WANJIKU’S POWER

Understanding the Constitution of Kenya 2010
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Foreword

This publication has been done with the objective of making Kenyans understand and appreciate their Constitution of Kenya (2010). It is divided in two parts: know your history and know your Constitution. It is produced and presented in a simple way to enable as many Kenyans as possible understand these parts. At the end of each part the publication explains to the common person (Wanjiku) what the constitution actually means for her daily life. It thereafter details the enabling Legislations that have been enacted at the time of publication.

Further, this publication notes that the search for this Constitution has been long, but also it urges that it is equally important to appreciate that the Constitution will be with us for a very long time to come. Kenyans must therefore be willing to exercise vigilance in ensuring that the new Constitution is fully implemented; is fully protected and safeguarded and is also fully supported by all citizens to make Kenya a thriving democracy based on social justice and fundamental freedoms, among other key principles.

In this way, the publication will be useful for Kenyans who want to exercise their rights and duties, elect their leaders, participate in governance at the national and county levels, and also ensure that all state institutions as well as those in the private sector should respect, protect and promote human rights, national values and principles of governance set out in the constitution.

As a Chair of CRECO, it gives me great honour, pleasure and sense of patriotic duty to be part of this publication, which seeks to respect, uphold and defend the Constitution of Kenya (2010).

God bless Kenya

Tom Kagwe

Chair- Management Committee (2009-2011)

Constitution and Reform Education Consortium (CRECO)
Acknowledgement

The Constitution and Reform Education Consortium (CRECO) would like to acknowledge Kenyans for bequeathing themselves and future generations a progressive constitution. CRECO further recognizes the efforts by Kenyans of goodwill to defend and uphold the constitution. The survival of the constitution depends on the goodwill of all, and it is the responsibility of all Kenyans to respect, uphold and defend it as we ensure the constitution is implemented.

We would also like to sincerely thank all the staff members of CRECO Secretariat namely: Zipporah Abaki, Joel Mungania, Renée Kamau, Boaz Mugoto, Martha Ndururi, Edna Change, Moses Bakari and Regina Opondo. In particularly we acknowledge Ms. Kamau for the time and skills she dedicated to the review of this book.

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Our thanks go to HIVOS for their support towards the review and reprinting of this book.

Rhoda Musyoka

Chair- Management Committee

Constitution and Reform Education Consortium (CRECO)
The Constitution and Reform Education Consortium (CRECO) was formed in 1998 by organizations that were/are working on civic education for reforms and human rights advocacy. It was formed as a coordinating center for nationwide civic education and advocacy on constitutional and other reforms. The CRECO membership of 23 civil society organizations is drawn from both urban and rural based NGOs working in 8 former provinces of Kenya. The composition of the membership is multi-sectorial, with communities in Northern Kenya, ethnic minorities in Rift Valley, Coastal communities, urban and rural squatters among others.

To realize a just society, CRECO is committed to promoting constitutionalism, democratic governance and institutional excellence through coordination and capacity building of CSOs. CRECO espouses integrity, accountability, gender equity and equality, tolerance, respect for diversity and professionalism as its core values. CRECO was one of the consortia involved with the Civic Education Programme (NCEP) in 2000-2002 and NCEPII (under URAIA) in 2006-2007. Also from 2002, CRECO has observed elections and referenda together with other organizations and networks.

CRECO member organizations and secretariat participated in the Bomas Constitutional Conference as observers and delegates. After the betrayal by the political elite, CRECO supported the civil society led yellow movement which, among other things, sought to uphold the supremacy of the people in constitution making - in regard to both process and content- and supported the rejection at the 2005 referendum of the Wako draft.

After the Political Thuggery witnessed in 2007, CRECO took the position that a new constitution would be the cure against political and electoral system and would be the sole basis for strengthening the institutions charged with overseeing democratization in the Country.

The Independent Review Commission on the Kenya Elections 2007 (Kriegler Commission) and the Commission Investigating the Post-Election Violence (Waki Commission) that were put in place to investigate the bungled elections and post-election respectively strongly pointed towards the need for a new constitutional dispensation that will allow for the strengthening of institutions that manage elections and oversee governance.

As a result, the Constitution of Kenya Review Act 2008 and the Constitution of Kenya (Amendment) Act were enacted by parliament in 2008. There were three salient features in these acts: one: there were provisions on how to replace the existing constitution through a referendum, two; several organs including the Committee of Experts and the Parliamentary Select Committee were set up; and lastly there were automated timelines for the process of review. These laws to a great extent protected the process from derailment by the political class.

In an effort to ensure that a new constitution was realized, CRECO working with URAIA, other
interest groups, CSOs and individuals started nationwide consultations that culminated in the formation of the Katiba Sasa! Campaign in October 2009. The campaign was premised on the thinking that as the civil society, we would do everything possible to ensure that the final document that was produced as a result of the work of the Committee of Experts and what was finally adopted by Parliament was an acceptable basis for starting the reconstruction of the nation.

Though the campaign had its secretariat at CRECO and the leadership was provided by the National Civil Society Congress, it successfully became a space for national advocacy and for individual action by CSOs and other actors in their target agenda and communities of work. The campaign popularized the need for a constitution to the point that Katiba Sasa! Became the clarion call the Kenyan society and for actors within and outside of government.

That Kenyans voted overwhelmingly in support of a new constitution is a vindication of the campaign. The implementation phase requires that citizens understand the constitution, what it means for them and what action they need to take to ensure that we as a nation are not betrayed by the Political class like it happened in three major moments of great expectations: at independence, after the repeal of Section 2A ushering in multi-partyism, and after the defeat of KANU IN 2002.

To ensure that this betrayal does not happen again, citizens must interact with the implementation process at all levels of governance. The role of the Civil Society and opinion leaders is to mobilize the communities, provide civic education and advocacy to ensure that the issues relevant to all citizens are taken care of in the implementation process and also that the leadership at both county and national levels are responsive to the people and the provisions of the constitution.

Despite the optimism that Kenyans had for the new dispensation, a number of serious challenges face the implementation of the constitution: Firstly, a majority of Kenyans display insufficient knowledge of the Constitution. Provisions of the Constitution of Kenya are not well understood and Kenyans are yet to internalize the content of their Constitution. This calls for targeted civic education to ensure that public officers, the private sector and other non-state actors and individuals are well educated on the constitution and their respective roles in upholding its supremacy.

Second, owing to longstanding governance structures and public service practices propped by the previous Constitution, many individuals both in government and amongst the citizenry continue to hold conservative and even negative mindsets towards reform. Some administrative regulations are still undergoing review and their existence consigns the respective implementers to an old order of doing things. It is anticipated that objective and intensive education of public servants on the Constitution will help infuse the right attitude towards reform. This calls for the development of a change management strategy to ensure that the whole nation moves forth as one and a change of attitude that must also be targeted to the citizens and other intended beneficiaries of Constitution.

Thirdly, it has to be affirmed that certain political utterances and actions have presented challenges to the implementation process. It may be presented in the form of disrespect for, or lack of recognition of constitutional institutions, such as Courts or Independent
Commissions. This arises from focus by politicians on short-term political gains rather than ignorance of the law. The legislations that have been made by the National Assembly and the Senate have on occasions been against the spirit and letter of the constitution. Politics should unite not divide Kenyans and shore up constitutionalism as envisaged in the Preamble Para 3 Article Art 3[1] of the Constitution. Even negative political pressure from general populace should not be allowed at all. Kenyans should become diligent and vigilant and insist on proper enforcement of the Constitution.

Fourthly, the apparent overlaps and cross cutting functions of different government agencies presents a logistical challenge to the implementation process in general. Organizations which should be working together sometimes end up as antagonists thereby delaying certain processes.

“Wakenya wazalendo, we should realize that the constitution will not liberate us; we have to liberate ourselves using the text and spirit of the constitution.” Kawive Wambua Executive Secretary CRECO 2007 - 2013.

Regina Opondo

Executive Secretary, CRECO

July 2014
PART I:

Know your History
This part is about Kenya’s background in the search for a new constitution, which can be traced back, as long back, as 1890 when the British started settling in Kenya after the Imperial British East Africa (IBEA) Company had navigated the country. In 1920, the British declared Kenya a protectorate and a colony: a colony in the interior parts of Kenya and a protectorate at the 10-miles coastal strip that was under the reign of the sultan of Zanzibar. When one examines that history, it is evident that the issues that made Kenyans clamour for change included: the issue of reduced power at the centre; some communities seeking to get out of their marginalized status; and also, some communities wished to secede and so on. Below is an introduction of the six phases of Kenya’s search for and attainment of a new order that is built on justice, equality and common good.

**PHASE 1: 1890-1960**

In this phase, marked by subordination and subjugation of the local people by colonizers, there was an undying need for freedom. Colonial rule was by decree, ordinances and also was marked by dictatorship of the colonial governor, who represented the Queen of United Kingdom. Africans were clamouring for freedom and land, which had been taken away since Kenya was declared a settler colony. All fertile land was taken away for large scale farming and livestock keeping. Communities that previously resided on such lands, like the Maa-speaking communities of Samburu and Maasai, were deprived, chased away or simply held in ‘reserve’ lands.

Thus, Kenyan-Africans were denied the rights to organize and even form political parties. The British administered Kenya both as a protectorate and also a colony. But the interior colony only meant where they had presence: both in the major towns and also rural areas under settler farming. The northern parts of Kenya were neglected. Marginalization of these people took root then; and this has implications of how such people participated or not in future national processes including making of the independence constitution.

By the time 1944 approached, there was some level of consciousness among Africans and some of them were elected to the Legislative Council (LEGCO). More representation in both the executive council and the LEGCO was fought for by the emerging African leaders. Further, while there were some elements of constitutional law towards the end of the phase, especially through the Lyttleton and Lenox Boyd Constitutions (of 1954 and 1958 respectively), it was emerging that Africans wanted more: they wanted total representation in all organs of government and also freedom to rule their own country. This led to the second phase discussed below.

**PHASE 2: 1960-1962**

This phase was marked by emerging constitutional moments. In this phase, three conferences were organized in London to draft Kenya’s new constitution. In these discussions, some of the
key problems in phase 1 resurfaced. For instance, the Mwambao United Front, coming from the then coastal protectorate, was demanding federalism and to some extent a high level of autonomy for their region. The Maa-speaking communities were demanding back their fertile grazing land, which has been deprived off them after signing the ‘Lenana Agreements’ of 1904 and 1908. The Somali and communities in the northern region, which had not seen any level of infrastructural development during colonialism demanded full independence as a country on its own. Thus, the way in which the British administered Kenya came back to haunt the three conferences in Lancaster.

Moreover, there were new political parties, which pitched either for a federal or for a unitary government. Kenya African Democratic Union (KADU) pitched for a federal state, and was backed by minority groups including the then settlers. Kenya African National Union (KANU) on the other hand pushed for a centralized system akin to how colonialists administered Kenya, and also favoured a parliamentary system similar to the one in United Kingdom. In summary, by 1962, an independence constitution was drafted largely ignoring the issues of marginalization and freedom of northern peoples and coastal protectorate; ignored the question of African administrative structures that had existed prior and during colonialism; and also ignored the legitimate claims about land. However, the drafters and parties present agreed that the right to own property be given constitutional recognition, agreed that citizenship can be acquired after birth or through other processes; agreed on an independent judiciary; agreed in some form of devolution under ‘regional governments’; agreed on a parliamentary system, with two Houses; and also agreed that the prime minister and governor co-exist together among other things. All these were to change in the next phase.


Kenya became independent partially by having self-government under a prime minister, then later full independence but still with the governor as Head of State representing the Queen of United Kingdom. But before one year was over, the first amendment was passed to abolish this latter post, and equip the same powers to the prime minister. The rain, as it goes, started beating Kenya on this material day.

Numerous amendments that weakened institutionalism and constitutionalism were hurriedly done to the extent that by 1969, ten amendments had been done, and thus, the entire independence constitution was reconfigured. The independence constitution was totally modified to suit the power hungry elite, who equipped so much power in the presidency – a president who was never elected by anyone in the first place. That was the first type of amendments: amendments to destroy the constitutional structure cited in phase two above.

The second type of amendments consisted of changing the constitution but later MPs realizing their mistake and going back to the state as it was before. Such amendments included the change of parliamentary language from English to Kiswahili and later on reverting to both; or the amendment that removed security of tenure for constitutional office holders only to
return to the same at a later date; or even the amendment to create a legally-justified one party state and later on return Kenya into multipartyism. The latter concluded this phase as the 27th amendment of 1991.

**PHASE 4: 1992-2002**

This phase was marked by numerous demonstrations and street protests demanding change. The former president, Daniel Arap Moi, at the helm of the party and the state was solid and anti-reform. But the push surmounted all decoys that either him or KANU put as obstacles. Kenya opened up, people claimed more space, and civil society pushed from the middle for an all inclusive democratic process to rewrite the constitution. A group of reformers emerged from civil society and the opposition political parties, and they pushed for reforms on behalf of *Wananchi* (citizens of Kenya). Indeed, if elections were any indicator in 1992 and 1997, Moi had already lost his grip over the country.

Within this phase, three critical steps were taken. First was to forge a common ground for reforms, within the Ufungamano Initiative. Second was to organize and push for a legislative framework to govern the process. And third, was the push for further constitutional amendments under the IPPG, which somehow stole the chance to rewrite the country’s constitution in 1997. The fourth issue that could have helped steer the process did not happen. That was the conference at Bomas, consisting of MPs which was to meet before the 2002 General Elections but Moi dissolved parliament thereby blowing out the last candle that Kenya could get a constitution before the 2002 elections. But within this phase, as it ended, something critical happened: Moi and KANU lost elections to a promising opposition which had been a key advocates for Constitutional and institutional reform. They were to steer the process once in power.

**PHASE 5: 2003 -2010**

In Kenya’s history, this was the most promising phase, and has indeed turned out to be the most promising, in the search of a new order. But Kenyans squandered the first opportunity in 2005. Kenyans were led by a divided government in 2003 whose formation combined both anti- and pro- reformists; to a divisive referendum in 2005; and, to a post-election mayhem in 2008. Within the first part of this phase (2003-2005), three critical things happened: first, the current president, Mwai Kibaki, and ‘his handlers’ refused to fully implement the 2002 pre-elections MoU that could have saved this country from the quarrels of government and the stalemate at Bomas of Kenya (venue of the National Constitutional Conference). Second, within parliament, there was no agreement on the draft that would be taken to the referendum, as two opposing forces emerged and Kenyans followed suit. And third, Kenyans did not allow objective civic education to take place and each followed their own ethnic lineage to vote for or against the draft.
After the defeat of the draft constitution at the 2005 referendum, there were efforts aimed at jumpstarting the review. Such efforts included a taskforce set up to investigate why Kenyans rejected that draft; parliamentary attempts by front- and back-bench MPs; and also, political parties’ initiatives to re-start the process. All these were in vain.

In summary, new laws were drafted but were either hazy or ill-intentioned to restart the process. Second, politicians switched sides within this phase, where pro-reformers now enjoying presidential and state power, wanted things to remain as they were, while the group outside power, wanted power devolved. And third, legal bottlenecks either as opinions by lawyers or judicial rulings from judges stifled an already polarized process.

Finally, in the later stages of this Phase following the 2008 mediation process spearheaded by the Panel of Eminent African Personalities under the leadership of Honourable Kofi Annan, completion of constitutional reform was identified as one of the key underlying issues to be dealt with as part of Agenda Four of the mediation process. Parliament in December 2008 passed both a Constitutional amendment and a Constitution of Kenya Review Act setting the process for completing the review process. That process largely revolved around a Committee of Experts (CoE). The CoE was appointed and started work in March 2008 and were mandated to spearhead the process of finalizing the review process.

After production of various drafts between November 2009 and February 2010, the CoE eventually drafted the Proposed Constitution of Kenya (PCK) which after being passed in by Parliament in April 2010 without amendments, Kenyans overwhelmingly ratified the Proposed Constitution of Kenya (hereinafter, Constitution of Kenya, (2010) ) during the referendum on 4th August 2010. In a record voter turnout of about 70 percent of the registered voters, about 67 percent of Kenyans agreed to the new order against 31 percent. By promulgation of the Constitution of Kenya (2010) on 27th August 2010, Kenya finally ended the search for a new order. But that end signals a new beginning of constitutionalism; that is living by the rules, values and principles set out in the Constitution of Kenya (2010) as well as implementing the entire constitution by setting up institutions, processes and practices, which are important to make Kenya’s democracy thrive.

PHASE 6: 2011-

Kenya successfully achieved two main constitutional milestones since it came into force. The first being the March 4th, 2013 general elections which were the first to be held under the new constitutional dispensation. It involved a novel 6-piece voting system, the most complex and expensive yet. Secondly, the advent of a devolved system of government featuring a two-tier government structure: a national government and 47 county governments. The period witnessed the commencement of the transition to devolved government, and the operationalization of the same.

One more key development has been the constitutional recognition of the importance of civic education in a democratic society, and indeed the post 2010 period has experienced
implementation of widespread civic education. Civic education is aimed at developing an informed citizenry that actively participates in governance affairs of the society on the basis of enhanced knowledge, understanding and ownership of the Constitution.

In addition most of the requisite legislations as per the Fifth Schedule of the Constitution were enacted in the specified period, an achievement which greatly aided the transition. Another achievement was the laudable use of judicial mechanisms to settle electoral disputes, and interpret key articles of the Constitution.

Some of the challenges experienced during the period beginning 2011 as noted by the Commission on the Implementation of the Constitution (CIC) have been the politicization of devolution, resistance to change, irregular amendment of bills by the executive and the legislature, with some of those laws being enacted with fundamental constitutional flaws. Others include the emasculation of independent commissions, and attempts to roll back the gains in human rights protection.

However, these can be considered to be teething pains experienced by a nation slowly growing into its own, in an environment still largely defined by the Political culture and practices of its forefathers. Another reason posited is insufficient civic education, partly attributable to lack of marked absence of clear structures and platforms for dissemination of information and citizen engagement. These can be cured by strengthening institutions charged with oversight responsibilities and intergovernmental relations as well as entrenching devolution through developing and implementing policy and legislative frameworks.
PART II:

Know your Constitution
PREAMBLE:

A preamble is an introductory statement to a law which briefly states the underlying intent and captures the spirit and essence of the same. The Preamble to the Kenyan Constitution asserts the basic philosophy, principles, values and national goals to which we as a people are committed. The Preamble also reflects the understanding that Kenyan people form one nation bound together by common ideals, historical origins or experiences that are of great significance to us.

The Preamble in the Constitution of Kenya (2010) recognizes the supremacy of the Almighty God; honors our freedom heroes; recognizes our ethnic, cultural and religious diversities within Kenya; asserts essential values of human rights and democracy, equity, freedom and many more; and finally, asserts that we enact the Constitution for not only ourselves, but for other generations after us.

What this means for Wanjiku:

- That Kenya is a state with different ethnic communities, religious groups or other such differences, but who shall treat each other equally in all aspects
- That the Kenyan national identity should be balanced with other personal or communal identities
- That there are values that guide all Kenyans regardless of their position in society or which ethnic community they belong to
- That, for the first time, we have appreciated our history through acknowledging our independence freedom fighters and those who have continually fought for justice in Kenya
The simple statement that all sovereign power belongs to the Kenyan people is important, since it guards against misuse of power by those in government. Usually, when people surrender the right to govern themselves directly to State institutions (the government), in exchange for protection from the same, the government becomes the agent of the people and not vice versa.

This Chapter allows the people of Kenya to apply their sovereign right indirectly by delegating their power to elected representatives, but also keeps part of the same for people to exercise their power directly. These powers are seen in subsequent Chapters where people have the direct power to petition public authorities, or to participate in governance, and even to participate in future referenda to amend the Constitution. Further, this Chapter provides that such sovereign power is exercised at two levels of government: that is, the County and National levels; while some power is delegated to the judiciary and independent tribunals. Further, the Chapter recognizes the Constitution as the supreme Law, which must therefore bind all persons and state organs at all levels of government. It also states that there shall be no exercise of State authority except as authorized under the Constitution, and prohibits the establishment of a government otherwise than as prescribed under the Constitution.

**What this means for Wanjiku:**

- That the people of Kenya have the final authority and no one can misuse power
at either level, but if so, action must be taken against such persons

- That no one, and absolutely no one, is above the law

- That every person has an obligation to respect, uphold and defend the Constitution

- That all structures and systems of government set out in the Constitution derive authority from the people of Kenya.

- That the courts of law in Kenya should and must nullify any exercise of power or law enacted, which is not compliant with the Constitution.

- That no law, whether customary or international, shall be superior to our Constitution

**ENABLING LEGISLATION:**

Petition to Parliament (Procedure) Act No. 22 of 2012
CHAPTER 2

The Republic

This Chapter describes and defines Kenya as a sovereign republic and a multi-party democratic state founded on national values and principles. These national values are reiterated numerous times in the Constitution, reinforcing their importance. The territory of Kenya is divided into 47 counties which are interdependent. The official languages of Kenya are Kiswahili and English but the state shall recognize and promote the diversity of language of the people of Kenya. It is also stated that there shall be no state religion. The national symbols of Kenya are: the national flag, national anthem, coat of arms and the public seal. Culture is recognized as the foundation of the nation and the Constitution places a duty on the State to promote all forms of national and cultural expression.

Kenya is a diverse country, boasting 42 different tribes and cultures.

The importance of this Chapter is that it establishes who Kenyans actually are, and what brings us together. It is encouraging the Ubuntu philosophy: “I am what I am because of who we all are”. Indeed, culture is a critical component of our society. Since culture is a set of distinctive spiritual, material, intellectual and emotional features of society, it helps keep us together. Recognition of culture thus provides identity for us as Kenyans and also as a means for controlling our social behavior. Therefore, this Chapter is important for national cohesion, embracing national diversity and also realizing our shared national aspirations.
What this means for Wanjiku:

- That it creates room for more unity among Kenyans since it demystifies some of the divisive aspects that have previously been used, such as ethnic language or religion.

- That Kiswahili will be an official language, which extends rights to Kenyans who previously could not interact in official capacity in English.

- That, through symbols, we need to instill patriotism and a sense of pride to be Kenyan.

- That Kenyans have been given an opportunity to be proud of their cultures, develop them and respect other people’s culture to bring about equality for all.

- That lack of recognition of any State religion means that all Kenyans, and their religious affiliations, are equal before the law and therefore no one can impose a religion on any or all Kenyans.
A citizen of Kenya can be described as a person who, by either birth or registration, is a member of the Kenyan political community, and is entitled to enjoy all its civil rights, protections and privileges. Further, the law of the land also vests in its citizens certain duties, such as that to participate in the country’s governance. In most countries only a citizen can vote, and usually only a citizen can be an MP, or serve in the army. A citizen always has a right to be in their own country while non-citizens have to get special permissions such as visas and work permits. Citizens also have obligations over and above those they share with other residents (such as paying taxes). In some countries, citizens have an obligation to serve in the national service, and are liable to be called to join or fight with the armed forces.

In this Chapter, every citizen is entitled to: the rights, privileges and benefits of citizenship, subject to the limits provided for by the Constitution; and also a Kenyan passport and any document of registration or identification issued by the state to citizens. This Chapter also acknowledges that citizenship may be acquired by birth or registration and is not lost through marriage or dissolution of marriage. Marriage to a Kenyan citizen or being a lawful resident for a period of seven years entitles one to apply for citizenship through registration. To protect those born in Kenya, this Chapter provides that a citizen by birth does not lose citizenship by acquiring the citizenship of another country.

What this means for Wanjiku:

- That no one lost their citizenship, or validity of their documents, after the promulgation of the new Constitution
• That all Kenyans who lost their citizenship by taking up other nationalities can reclaim their citizenship and hence rights and privileges of being Kenyan

• That men and women are equal before the law since both can pass on citizenship to their spouses and children, unlike it was previously

• That street children or orphans under the age of 8 years, are qualified to be Kenyan citizens but that can be revoked, if the government eventually establishes their nationality

• That national documents such as identity cards or passport, will be made available to all Kenyans as of right unless there are clear reasons why these documents should not be issued.

• That all Kenyans who are citizens by birth are entitled to apply for citizenship of another country without losing their Kenyan citizenship (i.e. dual citizenship)

• That, as citizens, Kenyans also have duties such as the responsibility to vote in the right leaders, to uphold the rights and fundamental freedoms under the Bill of Rights, live according to the national values and principles, and to participate in governance and decision making processes.

**ENABLING LEGISLATION:**

Kenya Citizenship and Immigration Act No. 12 of 2011
Human rights are entitlements that are due to everyone by virtue of being a human being, and are meant to protect the personal dignity of the individual. Therefore, rights are not something to be begged from or granted by the government and the government has no power to take them away from us. Indeed, it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights. However, the defense of rights demands an equally responsible and enlightened citizenry. That is, with rights, come responsibilities! Many people often misunderstand human rights provisions, and think that something that says ‘every person has a right to’ means that everyone can do as they wish without respecting other people’s rights or without other limitations. Not really. Most rights are limited, especially where one is bound to infringe directly on the rights of others, or their enjoyment of those rights. It is important to understand, however, that any limitation imposed by a law must be reasonable and justifiable.

Unlike its predecessor, this Constitution includes an elaborate Bill of Rights, and makes specific mention of economic, social, cultural and consumer rights. This Chapter is divided into 5 parts: general provisions, rights and fundamental freedoms, special application of rights, state of emergency and the Kenya Human Rights and Equality Commission (KHREC). It provides for all ‘types’ of rights: from civil and political rights; to economic and social rights such as clear rights to health, housing and sanitation, food and water and social security (the state has the obligation to take measures necessary to achieve the progressive realization of
the rights); and makes provision for group, or collective rights held by women, persons living with disabilities, children, the elderly, the youth and so on.

This Chapter binds all state organs and all public officers and imparts on them the duty to address the needs of vulnerable groups within society. Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights and has the right to institute court proceedings or make a complaint to the Kenya National Commission on Human Rights (KNCHR), claiming that a right or fundamental freedom in the bill of Rights has been denied or is being threatened.

This Chapter grants everybody the right to life, and provides that no one has power to take that life away arbitrarily. With this, the Bill of Rights respects and upholds the human dignity of every person: human dignity being the foundation of humanity; that no one shall be discriminated against because of age, sex ethnic group, race, disability and so on.

The Chapter also gives every person the right to freedom of religion, expression, association, thought, belief and opinion. To ensure that some of the above rights are exercised, the Chapter provides that every person has the right of access to information held by the state or other persons and required for the protection of any right. The Bill of rights also provides that every person has the right, either individually or in association with others, to acquire and own property of any description in any part of Kenya. An arrested person has the right to be informed promptly of the reason for arrest and be allowed to communicate with an advocate or other persons whose assistance is necessary.

Finally, the Constitution established the Kenya National Human Rights and Equality Commission (KNHREC). It has since been restructured to give rise to three bodies: the Kenya National Commission on Human Rights (KNCHR), the National Gender and Equality Commission (NGEC), and the Commission on Administrative Justice (CAJ). KNCHR’s mandate is to ensure the protection and promotion of rights, including investigation into complaints of human rights abuses. NGEC’s core function is to contribute to the reduction of gender inequalities and the discrimination against all. While the Office of the Ombudsman (CAJ) is mandated to address all forms of maladministration, promote good governance and efficient service delivery in the public sector by enforcing the right to fair administrative action.

What this means for Wanjiku:

- That recognition of individual political rights, socio-economic and cultural rights and group rights is a huge step to show the inter-dependence of human rights
- That groups that were previously marginalized, such as women, youth, children persons living with disability, and the elderly have a fair chance to demand their rights and proper place in society
- That recognition of human rights gives Kenyans a tool to use, in the event that a person in their public or private capacity violates their rights, to rectify that violation.
- That the responsibility to protect all Kenyans against discrimination rests on the
government but also the private sector and individuals

- That the police shall not unnecessarily violate the rights of those suspects held in custody or detention

- That all Kenyans must exercise their rights and their responsibilities to defend their rights as well as defend the rights of others

- That all Kenyans have a right to fair trial without undue delay. This includes the right to a public trial before a court, to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial, to be presumed innocent until the contrary is proved, and to appeal or review among others.

- That torture, cruel, inhuman or degrading treatment or punishment is strictly prohibited

- That arrested persons will not be disappeared while in custody as courts are empowered to demand their production in court.

ENABLING LEGISLATION:

- Media Bill, 2013
- Consumer Protection Act, No 46 of 2012
- Kenya National Commission on Human Rights Act No 14 of 2011
- National Gender and Equality Commission Act No 15 of 2011
- Commission on Administration of Justice Act No 23 of 2011
Land has been, is and will remain one of the most controversial topics in Kenya. The question of land has always been an emotive issue throughout Kenya’s history. Indeed, Kenya’s freedom struggle was primarily hinged on the issue of land access and ownership, among other injustices. Out of the total 582,646 sq. km. that Kenya occupies and a population of close to 40 million, only 8% of that land is arable. It is thus understandable why Kenyans, 40 million people, crave to own a piece of this 8%!

But equally, there are so many injustices around the issue of land in Kenya. These include: a) some communities were dispossessed of their land during the colonial period and after, but this STILL remains unaddressed; b) a few wealthy individuals and families control huge tracts of unutilized land yet many families do not have even land for subsistence farming; c) alleged illegal or irregular conveyance of community land to public and even private institutions; d) as a result of politically-instigated violence, hundreds of thousands of families were displaced from their homes and farms; and e), many people live in informal settlements, without legal titles among other injustices.

This Chapter provides for equitable, efficient, transparent, non-discriminatory, productive and sustainable management of land and resources. Land in Kenya belongs to the people of Kenya and is classified into public, community or private. Public land is land lawfully held, used or occupied by any state organ including all minerals and mineral oils as defined by law. Community land is identified on basis of ethnicity, culture or similar community of interest. Private land is registered land held by any person under any freehold or leasehold tenure.
With regard to owning land, non-citizens can only own land on the basis of leasehold tenure and shall not exceed ninety nine years.

There is established the National Land Commission (NLC) to manage public land on behalf of the national and county governments and its functions are primarily advisory and administrative responsibilities, and general oversight of land use planning. These advisory and oversight functions, coupled with its mandate to make recommendation for redress for land injustices, make the NLC a very important Constitutional Commission.

The state shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure the equitable sharing of benefits. In this way, Chapter 5 seeks to address the question of historic injustices regarding land.

This Chapter also maintains that environmental protection and management is important, and therefore both the government and the Kenyan people have an obligation to enhance sustainable development in the use of land and other land-based resources such as minerals.

**What this means for Wanjiku:**

- That recognition of certain principles about land and different types of land gives certainty of land ownership, especially community ownership of land, unlike previously where it was entrusted to Local Authorities.

- That Kenyans can make complaints to the National Land Commission regarding present or historical land injustices, and the Commission in mandated to investigate and redress these wrongs.

- That all land use, including exploitation of minerals, shall be regulated by Parliament, which shall be elected by Kenyans.

- That environmental rights shall be enforced where all Kenyans and government have a duty to protect the environment.

- That all non-citizens who held free title to land, or possessed very long land leases some up to 999 years, have been made to face social justice.

**ENABLING LEGISLATION**

- Land Act No 6 of 2012
- Land Registration Act No 3 of 2012
- Public Private Partnership Act No 15 of 2013
- National Land Commission Act No. 5 of 2012
One of the qualities of a good leader is integrity, that is: having strong moral principles, and being honest and fair. A holder of public office should behave in such a manner that s/he does not compromise public or official interest in favour of his/her own personal interest, demean the office they hold, or brings about conflict of interest.

Part of Kenya’s problems lie in the lack of focused and visionary leadership. Independent Kenya has produced bad leaders who have been re-elected time and again by Kenyans. A desire for a new beginning sans corruption and selfishness was one of the drivers of the constitutional process. Besides the national values and principles of governance of the Constitution of Kenya, the criteria for appointments and the institutions and procedures creates a way in which we could contribute to the development of ethics and public good in public service. However, a Constitution can do only a limited amount, since it is the people (both in office and outside) who should develop a culture of integrity and honesty outside of the Constitutional document.

This Chapter provides that all authority assigned to State officers should be exercised with a spirit of service to the people, rather than the power to rule them. All people having such authority should have integrity, competence, objectivity, impartiality in decision making, selfless service and honesty. It is also stated that a full-time state officer shall not participate in any other gainful employment or hold office in a political party.
This Chapter also prohibits State officers from dual citizenship except for judges and members of commissions. Further still, State officers are supposed to conduct themselves in an ethical way, whether in private or in public life; they are not supposed to have bank accounts outside Kenya; and also, they should not receive personal gifts or donations other than on behalf of the State. To ensure all the above is enforced, an Ethics and Anti-corruption Commission is established to ensure compliance with this Chapter. While not strictly a constitutional commission as those listed in Chapter 15, it plays an important role in challenging and eradicating the culture of impunity in our society by combating and preventing corruption and economic crime through law enforcement, preventive measures, public education and promotion of standards and practices of integrity, ethics and anti-corruption.

**What this means for Wanjiku:**

- That corruption and bribery will reduce considerably since gifts and donations to public servants are prohibited
- That all leaders who want to be elected and appointed must be willing to serve the people but not rule or lord over the Kenyans
- That public servants should not use their positions for personal gain, or enter into transactions that might be suspicious to the public as to their conduct of public affairs
- That all State Officers will only derive income from one source (their salaries) and therefore, will be in office to serve the public but not doing personal business during work hours
- That State officers shall be loyal and patriotic to only one country and therefore too, cannot keep their money outside our borders
- That all State Officers, especially future Cabinet Secretaries shall not hold offices in political parties, which previously has compromised their decision-making abilities
- That in general, all appointed and elected leaders, shall be prosecuted if they break the above laws

**ENABLING LEGISLATION**

Ethics and Anti-Corruption Commission Act No 22 of 2011

Leadership and Integrity Act No 19 of 2012
The representation of the people in a country is essential for a functioning democracy. People can participate directly through referenda, participating in meetings at national and local level or through elected representatives. That so even though democracy assures that people will govern themselves, it is not feasible for all the people to be in decision-making seats. They have to elect representatives to air their views. This representation is made possible through an electoral process. This is one of the areas of political participation and one of the functions of elections: that is, to vote for the would-be representatives.

The general principle in determining constituencies/electoral area boundaries is the equality of the vote. The population should be equally represented with each vote carrying more or less the same value. Indeed the primary concern of the people is the population and most of our criticisms are drawn from some of the glaring imbalances, which characterize the set up of constituencies in Kenya. To reconcile representation with the population, other factors such as geographical considerations, community of interest, population trends, and accessibility must be accounted for to achieve equality.

Through elections, citizens choose the kind of leaders they want, which political party they deem fit, and which party’s manifesto appeals to their real needs, hopes, aspirations and expectations. On the other hand, the people can offer themselves for candidature to be the leaders. That is, vie for any seat they aspire to so long as they meet the specifications.
This chapter provides detailed information on how people shall be represented in government processes and systems. It outlines the general principles for the electoral system as: a) freedom of citizens to exercise political rights; b) equity of men and women where ‘not more than two-thirds of the members of elective public bodies shall be of the same gender; c) fair representation of persons with disabilities, youth and the marginalized groups; and also free and fair elections which are free from violence unlike witnessed over the years. These are principles, but we need to actualize them as citizens through ensuring that we do not get involved in violence, intimidation, improper influence or corruption during the electoral processes. Further, the Chapter also establishes an Independent Electoral and Boundaries Commission (IEBC) to help Kenyans navigate through the electoral processes.

New things are proposed such as continuous registration of citizens as voters, including those residing outside Kenya; an electoral system which recognizes aspects of proportional representation; regular revision of voters’ registers; regular revision of electoral units, be they wards or constituencies; rights of person to vie for seats independently, without being in a political party; faster processes for electoral petitioning and conclusion of such petitions; and finally, developing codes of conduct for candidates and parties contesting elections where political parties should adhere to basic tenets of democracy including accountability and transparency.

What this means for Wanjiku:

- That there is a clear and independent electoral body and process, which means that future elections will be free, and therefore, all Kenyans should be involved in the electoral process
- That all Kenyans, be they candidates, electorate or the IEBC, must respect the Constitutional principles to ensure our constitutional democracy flourishes, but if not, they should be prosecuted.
- That continuous registration of voters will ensure that all Kenyans have the right to participate and determine the destiny of the country
- That all Kenyans have an opportunity to vie for leadership positions, regardless of whether they belong to political parties or not
- That women of Kenya have the chance to getting into decision-making organs such as Parliament to add more weight to gender equality
- That all persons living with disability, the youth and people who are marginalized have a great opportunity to influence Kenya's destiny
- That all candidates who loose an election unfairly, do not have to wait for long periods, of up to 5 years, before an election petition is determined by courts of law
ENABLING LEGISLATION:

Elections Act No 24 of 2011
Petition to Parliament (Procedure) Act No 22 of 2012
Salaries and Remuneration Commission Act No 10 of 2011
The legislature, commonly referred to as parliament, plays a central role in democracy since its primary role is to represent the people, and also make laws. Thus, it is a structure where those who are elected respond to people’s preferences, particularly in law making, holding government (read, the executive) accountable, and hold custody and control of finances and other resources of the people who elect them.

However, Kenyans have been quite dismissive of the role of parliament, or parliamentarians more directly, about their failure to rise up for the common or public good. On one hand MPs are often seen as greedy, and disinterested in their constituents except at election time, and even lazy, where they have long breaks, and even failing to turn up for debates so that parliament is usually adjourned because of lack of quorum.

Equally, and also interestingly, Kenyans have demanded for more MPs (or more easily, more constituencies) – so that they can have better representation. This may be partly connected with the Constituencies’ Development Fund (CDF) where creation of new constituencies within an area leads to more financial resources to the constituents, and therefore a greater likelihood that development projects will be closer to, and benefit the people. Despite this, people also generally welcome signs that MPs take their work seriously – especially when House Committees (such as the Public Accounts Committee) carry out serious investigations into socio-economic scandals and exercise oversight over public finance spending.
Over the years, in the search for a new constitutional order, Kenyans have tried to meet these concerns by: a) strengthening the ability of parliament to take an active role in decision-making, and thereby, reducing the impact of the presidency; b) holding government accountable and also by provisions designed to make parliamentarians more accountable; and c) demanding parliament be more open and accountable in its procedures to public, with possibility of recalling MPs who do not seem to fulfill the desires and aspirations of the electorate.

Indeed, during the CKRC process, Kenyans called for a Parliament that was more inclusive of women; the consensus was that at least 1/3 of MPs and Cabinet ministers be women; ii) that there be a second chamber; and iii) that Parliament be given the power to dismiss the Government of the day through a vote of no confidence and to impeach a sitting president.

This Chapter, incorporating the wishes of the people of Kenya, and the COE recommendations, establishes the Parliament of Kenya consisting of two houses: the Senate and the National Assembly. Both Houses have different functions. Functions of the National Assembly include: representing the electorate and also special interests; to pass laws; and to oversee the allocation of national revenue and expenditures among other functions. The Senate on the other hand will represent and protect the interests of the county government; participate in vetting bills concerning the counties; and also determination of allocation of national revenue, especially that allocated to counties. Unfortunately, however, there has been tension and an ongoing battle for supremacy between the two Houses. There have also been calls to disband the Senate, remove the position of women’s representatives in Parliament, and reduce the number of constituencies, and therefore the number of members of the National Assembly – contrary to previous and popular opinion.

Membership in Parliament has increased to 349 members in the National Assembly, which is drawn from both elected and nominated members through proportional representation of political parties (depending on how many seats they win in the House). The Senate has 67 members both directly elected and nominated to take care of gender representation (read, women) and other interest groups which are the youth and the marginalized. For the first time too, the Constitution provides the electorate with the right to recall their MPs and Senators. The Parliamentary Service Commission is set up to ensure that all possible support is given to MPs so that they do their work, but this Commission unlike previously, shall not have the role of determining the salaries of MPs. Finally, the quorum of parliament is raised to 50 MPs and 15 for Senators.

Further, parliamentarians would not be part of the executive (as ministers) but would have to approve the appointment of Cabinet Secretaries (mentioned in the next section on Executive), and the National Assembly would have the power to require that the President remove a Cabinet Secretary, on grounds of misconduct. A potentially important new role of Senate is the removal of the President by the process of impeachment, if and when the President violates the Constitution.

Finally, the Constitution fixes dates for elections so that Parliament cannot be dissolved
before its 5 year term ends unlike previously, where the President could dissolve Parliament at any time. And if Senate under the Constitution impeaches the President, or the National Assembly passes a vote declaring that the President is incapacitated to undertake the duties of the President, Parliament would not be dissolved. Power is delegated to people’s representatives, but the people of Kenya must ensure that those representatives are checked not to abuse power.

By and large, the introduction of a bi-cameral Parliament has been a progressive addition to the governance and devolution landscape, but one that is marred by wrangles and infighting, and focus on power rather than serving the citizens who elected them. It is hoped that once intergovernmental relations structures are put in place, coupled with civil society and the citizenry playing watchdog roles, Kenya can see a more cooperative legislature.

**What this means for Wanjiku:**

- That parliament is now fully independent from the executive and shall work for Kenyans in passing laws to implement all values and principles of the Constitution
- That parliament will reflect the diversity of Kenyan people where women shall have reserved seats in parliament, including youth, persons living with disability and also the marginalized groups
- That Kenyans will be able to retire/recall their leaders if they do not perform
- That the president shall never dissolve parliament anyhow and further, elections in Kenya shall never be a ‘secret weapon’ of the president since dates shall be known to all
- That Kenyans will be ably represented in terms of numbers of constituencies (or MPs) , and hence they should make sure that quality of representation is improved
- That more parliamentarians will have to go to the respective Houses to raise quorum to do business and hence, MPs will work harder to do this and also avoid recall
- That the interests of Kenyans are to be protected by County Governments and the Senate.

**ENABLING LEGISLATION:**

- Elections Act No 24 of 2011
- Petition to Parliament (Procedure) Act No 22 of 2012
- Salaries and Remuneration Commission Act No 10 of 2011
The executive arm of government has the authority and power to literally run the State, among other arms. And that is why most of the amendments to the former constitution were aimed at strengthening the executive arm at the expense of both the judiciary (discussed after this section) and the legislature (discussed above). More directly, the president emasculated enormous powers and became ‘very powerful’, in the sense of what these words mean. Through a series of amendments, the former constitution managed to create a centralized, all powerful executive, and in effect, a dictatorship. Up until 2007, any person who assumed the office of the president in this country, under the former constitution, became a ruler rather than a leader.

Our former constitution was so flawed that a majority of Kenyans expressed their dissatisfaction with the powers of the president. Indeed, the search for this new Constitution was equated with reducing powers of the presidency; and rightly so. They wanted those powers trimmed and shared out both horizontally and vertically: horizontally, to other institutions and persons; and vertically, to other governments other than the central one. And further, Kenyans have over the years complained about a large cabinet and very many assistant ministers. They wanted this reduced.

This Chapter establishes the executive arm and begins by stating that all executive authority is derived from the people and is exercised in a manner benefiting the people. The National
Executive shall comprise of the President, Deputy President and the Cabinet, whose members (Cabinet Secretaries) shall not exceed 22, and shall not be less than 14. Assistant Ministers, as we know them, shall not exist anymore. The President will be both Head of State and Head of Government, and shall therefore be coordinating functions of ministries and government departments.

Most appointments, indeed nominations are to be done by the President, but must be approved by the National Assembly, including Cabinet Secretaries, Principal Secretaries, Director of Public Prosecutions and the Attorney General. The President shall be elected with a running mate, and hence has no power to hire or fire a deputy president. For the first time ever in the history of Kenya, Cabinet Secretaries shall be from outside parliament. This is in tandem with the wishes of Kenyans who hoped that separation of the functions of the parliament and those of the executive will be done. Finally, the Chapter separates the roles of the Attorney General and that of the Director of Public Prosecutions.

What this means for Wanjiku:

- That there is openness about all presidential nominations and approvals in parliament in all public appointments, which increases accountability
- That there is also enhanced accountability and transparency in execution of duty in public offices by the President and other state officers.
- That the lean Cabinet will reduce the tax burden of Kenyans
- That approvals of appointments by parliament reduces the powers of the president and also enhances the role of people’s representatives in decision-making
- That selection of cabinet secretaries outside parliament ensures credibility and expertise in running government.
- That principal secretaries are also approved by parliament which improves checks and also enhances professionalism in service delivery
- That the separation of the office of DPP and the AG helps in increasing the efficiency with which its officers prosecute all who break the law, whether rich or poor.

ENABLING LEGISLATION:
Power of Mercy Act No 21 of 2011
Assumption of Office Act No 21 of 2012
The judiciary is the arm of government which adjudicates between the executive bid to implement the laws passed by parliament, and the people who break these laws. Moreover, it is the Judiciary’s role to countercheck all laws made by parliament so that they are consistent with the supreme Constitution. While most Kenyans have never interacted directly with the judiciary, courts are a vital part of the machinery to enforce and safeguard the Constitution, especially human rights. Court rulings and judgments form part of Kenyan law. Thus, court cases may involve only a few people but the ruling can have a major impact on the rights of people generally. To perform these functions properly, judges need to be independent. For this reason, they are shielded from interference by the other arms (parliament and the executive) and other institutions or agencies of the State. The Judicial Service Commission was composed of sole appointees of the president and this rendered judicial appointments and judiciary not fully independent.

As a result, the judiciary became a major disappointment to many Kenyans who sought justice. Part of the underlying cause is the legacy of presidential power (discussed above), reinforced by the years of one-party rule which removed their independence. At individual level, a large number of judges have been accused of unprofessionalism, bribery, and corruption. Further, judges have made rulings that favour the executive regardless of the law. Judges have twisted the law to benefit the rich or the powerful at the expense of the poor. Judgments of the Kenyan courts have been weak in their reasoning or have at times
been outrightly anti-human rights. It is of course not true that all judges are weak, corrupt or subservient to government. There are judges who on some occasions have been seen to deliver judgments that favour only state interests, while on other occasions have been guided by justice and the rule of law for the best of Wanjiku.

Therefore, this Chapter may enable Kenyans break from this horrible past. The keys to an effective judicial system are competent judges, adequate finances and independence of the judiciary. To meet this, this Chapter begins by asserting all judicial authority is derived from the people and is vested and exercised by courts and tribunals. It goes further to recognize traditional dispute resolution mechanisms as some of the ways of ensuring justice is accessed by as many people as possible.

The courts are given independence by cushioning them from interference by either parliament or even the executive. To consolidate this independence, there is established a Judiciary Fund administered by the Chief Registrar of the judiciary. Judicial offices and its officers are protected from politics. Parliament is however given power to establish courts with the status of High Court. These courts may include labour related courts, industrial courts and courts to determine disputes relating to the environment and land.

There is established the office of the Chief Justice who shall be the head of the Supreme Court and head of the Judicial Service Commission. The office of the Deputy Chief Justice is also established. The Chief Registrar shall be the chief administrator and accounting officer of the Judiciary. Most of these appointments are approved by the national assembly.

There are two main types of courts, which include: superior courts that include the Supreme Court, Court of Appeal, and the High Court, and all these courts have different heads unlike previously where the Chief Justice is the overall. Subordinate courts include: magistrates courts; Kadhis’ Courts; Courts Martial and any other court as may be established by an Act of Parliament (referred to above).

The Judicial Service Commission (JSC), headed by the Chief Justice, is now composed of elected representatives of the various superior courts, the AG, a representative of the Public Service Commission and four ‘outsiders’ (two representatives of LSK and two representatives of the Wananchi). Part of its key functions is to recommend judges to be appointed by the president and also to promote and facilitate independence and accountability of judiciary and efficient and effective administration of justice to all.

Key successes and achievements of the Judiciary since the promulgation of the Constitution have been the arbitration of presidential and gubernatorial elections, favourable judgments in the human rights division of the High Court, and interpretation of key constitutional provisions which go a long way in enforcing the rights of groups and individuals, and setting precedent for the determination of political disputes.

Other reforms witnessed within the Judiciary have included vetting of judges and magistrates, introduction of Court User Committees (CUCs), mobile courts and circuit courts which have the overall effect of improving service delivery and facilitating faster dispensation of justice.
What this means for Wanjiku:

- That the composition of the JSC is critical to bring about independence and integrity of the judiciary
- That having different heads of the superiors courts reduces the enormous and often abused powers of the Chief Justice
- That the independence of the judiciary will lead to strengthened role of the judiciary to check and counter abuse of power by the executive and parliament
- That recognition of traditional dispute resolution mechanisms is a great opportunity for Kenyans to access justice without necessarily going to court.
- That appointments of senior officers in the judiciary must be vetted by parliament gives credibility to the judicial processes and outcome.

**ENABLING LEGISLATION:**

Environment and Land Court Act No 19 of 2011
Industrial Court Act No 20 of 2011
Judicial Service Act No 1 of 2011
Vetting of Judges and Magistrates Act No 2 of 2011
The introduction of a devolved system of government is the most marked departure from the previous Constitution. Decentralization of power is the process of transferring political power structurally or institutionally, by either de-concentrating it or devolving it. De-concentration entails the transfer of administrative authority to local institutions of one department or level of government, while devolution is the transfer of political authority to sub-national governmental units.

Devolution therefore takes place when power is ceded and is used to make decisions, which can be done by the Constitution or other law to sub-national institutions such as what Kenyans have done by establishing counties. Devolution therefore entails transferring power to constituent institutions determined by legislation. In essence, devolution is a way of involving the local units in governance: that is, in policy and political decision-making. That, by extension, includes the people at the local level, the so-called Wananchi. As seen in Part 1 of this Booklet, Kenya had some form of devolution at independence with ‘regional governments’, but with subsequent constitutional amendments and legislation, it became a unitary state, where all powers were concentrated at the center: Nairobi.

As the search for this new Constitution took shape, Kenyans were calling for reduced powers in Nairobi. There was a strong feeling that far too much power was concentrated in Nairobi, and decisions that affect local communities were been made far away from them. Local
governments were weak and very much under the control of the national government. Power was highly centralized. For many Kenyans, interactions with government were with the Provincial Administration, which ultimately was not answerable to them but was responsible to the Office of the President. That is why many Kenyans not only wanted this Provincial Administration abolished but also wanted some of the power to make decisions and take control of their own affairs brought to the grassroots for people to control their own destiny.

This Chapter explains the essence of devolution, which is to promote democratic and accountable exercise of power; give powers of self-governance to the people; and recognize the right of communities to manage their own affairs among other principles. The county governments (47 in total) shall be guided by democratic principles and separation of powers; reliable sources of revenue to enable them to govern and deliver services effectively; and also be based on gender equality which ensures that not more than two thirds of the assembly or the executive are of same gender. Devolution is intended to involve the people more in governance, and to ensure the effective delivery of services. The relationships between the two levels of government, and amongst the 47 county governments are intended to be based on cooperation but not competition. There are 349 constituencies based on former colonial districts.

The County Assembly is the legislative arm of the county while the County Executive Committee is the executive authority in that it executes the mandate of the assembly. The Counties will be headed by a county governor (who shall have a running mate as deputy governor). The governor will be elected directly by voters registered in the county, and will lead the executive arm, just like the president is chosen to lead the executive arm of the national government. Urban areas and cities are given special recognition which shall be provided for through national legislation. This Chapter allows for transfer of powers from the national government to the county governments. Parliament shall by legislation ensure support of counties to perform their functions. A county government may be suspended in an emergency arising out of internal conflict or war.

**What this means for Wanjiku:**

- That certain functions which were previously the preserve of the national government are now shared by the county governments e.g. agriculture, health services, education.

- That a closer and more responsive county government means better and faster service delivery to all Kenyans

- That county governments will each further decentralize their functions to smaller units to ensure all Kenyans living in the counties access services.

- That the principle of self-governance and inclusion of women and other groups enhances equality and reduced discrimination

- That there is a clear separation of powers between the assembly and the
executive, which increases openness and accountability of institutions to the people.

- That both national and county governments must mutually cooperate to ensure tension is reduced so that they concentrate on development of the country.

- That the phased transfer of power and functions from the national to the county governments will build local capacity to decide where best to invest resources and hence meet needs of the people.

- That citizens are given the right to participation in county affairs, which right is elucidated in the Acts relating to devolution and transfer of power.

**ENABLING LEGISLATION:**

- Elections Act No 24 of 2011
- County Governments Act No 17 of 2012
- Urban Areas and Cities Act No 13 of 2011
- Transition to Devolved Government Act No 1 of 2012
- County Governments Public Finance Management Act No 8 of 2013
- Division of Revenue Act No 31 of 2013
- Intergovernmental Relations Act No 2 of 2012
- National Government Coordination Act No 1 of 2013
- Transition County Appropriation Act No 7 of 2013
- Transition County Allocation of Revenue Act No 34 of 2013
Public financial management is about the adequate control of the level of revenue and expenditure, and the appropriate allocation of public resources to deserving sectors or programmes. Unfortunately, Kenyans have seen irregular allocations of public revenue to undeserving projects; we have seen numerous scandals where money was squandered, or simply, stolen by public servants; and also, the revenue bases have not been tapped fully, especially where MPs and other constitutional holders, not to mention unscrupulous businesspersons, have evaded paying tax. Thus, many Kenyans have shouldered the heavy debts arising from not only government-borrowed loans, but also have been taxed heavily on even essential goods.

Indeed, management of public debt is the most worrying aspect of fiscal policy management. The domestic/internal debt and international/external debt are choking the country. Kenya continues to accumulate debt liabilities with no sign of restraint or concern over the distribution of debt burden between current and the future generations. Even currently, this situation continues with the Anglo-Leasing scandal among others. The current generation has been encouraging debt-financed consumption, but transferring the debt liability to the future generations. In many countries, governments are required to ensure public borrowing maintains both *net worth* (what the debt is for) and *intergeneration equity* (being fair to future generations) in their expenditure management and practices. But in Kenya, we have not done this.
There is need therefore to take adequate control of the level of revenue and expenditure. The first step is to improve inter-governmental fiscal relations through streamlined and predictable rules on tax sharing and grants. In our case, this would involve how the county governments relate to each other and to the national government. The functions that are provided for in the Fourth Schedule attract some taxation legislation by both governments and provides for inter-governmental fiscal relations.

The second step is to improve the local taxation system (that is, bases, rates and administration), and put sound budgetary and financial procedures into place through comprehensive, accurate and transparent budgets, which establish the basis for financial control and provide timely financial information. Our history has been problematic on this front. National budgets are prepared largely in ‘secret’ where the Ministry of Finance and Treasury have had the last say. And in the annual estimates read every June, we have seen more allocations to re-current expenditure to pay salaries and operational maintenance at the expense of money for infrastructure such as roads, water, energy and so on.

Thus, this Chapter speaks to the above concerns. Administration of public finance is to be guided by the principles of accountability; public participation; equity; transparency and representation. This is a welcome change from the previous constitutional dispensation wherein Parliament could not introduce money bills, which meant that public finance matters were solely within the ambit of the executive. The new principles of the public finance management will now help reduce and/or curb excesses and misappropriation of public funds.

This Chapter establishes the Equalization Fund which aims at upgrading marginalized regions with the view to reducing inequalities and bringing them at par with the rest of Kenya. The Fund shall be used to provide basic services including water, roads, health facilities and electricity to marginalized areas. To bring this into operation, parliament enact an Appropriation Bill to guide utilisation of the fund. The Chapter also make mention of a Consolidated Fund, Revenue Fund and Contingency Fund.

Further, Government revenue is to be shared equitably between the national and the county governments and particularly there is a guarantee that 15 percent of the revenue collected by the national government will be allocated to county governments. Counties could impose property rates and entertainment taxes (and any other tax assigned to counties by a national law.

A Commission on Revenue Allocation (CRA) is established for the purpose of making of recommendations regarding the equitable sharing of revenue between the national and the county levels, and between the counties. Of course, the Senate will be involved in such discussions by determining the basis of revenue sharing based on the CRA’s recommendations.

This Chapter also prohibits any law from being written that can exempt State Officers from paying taxes. The provisions of this Chapter also seek to ensure that fair, equitable,
transparent, competitive and cost-effective procurement procedures are followed when a State organ or any other public entity contracts for goods and services.

Both county and national governments are free to borrow but both parliament (for national government) and assembly (for county government) must approve such loans by legislation and also debate to ensure accountability and transparency. This should help stem public debt problems that exist today, but we must pay all past debts as provided in the provision of public debt, which should be charged to the Consolidated Fund whether that debt was used for the correct reasons or not. Both governments must prepare budgets, which shall show the estimates between re-current and development expenditure and the processes have been made more open where parliament and the county assembly shall be involved and also in financial control too.

The following financial offices are established by the chapter: a) the Controller of Budget: To oversee the implementation of the budgets of the national and county governments and submit as report on the same (this is also an independent office under Chapter 15); b) the Auditor General: to audit and report on the accounts of any entity that is funded from public funds (this is also an independent office under the Constitution); c) the Salaries and Remuneration Commission: to set and regularly review the remuneration and benefits of all state officers and advice the national and county governments on the remuneration and benefits of all other public officers; and finally d), the Central Bank of Kenya: which shall be responsible for formulating monetary policy, promoting price stability and issuing currency: a currency that will never have a picture of the president or any other person.

The Public Finance Management Act, 2012 also provides for the continued existence of the Parliamentary Budget Office which is responsible for preparing reports and analyses on budgetary and economic matters and thereafter make proposals to the relevant Parliamentary Committee. Another important public finance institution is the Treasury which formulates, evaluates and promotes economic and financial policies that facilitate social and economic development, and manages the country’s financial obligations.

**What this means for Wanjiku:**

- That openness of the public financial procedures and budgetary process will lead to better use of taxpayers money where money should be taken where it is most needed
- That the Wananchi can access Auditor General Reports, Budget Policy Statements and Budget Review and Outlook papers to critique and evaluate public expenditure
- That the Equalization Fund and the County Fund will ensure all counties have a stable source of money, which lead to better service delivery to meet the needs of the people
- That all State officers are obligated to pay taxes, meaning there shall be more
revenue to meet our needs

- That clear financial procedures will lead to reduced potential for bribery and corruption and hence faster economic growth at both county and national levels.

- That the Commission on Revenue Allocation will make independent decisions about where and how to utilize money leading to efficiency in spending.

- That the Salaries and Remuneration Commission will bring equity to salaries paid to different public servants.

- That vetting of appointees to offices within public finance will lead to professionalism instead of appointments based on patronage.

- That separation of roles between auditing and controlling of budget will lead to less avenues for corruption and inefficiency.

**ENABLING LEGISLATION:**

- Public Finance Management Act No 18 of 2012
- Contingencies Fund and County Emergency Funds Act No 17 of 2011
- Public Procurement and Disposal (Amendment) Bill 2012
An effective public service is essential for providing key public services that are central to poverty reduction and to create an enabling environment that supports growth in the all sectors of the economy. Thus, also called the civil service or the civil bureaucracy, it is the hub upon which the spokes of the State turn. In Kenya, the public service is an inheritance of the past colonial administration. However, the public service as it existed then was purely an outfit for maintaining law and order.

However, at independence it became necessary for the Government to transform that service so that it could put in place policies and programmes that would stimulate both social and economic development throughout the country. Consequently, it was the civil service that was charged with a new mandate and responsibility of providing a wide range of essential economic and social services to the entire population. Among others: expanded educational opportunities; rural health services; various extension services such as agricultural; and essential infrastructure facilities. These had to be provided by the Government to serve the rapidly growing population.

Over the years, the Government has formulated appropriate policies geared towards the achievement of accelerated development. At the same time, direct government participation in commercial and industrial enterprises increased owing to scarcity of private domestic savings, management talent and entrepreneurial experience especially among indigenous people. As a result, a larger and more pervasive public service was required to undertake the
provision of services at the grassroots level and at higher levels to supervise and manage the commercial and industrial activities in which the Government was involved.

Traditionally, the shortcomings of the public service have been seen as organizational problems capable of solution by appropriate applications of political will, powerful ideas, and managerial determination.

Attempts at reforming the public service, through for example the Governance Justice Law and Order Sector (GJLOS) – Reform Programme, which brought about performance contracting have brought some institutional and infrastructural changes but attitudes of civil servants remains unchanged largely. That is, the public service reforms have not yielded much where Sessional Papers have been produced to reform the service have been largely “Sensational,” without much attitude change. The culture of corruption, ineptitude, lack of efficiency, unethical behaviour and outright laziness in some instances, continues to dominate some avenues in the issuance/delivery of public services.

This Chapter begins by recognizing that appointments in the public service will be considered on the basis of high standards of professional ethics; efficient, effective and economic use of resources; responsive and prompt, effective, impartial and equitable provision of services; and involvement of the people in the process of policy making among others. Accountability for administrative acts and transparency and provision to the public of timely, accurate information are considered important measures too. These values and principles apply to all state organs in both levels of government and all state corporations thereby binding every organ of government from county to national level.

To deal with promotions, which sometimes have been largely based on grounds that are unethical, this Chapter states that affordable adequate and equal opportunities for appointment, training and advancement, at all levels of the public service targeting all persons including men and women, members of all ethnic groups and persons with disabilities shall be observed. To ensure their independence and ability to point out mistakes, all public officers are shielded from victimization, discrimination, dismissal, demotion, removal from office, or being subjected to disciplinary action without due process of law.

A Public Service Commission is a newly constituted body charged to take care of the above and also create and abolish offices in the public service; appoint and confirm appointments; exercise disciplinary control; promote values and principles of public service; and monitor and evaluate practices of the public service. The Commission will also ensure efficiency and effectiveness of the public service and review and make recommendations to the national government on conditions of service, code of conduct and qualifications of public service officers. For the county government public service commissions, they have powers to establish and abolish offices in its public service and appoint, confirm and exercise disciplinary control over employees in its service. This means that the national government cannot impose civil servants on the county, including the Provincial Administration, as its scope is limited to national government, but is empowered to hear and determine appeals in respect of county public service. An interesting aspect of the PSC is that it is allowed to delegate any of its
functions and powers to any of its members, or to any authority within the public service. In any event, the County Government Act makes provision for county staffing.

The Teachers Service Commission is now a constitutional commission, and is established in this Chapter and its roles are to: register, recruit, employ, assign, promote and transfer teachers; exercise disciplinary control over teachers and terminate their employment; review standards of education and training of teachers entering the teaching service; and advise the national government on matters relating to the teaching profession among others.

As a result of the outcry from all corners about the unsustainability of the public wage bill, there are currently plans to bring reforms within the civil service to reduce the number of central government employees to reduce the heavy burden.

**What this means for Wanjiku:**

- That there is a more responsive and accountable public service, which will ensure timely delivery of services to Kenyans
- That independent public servants can blow the whistle, without fear of victimization, when corrupt deals are being designed or executed and hence save taxpayers money
- That promotion and advancement within public service shall be based on merit and hence enacting equality and anti-discrimination for all Kenyans
- That resources will be spent efficiently and effectively to meet the needs of Kenyans
- That an independent public service commission will be able to recruit and deploy the best brains in Kenya rather than recruitment based on who-knows-who
- That both national and county governments will recruit and retain persons who are capable of delivering services to Wananchi

**Enabling Legislation**

Public Service Commission Act No. 13 of 2012
Teacher Service Commission Act No. 20 of 2012
Security is a basic human right and therefore should be a matter of national priority. Security is also one of the most significant factors contributing to the quality of community life worldwide. Security provides an enabling environment for citizens to live and work in, and it stimulates social, economic and political development.

General insecurity results from crimes committed by individuals. Crime can be roughly divided into two broad categories. The first category is ‘hidden crime’, which is less visible crime and often comes under the cover of corruption. This includes criminal activities such as embezzling public funds, filing false information and so on. Such crimes are mainly committed by the political and business elite in society – the economically well-to-do and the politically powerful. By the very covert nature of these crimes, their perpetrators mostly go scot free. But these have implications on the economy.

The second category is ‘open crime’, which is easily identifiable. It involves the physical or psychological injury to other people. Physical criminal violence or physical assault includes homicide, armed robbery, car-jacking, attempted murder, manslaughter, rape and so on. Psychological violence includes lies, threats, brainwashing, etc. These serve to diminish mental potentialities. In addition, there is also violent crime against property such as car-jacking, house breaking among others. This kind of crime is rightly called violent crime.
General insecurity in Kenya has been one of the key problems leading to major social and economic crises. The major crimes affecting general insecurity in Kenya are crimes related to: proliferation of illegal small arms and light weapons, especially from neighboring countries; rise of vigilante groups and informal gangs; pervasive poverty that leads to crimes such as kidnapping, carjacking, theft of personal effects, and conflicts related to cattle theft among other types of crimes. Kenya’s transition, and prospects of development, hinge to a great extent on the country’s ability to guarantee security within its borders.

Crime is an index of lawlessness and disintegration of social order. Such lawlessness has a bad effect on society. Crime impairs the overall development of nations, undermines spiritual and material well being, compromises human dignity and creates a climate of fear and violence, which endangers personal security and erodes the quality of life.

Therefore this Chapter is very important to the realization of personal and the country’s growth. The Chapter begins by defining national security to be the protection against internal and external threats to Kenya’s territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity and other national interests. Principles to guide security organs of the State include: compliance with the law, democracy, human rights and fundamental freedoms and the respect for the diverse culture of the communities within Kenya.

The National Security Organs will include: the Kenya Defense Forces consisting of the Kenya Army, Kenya Air Force and the Kenya Navy; the National Intelligence Service responsible for security intelligence and counter intelligence to enhance national security in accordance with the Constitution; and, the National Police Service consisting of the Kenya Police Service and the Administration Police Service. The National Police Service is headed by the independent Inspector General who is appointed by the President with the approval of Parliament. A National Security Council is established and will be headed by the President. Among its functions is to assess the objectives, commitments and risks to the country in respect of actual and potential security threats and capabilities. Under the previous Constitution, there was only mention of the National Police Force, and not of the other two security organs.

The National Police Service, which is usually the first stop in the prevention and detection of crime must be guided by professionalism and discipline including to: prevent corruption and promote transparency and accountability; comply with constitutional standards of human rights; train staff to the highest possible standards of competence and integrity; and also, foster and promote relationships with the broader society. To create and maintain these standards, a National Police Service Commission is established to recruit, appoint, promote and transfer officers within the National Police Service and also exercise disciplinary control over police officers.
What this means for Wanjiku:

• That there is a more responsive and accountable police service, which shall respect the human rights and freedoms of all Kenyans

• That all security organs must work professionally who must respect the Constitution in the performance of their work

• That the harmonization of command for the two police services will create greater collaboration in their functions

• That the independent Inspector General will have a secured term and will not be under direction of politicians to investigate or not to investigate crime

• That parliament shall have a role in approving the Inspector General, and therefore powers of the president reduces and room for patronage appointments is locked

• That there will be efficiency in dealing with crime and criminals and hence we expect security to improve for all Kenyans

**NATIONAL LEGISLATION:**

The National Police Service Act No. 11A of 2011
The National Police Service Commission Act No.30 of 2011
Independent Police Oversight Authority Act No. 25 of 2011
National Intelligence Service Act No. 28 of 2012
Commissions are basically established to assist in delivery of government services. Some commissions are constitutional while some are created by ordinary law. Other than commissions, there are also independent offices, which are created to ensure transparent and accountable process of governance. These Commissions are established elsewhere throughout the Constitution, but reiterated in the Chapter. This Chapter establishes the following commissions and independent offices:

a) the Kenya National Human Rights and Equality Commission which consists of KNCHR, CAJ and NGEC;

b) the National Land Commission;

c) the Independent Electoral and Boundaries Commission;

d) the Parliamentary Service Commission;

e) the Judicial Service Commission;

f) the Commission on Revenue Allocation;
g) the Public Service Commission;

h) the Salaries and Remuneration Commission;

i) the Teachers Service Commission;

j) the National Police Service Commission.

The independent offices are:

k) the Auditor-General; and

l) the Controller of Budget.

The objects of these commissions and independent offices include: to protect the sovereignty of the people; to uphold and protect democratic values and principles; and to promote constitutionalism. This latter function can be read progressively as helping Kenyans understand and live the Constitution, or simply, abide by the rule of law.

Appointments to these commissions shall be done according to Acts of Parliament; where the senate and national assembly approve the same. To ensure independence, these commissions’ financial resources shall be drawn from the Consolidated Fund.

Other important commissions not listed here are:

a) Ethics and Anti Corruption Commission Act.


Every year, each Commission is required to submit a report to the President and to Parliament, and to publicize and publish their reports.

What this means for Wanjiku:

- That commissions shall be able to execute their mandate and also protect their rights of Kenyans
- That each commission shall be able to help in the implementation of the Constitution and safeguarding of the same
- That unlike the past, commissioners and office bearers shall be vetted by parliament and therefore reduce tribalism and favouritism in appointments by the president
- That accountability and transparency will be enhanced since Wanjiku will be able to access and review reports from each of the independent offices and commissions
ENABLING LEGISLATION:
The Kenya National Commission on Human Rights Act No 14 of 2011
The National Gender and Equality Commission Act No 15 of 2011
The Commission in Administration of Justice Act No 23 of 2011
The National Land Commission Act No 5 of 2012
The Independent Electoral And Boundaries Commission Act No 9 of 2011
The Parliamentary Service Commission Act of 2000
The Judicial Service Commission Act No 1 of 2011
The Commission On Revenue Allocation Act No 16 of 2011
The Public Service Commission Act No 13 of 2012
The Salaries And Remuneration Commission Act No 10 of 2011
The Teachers Service Commission Act No 20 of 2012
The National Police Service Commission Act No 30 of 2011
The Independent Offices (Appointment) Act No 8 of 2011
The Ethics and Anti Corruption Commission Act 2011
The Commission for the Implementation of the Constitution Act No 9 of 2010
Constitutions are not perfect documents. They are made with provisions for amendments so that in case something important was left out, or something bad included, people are able to amend the constitution. A very old constitution, such as that of the United States of America of 1787, has been amended 27 times. Some constitutions which were written in the last century, such as the Republic of Ireland constitution of 1937, has been amended 22 times. However, Kenya’s independent constitution was amended so many times that it defeated the purpose. Indeed, by 2008 Kenya had amended its constitution close to 40 times. As seen in Part 1 of this Booklet, most of those amendments were flimsy. Most of those amendments were made for reasons that were political and narrow in scope. Other amendments were made hurriedly to solve political problems or settle political scores. Some more were made to increase powers of the presidency at the expense of parliament and the judiciary and also other independent offices. Generally, these amendments were not done to help Kenyans but to fulfill the greed of the powerful politicians, especially the president.

During the referendum campaigns leading to the ratification of the Constitution of Kenya (2010) there were many arguments about possible amendments. To the ‘yes’ team, they insisted that amendments can be done after we pass the draft. To the ‘no’ team, they wanted amendments done before. But actually both were wrong. There is no way parliament could have amended before the referendum and equally there is no way parliament can amend the constitution that easily. Indeed, some of the ‘amendments’ that were being floated...
were, and still are, protected provisions that require a referendum to amend them. These are shown below.

This Chapter on amendments provides for the procedures to be followed in case of intent to amend the constitution by any individual or other entity, such as parliament. It seeks to ensure that all Kenyans are involved in deciding what issues are to be amended; it therefore proposes the following ways through which the constitution can be amended. The first type of amendment refers to protected provisions; where a referendum will be required to amend those Articles that are considered fundamental pillars of the Constitution, which are:

1) Supremacy of the constitution;
2) Territory of Kenya;
3) Sovereignty of the people;
4) National values and principles;
5) Bill of rights;
6) Term of the office of the president;
7) Independence of the judiciary
8) Commissions and independent offices;
9) Functions of parliament;
10) Provisions of this chapter

To amend the above, any proposed amendment is either by people themselves (through popular initiative) or by parliament. These amendments shall require to be approved by at least 20 percent of the people in at least 24 counties together with a simple majority of 51 percent of the total votes cast. For example, before the referendum, there was hue and cry about the clause that prohibits abortion. This clause is contained in the Bill of Rights. If Kenyans want that clause deleted from the Constitution, they must garner support from at least 24 of the 47 counties and thereafter the results of the referendum must indicate a simple majority win of at least 51 percent.

Parliament also has powers to amend the Constitution, without necessarily bringing the matter to a referendum, that is, if they do desire an amendment to the Constitution which does not fall within the ten above areas. But since the history of parliament is well known to Kenyans, the Committee of Experts provided a creative way of ensuring parliament involves Wananchi even in this power they have.

The third type of amendment is through popular initiative, which can either amend the above 10 protected provisions or any other provisions. But equally this is not easy. Movers of such an initiative require at least one million signatures of registered voters approved by
the Independent Electoral and Boundaries Commission (IEBC). This should also be supported by at least 24 of the county assemblies within three months from the date of submission to the IEBC.

Thereafter the proposal must go to both Houses where both senate and the national assembly must approve by a simple majority of 50%. Failure to pass through both Houses, the proposed amendment is submitted to the Kenyans for a referendum. Again, similar to the above referendum rules, at least 20 percent of registered voters in each in at least 24 of the 47 counties must approved together with a simple majority of 51 percent.

**What this means for Wanjiku:**

- Chapter 16 of the Constitution provides for the procedure for amendment of the Constitution.

- That anyone who wants to amend the basic structure of the Constitution must consult Kenyan people, which translates that real power is with Wananchi.

- That parliament may have power to amend the Constitution on their own, but must consult widely and the Bill be brought to the public for three months for Kenyans to debate its merit or lack of it.

The Chapter contemplated 3 possible scenarios:

i) By subjecting certain matters listed in article 255 (1) for the people’s approval by a referendum; or

ii) By enacting an amendment on a matter not mentioned in article 255 (1) by Parliamentary Initiative as per article 256; or

iii) By enacting an amendment on an issue not mentioned in article 255 (1) by Popular Initiative as per article 257.
CHAPTER

17

General Provisions

Usually, many Constitutions provide for this Chapter, whose essence is to explain to readers, and especially judges for purposes of interpretation, what the drafters meant in their words expressions, and also phrases. This chapter has provisions providing the general enforcement and interpretation of the Constitution. This Chapter empowers any person, or group of persons, to institute court proceedings in case the Constitution is violated. Judges are advised that the interpretation of the Constitution should be done in such a manner that promotes its purpose, values and principles; advances rule of law, human rights, and fundamental freedoms; permits the development of law; and, contributes to good governance. This guidance is welcome, as under the previous Constitution, judicial jurisprudence was varied which led to lack of clarity on constitutional law and its application.

What this means for Wanjiku:

• That it is very important for Wananchi to read this Chapter as it explains what the Constitution means when it uses some words or phrases

• That judges should at all times promote the values of the Constitution and therefore, protect rights of Kenyans at all times
Constitutional transitions are provided to ensure that a new constitution saves some of the things of the old order and also show how the new order should be entered into. That is, by creating new sets of rules, offices, and also procedures to bring the constitution into full operation. Usually this is done by legislation. But some areas of the Constitution take legal effect immediately after being passed. Transition chapters help societies to move into the new order, especially where societies overthrow old constitution.

The objective of this Chapter is to provide procedures to be followed when we fully transit. Therefore, to understand transition fully, one must read this Chapter together with the Sixth Schedule titled *transition and consequential provisions*. This Chapter for instance provides how parliament must enact legislation, or aspects of legislation, or amend the laws that currently exist so that they conform to the new Constitution. The Fifth Schedule, read together with this Transitional Chapter, provides guidance on the laws which should be enacted within five years from the Promulgation Day on 27th August 2010.

To ensure parliament does so, this Fifth Schedule has timelines which should be respected. The Chapter has a creative solution to this problem: if Parliament does not enact a law that is required, any Kenyan may apply to the High Court for an order directing that legislation be enacted, within a time limit. If the legislation is not enacted within the time limit, the Chief Justice must advise the President to dissolve Parliament – and the President must do it. MPs
would then have to go home and face an election accordingly. And that the next crop of MPs will face the same process if they fail to enact laws.

The Chapter also provides when the Constitution takes effect which already happened during the Promulgation Day. Finally the Chapter repeals the former Constitution of Kenya (2008), effectively which happened: on the Promulgation Day. Of course, some sections of the former Constitution were extended to enable the transition, especially dealing with the executive and legislature, and of course some laws like the National Accord and Reconciliation Act (2008) which created the current grand coalition government. This has now been rendered defunct since the March 4th, 2013 general election.

The Supreme Court clarified the date of elections in 2013 as various interpretations led to different conclusions and created uncertainty.

**What this means for Wanjiku:**

- That the former Constitution which was used to rule over Wananchi and subject them to cruel lives is no longer in force and no one including a judge can quote the former Constitution unless referring to the sections that are extended

- That MPs will now work very hard to ensure they pass good laws, and if they do not, parliament will be dissolved, and Kenyans will elect other MPs

- That the laws to be enacted must be done within five years and Kenyans must participate in the implementation process
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CRECO also works in concert with Civil Society organisations and networks in Kenya and the Eastern Africa Region. Some of these are National Civil Society Congress, Action Aid, FIDA, Mbunge la Mwananchi, Kituo cha Katiba (Uganda) and Legal and Human Rights Centre (Tanzania).