist they must speak that this is not the time for politics, but for the community to learn about issues and express their concerns. It is important that you exercise control over your forum by informing all stakeholder ahead of time about your intentions and the importance of keeping the community forum a non-partisan venue for community residents to express genuine concerns and needs.

2.3.2. Town Halls & Public Consultations

All levels of government must offer the public opportunities to provide input into the policies, programs and projects that have an impact on citizen's lives. It is your responsibility to monitor the media newspapers, FM Radio, websites, social media sites (e.g. Facebook and Twitter, etc.) to stay up to date with the on-going public consultations and town hall meetings that are being held in your community. You can also use these communication methods to spread your own message. Ask town hall organisers to add you to their distribution lists for media advisories or email invitations, if they are available. Once you are aware of the meetings, it is important that you attend regularly and use the

Be Prepared Before You Speak

Remember you must be prepared to clearly explain the issue you are there to talk about, explain what solutions you are seeking and show how strong your community support is!

opportunity to listen closely and speak up when time is made available for public comment.

Benefit of Town Halls & Public Consultations

Attending town halls and public consultations will help you in a number of ways. Below are some key benefits to such public forums:

- Understand the issues better by hearing both sides of the issue as well as the explanations by public officials and/or community leaders about what they are doing to resolve the issue;
- Identify what government officials are responsible for administering policies and programs in that area;
- Provide you with access to a network of other stakeholders if you introduce yourself and exchange contact information;
- Give you an opportunity to give input on your issues either as an oral presentation or in writing;
- Give you an opportunity to follow up on previous commitments, ask officials to explain what they are doing to address your issues or why they have not moved to solve the issue.

2.3.3. Barazas

Barazas are an excellent platform for engaging the community - more of a social affair where the community gathers to raise awareness, share knowledge, ideas, network (form relationships). Barazas are ways to bring large and diverse group of people together at a short notice. Common types of barazas are residents' meetings in a given area to discuss issues that affect them. There are many residents' association meetings that take place in estates on weekly or monthly basis.

When organising a Baraza it is important that you identify topics for discussion in advance. This is important because otherwise you may have too

many issues up for discussion without a clear direction or resolution to any of them. Therefore, cover one or two topics at a time. When planning a baraza, you should also decide if there would be any refreshments served and how you will pay for them. Since barazas take the form of social gatherings it makes sense to arrange some sort of entertainment. Using cultural and traditional forms of entertainment will promote greater social cohesion among communities.

2.3.4. Roundtable Discussions

Well-informed and well-organised groups of marginalised people are able to take on the individuals, institutions and policies that have traditionally excluded or restricted them. One way of doing this is through roundtable discussions.

Benefits of Roundtables

A roundtable gives you an opportunity to engage community stakeholders on an issue or a series of issues. Other benefits of roundtables are to:

- build alliances with sympathetic partners and possible champions;
- use the parliamentary system for single-issue campaigns; and
- negotiate effectively with a well-prepared position;

Tips for a Successful Roundtable

Below are several tips and best practices to assist you in holding a successful roundtable:

- travel to hold events where people are rather than having them come to you;
- use humour, simple stories and local language to help communicate complex issues;
- facilitators should behave like a member of the community rather than an outsider lecturing the community;

- choose an appropriate time of the day, week, and even time of the year when scheduling your presentations and meetings – avoid the harvesting season, midday meetings when people are at work or devotional days or religious observances;
- presentations, language and content must differ with the type of audience (i.e. youth, elders, business professionals);
- engage constantly the community through a series of on-going activities with the same audience;
- involve relevant government offices – their early involvement improves their later listening and acting;

2.3.5. Advisory Committees

An advisory committee can be a formal or informal group brought together by a larger body or single official to discuss issues, form a consensus, and then offer recommendations. The idea behind an advisory committee is to engage non-state actors in the process of public policy making and to ensure that public officials and government policy making bodies have direct access to key stakeholders at the community level.

Such committees can be given a very narrow mandate (i.e. identify development opportunities and challenges in a specific part of town) or have a wide range of areas and topics it will advise on. The purpose of these committees will determine their composition. Often elected officials, and even local assemblies, will utilize multiple advisory committees to provide guidance and input on a wide variety of issues (e.g. public safety, business, environment, health care, etc.). As such, members will come from specific areas of expertise.

Be sure to get to know the different members of advisory committees and try to attend their meetings. If possible, even try to make a presentation on issues important to you. An advisory committee's recommendations can influence on the policymaking and service delivery process, so do not under estimate their value to your own efforts. Furthermore, try to get on their email list

and other contact lists so you can get copies of their reports and/or recommendations.

2.3.6. Public Rallies

Many of the tools discussed so far focus on two-way dialogues with other stakeholders and government officials. Sometimes two-way dialogues do not make progress, or important officials will not speak with you about your issue. At this point, you have several options to raise awareness in the community. The most effective way is a peaceful public rally that can bring together your supporters in one place. A successful rally is one held in a venue that is easy to access, has facilities to allow the participants to hear speeches from specific spokespeople, and is of an appropriate size to accommodate the number of people who you expect to attend.

Steps to Organize an Effective Rally

- ✓ Choose a venue. Ensure that the venue has facilities to support large crowds (e.g. washrooms, parking, etc.)
- ✓ Choose a date and time that is convenient and does not conflict with devotional times, religious or public holidays when people may be with their families.
- ✓ Work with local authorities and/or police to obtain permits and permissions. Always inform the relevant authorities for security and emergency considerations.
- ✓ Draft an agenda for the rally (e.g. arrival time, speeches, facilitators, etc.)
- ✓ Invite spokespeople to address the participants. Have an idea of what it is they are going to say and give them clear time limits.
- ✓ Draft speaking notes that outline the issue, propose solutions, and identify those responsible for regulating or resolving the issue.

- ✓ Make sure members of the community are involved and can participate in the public speeches.
- ✓ Consider inviting entertainers or making sure there is music available.
- ✓ Provide access to water and food. If you cannot afford to buy it then make sure to be in an area where people can purchase it themselves.
- ✓ Publicize the rally well in advance. Use flyers, radio, newspapers and other forms of media. Also, consider using social media like Facebook and Twitter.
- ✓ Use your networks and partners to invite supporters.
- ✓ Invite relevant State or public officials. Be sure they understand though that you are not holding a political rally and that issues or topics discussed should be the focus of their comments.
- ✓ Invite the media to cover the rally and give interviews to explain your objectives. Also, if possible, draft a press release or fact sheet on the topic or purpose of the meeting.
- ✓ Ensure the speeches and presentations stress peaceful and respectful messages. Again, stay away from politics or other issues that may cause division in the crowd. Do not tolerate hate speech or tribalism.
- ✓ Collect contact information from as many participants as possible through a sign-in sheet. This will be valuable data when you conduct follow-up activities in the community later on.
- ✓ Make sure to leave the venue clean and free of rubbish after the rally.

2.3.7. Public Petitions

Public petitions can be an important avenue for those who wish to influence public officials. A well-documented and supported petition will always have persuasive influence in all areas of public policy-making. Petitions to other targets (non-government) can also help to form or shape public opinion and

ultimately bring about change. A successful petition will complement a strategy that includes direct lobbying, letter writing and media exposure.

Writing a Petition

Writing a petition is not as difficult as you might think. For great campaign results, however, you should consider a number of factors including your target audience, proper research, clear communication, and promoting your petition..

Identify Your Target

The first task of effective petition writing is to identify your target audience. The list below provides some possible targets:

- National and county governments, parliaments, and politicians
- Political parties, presidents, prime ministers, governors, senators, and ambassadors
- Media organisations
- Neighbourhood authorities
- Business associations

Know the Legal Rules of a Petition

It is very important that you research what the official rules are around the legalities of submitting a petition to your target. You need to follow rules about:

- ✓ **How many signatures are needed to qualify for submission**
- ✓ **How those signatures must be verified**
- ✓ **How and where you submit the petition**
- ✓ **What legal weight the petition may hold**

Text of the Petition

A petition should begin with a request, followed by well-researched reasons for making the request. Each petition should provide a description of relevant circumstances and links to documentation or facts that support that description. Moreover, a petition should contain information that suggests its request is feasible. Do not fill your petition with information or requests that have no clear connection to the main message. Read over your petition carefully. Make sure it

describes the situation, suggests what is needed, and explains why it is needed. Below is a template petition to help you get started.

Template Petition

Petition to [Enter Here the Action You are Petitioning For]	
Petition summary and background	[Enter here the background of and reasons for this petition]
Action petitioned for	We, the undersigned are concerned citizens who urge our leaders to act now to [Enter here the action item(s) for which you are petitioning]

Printed Name	Signature	Address	Comment	Date

How to Promote Your Petition

How you promote your petition will have a critical influence on the outcome of your campaign. If you think it is appropriate, you can do an online petition instead of a physical paper petition. To promote your petition, you can spread the message to friends, family, social networks and through the media. You should also raise your issues in forums and discussion groups, and email as all of your contacts.

2.3.8. Lobbying & Advocacy

Lobbying is the practice of engaging with governments, often from outside, to support change, request information or to hold officials accountable for their commitments.

Identify & Engage Key Stakeholders

- Identify individuals who have the greatest influence on the decision-making process - it is important to locate contact information for key stakeholders during your initial research.
- Develop a target list of names from community leaders, elected politicians, government officials, and other civil society groups.
- Stay in touch informally with these contacts so that you develop a relationship of trust with them before you have to approach them.

After communicating with your list of contacts, identify influential individuals who support or are interested in your point of view. Even if your supporters do not have decision-making power directly linked to your issue of interest, they may be able to help you by exerting influence on the key decision-makers. Elected representatives are not the only ones who hold influence. Be sure to develop relationships with staff that work with elected officials.

Key Principles of Lobbying

- Be accurate and honest. If you do not know the answer to a question, then say so.
- Be brief and to the point. For written communication, try to limit yourself to a page or less.
- Have a specific goal and state it clearly.
- Recognize your opposition. Be aware of the main arguments for and against your position.

- Demonstrate to decision-makers how your interest is relevant to their work.
- Consider the decision-maker's perspective. Try to find a way to make your position align with their values and interests.
- Follow up by sending a thank you note or making a phone call.
- Recognize and appreciate any effort made toward supporting your cause.

Tips for Successful Lobbying

Important meetings and negotiations require preparation. Practical considerations make a difference such as where to hold a meeting – for example, people usually feel more comfortable meeting an official on their own home area rather than going to an office in the city/town. Additionally, hold a group session prior to the meeting so you and your group can prepare talking points and questions. This will help make you and your group more confident in the meeting. Key questions to cover in this kind of preparatory group session are:

- What is the group's reason for attending the meeting?
- Who among the group is going to attend the meeting?
- What are the issues the group should raise?
- What questions should the group ask and who will ask them?
- What solutions have you already identified?
- When and how do you propose that your issue should be resolved?
- What should/can the person you are meeting with do to help?
- What are the next steps you want to agree on with the official before leaving the meeting?

Modes of Communication

You can communicate directly through face-to-face meetings, phone calls or email. You can also communicate indirectly by placing your message in a newspaper article or advertisement, or in a speech at a public event. If the person you are pursuing indicated a preferred way of communicating with them, you should always respect his or her preference and communicate using the desired means.

Prepare a One-Pager

Before you approach officials or elected members for a meeting, it is useful to prepare a one-page document that will have your contact information, outline the issue, list important facts, and propose solutions. Your one-pager should be clear, concise, brief, and to the point. Your name and contact information should be noticeable on the page, and you should provide website links for more information. Bring this one-pager to any meeting you attend.

Letter Writing & Email Campaigns

Mass letter or email campaigns can be effective if you can get enough people to submit letters, postcards or emails. If you have enough submissions, your audience will be more aware of your issue, and the State or public official you are targeting will understand its relevance to many people as a result.

Phone Calls

If meeting a State or public official in person is difficult, you can try to arrange a phone call. Once you have the call scheduled, try to deliver your one-pager before it begins. Make sure that you are on time for the call and are prepared to deliver your message in a clear, concise and convincing manner. Make sure you end the call by asking what the official intends to do about your issue. Be sure to ask if you can provide him/her with any further information and thank them for their time and consideration - tell them you will be following up.

In-Person Meetings

Face-to-face meetings are the most effective way to engage officials and elected members in a dialogue. People are more likely to acknowledge your issue and then take some sort of action when you are directly in their presence. When you schedule an in-person meeting, be respectful of the person's schedule by being on time. Do not expect to spend hours discussing your issue, so be prepared to deliver your presentation quickly and clearly. Always thank the official for taking the time to meet with you and, if present, thank his/her staff as you leave.

Follow-up & Relationship Building

Always send a thank you note when you have a phone call or face-to-face meeting. Include in your note a summary of the discussion, the next steps you expect to see, and include any further information they may have requested during your meeting. Hand written notes are best, but sometimes an email is the fastest way to follow up. Be sure to ask the person how s/he would prefer you follow up with them. Continue to stay in touch after your meeting. It is good to send updates to this person at regular intervals on the issue(s) you discussed with them. ■

CHAPTER THREE

Fundamentals of Devolution

3.1. Understanding Devolution

This Section...

- Defines the technical aspects of devolution and role of sovereign power in devolved government
- Provides an overview of the objectives and principles of Kenya's devolved governance model
- Outlines distinctive features of Kenya's devolution process
- Highlights the mechanisms to ensure that devolution occurs as smoothly and efficiently as possible

3.1.1. What is Devolution?

Devolution involves the transfer of functions, resources and power to the sub-national levels of government. The devolved levels of government assume full responsibility and accountability for specific functions given to them by the people through the constitution or law. The purpose of devolution is to promote participatory democracy and sustainable development for the benefit of all citizens. In short, devolution seeks to bring the government closer to the people.

Role of Sovereign Power

Sovereign power is the supreme and absolute power that governs an independent state. It is also the source of all specific political power in a state. Examples of activities that use sovereign power include making and enforcing laws, signing treaties and trading with foreign countries, waging war and peace and imposing and collecting taxes.

The Constitution guides how Kenyans uses their sovereign power. According to the Constitution, all sovereign power belongs to the people of Kenya and they may exercise this power “either directly or through democratically elected representatives." The institutions used in the Constitution to exercise the peoples’ sovereign power include Parliament (National Assembly and Senate), county legislative assemblies, the National Executive, county executive committees, the Judiciary, and independent tribunals.

3.1.2. Decentralisation

Decentralisation is a process that distributes sovereign power from a central authority to different levels of government. The idea behind decentralization is that local communities and governments can govern themselves and deliver services better than a central government. The Constitution distributes the sovereign power at Kenya’s national level to Parliament, Executive, Judiciary, independent commissions and tribunals. At the county level, the Constitution distributes sovereign power to the 47 country assemblies and county executive committees.

Dimensions of Decentralisation

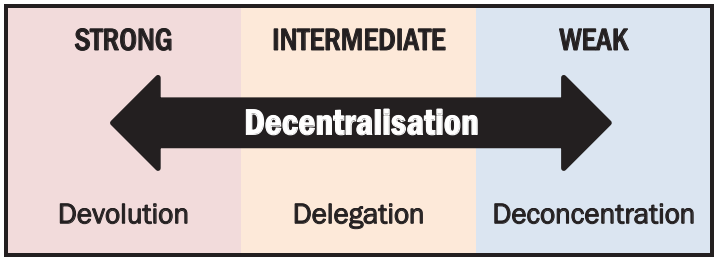
There are three primary areas of decentralisation, which can occur either independently or jointly. They are as follows:

- *Administrative decentralization* refers to the decentralisation of the decision-making institutions (i.e. Parliament, county assemblies, etc.) and procedures that support their operations.
- *Fiscal decentralization* refers to the decentralisation of the number and type of services delivered and the revenues assigned to each level of government.
- *Political decentralization* refers to the transfer of political decision-making authority and accountability mechanisms available to the levels of government.

Types of Decentralisation

There are three primary types of decentralisation – (1) de-concentration, (2) delegation and (3) devolution. Each type has specific characteristics explained below:

- *Deconcentration* refers to assigning responsibilities from a national authority to its own sub-national branches in other regions of the country. These branches are to some extent supervised by the national authority. This is the weakest type of decentralisation.



- *Delegation* is the form of decentralisation that is in the middle between de-concentration and devolution. It refers to the transfer of some of the national authority's power to semi-independent sub-national and/or non-government authorities. These semi-independent authorities have some freedom to decide how to carry out their responsibilities, but they are ultimately accountable to the national authority.
- *Devolution* refers to the near-complete transfer of power from a national authority to near-autonomous sub-national authorities. This is the strongest type of decentralisation. Under devolution, local citizens are empowered to elect their own leaders and make decisions on local matters affecting their communities.

3.1.3. Objects & Principles of Devolution

The Constitution transfers many national administrative, fiscal and political powers through devolution to 47 county governments. The powers granted in Chapter 11 of the Constitution enables counties to govern themselves, including raising revenue, making laws and electing local leaders. These powers, however, should observe specific principles and objectives outlined in the Constitution.

Principles of Devolved Government

Article 175 of the Constitution lists and describe the principles of devolution in Kenya. Some of these include:

- County governments shall be based on democratic principles and the separation of powers;
- County governments shall have reliable resources so they can govern and deliver services effectively; and
- The county government's representative bodies shall be comprised of not more than two-thirds of the same gender.

Objectives of Devolution

Article 174 of the Constitution outlines nine specific objectives of Kenya's devolved government. Some of these include:

- Promoting democratic and accountable exercise of power;
- Fostering national unity by recognizing diversity;
- Giving power of self-governance to the people and enhancing their participation in the exercise of the powers of state and in making decisions affecting them;
- Recognizing the right of communities to manage their own affairs and development;

- Protecting and promoting the interests and rights of minorities and marginalized communities;
- Promoting socio-economic development and providing easily and accessible services throughout Kenya;
- Ensuring equitable sharing of national and local resource throughout Kenya;
- Facilitating further decentralization of State organs; their functions and services from the Capital of Kenya; and
- Enhancing checks, balances and the separation of powers

3.1.4. Distinct Features of Kenya's Devolution

Kenya's devolution model has several distinctive features. The most prominent of these features are:

- ***Level of government*** – The sovereign power of the people is exercised at both the national and county levels of government. These two levels have distinct functions, roles and responsibilities. As much as they are distinct, the two levels of government are also connected to each other. According to Article 6 (2) of the Constitution, the two levels shall be interdependent and conduct their affairs through consultation and cooperation.
- ***Revenue distribution*** – Revenue sharing and generation are other distinct features of the Kenya model. Chapter 12 of the Constitution declares that the two levels of government shall divide equitably the revenue raised nationally. Article 203 (2) of the Constitution stipulates that at least 15 per cent will be allocated to the 47 county governments. Article 202 (2) provides a possibility of county government receiving additional allocations conditionally or unconditionally.

- *Decision-making organs* – The Constitution places national political power in the hands of the National Executive and Parliament. At the county level, the 47 county assemblies and county executive committees exercise the political power.

Positives & Negatives

There are several possible positive and negative effects of Kenya's embrace of devolved governance. They are as follows:

- *Positive effects* - The devolution process could increase employment, improve national economic growth, provide greater service delivery, develop marginalized/underdeveloped areas, and make the distribution of resources more equitable.
- *Negative effects* - Devolution could increase local corruption and clan-ism, national disunity, excessive taxation and regulation. Additionally, local areas with poor resources may be disadvantaged from other counties and may require more resources from the national government.

3.1.5 Transition Mechanisms

Kenya's transition to a devolved system of government requires changes to existing institutions and legislation passed by Parliament to empower new ones. Article 261 (1) of the Constitution stipulates that Parliament pass key legislation within a specific period to ensure a smooth transition to devolved government. The table below lists the legislation as mandated in Article 261 (2) and the Fifth Schedule (*Legislation to be enacted by Parliament*) of the Constitution in order to make devolution function on the national and county levels of government.

Transitional Legislation for Devolved Government		
Location in the Constitution	**Deadline**	**Status**
Speaker of a county assembly *(Article 178)*	Aug 27, 2011	Enacted
Urban areas and cities *(Article 183)*	Aug 27, 2011	Enacted
Support for county governments *(Article 190)*	Aug 27, 2013	Enacted
Removal of a county governor *(Article 181)*	Feb 27, 2012	Enacted
Vacation of office of member of county assembly *(Article 194)*	Feb 27, 2012	Enacted
Public participation and county assembly powers, privileges and immunities *(Article 196)*	Aug 27, 2013	Enacted
County Assembly gender balance and diversity *(Article 197)*	Aug 27, 2013	Enacted
Legislation to effect Chapter 11 *(Article 200; Sec. 15 of the Sixth Schedule)*	Feb 27, 2012	Enacted

Source: Adapted from the Fifth Schedule (*Legislation to be enacted by Parliament*) and Article 261(1), *The Kenya Constitution 2010*

The Transition to Devolved Government Act, 2012

The Transition to Devolved Government Act, 2012 (No. 1 of 2012), which commenced on 9 March 2012, provides a framework for the transition to devolved government in accordance with section 15 of the Sixth Schedule to the Constitution. Specifically, the Act provides for:

- A legal and institutional framework for a coordinated transition to the devolved system of government while ensuring continued delivery of services to citizens;
- The transfer of powers and functions to the national and county governments;
- Mechanisms to ensure that the Commission for the Implementation of the Constitution (CIC) performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively;
- Policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of assets and liabilities, human resources, government and local authorities, and pensions and other staff benefits of employees of the any other connected matters;
- Closure and transfer of public records; and
- The mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.

Transition Authority

The Act establishes the Transition Authority, which is comprised of a full-time chairperson and eight other full-time members appointed by the President, in consultation with the Prime Minister and with the approval of the National Assembly (see *First Schedule* of the Act). The Transition Authority also includes Principal Secretaries from the Office of the President and the ministries

responsible for devolution, public service, finance, planning and justice. The Attorney General is also a member of the Authority but serves in an *ex-officio* capacity.

The Authority must elect a vice chairperson from among its members within seven days of their appointment - s/he must be of opposite gender of the Chairperson. The Authority must also recruit and appoint a Secretary responsible for the Authority's day-to-day operations.

Authority Functions

The primary function of the Authority, as mandated in Article 7(1) of *The Transition to Devolved Government Act, 2012*, is to facilitate and co-ordinate the transition of the devolved system of government as provided for under the Constitution. Additional functions include:

- Submitting a progress report on the transition process to the President, Prime Minister, CIC and CRA;
- Publishing progress reports in the Gazette;
- Auditing the assets and debts of local authorities;
- Conducting an inventory of staff for both the central and local authorities;
- Conducting civic education of the public on county governments;
- Developing county profiles;
- Determining which town qualifies as a city and municipality;
- Assisting new county officials to develop their budgets;
- Building the capacity of county officers in their new duties;
- Transferring the functions originally done by national government authorities; and
- Evaluating the performance of county governments and reporting their findings to CIC and CRA.

Guiding Principles

The Transition to Devolved Government Act, 2012 (Article 14) directs the Transition Authority to adhere to the following principles in the conduct of its work. They are to:

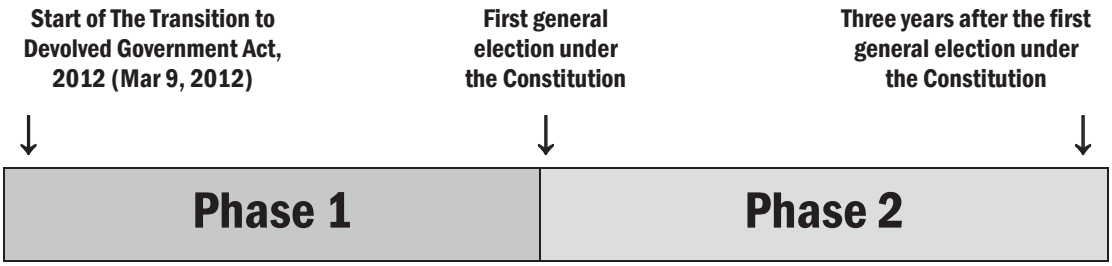
- Perform its functions subject to the Constitution;
- Be accountable to the people of Kenya and ensure their participation in the transition process;
- Facilitate the transition to the devolved system of government in a transparent, objective and fair manner;
- Promote and sustain fair procedures in its operations;
- Ensure technical and administrative competence for the better carrying out of its functions;
- Be non-partisan and non-political in its operations; and
- Apply and promote national values and principles provided under the Constitution.

Transitional Plan

The Transition Authority is responsible for issuing guidelines for implementation plans created by various State or public entities. These plans must be submitted to the Authority and CIC for review and monitoring. Each of the 47 county governments must submit their transition plans to the Authority and CIC following the first elections under the 2010 Constitution. The CIC is responsible for monitoring the progress of transition plans and may request progress reports. Also following the first elections under the Constitution, the transition plans must be shared with the National and County Government Co-ordinating Summit and the Council of County Governors (more on these two bodies below).

Transition Period

The transition period refers to the period between the date of the start of the *Devolved Government Act, 2012* and three years after the first elections under the Constitution of Kenya 2010. The transition period occurs two phases.



The first phase, Phase 1, is the period between commencement of *The Transition to Devolved Government Act, 2012* (on March 9, 2012) and the date of the first election under the 2010 Constitution. The second phase, Phase 2, is the period between the date of the first elections under the 2010 Constitution and three years afterward. *Fourth Schedule* of the Act outlines the specific activities of Phase One and Phase Two of the transition period. ■

3.2. Units of Devolved Government

This Section...

- Describes the detailed characteristics of the devolved government system, including the different governing institutions, their responsibilities and authority
- Highlights changes and design of the newly-devolved government units at the county and sub-county levels, including the role of such new bodies as the county assemblies and both municipal and city boards
- Outlines the roles citizens will be play in the new devolved government including both constitutional and legal requirements for citizens to participate in local decision-making processes

3.2.1. National Government

The National Government is composed of Parliament (National assembly and Senate), the Executive (President and Deputy President, Cabinet Secretaries, Public Prosecutions Director, and Attorney General), and the Judiciary. The National Government plays an important role in implementing and ensuring the success of the transition to devolved government. For example, the Constitution directs the National Government to pass legislation and implement policies to support the devolution process. Furthermore, the Constitution emphasizes National Government support to county governments in Article 190 (1), which states "Parliament shall by legislation ensure that county governments have adequate support to enable them perform their functions."

National Executive

The Constitution assigns executive power at the national level of government to the National Executive, which is comprised of the President, Deputy President, Cabinet Secretaries, Attorney-General and the Director of Public Prosecution. The Executive, especially the President, is required to meet with county governors regularly to discuss matters that affect devolved government operations. The National and County Government Coordinating Summit is the coordinating body for these meetings.

Parliament

Article 94 of the Constitution assigns national legislative authority of the country to the 'Parliament of Kenya'. The National Assembly and the Senate comprise Parliament, whose legislative powers include representing the will of the people and exercising their sovereign power. Parliament also has the power to amend the Constitution as needed.

Learn More About Parliament of Kenya

You can learn more about the qualifications for and the responsibilities and composition of Parliament (National Assembly and Senate) in Section 1.3.5 of this handbook.

National Assembly

The National Assembly represents the special interests of you and the others living in your constituency through its elected and nominated members. The National Assembly deals with the legislative matters of the national government and is responsible for ensuring the passage of all laws related to, and facilitating the creation of, county governments and the transition process outlined in the Constitution. The National Assembly has further functions of oversight over State institutions and the National Executive. It also plays a role in determining the allocation of national revenue between the national and county governments.

Senate

The Senate represents the counties and serves to protect their interests at the national level of government. As such, the Senate is a very important to the devolution process. Specifically, in terms of the counties, the Senate's role is to:

- Represent and protect the interests of counties and their governments;
- Participate in law-making function of Parliament through the consideration, debate and approval of legislation concerning counties; and
- Determine and conduct oversight over national revenue allocated to county governments.

National Legislation on the Counties

- **National legislation that affects the counties must pass through both the Senate and the National Assembly.**
- **Legislation that does not affect the counties only has to pass through the National Assembly.**

– Article 110, *Constitution of Kenya, 2010*

Judiciary

Chapter Ten of the Constitution describes the responsibilities for the Judiciary with regard to promoting and protecting justice for all citizens. The Judiciary consists of the following courts: the Supreme Court, the Court of Appeal, the High Court and the Subordinate Courts. Within the context of devolution, one of the specific duties of the Supreme Court is to provide guidance on justice-related matters at the county government level upon request by any county government.

Judicial Service Commission

The Judicial Service Commission exists to offer oversight and guidance to the Judiciary. The Commission is composed of judges selected from each of the courts within the Judiciary as well as the Attorney-General and two

representatives of the public. One of the specific functions of the Commission is listed under Article 172(1) of the Constitution, which is to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice." In fulfilling its obligation, the Judicial Service Commission will function as a mechanism for ensuring accountability and transparency within the Judiciary.

3.2.2. County Government

The two primary organs of the 47 county governments are the County Assembly and County Executive. These two organs work together to develop and implement policies, growth plans and budgets. The county government must also operate in partnership with the National Government on issues related to the country's national development plans, policies, and revenue sharing. The Fourth Schedule of the Constitution provides more specific functions and powers of county governments.

County Assembly

The county assemblies are comprised of elected ward representatives (one from each ward), a number of nominated seats for marginalized groups (including Persons with Disabilities and youth) nominated by political parties, and a Speaker (serving as an *ex-officio* member). There are also a number of special seats in the Assembly to ensure it is comprised of no more than two-thirds of the same gender.

As the legislative authority at the county level, the county assemblies are in charge of drafting and passing laws necessary for the county government to perform effectively. In addition to its role as the legislative authority at the county level, Clause 8 of *The County Government Act, 2012*, outlines additional roles for the county assemblies to include:

- vetting and approving nominees for appointment to county public offices;
- performing the roles set out under the Constitution;
- approving the budget and expenditure of the county government;
- approving the borrowing by the county government;
- approving county development planning; and
- performing any other role as may be set out under the Constitution or legislation.

Leadership of the County Assembly

The county assembly will have a Speaker, leader of the majority party and a leader of the minority party. The Speaker, as stipulated in Article 178 of the Constitution, is the person in charge of presiding over the sittings of the county assembly. S/he cannot be a member of the assembly, but is chosen by assembly members through secret ballot. The actual process for electing a county assembly speaker is in the First Schedule of *The Elections Act, 2012*.

Removing the Speaker of the Assembly

A speaker of a county assembly can be removed from office through a resolution supported by not less than 75 per cent of all the members of the county assembly

– Clause 11, *The County Governments Act, 2012*

The majority leader is the person who leaders the largest party or coalition of parties in the county assembly. The minority leader, meanwhile, is the leader of the second largest party or coalition of parties in the county assembly. The order of seniority in the county assembly, therefore, should go like this: (1) speaker; (2) majority leader: and (3) minority leader.

Role of County Assembly Members

Clause 9 (1) of *The County Governments Act, 2012* outlines specific roles for members of county assemblies. They are:

- maintain close contact with the electorate and consult them on issues before or under discussion in the county assembly;
- present views, opinions and proposals of the electorate to the county assembly;
- attend sessions of the county assembly and its committees;
- provide a linkage between the county assembly and the electorate on public service delivery; and
- extend professional knowledge, experience or specialised knowledge to any issue for discussion in the county assembly.

County Executive

Citizens in each of the 47 counties delegate their county's executive authority, in the constitution, to county executive committees. These committees implement county laws passed by the county assembly, draft legislation for consideration by the county assembly, manage the county's administration and departments, and supervise service delivery in the county and in all of its decentralised units.

Each executive committee is comprised of the county's governor and deputy governor, and a number of committee members appointed by the governor and approved by the county assembly. Committee members are individually and collectively accountable to the governor for their work. A county assembly committee may require a member of the executive committee to attend or appear before the committee and answer any questions related to their responsibilities.

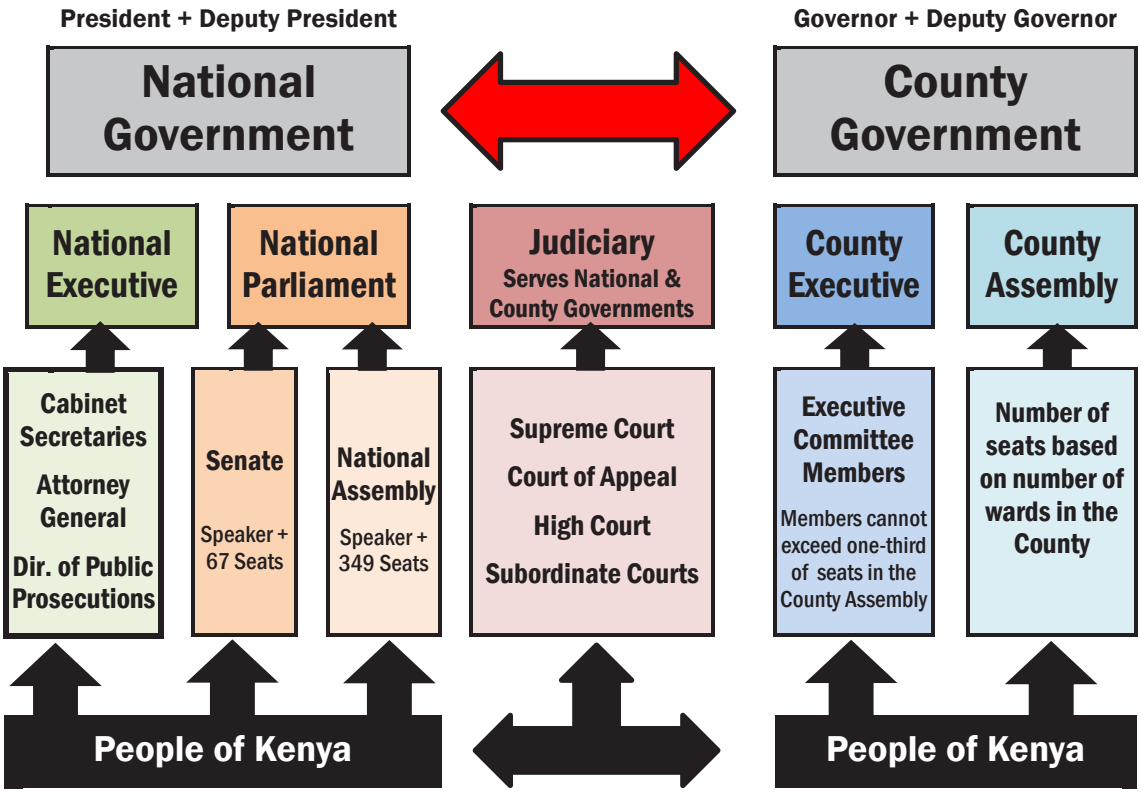
Determining the Number of Appointed Executive Committee Members

The total membership of the County Assembly determines the maximum number of members the Governor may appoint to the County Executive Committee. When the Assembly has less than 30 members the maximum number of Committee members the Governor may appoint cannot exceed one-third of the Assembly's total membership. When the Assembly's total membership is 30 or more, the maximum number of Committee members the Governor may appoint is ten.

County Secretary and County Chiefs

The executive committee also has a county secretary who the governor competitively recruits and appoints with the approval of the county assembly. The secretary, among other things, serves as the head of the public service, conveys decisions of the executive committee to the appropriate person or authority, and is responsible for arranging the business and keeping the minutes of the executive committee meetings. Finally, there are qualified county chief officers, appointed by the governor, who report to the respective county executive committee member for the administration of a county department.

Structure and System of Devolved Governance in Kenya



Adapted from "The New Structure and System of Governance in Kenya," Centre for Law and Research International (CLARION).

Roles, Powers & Functions

The primary role of county governments is service delivery in 14 core areas assigned in the Fourth Schedule of the Constitution. Below are the 14 core areas:

- Agriculture;
- County health services;
- Control of air and noise pollution, other public nuisances and outdoor advertising;
- Cultural activities, public entertainment and public amenities;
- County transport;
- Animal control;
- Trade development and regulation;
- County planning and development;
- Pre-primary education, village polytechnics, home craft centres and childcare facilities;
- Implementation of specific national government policies on natural resources and environmental conservation;
- County public works and services;
- Fire fighting services and disaster management;
- Control of drugs and pornography; and
- Empower local communities on governance issues.

In implementing service delivery, the county government has a responsibility to ensure that it adheres to the objectives and principles of devolution (Article 174 and 175) and that it transfers its functions and services to lower levels of government as much as possible.

Functions of the County

Clause 5 in *The County Governments Act, 2012* gives specific functions to county governments, which include:

- legislative functions through the county assemblies;
- executive functions through the county executive committees;
- establishing their own public service; and
- other functions, including those in the Fourth Schedule of the Constitution, agreed with other county governments, and transferred from the national government.

The Citizens' Service Centre

A county executive committee shall establish a Citizens' Service Centre at the county, sub-county, ward and any other decentralised unit of government. The Citizens' Service Centre serves as the central office for the providing public services to the county citizens.

Powers of the County Government

The County Governments Act, 2012 grants specific powers to county governments, which include:

- entering into contracts;
- acquiring land;
- delegating functions to county and sub-county institutions;
- partnering with public or private institutions; and
- establishing agencies and departments for services and other functions.

3.2.3 Decentralised Units of Government

Article 176 (2) of the Constitution states: "Every county government shall decentralize its functions and provision of its services to the extent that it is efficient and practicable to do so." This means that county governments, as much as it is possible, should transfer governance and service delivery responsibilities to smaller governing units below the county level. This further decentralisation of county government will bring the government administrative functions and service delivery closer to you and your community.

There are several decentralised units of governance below the county level. These units include sub-counties, wards, cities, municipalities, towns, and villages. Each unit has a specific governance structure and fit into a classification as an urban or non-urban area.

Decentralised Urban Units

Urban areas and cities are areas below the county-level that have urban characteristics of development, service delivery, and population. *The Urban Areas and Cities Act, 2011*, assented to on 27 August 2011, established a framework to:

- govern and manage cities and urban areas;
- provide mechanisms for residents of cities and urban areas to participate in the governance process; and
- specify criteria and processes for classifying an area below the county level as either a city or urban area (i.e. municipality or town).*

***The table on the next page provides classification criteria for cities, municipalities, and towns.**

Criteria for Classifying Urban Areas and Cities

City	Municipality	Town
A ***city*** must have a: • Population of at least **500,000 residents** based on the last official census • Integrated urban area or city development plan • Demonstrable capacity to generate sufficient revenue to sustain its operation • Demonstrable good systems and records of prudent management • Institutionalized active participation by its residents in the management of its affairs • Infrastructural facilities, including but not limited to roads, street lighting, markets and fire stations, and an adequate capacity for disaster management • Capacity for functional and effective waste disposal	A ***municipality*** must have a: • Population of at least **250,000 residents** based on the last official census • Integrated development plan • Demonstrable capacity to collect, have the potential to collect, revenue • Demonstrable capacity to generate sufficient revenue to sustain its operations • Capacity to deliver services to its resident effectively and efficiently • Institutionalized active participation by its residents in the management of its affairs • Sufficient space for expansion • Infrastructural facilities, including but not limited to street lighting, markets and fire stations • Capacity for functional and effective waste disposal	A ***town*** must have a: • Population of at least **10,000 residents** based on the last official census • Demonstrable economic, functional and financial viability • Existence of an integrated development plan • Capacity to effectively and efficiently deliver essential services to residents • Sufficient space for expansion

The Urban Areas and Cities Act, 2011

Cities and Municipalities

Clause 12 (1) of *The Urban Areas and Cities Act, 2011*, stipulates that boards supervise cities and municipalities on behalf of the county government. Cities and municipalities appoint managers who implement the decisions and functions of the boards. Both types of boards have the power, among other things, to exercise executive authority, oversee city and municipality affairs respectively, and ensure service delivery to its residents.

When a City is Also a County

In the case where a city is also a county (i.e. Nairobi, Mombasa or Kisumu), the government structure and governance shall be similar to that of the county government. This means that Nairobi, Mombasa, and Kisumu are City Counties.

City boards consist of no more than 11 members, each of whom the county executive appoints and the county assembly approves. Municipality boards differ slightly from city boards in size – they are comprised of nine members (four appointed and five elected). City and municipality board members serve five-year terms on a part-time basis. Each board has a chairperson and vice-chairperson elected from among the board members during their first meeting. The board must meet once every three months, and may hold special meetings if at least one-third of board members submit a written request to the board chairperson to do so.

Towns

Town committees supervise towns on behalf of the county government. Unlike city and municipality boards, town committees are not corporate entities; however, committees serve similar functions as boards in terms of supervising and managing town affairs and service delivery. The county governor appoints and the county assembly approves town committees. The governor also appoints a town administrator who is responsible for implementing the decisions of the town committee.

Decentralised Non-Urban Units

Non-urban areas are those areas below the county level not classified as a city or urban area under *The Urban Areas and Cities Act, 2011*. There are three decentralised units of governance in non-urban areas: (1) sub-county, (2) ward, and (3) village. Below is an overview of each unit.

Sub-County

Clause 48 (1) (b) of *The County Governments Act, 2012* defines a sub-county as a constituency within a county. However, if a constituency (or part of a constituency) qualifies as a city or urban area it cannot be a sub-county. The County Public Service Board competitively appoints an administrator to each sub-county.

The sub-county administrator reports directly to the relevant county chief officer and is responsible for coordinating, managing and supervising the sub-county on behalf of the county government.

Ward

Each constituency has a certain number of wards determined by the IEBC. In non-urban areas, wards also serve as decentralised units of governance. The County Public Service Board competitively appoints an administrator to each ward in a sub-county.

Non-Urban Units

Sub-County Unit

A sub-county administrator is responsible for coordinating, managing, and supervising the sub-county; s/he reports directly to the relevant county chief officer

Ward Unit

A ward administrator is responsible for coordinating, managing, and supervising the ward on behalf of the sub-county; s/he reports directly to the sub-county administrator

Village Unit

A village administrator is responsible for coordinating, managing, and supervising the general administrative functions in the village; s/he reports directly to the ward administrator;

Each village unit has a village council chaired by the village administrator consists of not less than three and not more than five village elders

The ward administrator reports directly to the sub-county administrator and is responsible for coordinating, managing and supervising the ward on behalf of the sub-county.

Village

County assemblies are responsible for enacting legislation to define and establish village units in their county. In doing so, the county assemblies must consider the following criteria: population size; geographical features; community of interest, historical, economic and cultural ties; and means of communication. Each village unit has an administrator appointed by the County Public Service Board.

The village administrator reports directly to the ward administrator and is responsible for coordinating, managing and supervising the general administrative functions in the village. Each village unit has a village council chaired by the village administrator. Village councils consist of not less than three and not more than five village elders.

The village administrator competitively appoints village elders upon approval of the county assembly, and taking into account gender balance. To qualify for appointment as a village elder, a person must be a citizen of Kenya, continuously been a resident or own property in the respective village unit, and is qualified for appointment under requirements in Chapter Six of the Constitution and any other Act or law.

3.2.4. Citizen Participation

Your participation as a citizen is an important part of the devolution process. Clause 85 of *The County Governments Act, 2012* lists specific principles that serve as the basis of citizen participation at the county level:

- timely access to information related to policy formation and implementation;
- reasonable access to formulating and implementing laws and regulations;
- protect and promote the interest and rights of minorities, marginalized groups and communities (i.e. the youth, women, and persons living with disabilities);
- review decisions or redress grievances with particular emphasis on persons of marginalized communities;
- decision-making between county governments and non-state actors is a balance of shared responsibility, ownership and oversight;
- promote public-private partnerships to encourage direct dialogue and determined action on sustainable development; and
- recognize and promote the valuable role of citizen participation in government facilitation and oversight.

More on Citizen Participation

To learn more about citizen participation in Kenya, please see Section 2.1.5 of this handbook for an overview of different provisions in the Constitution on citizen participation.

Structures for Citizen Participation

The county governments, according to Clause 91 of *The County Governments Act, 2012*, are responsible for facilitating the establishment of structures for citizen participation, including:

- information communication technology based platforms;
- town hall meetings;
- budget preparation and validation fora;
- notice boards: announcing jobs, appointments, procurement, awards and other important announcements of public interest;
- development project sites;
- avenues for the participation of peoples' representatives including but not limited to members of the National Assembly and Senate; or
- establishment of citizen fora at county and decentralized units

Citizen Participation in Urban Areas

Clause 22 of *The Urban Areas and Cities Act, 2011* outlines certain rights of residents in cities, municipalities and towns. These include the right to:

- deliberate and make proposals to the relevant bodies or institutions on service delivery, annual budgets, county policies and legislation, and on other matters of concern to citizens;
- plan strategies to engage various levels of government on issues of concern to citizens; and
- monitor activities of elected and appointed officials of urban areas and cities, including city and municipal board members

Citizens Right to Petition

Citizens have a right to petition the county government on any matter under the responsibility of the county government. The government is obliged to respond to petitions submitted in writing. Additionally, the county government may conduct a referendum on citizen petitions of local issues.

- Clauses 88-90, *The County Governments Act, 2012*

Clause 22 also states that a city or municipality board invite representation and petitions from Citizen Fora (or a forum of citizens) on administration or management issues. The boards are obliged to make recommendations on any issues raised at the Citizen Fora and pass them on to the city or municipality manager for implementation. The manager must then report to the board any decision s/he makes in response to the petition.

Principles for Minorities and Marginalised Groups

Clause 97 of *The County Government Act, 2012*, states that a county government, public and private organisation and private individual, shall observe the following principles:

- protection of marginalized and minority groups from discrimination and from treatment of distinction of any kind, including language, religion, culture, national or social origin, sex, caste, birth, descent or other status;
- non-discrimination and equality of treatment in all areas of economic, educational, social, religious, political and cultural life of the marginalized and minority groups;
- special protection to vulnerable persons who may be subject to threats or acts of discrimination, hostility, violence and abuse as a result of their ethnic, cultural, linguistic, religious or other identity;
- special measures of affirmative action for marginalized and minority groups to ensure their enjoyment of equal rights with the rest of the population;
- respect and promotion of the identity and characteristics of minorities;
- promotion of diversity and intercultural education; and
- promotion of effective participation of marginalised and minority groups in public and political life. ■

3.3. Financial & Human Resources

This Section...

- Discusses the guiding principles for the management of public finances as outlined in the Constitution, as well as the national revenue system and the new ways of revenue allocation to the counties
- Designates the responsibilities associated with public finance management to the appropriate bodies of government as well as those responsible for the management of finances at the devolved levels of government
- Identifies government institutions that deal with financial and human resources at be both the national and sub-national levels, and outlines how those institutions share resources

3.3.1 Public Finance

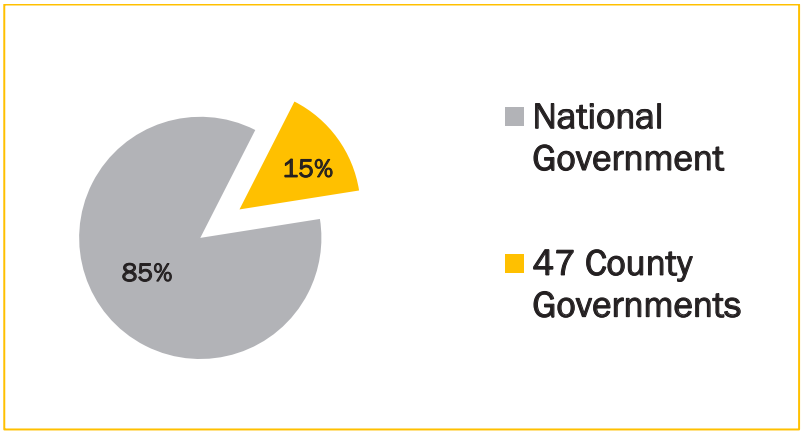
Kenya's constitution provides guiding principles and framework for managing the country's finances. Article 201 stipulates the following principles when dealing with Kenya's public finances:

- openness, accountability and public participation in financial matters;
- promotion of an equitable society through a fairly shared tax burden, an equitable sharing of national revenue among national and county

governments, and public expenditures that promote equitable development and marginalized groups;

- future and present generations have equitable share in the burden and benefits of public resource use;
- prudent and responsible use of public money; and
- responsible financial management and thorough fiscal reporting

Breakdown of the Share of National Revenue



3.3.2 Revenue Allocation

The Constitution stipulates that county governments have reliable, stable and predictable sources and allocations of revenue. This will ensure they can perform their constitutional functions and deliver services within their jurisdictions. As mentioned in the guiding principles of public finance, the national and county governments should equitably share national revenue. The national government receives 85 per cent of this revenue, while the 47 counties split up the remaining 15 per cent.

In addition to any national legislation, the Constitution provides specific criteria for determining fair national revenue allocation to the counties, including

public debt and other national obligations, county fiscal capacity, and the need to cure economic inequalities among and with counties.

Responsibilities of Parliament

Every five years, the Senate will determine by resolution the basis for annual revenue allocation among the counties. At least two months before the end of each fiscal year, Parliament should introduce two pieces of legislation concerning national revenue allocation – Division of Revenue Bill and County Allocation Revenue Bill.

- *Division of Revenue Bill* – This piece of national legislation will divide the national government's revenue among the national and county levels of government.
- *County Allocation of Revenue Bill* – This legislation will divide among the counties the revenue allocated to the county level of government.

Commission on Revenue Allocation

The CRA is responsible for proposing to Parliament its recommendations for the allocation of revenue between the national and county governments. Before Parliament votes on relevant financial matters, it must consider recommendations of the Commission. The CRA may also make recommendations on other financial matters concerning the county governments. CRA is composed of a chairperson, two persons nominated by political parties in the National Assembly, five persons nominated by political parties in the Senate and the principal secretary from the Ministry responsible for finance. No member of the CRA may also be a sitting member of Parliament.

Equalization Fund

Article 204 of the Constitution stipulates the establishment of the Equalization Fund, which is to receive one-half per cent of all the revenue collected by the national government each year. The Fund seeks to address inequities that may exist between counties and within marginalized areas and

groups by funding basic services including water, healthcare, roads, health facilities, and electricity. The money dispersed from the Equalization Fund may be conditional or unconditional grants. The life of the Fund is a fixed period of 20 years with the possibility of extension by the National Assembly.

Spending and Raising Revenue

Article 209(3) of the Constitution permits county governments to levy property and entertainment taxes in their county, and any other taxes authorized by Parliament. Counties may also impose charges for the services they provide. Each county will deposit all money raised or received on behalf of the government into its own revenue fund. Any county government may borrow money so long as the national government guarantees the loan and it receives approval from the county government's assembly. County governments, according to Article 224 of the Constitution, should prepare and adopt their own annual budgets and appropriation bills in the form and procedure prescribed by Parliament and based on national revenue allocations in the Division of Revenue Bill referred to above.

3.3.3 Human Resource Management

Article 235 of the Constitution authorises each county government to establish its own county public service. The public service is those people who work for the county government and its dependent units of government. *The County Governments Act, 2012* further defines county public service and stipulates that a secretary lead it.

County Public Service Board

The County Public Service Board establishes and oversees public service for each county. *The County Governments Act, 2012* establishes the Board, which is composed of a chairperson, vice chairperson, and appointed members (no less than three and no more than five) and a certified public secretary appointed

by the governor and approved by the county assembly. The mandate of the County Public Service Board is to:

- establish and abolish offices in the county public service;
- appoint persons to hold or act in county public service offices and confirm appointments;
- exercise disciplinary control over, and remove, persons holding or acting in those offices;
- prepare regular public service compliance and performance reports to the county assembly;
- promote in the county public service the constitutional public service values and principles;
- advise the county government on its public service human resource management and development;
- facilitate development of a coherent, integrated planning budgeting for personnel salaries; and
- make recommendations on county government public service salaries, pensions and gratuities.

3.3.4 Shared Institutions

The national and county levels of government share several institutions established by the Constitution. This practice of shared governance among select state institutions is necessary for the successful implementation of the devolution process and effective service delivery. The table below lists some examples of the shared institutions that affect both levels of government. ■

Some of the Shared Institutions in the Constitution

Institution	Constitution	Description
Human Rights and Equality Commission	Article 59	Enforces human rights at both levels of government and in all counties
National Land Commission	Article 67	Manages public land at both levels of government and in all counties
Ethics and Anti-Corruption Commission	Article 79	Enforces constitutional public leadership and integrity standards at both levels of government and in all counties
Independent Electoral Boundaries Commission	Article 88	Manages elections and electoral boundaries at both levels of government and in all counties
Parliament (National Assembly and Senate)	Article 93	Provide counties with a forum to impact national legislation
Commission on Revenue Allocation	Article 215	Recommends national revenue sharing between national and county levels and distribution among counties
The Controller of Budget	Article 228	Controls expenditure at both levels of government and in all counties
The Auditor General	Article 229	Audits and reports on the accounts of both levels of government and in all counties
Salaries and Remuneration Commission	Article 230	Established and recommends salaries for some public servants at both levels of government and in all counties
Public Service Commission	Article 233	Hears appeals of public servants of all county governments in addition to its national responsibilities

3.4. Intergovernmental Relations

This Section...

- Highlights the importance of consultation and cooperation among the national and county levels of government so that the devolved government system functions successfully
- Provides and an overview of key mechanism established through the Constitution and law to manage the intergovernmental relationship among the national and county governments

3.4.1. Importance of Intergovernmental Relations

The relations between the various levels and layers of government are extremely important in a devolved government system. While the Constitution assigns specific mandates to each level of government, you as a citizen cannot be well served if there is no coordination among the various government entities in planning and service delivery. There is always a possibility of conflict between the national government and county governments, and among the county governments. As such, there is a need for an intergovernmental coordinating mechanism.

Principles of Intergovernmental Relations

Clause 4 of *The Intergovernmental Relations Act, 2012* outlines key principles of intergovernmental relations. They are as follows:

- recognizing the sovereignty of the Kenyan people;

- inclusive and participatory governance;
- promotion of national values, constitutional governance principles, and service delivery equality;
- respecting the constitutional status of the government levels and institutions;
- objective and impartial decision-making;
- minimizing intergovernmental disputes;
- promoting accountability to the people; and
- institutionalising the protection of marginalized groups

Objectives of Intergovernmental Relations

Clause 5 of *The Intergovernmental Relations Act, 2012* outlines the objectives of Kenya's intergovernmental relations. They are as follows:

- facilitate the implementation of the devolution objects and principles outlined in the Constitution;
- facilitate cooperation and consultation between national and county governments and amongst county governments;
- provide a forum for coordinating government policies, legislation and functions;
- provide mechanisms for the transfer of power, functions and competencies to either level of government; and
- promote accountability between the two levels of government or amongst county governments.

3.4.2. National & County Government Coordination

The Intergovernmental Relations Act, 2012 establishes several intergovernmental structures, which serve to facilitate greater intergovernmental cooperation and consultation under the devolved government model. The national government and county governments will use these structures to agree on crosscutting policies, legislation and other important issues that affect you both nationally and locally. Furthermore, these structures will help prevent or resolve intergovernmental disputes.

National and County Government Coordinating Summit

Clause 7 of *The Intergovernmental Relations Act, 2012* establishes the National County Government Coordinating Summit. The highest intergovernmental body, the Coordinating Summit ensures that relations between the national and county governments are effective and consultative. It consists of the President (or Deputy President in his/her absence) who serves as the chairperson, all governors of the 47 counties, and the chairperson of the Council of County Governors who serves as the Summit's vice chairperson.

Functions of the Coordinating Summit

The Coordinating Summit must convene at least twice a year and submits an annual report to Parliament and the county assemblies within three months after the end of every financial year. Other functions of the Summit are outlined in Clause 8 of *The Intergovernmental Relations Act, 2012*. They are as follows:

- consultation and co-operation between the National and County governments;
- promotion of national cohesion, values, and principles of governance;
- consideration and promotion of national interest matters and reports on national interest by other intergovernmental bodies and forums;
- monitoring national and county development plan implementation;

- considering intergovernmental issues referred to the summit by the public and recommending action;
- evaluating national or county government performance and recommending appropriate action;
- county and national governments development plan implementation; and
- facilitating and coordinating the transfer of functions, power or competencies from and to either level of government.

Intergovernmental Relations Technical Committee

Clause 11 of *The Intergovernmental Relations Act, 2012* establishes the Intergovernmental Relations Technical Committee, which is comprised of a chairperson and not more than eight members appointed by the Coordinating Summit. The Technical Committee is responsible for the Summit's day-to-day operations, including facilitating its activities and implementing its decisions. The Committee is also responsible for submitting quarterly reports to the Coordinating Summit and may establish working groups to assist in carrying out its functions.

The Technical Committee also acts as the National and County Government Coordinating Summit Secretariat. The Technical Committee is responsible for appointing a secretary to serve as the secretariat's chief executive and financial officer. The Secretary is also responsible for the day-to-day administration and affairs of the secretariat as well as the implementation of decisions made by the Coordinating Summit and its Technical Committee. The figure below illustrates the structure of the Coordinating Summit.

Structure of the Coordinating Summit

National & County Government Coordinating Summit

- President of the Republic (Summit Chairperson)
- 47 County Governors
- Council of County Governors Chairperson (Summit Vice Chairperson)

↓

Intergovernmental Relations Technical Committee

(also functions as the Summit Secretariat)

- Secretary of the Summit Secretariat
- Chairperson
- Not more than eight members

↓

Sectoral Working Groups

(Appointed by the Technical Committee as needed)

↓

Sectoral Working Groups

(Appointed by the Technical Committee as needed)

3.4.3 Council of County Governors

Clause 19 of *The Intergovernmental Relations Act, 2012* establishes the Council of County Governors. Similar to the role the Coordinating Summit plays in strengthening intergovernmental relations between the national and county levels of government, the Council of County Governors is an intergovernmental organizing and advice-giving body for the 47 county governments.

The Council, which must convene at least twice a year, consists of 47 county governors and a chairperson and vice chairperson selected from among its membership. The Council has the power to establish other intergovernmental forums (e.g. inter-city and municipality forums) and sector working groups or committees to assist in carrying out its functions.

Functions of the Council

The Council of County Governors is required to submit an annual report to the National and County Government Coordinating Summit and to Parliament. The Council should also send this report to the county assemblies within three months after the end of every financial year. Other functions of the Council as outlined in *The Intergovernmental Relations Act, 2012* include:

- consultation amongst county governments;
- information sharing on the performance of the counties;
- considering matters of common interest to county governments;
- resolving disputes between counties;
- facilitating capacity building for governors;
- receiving reports and monitoring the implementation of inter-county agreements on inter-county projects;
- considering matters referred by a member of the public; and
- considering reports from other intergovernmental forums on matters of national and county interest

3.4.4 Resolving Intergovernmental Disputes

Clause 31 of *The Intergovernmental Relations Act, 2012* stipulates that national and county governments should take all reasonable measures to resolve disputes politely and utilize all alternative intergovernmental dispute resolution mechanisms before pursuing to judicial proceedings.

Dispute Resolution Framework

Any agreement between the national government and a county government or amongst county governments should include a dispute resolution mechanism and provide alternative options for dispute resolution that leaves legal proceedings as the last resort. Clause 32(2) states that agreements not contain dispute resolution framework should utilize the structure established in *The Intergovernmental Relations Act, 2012*.

Declaration of a Dispute

Before declaring a dispute, the concerning parties should make every effort to politely resolve the matter through direct negotiations or through an intermediary. If these negotiations fail, a party may formally refer the dispute to the Coordinating Summit.

After Declaration of a Formal Dispute

Any intergovernmental structure (e.g. Coordinating Summit or Council of City Governors) should convene a meeting between the involved parties or representatives within 21 days of the formal dispute declaration. The goal of the meeting is to identify the issues in dispute, discuss possible solutions and identify any existing dispute resolution mechanisms.

The disputing parties should make every effort to resolve their differences with a mechanism where one exists. When the parties exhaust all dispute resolution alternatives and there is still no resolution, a party may submit the dispute for arbitration or judicial proceedings.■

Glossary of Terms

Glossary of Terms

Absolute majority system refers when the outcome of an election is determined by the candidate that receives more than half (50 per cent plus one) of the valid votes cast in an election.

Administrative decentralization is a dimension of decentralization that refers to the institutional structures and procedures that support assigned sub-national functions in the decentralization process.

Affirmative action refers to policies put in place by the state to correct past discriminatory practices.

Authoritarian leadership is a style of leadership where the person in charge does not consult with their people, or even with their colleagues, when making decisions.

Bill of Rights is a list of the most important rights of the citizens of a country which defines the rights and freedoms of citizens and protects them from infringement.

Citizen participation is an action or series of actions a citizen takes to participate in the affairs of his or her own government and/or community.

Citizen Fora means a forum for citizens organised for purposes of participating in the affairs of an urban area or a city under *The Urban Areas and Cities Act, 2011.*

City is an urban sub-county unit defined under clause 5(1) of *The Urban Areas and Cities Act, 2011.* Among the characteristics of a city are a population of at least 500,000 residents.

City-county means a city which is also a county.

City board is the governing body of a city. The board consists of maximum 11 members, each of whom the county executive appoints and the county assembly approves.

City manager is the chief administrator of a city who is responsible for implementing the policies and decisions of, and accountable to, the city board.

Civic education is a means of educating citizens on socio economic and political issues impacting the lives of citizens. The process also informs citizens of their specific societal roles.

Civil rights refer to the entitlement of an individual to freedom or liberty and the protection of individuals from unconstitutional interference from the state.

Civil society is made up of groups of active citizens concerned about a specific set of issues or focused on accomplishing a specific set of objectives.

Coalition government is a power sharing arrangement involving the introduction of a prime minister and two deputy prime ministers, in addition to the President.

Codified constitution is a type of constitution that is written in a single document and serves as the single source of constitutional law in a country

Committee of Experts (COE), established under *The Constitution of Kenya Review Act, 2008*, was responsible for harmonizing previous constitutional proposals and develops a harmonized and, later, a draft constitution.

Commission on Revenue Allocation is an independent commission established under Article 215 of Kenya's constitution, which recommends national revenue sharing

between national and county levels and distribution among counties.

Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest.

Constitution contains the fundamental political principles on which a state is governed, especially when considered as embodying the rights of the subjects of that state.

Constitutional of Kenya Review Commission (CKRC) was established was establish by an Act of Parliament in 1997 and charged with carrying out a people-driven process to develop a constitution that addressed the needs and requirements of the citizens.

Constitutionalism is a term used to refer to adherence to the principles of constitution or the rule of law.

County is a semi-autonomous unit of government devolved from the national level. There are 47 counties in Kenya.

County Allocation of Revenue Bill is national legislation passed annually by the Parliament of Kenya at least two months before the end of the fiscal year, which divides the revenue allocated to the county-level among Kenya's 47 counties.

County assembly is the legislative body representing the people of a county's wards and special interests through its elected and nominated members. The County Assembly is in charge of drafting and passing laws necessary for the county government to perform effectively.

County executive committee is the executive authority in each of Kenya's 47 counties, which is comprised of the County Governor, Deputy County Governor, and members appointed by the Governor and approved by the County Assembly. It is responsible for implementing county laws passed by the Assembly, managing the county's administration and departments, and drafting proposed legislation.

County Public Service Board, established in *The County Governments Bill, 2012*, is a county-level institution that establishes and oversees public servants for each of Kenya's 47 counties. It is composed of a chairperson, vice chairperson, appointed members (no less than three and no more than five), and a certified public secretary appointed by governor and approved by the county assembly.

Customary tenure is land ownership granted through customs. Customary tenure is not recognized when it conflicts with the principles or provisions of the Constitution such as disinheritance on account of gender.

Decentralization is a structural redistribution of power that takes a portion of the power vested in the national government and allocates it equitably among a series of smaller entities.

Deconcentration is a type of decentralization that refers to assigning responsibilities from a central authority to its own sub-national branches in other regions of the country. These branches are subject to some degree of supervision by the central authority.

Delegation is a type of decentralization that refers to the transfer of some of the central authority's power to semi-independent subnational and/or non-government authorities, which have relative freedom to decide how to carry out their responsibilities, but they are ultimately accountable to the central authority.

Glossary of Terms

Democracy refers to a system of government based on people's consent, or the 'will of the people.'

Democratic leadership is a style of leadership where the person in charge acts in the interests of their people. They are prepared to make themselves accountable to the people they serve and to the institutions they lead.

Deputy Governor is the second highest executive authority in a county. The Deputy Governor fulfils the duties of the Governor when absent or as is required under law.

Devolution is a type of decentralization that refers to the complete transfer of power from a central authority to near-autonomous sub-national authorities. Local citizens are empowered under devolution to elect their own leaders and make decisions on local matters.

Division of Revenue Bill is national legislation passed annually by the Parliament of Kenya at least two months before the end of the fiscal year, which allocates the national revenue between the national government and Kenya's 47 counties.

Economic, social and cultural rights are basic human rights put in place to protect humanity such as the right to food, shelter, and education.

The Elections Act, 2011, which was signed into law on 27 August, 2011, addresses the aspects of elections outlined in Article 82 (1) of the Constitution. The Act is the primary law governing the conduct, oversight and management of the electoral process.

Elective positions are those positions that require an election through a secret ballot by registered voters, which are: President; senator; member of the National Assembly; one woman elected to the National Assembly by voters in each county; governors; and ward representatives.

Equalization Fund is a national fund that seeks to address inequities that may exist between counties and within marginalized areas and groups by funding basic services (e.g. water, healthcare, and roads). One-half per cent of national revenue collected each year goes toward this fund and its lifespan is 20 years with the possibility of an extension by the National Assembly.

Fiscal citizen power relates to financial action like taxes, donations, endorsement spending and consumption.

Fiscal decentralization is a dimension of decentralization that refers to service delivery and revenue sharing assignments between the national and sub-national levels of authority.

Freehold tenure is a type of land ownership that allows for inheritance.

Gazette means the *Kenya Gazette* published by the authority of the national government, or a supplement of the *Kenya Gazette*.

Governance entails the management of public resources and the relationship between and among citizens, their elected officials and their organizations.

Governor is the highest executive authority of the county executive and serves as the chairperson of the County Executive Committee. S/he also serves as the county's representative in the National and County Government Coordinating Summit and the Council of County Governors.

Habeas corpus is a legal action through which a prisoner can be released from

unlawful detention due to a lack of sufficient cause or evidence.

Horizontal decentralization is the process by which sovereign power is dispersed horizontally among various authorities at the same level (e.g. at a national level between Parliament, Executive and Judiciary).

Lobbying is the practice of engaging with governments to advocate for change, request information, or hold officials accountable to their commitments to human rights and service delivery.

Municipality is an urban sub-county unit defined under clause 9(3) of *The Urban Areas and Cities Act (No. 13 of 2011)*. Among the characteristics of a municipality is having a population of between 250,000 and 500,000 residents.

Municipality board is the governing body supervising a municipality on behalf of the county government. The board consists of nine members – four appointed and five elected.

Municipality manager is the chief administrator of a municipality who is responsible for implementing the policies and decisions of, and accountable to, the municipality board.

Independent Electoral and Boundaries Commission is an independent body responsible for conducting and supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by statute.

The Independent Electoral and Boundaries Commission Act, 2011, which became law on 5 July 2011, is intended to assist with establishing and appointing the IEBC and to further define the Commission's roles and responsibilities.

Leasehold tenure is the temporary ownership of land as secured by periodic rent payments.

National Accord and Reconciliation Act, 2008, commonly known as the National Accord, introduced, among other things, a coalition government and created the offices of a prime minister and two deputy prime ministers.

National Assembly is a body of the Parliament of Kenya and serves as the national legislative body representing the people of the constituencies and special interests through its elected and nominated members. It is composed of 350 members from which 290 are elected from constituencies, 47 are elected representing each county, 12 are nominated representing special interests (includes youth and disabled persons), and led by a Speaker elected from among its members.

National Executive is the executive authority at the national level of government and is comprised of the President, Deputy President, cabinet secretaries, Attorney-General and the Director of Public Prosecution.

National Land Commission, established under Article 67 of the Constitution and the *National Land Commission Act, 2012*, is responsible, among other things, for managing public land on behalf of the national and county governments.

Majimbo is a system of devolved power to the regions in Kenya.

Majoritarian formula is an election formula in which candidates or political parties win elections by getting the most votes.

Parliament is the national legislative body established under Article 93 of Kenya's constitution. The National Assembly and the Senate comprise Parliament, whose legislative powers include representing the will of the people and exercising their sovereign power. Parliament also has the power to amend the Constitution as needed.

Parliamentary Select Committee (PSC), established under The Constitution of Kenya Review Act, 2008, was responsible for reviewing and interrogating the Harmonized Draft Constitution developed by the Committee of Experts.

Partial interest tenure is land that has many different interests or stakeholders on a specifically parcel of land. This can include easements where one landholder has rights to certain parts of land of another landholder.

Passive citizen power relates to participation that does not require direct physical action, like petition signing, writing letters, voting and releasing publications.

Phase One means the period between commencement of *The Transition to Devolved Government Act, 2012* (on 9 March 2012) and the date of the first election under *The Constitution of Kenya, 2010*.

Phase Two means the period between the date of the first elections and three years after the first elections under *The Constitution of Kenya, 2010.*

Physical citizen power requires direct physical participation like protesting, volunteering, working for government or boycotting.

Plurality refers to when the outcome of an election is determined by the candidate that receives the most votes of any other candidate.

Political decentralization is a dimension of decentralization that refers to the transfer of political decision-making authority and accountability mechanisms (e.g. local elections, oversight) to sub-national authorities.

Political Parties Act, 2011, which became law on 27 August 2011, addresses the aspects of political parties outlined in Article 92 of the Constitution. The Act provides requirements for political party finance, registration and establishes a mechanism to regulate political parties.

Political party is an organization that is constituted for the purpose of providing an organized form of participation by people with similar views on political issues and activities.

Political rights enable citizens to participate in the political processes that contribute to the functioning of a democracy.

Private land is registered land owned or leased by any person.

Promulgation is the act that brings a new constitution into effect and abolishes the old constitution.

Public land is land owned by the government or occupied/used by any State organ. No individual or community ownership can be established by any legal process.

Public Service Commission is an independent commission established under Article 233 of Kenya's constitution, which is responsible for hearing appeals of public servants of all county governments in addition to its national responsibilities.

Glossary of Terms

Proportional election formula is one in which parties win seats in proportion to the number of votes they receive

Referendum is the process through which citizens decide, through a vote, whether or not they wish to make a significant change to the political landscape in which they operate.

Revenue Fund is a fund where each county deposits all money raised or received on behalf of the county government.

Rule of law is the principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced.

The Senate is a body in the Parliament of Kenya and represents the counties, and serves to protect the interests of the counties and their governments. The Senate is composed of 68 members from which 47 are elected (one from each county), 16 women nominated by parties, four special interest members nominated by parties (two youth and two persons with disabilities), and led by a Speaker elected from among its members. The Senate is a critical institution to the counties as it is responsible for representing Kenya's 47 counties at the national level.

Sovereign power is the supreme power that a sovereign state uses to govern itself independently and the power from which all citizens and government institutions derive their political power.

The Speaker leads each of Kenya's legislative bodies at the national and county levels – National Assembly, Senate and county assemblies.

Strategy is a roadmap for how you or your organization will go about achieving its mission.

Sub-county is a semi-autonomous unit of government devolved from the county whose purpose is to improve government administrative functions and service delivery by bring both closer to citizens.

Sub-county administrator is a public servant appointed by the County Public Service Board who responsible for the coordination, management and supervision of the sub-county unit.

Sub-national is a semi-autonomous decentralized unit of government below the national level. Each of Kenya's 47 counties is known as sub-national units.

Supermajority is a vast majority (i.e. 80%) consensus required to make major changes that will have a direct effect on the population of a country, such as an amendment to the Bill of Rights.

Supreme law is often used to refer to the constitution as the highest law, and the based upon which all other laws are developed.

Town is an urban sub-county unit defined under clause 10(1) of *The Urban Areas and Cities Act (No. 13 of 2011)*. Among the characteristics of a town is having a population of between 10,000 and 250,000 residents.

Town administrator is the chief administrator of a town who is responsible for implementing the policies and decisions of, and accountable to, the town committee.

Town committee is the governing body supervising a town on behalf of the county government. The governor appoints and the county assembly approves town committee members.

Transition period refers to the period between the date of the start of the

Devolved Government Act, 2012 and three years after the first elections under *The Constitution of Kenya, 2010*.

Un-codified constitution is a type of constitution that is not contained in a single document and consists of several different sources which may be written or unwritten.

Urban sub-county is a unit of government devolved from the county level and has urban characteristics of development, service delivery and population.

Values are core beliefs that are shared among the stakeholders of an organization.

Vertical decentralization is the process by which sovereign power is dispersed vertically between national and sub-national authorities (i.e. county) and/or semi-autonomous authorities (e.g. revenue authority).

Ward is a sub-county unit governed by a ward administrator. Wards also serve as electoral units for electing members of the county assembly.

Ward administrator is a public servant appointed by the County Public Service Board who responsible for the coordination, management and supervision of the ward.

Appendix

Appendix 1

As written in the Fifth Schedule of The Constitution of Kenya, 2010

FIFTH SCHEDULE **Article 261 (1)**

LEGISLATION TO BE ENACTED BY PARLIAMENT

Chapter and Article	*Time Specification*
CHAPTER TWO – REPUBLIC	
Legislation in respect of culture (Article 11 (3))	Five years
CHAPTER THREE – CITIZENSHIP	
Legislation on citizenship (Article 18)	One year
CHAPTER FOUR – THE BILL OF RIGHTS	
Freedom of the media (Article 34)	Three years
Family (Article 45)	Five years
Consumer protection (Article 46)	Four years
Fair administrative action (Article 47)	Four years
Fair hearing (Article 50)	Four years
Rights of persons detained, held in custody or detained (Article 51)	Four years
Kenya National Human Rights and Equality Commission (Article 59)	One year
CHAPTER FIVE – LAND AND ENVIRONMENT	
Community land (Article 63)	Five years
Regulation of land use and property (Article 66)	Five years
Legislation on land (Article 68)	18 months
Agreements relating to natural resources (Article 71)	Five years
Legislation regarding environment (Article 72)	Four years
CHAPTER SIX –LEADERSHIP AND INTEGRITY	
Ethics and anti-corruption commission (Article 79)	One year
Legislation on leadership (Article 80)	Two years

Appendix 1

CHAPTER SEVEN – REPRESENTATION OF THE PEOPLE	
Legislation on elections (Article 82)	One year
Electoral disputes (Article 87)	One year
Independent Electoral and Boundaries Commission (Article 88)	One year
Legislation on political parties (Article 92)	One year
CHAPTER EIGHT – THE LEGISLATURE	
Promotion of representation of marginalised groups (Article 100)	Five years
Vacation of office of member of Parliament (Article 103)	One year
Right of recall (Article 104)	Two years
Determination of questions of membership of Parliament (Article 105)	Two years
Right to petition Parliament (Article 119)	Two years
CHAPTER NINE – EXECUTIVE	
Power of mercy (Article 133)	One year
Assumption of office of president (Article 141)	Two years
CHAPTER TEN – JUDICIARY	
System of courts (Article 162)	One year
Removal from office (Article 168)	One year
Judiciary Fund (Article 173)	Two years
Vetting of judges and magistrates (Sixth schedule, Section 23)	One year
CHAPTER ELEVEN – DEVOLVED GOVERNMENT	
Speaker of a county assembly (Article 178)	One year
Urban areas and cities (Article 183)	One year
Support for county governments (Article 190)	Three years
Removal of a county governor (Article 181)	18 months
Vacation of office of member of county assembly (Article 194)	18 months
Public participation and county assembly powers, privileges and immunities (Article 196)	Three years

County assembly gender balance and diversity (Article 197)	Three years
Legislation to effect Chapter eleven (Article 200 and Sixth Schedule, Sec.15)	18 months
CHAPTER TWELVE – PUBLIC FINANCE	
Revenue Funds for county governments (Article 207)	18 months
Contingencies Fund (Article 208)	One year
Loan guarantees by national government (Article 213)	One year
Financial control (Article 225)	Two years
Accounts and audit of public entities (Article 226)	Four years
Procurement of public goods and services (Article 227)	Four years
CHAPTER THIRTEEN – PUBLIC SERVICE	
Values and principles of public service (Article 232)	Four years
CHAPTER FOURTEEN – NATIONAL SECURITY	
National security organs (Article 239)	Two years
Command of the National Police Service (Article 245)	Two years
GENERAL	
Any other legislation required by this Constitution	Five years

Appendix 2

Names of the 47 Counties

1. Mombasa
2. Kwale
3. Kilifi
4. Tana River
5. Lamu
6. Taita/Taveta
7. Garissa
8. Wajir
9. Mandera
10. Marsabit
11. Isiolo
12. Meru
13. Tharaka-Nithi
14. Embu
15. Kitui
16. Machakos
17. Makueni
18. Nyandarua
19. Nyeri
20. Kirinyaga
21. Murang'a
22. Kiambu
23. Turkana
24. West Pokot
25. Samburu
26. Trans Nzoia
27. Uasin Gishu
28. Elgeyo Marakwet
29. Nandi
30. Baringo
31. Laikipia
32. Nakuru
33. Narok
34. Kajiado
35. Kericho
36. Bomet
37. Kakamega
38. Vihiga
39. Bungoma
40. Busia
41. Siaya
42. Kisumu
43. Homa Bay
44. Migori
45. Kisii
46. Nyamira
47. Nairobi City

As written in the First Schedule of The Constitution of Kenya, 2010

Elective Positions in the Constitution of Kenya, 2010

Elective Positions in The Constitution of Kenya, 2010					
Position	**Level**	**Qualification**	**Term**	**Disqualification**	**Election**
President	National	• Holds a university degree from a university recognized in Kenya • Is a citizen by birth • Is qualified to be a member of Parliament • Is nominated by a political party, or is an independent candidate nominated by at least 2,000 voters from at least 24 counties • Declare a running mate before the election to be Deputy President if he/she wins	5 years; 2 term limit	• Owes allegiance to a foreign state • Is a public officer, or is acting in any State or other public office (sitting President, Deputy President and Member of Parliament are exempt)	• Absolute Majority: Candidate needs at least 50% +1 of the total votes cast in the country and at least 25% of votes cast in at least 24 counties to be declared the winner *Run-Off Election:* • If no candidate gets absolute majority, then the top-two candidates with the most votes compete in a second round of voting within 30 days • Plurality: The candidate with most votes will be the winner of the run-off election
Governor	County	• Hold a university degree from a university recognized in Kenya • Is qualified to be a member of County Assembly		• Is a State or public officer, other than a member of Parliament • Was a member of the IEBC in the last 5 years before the election date • Has not been Kenya citizen for at least 10 years before the election date • Is a member of County Assembly • Is of unsound mind • Has been declared bankrupt • Has been sentenced to at least six months at time of registration as a candidate or the date of election • Is found to have misused or abused a State or Public office.	Plurality: Candidate with the most votes will be the winner of the election
National Assembly Member (MP)	Constituency	• Hold a post-secondary school qualification • Is a registered voter • Satisfies educational, moral and ethical requirements set by the Constitution and relevant Acts of Parliament • Is nominated by a political party, or is an independent candidate nominated by at least: ➢ National Assembly: 1,000 registered voters from the constituency where contesting ➢ Senate: 2,000 registered voters in the county where contesting ➢ County Assembly: 500 registered voters from the ward where contesting	5 years; No term limit		
Senate Member (Senator)	County				
Woman Representative (National Assembly)	County				
Ward Representative (County Assembly)	Ward				

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No	Name	Organization
1	Morris Odhiambo	CLARION
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