

# **ELECTIVE, NOMINATIVE & APPOINTIVE POSITIONS UNPACKED**

## **A Handbook for Women Seeking Leadership Positions**

Netherlands Institute for  
**Multiparty Democracy**



Canadian International Development Agency

 **HEINRICH BÖLL STIFTUNG**  
**EAST & HORN OF AFRICA**

# **A PUBLICATION OF CMD-KENYA**

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**Njeri Kabeberi**

**Executive Director, CMD-Kenya**

# ONE

## Introduction

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The Constitution of Kenya 2010 has provided very progressive and gender friendly governance institutions, values and processes for all Kenyans in general and for women in particular.

Specifically, the Constitution secures social, economic and political rights of women by guaranteeing that no single gender shall occupy more than two thirds of elective, nominative or appointive positions at any level thus creating many opportunities for women at all governance structure. Additionally, the Constitution has also created a facilitative and gender friendly legal framework that makes it possible for both men and women to access and participate in these institutions. Furthermore, recognizing the historical disadvantage of women and other vulnerable members of society including the disabled, minorities and the youth, the Constitution has entrenched the principle of affirmative action in addition made it mandatory that neither gender will occupy more than two-thirds of any public governance seats.

The Constitution, therefore, has afforded women greater political leverage for participation in decision-making through the introduction at Parliamentary level of a second house- the Senate and County based devolved governance structures that bring power, resources and services closer to the majority of the people, especially women; as well as the quota and proportional representation system that guarantees women a significant number of seats in these key governing institutions.

Although a lot of attention has to date been focused on the elective political posts under the new structures of governance, it is also important for women to understand and seek access and participate in the nominative/non-elective positions that now exist. The more the presence of women in all types of decision making positions, the more effective will be their capacity to transform the undemocratic social-economic and political environment that now exists. In order to access these positions, it is important that women first familiarize themselves with the institutions, positions that are available, their functions, mandate and powers as well as the mode and criteria of access.

In this connection and in an attempt to make these constitutional institutions and leadership positions more accessible in a user friendly manner for women, this book is a simplified but comprehensive profile of all the elective, nominative and appointive positions as provided for in the Constitution. By unpacking these positions and institutions, CMD-Kenya hopes that more and more women will be better prepared to make informed decisions about which offices to go for. More importantly, CMD-Kenya hopes that women will use the information to position themselves and leverage within political parties in order to access the positions at all levels of governance.

Besides unpacking the positions, this book has also emphasized on the key requirements for each of the positions including the high ethical and integrity thresholds set out in Chapter Six of the Constitution to which all leaders will need to abide, and thereby provide our country with the sort of transformative leadership required to make Kenya a truly democratic, peaceful and equitable nation.

Finally, the book seeks to demystify the myths around leadership positions and encourage women to be adequately prepared to occupy all posts taking advantage of the facilitative and enabling environment provided by the Constitution. While this book is primarily targeted at women who plan to take up leadership under the new constitutional dispensation, men will no doubt find it equally useful. It is our hope and prayer that Kenyans in general and women in particular will find this tool informative, educative and relevant as the country edges closer to the first General Election under the new constitutional dispensation.

Hon J. B. Muturi

Chairperson, CMD-Kenya

## TWO

# The National Government

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**Introduction:** This section seeks to clarify the positions available within the three arms of government, namely; Executive, Legislature and the Judiciary. It is important to note that the Constitution provides for explicit separation of powers between each of the three arms. This is one of the progressive provisions of the Constitution as it not only specifies roles of the various office holders in each of the arms but also guarantees strong checks and balances which are essential for solidifying a democratic culture in the country. Details of the positions available in each of the arms are provided as: Executive, Legislature and Judiciary in the section below:

### **The Executive / National Executive**

The Executive / National Executive shall comprise of the President, the Deputy and the Cabinet. Specific details of the positions and the qualifications are as discussed below:

### **The President**

The President shall have Executive authority which she / he derives from the people of Kenya and shall use it for the wellbeing and benefit of Kenyans and as per the Constitution.

The President shall not hold any other State or Public Office and shall not be a Member of Parliament.

### **Disqualification**

- A person is not qualified for nomination as a presidential candidate if the person:
- Owes allegiance to a foreign state; or
- Is a public officer, or is acting in any State or other public office (this shall not apply to the sitting President, The Deputy President; or a Member of Parliament)

## Qualifications

A person qualifies for nomination as a presidential candidate if the person:

### Qualifications of a President

- Is a Kenyan citizen by birth;
- Is qualified to stand for election as a Member of Parliament (See qualifications for MP on pg 12)
- Holds a Post Secondary school qualification recognized in Kenya (Specifically, presidential candidates **MUST** possess **a degree from a University recognized in Kenya** )
- Is nominated by a political party, or is an independent candidate; and
- Is nominated by not fewer than 2000 registered voters from each of a majority of the counties;
- Declares before the election a running mate who will be the Deputy President if she / he wins

### To be declared President one must get:

- At least 50% + 1 of the total votes cast in the election; and
- At least 25% of the votes cast in at least 24 Counties

**Note 1:** *In addition to the basic post secondary requirement, presidential candidates MUST also possess a degree from a University recognized in Kenya.*

**Note 2:** *In the event that no presidential candidate achieves at least 50% + 1 of the votes cast and 25% in at least 24 Counties, a fresh presidential election (Run off) shall be held within thirty days after the previous election.*

**Note 3:** *A person shall not be a President for more than two terms.*

**Note 4:** *Presidential candidates running on an Independent ticket will need to be nominated by 2000 independent registered voters from a majority of the counties.*

## Deputy President

A Deputy President, who is the Principal assistant / Deputy of the President, shall be nominated by a presidential candidate (a running mate). There shall be no separate nomination process or elections for the Deputy President. Once a person has been elected to be president, the Independent Electoral and Boundaries Commission shall declare the running mate as the Deputy President. The Deputy President shall not hold any other public office.

## Qualifications

A person qualifies for nomination as a Deputy Presidential candidate if the person meets the qualifications of a Presidential candidate. However, the Deputy President is exempt from the requirement that one gets the support of 2,000 members from 24 Counties as is the case with the President. Necessary qualifications therefore are:

### Qualifications of a Deputy President

- Is a Kenyan citizen by birth;
- Is qualified to stand for election as a Member of Parliament;
- Is nominated by a political party, or is an independent candidate; and
- Declared by Presidential candidate before the election as running mate

## Disqualification

- A person is not qualified for nomination as a presidential candidate if the person:
- Owes allegiance to a foreign state; or
- Is a public officer, or is acting in any State or other public office (this shall not apply to the sitting President, The Deputy President; or A Member of Parliament)

*Note:* In the event that the office of the President becomes vacant and the Deputy President is unable to assume office of the President, the Speaker of the National Assembly shall act as a President and a presidential election held within 60 days after the vacancy arose in the office of the President.



## **Cabinet**

The Constitution provides for a lean cabinet of not less than 14 and not more than 22 members and will comprise of:

- (a) The President;
- (b) The Deputy President;
- (c) The Attorney-General; and
- (d) Cabinet Secretaries

## **Cabinet Secretaries**

Cabinet Secretaries will be nominated and appointed by the President, subject to approval of National Assembly. They shall not be fewer than fourteen (14) and not more than twenty-two (22). A Cabinet Secretary will not be a Member of Parliament.

## **Secretary to the Cabinet**

This is an office within the public service. The holder of the office is nominated by the President with approval of the National Assembly and may be dismissed by the President. The Secretary to the Cabinet is:

- in charge to the Cabinet Office
- responsible, subject to directions of the Cabinet for arranging the business and keeping minutes of the Cabinet

**14 - 22**  
Size of Cabinet

## **Principle Secretaries**

The Constitution provides for the establishment of the office of Principal Secretaries within the public service. The Principal Secretaries shall be in charge in State Departments.

The Principal Secretaries shall be nominated by the President from persons recommended by the Public Service Commission; and the President shall appoint them subject to the approval of the National Assembly. The President may re-assign duties or dismiss Principle Secretaries.

## **Other Offices within the National Executive**

In addition to the above offices, the National Executive shall also be supported by the following Constitutional Offices:

## **Attorney- General**

The Attorney-General shall be nominated and appointed by the President, subject to approval of National Assembly.

### **Qualifications of the Attorney General**

(a) At least fifteen years experience as a superior court judge;

Or

(b) At least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field;

Or

(c) Held the qualifications mentioned in paragraphs (a) and (b) for a period amounting, in the aggregate, to fifteen years;

### **Director of Public Prosecutions**

The Director of Public Prosecutions will be nominated and appointed by the President, subject to approval of National parliament. Qualifications for this office shall be the same as for the appointment as a judge of the High Court, namely;

➤ At least ten years' experience as a superior court judge or professionally qualified magistrate;

Or

➤ At least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field;

Or

➤ Held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.

## Legislature

This arm of government also referred to as Parliament, will now comprise of two chambers namely the National Assembly (ordinarily known as the Parliament) and the Senate which shall be represented by a Member of Parliament and a Senator respectively. Positions available in each of the Chambers and the required qualifications are explained below:

### Parliament

The Constitution provides for a total of 350 Members of Parliament as follows; 290 Members of Parliament elected from the original 210 constituencies and the new 80 additional constituencies created under the Constitution

- 47 women elected from each of the 47 Counties elected by voters in the County
- 12 members nominated by parliamentary political
- The Speaker, who is an ex-officio member

### Requirements for a Member of Parliament (MP)

To contest for the position of Member of Parliament (MP) the Constitution requires that one is either nominated / supported by a political party or be an Independent Candidate. Both need to meet the following criteria:

#### Qualifications for MP Position

- Is registered as a voter;
- Post Secondary School qualification recognized in Kenya
- Is nominated by a political party, having been a member of the party at least 3 months (90 days) before nomination ; or,
- Is an independent candidate who is supported by at least one thousand (1000) Independent voters registered in the constituency;
- Meets the leadership and integrity threshold as provided for in the Constitution

My brothers  
and sisters, I'd like  
your support to run for the  
Parliamentary seat of this  
Constituency.



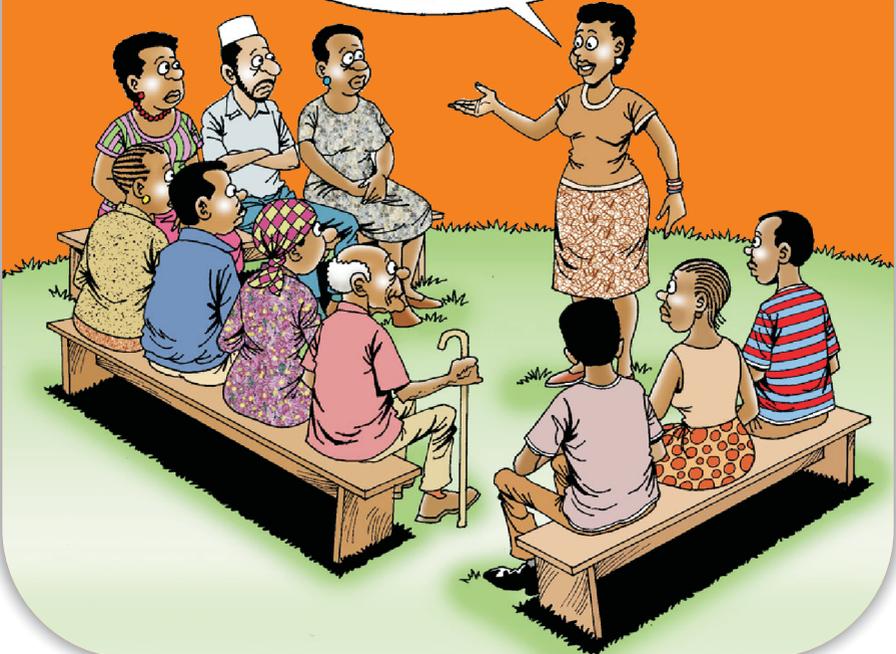
## **Disqualifications for Members of Parliament**

A person is disqualified from being elected a member of Parliament if the person:

- Is a State officer or other public officer, other than a member of Parliament;
- Has, at any time within the five years immediately preceding the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- Has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- Is a member of a county assembly;
- Is of unsound mind;
- Is an un-discharged bankrupt;
- Is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
- Is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six, on Leadership and Integrity.

*Note:* Each of the 47 women elected from the Counties will have to meet the same criteria as those of a Member of Parliament stated above and shall be voted in by all registered voters (both female and male) of the County

Ladies and gentlemen, I've decided to run for the position of Women's representative in this County and I need your support.



## **Role and functions of Parliament:**

Has legislative authority, namely, *is the only institution* with power to make provisions having the force of *National law*, as provided under Article 94 (5)

### **The specific role of the National Assembly**

- *Represent* the people in constituencies and special interests.
- *Deliberate* on issues of concern to the People
- *Determine* the allocation, the expenditure & exercises oversight on *National Revenue*
- *Appropriates funds* for State Organs
- *Review the conduct* of the president and deputy president and other state officers and Initiate procedures of removing them from office.
- *Exercise oversight* of war & approve the declarations of war and extension of states of emergencies



**349+Speaker**  
Number of MP's

**The Senate:** This is the other chamber of the National Assembly and will comprise of:

### Composition of Senate

- 47 members (Senators) elected from each County
- 16 Women members (Senators) nominated by Political Parties
- 2 Youths (one male one female) nominated by Political Parties
- 2 Persons with disabilities (one woman one man) nominated by the Political Parties
- Speaker of the Senate who is an ex-officio member

**67+Speaker**

Number of Senators

### Role of the Senate:

- *Represent and Serve the* interests of the Counties and their Governments.
- *Participate in law making* functions of Parliament e.g. debating and approving bills concerning Counties.
- *Determine the allocation* of revenue among Counties.
- *Exercise Oversight* over revenue allocated to the Counties
- *Participates* in the oversight of state officers by considering or determining any resolution to remove the president or deputy president

### Relations between Senate and the National Assembly

- The Constitution demarcates the respective functions of the National Assembly and the Senate.
- The legislative powers of the Senate are limited to matters involving County Governments, with the National Assembly being the competent House with respect to all other legislation.

- The possibility of conflicts between the two Houses, therefore, is minimal.
- To the extent that the two Houses have to approve Bills concerning Counties, however, the possibility of conflict exists.
- The New Constitution anticipates conflict and sets out elaborate provisions for resolution of such conflicts through Mediation Committees.
- The only conflict the resolution of which is not provided for is where the Speakers of the two Houses do not agree whether a proposed Bill relates to County governments.

### **Qualifications of a Senator**

- Is registered as a voter;
- Post Secondary School qualification from an institution recognized in Kenya
- Is nominated by a political party, having been a member of the party at least 3 months (90 days) before nomination ; Or,
- Is an independent candidate who is supported by at least two thousand (2000) registered voters non party members in the constituency;
- Meet the leadership and integrity threshold as provided for in the Constitution

### **Disqualifications**

A person is disqualified from being elected as a Member of the Senate if the person

- Is a State officer or other public officer, other than a member of Parliament;
- Has, at any time within the five years immediately preceding the date of election, held office as a member of the Independent Electoral and Boundaries Commission;

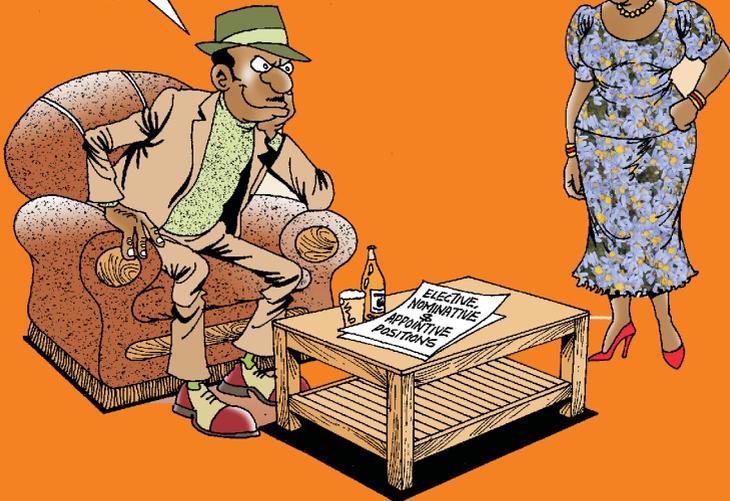
- Has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- Is a member of a county assembly;
- Is of unsound mind;
- Is an un-discharged bankrupt;
- Is subject to a sentence of imprisonment of at least six months, as at the date of registration as a candidate, or at the date of election; or
- Is found, in accordance with any law, to have misused or abused a State office or public office or in any way to have contravened Chapter Six, on Leadership and Integrity.

### **Qualifications of a Senator**

- Is registered as a voter;
- Post Secondary School qualification from an institution recognized in Kenya
- Is nominated by a political party, having been a member of the party at least 3 months (90 days) before nomination ; Or,
- Is an independent candidate who is supported by at least two thousand (2000) registered voters non party members in the constituency;
- Meets the leadership and integrity threshold as provided for in the Constitution

I'm spoilt for choice. What should I go for? Governor? MP? Senator? Yes... I think I'll go for Senator!

That's my seat!



## Judiciary

The judiciary is one of the other arms of government and is divided into Superior Courts and Subordinate Courts. Superior Courts consist of: a Chief Justice, Deputy Chief Justice (who are members of the Supreme Court), Supreme Court judges, judges of Court of Appeal and High Court judges appointed by an independent Judicial Service Commission. The Chief Justice together with her or his deputy are nominated by the President from names selected by the Judicial Service Commission and vetted by the National Assembly. Subordinate Courts comprise of Magistrates Courts, Kadhi Courts and Courts Martial. Details on each of these courts as explained below.

### Superior Courts: These comprises of:

- a. Supreme Court,
- b. The Court of Appeal,
- c. The High Court
- d. High Courts to hear and determine disputes relating to—
  - i. Employment and labour relations; and
  - ii. The environment and the use and occupation of, and title to, land.

### Supreme Court

- (a) The Chief Justice, who shall be the president of the court;
- (b) The Deputy Chief Justice, who shall
  - (i) Deputise for the Chief Justice;
  - (ii) Be the vice-president of the court;
- (c) Five other judges.

### Key positions

#### Chief Justice

The Chief Justice shall be nominated and appointed by the President on recommendations of Judicial Service Commission and subject to approval of National Assembly.

## Qualifications of the Chief Justice and Deputy Chief Justice

- a. At least fifteen years experience as a superior court judge;  
Or
- b. At least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field;  
Or
- c. Held the qualifications mentioned in paragraphs (a) and (b) for a period amounting, in the aggregate, to fifteen years;

*Note: The Chief Justice shall hold office for a maximum of 10 years or until retiring at 70 years whichever is the earlier.*

## Judges of the Court of Appeal

The Court of Appeal shall consist of the number of judges, not fewer than twelve and shall be headed by a President of the Court of Appeal who shall be elected by the judges of the Court of Appeal from among themselves.

## Qualifications of judges of Appeal

- (a) At least ten years' experience as a superior court judge or professionally qualified magistrate;  
Or
- (b) At least ten years' experience as a distinguished academic or legal practitioner or such experience in other relevant legal field;  
Or
- (c) Held the qualifications specified in paragraphs (a) and (b) for a period amounting, in the aggregate, to ten years.

*Note: A judge shall retire from office on attaining the age of seventy years*

## The subordinate Courts

The subordinate courts consist of:

- (a) The Magistrates courts;
- (b) The Kadhis' courts;
- (c) The Courts Martial; and
- (d) Any other court or local tribunal as may be established by an Act of Parliament.

## **Kadhi Courts:**

Chief Kadhi and such number, not fewer than 3 (minimum 4)

### **Qualifications of a Kadhi**

- a) Professes the Muslim religion; and
- b) Possesses such knowledge of the Muslim law applicable to any sects of Muslims

### **The Judicial Service Commission (JSC)**

The Commission shall consist of—

1. The Chief Justice, who shall be the chairperson of the Commission;
2. One Supreme Court judge elected by the judges of the Supreme Court;
3. One Court of Appeal judge elected by the judges of the Court of Appeal;
4. One High Court judge and one magistrate, one a woman and one a man, elected by the members of the association of judges and magistrates;
5. The Attorney-General;
6. Two advocates, one a woman and one a man, each of whom has at least 15 years' experience, elected by the members of the statutory body responsible for the professional regulation of advocates;
7. One person nominated by the Public Service Commission; and
8. One woman and one man to represent the public, not being lawyers, appointed by the President with the approval of the National Assembly.

### **Chief Registrar**

The chief Registrar of the Judiciary shall be the chief administrator and accounting officer of the Judiciary.

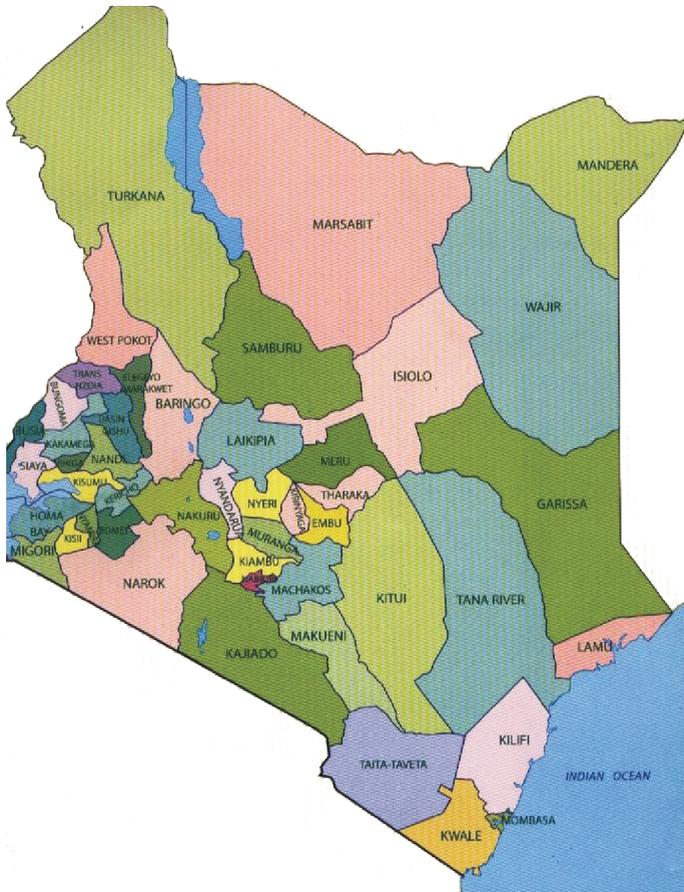
The person shall also be the Secretary to the Commission.

*Note: The Judiciary will serve both the National and County Governments.*

# THREE

## Devolved Government

**Introduction:** Kenya has adopted a devolved system of government that has resulted into the formation of 47 county governments whose number is derived / based on the no. of districts in 1992. Each County will have the Legislative and Executive arms of government. The Judiciary will serve both the National and County Governments. *It is important to note that membership of the Devolved Governments is bound to adhere to the affirmative principle that not more than 2/3rds of the members shall be of the same gender.* The 47 Counties are delineated as follows:



## COUNTIES

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

47

Total number of Counties

## County Assembly

County Assemblies will be elected for a term of 5 years and shall be constituted as follows:

- *Members elected by the registered voters of the wards, each ward constituting a single member constituency ( Members of Count Assemblies [MCAs]),*
- *The number of special seat members necessary to ensure compliance with the principle of Affirmative Action; (not more than 2/3rds are of the same gender)*
- *The number of members of marginalised groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and*
- *The Speaker, who is an ex officio member- elected by the County Assembly from among persons who are not members of the Assembly.*

## Allocation of Special Seats

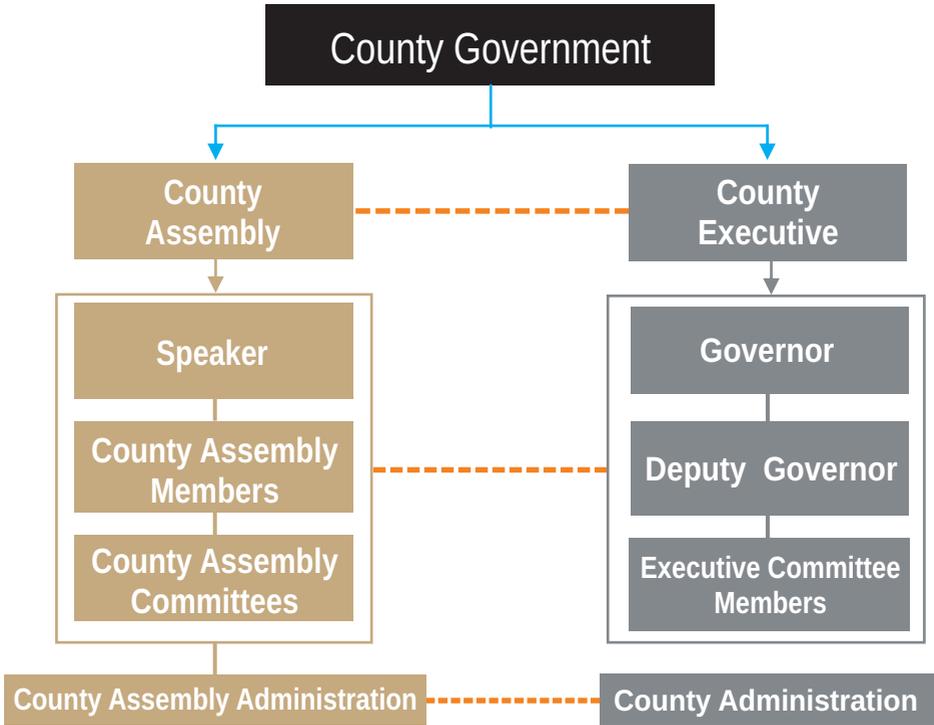
The Constitution provides for the allocation of special seats to fill in the required members to fulfil gender balance and diversity. Political parties will nominate members in proportion to the seats received in that election in that County. The filling of special seats will be determined after declaration of elected members from each ward. Specifically, County assemblies will be required to ensure that *'not more than two - thirds of the members of any county assembly or county executive committees shall be of the same gender.'*

*Note: County Assemblies are required to ensure gender balance and diversity. Specifically county assemblies are bound to adhere to the rule that 'not more than two - thirds of the members of any county assembly or county executive committees shall be of the same gender.'*

## Composition of the County Governments

Each of the 47 Counties shall have a County Government consisting of a County Assembly and a County Executive. In Addition, each County Government will be required to decentralise or devolve its functions and the provision of its services to enhance efficiency and accessibility of the services and functions.

## Structure of County Governments



*Note: The Judiciary will serve both the National and County Governments.*

## Qualifications of Members of a County Assembly ( MCAs):

- Is registered as a voter;
- Satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and
- Is either— (i) nominated by a political party

Or

(ii) Is an independent candidate supported by at least five hundred (500) registered voters (*who should not be members of any political party*) in the ward concerned.

## Disqualifications:

- Is a State officer or other public officer, other than a member of the County Assembly;
- Has, at any time within the five years immediately before the date of election, held office as a member of the Independent Electoral and Boundaries Commission;
- Has not been a citizen of Kenya for at least the ten years immediately preceding the date of election;
- Is of unsound mind;
- Is an un-discharged bankrupt;
- Is serving a sentence of imprisonment of at least six months; or
- Has been found, in accordance with any law, to have misused or abused a State office or public office or to have contravened Chapter Six on Leadership and Integrity.

## Speaker of a County Assembly:

Each County Assembly shall have a Speaker elected by the County assembly from among people who are not members of the Assembly.

## County Executive

Every County Government shall decentralise its functions and the provision of its services to the extent that it is efficient and practicable to do so. The County Executive shall comprise of:

- The County Governor and the Deputy County Governor; and
- Members appointed by the County Governor, with the approval of the County Assembly, from among persons who are not members of the assembly & NOT exceeding:
  - One-third of the number of members of the County Assembly, if the Assembly has less than 30 members; or
  - Ten (10), if the assembly has 30 or more members.

## Functions of County Executive Committee (CEC)

- Implement county legislation;
- Implement, within the county, national legislations
- Manage and coordinate the functions of the county administration and its departments
- Prepare proposed legislation for consideration by the county assembly.
- Provide the county assembly with full and regular reports on matters of county.

## Key offices of the County Executive are as follows:

### The Governor

Each of the 47 Counties shall elect a Governor who shall nominate a running mate as Deputy Governor. The Governor shall be directly elected by the voters registered in the county, on the same day as a general election of Members of Parliament.

The Independent Electoral and Boundaries Commission shall not conduct a separate election for the deputy governor but shall declare the candidate nominated by the person who is elected county governor to have been elected as the deputy governor.

## Qualifications for Governor

- Be eligible for election as a member of the County Assembly.
- Must possess a degree from a university recognised in Kenya
- Must be nominated by a political party, having been a member of that party for at least three (3) months (90 days) before the nominations
- Or if Independent Candidate,
  - must not have been a member of a political party for at least three (3) months preceding the general elections,
  - has presented duly finalised nominations signed by at least 2000 voters non party members
  - Submit a symbol for use in the elections to the IEBC three months to the nomination date.

*Note: Each candidate shall nominate a person who is qualified for nomination for election as county governor as a candidate for deputy governor.*

## The Deputy Governor

- The IEBC shall declare the person nominated by the elected Governor as elected Deputy Governor (running mate) but there shall not be separate elections for DG
- *Tenure of office*-maximum 2 terms of 5 years each



# FOUR

## Nominative Positions & Party Lists

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In addition to the elective positions, political parties will nominate people to various positions using Party Lists submitted to the Independent Electoral and Boundaries Commission at least to the Election date. These Lists will remain unchanged unless occasioned by death of a nominee. Specific nominative positions are as follows:

**National Assembly:** There will be 12 nominated seats in the National Assembly, which will be shared according to political party strength. In the last elections of 2007, political parties used these seats to increase the numbers of women, required to represent the youth, persons with disabilities and workers.

**Senate:** There will be 16 seats in the Senate that have also been set aside for women, who will be nominated by the political parties, according to political party strength.

**County Assemblies:** Nominations at County Assemblies will be determined by the gender deficits to ensure that the principle of affirmative action that no more than two thirds of either gender shall occupy nominative or elective positions.

### Nomination Process through Party Lists

- A political party participating in the election will submit a list of persons who would occupy all the seats for the position listed, assuming that the Party would be entitled to all. This means that the Party will have to list the 12 candidates for the National Assembly, 16 seats for women in the Senate, the 2 seats for youth and 2 seats for the persons with disabilities. The Senate will be subject to the same procedure. These lists are commonly known as closed lists and will be submitted to the Independent Electoral Boundaries Commission before the election.

12

Number of nominative positions at National Assembly (Nominees to represent special interest groups ie youth persons with disabilities & workers)

16

number of nominative positions set aside for women at the Senate

This is our Party List of nominees.

All male? Go back and use the Zebra format. Male, female...



- Party lists will also be submitted for the special seats necessary to ensure that no more than two-thirds of the County Assembly are of the same gender. Party lists will also be used to include marginalised groups, persons with disabilities and the youth in County Assemblies. The Party will nominate these persons in proportion to the strength at the County level, and will be filled after the results are declared.
- A person who is nominated by a political party shall have been a member of the political party for at least three months before the date of submission of the party list by the political party.
- Party lists will be submitted to the IEBC at least 45 days before a General Election in accordance with re respective parties' constitution and nomination rules. (Political parties act (section 13(1)).
- Political party should adhere to the affirmative action principle as provided in section 34(1)(2) of the Political Parties Act 2011

#### **Additional Requirements for Independent Candidates**

Candidates running on independent tickets for presidential, parliamentary and county posts if the person:

- a) Has not been a member of any political party for at least three months preceding the ate of the election;
- b) Has submitted to the Commission on the day appointed by the Commission as the nomination day, a duly filled nomination paper as prescribed by the Commission;
- c) Has submitted the symbol that the person intends to use during the election; and,
- d) Is nominated by the required registered members who should not belong to any political party i.e 2,000 (from a majority of Counties) for President, 2,000 for Governor, 2000 for Senator, 1,000 for Member of Parliament and 500 for Member of the County Assembly

## FIVE

### Constitutional Commissions and Other Independent Offices

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The Constitution establishes *eleven* Constitutional Commissions and two Independent Offices.

In addition, there are *other Offices and Funds, which although not constitutionally entrenched are established by Statute/law.*

The eleven constitutional commissions are as follows:

#### Constitutional Commissions

- Kenya National Human Rights and Equality Commission and successive Commission e.g. Gender and Equality Commission\*
- National Land Commission
- Independent Electoral and Boundaries Commission
- Parliamentary Service Commission
- Judicial Service Commission
- Commission on Revenue Allocation
- Public Service Commission
- Salaries and Remuneration Commission
- Teachers Service Commission
- National Police Service Commission
- Ethics and Anti-corruption Commission

*Note: Parliament has since enacted a law to establish a separate Gender and Equality Commission. The Constitution requires that the 'Not more than two thirds' affirmative action rule shall be adhered to in the establishment of all these Commissions.*

**Independent Offices are:**

- The Auditor- General
- The Controller of budget

**The Funds are:**

- Consolidated Fund
- Equalization Fund
- Tenure of Fund
- Revenue Fund
- Contingencies Fund
- The Judiciary Fund
- The Political Parties Fund

**11**

Number of Constitutional  
Commissions

**TWO**

Number of Independent  
Offices

**11**

Number of Statutory  
Funds

## SIX

### Leadership and Integrity

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In addition to the requirements spelt out in this book, all aspiring leaders, including those seeking elective, nominative or appointive positions will be required to adhere to other regulations that will be set out by the Independent Electoral and Boundaries Commission (IEBC). Further, all leaders are expected to uphold the National Values spelt out in Article Ten of the Constitution as well as meet requirements of Chapter Six of the Constitution on leadership and integrity. We reproduce both Article Ten and Chapter Six for ease of reference and as a constant reminder to all aspiring leaders of the high moral threshold that they must meet in order to qualify for leadership under the new constitutional dispensation and as one way to guarantee transformative leadership for a new Kenya as envisaged by the Constitution.

#### **National Values and Principles of Governance – Article 10**

The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

applies or interprets this Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.

#### **National Values and Principles**

The national values and principles of governance include—  
patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized; Good governance, integrity, transparency and accountability and Sustainable development.

## **Leadership & Integrity: Chapter Six of the Constitution**

### **Responsibilities of Leadership**

**73.** (1) Authority assigned to a State officer—

(a) is a public trust to be exercised in a manner that—

(i) is consistent with the purposes and objects of this Constitution;

(ii) demonstrates respect for the people;

(iii) brings honour to the nation and dignity to the office; and

(iv) promotes public confidence in the integrity of the office and

(b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

(a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;

(b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;

(c) selfless service based solely on the public interest, demonstrated by—

(i) honesty in the execution of public duties; and

(ii) the declaration of any personal interest that may conflict with public duties;

(d) accountability to the public for decisions and actions; and

(e) discipline and commitment in service to the people.

**74.** Before assuming a State office, acting in a State office, or performing any functions of a State office, a person shall take and subscribe the oath or affirmation of office, in the manner and form prescribed by the Third Schedule or under an Act of Parliament.

**75.** (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

(a) any conflict between personal interests and public or official duties;

(b) compromising any public or official interest in favour of a personal

(c)

interest; or demeaning the office the officer holds.

(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2)—

(a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions mentioned in clause (2) is disqualified from holding any other State office

**76.** (1) A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament.

(2) A State officer shall not—

(a) maintain a bank account outside Kenya except in accordance with an Act of Parliament; or

(b) seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer.

**77.** (1) A full-time State officer shall not participate in any other gainful employment.

(2) Any appointed State officer shall not hold office in a political party.

(3) A retired State officer who is receiving a pension from public funds shall not hold more than two concurrent remunerative positions as chairperson, director or employee of—

(a) a company owned or controlled by the State; or

(b) a State organ.

(4) A retired State officer shall not receive remuneration from public funds other than as contemplated in clause (3).

**78.** (1) A person is not eligible for election or appointment to a State office unless the person is a citizen of Kenya.

(2) A State officer or a member of the defence forces shall not hold dual citizenship.

(3) Clauses (1) and (2) do not apply to—

(a) judges and members of commissions; or leadership.

(b) any person who has been made a citizen of another country by operation of that country's law, without ability to opt out.

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

**80.** Parliament shall enact legislation—

- (a) Establishing procedures and mechanisms for the effective administration of this Chapter;
- (b) prescribing the penalties, in addition to the penalties referred to in Article 75, that may be imposed for a contravention of this Chapter;
- (c) providing for the application of this Chapter, with the necessary modifications, to public officers; and
- d) making any other provision necessary for ensuring the promotion of the principles of leadership and integrity mentioned in this Chapter, and the enforcement of this Chapter.

# SEVEN

## Checklist of Qualifications for Elective Positions

	<b>Qualifications of a President</b>	Yes	No
1	Is a Kenyan citizen by birth		
2	Is qualified to stand for election as a Member of Parliament (See qualifications for MP on pg 12)		
3	Holds a Post Secondary school qualification recognized in Kenya (Specifically a degree from a University recognized in Kenya)		
4	Is nominated by a political party, or is an independent candidate		
5	Is nominated by not fewer than 2000 registered voters from each of a majority of the counties from the party or 2000 non party members for independent candidates		
6	Declares before the election a running mate who will be the Deputy President if she / he wins		
7	Meets the leadership and integrity threshold as provided for in the Constitution		

	<b>Qualifications of a Deputy President</b>	Yes	No
1	Is a Kenyan citizen by birth		
2	Is qualified to stand for election as a Member of Parliament		
3	Is qualified to stand for election as President		
4	Is nominated by a political party, or is an independent candidate		
5	Declared by Presidential candidate before the election as running mate		

	<b>Qualifications for MP Position</b>	<b>Yes</b>	<b>No</b>
1	Is registered as a voter		
2	Post Secondary School qualification recognized in Kenya		
3	Is nominated by a political party, having been a member of		
4	The party at least 3 months (90 days) before nomination or, Is an independent candidate who is supported by at least one thousand (1000) Independent voters registered in the constituency		
5	Meets the leadership and integrity threshold as provided for in the Constitution		

	<b>Qualifications of a Senator</b>	<b>Yes</b>	<b>No</b>
1	Is registered as a voter		
2	Post Secondary School qualification from an institution recognized in Kenya		
3	Is nominated by a political party, having been a member of the party at least 3 months (90 days) before nomination Or, Is an independent candidate who is supported by at least two thousand (2000) registered non party voters in the constituency		
4	Meets the leadership and integrity threshold as provided for in the Constitution		

	<b>Qualifications for Governor</b>	<b>Yes</b>	<b>No</b>
1	Be eligible for election as a member of the County Assembly.		
2	Has a post secondary qualifications (Specifically a degree from a university recognised in Kenya		
3	Must be nominated by a political party, having been a member of that party for at least three (3) months (90 days) before the nominations or if Independent Candidate, must not have been a member of a political party for at least three (3) months preceding the general elections; Presents duly finalised nominations signed by at least 2000 non party voters ; Submits a symbol for use in the elections to the IEBC three months to the nomination date.		
4	Meets the leadership and integrity threshold as provided for in the Constitution		

<b>Item</b>	<b>Qualifications of Members of a County Assembly ( MCAs)</b>	<b>Yes</b>	<b>No</b>
1	Is registered as a voter		
2	Possess post secondary education		
3	Satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and		
4	Is either— (i) nominated by a political party Or (ii) Is an independent candidate supported by at least five hundred (500) registered voters ( <i>who should not be members of any political party</i> ) in the ward concerned.		
5	Meets the leadership and integrity threshold as provided for in the Constitution		