

THE PROPOSED NEW CONSTITUTION

POPULAR VERSION

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FOREWORD

This popular version of the Proposed New Constitution has been prepared by the Constitution of Kenya Review Commission in exercise of its mandate under the Constitution of Kenya Review Act generally and more specifically, under section 17 of that Act.

Section 17(a) bestows on the Commission the power to “conduct and facilitate civic education in order to stimulate public discussion and awareness of constitutional issues,” while section 17(e) specifically mandates the Commission “to conduct and facilitate civic education to support the referendum.”

This booklet is intended to be a summarized and easier to understand version of the Proposed New Constitution published by the Attorney-General on 22nd August, 2005. It highlights some of the key provisions in the Proposed New Constitution and tries to simplify them for easier understanding by all Kenyans.

This booklet is not intended as a substitute for the Proposed New Constitution, which is the official statutory document. If there is any conflict between this document and the Proposed New Constitution as published, it needs to be understood that it is the Proposed New Constitution as the official statutory document that prevails. In this regard, the Commission would like to encourage every Kenyan to read the Proposed New Constitution itself as published by the Attorney-General.

The Commission would like to acknowledge and thank the following commissioners who were members of the Task Force that prepared the booklet before its approval by the Commission Plenary: Prof. Wanjiku Kabira, Vice-Chairperson of the Commission and Co- Convener of the Task Force, Dr. K. Mosonik arap Korir, Co- Convener of the Task Force, Mrs Abida Ali- Aroni, Chairperson of the Commission, Prof. H.W.O. Okoth-Ogendo, Chairperson of the Research, Drafting and Technical Support Committee, Ms. Kavetsa Adagala, Mr. John Mutakha Kangu, Mr. Ahmed Issack Hassan, Mr. Paul Musili Wambua and Ms. Salome Wairimu Muigai.

The Commission would also like to acknowledge and thank the following members of the secretariat who participated in the preparation of the booklet: Ms Pauline Nyamweya, Deputy Secretary, Mr. Harrison Ndoria Gicheru, Mr. Jeremiah Nyegenye, Ms. Eunice Gichangi, Ms Selina Achieng’ Olende and Ms. Noor Awadh Ghalgan.

THE PREAMBLE

This part is about what we declare first in the Constitution, including:

- ❖ Who is making the Constitution?
- ❖ Why is it being made?
- ❖ What does it actually say?

What is a Preamble?

A preamble usually states who is making the Constitution and why the Constitution is being made, among other things.



What does our Preamble say?

In the preamble, we celebrate the history of our country as one people. We declare pride in our different communities, cultures and religions. We set out the goals which we want to achieve as a people. And we acknowledge God, and ask for God’s blessings on our country.

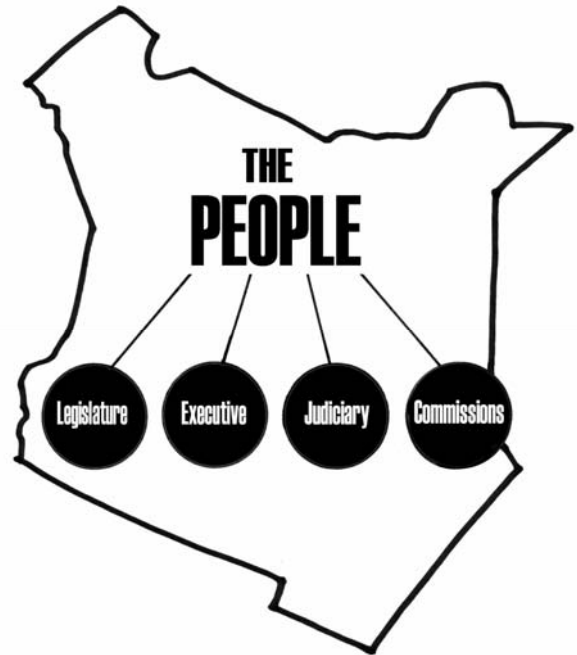
**CHAPTER ONE: SOVEREIGNTY OF THE PEOPLE AND SUPREMACY OF
THE CONSTITUTION**

This chapter is about:

- ❖ **Decision-making**
- ❖ **Controlling our affairs**
- ❖ **Our laws**

What does sovereignty of the people mean?

This means that the power to decide about and control all matters relating to the country lies in us, the people of Kenya. We exercise this power through the representatives we elect and the various organs of state established under the Constitution. These are the legislative, executive and judicial organs at all levels of government, as well as constitutional commissions and State offices.



What are the laws that govern our country?

The highest and most important law in our country is the Constitution. Other laws include: laws made by Parliament; personal laws based on customs, culture or religion; laws of the East African Community; and any international law relevant to our situation.

What does supremacy of the Constitution mean?

This means that the Government and every person in Kenya must obey the Constitution. No person can question the validity of the Constitution. As a Kenyan, you have a duty to respect and to defend our Constitution. All persons in Kenya must obey our Constitution.

CHAPTER TWO: THE REPUBLIC

This chapter is about:

- ❖ **Our country**
- ❖ **Our government**
- ❖ **Our languages**
- ❖ **Our national days**
- ❖ **Our religions**

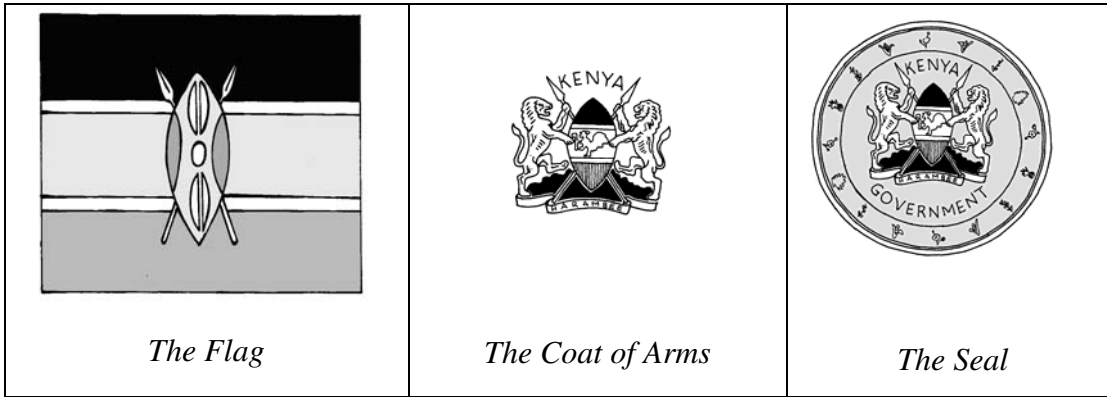
Kenya is a free and independent country. The territory of Kenya is divided into districts and other units as may be determined by law from time to time. We exercise our power to govern ourselves at two levels of Government, which work in harmony for our common benefit. These are the national and district levels.

The capital of Kenya is Nairobi.

The national language of Kenya is Kiswahili.

The official languages of Kenya are Kiswahili and English.

The national symbols of Kenya are found in the First Schedule to the Constitution, and are as illustrated below:



What are our National Days?

A National Day is a day on which we celebrate important events in the history of our country. Our National Days are:

- 1st June – Madaraka Day;
- 20th October – Mashujaa Day; and
- 12th December – Jamhuri Day.

What is the relationship between the State and religion?

Religious matters and state affairs must be kept separate. Kenya has no state religion, and all religions shall be treated equally.

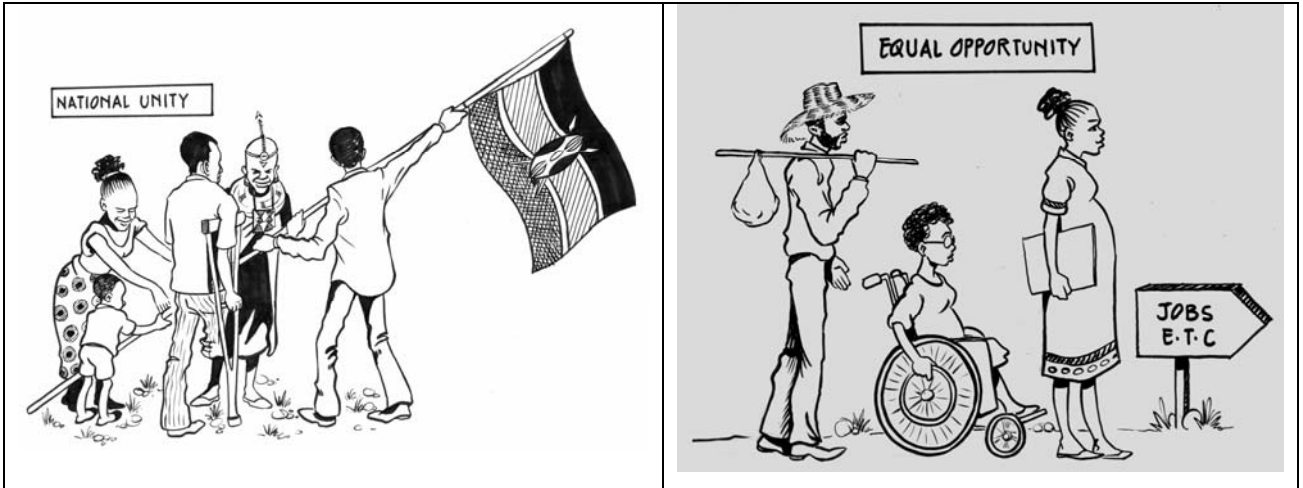
CHAPTER THREE: NATIONAL VALUES, PRINCIPLES AND GOALS

This chapter is about:
❖ **What guides us when we are interpreting our Constitution**

When we, as individuals or agents of the Government, apply or interpret the Constitution, we are guided by our national values, principles and goals as stated in this chapter. These include:-

- the unity of our country;
- ensuring that the work of the Government and its officers is done in an open manner;
- taking steps to get rid of corruption;

- ensuring that women, persons with disabilities, marginalized communities and all other citizens participate fully in all areas of national life; and in particular that no number of men or of women is allowed to make up more than two-thirds of any elective or appointive body;
- managing the wealth of our country fairly for the benefit of all our people; and
- taking good care of the environment so that it can benefit us now and the future generations.



CHAPTER FOUR: CITIZENSHIP

This chapter is about:

- ❖ Our status as citizens
- ❖ Our duties as citizens

Who is a citizen of Kenya?

You are a citizen if you were born in Kenya, or your father or mother was a citizen.

A non-citizen can apply and become registered as a citizen after seven years of marriage to a citizen of Kenya.

A non-citizen who has lived in Kenya continuously for seven years may apply to be registered as a citizen.

A non-citizen may live in Kenya under circumstances allowed by our laws.

If a child of less than eight years whose nationality is not known is found in Kenya, it will be assumed that the child is Kenyan.

A citizen of Kenya has the right to be issued with a passport and other identification documents.

Can I be a citizen of Kenya and another country?

A citizen of Kenya may also be a citizen of another country without losing Kenyan citizenship. Citizens of other countries may also apply to be citizens of Kenya.



What are the duties of a citizen of Kenya?

The duties of a citizen include to:-

- understand, obey and defend the Constitution and other laws;
- vote;
- work to support oneself and family, and promote the welfare of the community;
- pay taxes;
- protect the environment;
- avoid all forms of corruption; and
- promote democracy and good governance.

CHAPTER FIVE: CULTURE

This chapter is about:

- ❖ Respecting and protecting our cultures

Culture in the Constitution

The Constitution recognizes our different traditions, values, customs, histories, religions, medicines, stories and ways of dressing which make us proud to be Kenyans. We are required to understand and protect all these aspects of our cultural heritage. We must also help our children and other people to learn about our culture.



National Commission on Culture

The Constitution establishes a National Commission on Culture to serve as the main instrument of the State for the protection and promotion of culture. The Commission advises the Government on all matters of policy about culture.

Utamaduni Day

We celebrate our cultures together as Kenyans every 26th December, which is called Utamaduni Day.

CHAPTER SIX: BILL OF RIGHTS

This chapter is about:

- ❖ **Our rights as human beings**

What is the Bill of Rights?

All of us have some rights which we enjoy simply because we are human beings. These rights are called *human rights*. The Bill of Rights tells us what they are. They are not given by the State and the State cannot take them away. The Government must recognize, respect and protect these rights. This is important so that everybody and every community is respected and treated fairly.

To whom does the Bill of Rights apply?

The Bill of Rights applies to everybody. It equally applies to the Government, all its branches and State officers while doing their work. They are required to respect and protect human rights, and deal appropriately with the special needs of individuals and different groups in our society.

Also, the Government enters into international agreements about human rights. The Government is required to ensure that those agreements are respected in our country.

Where can I complain if my rights are denied?

If your human rights are denied or if someone threatens to deny you your rights, you have a right to complain. You may complain to a court of law or to the Commission on Human Rights and Administrative Justice. The court can declare that you have been denied your rights and order that you get the necessary compensation. It can also order that an action taken by someone is unlawful and cannot be accepted or respected under the law.

Are there limits to the enjoyment of rights?

The law can put conditions on your enjoyment of rights. This is important so that your enjoyment of rights does not deny others the chance to enjoy their own. But the conditions put must be fair, and must be conditions which are acceptable in a democracy.

The right to life and to equal treatment

One of the human rights is the right to life. From the time in the mother's womb, one has the right to live. Abortion is not allowed except in certain situations specified by an Act of Parliament.



One also has the right to be treated equally with others and not be made to suffer any disadvantages because of race, sex, religion, health condition or such other reason of a similar nature.

What are the rights of women and men?

Women and men have the same rights. This is the case in all matters, including owning or inheriting property. No law, culture or tradition is to be accepted or respected if it denies either women or men any of their rights.

Rights of older members of the society

Older members of our society are those persons who are sixty years of age or above. They continue to have full rights. The Government must assist and protect them.



Rights of the youth

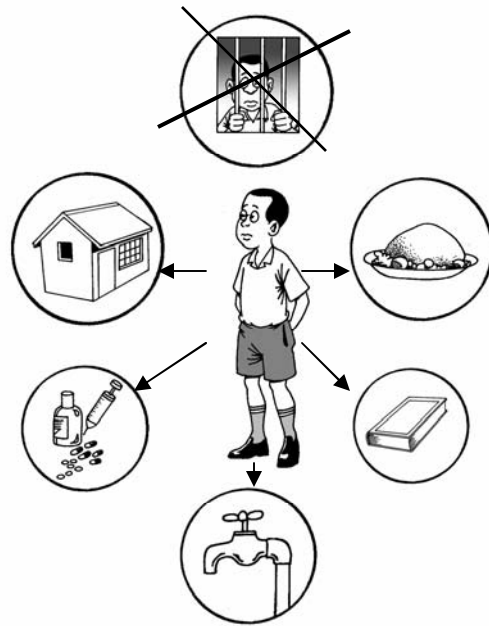
The Government must do what is necessary to benefit the youth and establish the relevant programs for that purpose. It must also help them participate in the running of public affairs.

Rights of children

Children hold a special place in the society. The family and the Government have a duty to educate and protect them. They have the same rights, whether their parents are married or not.

In all matters affecting children, their interests are the most important thing to be considered. The mother and father have equal rights and duties towards the child. The rights of every child include:-

- the right to food, shelter and health services;
- the right to free and compulsory basic education;
- the right to protection from all kinds of harm;
- the right not to be arrested or put in custody unless there is no alternative; and
- if arrested, the right to be kept separate from adults and be given a lawyer by the Government.



Family

The family is the foundation stone on which our society is built and it must be protected.

The right to marry

An individual has the right to marry a person of the opposite sex. The conditions are that they agree and are both eighteen years of age or above. The wife and the husband have the same rights in their marriage. Parliament must make laws that recognize marriages made under customs or religions.

Are the rights of persons with disabilities protected?

Persons with disabilities have the same rights as those without disabilities. They also have the right to be treated with respect. The Government must make laws to ensure that such persons enjoy all these rights.

Prohibition against slavery, servitude and forced labour.

No person is allowed to torture another person or make him or her a slave.

Right to religion

Every person has a right to belong or not to belong to any religion, and to practise religion. No person may force another to believe in or practise religion. One cannot be denied employment or other opportunities and facilities because of religion.

Right to information

One has a right to express oneself and to obtain important information held by the Government. Newspapers, television, radio and other media must operate freely. There shall be no interference from the Government.

Freedom of association

Citizens have a right to meet with and associate with others, and to form organizations. They also may form or join a political party or trade union.

Freedom of movement

As a citizen you have a right to move, live or travel anywhere within Kenya. You also have a right to leave the country.

Refugees

A refugee has a right to stay in Kenya. This is especially the case if his or her life will be unfairly endangered if he or she leaves the country.

Do I have a choice of work? And what rights do workers have?

You have a right to choose a job or business that is available. Workers have a right to be treated fairly, to work in good conditions and to be paid fairly. They have a right to join a trade union of their choice and to go on strike.

Owning property

You have a right to own property. Parliament is not allowed to make a law allowing the Government to take away your property without a good reason. The exception to this rule is when there is a purpose of benefit to the public. In such cases, the Government must pay a fair compensation before taking it away.

What other rights do Kenyans have?

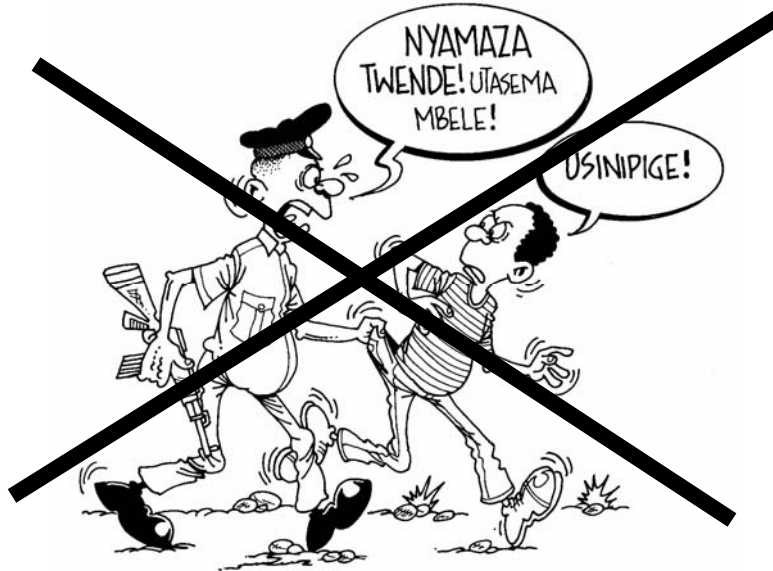
Every Kenyan, has a right to-

- support by the Government if unable to support oneself or family;
- health services;
- education;
- housing;
- food;
- water;
- proper sanitation;
- a clean and safe environment;
- language and culture; and
- protection as a consumer of products and services.

The Government must make laws to ensure that these rights are achieved over time.

What are the rights of an arrested person?

The person must be told the reason for the arrest. He or she must be allowed to speak with a lawyer or any other person who can assist. No one can force another to confess to having committed an offence.



An arrested person must be taken to court as soon as possible. This must not be later than forty-eight hours from the moment of arrest. There is a right to be released on bond before trial, unless there is a good reason for not doing so. If the offence is one that can be punished by a fine or less than six month's imprisonment, the suspect cannot be held in remand.

Right to a fair trial

If one is charged with a criminal offence, one has a right to a fair trial. This includes a right-

- to be considered innocent until proved guilty;
- to be informed of the case and allowed enough time and facilities to prepare to answer it;
- for the case to take the shortest time possible;
- to be represented by an advocate of one's choice, or by one paid by the Government if it would be unjust not to have an advocate; and

- to appeal to a higher court.

Rights of persons in custody

If held in custody, one still has all the rights under the Bill of Rights. The exception is those rights which clearly cannot be enjoyed while in custody.

Declaration of a State of Emergency

A State of Emergency can be declared if the country:

- has been attacked by another country;
- is under threat of war or a natural disaster; or
- is facing some other very serious national problem.

During a State of Emergency, the enjoyment of some of the rights in the Bill of Rights may not be possible. A State of Emergency will last for fourteen days, unless Parliament makes it longer.

The High Court has the power to decide if a declaration of a State of Emergency or actions taken under it are proper under the law. If a law made during a State of Emergency puts conditions on the Bill of Rights, that law can only put conditions that are strictly necessary. A law that puts conditions on the Bill of Rights must be in accordance with international law.

Commissions on Human Rights

The Constitution establishes two Commissions to assist the State to implement the provisions in the Bill of Rights. They are –

- the Gender Commission; and
- the Commission on Human Rights and Administrative Justice.

The Gender Commission is responsible for promoting the equal treatment of men and women. It also advises the Government about all matters relating to gender and development. On its part, the Commission on Human Rights and Administrative Justice is primarily responsible for the protection and promotion of human rights in the country.

CHAPTER SEVEN: LAND AND PROPERTY

This chapter is about:
❖ **Our land and our property**

Land is our country's most important resource. We depend on it for our survival and development. It belongs to all the people of Kenya, whose lives depend on it. It must therefore be held and used in a manner that is fair and reasonable.

Government policies on land

The land policy to be made by the Government must ensure that:

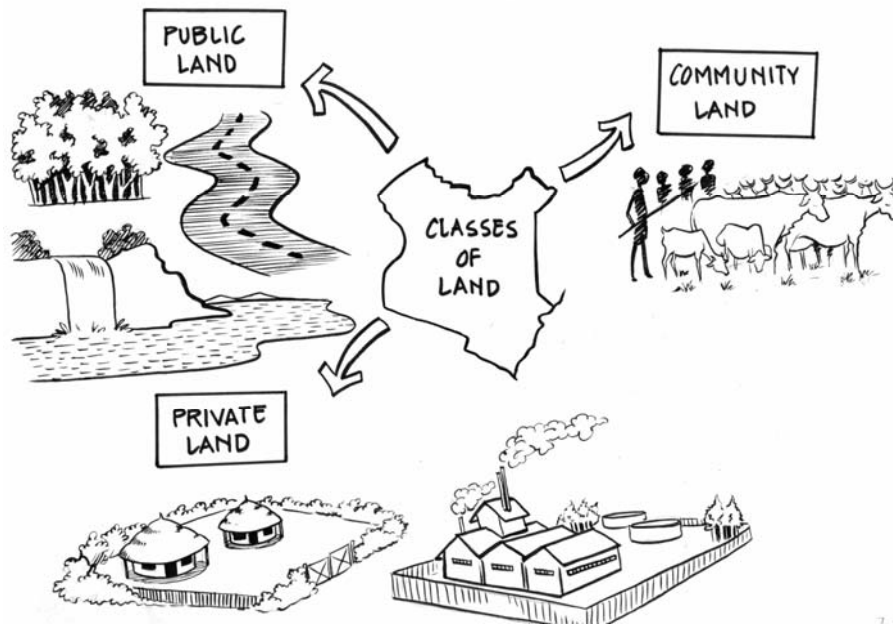
- all Kenyans have fair access to it;
- people use land in an effective and productive manner;
- the law protects people who own or use land;
- people use land in a manner that conserves and protects the environment;
- there is no discrimination against either women or men in ownership and use of land; and
- where possible, land disputes are resolved at the local level.



What are the different classes of land?

There are three classes of land. These are:-

- public land;
- community land; and
- private land.



What is Public land?

Public land is land held by the Government or a public authority. This includes Government forests, roads, national parks and game reserves, rivers, lakes and the sea. Such land cannot be sold or given away unless allowed by the law.

And what is Community land?

This is land held by a particular community. It includes grazing areas and shrines, and lands occupied traditionally by hunters and gatherers communities. Such land cannot be sold or given away unless allowed by the law.

How about Private land?

Private land is all that land that is neither public nor community land. It is owned by an individual or individuals. Such ownership may be permanent or for a limited time.

Can non-citizens own land in Kenya?

No. A person who is not a citizen of Kenya cannot own land in Kenya. But such a person can lease land. The maximum period a foreigner can lease land is ninety-nine years. A non-citizen can use land only by paying rent.

Control of the use of land

The Government has power to control how land is used. However it can only use this power of controlling land in a manner that benefits the public.

Laws on land

Parliament must make laws to ensure the good use of land for the benefit of our people.

National Land Commission

This Commission is in charge of land matters, and its work includes -

- managing all public land;
- advising the Government on land policy;
- investigating disputes about land, and helping to solve them; and
- helping to revise laws and policies on land.

Where are the offices of the National Land Commission?

The National Land Commission must establish offices throughout the country.

CHAPTER EIGHT: ENVIRONMENT AND NATURAL RESOURCES

This chapter is about:
❖ **Our surroundings**
❖ **The wealth that nature has given to us**

What are the duties of the State regarding the environment and natural resources?

The State must protect and preserve our environment and natural resources. Its duties include -

- making sure that the environment is used properly;
- preventing pollution and destruction of the environment;
- encouraging people to use sources of fuel that save energy and that can be used again;
- encouraging people to plant trees so that at least ten per cent of Kenya is covered by trees; and
- making sure that the profits from the use of natural resources and the environment are shared fairly and used for the benefit of the people of Kenya.

What are the citizen's duties in relation to the environment and natural resources?

The duties of the citizen in relation to the environment include -

- the use of natural resources in a responsible way;
- protection and respect for the environment;
- keeping the environment clean, safe and healthy; and
- reporting to the authorities whenever an act that harms the environment is committed.



How do I ensure there is a clean and healthy environment?

You have a right to a clean and healthy environment. If the environment is not clean and healthy, you can take the matter to court.

National Environment Commission

The work of the Commission includes-

- giving advice to the Government on the best ways of managing the environment;

- making sure that the environment is protected and is used in a responsible manner; and
- ensuring that the State's plans and programmes on the environment are implemented.

Are all these rules about the environment in the law?

Parliament must make laws to ensure the good use of the environment.



CHAPTER NINE: LEADERSHIP AND INTEGRITY

This chapter is about:

❖ **Our behaviour in positions of leadership**

The power to decide about and control all matters concerning the country belongs to us, the people of Kenya. This power is sometimes exercised on our behalf by State officers who hold offices established under this Constitution. All public officers are also State officers. A State officer must -

- obey the Constitution;
- respect the people who give the power to govern;
- respect the office that he or she serves in; and
- take an oath or affirmation before taking office.

How should State Officers conduct themselves?

In both their private and public life, all State Officers must act according to some rules.

These include, -

- being qualified and able to perform the duties of office;
- making fair decisions and without favouring any person; and
- being disciplined and dedicated to work.

In addition, a State Officer shall not-

- use office for personal gain;
- ask for or accept a bribe;
- misuse public money;
- use office to take advantage of others sexually or to harm other people; or
- order another person to do an act that is illegal.

Are State Officers punished for committing the above offences?

A State officer found guilty of having acted against any of the above rules must be removed from office. They shall not be allowed to hold any other State office.



Declaration of wealth

State officers are required to make written statements or declarations to the Ethics and Integrity Commission. The declaration says what they own and the debts that they have.

It should include the property and debts of the State Officer, the State Officer's wife or husband, and the State Officer's unmarried children below the age of eighteen years. The declarations are required to be made-

- when the State Officer is appointed to office;
- after appointment, once every year; and
- when the State Officer is leaving office.

Can a State Officer have a bank account in another country?

State officers may not have bank accounts outside Kenya unless allowed by law.

What about gifts to State Officers?

When a gift or some other donation is given to a State Officer at a public or official function, it shall not belong to him or her. It must be surrendered to the Government.



Can a State Officer have another paid job?

If a State Officer is employed on a full-time basis, he or she cannot engage in any other paid work.

Laws on leadership

Parliament must make laws to promote and enforce good leadership and integrity.

Ethics and Integrity Commission

This Commission is the main authority for enforcing ethics and integrity among public officers. Its other functions include-

- receiving the written statements or declarations from State Officers;
- making the statements available for examination if necessary;
- handling complaints from the people on the conduct of State Officers; and
- helping to prevent corruption.

CHAPTER TEN – REPRESENTATION OF THE PEOPLE

This chapter is about:

- ❖ **Representing fellow Kenyans in various public roles**

Principles of elections

The Constitution provides for general principles on elections as follows -

- all citizens who are qualified to vote or stand for election have a right to do so;
- voting in an election must be by secret ballot;
- voting in an election must be free and fair;
- elections must ensure that men, women and marginalized groups are fairly represented; and
- elections must be conducted by an independent body which is protected from all forms of interference.

Laws on elections

Parliament must make laws concerning-

- (a) the number and size of constituencies for election of Members of Parliament;
- (b) how candidates are nominated;
- (c) how votes are cast;
- (d) the continuous registration of voters;

- (e) how elections and referenda are held and supervised; and
- (f) how Kenyans living abroad can register and vote.

Voting at elections

At every election, the Electoral and Boundaries Commission must ensure that-

- the voting procedure is simple;
- ballot boxes are transparent;
- votes cast are counted and results announced at the polling station;
- special arrangements are made so that all registered voters can vote, including Kenyans living abroad, prisoners, members of the Defence Forces and patients in hospitals; and
- elections are free and fair.



Who may vote in an election?

- A citizen is qualified to vote if he or she is at least eighteen years of age.
- One may register as a voter at only one registration centre.
- Arrangements for registration must enable qualified citizens to vote or stand for election.

Independent candidates

An independent candidate is one who is not nominated by a political party for election to Parliament or to a District Assembly. One may stand as an independent candidate if he or she:-

- is a citizen;
- has not been a member of a registered political party for the six months before the elections;

- is registered by the Electoral and Boundaries Commission as an independent candidate;
- satisfies the Code of Conduct for independent candidates prepared by the Electoral and Boundaries Commission;
- has been nominated by the following number of registered voters from the area in which he or she intends to stand as a candidate -
 - (i) in the case of Parliament, one thousand (1000); and
 - (ii) in the case of district, five hundred (500).

Unopposed candidate

If at the end of the nomination day only one candidate is nominated, that candidate is declared elected.

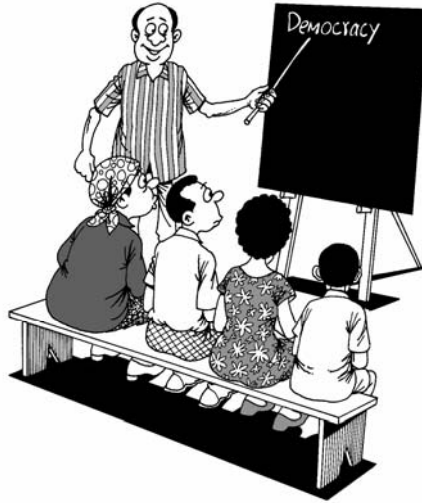
Representation in international law-making authorities

In accordance with relevant agreements, Parliament must make laws on the nomination and election of persons to represent Kenya in law-making authorities at the international level.

The Electoral and Boundaries Commission

The functions of the Electoral and Boundaries Commission are-

- to carry out continuous registration of voters;
- to create constituencies and fix their boundaries;
- to ensure that elections are free, fair and efficiently conducted;
- to supervise political parties;
- to settle minor disputes during an election;
- to clear all candidates for Presidential, Parliamentary and district elections in consultation with the Ethics and Integrity Commission; and
- to educate citizens on how to exercise their right to vote and to accept democracy as a way of life;

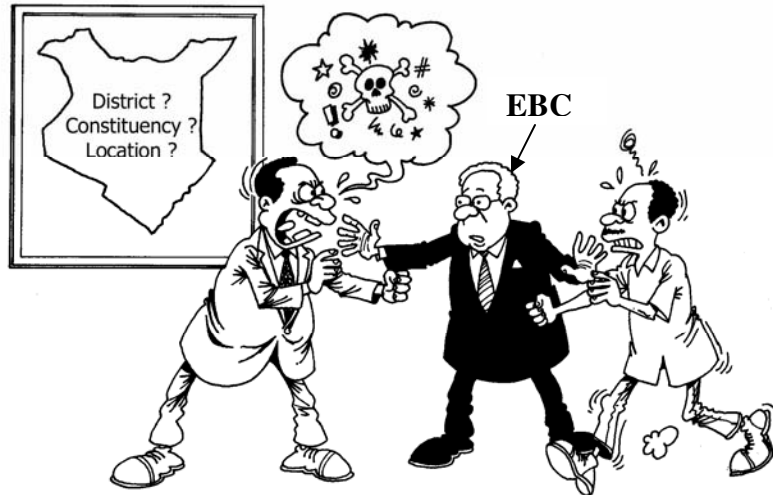


Fixing of constituency and administrative boundaries

The Electoral and Boundaries Commission decides the names and fixes the boundaries of administrative units. In doing so, the Commission must—

- consult all affected persons or groups of persons;
- ensure that all constituencies contain as nearly equal numbers of people as possible; and
- concerning an administrative unit or constituency, take into account -
 - (i) how the communities living there relate to one another;
 - (ii) population density and the way it is likely to change;
 - (iii) geographical features;
 - (iv) means of communication; and
 - (v) the boundaries of existing administrative areas.

The Commission must reconsider the names and the boundaries of constituencies once every ten years or earlier.



Political parties

Political parties play an important role in elections. They hold campaigns and nominate candidates. The government is formed by the winning party or group of parties. The Constitution states the basic principles which all the political parties must observe.

What are these basic principles relating to political parties?

A political party must have a national character. This means that it must not be based on ethnicity, region, race, gender, or religion. A political party must promote the national values, principles and goals and the rule of law.

A political party must also-

- practise internal democracy within itself, and have a democratically elected body to govern it;
- promote and uphold national unity;
- promote and respect human rights; and
- observe the Code of Conduct for political parties.

An Act of Parliament states how political parties should be managed. This includes the management of their:-

- roles and functions;
- registration, supervision and discipline; and
- accounts and audit.

CHAPTER ELEVEN: THE LEGISLATURE

This chapter is about:

- ❖ **The work of those who make our laws
How they get and lose that job**

In Kenya, the highest law-making body is Parliament. Its functions include -

- making laws;
- ensuring that all parts of the country are treated fairly in the sharing of national resources;
- approving appointments of holders of certain public offices;
- checking the conduct of the President, the Deputy President and other State Officers;
- taking action to dismiss these officers if it becomes necessary; and
- considering and approving international agreements.

Who are the Members of Parliament?

Parliament consists of -

- members elected from constituencies, the number of whom is determined by law;
- women elected from special constituencies created by law;
- members nominated by political parties;
- the Attorney-General;
- the Speaker; and
- the Ministers who are appointed from outside Parliament.

Among the members nominated by political parties –

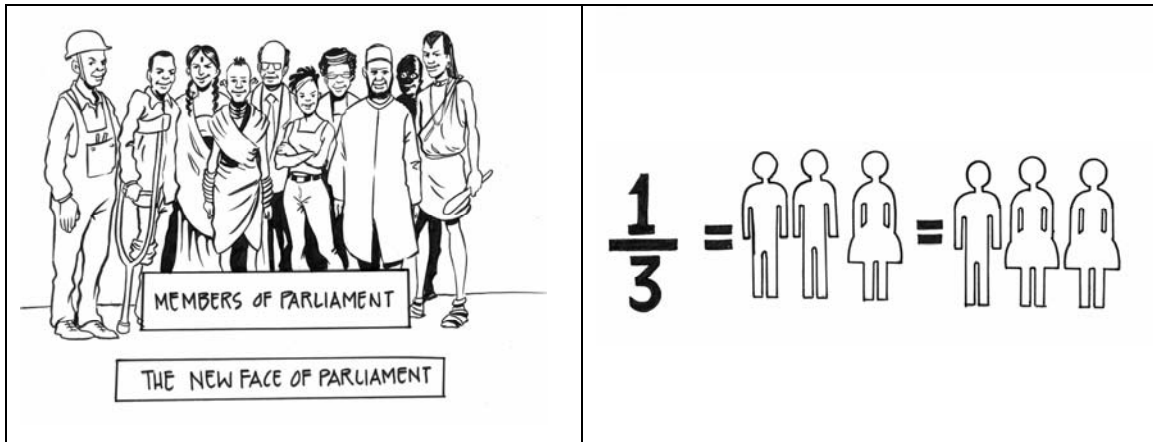
- five percent of the members must be persons with disabilities, and, of these, one-third must be women;
- five percent of the members shall represent special interests, including the youth and workers; and
- a number shall be nominated in the event that either men or women do not make up at least one-third of the total membership.

The Attorney-General, the Speaker and the Ministers appointed from outside Parliament are Members of Parliament only because of their positions. They remain members only as long as they are still in those positions. They do not vote on any matter in Parliament.

Who is qualified to be a Member of Parliament?

A person is qualified to stand for Member of Parliament if he or she–

- is a citizen;
- is registered as a voter in any constituency;
- satisfies any standard of education or conduct that may be set by law;
- is nominated by a political party; or
- is an independent candidate, who must be supported by one thousand or more registered voters.



And who qualifies to be elected to a District Assembly?

A candidate for election to the district assembly, must be supported by five hundred or more registered voters.

Who is not qualified to be a Member of Parliament?

A person is not qualified to be a Member of Parliament if he or she–

- holds a public office, except as a Member of Parliament;
- is of unsound mind;
- has been declared bankrupt and is still in that condition;

- has been sentenced to six or more months in prison, and is still serving that sentence;
- has, during the last ten years, been sentenced to three or more years in prison and served part or all of that sentence;
- has been removed from a public office because of bad conduct;
- has been found to have misused a public office.

When are elections of Members of Parliament held?

Elections for Members of Parliament must be held on a Tuesday. This must be the last Tuesday that allows twenty-eight days before the end of the life of Parliament.

A by-election must be held within ninety days after a vacancy occurs in the position of Member of Parliament. However, if there are only ninety days or less left before the next election, a by-election will not be held. On the other hand, if the vacancy is of a parliamentarian who is not directly elected, the relevant electoral college must nominate a replacement within forty-two days.

Vacation of office of Member of Parliament

One stops being a Member of Parliament –

- if one resigns by writing a letter to the Speaker;
- if something happens that disqualifies the person from membership of Parliament;
- when the life of Parliament ends;
- if one is absent from eight sittings of Parliament without the written permission of the Speaker or a good reason;
- if one is removed from office for going against the rules concerning leadership and integrity for State officers;
- if one joins a political party after being elected to Parliament as an independent candidate; or
- if one leaves the political party that nominated him or her for election to Parliament.

What happens when there is a question concerning the election or nomination of a Member of Parliament, or concerning a vacancy in Parliament?

The High Court must decide the matter within six months.

What happens if a party is dissolved, or if parties come together in a coalition or merger?

A Member of Parliament will not be taken as having left a party that nominated that member for election, if -

- (i) the party is dissolved;
- (ii) the coalition of which the party forms part is dissolved; or
- (iii) the party merges with other parties.

Procedure for Making laws

Law-making begins with a draft law called a Bill. The Bill contains proposals for a new law or changes to an existing law. It may be introduced in Parliament by any member. Money Bills, however, may only be introduced by a Minister. These Bills concern the raising and spending of public funds.

Before becoming law, a Bill goes through several stages. If it is passed, it is sent to the President for assent. The President may give assent or return the Bill with recommendations. If it is returned, but Parliament passes it again, the Bill is sent back to the President for assent or approval.

The President then gives assent and the Bill becomes law. It is then published in the Gazette as an Act of Parliament. However, if the President fails to give assent, the Bill will become law without the President's assent.

How does a Bill finally come into force as an Act of Parliament?

A Bill passed by Parliament and assented to by the President-

- is published in the Gazette within seven days after the assent; and
- comes into force within seven days after it is published in the Gazette.

However, if the Act as published in the Gazette-

- mentions the date of its coming into force, it comes into force on the date mentioned;
- gives to Members of Parliament a direct monetary benefit (like salaries and allowances), it comes into force after the life of the Parliament that passed it ends.

Where can I find laws that have been passed?

There is a public registry called the Registry of Enactments, which keeps all laws passed by Parliament, and also laws passed by the district assemblies. The legislation is available in-

- Kiswahili;
- English; and
- Braille.

A copy of each piece of legislation enacted by Parliament and the district assemblies must also be available in all public libraries.

Where does Parliament sit?

The seat of Parliament is Nairobi. However-

- the President may appoint any other place for the first sitting of a new Parliament;
- if it becomes necessary, Parliament may decide to sit elsewhere.

What rules guide Parliament in doing its work?

Parliament makes rules on how to carry out its work. These rules are known as Standing Orders.

Committees of Parliament

Parliament has committees to assist it in doing its work. A committee has power to call any person to assist it in the performance of its functions.

Conduct of business and meetings of Parliament

Parliament must perform its functions in an open manner. It must hold its meetings and those of its committees in public. This allows members of the public to take part in the work of Parliament. They are allowed to attend meetings of Parliament, unless there is a good reason why they should not attend.

Do I have the right to request Parliament to consider an issue that I am concerned about?

Every person has a right to make a written request to Parliament to make or amend any law, or stop any existing law from applying.



What is the quorum in Parliament?

The quorum of Parliament is thirty percent of all members. That is the number required for Parliament to conduct its business at any one sitting.

What are the official languages of Parliament?

The official languages of Parliament are Kiswahili, English and sign language.

How are decisions made in Parliament?

Any matter brought up for decision in Parliament is decided by a majority of the members present and voting. If the votes for and against any matter are equally divided the matter is lost. However, there are cases where the Constitution requires a different majority.

A Member of Parliament is not allowed to vote on a matter in which he or she has a direct monetary interest. If the member votes on such a matter, the vote is not counted.

Privileges of Parliament and its members

Members of Parliament enjoy freedom of speech and debate in Parliament. They cannot be charged or questioned in a court of law for what they say or do in Parliament while performing their functions. However, they must obey the Standing Orders and can be punished by Parliament for not doing so.

Officers of Parliament

Officers of Parliament are placed in two groups -

- officers who are Members of Parliament - that is, the Speaker and the Deputy Speaker; and
- officers who are not members of Parliament; that is, the Clerk and the staff. These officers assist Parliament in matters of administration and technical work.

How are the Speaker and Deputy Speaker elected?

The Speaker is elected by Parliament from among persons who are not members but are qualified to be elected as members.

The Deputy Speaker is elected from among persons who are already Members of Parliament.

What is the work of the Speaker and Deputy Speaker?

The Speaker and Deputy Speaker chair Parliamentary debates, and make sure that the Standing Orders are followed. They are also spokespersons of Parliament as a whole in its dealings with persons outside Parliament.

The Clerk of Parliament

The Clerk is appointed by the Parliamentary Service Commission with the approval of Parliament. He or she-

- is appointed on permanent and pensionable terms;

- retires at the age of sixty-five years;
- may be removed from office by a vote supported by at least sixty-five per cent of all Members of Parliament.

Leader of the Opposition

The Leader of the Opposition is elected by the largest party or coalition of parties in Parliament not forming the Government. He or she-

- comes in importance immediately after the President, the Deputy President, the Prime Minister and the Speaker;
- may take part in all official functions;
- has the right to speak immediately after the Prime Minister in reply to a speech to Parliament by the President.

The Standing Orders ensure that the Leader of the Opposition is able to take part effectively in the business of Parliament.

When is Parliament dissolved or prorogued?

The life of Parliament is five years from the date it meets for the first time after a general election.

When Kenya is at war, the life of Parliament may be extended by not more than six months. This extension must be supported by the votes of at least sixty-five per cent of the members. However, the extension must not-

- exceed a total of twelve months;
- be made between a general election and the end of the life of the outgoing Parliament.

Otherwise, Parliament is prorogued on the thirtieth of November in every year. This stops its business until the next session, which starts on the first Tuesday of February in the next year.

The Parliamentary Service Commission

The functions of this Commission include -

- providing the necessary services and facilities to ensure Parliament functions effectively and efficiently;
- creating offices in the parliamentary service, and appointing persons to hold those offices;
- managing the budget or finances of Parliament; and
- performing any other function to promote parliamentary democracy in the country, and to improve the welfare of the Members and staff of Parliament.

CHAPTER TWELVE: THE EXECUTIVE

This chapter is about:

- ❖ **Those who rule us**
- ❖ **Their duties**
- ❖ **How they get into their positions**

The President

The executive authority of the Republic is vested in the President. This means that the President has the authority to control and direct the affairs of the Republic of Kenya. The President is the-

- Head of State;
- Head of Government;
- Commander-in-Chief of the Kenya Defence Forces; and
- Chairperson of the National Security Council.

Election of the President

The President is directly elected by registered voters in a secret ballot. The election is held every fifth year, together with the elections for members of Parliament, unless there is an earlier vacancy in the office of the President. The President holds office for a term of not more than five years, and may be re-elected for one further and final term.

How is a candidate for President nominated?

A candidate for President must be—

- qualified to stand for election as a Member of Parliament;
- nominated by a registered political party; or
- if an independent candidate, nominated by at least ten thousand (10,000) registered voters, including at least one hundred (100) from each district.

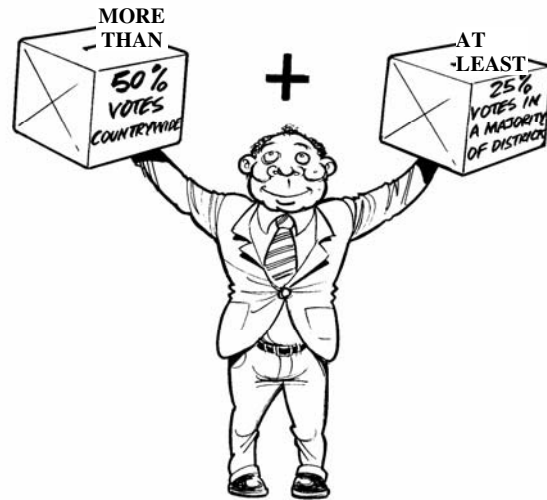
One is not qualified to be nominated as a candidate for President if one –

- serves the interests of a foreign country;
- is serving in any office in the public service;
- is a member of a Commission established by the Constitution;
- is a candidate for election as a Member of Parliament; or
- has ever been dismissed from any office for acting against the Constitution or for misconduct.

Procedure for presidential election

If there is only one candidate, the candidate is declared elected. If there are two or more candidates, voting takes place in every constituency.

The successful candidate must have more than fifty per cent of all the votes cast in the election. In addition, he or she must have at least twenty-five per cent of the votes cast in each of a majority of the districts.



If no candidate is successful, a fresh election is held. In this election, the candidates who received the highest and the second highest number of votes are the only candidates. The successful candidate is the one who receives the higher number of votes. He or she is

declared elected as President but, before being sworn in, he or she is known as the President-elect.

How can a presidential election be challenged?

The election of the President-elect may be challenged by lodging a complaint in the Supreme Court within seven days after the election results are announced. The complaint must be heard, and judgment on it must be given within seven days after it is lodged.

How does the President-elect take office?

The President-elect must be sworn in before taking office. The swearing-in is done on the first Tuesday following the twenty-one days after the election results are announced.

The President-elect takes office by taking two oaths or affirmations. These are –

- the oath or affirmation of loyalty to Kenya; and
- the oath or affirmation to carry out the functions of office as required by the law.

The ceremony is done before the Chief Justice or a Judge of the Supreme Court on the date when the term of the President holding office expires.

What happens if the President-elect dies before taking office?

If the President-elect dies before taking office, the person declared elected as Deputy President takes the office of President. The office of Deputy President then becomes vacant. And if the person declared elected as Deputy President dies before taking office, the office of Deputy President is declared vacant once he or she becomes President. However, if both the President-elect and the person declared as Deputy President die before taking office, the Speaker of Parliament acts as President until a fresh election is held.

What are the functions of the President?

The President has a number of state functions under the Constitution. If temporarily absent or unable to perform the functions of office of President, the person who holds office during that time exercises some of the powers of President.

The state functions of the president are-

- addressing the opening of each new Parliament, a special sitting of Parliament once each year, or addressing Parliament at any other time;
- addressing the nation on the steps taken and the progress achieved in realizing the national values, principles and goals;
- appointing and dismissing the Prime Minister, Deputy Prime Ministers, Ministers, Deputy Ministers, judges, and other public officers, according to the procedure in the Constitution;
- signing treaties and other international agreements which Parliament has approved;
- declaring a State of Emergency or war with the Cabinet's approval;
- appointing and receiving diplomatic and consular representatives;
- exercising the powers of mercy;
- conferring honours on Kenyans who have served the country in an outstanding manner; and
- making sure that the country's international obligations are fulfilled by the Ministers, and reporting to Parliament on the progress made in fulfilling the agreements every year.

On the advice of the Advisory Committee on the Presidential Power of Clemency, the President has power to pardon or reduce the sentence of a person who has been convicted for committing an offence.

How can the President be removed from office?

The President may be removed from office in two ways -

- due to incapacity in the sense that he or she is unable to perform the functions of office because of physical or mental illness;
- on impeachment meaning that he or she fails to act in accordance with the Constitution or is of very bad behaviour.

What is the procedure for removing the President due to incapacity?

The following steps are followed in removing the President due to incapacity-

- a Member of Parliament moves a motion to remove the President from office;
- if the motion is supported by at least half of the Members of Parliament, the Speaker informs the Chief Justice;
- the Chief Justice then appoints a medical tribunal consisting of five medical practitioners within seven days;
- if the Chief Justice fails to appoint the tribunal, the Speaker must appoint the tribunal within seven days;
- the tribunal inquires into the President's capacity and reports to the Chief Justice or the Speaker - depending on who appointed the tribunal - within fourteen days;
- the Chief Justice or the Speaker certifies the report and takes the certificate and the report to Parliament; and
- if the tribunal reports that the President is incapable of performing the functions of office and the report is adopted by at least half of the Members of Parliament, the President must leave office.

What is the procedure for removing the President by impeachment?

The following steps are followed in removing the President by impeachment-

- a Member of Parliament moves a motion for the impeachment of the President;
- if more than fifty percent of the members of Parliament adopt the motion, Parliament appoints a special committee of thirteen members to investigate the matter;
- the special committee investigates the matter and must report to Parliament within ten days;
- if the committee reports that the charges against the President have been proved, Parliament votes on the report; and
- if the report is adopted by seventy-five percent of all the Members of Parliament, the President is removed from office.

How then, may a vacancy arise in the office of President?

The office of the President may become vacant if the President –

- dies;
- resigns;
- is removed because of physical or mental incapacity; or
- is impeached.

How is the vacancy filled?

Where a vacancy occurs in the office of President, the Deputy President takes office as President. And where a vacancy occurs in both the office of President and that of Deputy President, the Speaker of Parliament assumes office as President.

Can the President be prosecuted or sued in a court of law?

A person who holds the office of President cannot be prosecuted while holding that office. Similarly, a person holding the office of President cannot be sued while holding that office for doing or failing to do anything in the exercise of the powers given under this Constitution.

How is the Deputy President elected?

There is no separate election for the Deputy President. Before a presidential election, each candidate must nominate a person who becomes Deputy President if the candidate is elected as President. The person nominated must also be qualified for election as President.

What is the term of office of the Deputy President?

The term of office of the Deputy President begins when the President takes office and ends –

- when the next President takes office;
- upon the Deputy President taking the office of President; or
- when the Deputy President resigns, dies or is removed from office.

The Deputy President –

- serves for not more than two terms;
- may resign by written notice addressed to the President; or

- may be removed in the same way that the President may be removed.

What happens when the office of Deputy President becomes vacant?

If the office of the Deputy President is vacant, the President nominates a person who is qualified for election as President to serve as Deputy President. The nomination is submitted to the Speaker within fourteen days. Parliament may, by resolution supported by two-thirds of all the members, approve the nomination.

If Parliament does not approve the nomination, the President makes another nomination. And if Parliament rejects the second nomination, the President appoints another person to be the Deputy President.

What are the functions of the Deputy President?

The Deputy President –

- is the principal assistant of the President in the performance of the President's functions;
- performs the functions given by the Constitution;
- acts as the President if the President is temporarily unable to work or is absent from Kenya; and
- performs any other functions the President may assign.

The Prime Minister

There is a Prime Minister of the Republic.

What are the Functions of the Prime Minister?

The Prime Minister is accountable to the President. Under the general direction of the President he or she –

- (a) is the Leader of Government Business in Parliament;
- (b) performs other duties required by the Constitution, or as the President directs.

How is the Prime Minister appointed?

The Prime Minister is appointed by the President from among the Members of Parliament. The process to appoint the Prime Minister starts within seven days after Parliament meets following a general election or whenever necessary to fill a vacancy in the office of the Prime Minister.

The person appointed must receive the support of more than fifty percent of all the Members of Parliament. And if Parliament fails to confirm the person, the President makes another nomination. If Parliament fails to confirm the second nominee, the President chooses a Member of Parliament to become Prime Minister.

What is the term of office of the Prime Minister?

The term of office of the Prime Minister continues until the -

- Prime Minister dies;
- Prime Minister resigns in writing addressed to the President;
- Prime Minister is dismissed from office; or
- next person appointed Prime Minister after an election assumes office.

The Cabinet

The Cabinet is made up of the President, Deputy President, Prime Minister, two Deputy Prime Ministers, Ministers, the Attorney-General and the Government Chief Whip.

How are the Deputy Prime Ministers, Ministers and Deputy Ministers appointed?

The Deputy Prime Ministers, Ministers and Deputy Ministers are appointed by the President. They are appointed from among Members of Parliament. However, the President may appoint not more than twenty percent of the Cabinet from outside Parliament. They assume office by taking and subscribing the oath or affirmation of office.

The term of office of Deputy Prime Ministers, Ministers and Deputy Ministers

The Deputy Prime Ministers, Ministers and Deputy Ministers continue in office until they-

- die;
- resign in writing - their resignations being addressed to both the Prime Minister and the President;
- are dismissed;
- or their successors assume office after an election for Parliament.

Allocation of duties to Cabinet members

The President assigns responsibilities to the Deputy President, the Prime Minister, a Deputy Prime Minister, a Minister or a Deputy Minister.

The Cabinet at work

Members of the Cabinet are accountable to Parliament, as a team and as individuals, in the performance of their functions. They are charged with the responsibility of the Ministry over which they exercise general direction and control.

The Cabinet must meet at least once a month. The quorum for Cabinet meetings is half of the Cabinet members.

A Cabinet decision must be in writing and signed by the President.

Secretary to the Cabinet

The Secretary to the Cabinet is appointed and removed from office by the President with the approval of Parliament.

The Secretary to the Cabinet—

- is in charge of the Cabinet office;
- arranges the business, and keeps the minutes, of the Cabinet;
- conveys Cabinet decisions to appropriate persons.

Principal Secretaries

The Principal Secretary —

- is appointed by the President with the approval of Parliament;

- is the administrative head of the Ministry; and
- supervises the day-to-day running of the Ministry, and advises the Minister on all matters concerning the Ministry.

The Attorney-General

The Attorney-General is appointed by the President after receiving recommendation from the Public Service Commission and the approval of Parliament.

What are the qualifications of the Attorney-General?

To be appointed as Attorney-General, a person must have the same qualifications as are required for appointment as Chief Justice.

What are the duties of the Attorney-General?

The Attorney-General is the principal legal advisor to the Government, and -

- prepares legal documents for the Government;
- represents the Government in civil cases; and
- drafts legislation for the Government.

What is the term of office of the Attorney-General?

The Attorney-General serves for a term of five years, and can be re-appointed for one further term of five years.

The Director of Public Prosecutions

The Director of Public Prosecutions is appointed by the President on the recommendation of the Public Service Commission and after the approval of Parliament.

What are the qualifications of the Director of Public Prosecutions?

To be appointed Director of Public Prosecutions, a person must have the same qualifications as are required for appointment as a judge of the High Court.

What are the functions of the Director of Public Prosecutions?

The Director of Public Prosecutions prosecutes criminal cases on behalf of the Government and can-

- bring a criminal case against any person;
- take over criminal cases that have been brought by other persons;
- with the permission of the court, stop any criminal cases before judgment is delivered; and
- direct the Inspector-General of the Kenya Police to carry out investigations of crimes.

What is the term of office of the Director of Public Prosecutions?

The Director of Public Prosecutions holds office for ten years and cannot be re-appointed.

The Public Defender

The Public Defender is appointed by the President on the recommendation of the Public Service Commission and after the approval of Parliament.

What are the qualifications to be appointed as Public Defender?

To be appointed as Public Defender, a person must have the same qualifications as are required for appointment as a Judge of the High Court.

What are the functions of the Public Defender?

The Public Defender provides legal advice and representation to people who cannot afford legal services.

What are the grounds for removing the Attorney-General, the Director of Public Prosecutions or the Public Defender from office?

The Attorney-General, the Director of Public Prosecutions or the Public Defender may be removed from office if he or she -

- is unable to work because of sickness;
- fails to comply with the principles relating to integrity under Chapter Nine of this Constitution;
- is bankrupt;

- lacks the skill to do the work required properly; or
- misbehaves, or is of bad conduct.

What is the procedure for removing the Attorney-General, the Director of Public Prosecutions or the Public Defender from office?

- Any person can complain to the Public Service Commission asking that the Attorney-General, the Director of Public Prosecutions or the Public Defender be removed from office.
- If the Public Service Commission is satisfied that the complaint is valid, it will send it to the President.
- After receiving the complaint, the President must suspend the officer concerned and appoint a tribunal to recommend whether or not he or she should be removed from office.
- In making a decision, the President must act according to the recommendation of the tribunal.

CHAPTER THIRTEEN - THE JUDICIARY

This chapter is about:

- ❖ **How our laws are applied in our courts and other places**

Judicial power

Judicial power is the power to interpret our laws and make judgments. It is exercised on behalf of the people by the courts and other tribunals. In exercising this power, they must follow the Constitution and the Laws of Kenya.

Principles that guide the courts and other tribunals

The courts and other tribunals are guided by the following principles-

- all people must be treated fairly;
- decisions must be made without delay;
- people who have been wronged must be adequately paid for their loss;
- the procedures used must be simple and easy to understand;

- the use of traditional courts to decide cases should be encouraged.

Who are the members of the Judiciary?

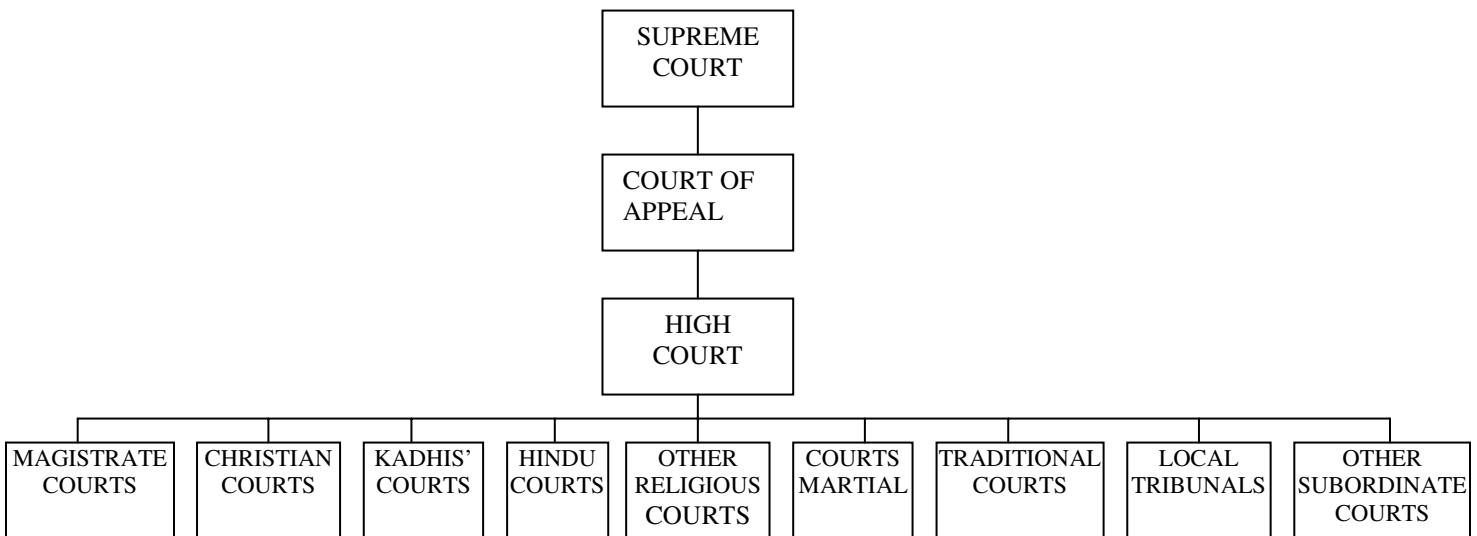
The members of the judiciary are -

- judges;
- magistrates; chief presiding officers and presiding officers of religious courts, the Chief Kadhi and Kadhis; and
- other officers of the courts.

Which are the courts in Kenya?

The following are the courts in Kenya-

- the Supreme Court;
- the Court of Appeal;
- the High Court;
- the Magistrate’s Courts, Christian courts, Kadhis’ courts, Hindu courts and other religious courts;
- the Courts Martial or military courts;
- traditional courts;
- local tribunals created by Acts of Parliament; and
- any other subordinate courts created by Acts of Parliament.



Independence of the Judiciary

The Judiciary is independent and is not answerable to any other body or person.

The Chief Justice and the Deputy Chief Justice

The Chief Justice is the head of the Judiciary. The Chief Justice remains in office for ten years, or until he or she is seventy years of age, whichever comes earlier.

The Deputy Chief Justice is the principal assistant to the Chief Justice.

The Supreme Court

The members of the Supreme Court are-

- the Chief Justice, who is the President of the Court;
- the Deputy Chief Justice, who is the Vice-President of the Court; and
- between five and seven other Judges.

The Supreme Court is the only court with the power to decide the following types of cases-

- presidential election petitions;
- cases concerning the impeachment of the President; and
- appeals from the Court of Appeal and from other courts and tribunals as allowed by the law.

The Court of Appeal

The members of the Court of Appeal are-

- the President of the Court of Appeal;
- other Judges.

It hears appeals from decisions of the High Court or any other court or tribunal.

The High Court

The members of the High Court are-

- the Principal Judge;

- other Judges.

The High Court has the power to decide the following types of cases -

- criminal and civil cases;
- interpreting and enforcing the Constitution; and
- any other cases that the law may require it to hear and decide.

The High Court acts as the supervisor to the courts and other tribunals that are below it.

How are the Chief Justice, Deputy Chief Justice and other judges appointed?

The procedure for appointing the Chief Justice, Deputy Chief Justice and other judges is as follows-

- a recommendation is made by the Judicial Service Commission;
- the recommendation is approved by Parliament; and
- the final appointment is made by the President.

Who qualifies to be a Chief Justice, Deputy Chief Justice or a judge?

The Chief Justice, Deputy Chief Justice, Judges of the Supreme Court and of the High Court must be persons who-

- have a good understanding of law, and are able to do the work required in their offices; and
- are of high moral character and integrity.

Additional qualifications for judges

In addition,

- to be the Chief Justice or a Judge of the Supreme Court, a person must have fifteen years experience in Kenya or in another Commonwealth country, as a judge of the Court of Appeal or the High Court, or as an advocate in public or private practice;
- to be a Court of Appeal judge, a person must have served twelve years in Kenya or in another Commonwealth country, as a judge of the Court of Appeal or High Court, or as an advocate in public or private practice; and

- to be a High Court judge, a person must have served ten years in Kenya or in another Commonwealth country, as a professionally qualified magistrate, or as an advocate in public or private practice.

What is the retirement age for judges?

The retirement age for judges is seventy years.

When can a judge be removed from office?

A judge may be removed from office, if the judge-

- is unable to work because of sickness;
- is bankrupt;
- lacks the skill to do the work required properly; or
- misbehaves, or is of bad conduct.

What is the procedure for removing a judge from office?

Any person can complain to the Judicial Service Commission asking that a judge be removed from office. If the Judicial Service Commission is satisfied that the complaint is valid, it will send it to the President. After receiving the complaint, the President must suspend the judge concerned and appoint a tribunal to decide whether or not the judge should be removed from office. The President must act according to the decision of the tribunal.

Religious courts

The following religious courts are recognized by the Constitution –

- Christian courts;
- Kadhis' courts; and
- Hindu courts.

Parliament has power to establish other religious courts.

The religious courts are presided over by Chief presiding officers, Chief Kadhi, other presiding officers or Kadhis of the respective religions.

Parliament makes laws on how the religious courts are organized.

Which cases can the religious courts deal with?

The religious courts deal only with matters of their religious laws concerning personal status, marriage, divorce and inheritance. All the parties before a religious court must belong to the religious faith applied by that court.

The Judicial Service Commission

The members of this Commission are-

- The Chief Justice who is the chairperson;
- one judge of the Supreme Court;
- one judge of the Court of Appeal;
- one judge of the High Court;
- the Attorney-General;
- two advocates; and
- one person nominated by the Public Service Commission.

What are the functions of the Judicial Service Commission?

The work of the Judicial Service Commission includes-

- ensuring that the Judiciary is independent and works in an open manner;
- recommending to the President persons to be appointed as judges.
- appointing, disciplining and removing court registrars, magistrates and other judicial officers;
- preparing programmes for ensuring the continuous training of judges, magistrates and other judicial officers; and
- advising the Government on how to improve the Judiciary.

CHAPTER FOURTEEN: DEVOLVED GOVERNMENT

This chapter is about:

- ❖ **How we govern ourselves at the district level**

What is devolution?

Devolution is about having different levels of government, which cooperate in controlling the affairs of the country and deciding on the allocation of the country's resources.

Devolution is intended to-

- enable the protection of democratic rights and ensure governance to Kenyans;
- allow transparency in self-governance;
- enable local communities to take charge of their affairs and promote development;
- protect the rights of marginalized groups;
- ensure that resources are shared fairly country-wide; and
- enable citizens to benefit from Government services throughout Kenya.

District government

Our Government works at two levels: national, and district. The law states how these levels work. The principal unit of devolution is the district.

How do the two levels of Government work together?

In performing its functions, each level of Government must ensure that it does not interfere with the other level. And each level must respect the rights and constitutional position of the other level. Both levels must assist and support each other, and respect the laws governing the arrangement. The two levels of Government must share information with each other and exchange views on how each of them can perform its duties better.

The district governments may set up joint committees and authorities when it is necessary to make it easy for them to work together.

Parliament makes laws to help the district governments and the national Government to settle disputes between them.

Responsibilities of each level of Government

Each level of Government is assigned certain duties and responsibilities.

The functions of the national Government include-

- foreign affairs;
- the use of international waters;
- immigration and citizenship;
- national defence and security; and
- the courts.

The functions of the district government include-

- formulating district policies;
- agriculture in the district;
- district health services;
- cultural activities; and
- transport in the district.

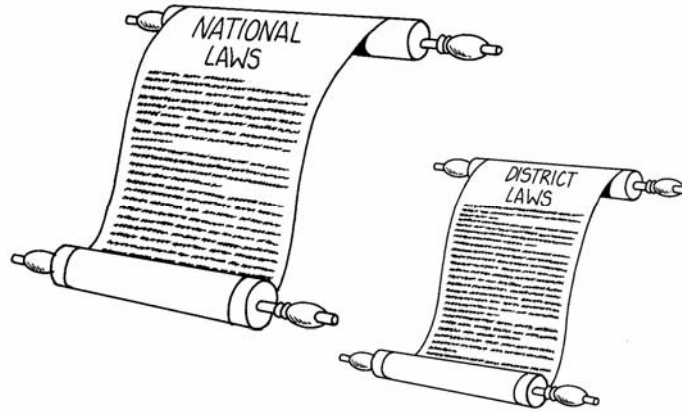
Whenever possible, district governments bring their services closer to us by giving authority to lower levels of authorities to provide some of their services.

When the functions of the national Government are given to a district government, the money to enable those functions to be performed by the district government must also be given.

To perform their functions the national Government and the district governments will receive money from the Treasury. In addition, district governments have power to raise some money through taxes.

Clash of national laws and district laws

The district government and the national Government each have power to make laws on some matters of concern to them. And if national and district laws do not agree, national law applies.



Urban areas within districts

National legislation provides the manner in which urban areas within districts are managed. National laws-

- differentiate between urban and rural areas within districts;
- state how an area in a district may become urban; and
- state how citizens of urban areas within the district to participate in governance in their districts.

Suspension of a district government

A District government may be suspended for not more than ninety days if -

- there is a war within Kenya;
- if we are at war with another country; or
- if it is inefficient or corrupt.

Before a district government is suspended, -

- an independent Commission of Inquiry must investigate whether or not charges are true; and
- the Commission of Inquiry must have recommended that it be suspended.

The law states how the work of a suspended district government will be done.

National Forum for District Governments and other Fora

There is a Forum called the National Forum for District Governments in which every district government is represented. It enables district governments to co-ordinate their affairs. It also consults with, and advises, the national Government on matters relating to district governments.

The Constitution allows district governments to co-operate in the performance of their functions. For this purpose, a number of district governments can set up a forum.



District governments

Each district has a district government made up of:

- a district assembly; and
- a district council.

The proceedings of the district assembly and district council must be open to the public and the press.

What is the work of the district assembly?

The district assembly is the law-making body of the district government.

Who are the members of the district assembly and what is their term of office?

A district assembly is made up of -

- one member elected from each ward within the district; and
- special seat members who are all women. These members are elected after the election of one member from each ward in the district, so that one-third of the members of each district assembly are women;
- members nominated by political parties to represent special interests.

A district assembly is elected for a term of five years.

The district council

The district council is made up of -

- an elected district chairperson;
- an elected deputy district chairperson; and
- other members appointed from among members of the district assembly by the district chairperson with the approval of the district assembly.

Members of the district council must reflect the different gender, religious, cultural and ethnic interests within the district.

Election of district chairperson and deputy district chairperson and their terms of office

The law states the manner in which the district chairperson and deputy district chairperson are elected.

The district chairperson and deputy district chairperson hold office for a term of five years, and may seek re-election for one further term.

What is the work of the district council?

A district council ensures: -

- that the laws made by the district assembly are working as required ;
- that national laws within the district are working as required; and

- that the various units within the district are working in harmony.

The district council may also prepare laws for the district assembly to pass and do other work given to it under national or district laws.

Members of the district council are accountable individually and together to the district assembly. The council is required to make reports to the district assembly regularly, explaining to the assembly how it is working.

Laws of district governments

Laws made by district governments must be published in the Kenya Gazette before they can be applied.

Implementation of the devolved structure

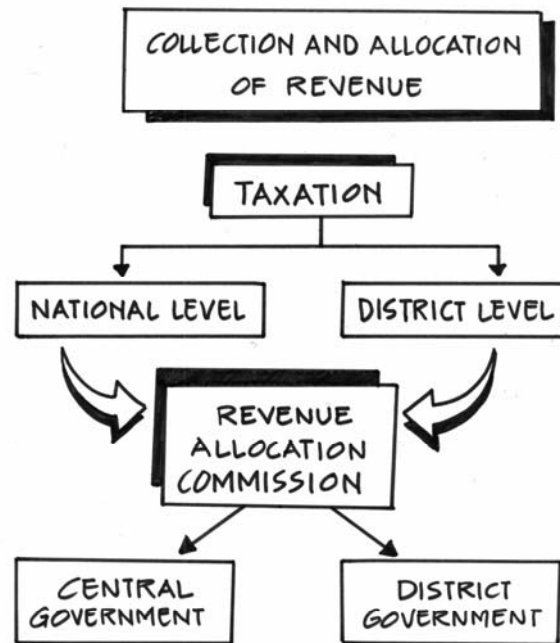
The law states how the district government system operates.

CHAPTER FIFTEEN: PUBLIC FINANCE AND REVENUE MANAGEMENT

This chapter is about:

- ❖ **How our government obtains money**
- ❖ **How the government looks after public money**

The purpose of having a system for managing public finance and revenue is to ensure that public money is handled in an efficient and open manner. The system also ensures that tax payers participate more actively in shaping how the Government uses their money.



Imposition of tax

Public funds are raised through taxation. The national government and the district governments have different taxation powers. No person or authority may impose, cancel or change a tax, fee or charge on behalf of the Government, unless the law allows.

How are national funds shared among district governments?

The Government must promote a system that makes all areas equal in terms of development. For this purpose, the national Government provides each district government with a fair share of money. This sharing for the national Government and the district governments is based on such factors such as differences in development and any emergency situation which may arise in an area.

The Consolidated Fund

All money received by the Government is paid into the Consolidated Fund. No money can be removed from the Fund unless allowed by this Constitution or another law.

What is the Revenue Fund?

The Revenue Fund is established for each district government. Money received is put into this fund. And money required for the work of the district government is withdrawn from it.

The Contingency Fund

Money from the Contingency Fund is used when an emergency arises which had not been budgeted for. Parliament will make a law for the operation of the Fund.

Borrowing by governments

The national Government is allowed to borrow money from any source. However, before borrowing, the national Government must receive approval of Parliament. Similarly, a district government is allowed to borrow money only with the permission of the district assembly.

The amount borrowed by both levels of government is not to exceed a certain percentage of the total wealth of the country. This percentage is set by law.

An Act of Parliament provides the conditions under which the Government or district government can guarantee a loan.

Budgets

Budgets contain the proposals of the national Government or district governments on how they will raise and spend money during the period of one year. The national budget has to set aside some money for marginalized areas and communities.

How do members of the public participate in making the budget?

Members of the public must be involved in the preparation of the budget. Their views and the advice of the Economic and Social Council have to be considered when Parliament is making the budget.

How does the Government buy goods and services?

If the Government wants to buy goods or services, it must buy them in a manner that is fair, open and competitive. The law states how this is done.

The use of Government money by public institutions

Government money has to be used properly and accounted for. The Principal Secretary in charge of a Ministry and all accounting officers of a Ministry, department or a public authority must be accountable to Parliament for the use of public funds.

If public funds are misused, the Treasury can stop transfer of money to the public authority responsible. However it cannot stop the transfer of more than fifty per cent of the funds which were to be received by a district government. Parliament can approve or decide not to approve such a decision by the Treasury.

Controller of Budget and the Auditor-General

The offices of Controller of Budget and the Auditor-General are created by the Constitution. These offices are very important for taking care of public money. The Controller of Budget ensures that money is allocated in accordance with the budget. On the other hand, the Auditor-General ensures that the money used is for the purposes it was budgeted for.

Other institutions whose work is relevant to public finance

(a) National Revenue Authority

The National Revenue Authority is responsible for collecting revenue due to the national Government. The law states its composition and functions.

(b) Commission on Revenue Allocation

The main function of the Commission on Revenue Allocation is to decide how money from national sources is shared between the two levels of government. It also has powers to settle disputes arising between the national Government and the district governments about sharing of national resources.

Representatives of district governments to this Commission are nominated by the National Forum for District Governments.

(c) *The Central Bank of Kenya*

The Central Bank of Kenya is the only authority allowed to issue currency. It acts as the banker and financial advisor of the Government. Its key function is to encourage and promote economic development. This it does by ensuring that there is an efficient banking system in the country.

The Central Bank is under the authority of a Board consisting of a Governor, who is the chairperson, Deputy Governor, and not more than five other members. All members of the Board are appointed by the President with the approval of Parliament. They hold office for a term of five years, but can be re-appointed for a further term of five years.

Portraits on Kenyan currency

Only the picture of the first President of Kenya is allowed to be put on the currency of Kenya. Pictures of other important aspects of Kenyan life can also be put on the currency.



FOUNDING PRESIDENT JOMO
KENYATTA'S PORTRAIT ONLY.

(d) *The Economic and Social Council*

The Economic and Social Council is established to advise the Government on good economic policies. Its members are appointed by the President with the approval of Parliament. When appointing the members, an effort is made to include the different people in Kenya.

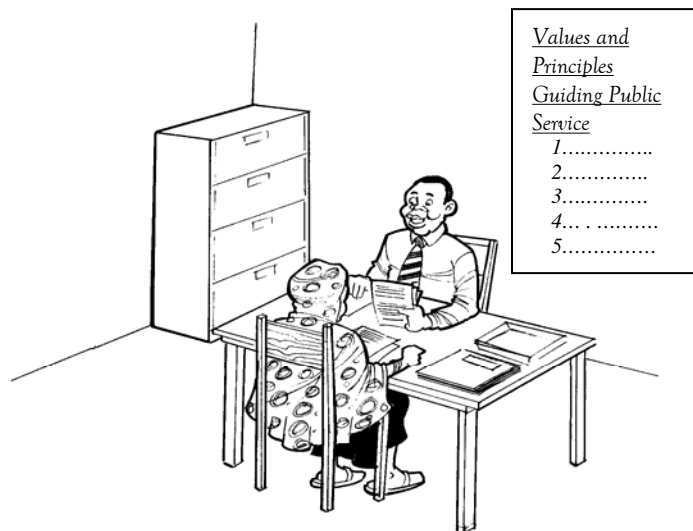
CHAPTER SIXTEEN: THE PUBLIC SERVICE

This chapter is about:

- ❖ **The work of public servants**
- ❖ **The welfare of public servants**
- The payment of public servants**

The values and principles guiding the public service include:-

- maintaining high professional standards;
- providing effective and fair services;
- working in an open and accountable manner;
- providing equal opportunities for all; and
- representing Kenya's different communities - including persons with disabilities, minorities and marginalized groups- in the composition of the public service at all levels.



The Public Service Commission

The Public Service Commission ensures that the Public Service works in an efficient manner. It has the power to create and abolish offices. It also appoints persons to hold or act in those offices, and can remove them from office.

Staffing of district governments

District governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of their public services in the manner provided by an Act of Parliament.

Protection of public officers

Public officers are protected from discrimination or punishment for having done their work. They cannot be punished without following the law.

The Teachers Service Commission

The Teachers Service Commission has the power to register, employ, transfer, promote and dismiss teachers.

The Health Services Commission

The Health Services Commission has the power to register, employ, promote and transfer health workers.

Salaries and Remuneration Commission

The Salaries and Remuneration Commission has the duty of setting and reconsidering the salaries and other benefits of all the people working for the Government.

The Kenya Correctional Service

The Kenya Correctional Service ensures that prisoners are kept in safe and humane conditions. It must also help prisoners to change their behaviour and become useful members of the society.

The head of the Kenya Correctional Service is the Director-General, who is appointed by the President on the advice of the Public Service Commission and after approval by Parliament.

The Director-General holds office for a term of five years and can be appointed for another term of five years.

CHAPTER SEVENTEEN: NATIONAL SECURITY

This chapter is about:

- ❖ The security of our country

What is National Security?

National Security is the protection our country, our people, our freedom, and our property against threats from within or outside the country.

National Security Organs

The National Security Organs are the:

- Kenya Defence Forces;
- National Intelligence Service;
- Kenya Police Service; and
- Administration Police Service.

The National Security Organs are under the authority of the Constitution and Parliament. In carrying out their duties, they must respect Kenyan and international law, our different cultures and other human rights. The organs are responsible for keeping peace within our borders.

National Security Council

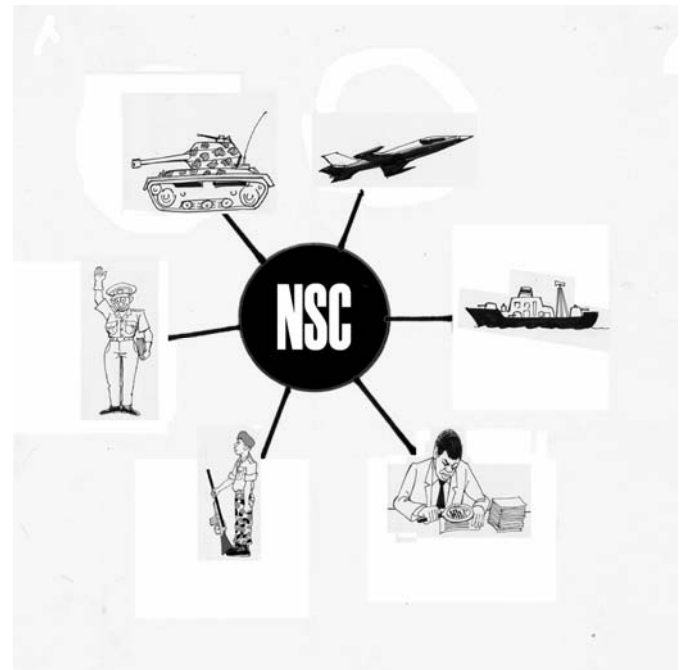
There is a National Security Council. Its members are-

- the President;
- the Deputy President;

- the Prime Minister;
- the Minister responsible for defence;
- the Minister responsible for foreign affairs;
- the Minister responsible for internal security; and,
- the Attorney General.

The President chairs the meetings of the Council. In the absence of the President, the Deputy President chairs. And in the absence of both, the Prime Minister chairs the meetings of the Council.

The National Security Council is required to supervise the National Security Organs and help them work together to keep Kenya safe. It reports to Parliament every year on the state of security of Kenya. With the approval of Parliament, it may send our national forces outside the country. It also may allow forces from other countries into Kenya for peacekeeping and other support operations.



Kenya Defence Forces

The Kenya Defence Forces is made up of:

- the Kenya Army;
- the Kenya Air Force; and
- the Kenya Navy.

No person is allowed to form any military or paramilitary organization unless allowed by the Constitution



Defence Council

There is a Defence Council responsible for overall policy, control and the supervision of the Defence Forces. Its members are-

- the Minister responsible for defence, as the chairperson;
- the Deputy Minister responsible for defence, as the vice-chairperson;
- the Chief of the Kenya Defence Forces;
- the Army Commander;
- the Air Force Commander;
- the Navy Commander; and
- the Principal Secretary of Defence.

Command

The President, in consultation with the Defence Council, appoints the Chief of the Kenya Defence Forces, the Army Commander, the Air Force Commander, and the Navy Commander. The Chief of Defence Forces and these three service commanders, exercise command over the Kenya Defence Forces. In exercising their duties, they are subject to the overall command and authority of the President as Commander-in-Chief of the Kenya Defence Forces.

National Intelligence Service

The National Intelligence Service is responsible for gathering and providing information that is important for the security of the country. In the exercise of its duties, the Service must always respect human rights and the rule of law. Other intelligence services may not be established unless allowed by law.

Director-General of the National Intelligence Service

The Director-General of the National Intelligence Service is the head of the Service. He or she is appointed by the President with the approval of Parliament. He or she serves for a maximum of two terms of five years each, and may be removed from office by the President.

The National Intelligence Council

The National Intelligence Council advises on all matters of national security and intelligence policies, administration and expenditure. Its members are -

- the Minister responsible for national intelligence, as the chairperson;
- the Minister responsible for Foreign Affairs;
- the Minister responsible for Finance;
- the Attorney General; and,
- the Head of the Public Service.

The Kenya Police Service

The Kenya Police Service works at the national level. Its functions are also organized to fit into the structure of devolution. It is a disciplined and a professional service, and must -

- protect and respect human rights;
- help fight corruption;
- work in an open manner;
- work with all communities ensuring safety and security; and
- control and help all private and parastatal security organizations in ensuring safety and security throughout Kenya.

The operations of the Kenya Police Service are under the Police Service Commission.

Inspector-General of the Kenya Police Service

The Kenya Police Service is headed by the Inspector-General. He or she is appointed by the President with the approval of Parliament for one term of five years. The Inspector-General may be removed from office by the President.

Administration Police Service

There is an Administration Police Service. It is required to work at both levels of government and with the people to ensure safety and security. It is separate from the Kenya Police Service. However, its operations are under the Police Service Commission.

Commandant-General of the Administration Police Service

The Administration Police Service is headed by the Commandant-General. He or she is appointed by the President with the approval of Parliament for one term of five years. The Commandant-General may be removed from office by the President.

The Police Service Commission

The Police Service Commission is made up of:

- a person who is qualified be a High Court Judge;
- one retired senior Kenya Police Service officer;
- one retired senior Administration Police Service officer;
- three persons of integrity, who have served the public with distinction;
- the Inspector-General of the Kenya Police Service; and
- the Commandant-General of the Administration Police Service

The Police Service Commission is responsible for-

- hiring, appointing and promoting members of the Kenya Police Service and the Administration Police Service;
- reviewing salaries and allowances of the members of the Kenya Police Service and the Administration Police Service;

- reviewing the standards and qualifications required of members of the Kenya Police Service and the Administration Police Service; and
- disciplining members of the Kenya Police Service and the Administration Police Service.

CHAPTER EIGHTEEN: CONSTITUTIONAL COMMISSIONS

This chapter is about:

- ❖ **The commissions established by the Constitution**

What are Constitutional Commission, and why are they established?

All commissions established under this Constitution are called Constitutional Commissions. They are established to help the national Government to implement the provisions of the Constitution. They are independent, and allow for important functions in the Constitution to be performed without interference by other bodies of Government or persons. Each Constitutional Commission is expected to establish branches in the districts.

Who can be a member of a Constitutional Commission?

A Constitutional Commission must not have less than three or more than nine members. The members should be qualified people selected from all groups and communities in our country. They must be approved by Parliament before appointment by the President. A member serves for one term of five years, and can be re-appointed for one other term of five years.

A Constitutional Commission has power to receive complaints from the members of the public. It may investigate complaints, and it solves problems so as to bring people together. It can order a person to pay a fine. It can also order a person who has been wronged to be paid compensation.

Where does a Constitutional Commission get its staff?

A Constitutional Commission employs its own staff.

How can a member of a Constitutional Commission be removed?

A member can be removed from office by the President if the member-

- is unable to work because of sickness;
- misbehaves or is of bad conduct;
- misuses or abuses privileges of office, or acts against the principles of leadership and integrity;
- is bankrupt; or
- lacks the skill to do the work required properly.

The President appoints a tribunal to investigate the relevant accusations. The member is removed only if the tribunal recommends so.

Funds of Commissions

Constitutional Commissions operate using money from the Consolidated Fund. Parliament also votes money for their use. In addition, they can receive donations. The use of this money is checked by the Auditor-General.

Reports by Constitutional Commissions

Each Constitutional Commission must give a report on its work to the President and to Parliament every year. Parliament can also ask a Constitutional Commission for a report on its work at any time.



Are there other Commissions?

Parliament has the power to establish more Commissions. This is in addition to those established in the Constitution.

CHAPTER NINETEEN: AMENDMENT OF THE CONSTITUTION

This chapter is about:

❖ **Making changes in our Constitution**



Can the Constitution be amended?

The Constitution can be amended through the methods described below.

Amendment of specially protected parts of the Constitution

The Constitution has special requirements to be met before some parts of it can be changed. These parts are specially protected by being made more difficult to change than other parts. These are provisions concerning -

- the superiority of the Constitution over other laws;
- the boundaries of our country;
- our power as the people in control of our affairs;
- the values and principles guiding our country;

- the Bill of Rights;
- the term of office of the President;
- the independence of the courts and the Commissions established by the Constitution;
- the functions of Parliament; and
- governance by the people at both levels of government.

Before any a change can be made to any of these provisions, the people must approve the change.

How are other parts of the Constitution changed?

The other parts of the Constitution can be changed by Parliament through its own special procedures.

How do the people make a change to the Constitution?

If one million registered voters suggest a change to the Constitution and the change is supported by a majority of the district assemblies, the Constitution can be changed as required if Parliament also approves the change. This is called a popular initiative.

If Parliament does not approve the change, the people can still change the Constitution if they approve the change in a referendum.

CHAPTER TWENTY: GENERAL PROVISIONS

This chapter is about:

- ❖ **General matters and explanations of terms appearing in our Constitution**

What is the purpose in the Constitution of General Provisions?

When writing as the Constitution or other laws, it is sometimes necessary to use special words or to make the meaning clear. It then becomes necessary to explain the relevant words or expressions. This is the purpose of the general provisions in this Constitution.

Enforcement of the Constitution

All the parts of this Constitution should be understood and applied in the same way that the Bill of Rights is understood and applied by the courts or the Commission on Human Rights and Administrative Justice.

Understanding the Constitution

This Constitution must be understood and applied in a manner that promotes the welfare of the people of Kenya.

If there is a difference of understanding between the different languages in which the Constitution is written, the one in English should be the one to be used.

Definitions

There are definitions for some of the words and expressions used in the Constitution.



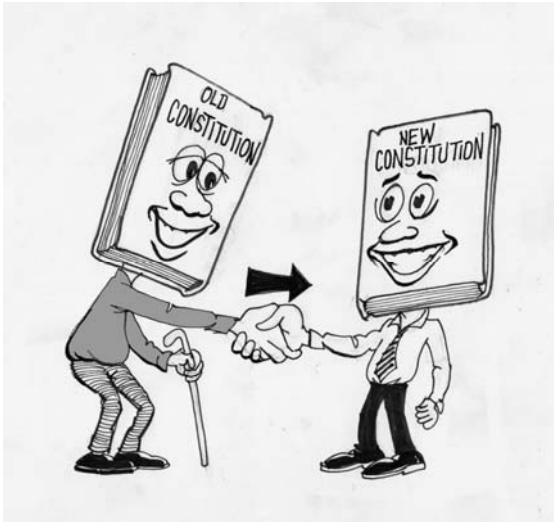
CHAPTER TWENTY-ONE: SAVINGS, TRANSITIONAL AND

CONSEQUENTIAL PROVISIONS

**This chapter is about:
The process of moving from the current
Constitution to the new one**

What is the purpose of this Chapter?

Transitional and consequential provisions explain what happens when the old Constitution stops applying and this Constitution comes into effect.



The Constitution says that Parliament needs to make laws, and those laws must be made by the deadlines given in this Constitution. If there is a good reason why the deadline cannot be met, Parliament can by a majority of at least two-thirds of the members vote to extend the time by not more than one year.

The Attorney-General, working in consultation with the Commission on the Implementation of the Constitution, must draft Bills to enable Parliament to pass the laws within the required deadlines. If Parliament fails to pass the Bills within the required deadlines, the Bills will automatically become law at the end of the deadline.

The Constitution will begin to apply on the day it is signed by the President. On that day, the old Constitution will stop applying.

Transitional Provisions

On the day the new Constitution starts applying-

- the Government will remain the same, and all the laws which are not against the new Constitution will continue to apply;
- Parliament will continue for the time remaining in its term;
- if any by-election is to be held, it will be held under this new Constitution;
- local authorities and the councillors will continue in office until the new arrangements under this Constitution are made;
- political parties will continue to exist, but must obey the new law;
- the President and Vice President will remain in office, but as the President and Deputy President under this new Constitution;
- members of the cabinet will remain as members of the cabinet;
- a Prime Minister will not be appointed until after the next general elections;
- the Provincial Administration will stop existing six months after the next general elections, and the persons employed in that administration will be deployed;
- all people holding office under the old Constitution will continue to hold office as if they were appointed under this Constitution;
- cases which were in court will continue;
- all Constitutional Commissions will have to be established within twelve months;
- the Commission on the Implementation of the Constitution will be appointed to operate for at least five years;
- Parliament will have six months to make a law to empower the Commission on Human Rights and Administrative Justice to investigate and resolve past violations of human rights;
- the Government, through its various branches, will have to teach the people about the new Constitution in Kiswahili, English and their local languages;
- existing currency notes and coins will continue to be used;
- the current districts will remain as the districts under the new Constitution, until changed under an Act of Parliament; and,
- An Act of Parliament will give guidance on how the district governments will take up and exercise their new functions.