

FACTSHEET

01



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

How Parliament Works

2nd Edition

Factsheet No. 1

HOW PARLIAMENT WORKS

Published by:

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First Published 2017
Second Edition; August 2022

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The National Assembly Taskforce
on Factsheets, Speaker's Rulings and
Guidelines

Printed by:

Design & Layout:
Gitonga Ruchiami



Purpose and Acknowledgement

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

This work is a product of the concerted effort of all the Directorates and Departments of the National Assembly and the Parliamentary Joint Services. Special thanks go to the Members of the *National Assembly Taskforce on Factsheets, Speaker's Rulings and Guidelines*, namely, Mr. Kipkemoi arap Kirui (Team Leader), Mr. Rana Tiampati, Mr. Kennedy Malinda, Ms. Anna Musandu, Mr. Samuel Kalama, Mr. Salem Lorot, Ms. Fiona Musili, Mr. Benson Inzofu, Ms. Laureen Wesonga, Ms. Anne Shibuko, Mr. James Maina Macharia, Mr. Morrice Shilungu, Mr. Finlay Muriuki, Ms. Rabeca Munyao and Mr. Stephen Omunzi.

FACTSHEET NO. 1

How Parliament Works



Introduction

Parliament is a legislative, elected body of government. It has a number of functions: representing the electorate, making laws, authorizing Government expenditure, scrutinizing activities of government ministries, departments and agencies, and is a forum for debate on national issues. There are two types of Parliaments, namely, unicameral (one Chamber) and bicameral (two Chambers). The Parliament of Kenya is bicameral, consisting of two Houses, the National Assembly and the Senate. The National Assembly consists of three hundred and forty nine (349) Members and the Speaker, while the Senate comprises of sixty seven (67) Senators and the Speaker. The term of Parliament is five years.

Sovereignty of the People and Parliament

The sovereignty of the people refers to the supreme power or authority of the people to govern themselves or to determine how they want to be governed. In Kenya, Article 1 of the Constitution securely vests the sovereign power of the Republic in the people. The Sovereign power of the people of Kenya is delegated to several State organs including Parliament. The legislative authority of the Republic is therefore derived from the people and is vested in and exercised by Parliament at the national level. Parliament, therefore, performs its functions in accordance with the Constitution by representing the will of the people and upholding their sovereignty.



Supremacy of the Constitution

The Constitution is the supreme law of the Republic of Kenya and binds all persons and all State organs at the national and county levels of government. No person is permitted to claim or exercise State authority except as authorized under the Constitution. Article 10 obligates all State organs, State officers, public officers and all persons to adhere to the national values and principles of governance stipulated in the Constitution whenever any of them applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions. Further, Article 93 of the Constitution requires the National Assembly and the Senate to perform their respective functions in accordance with the Constitution.

Roles of Parliament

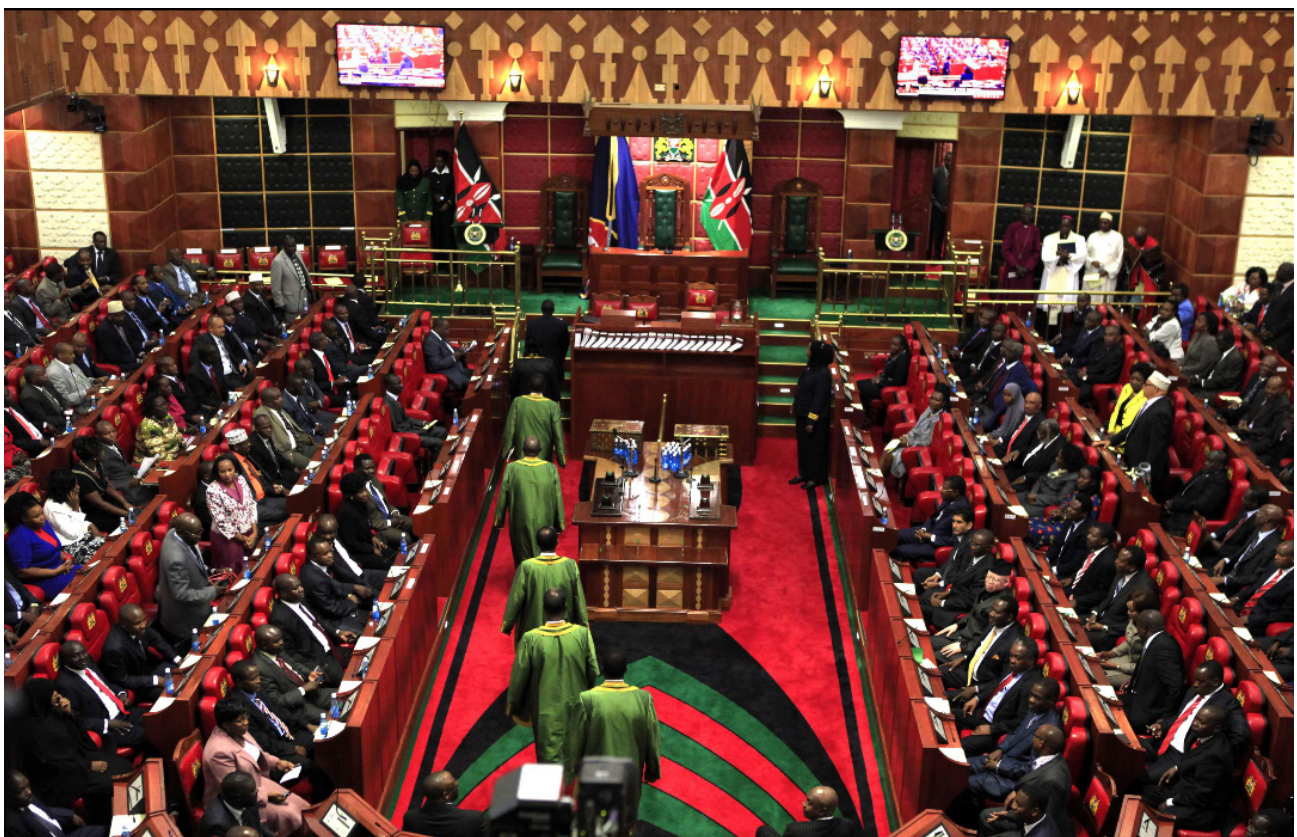
The Constitution categorizes roles of Parliament at two levels; first are the roles of Parliament and second, the roles assigned to the respective Houses of Parliament.

Article 94 of the Constitution grants certain powers and roles to Parliament as follows:

a) Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.

- b) Parliament is the only body that has the power to make provision having the force of law in Kenya.
- c) Parliament may confer the authority to make law to any State organ, State officer or person through legislation on condition that it limits the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority. Such authority is referred to as delegation, and the resultant laws are referred to as Subsidiary Legislation/ Regulations.
- d) Parliament may consider and pass amendments to the Constitution.
- e) Parliament has power to alter county boundaries.
- f) Parliament is a key protector of the Constitution.
- g) Parliament promotes the democratic governance of the Republic.

Roles and Powers of the National Assembly



The National Assembly in a past sitting

Article 95 of the Constitution provides for the functions and powers on the National Assembly in addition to the roles of Parliament espoused in Article 94. These specific roles are as follows:

- a) Representation of the people of the constituencies and special interests in the National Assembly.
- b) Deliberating on and resolving issues of concern to the people.
- c) Enacting legislation, including having the power to originate a Bill on any matter.
- d) Exclusive power to consider money Bills including taxes; the imposition of charges on a public fund or the variation or repeal of any of those charges; the appropriation, receipt, custody, investment or issue of public money, and the raising or guaranteeing of any loan or its repayment.

- e) Originating Bills concerning county governments.
- f) Power to amend or veto a special Bill that has been passed by the Senate (but this can only be done by a resolution supported by at least two-thirds of the members of the National Assembly).
- g) Determining the allocation of national revenue between the two levels of government.
- h) Appropriating funds for expenditure by the national government and other national State organs.
- i) Exercising oversight over national revenue and its expenditure.
- j) Reviewing the conduct in office of the President, the Deputy President and other State officers and initiating the process of removing them from office;
- k) Exercising oversight of State organs, and,
- l) Approving declarations of war and extensions of states of emergency.

The Role of the Senate



Inside the Senate chamber whilst in session

Article 96 of the Constitution provides for the functions and powers on the Senate in addition to the roles of Parliament espoused in Article 94. These specific roles are as follows:

- a) Representing the counties, and serving to protect the interests of the counties and their governments.
- b) Participating in the law-making function of Parliament by considering, debating and approving Bills concerning counties.
- c) Determining the allocation of national revenue among counties.
- d) Exercising oversight over national revenue allocated to the county governments.

- e) Participating in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office.
- f) In addition, section 33 of the County Governments Act, 2012 empowers Senate to consider and determine impeachment charges against a Governor upon referral of the charges from a County Assembly.

Bicameralism in the Parliament of Kenya

In the Kenyan context, bicameralism in Parliament has occurred in two phases. The first phase of bicameralism was between 1963 and 1966. At independence in 1963, Parliament of Kenya had a Bicameral Legislature called the National Assembly consisting of the Senate (Upper House) and the House of Representatives (Lower House). However, in 1966, the Constitutional Amendment Act No. 40 of 1966 abolished the Senate, merged it with the House of Representatives and created a unicameral Parliament known as the National Assembly.

Promulgation of a new Constitution in 2010 ushered in the second phase of bicameralism in Kenya by establishing a bicameral Parliament that consists of the National Assembly and the Senate. The Constitutional principle on representation is designed in a manner that the National Assembly represents the people of the constituencies and special interests in the National Assembly, whereas the Senate represents the counties, and serve to protect the interests of the counties and their governments. Each House performs its distinct mandate independent of the other House. However, concurrence of both Houses is necessary when passing laws concerning counties or processing business requiring the consideration of both Houses.

How the two Houses of Parliament Work

(a) Administration

The administration of the Parliament of Kenya is vested in the Parliamentary Service Commission which is established under Article 127 of the Constitution.

For better service delivery, each House has its dedicated service (National Assembly Service and Senate Service). In addition, the Parliamentary Joint Services which provides services that are utilized by both Houses.

The staff of Parliament serve in comity and cooperation to ensure the two Houses deliver on their respective and shared mandates.

(b) Representation of the People

Parliament, in line with the Constitution, is expected to manifest the diversity of the nation, represent the will of the people, and exercise the people's sovereignty. In particular, the National Assembly represents the people of the constituencies and special interests in the National Assembly. On its part, the Senate represents the counties, and therefore serves to protect the interests of the counties and county governments.

Further, the National Assembly deliberates on and resolves issues of concern to the people. Such issues include matters of food provision, water provision, security, agriculture, trade, prices of commodities, employment opportunities, access to health, freedom of expression, and so on.

The participation of People in Parliamentary work is a right that is recognized and protected by

the Constitution. To this end, Members of Parliament usually consult their constituents about the specific matters or laws that they would like to be passed in line with Articles, 1, 10, and 118 of the Constitution. The National Assembly actualizes the constitutional stipulation of public participation through various mechanisms including public hearings, request for memoranda, and other avenues. MPs normally do this through the Meet-the-People Tours that they undertake in their respective constituencies particular on weekends when Parliament does not have sittings.

The Parliamentary Service Commission also established the Constituencies Liaison Office through which the Commission supports Members of Parliament by funding Constituency Offices in every constituency to enable legislators to engage the electorate and gather their issues and present them in the House.

Public Petitions are also another avenue through which Parliament represents the concerns of the people as provided for under Article 119 of the Constitution. Citizens forward their particular concerns to Parliament through their elected representatives and Parliament investigates the issue and comes up with recommendations for action.

(c) Deliberation

Parliament is a deliberative organ of government. In particular, the National Assembly deliberates on and resolves issues of concern to the people. Parliament deliberates by way of motions, bills, questions, statements, petitions and other oversight mechanisms.

Debates in the House are guided by certain set of codified Rules known as the Standing Orders. In addition, best practices from other jurisdictions are at times applied in guiding debates and making decisions. The Rules allow flexibility for Members to move the House to debate matters of urgency that affect the electorate in order to resolve them urgently. Where the two Houses deem necessary, they may hold joint sittings to deliberate on matters of mutual interest within the mandates of the both Houses, including on Bills or Motions that require consideration by both Houses. In some cases, the Houses may resolve to form joint committees to consider matters of mutual concern.



An ongoing session inside The National Assembly chamber

All debates in Parliament are always aired live on Parliament's You Tube Channel, and occasionally on the Kenya Broadcasting Corporation and other television stations. This ensures that citizens are able to follow real time as their elected representatives deliberate and decide on issues of concern to them.

(d) Parliament and law-making

Parliament represents the will of Kenyans by passing laws. Bills (proposed laws) may be introduced by a Member of Parliament, a Committee of the House, a political party or directly by citizens through a Public Petition praying that Parliament legislates on a certain matter.

Bills introduced in the House pass through various stages; from pre-publication; First Reading; Second Reading; Committee Stage; Third Reading and in some instances, Mediation on Bills concerning counties. A Bill concerning counties may originate from either House of Parliament. Such Bills are considered by the originating House, and if passed, are referred to the other House where they go through the same lawmaking process. In case of disagreements between the Houses on a Bill, a mediation committee consisting of equal numbers of members of each House is established to attempt to develop a version of the Bill that both Houses will agree on and pass. In the event the mediation committee fails to agree on a version of the Bill within thirty (30) days from the day the committee holds its first meeting, or if a version proposed by the committee is rejected by either House, the Bill is defeated/ lost.

A Bill not concerning county governments, once read a Third Time by the National Assembly, is referred to the President for assent. Bills concerning counties once passed are referred to the President for assent by the Speaker of the originating House, except that in the case of Bills which go through the mediation process, the Speaker of the National Assembly shall refer mediated version of the Bill to the President for assent. Article 115 of the Constitution envisages that every Bill passed by Parliament requires presidential assent for it to become law. Where the President does not assent or return a Bill back to Parliament for re-consideration, the Bill automatically becomes law after fourteen (14) days from the date it was presented to the President.



Where the President refuses to assent to a Bill that was considered and passed by one House and he refers it back with reservations for refusal to assent for reconsideration, the House reconsiders the Bill and may either:

- 1) pass the Bill a second time in the same form without amendment or with amendments that do not fully accommodate the President's reservations. This requires a vote supported by at least two-thirds of the membership of the National Assembly, or two-thirds of the Delegations in the case of the Senate; or
- 2) pass the Bill with amendments that fully accommodate the President's reservations. This requires a simple majority.

If the President refers for reconsideration a Bill that was considered and passed by both Houses, the President's reservations ought to be considered separately by both Houses. Where either or both Houses do not agree with the President, the decision must be supported by at least two-thirds of the membership of the National Assembly, or two-thirds of the Delegations in the case of the Senate.

Participation of the people in Parliamentary work is a right that is recognized and protected by the Constitution. Parliament involves the people in the law-making process as follows:

- 1) inviting the public to submit views and memoranda on the Bills upon being read a First Time and referred to the relevant committee. This is done through advertisements/ notices placed in the major newspapers and oral submissions before the relevant committee(s) to which a Bill has been referred.
- 2) uploading Bills on the Parliament website for access by the public as they prepare their submissions on the areas of concern to them.

(Refer to the Factsheet No. 2 on 'The Law Making Process for more details)

(e) Accountability (Oversight) Role:



Chief Justice Martha Koome Martha Koome swears oath before her vetting session by Members of Parliament in The National Assembly.

Parliament holds the Government to account in a variety of ways:

- 1) Parliament, and in particular the National Assembly, vets and approves nominees to various public offices such as the Chief Justice, Cabinet Secretaries, Principal Secretaries, Ambassadors,

Chairpersons and Members of Constitutional Commissions and Institutions such as the Teachers Service Commission, and the Central Bank of Kenya. The Inspector-General of Police is vetted by both the National Assembly and the Senate.

2) Parliament can also impeach (remove from office) the President and Deputy President on grounds set out in the Constitution. The National Assembly reviews the conduct in office of state officers such as Cabinet Secretaries, Commissioners and holders of Independent Offices and may recommend their removal from office.

3) Parliament through the National Assembly approves all military engagements that the Kenya Defence Forces (KDF) engages in and outside the country, and the engagement of foreign forces within the territory of Kenya.

4) Parliament through the National Assembly approves treaties and agreements that the Government of Kenya makes with other countries and international institutions such as security pacts, economic deals, among others.

5) Parliament receives and considers complaints from citizens on any issues regarding the work and performance of the Government and government officers and holds the relevant Government agencies to account on such issues.

6) Parliament also exercises oversight through Questions, Statements and Public Petitions to the Cabinet Secretaries, Independent Offices or Constitutional Commissions. Some of the avenues used to undertake oversight include appearance before committees, general debates in the House, and committee inquiries/ fact-finding visits.

(f) Parliament and the Budget



The Cabinet Secretary for National Treasury and Planning, Hon. (Amb) Ukur Yatani (holding briefcase) arrives in Parliament for the presentation of the 2020/2021 FY budget highlights.

Parliament: -

- 1) determines the sharable revenue between the two levels of Government (the National government and county governments) through the Division of Revenue Bill;
- 2) determines and approves the Annual Budget of both the National Government, Parliament, Judiciary, Constitutional Commissions, Independent Offices and the 47 County Governments;
- 3) determines how much funds each Ministry and Department is to be allocated for its annual operations. To this end, Cabinet Secretaries appear before relevant Parliamentary Committees of the National Assembly each financial year to discuss and defend their budget proposals, which the National Assembly can approve or amend or reject;
- 4) the National Assembly approves taxes, levies, charges and other revenue-raising measures that the National Government intends to levy in a financial year through the Ministry of the National Treasury and the Kenya Revenue Authority (KRA);
- 5) the National Assembly considers and approves external Government Borrowing Arrangements (loans/ credit facilities) such as loan agreements with international financial institutions and development partners such as the World Bank and the International Monetary Fund (IMF);
- 6) the National Assembly approves additional Government funding before a financial year ends through the Supplementary Appropriation Bill;
- 7) reviews audit reports:

The National Assembly reviews audit reports from the Auditor-General with the objective of ascertaining whether public funds were spent as approved in the budget as well as if there was value for money. This is done through the Public Accounts Committee (PAC) the Public Investments Committee (PIC) and the Special Funds Accounts Committee (SFAC).

On the other hand, the Senate reviews audit reports relating to the utilization of funds allocated to each county through the County Allocation of Revenue Act and the monies directly allocated to counties by the National Assembly such as conditional grants. The Senate carries out this role through County Public Accounts and Investments Committee (CPAIC).

Following such review, the Committees make recommendations to the respective House for consideration. Committees may recommend various sanctions for imprudent use of public funds, including recommending removal of state and public officers from office, recovery of public funds and prosecution of public officers culpable of misusing public funds.

(Refer to the Factsheet No 9 on 'Role of the National Assembly in the Budget-Making Process for more details)

(g) Parliament working through Committees

Committees of Parliament usually undertake most of the work done by Parliament and thereafter submit their reports to the House for consideration. Parliaments mostly work through committees because of the following strategic benefits:

- 1) committees are more suitable forums than the plenary for detailed consideration of matters - committees can address in detail matters that are before Parliament which the plenary is not the suitable forum for dealing with them. In addition, committee proceedings are more intimate and bipartisan than those in a plenary because party politics often tend to be less prominent in a committee than in a plenary. Committees can also be useful for reviewing complex or

contentious matters, building consensus or common ground on divergent positions by different parties and enhancing the quality of parliamentary debate through reports submitted to the House on matters referred to them for review.



The Chairman of the Special Funds Accounts Committee addressing residents of Ngiwa Farm in Nakuru County



Members of Public Investments Committee inspecting the stalled construction of Kenya Maritime Authority office building

2) committees are more practicable fora than a plenary - committees can perform functions which a plenary may not be well placed to perform. Such functions include carrying out investigations, hearing evidence from witnesses, travel for inquiries, seeking advice from experts, and deliberating on matters under inquiry before reporting their findings to the plenary.

3) committees are an avenue for public communication - committees are good avenues for communication between Parliament and the community because they offer a platform for the public to participate in legislative business and policy review by providing a platform for them to give their input on a matter and reporting such views to Parliament.

Although each House is mandated to establish its own committees, the Houses of Parliament may resolve to establish joint committees consisting of a certain number of members drawn from each House and prescribe the mandate and procedure of those committees. In addition to the *ad hoc* joint committees established through resolutions of the Houses with specific mandate, the Constitution provides for mediation committees. A mediation committee is a joint committee that is constituted when the two Houses fail to agree on a Bill. The mandate of a mediation committee is to attempt to develop a version of a Bill that both Houses will pass.

(Refer to the Factsheet No. 7 on Committee System in the National Assembly)

(h) Parliament in times of national crisis

Parliament is a key organ in the governance process. Through the National Assembly, Parliament plays a key role in time of crisis by granting approval of:

(1) declaration of war on other countries;

(2) deployment of the Kenya Defence Forces (KDF) for regional and international peace support operations and the deployment of foreign forces in Kenya;



KDF Soldiers in Somalia

(3) any extension to a State of Emergency facing the country; and

(4) emergency funding and funds reallocation by the National Government to address and mitigate the effects of drought, famine, floods, and other natural and man-made disasters.

To ensure that decisions necessary to avert a crisis are made, the Constitution and Standing Orders permit either House of Parliament to sit in any other gazetted place other than Parliament Buildings in the event of occurrence of a national crisis likely to obstruct Parliament from holding sittings. This ensures that Parliament can always sit and make such decisions necessary in cases of emergency.

(i) Communication between the Houses of Parliament

Parliament is established as an organ with two Houses, each discharging certain constitutional mandates and, where required by the Constitution, both Houses perform shared functions. The Houses of Parliament therefor communicate on a regular basis either formally or informally.

The Constitution and Standing Orders define formal communication mechanisms between the Houses as distinct from the many informal communications and consultations between members and Office holders of the Houses. Communication between the Houses may occur by way of Messages, through mediation committees, joint committees or through joint conferences/seminars/workshops.

Parliament also holds Joint Sittings during the State opening of Parliament following general elections; annual State of the Nation Address by the President or at any other time, or when the Speakers of the Houses of Parliament jointly accede to a request by a visiting dignitary to address Parliament.

(j) Parliament and the people



A group of primary school children attending a session of the House

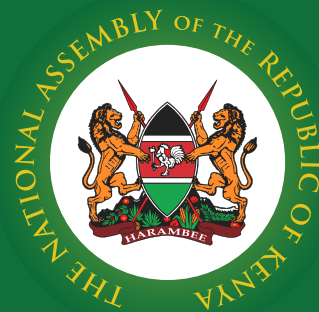


A group of university students pose for a picture in front of the parliament building after touring it on an open day

Articles 1, 10 and 118 of the Constitution make it mandatory for Parliament to conduct its business in an open manner, open up its sittings to the public and to facilitate the involvement/participation of the people in its legislative and other business. To this end, Parliament has put in place various measures to facilitate participation of the people. They include:

- (a) Public hearings;
- (b) Invitation to submit memoranda;
- (c) Attendance before committees;
- (d) Live broadcast of proceedings on TV and through webcasting (You Tube);
- (e) Outreach activities such as sports;
- (f) Parliament open days;
- (g) Interactive website engagements;
- (h) Social media accounts (Tweeter, Instagram and Facebook); and
- (i) Visits to engage the public on specific and general matters.





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