Women’s power through the Constitution

Our Constitution, our life!!
Women’s power through the Constitution

*With support from*

The Women Peace and Security (AF-WPS) Initiative - USAID
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Acknowledgement

On behalf of the African Woman and Child Feature Service, we wish to acknowledge the efforts of all those individual women, women’s organizations and Kenyans in general who fought so hard for legal reforms and reviewing of the constitution which eventually led to the country having new laws, now known as the Constitution of Kenya 2010 which recognizes the rights of everyone and has entrenched Gender Equality as one of the key principles.

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Foreword

There is no doubt that the Constitution of Kenya 2010 (COK 2010) presents a new dawn for the majority of Kenyan women. It also epitomised the victory for the women of Kenya. For the first time, the highest law of the land recognised the role of women in the overall development of the country.

The women were, through the constitution are assured of enjoying their rights in more comprehensive than even before. This included being consulted during the constitutional implementation process especially on matters of appointments to key government decision making organs and positions.

Since the constitution is the supreme law of the land it embodies the people's political will and is the basis upon which all other laws of the land shall operate. Therefore every law in Kenya must be in agreement with the Constitution.

But in order for the women to realise their powers through the constitution, the implementation should go hand in hand with the national values and principles of governance which are; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.

More importantly the women would like to see the Affirmative Action being applied in every implementation step of the new constitution and expect the spirit of the constitution to be respected and enshrined at national and also at county level.

The women therefore see the constitution as a new beginning for Kenyans. And an opportunity for both men and women to work together to enhance the principles of democracy and create a culture where each citizen is equally valued and has rights to participate in governance, regardless of ethnicity, gender, and disability status, among others.

Rosemary Okello-Orlale
Executive Director
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Executive Summary

For the first time in the history of Kenya, there is a Constitution that recognises the rights of women. As the country embarks on the implementation of the new law, Kenyans must remain vigilant and ensure that no gain is eroded. This is particularly so for women who will have to be vigilant to ensure that the laws being implemented also reinforces the spirit of the Constitution of Kenya 2010.

Recognition of the equal rights of women and men as expressed in the Constitution is imperative towards achieving full empowerment of women. The rights are vast and range from the areas of citizenship, equal rights to ownership of property including land, right to inheritance, leadership and governance positions.

This booklet is a must have for women to enable them learn and empower themselves at county and national level. They will also be able to demand for services which have been proscribed within the Constitution.

The gains summarised herein include how women can ensure that these gains are realised. These are prohibition of all forms of discrimination including violence against women; women's right to own and inherit land; equality in marriage; right to matrimonial property; invalidity of discriminatory customary law; guaranteed women’s representation; women's right to bestow citizenship to their foreign spouses and or children; and equal parental responsibility;

The booklet puts together the women’s gains realised in the Constitution, draws out points of implementation and gives a summary of what it means for women and how they can use it.

It is indeed a booklet that draws the reader to the bigger picture of what is entrenched in the new laws and opens up a wider space for women to interrogate what they will benefit if legislation has been drawn. It also allows women an opportunity to question where they think they are getting a raw deal of being denied what is rightfully theirs.
Chapter 1

Sovereignty of the People and Supremacy of the Constitution

The Article

Art. 2 Supremacy of the Constitution

Any law including customary law which is inconsistent with this constitution is void to the extent of the inconsistency.

Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

Article 7. (1) The national language of the Republic is Kiswahili.
(2) The official languages of the Republic are Kiswahili and English.

What does it mean for you as a woman?

◆ The constitution is the supreme law of the land, it is the one that will guide us on all the things that we endeavour to do as a country including the laws that we will use.

◆ We will not have other laws that go against the constitution – and if there shall be a law which is contrary to the constitution, it will have no place in Kenya.

◆ As a woman, you will not be subjected to customs and traditions that are against the good in the constitution. The customs include those that punish women, those that do not respect women’s rights such as, FGM, early marriages, violence, pushing away women from leadership.

◆ There are some very good international laws that Kenya is a signatory to and agreed to ratify. These laws are now part of the Kenyan law and you will now be able to use these laws and claim your right. Some of the laws

◆ Kenyan parliament will not have to make another local law on the same international law that the government has ratified/agreed to/accepted.

◆ Many of those laws are very supportive of women and respect women’s rights and recognise them as equal human beings.

◆ Where you find your right is not being granted, recognised or respected and yet it is provided for under those international laws, you will be able to go to the Kenyan court and ask the court to give orders to those who are denying you that right.

◆ Kiswahili is now the National language and the first of the official languages.

◆ You will now be able to communicate to everyone including all government officials in Kiswahili. You will no longer be forced to struggle with English.

◆ If you are interested in leadership, you will ask for your votes in Kiswahili without being ridiculed that you do not know good English.

◆ As a leader, you will conduct business, debate in bunge or barazas in Kiswahili. This way as a woman, you will always be able to participate, engage and get involved with ease.

◆ The better news is that women, who have hearing impairment, will be able to follow debates, communicate, contribute, engage and participate by use of sign language.

◆ You should not be left behind as your channels of communication have been widened.
Article 10: National values and principles of governance

- As a woman you are an equal citizen. You are in a democratic country where your dignity must be respected.

- You will not be discriminated against and left out just because you are a woman, you will be involved in the development of the country and you will participate in all national endeavours.

- Whenever you as women feel you are being left out, you will now be able to go to court and demand to be included in development issues of your local area. If women are not being allowed in the meeting or their views are not being allowed, you can go to court for orders to be effectively included.

- When you find there are laws or policies being made and they are not following the National Values, you petition against such laws or go to court if law has already been passed and ask for it to be declared unconstitutional. Such laws will be the ones that do not consider both women and men as equal partners in the implementation of the law or as beneficiaries of the law.
Chapter 3

Citizenship

The Articles

13(3) Citizenship is not lost through marriage or the dissolution of marriage.

14. (1) A person is a citizen by birth if on the day of the person’s birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen.

(5) A person who is a Kenyan citizen by birth and who, on the effective date, has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.

16. A citizen by birth does not lose citizenship by acquiring the citizenship of another country.

What this means

- As a woman, you will be able to pass on citizenship to your children regardless of whether or not you are married to a Kenyan.

- Your children will not live in Kenya as foreigners or under visitor’s visas even if you the father of your child is a foreigner since you are Kenyan citizen.

- If and when you get married to a foreigner, you will not lose your Kenyan citizenship. This will include the period you will be married and even after dissolution of such marriage.

- Better still, you will be able to pass citizenship status to your spouse. If you get married to a foreigner and you choose to live in Kenya and if you so wish, you will be able to apply and have him get Kenyan citizenship.

- You will be able to get dual citizenship. If for example you are married to someone from another country, or you work in another country and you have got citizenship of that other country, you will not lose your Kenyan citizenship! You will be a citizen of both countries.
Towards realising women’s rights in the Constitution

Chapter 4

Bill of Rights

Article 21(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

- The State / Kenya and all the officers of government have been given a duty to take care of your needs as a woman (among other vulnerable people).
- As a woman you have some specific needs such as the right to have clinics nearby so as to attend when pregnant and or take the baby, the right to get treated when you walk to a hospital, the right to take your children to school.
- You will therefore now demand to have these needs prioritised and brought to places accessible to you.
- If you on the other hand feel that you are being left out and are discriminated against as a woman, you can go to court and challenge such discrimination or even complain to the National Human Rights and Equality Commission.
- The good part is that when you file such a case, you will do so at no cost.

Article right to life

Article 26(4)

- Abortion is prohibited in the Constitution and it is illegal. You can be jailed when you knowingly and willing procure an abortion.
- But as a woman, there are times when you have miscarriages, or your life is threatened while pregnant, you can go to a hospital where there are trained nurses or doctors.
Once at the health centre, a professional will check on you and determine. And if they feel and decide that your life or that of the unborn baby is in danger and you therefore need emergency treatment, then and only then can they terminate the pregnancy.

You will not have to lose your life when trying to give life to another life.

**Article 27: Equality and non-discrimination**

*The Article*

Article 27 (3): Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

27(8) ... State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

*What does this mean?*

- No one should discriminate against you just because you are different from them in respect of: race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

- You should be treated equally and given all the chances and opportunities you need even if you are different.

- As a woman, you can now enjoy “full and equal enjoyment” of all rights and freedoms the same way as a man. You should never be denied a right because you are a woman. For example your girl child should be given equal right to education and to even study medicine, or join the military just as a boy gets.

- As a woman, the equality you should experience will be in all spheres in the political field: standing for elections and getting an equal chance to be nominated and elected without violence.

- In the economic sector when you apply for a job, you should get it if you qualify, whether you are pregnant or not. You should also get equal salary to a man doing the same work.
- Do not allow culture and traditions be used against your daughter or son. For example, by allowing your girl child go through early childhood marriage, Female Genital Mutilation (FGM) among others.

- In social spheres you are entitled to access all areas and public venues and not stopped just because you are a woman, e.g. If there is a social hall at your county, you too can hold your functions there or attend events in such halls.

- You should also be able to join any social club, union, network that you qualify as a member and not be denied just because you are a woman.

- The constitution demands that the implementation of the constitution by the government should ensure that women are included and that men do not exceed 2/3 of any appointive or elective body, be it at the ward level, country, national Parliament or any other appointive or nominations by any arms of the government.

**What to do!**

Women make sure that the constitution is followed and be ready to vie for leadership at all levels and also ensure that come the next general elections there are at least 117 women in the National Assembly.

Be vigilant and monitor all public and private sectors to ensure that everyone including women have access to equal opportunities and that no one is being discriminated against because of their gender.

If any organ/body including parliament is having men that exceeds 2/3, you as a Kenyan citizen have a right to go to court and have it declared unconstitutional.

**Article 29 freedom and security of person**

*Article*

Every person has the right to freedom and security of the person, which includes the right not to be—

c) subjected to any form of violence from either public or private sources;

d) subjected to torture in any manner, whether physical or psychological;

e) subjected to corporal punishment; or

f) treated or punished in a cruel, inhuman or degrading manner.
**What it means**

- You as a woman should not be violated – the constitution protects you from violence. And violence of any kind against you is prohibited. This violence includes that which is directed at you and keeps you away from leadership, governance, development and denies you equal participation platform.

- When you report any violence act at the Police Station, you got a right as a Kenyan citizen to be heard and your case taken seriously, And police have the right to act on issues of violence against women without trivialising and terming them as *mambo ya nyumbani*!

- Whenever anybody violates you, report, and you should never be turned away and told that it was in private or that the issue is domestic.

**Article 35 Right to access of information**

Every citizen has the right of access to—

- Information held by the State; and

- Information held by another person and required for the exercise or protection of any right or fundamental freedom.

- Every person has the right to the correction or deletion of untrue or misleading information that affects the person.

You will no longer have to live ignorant of what is happening around you. If there is any policy, law or information on how money has been allocated to your area for development, you can write to the government or any other duty bearer and ask for information that you need to enable you do a duty, make a decision or simply hold government to account as a citizen.

You will also be able to demand for information that you need and believe is necessary towards actualising your rights.

If someone writes or gives information about you that is wrong, is misleading and can harm you, you can demand for it to be deleted and or corrected.

You will not have to suffer in silence especially during electioneering campaigns if an opponent maligns you just to keep you off the race.

If you feel that the media is not giving you the right information, you can take them to task using this clause in the constitution.
Article 40(1) women’s right to property

40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—(a) of any description; and (b) in any part of Kenya.

- You can now own property:
  - Have it registered in your name or in joint names.
  - Have full possession of it.
  - Be able to get a loan using it.
  - Derive livelihood from it.
  - Inherit it or give it out to whomever you want.
  - Manage and sell off the property.

If someone denies you this right, you can go to court and claim the actualisation of this right.

Article 43 Economic Social Rights

43. (1) Every person has the right—(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;

(2) A person shall not be denied emergency medical treatment.

When in need of health care, you will be able to access it and to the highest level you require.

The State should enable you access good standard of health care, whenever you are sick and need emergency treatment, you should not be turned away especially at private clinics which might ask for money before they accept to treat you.

You will also get treatment and health care services for reproductive health needs. Many times as a woman you might have pregnancy related
complications, reproductive organs ailments and for all these, the State is supposed to enable you access health services.

**Accessible and adequate housing, and to reasonable standards of sanitation:**

- You should now be able to live in a dignified manner:
- Have a reasonably sized house where you and your family can fit in acceptable social norms.
- While adequate is debatable, the house should at least be one where parents and children live in separate rooms and also boys separate from girls.
- The place you live should be hygienic, e.g. have toilets, bathrooms with a sewage system to avoid health complications.

**Be free from hunger, and to have adequate food of acceptable quality:**

- As a citizen of Kenya, you should be enabled to access food and of acceptable quality, meaning clean, not intoxicated, not spoilt due to overstaying or poor condition of storage.
- You should be able to have an environment secure for you so that you can work and sustain yourself. For example, if you trade at the market and need to wake up so early to get fresher items, your security should be given by the government.
- Your trade licence processes should not be tedious so as to keep you off trade.
- When you cannot afford food at all, the state should give you food.

**Right to clean and safe water in adequate quantities:**

- Water is one of the basic rights which have been recognised by the constitution.
- As a woman, access to clean and safe water has been a problem for many women who have to use water to feed their family.
- As a great consumer and user of water for your children, yourself, children and family in general, it means that the government has to ensure that you get clean and enough water.
Towards realising women’s rights in the Constitution

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- You have the right to demand for the water to be brought near you, to be clean, and enough for your use including, cleaning, drinking, washing etc.

**Social security;**

- You will now be part of the social security! You should not be discriminated against on the basis that you are a woman and denied social security.
- In old age, the state should be able to provide for you and not leave you live like a destitute.

**Education;**

- You have an equal right to that of a man in accessing education. Your children should also access education on equal levels whether boys or girls.
- In school the girls should not be forced to take only arts / soft subjects while boys take up those that are believed to be hard and more lucrative.
- Full access means that for girls their needs for sanitary towels should be taken care of to keep them in school.
- Issues of pregnancy – girls should not lose out just because they are pregnant.

*The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.*

- Women will no longer be undignified as they borrow to sustain themselves and their children.
- Women will have support from the State thereby enabling them to maintain themselves and their children.

If any of these rights are denied, you can now take the government to court for orders that the State is accountable and responsible to provide for you these economic and social rights.

You can do this as a person or together with others that are suffering the same. The court case should be free from court fees and be heard quickly.

*The fact that the rights are progressive, does not at all mean that they are shelved for another time, it clearly means that the implementation must start now but full realization will be in time.*
Article 45: Family relations

45. (1) The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.

(3) Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

(4) Parliament shall enact legislation that recognises—

(a) marriages concluded under any tradition, or system of religious, personal or family law; and

(b) any system of personal and family law under any tradition, or adhered to by persons professing a particular religion, to the extent that any such marriages or systems of law are consistent with this Constitution.

What this means!

◆ You and your husband are guaranteed equal rights in your marriage.

◆ You will for example have same rights with your husband to your children's custody all the time of the marriage, even at dissolution.

◆ Though you and your husband will have different and distinct roles and responsibilities, he will not be a more superior being to you within the set-up of your marriage.

◆ If you are married under the customary law, do not worry, there will be a law recognising your marriage.

◆ Your customary marriage will be formalised and upon the death of your husband your in laws will not descend on you claiming you are not a legal wife.

Article 53: parental responsibility

53(e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not;
Both you and the father to your children have equal responsibility to take care of your children. You will, share responsibility and it will no longer be your sole burden to care and provide

- Whether you marry the father to your child(ren) or not, he is responsible to provide for the child as well.

**Article 59: institutions for the protection and promotion of women’s human rights**

- The constitution establishes a Kenya National Human Rights and Equality Commission (KNHREC) which merged Kenya National Commission on Human Rights (KNCHR) and National Commission of Gender and Development (NCGD) even though the NCGD is also now a full Commission on its own.

- You can easily reach out to the commission and report violations that you might be facing and have not preferred the court route.

- This commission is your commission and whenever you have issues to be addressed like laws that you think you as a woman will benefit from, it will be the best commission to approach. Give your issues and demand for their action.

- Whenever you and fellow women feel that you are being left behind and you need to collect a national voice, you can demand that the Commission takes up the role in fulfilling its duty of promoting gender equality and equity.
Chapter 5

Land and Environment

Article 60: women’s right to access to land

60. (1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in (a) equitable access to land;

- You will be able to hold land,
- Use the land
- Manage the land and
- Access it as much as a man will be able to
- You will face no bias or discrimination on issues of land on the ground that you are a woman

Article 68 Legislation on Land

Article 68(c)(iii). Parliament shall enact legislation which shall regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage

- The law will protect your matrimonial property and especially your matrimonial home during, and upon the termination of the marriage.
- You will not face the often experienced violations of being thrown out of the matrimonial home and your property taken away just because your marriage has ended.
Leadership and Integrity

Chapter 6

Article 73 Integrity and accountability in leadership

- Being a tax payer, you have a right to value for your money and better services.

- You will now be able to get accountable leaders that have integrity and this will ensure that your needs are taken care of without favouritism. You will now have leaders that are responsible and transparent in all matters especially in development and access to justice.

- There will be no corruption in the courts.

- You will not be required to do reciprocal favours to get a job, or to have your business registered.

- You will now have leaders that:
  a) have respect for the people;
  b) honour the nation and dignity to the office;
  c) promote public confidence in the integrity;
  d) are responsible to serve the people, rather than the power to rule them;
  e) are objective and impartial in decision making;
  f) decisions are not influenced by nepotism, favouritism or corrupt practices;
  g) are disciplined and commitment in service to the people.

You will demand to have leaders that do not follow the above criteria be moved from the positions.
To be able to vie, be nominated as a leader or appointed in any leadership position ensure that you have:

1. Tax Compliant Certificate from KRA
2. Certificate of good conduct from CID
3. Ensure that you have paid loans for Higher Education Loans Board
4. That you are not involved in any corruption deal
Chapter 7

Representation of The People

81(b) not more than two-thirds of the members of elective public bodies shall be of the same gender;

The constitution expects women to also be leaders in the country.

As a woman you can now be able to be in positions of governance in various capacities and in a number of ways than before as follows;

1. Being elected in an elective position
2. Of being a representative at any level
3. Of being represented by a woman – who will understand your plight better.
4. Being appointed or nominated.

This will ensure that young women and girls will now grow up seeing women as leaders and will desire and endeavour to take up such positions.

If for any reason, you end up with an elective body in the coming general elections whose number of men are more than 2/3 of the total number, run to court; such a body will not have been constituted according to the constitution.

As a woman you have a right to elect, or vie in any elective posts to ensure women do not make less than one-third in any representative posts.

Article 90 Allocation of party list seats

90(2)(b) except in the case of the seats provided for under Article 98 (1) (b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed;
The political parties will give to the Independent Election and Boundaries Commission (IEBC) names of the candidates they will to nominate before the elections.

As a woman you must ensure that you belong to a political party and be an active member.

When your political party submits names for nominations, the list will be in an order that alternates between woman and man. Like a zebra!

The Political Party Act and Elections Act are in place and as a woman you need to understand what these laws say when it comes to the role of political party and the IEBC in ensuring that women are elected.

Use the laws to engage your political party to nominate women. Ensure that your political party has the list which has both women and man (women as the odd number), that way there will be more seats for women.

You now stand a better chance of being nominated by political parties and participating in leadership.

**Article 91 Political Parties**

*Article 91 (f) respect and promote human rights and fundamental freedoms, and gender equality and equity;*

Political parties are the major vehicle you can use to be elected or nominated in any elective posts.

Do not fear engaging with it and the political party should not make you fear politics anymore.

They will not ignore you and are now required to respect, ensure women’s participation and they have to show that they do not have men who are more than 2/3 of the total members.

This means that women have a good opportunity of being at least more than 1/3 of the members.
Kenya now has two (2) parliaments - the National Assembly (MPs) and the Senate (Senator).

As a woman, you have great chances of being in parliament or going to the Senate.

You can represent your people or be represented through an election or nomination by political party.

**National Assembly seats**

The Constitution provides for a total of 350 Members of Parliament as follows;

- 290 Members of Parliament elected from the original 210 constituencies and the new 80 additional constituencies created under the Constitution.
- 47 women elected from each of the 47 Counties elected by voters in the County.
- 12 members nominated by parliamentary political parties.
- The Speaker, who is an ex-officio member.

Women, be sure to protect this affirmative action or else, things will go back to where they were – men dominating leadership and only a few women making it to leadership.

So far there is no clear way of making sure that in parliament and senate men will not be more than 2/3.

The thinking that affirmative action principle is progressive and not for immediate implementation – is not true! The principle should be implemented immediately.
The Senate seats

- Elected members - 47.
- Nominated Women members of the Senate - 16 as per Party List on the strength of the party.
- Nominated Youth - 1 man and 1 woman as per Party List - 2.
- Nominated Persons with disabilities - 1 woman and 1 man according to the strengths of the political parties.
- Speaker of the Senate.

You can see there are 47 seats in the National Assembly for women to contest against each other. Remember that the 47 seats or nominations in the 12 nomination seats do not bar you from opting to vie in your constituency.

Also remember that at the Senate the total 18 nomination seats for women do not bar you from vying in your county as an elected Senator.

Article 100: Promotion of representation of marginalised groups

- There will be a law that will promote the representation of women, persons with disabilities, ethnic and other minorities and marginalised communities in Parliament.
- You will be able to use this law whenever the numbers of women are less than the expected.
- As women, especially those with disabilities, we will easily go to court to demand for the right to be in parliament.
- You together with other women need to watch out because some people say that affirmative action has to wait for 5 years.
Chapter 9

The Executive / National Executive

Kenya will still have a President and a Deputy President.

◆ You will go and elect the Presidency during the elections and by that time, the president will have chosen the person who will be the deputy president. You will not, however, elect the deputy.

◆ As women there are two good opportunities, (1) To front a strong woman candidate (2) To insist that all their Presidential male candidates nominate women for running mates.

◆ Ministers will no longer be politicians, they will be professionals with good experience and credentials, they are known as Cabinet Secretaries.

◆ The positions are a minimum of 14 and a maximum of 22 members. With the affirmative action principle, women have a very good chance of at least 9 (and more) seats out of 22 Secretaries.

◆ As women, you need to update your profile, upgrade your professional skills, apply for the positions and become a Cabinet secretary, or a Principal Secretary, Chief Executive Officer, Diplomat etc.

◆ You should also ensure that the private sector and the civil society follow suit and have women in all their ladders of leadership and management.

◆ If any of the departments or bodies fails to have the minimum number of women, you need to go to court and have the court force them to include women.
Chapter 10

Judiciary

- The courts will now be - The Supreme Court, a Court of Appeal, The High Court and the Subordinate Court which include Kadhi’s Court.

- You now have a court that will take care of human rights issues, land and environmental issues.

- This means that cases will not be taking too long before they are heard and decided.

- The judiciary will also apply the affirmative action principle and therefore more opportunities for women to work in the judiciary.

- For employment to the judiciary, there is a Judicial Service Commission, which has to apply affirmative action principle. Specifically there will be: 2 magistrates, a woman and man, 2 advocates, a woman and a man, 2 public representatives a woman and a man.

- As women, you need to watch out for distribution of women representation at all levels within the judiciary. You need to have an overall picture as the principle applies at every division and level. This will avoid having the usual picture of male at the top and women at the lower ladder.

- But, if that becomes the position, you have a choice to go to the Supreme Court and demand for rightful numbers of women representation.
Chapter 11

Devolved Government

177(1)(b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;

197. (1) Not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender.

- The power and resources are localized, women are always on the ground, and now you have the government at that level.

- This means that the national budgets are brought closer to you: a minimum of 15% of the national budget will now be allocated to the Counties and you have a right to demand social accountability from all the government offices at your country on how they use this money.

- As a woman, ensure that you are vigilant at the County when it comes to equity, and that all bodies at the Counties including the Assembly and the executive will have to have at least more than 1/3 women.

- You are entitled to run your own affairs at the County as well as prioritise your agenda, projects and generally be part of decision-making at your county.

- You also have a right to demand for faster and better quality services from the County Government.

Who will be in the County Executive?

- The County Governor.
- Deputy County Governor.
- Members of County Executive Committee.
**The Governor**

As a registered voter, at the County, you shall elect a Governor in a general election on the same day as Members of Parliament. The Governor shall nominate a running mate as Deputy Governor.

**Who qualifies to contest as a Governor?**

- One eligible for election as a member of the county assembly.
- Has a degree from a university recognised in Kenya.
- Is nominated by a political party, having been a member of that party for at least three (3) months (90 days) before.

Or

- Is an Independent Candidate and:
  - Does not belong to a political party for at least three (3) months before general elections,
  - is nominated by at least 2,000 voters non party members.

**What disqualifies a person from contesting? If a person**

- Is a state officer or public officer (MPs allowed).
- Served IEBC in the period of five years immediately before elections.
- Has not been a citizen of Kenya for at least 10 years before elections.
- Is a member of a county assembly.
- Is of unsound mind.
- Is an un-discharged bankrupt.
- Is subject to a prison sentence of at least 6 months.
- Has misused or abused a state office or public office.
- Participates in any manner in a harambee within 8 months before election.
The County Assembly Membership

This will be your parliament at the County level!

Women have a wide opportunity here to take up leadership as nominated members in the events that there more men than 2/3rds of the total number of members.

Who qualifies to contest as a County Assembly

- A registered voter.
- Has post-secondary school qualification.
- Is either nominated by a political party or
- is an independent candidate supported by at least 500 registered voters in the ward.

What disqualifies a person from contesting? If a person

- Is a State officer or other public officer
- Has worked for IEBC five years immediately before election
- Not been a citizen of Kenya for at least 10 years before election
- Is of unsound mind;
- Has been declared bankrupt;
- Is serving a sentence of imprisonment of at least 6 months
- Have misused or abused a State office or public office.
- Is corrupt / has acted contrary to leadership and integrity.
- Participates in a harambee within 8 months preceding an election
Women will be given considerations in allocation of public finances.

You will be in a position to hold the government to account if the affirmative action principles are not followed and also if resources are not allocated to such issues.

As women, you have been disadvantaged and you are entitled have that situation reversed. For example, during budgets it will be necessary for you to ensure that reproductive health related items e.g. sanitary pads are zero rated.
For you to effectively participate and start having competitive edge in employment, there will be trainings conducted to give better capacity especially for women so that when the jobs are available in Public Service Commission, they will compete effectively.

- You will have a chance to get employment and reduce the poverty levels.

- Remember that Public Service will also have to implement affirmative action by making sure that men are not more than 2/3 of all opportunities and positions available.

- You must be vigilant here so that you do not end up with proverbial 30% women representation that has been seen to be achieved only at the lowest levels of institutions while the top has small bits and pieces of their presence.
Chapter 15

Commissions and Independent Offices

250(11) The chairperson and vice-chairperson of a commission shall not be of the same gender.

- There are several Constitutional Commissions that have been established. Each of them will have at least 3 but not more than 9 commissioners.

- The Commissions will have to ensure that the affirmative action principle is followed. As women you have opportunities to be in these commissions and at least have sizeable numbers of not less than 1/3.

- Remember that you have a good chance of becoming the chairperson or the vice if the chairperson is a man.

- If a body, an organ, department or the State itself is leaving you out as a woman, denying you food, accessible health, housing, water, leadership or generally treating you as if you are not an equal citizen of Kenya, you have every right to go to court and demand for equal treatment.
Conclusion

The Constitution of Kenya provides very many avenues for women to realise their rights as full and equal citizens of Kenya. Being the supreme law in the land, it is like a spring which women must use to achieve gender equality.

Since women are more than 50% of the total population, the constitution is an instrument which women can use to hold government, leaders, duty bearers, private sector, NGOs; Faith based organisations, community Based Organisations, International Community, the media and any other organisation accountable with an aim of upholding the spirit of constitutionalism.

The provisions in the Constitution on women’s gains give renewed hope and a sense of belonging to women and a starting point to start walking the talk of the constitution.

National values and principles of governance that include democracy and participation of the people, human dignity, equity, social justice, inclusiveness, equality as expounded in the constitution touch on women’s lives due to the nature of violations that women have in the past faced and continue to face. The sovereignty of the people of Kenya and the supremacy of the constitution is guaranteed thereby giving it overall authority over other laws like customary laws and recognising of the cultural practices that are harmful to women as being unlawful is assuring for women.

The bill of rights guarantees social, economic and cultural rights. It also protect women in marriages including those ceremonised under customary law will be certified, and an Act of Parliament shall be legislated to this effect. The constitution therefore, opens spaces for politically engendered processes and promotion of respect of women’s human rights through different provisions.

While the Constitution offers a great opportunity for advancing women’s rights as outlined above, the political dynamics of the day present a threat to the realization of the gains. There is in fact a real risk of women missing out on the benefits especially on taking up leadership positions that are competitive and only target the ‘special seats for women’. Women should take up the call and enable the country make good her attempts to increase the participation of women in senior and middle level policy formulation and implementation processes, both within the local and national governance structures.
The Constitution provides a wide range of progressive gains which can be used in achieving inclusivity, right to equality and non-discrimination. However, the Constitution left on its own—without actual implementation can be said to have any gain. Women need to roll up their sleeves and give life to the written word to secure greater equality in practice.

It is now imperative for women to engage each other, think and strategize on how they can realise the gains and make positive changes in their own lives and those of their communities.