

# Kenya Constitution illustrated

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Helping to understand the harmonized draft

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November 2009

Disclaimer: the author is not a legal professional – just a Kenyan trying to understand and simplify the legal language. This document is intended to make reading the draft easier, not as a substitute or comprehensive summary. Readers should check the information presented here against the actual draft. Please send factual corrections to: [njerigakonyo@yahoo.com](mailto:njerigakonyo@yahoo.com) . Thanks.

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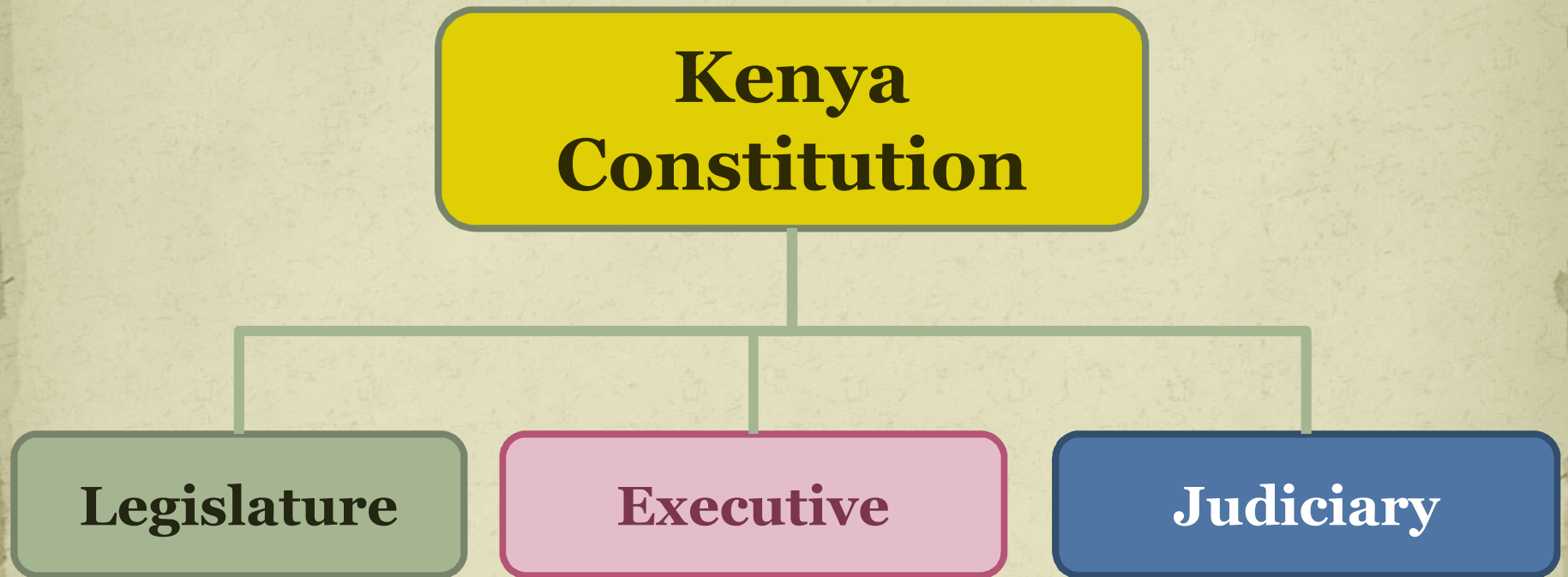
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- Note: CoE means Committee of Experts

# Structure of government

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Institutional overview

# Kenyan state

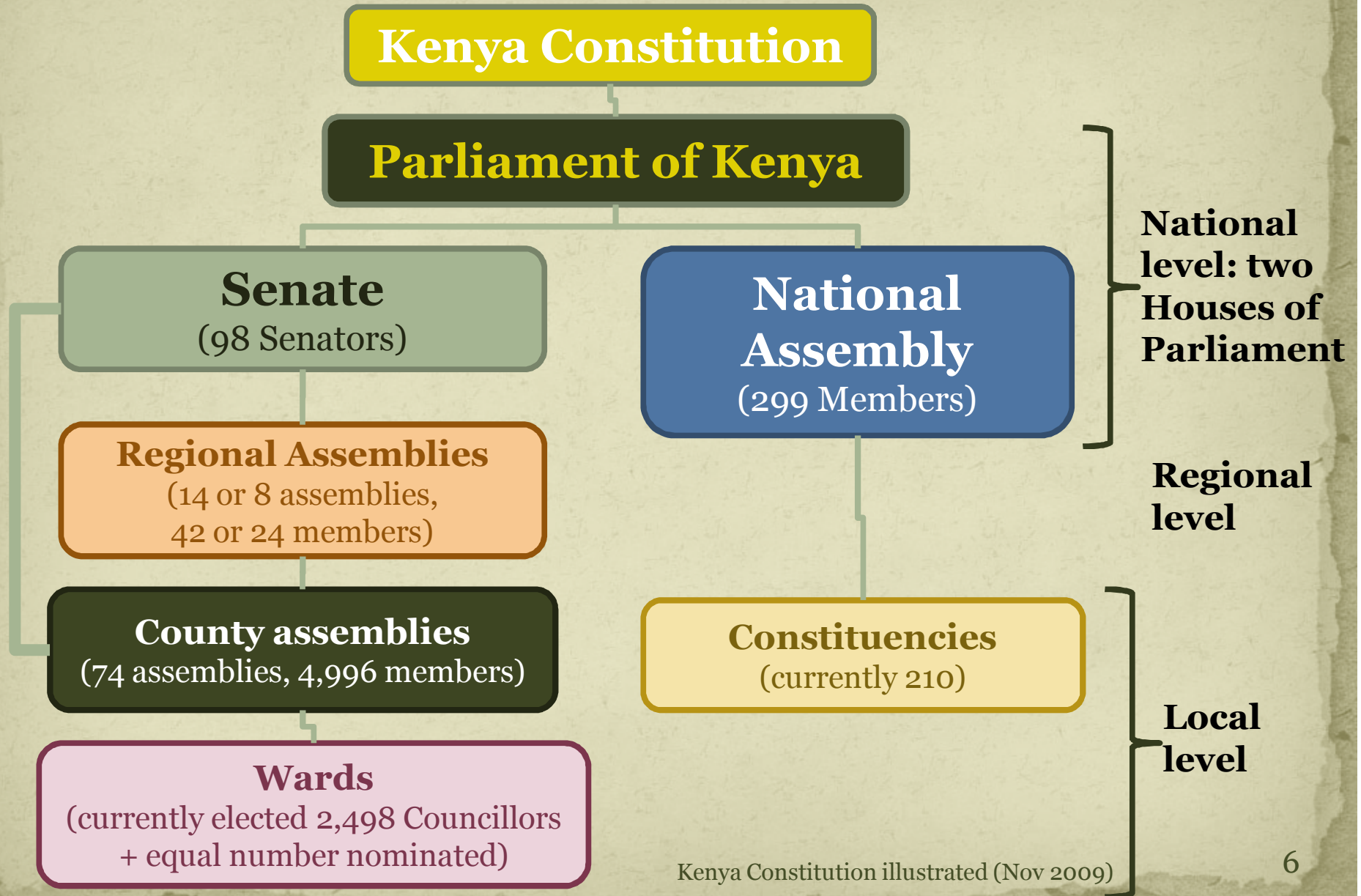


# Chapter 11: The Legislature

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Representative, law-making bodies

# The Legislature .../1



## Senate

- One elected by each county assembly but not a member of the assembly
- Two women from each region elected by the regional assemblies
- One disabled person or youth from each region
- Speaker – an ex officio member
- Total number:  $74 + (2 \times 8) + 8 + 1 = 98$  Senators)

## Regional Assemblies (8)

- Three members from each county
- Governors & Deputy Governors elected from assembly members

## County assemblies (74):

Rift Valley – 19 + Eastern – 13 +  
Nyanza – 12 + Western – 8 +  
Coast & Central – 7 each +  
North Eastern & Nairobi – 4 each  
Each county with members who are  
Councillors from each ward

## Wards

- Councillors elected
- Political parties nominate an equal number to those elected
- Total number: currently 2,498 elected Councillors + equal number nominated = 4,996

## National Assembly

- One from each constituency (at least 210)
- One woman from each county (each county comprising a single member constituency)
- 7 members – persons with disabilities; with no more than 4 of the same gender (one term only)
- 7 members elected by marginalized communities, groups and workers (one term only)
- Speaker – an ex-officio member
- Total number: (currently  $210 + 74 + 7 + 7 + 1 = 299$  Members)

## Constituencies (currently 210)

# The Legislature .../2

# Legislature structure: some pluses & concerns heard thus far

## Pluses

- Increased grassroots participation
- Devolved units have representation at national level

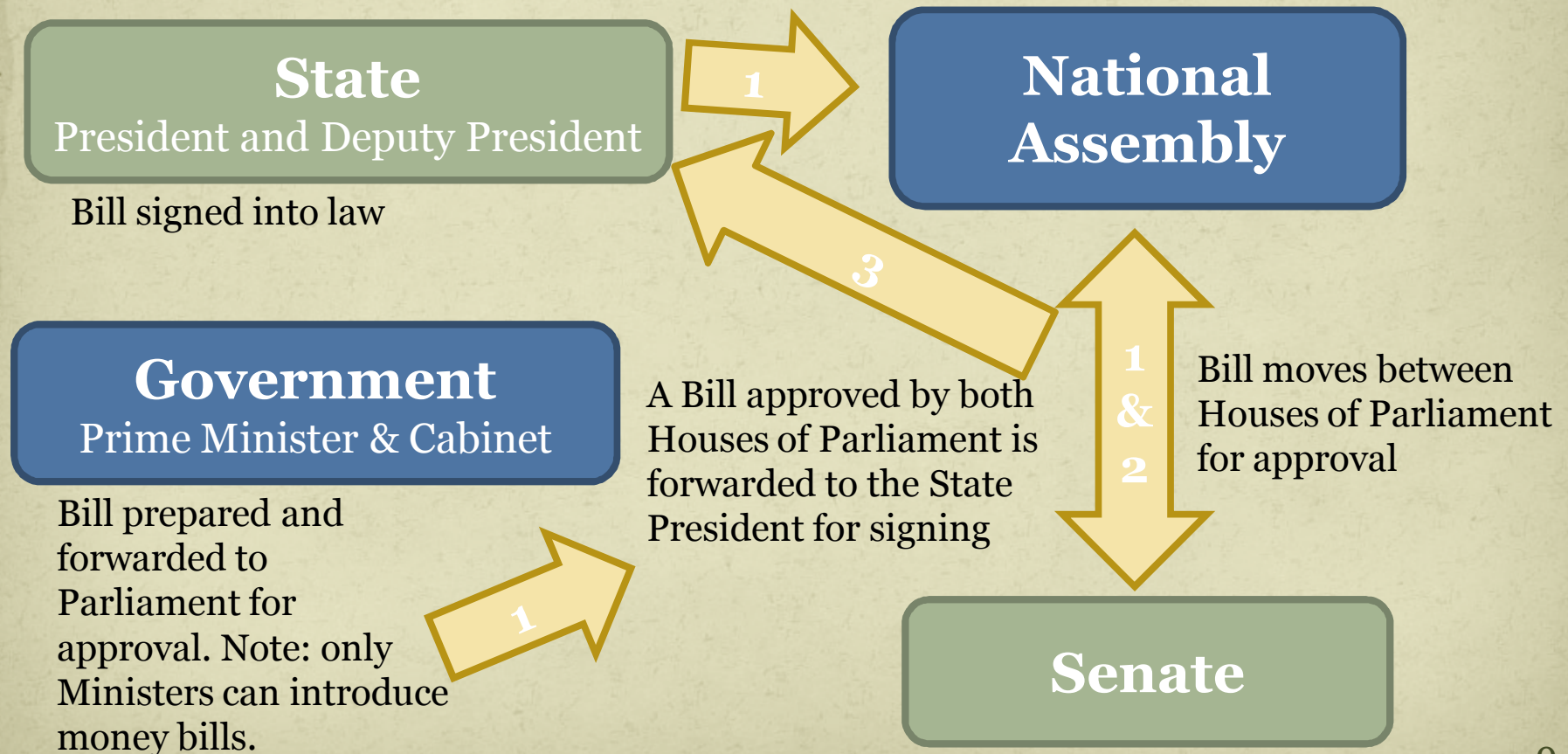
## Concerns

- Multiple layers mean decision-making gridlock
- Cost of implementing and maintaining such a huge structure is too high
- Financing could be very problematic:
  - Regional assemblies do not have power to raise revenue
  - Counties can borrow – but who bails them out when they can't repay?
- Lack of clarity: 8 regions or 14?
- We are at risk of creating ethnic balkans – powerful, self-governing regions whose boundaries largely follow ethnic concentrations

# Legislative process

## Executive

## Legislature



# **Chapter 12: The Executive**

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Implementing laws and policies

# *The Executive*

## National Executive

### State

President and Deputy President

#### President

- Head of State
- Commander-in-Chief of the Kenya Defence Forces
- Chairperson of the National Security Council
- Symbol of national unity

#### President

- Elected through direct adult suffrage by secret ballot
- Not required to be member of a party

### Government

Prime Minister & Deputy PM

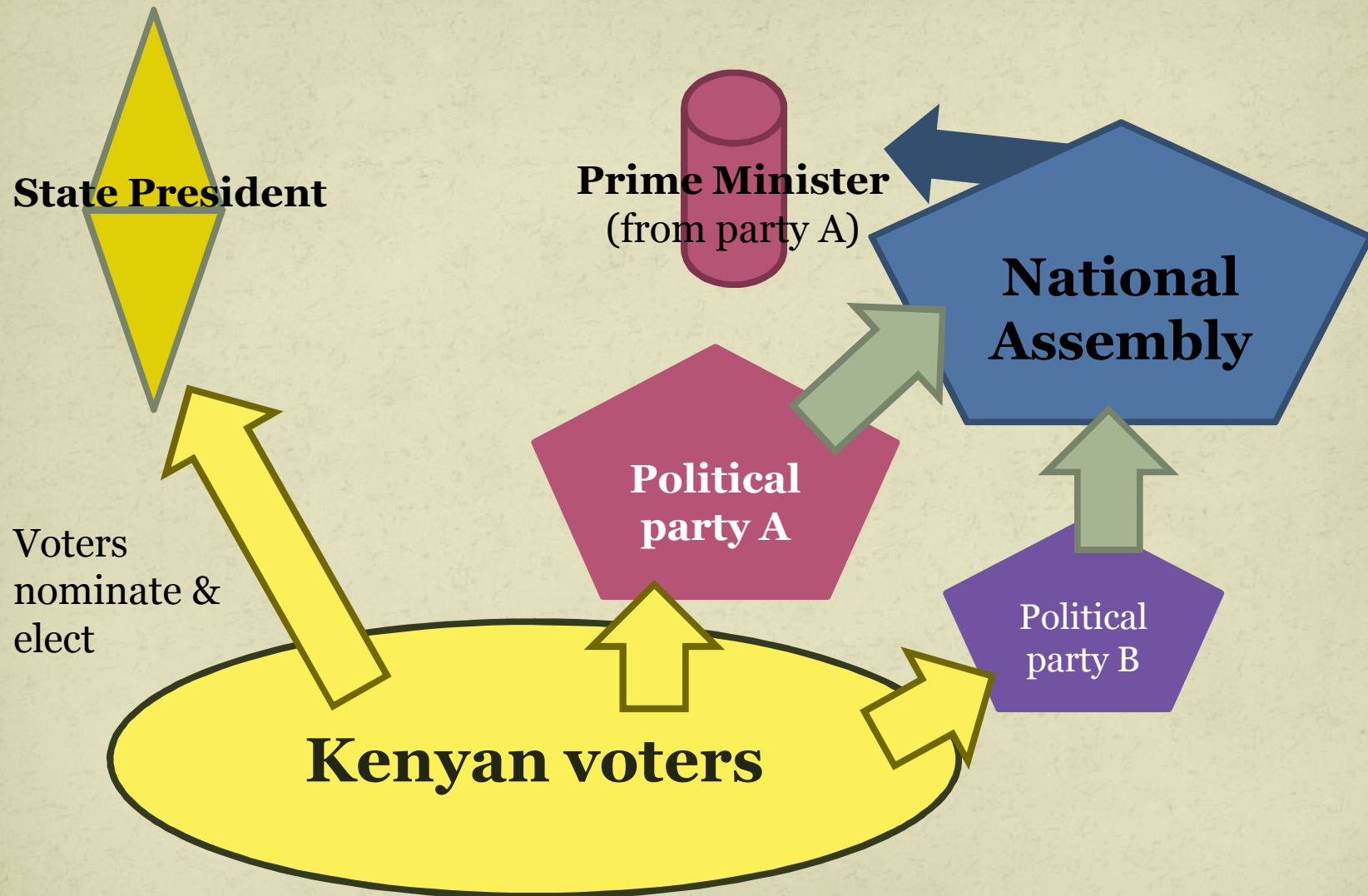
#### Prime Minister

- Head of Government
- Directs and coordinates work of the ministries (between 15 & 20) and the preparation of legislation
- Responsible to Parliament
- Presides over Cabinet meetings

#### Prime Minister

- State President appoints the leader of the largest political party or coalition of parties represented in the National Assembly (NA). NA confirms.

# *The contentious executive: selection*

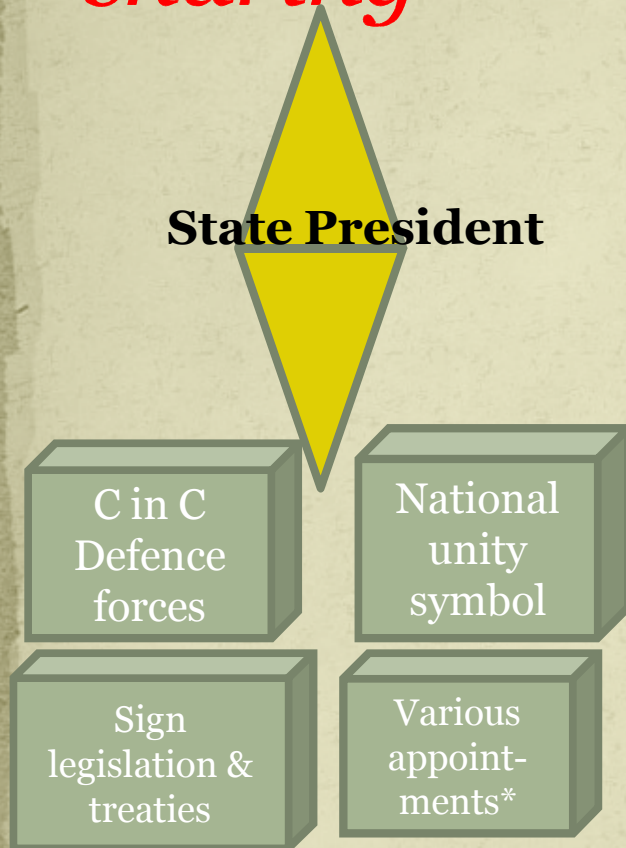


Note: the State President does not have to be a member of a party & should not be a Member of Parliament

# *The contentious executive: power sharing*

**State President**

**Prime Minister**



\*Includes:

- The Cabinet: PM, DPM, Ministers and Deputy Ministers
- Judges of superior courts
- President approves after parliamentary or other approval

Kenya Constitution illustrated (Nov 2009)

\*Note:

- Cabinet: minimum of 15 and maximum of 20
- Cabinet can include not more than 10 non-parliamentarians

# Executive: some pros & cons heard thus far

## Pros

- The all-powerful presidency is no more
- This arrangement is real power sharing
- Kenya needs a president who will be a true national symbol, not hung on party politics
- The system improves accountability: we watch what goes on in Parliament on TV but State House is opaque to us
- The parliamentary system should strengthen political parties and help to ensure discipline since the PM will want to pass legislation, etc

## Cons

- The PM is now too powerful
- The State President gets a huge mandate from the popular vote and peanuts by way of real power
- The runner-up in a presidential election falls out of the picture because he/she cannot even be an MP
- A popularly elected President in charge of defence who disagrees with the PM could destabilise the country

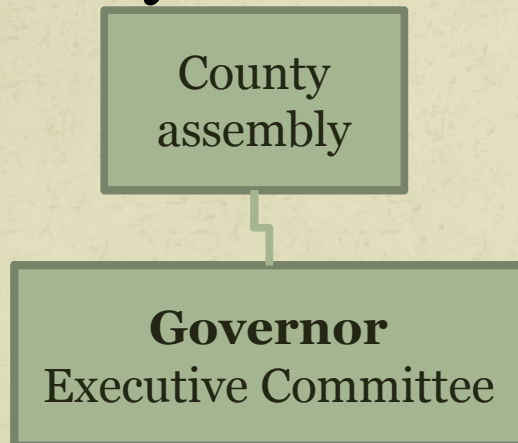
# *Fiscal matters*

## **Central Government**



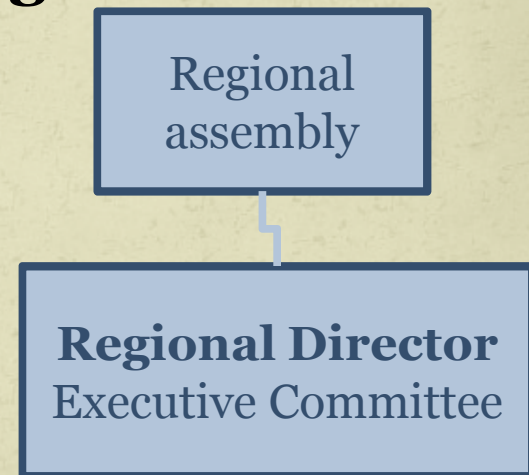
*Central government can levy taxes  
and borrow*

## **County Government**



*Counties can tax, borrow and  
guarantee loans for investors*

## **Regional Government**



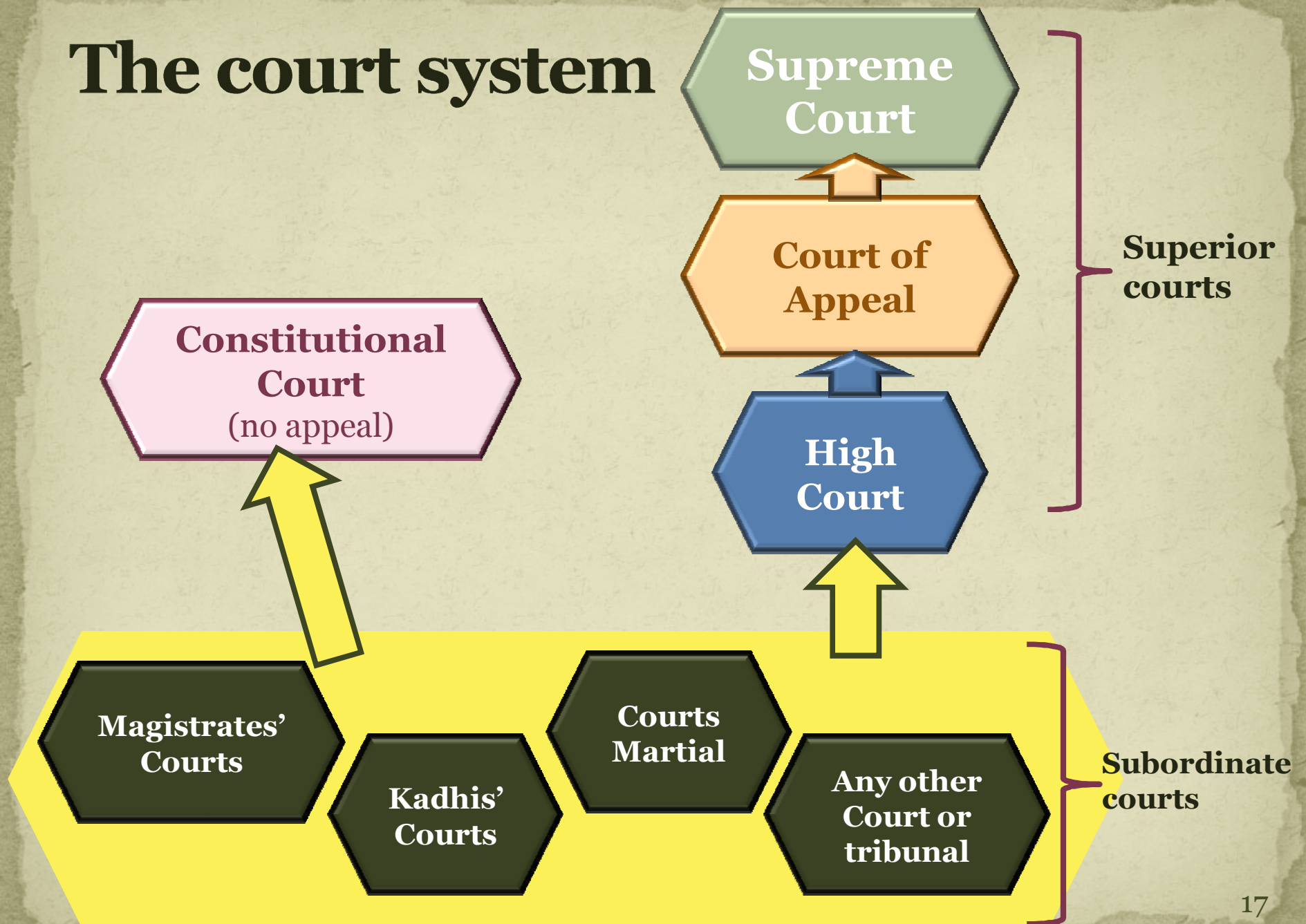
*Regions not empowered to tax  
but can borrow*

# **Chapter 13: The Judiciary**

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Courts and legal system

# The court system



# The Judiciary

## Supreme Court .../1

- Chief Justice is President of the Court
- Deputy Chief Justice is Vice President of the Court
- At least 5 but no more than 7 other judges

## Supreme Court .../2

- Proceedings require at least 5 judges
- Sits in Nairobi
- Only the Supreme Court can hear State President impeachment cases

## Constitutional Court

- An autonomous court
- No fewer than 5 judges
- Chief justice appoints the Principal Judge
- There is no appeal beyond this court

## Court of Appeal

- Not fewer than 12 judges
- Act of Parliament determines the actual number of judges
- Chief Justice appoints the President of the court

## High Court

- Act of Parliament determines the number of judges
- Chief Justice appoints the Principal Judge

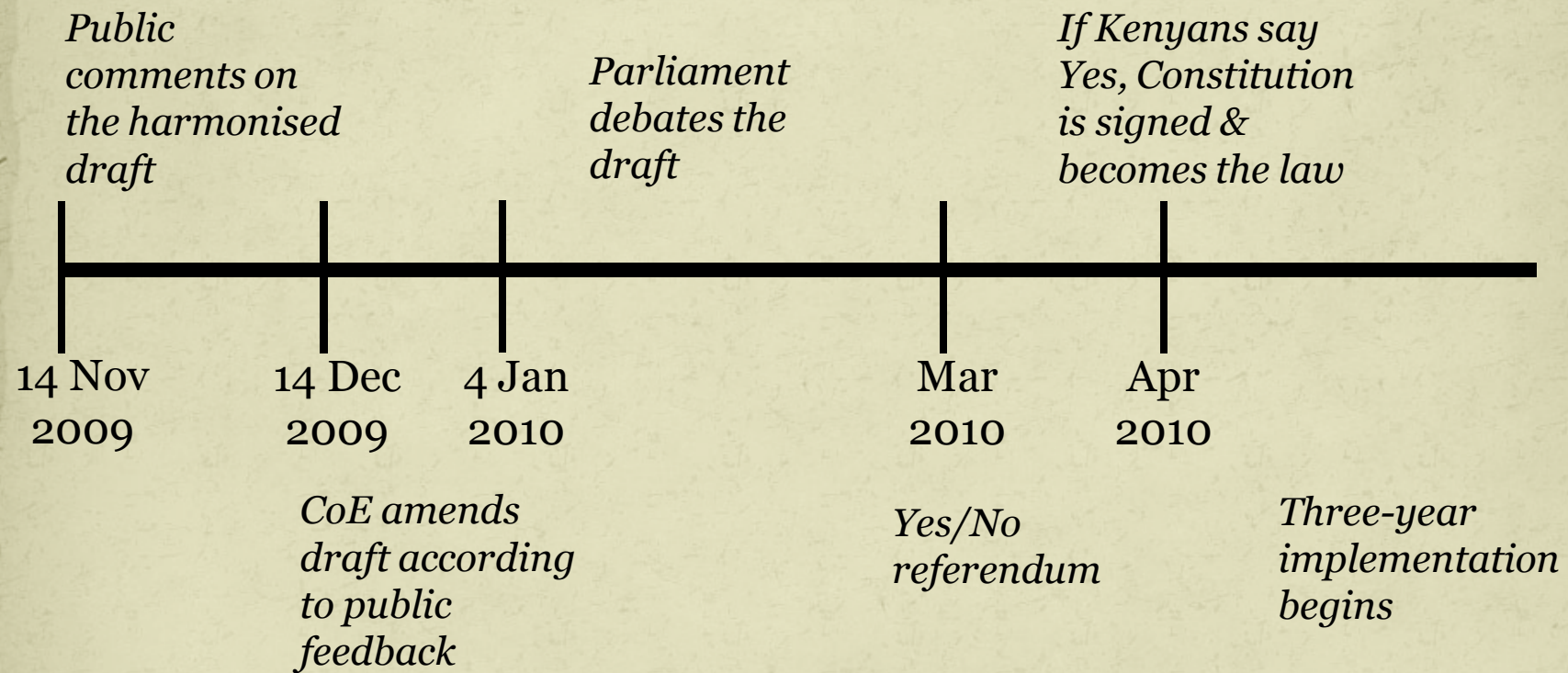
# **Next steps and implementation**

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# Coming milestones

- Window for comments closes on 14 December
- Committee of Experts (CoE) amends draft according to public feedback (21 days)
  - CoE hands over the draft to the Parliamentary Select Committee on the Constitution
- Parliament debates the document
- Referendum in March 2010
  - A referendum law is needed first
  - Yes or No to the entire document
- If Yes, the document is passed into effect in April 2010

# Constitution timelines



# Implementation

- The CoE have set a strict three-year timetable to fully implement the Constitution
  - It is contained in the legal schedule of the draft
- A Commission to oversee implementation will be established immediately the Constitution is enacted
- Parliament can only delay the schedule once
  - With a two-thirds majority
- If unauthorised delays occur, the Constitutional provisions require that the Chief Justice recommends dissolution of Parliament to the State President