

can't walk



can't write

CIVIC EDUCATION TRAINING GUIDE

ON THE CONSTITUTION OF KENYA 2010
AND RELATED ISSUES FOR
JIGGER INFESTED, AFFECTED AND
PHYSICALLY CHALLENGED PERSONS



DENIED
DEMOCRATIC
RIGHT

KNOW

YOUR DEMOCRATIC RIGHT

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Ahadi Kenya Trust is nongovernmental organization that is dully registered in Kenya since 2007, whose aim is to actively involve communities in sustainable initiatives that advance quality life, alleviate poverty and enhance the realization of a jigger free nation through advocating for health and social rights. Our main activity is the fight against the jigger menace through awareness creation, capacity building, treatment, rehabilitation and empowerment. Ahadi is also continuously involved in activities that are of national concern with a bias to topical issues that affect the marginalised people with which the jigger infested persons belong.

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Finally, we thank God The Almighty for His guidance, wisdom and sustenance through the years.

Executive Summary

The jigger plight in Kenya has till now not been recognized as a scourge since it is not considered as a problem. While it is a plight that has been overshadowed by other problems. Millions of rural dwellers are living with jiggers in their bodies, some of whom are disabled (both physically and mentally), while others are at risk of being disabled. These jigger infested persons are unable to walk such that children do not go to school and their parents are not able to work and hence they are marginalised from several societal activities like education, employment and even recreation. More specifically the adult population is unable to exercise their democratic rights and enjoy their freedoms as Kenyan citizens, in line with the provisions of the Constitution which include access to education, health and other economic and social rights. This has led them to lead desperate lives and one can conclude that they are undeniably almost a forgotten lot.

In Kenya over 2.6 million people are infested with jiggers, of them, 1.5 million are children of school going age and the rest are adults. Majority of these people are unaware or uninformed of the provision of the new Constitution with regards to their rights to access to health care let alone their democratic rights and obligations as citizens of Kenya. The disabling jigger effects that commit the victims and their caregivers to "home/house arrest" due to the inability to walk keeps them from getting informed (they are unable to attend public awareness forums or even chief barazas) an aspect that has made them either drop out of work, school or any other livelihood and thus not participate actively in national building.

The jigger menace needs to be addressed as a key issue for socioeconomic development as well as in the realization of Millennium Development Goals (MDG) on Eradicating Extreme Poverty and Hunger. The poorest communities tend to be minority communities that have been targets of discrimination, exclusion and marginalization. Marginalization is one of the key deterrence to national development and all inclusive growth and therefore, empowering the marginalised through creating more equitable access to and distribution of power can increase productive capacity and strengthen public institutions towards more efficient growth. Nevertheless, to address the development situation of the marginalised, a holistic and sustained approach that recognizes their rights as individuals and communities which begin from understanding the impact of discrimination on groups is required.

Active citizenship is the key to transforming the Constitution's promise into reality. Our target audience, the disabled, jigger infested and affected adult population are a group who have been discriminated and marginalised as result of the effects of the scourge hence the need to boost their participation and involvement as citizens in the implementation of the Constitution by ensuring that they too embrace their civic duties through capacity building and awareness creation.

Introduction

This manual is designed and developed to help in the implementation of a trainers of trainer and community based training aimed at enhancing marginalised disabled, jigger infested and affected adult population participation in Democratic Governance.

The Ahadi Kenya Trust project aims at improving human capabilities. Specifically improving vulnerable people's skills and knowledge through capacity building of marginalised physically challenged, jigger infested and affected population. I will teach them how to enhance their participation in the constitution implementation process, elections and their active role in the electoral processes. By improving their watchdog role as citizens and them actively exercising their civic duty; transparency and effectiveness will be enhanced not only at the national government level but also in the more important county government.

The manual will be used alongside the IIEC National Voter Curriculum and the Ministry of Justice, National Cohesion and Constitutional Affairs' National Integrated Civic Education Curriculum.

Objectives of the manual

1. Ahadi Kenya Trust felt the need to develop this manual with the aim to provide a common reference document for the volunteer trainers of trainers, facilitators and other educators.
2. Raise awareness on the importance of addressing marginalization toward all inclusive societal developments.
3. Give guidance and suggestion on suitable training methods in view of the target audience.

Preparing for training

Setting up the training room: Ideally, the room should be large enough to have the participants sit in a circle with space around for walking around during the training.

Registration: All the participants should be asked to sign in on the registration form upon the arrival.

Methods of Training: Lecture, Plenary, Group discussion, Role play, Question and answer.

Training Materials: Flip charts, Markers, Masking tape, Hand outs/resource materials, Name tags.

1 Human Rights

What are Human Rights?

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

The key principles of Human Rights are: -

- Universal and inalienable
- Invisible
- Interdependence and inter-relatedness
- Equality and non-discrimination
- Participation and inclusion
- Accountability, the rule of law and access to justice.

Examples of some of the fundamental Human Rights:

- The rights to life and liberty
- The rights to a standard of living adequate for health and well being of the individual
- The right to work
- The right to education
- Freedoms of religious, opinion, speech and expression

The Constitution of Kenya 2010 strengthens Kenya's commitment to Human Rights:

- Article 2 provides that the general rules of international law and any treaty or convention ratified by Kenya form part of the law of Kenya.
- Chapter 4 on the Bill of Rights includes numerous rights in the text of the New Constitution itself.¹

2 The Bill of Rights

Summary of the rights in the Bill of Rights

- Right to life – Article 26
- Equality and freedom from discrimination – Article 27
- Human dignity – Article 28
- Freedom of religion, expression and association – Article 32,33 and 36
- Economic and Social rights – Article 43 – including:
 - Health Care
 - Housing
 - Reasonable sanitation
 - Freedom from hunger and adequate food
 - Clean and safe water
 - Social security
 - Education

The equality clause in the Bill of Rights is the key provision. It says that “every person is equal before the law;” that “equality includes the full and equal enjoyment of all the rights and fundamental freedoms;” and that the State, private institutions and individuals may not discriminate against people on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

The Constitution recognizes that equality may require special treatment. Women must be allowed maternity leave if they are to have an equal opportunity to work. People with disabilities may need special access ramps. And, marginalised groups may need special programmes to redress that disadvantage and enable them to participate in the social, political and economic life of Kenya as equal citizens.

Equality	Equity
Sameness	Fairness
Give fifty-fifty	Give according to need
Address issues in a way that treats everyone in the same manner	Seek to identify differences and address those differences proportionately

The Bill of Rights in the new Constitution framework to serve as a relevant check on the government:-

- **Access to information:** this right is made accessible to all Kenyans fettered only by the limitations provided for by the Constitution. On limitation of rights and fundamental freedoms. The right is intimately linked to accountability. It is the means by which citizens hold the state accountable.
- **Marginalised and vulnerable groups:** different groups of people have been distinctly separated and measures provided to specifically guarantee those rights in recognition of specificity of needs with respect degree of vulnerability. The expanded Bill of Rights that explicitly guarantees the rights of specific groups such as women, children, youth and persons with disabilities. Economic and Social Rights: The PCK has provided for these rights hence creating constitutional thresholds for the implementation of these rights and facilitates legislative, policy and programmatic interventions. Economic and social rights facilitate the wellbeing of Kenyans and ensure that they can access their basic needs. The attainment of both is an object of the review process. Kenya Human Rights and Equality Commission: The name change redirects the commission to the core of its work – human rights and reflects international practice in one way in which such bodies are classified. Secondly, equality is only one facet of human rights and therefore would not address the full scope of the commission's work if left as Equality Commission.
- **Independent institutions:** PCK gives serious consideration to the institutions and the distribution of power. Tasks which are politically sensitive (like elections or the auditing of state accounts), or require special skills (like the environment and land), or need impartiality (like the appointment of judges or the enforcement of codes of conduct or integrity) are entrusted to independent commissions.
- **Human Rights enforcement:** The High Court has been granted jurisdiction over determination of questions as to the breach and obligations of the state regarding human rights. The "locus standi" has also been widened to enable Public Interest Litigation by third parties.

3 Children Rights

Objectives:

1. To create knowledge on the provisions on the Child in the Constitution of Kenya, 2010

Provision of the Constitution

Article 53 of the Constitution creates immediate obligations upon the State to fulfill socioeconomic rights of children. In effect, the government is henceforth bound to deliver healthcare, education, nutrition and shelter to all children irrespective of budgetary implications. The new duty on the State with respect to education for instance will be greater than that provided for in the Children Act, which vests responsibility on both parents and government.

Article 53 (d) gives children the right to be protected from all forms of abuse, neglect and harmful cultural practices. Article 53 (e) on parents' duty to support their children, the Constitution now stipulates that both the father and the mother, whether married to one another or not, have an equal responsibility to provide for their child. This provision is essential in light of the fact that the Children Act does not hold the father of a child born out of wedlock liable for the maintenance of such child.

Article 14(4) provides for a presumption of citizenship for children found in Kenya if they are or seem to be eight or less years old and if their nationality and parents are not known.

In tandem with international children's rights, the Constitution establishes in Kenyan law internationally acclaimed principles on the rights of children, such as best interests of the child which is now to be paramount in every matter concerning children.²

4 Governance

Governance is defined as the traditions and institutions by which authority in a country is exercised for the common good. This includes i) the process by which those in authority are selected, monitored, and replaced; ii) the capacity of the government to effectively manage its resources and implement sound policies; and iii) the respect of citizens for the institutions that govern economic and social interactions among them (Kaufman et. al 2003).

Article 10(2): the national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non discrimination and protection of the marginalised.

A. Good governance

Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources.

Components of good governance - page 10

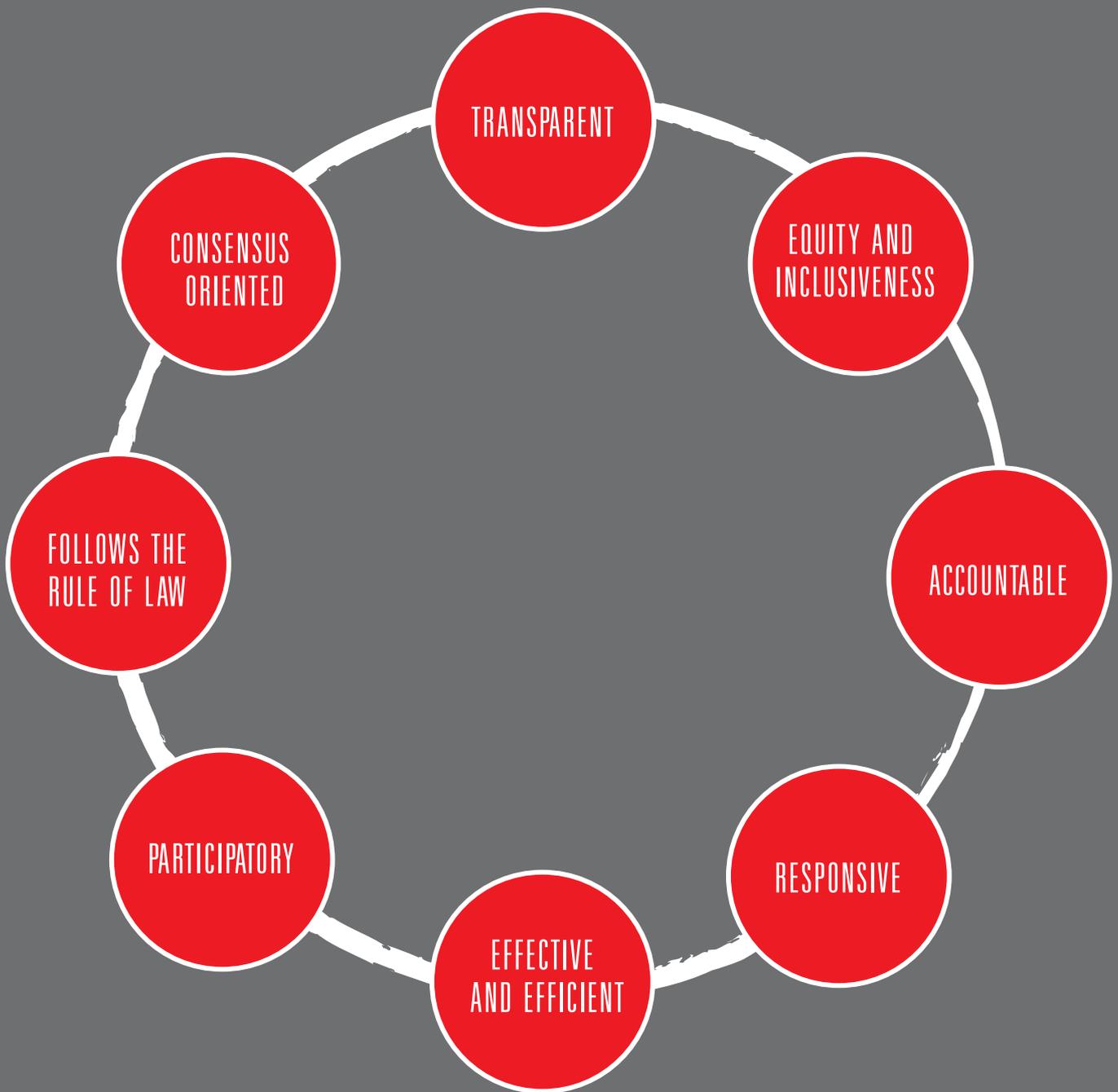
B. Poor governance

Components of poor governance - page 11

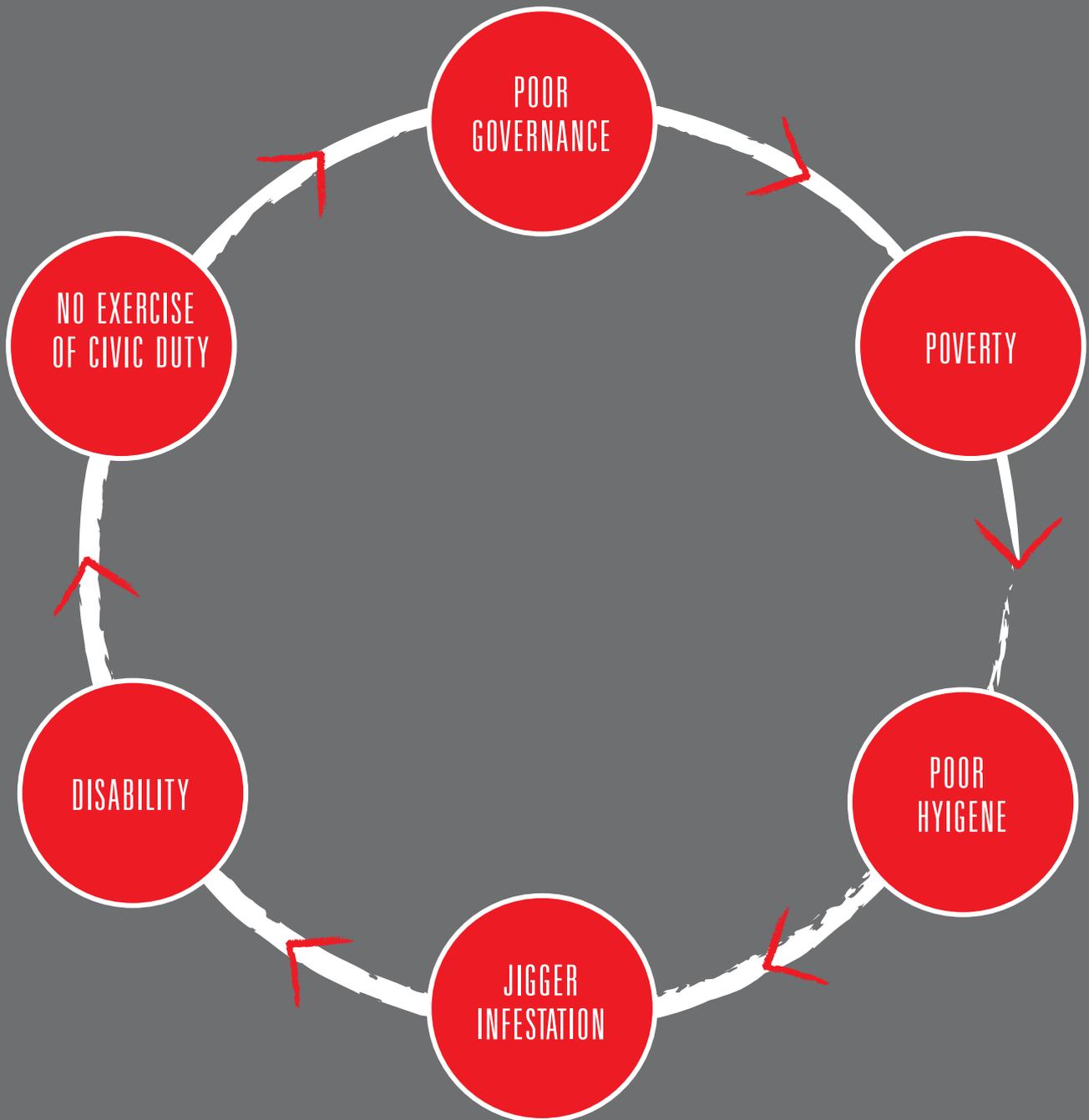
Group Discussion

The participants in groups to discuss their role as citizens in enhancing good governance and relationship between prudent voting and good governance

GOOD GOVERNANCE



POOR GOVERNANCE



5 | **Marginalization and Representation**

A. Definition of marginalised

A Marginalised group' is defined as one disadvantaged by laws or practices on the basis of grounds of discrimination covered in Article 27: race, sex, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture or birth, among others.

Several chapters of the Constitution are important to the marginalized groups in Kenya, for instance those covered in Article 56 on the Rights of minorities and marginalised groups. The state is required to put in place affirmative action programmes to ensure that the marginalised participate in governance, are provided special opportunities in education, economic fields and access to employment. They should be allowed to develop their culture, language and practices and have reasonable access to water, health services and infrastructure.

Article 204 provides for an equalization fund of 0.5% of the national budget to cover service provision and infrastructure development in marginalised areas.

Protection from discrimination is covered comprehensively in Article 27, which states that equality includes the full and equal enjoyment of all rights and fundamental freedoms.

B. Representation of the marginalised

The Constitution provides that Parliament will enact legislation to promote the representation in Parliament of marginalised groups including; women, persons with disability, youth, ethnic and other minorities and marginalised communities. Art. 100

Article 100 is supposed to complete provisions of Article 56 by allowing parliament to legislate law which will help to put clear recognition, promote and protect interests of this minority marginalised groups which include women and youth.

The law that will be enacted will create specific domains where minorities will be given affirmative action. It will specify how minority/marginalised groups representatives will be elected or nominated.

Art 56 obligates the state to put in place affirmative action's; affirmative actions are corrective measures that aim to give everyone a fair share of national resources.

6 | Democracy, Elections and Electoral Processes

Objectives

- To define the term voter education
- List documents needed for voter registration
- Role of the voter in the electoral process(voting process)
- Relationship between prudent voting and good governance

A. Democracy and elections

Democracy can be defined as a way of governing based on people's consent i.e. the Will of the People. It is based on the understanding that power belongs to the people and thus the government is answerable to them. People have the power to decide freely how they want to be governed and by whom. Democracy requires tolerance and consensus between people. The wishes of all are taken into consideration and whereas the majority will have their way, the wishes and needs of minorities and disadvantaged groups must also be respected.

B. Relationship between democracy and elections

Democracy recognizes that people are the highest authority. People are the source of power and all laws, rules and decisions must reflect the will of the people. In a democracy, citizens have a primary responsibility and key role to influence and set the agenda of their country. The democratic agenda of the country must be based on the needs and priorities of all citizens. This can only be assured when citizens are active in public affairs and when they make their demands known to their leaders whom they have elected to make decisions on their behalf. People's participation is provided through elections.

C. Voter education

Voter education is non-formal public education meant to inform and to empower the voters to clearly understand their rights and responsibilities in the electoral process. It strives to improve the process of democracy, mobilize voters to exercise their rights in politics and to enhance voters' understanding of participatory democracy.³

D. Why is it important for Kenyans to register as voters?

- To exercise citizen's constitutional right and duty: the Constitution grants every citizen the right to elect his/her leaders of choice
- To be able to vote in elections or the referendum
- Voting provides an opportunity to choose a leader of your choice
- To safeguard citizen rights and freedoms as provided for in the constitution
- To give legitimacy to leaders. By electing their leaders, voters give their consent to be led by whoever they have chosen and to reject those who fail to sufficiently represent their interests.
- Voting provides the opportunity to change leaders ideally on the basis of performance.
- Voting sets a good example to others. By participating in elections, you set an example for political involvement and responsibility for the younger generation

E. Qualifications for registering as a voter. To qualify as a voter, one must fulfill the following conditions:-

- You must be a Kenyan citizen
- You must be 18 years old and above
- You must have a national ID card or a valid Kenyan passport

F. How does one register as a voter?

- A person who meets the requirements must present himself/herself in person to a registration clerk at a registration center any day of the week between 8am- 5pm including Saturday and Sunday.
- Your old voters card will be retained by the registration clerk

G. The voting process – role play

Exercise

Put participants in groups and ask each of discuss how voting is conducted. Let the groups come up with the pre-requisites for to vote in an election process.

Provide clarity and lecture on the election process.

7 Devolution

Objectives:

- To understand devolution and its role in promoting equality

What is devolution – is the transfer of power from central government to local units

Aim: To spread out state organs, functions and services and to give people powers to govern and manage their own affairs democratically, with accountability as well as ensure fair distribution of resources. (Article 174)

Principles of devolved governments

- Democratic principles & separation of powers.
- Reliable resources to run.
- Ensuring gender equity.
- County governments should ensure that its functions are decentralized

Membership of county Assembly (Article 177)

1. Members elected from wards (exact area of the ward will be delimited by the electoral and boundaries commission) by registered voters.
2. Each party to nominate other members to ensure 1/3 of members of the assembly are women.
3. Each party to nominate members of marginalised groups (persons with disabilities & youth).
4. The speaker who is an ex officio member.

County Executive Committees (Article 179)

- Has the authority and responsibility for the daily administration of the county.
- Consist of county governor, deputy county governor and members appointed by the county governor with the approval of the assembly from among persons who are not members of the assembly.
- The number of the county executive shall not be more than one third of the county assembly if the assembly has less than thirty members and not more than ten if the assembly has thirty or more members.

Election of County Governor and His Deputy (Article 180)

- Elected by voters registered in the county on the same day as the general election.
- Same qualification as a member of the county assembly.
- Before election, the governor to nominate his deputy.

Removal of County Governor (Article 181)

- May be removed from office on the following.
- Gross violation of the constitution, abuse of office or gross misconduct.
- Physical or mental incapacity to perform his functions.
- Serious reason for believing that he has committed a crime under national or international law.

Functions of County Executive Committee (Article 183)

- Implement county and national legislation within the county.
- Manage and coordinate the functions of the county administration and its departments.

Legislative Authority of County Assemblies (Article 185)

- Legislative authority of a county is vested in, and exercised by a county assembly.
- May exercise oversight over the county executive committees and any other county executive organs.
- Receives and approves plans for development and management of infrastructure and institutions.

Functions and Powers of County Governments (Article 186)

- The functions and powers of the county governments are set out in the fourth schedule.
- A function or power not assigned by this constitution or national legislation to a county is a function or power of the national government.

Boundaries of Counties (Article 188)

- Boundaries to be reviewed every eight years and to take into account the size and characteristic of population among others.
- Can only be changed by resolution recommended by the commission in charge of boundaries and as long as the said resolution is passed by at least two thirds of both N/A and senate and two third of all county delegation.

Relationship Between County and National Governments (Article 189)

- In carrying out its functions, the government at both county and national levels will :-
- Respect the constitution status, communicate to exchange information, coordinate policies and administration and make effort to resolve their dispute, as set out in the law.

Support for County Government (Article 190)

- Parliament shall make laws to ensure that county governments get sufficient financial resources.
- Parliament may take charge of a county's resources if it's not able to perform its functions or does not follow prescribed financial management systems but must take steps to ensure that the county government resumes it.

County Assembly, Gender Balance and Diversity (Article 197)

- Not more than two thirds of members of any county assembly or county executive committee shall be of the same gender and laws will be enacted to ensure community and cultural diversity.

Qualifications for Election as Members of County Assemblies (Article 194)

- Must be a registered voter
- Satisfies any educational, moral and ethical requirements prescribed by the constitution or an act of parliament and is either nominated by a political party or if an independent candidate supported by 500 registered voters in the ward.

Suspension of a County Government (Article 192)

- The president can suspend county governments in conflicts or war emergencies or in exceptional circumstances that shall be first investigated by an independent commission of inquiry where the president is satisfied that the allegations made are true and the senate authorizes the suspension of the county. The suspension shall not be for more than ninety days

8 Public Finance

Principles and Framework of Public Finance (Article 201)

- Principles of openness, accountability and equity shall guide all aspects of public finance especially with regards to tax, distribution, spending of public resources and borrowing.
- Revenue raised nationally shall be shared fairly among the national and county governments; counties will get not less than 15%

Equalization Fund (Article 204)

- This is a fund that will be established and one half per cent of all the revenue collected by the national government each year will be deposited into it for basic services in marginalised areas for twenty years There will be law to govern its expenditure and administration

Division of Revenue (Article 217)

- Once every five years, the Senate will determine the basis for allocating among the counties the share of national revenue that is annually allocated to the country level of government, taking in account recommendations of the Commission on Revenue Allocation.

Salaries and Remunerations Commission (Article 230)

- The commission has powers to set and regularly review the remuneration and benefits of all state officers.
- To advise the national and county government on the remunerations and benefits of all other public officers.

Additional Information

Gains and Opportunities for Women:

- All forms of discrimination including violence against women are explicitly prohibited; one of the greatest impediments towards achieving this has been the customary laws which discriminate against women. Article 24) of the new constitution provides that such laws will be considered void. The constitution prohibits the state or any other person from discrimination against someone on the basis of sex, pregnancy, marital status, health status, and dress among others. The new constitution prohibits advocacy of hatred on the basis of gender.
- The Bill of rights provides from the freedom and security of persons, it brings domestic violence under the ambit of the constitution.
- Under the New Constitution, women can own and inherit land. Matrimonial property is protected during and after termination of marriage; the New Constitution gives women the rights to acquire and own property. This is fundamental given the high rates of women disinheritance and its consequences. Women are allowed to inherit land (Article 60(1f)) which prohibits gender discrimination, custom and other practices related to land and property. Article 68 protects the rights of the dependants of a deceased person holding interest to land. The new constitution subordinates customary laws to other written law therefore eliminating the age old problem of women being excluded from determining serious cultural issues such as land, inheritance and matrimonial issues (decision on where to bury their dead)
- Women's representation is guaranteed; The New Constitution provides a legal framework for women representation which is not provided in the current constitution. The articles delineate the composition of women representation in political parties, political parties fund and affirmative action. Articles 81(b), 90(1) and 91(1&2) best supports this.
- Women are recognized citizens and will be able to bestow citizenship to their foreign spouses or children born outside the country; Citizenship in the current constitution is only passed by men to their children. This makes women to be considered as second class citizens. Article 14(1) & 15(1) of the New Constitution will change this and women will be allowed to pass their citizenship to their children and spouses. Now a passport is a guaranteed document hence the restrictions on consent on the part of wives from their spouses have been done away with; hence women can also attain dual citizenship.
- Dual citizenship opens up channels for trade and economic development (taxes, treatment and education while in a country that you hold citizenship to, are charged at the same rate for all citizens of that country)
- Equal parental responsibilities of the mother and father to provide for the child; Children born out of the institution of marriage have continually been left for mothers and young girls to

bring them up. The New Constitution provides for equal responsibility for child care even out of wedlock. Article 53(1e) clearly provides for this.

- Increased numbers of women in all decision making organs including the devolved government; It is very critical for women to be represented in all decision making organs as it advances gender equality. The following articles in the New Constitution take care of this: Article 81, 90, 91, 97, 98, 100 & 127.
- Reserved seats; Gives women more opportunity to participate in decision making nationally and in the devolved aside. It is important to note that these seats don't bar women from seeking elective seats.
- The new constitution provides that 15% of the national revenue to go to the devolved government this is expected to enhance economic growth at the community level where women are the main actors.
- The constitution requires that public contract shall be awarded fairly, transparently and equitably and to this end parliament will come up with legislation protecting categories of people previously disadvantaged by unfair competition i.e. women.
- Ratified international laws will also play a major role in eliminating gender discrimination (Article 2(6)). The new constitution makes treaties ratified by Kenya part of the laws of Kenya e.g. African Charter on Human and Peoples' rights which embodies the spirit of gender equality.
- Bill of Rights has been expanded, class action is now allowed.
- Parliament is responsible to come up with legislation that recognizes marriages that are under any tradition and religion. As well as the enactment of legislation that provides for the protection rights and welfare of victims of offences.
- The provision for Independent candidates opens up an avenue through which more women can participate in leadership and decision making.

(Endnotes)

¹FIDA KENYA.ORG (Human Rights and the Constitution of Kenya)

²CHILDREN RIGHTS AND THE CONSTITUTION (www.acir.info)

³IIEC VOTER EDUCATION HANDBOOK MODULE 1 – VOTER REGISTRATION

EXERCISE

YOUR DEMOCRATIC RIGHT

can't walk



can't write



DENIED
EDUCATION
RIGHT